

Conflict of Interest in the University Setting: I Know It When I See It

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Abstract. Potential conflicts of interest are a fact of life at research universities today. This paper offers guidelines for dealing with potential conflicts openly and directly, making it possible for university administrators to balance the institutional risks and benefits of relationships and interests faculty may have with outside agencies or companies. The paper offers basic definitions, flags the kinds of activities that may raise conflict-of-interest questions, and provides guidelines for assessing risks to the institution. It provides advice on developing effective conflict-of-interest policies and procedures that will minimize risk to the university and the individual.

The entrepreneurial spirit has found a home on university campuses throughout the United States. It was invited by presidents and chancellors, embraced by faculty inventors, and encouraged by state and federal governments eager to reap the social and economic benefits of technology transfer.

Innovative approaches to technology transfer have led to new kinds of partnerships between the academic and private sectors: corporate researchers can be found working side-by-side with faculty and graduate students in university laboratories; universities have licensed new technologies to corporations; corporations are establishing outposts in university-owned or -sponsored research parks in order to take advantage of the proximity of faculty scientists and campus resources; universities are building incubator facilities to provide a supportive environment for developing new technologies; universities are licensing new technologies to spin-off corporations formed by their faculty members.

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The very fact that so many segments of society welcome these developments may be a sign that private enterprise and the public good can more than coexist in academia; they can positively flourish. At the same time, however, conflict of interest has become one of the more controversial aspects of university life in the late 1980s. Administrators at all kinds of institutions — public and private, big and small — are engaging in reviews, analyses, and no small amount of hand-wringing as they wrestle with the issues presented by the flurry of entrepreneurial activity taking place on their campuses.

The well-founded fear that motivates much of this activity is that the basic missions of the university — teaching, research and service — may be jeopardized if conflict-of-interest situations are not managed properly. Mistakes in this area will draw the attention and quite possibly the intervention of outside regulators, from government agencies, from state and federal legislatures, and even from prosecutors. The bad news is that it is not possible to enter into innovative relationships and garner all the benefits without exposure to the risks. The good news is that, with a better understanding of the risks, institutions can make a balanced determination of whether it makes sense to accept them in pursuit of the benefits.

Potential conflicts of interest don't disappear simply because they go unacknowledged. On the other hand, discovering potential conflicts need not result in the termination of entrepreneurial activities. On the contrary, with appropriate protective mechanisms and safeguards, some arrangements may become possible that would otherwise be untenable. In this way, dealing openly and directly with potential conflicts can improve the flow of technology and protect both individuals and institutions. Unless the issues of potential conflict of interest are confronted and contained, they can pollute the purest waters and turn a "win-win" situation into just the opposite.

To minimize the risks, institutions must have and enforce a conflict-of-interest policy. If such a policy is to work, it must include a thorough reporting and disclosure program. While a policy is necessary, however, it is not sufficient. It would be hard to find a faculty member who fails to condemn conflict of interest in the abstract, and most also find it easy to spot someone else's conflict. But it is extremely difficult for the most honest and upright of scholars to acknowledge their own conflicts for what they are. The most important single step an institution can take is to sensitize its faculty and administrators to the possibilities of conflict, and to provide them with the tools and examples they will need if they are to recognize it and rationally weigh the risks.

THE LEANING TOWER OF IVORY

If every faculty member devoted every waking minute to his or her university work, conflicts would not arise. In the late twentieth century, however, it is a fact of life that most university staff members also engage in outside activities of one sort or another. It is also true that faculty members often control university resources. This situation — where an individual who controls university resources also engages in outside activities — creates the possibility of conflict.

What are the ways in which faculty members, who after all spend most of their time conducting research, performing service and teaching, can be said to control university resources? Often, they determine the direction that entire research, service and teaching programs will take, which may affect the distribution of a wide range of resources — dollars spent on supplies and equipment, human time of students and support staff, machine time on computers and other sophisticated equipment, and the use of rooms and laboratories belonging to the institution.

It is in the nature of a university for the role of decision-making in these matters to fall to the individual faculty researcher. In itself, that does not give rise to a conflict situation. However, when those same faculty members and companies active in their area of expertise have financial relationships of one kind or another, conflicts of interest may arise. Such financial relationships could include consulting, an advisory role, stock holdings or management responsibility, for example. Other red flags are faculty-owned spin-off companies, in which not only financial interests but questions of research agendas and scientific objectivity may arise. Special attention is called for whenever students are involved in the private business activities of a faculty member.

Careful monitoring and management of potential conflicts can help avert disturbing and destructive situations. Scientific fraud, insider trading and misappropriation of funds are just a few of the direct outcomes that are possible when conflicts are allowed to go unchecked. Objectivity — *disinterest* — is the key to much of the work that takes place in universities. By definition, disinterest and personal financial interest are incompatible. Objectivity is nearly invariably compromised, in appearance if not in fact, when the financial stakes of a researcher are too great.

CONFLICT OF INTEREST

“Conflict of interest” encompasses two separate concepts: conflicts of interest, which have to do with private financial gain, and conflicts of commitment, which involve time. When personal financial interests

could affect the decisions someone makes at work, conflict of interest may be a problem. Financial gain can mean not only direct profits, but use of facilities, staff, or other resources at no cost or reduced cost. Conflicts of commitment may arise when, pulled in too many different directions, an individual is unable or unwilling to meet fully the responsibilities of the primary professional position. Both types of conflict stem from an individual's having multiple interests that can be simultaneously compatible and competitive. The more complex the interactions among these interests, the more difficult it can be to protect against potential or actual conflicts of interest.

If a faculty member stands to gain financially, making a personal profit by using public resources, it is likely that a conflict exists. If a staff member's time is used in a way that benefits the private interests of the faculty member, it is again likely to be a problem. Not only the faculty member himself or herself, but friends, family and associates should be taken into account when conflicts are assessed.

It is not sufficient to know that all the individuals involved are operating in good faith — it is possible for real problems to be caused by the appearance of conflict or the potential for conflict as well as by the full-blown reality of conflict. An **unacceptable conflict of interest** exists when a faculty member in fact makes a decision that is not in the institutional interest, based on personal factors. A **potentially unacceptable conflict** exists when the situation would permit that faculty member to do so. **Apparent conflicts** can be equally problematic. The faculty member may have made a decision quite properly, but in retrospect it may appear to have been influenced — or open to influence — by personal factors. Careful documentation and disclosure mechanisms can make a critical difference in such cases. Where appropriate, safeguards must be implemented or — on occasion — activities prohibited.

Consulting is the activity most commonly thought of when considering outside activities of faculty, but university employees also own and manage real estate, play in symphonies, create art, breed dogs and horses, and do volunteer work — sometimes in their area of professional expertise. Some of these activities are strictly within the private lives of the employees. Others may complement the university's mission by making expert contributions to communities, corporations, and professional societies, for example. Universities generally try to accommodate a wide range of such activities, both because faculty should have no less freedom than professionals of any other sort when it comes to their personal financial decisions, and because the outside activities of faculty often are seen to be in the public interest. Sometimes,

however, conflicts of interest make it impossible or inadvisable for universities to give faculty a free rein.

Conflicts of commitment, because they are related to time instead of money, may arise from volunteer activities as well as those that are remunerated. A faculty member who is deeply involved in the management of a professional society, runs for local political office, or serves on the board of a charitable organization may be just as vulnerable to neglecting university duties as one who is paid for his or her efforts. In general, university contracts presume that a faculty member's primary loyalty is to the institution. Faculty members do not punch a time clock; many work long, if irregular, hours. When a faculty member has competing outside interests, it can be very difficult for anyone — even the professor in question — to know exactly how to allocate time, energy and ideas between two masters. One faculty member at the University of Illinois asked a research administrator whether an idea he had in the shower belonged to the university or his company. The administrator's advice was that the idea might well "belong" to the university, and the safest course was to presume that it did. The question never would have arisen a generation ago.

It is important to remember that the simple fact of multiple time commitments does not necessarily signal a potential conflict. It is common for faculty members to spend large amounts of time, for which they are often compensated, outside of their direct university responsibilities but well within the professional activities that are expected of them if they are to flourish in the academic environments. These sorts of activities frequently are taken into account in promotion and tenure decisions, and may include book authorship, professional society activities, lecturing at conferences, editing of journals, site visits at other institutions, and so forth. The sure sign of a troublesome conflict of commitment is that the faculty member's university obligations are not being fulfilled to the satisfaction of the institution. The flip side of this is that, if the university obligations *are* being met, conflict of commitment is not a problem.

Thus, whether or not financial interests are involved, institutions should measure conflicts in terms of the damage they may cause to the basic missions and goals of the institution.

RECOGNIZING CONFLICTS

In reviewing outside activities of faculty and staff to assess the risks of conflicts of interest, institutions should be alert to four possible dangers: (1) that the educational programs of the university —

particularly those involving graduate students — could be adversely affected; (2) that research agendas might be subverted; (3) that the free flow of scientific information might be unreasonably constrained; and (4) that public resources might be used for private gain, possibly to the detriment of the public good.

Each of these flows from the traditional missions of universities in teaching, research, and public service. Remembering the university's mission is a constructive way to evaluate the potential benefits and risks in a given situation. Does the activity in question advance the university's basic missions? Harm them? Advance one at the expense of another? On balance, is the benefit worth the risk?

The public policy debate at the beginning of this decade on technology transfer initiatives produced a policy of sharing royalties with researchers when technologies they invent are commercialized. In the most recent wave of concerns about conflicts of interest, questions have been raised about whether these royalties might create disqualifying conflicts. It would be possible to eliminate almost all conflicts of interest by prohibiting broad categories of activities and relationships, including royalty-sharing with inventors, but the costs of such an approach in terms of discouragement of activities with many beneficial effects are likely more than is sensible to pay.

Risks are not necessarily problems. Institutions should recognize that some risky undertakings fail, but some benefits are not possible without accepting some risk. Sometimes, if a conflict of interest is possible, it will in fact materialize and subvert the hopes of the institution. Often, it will not.

Educational programs. A university's educational programs are susceptible to a variety of ill effects from the personal conflicts of interest of staff members. It is human nature to turn to familiar people when help is needed, and in a university setting familiar people are likely to be students and colleagues. Students may benefit from involvement in a faculty member's outside activities. The experience of working in the real world with a scientist who shares their interests may give them specific educational experiences that will be valuable to them, and also may help prepare them for their future professions inside or outside the academy.

Nonetheless, students are particularly vulnerable to exploitation, and it is important for universities to be alert to the possibility that the students' best interests are not being served. For example, the selection of a dissertation topic might be skewed so that the thesis research would fit more neatly into the plans of the outside activities of the faculty member. Faculty mentors could deliberately slow the progress of graduate students if they wish to keep them around to help in the private enterprise.

Or, students' degree progress could be speeded up unreasonably in order to make them available sooner for full-time employment. It is not only students who willingly participate in a faculty member's outside activities that may be hurt. If students involved in the outside project are favored, those who are not could be adversely affected.

Research agendas. Outside interests may cause faculty members to make decisions about research agendas that are not in the best interests of the institution. Is the work appropriately undertaken in a university laboratory, or is it simply private business conducted in university space? Is it fundamental research, rather than product development? Might the profit motive call into question the integrity of the research results?

When a faculty member serves as a consultant to a company that is also a research sponsor, inappropriate technology transfer is a real possibility. Unless specific other arrangements are made in advance, technology developed at the university properly belongs to the university. This sometimes is not well understood by either the scientist or the sponsoring company. If the risks inherent in this situation are recognized, negotiators for the company and for the university can deal in advance with use and compensation questions, licenses and royalties, establishing procedures by which to determine how technological advances are to be allocated among the parties.

Other problems also may arise in this situation, however, and may be more difficult to control. When a faculty member is paid a large retainer as a consultant or scientific advisor, it may well be difficult for him or her to remain objective when the company's financial well-being is at stake. At best, this creates a situation where the appearance of impropriety may exist. At worst, it can lead to insider trading, withholding of research results, falsification of findings, or other illegalities. If the faculty member also has an ownership interest in the company that is sponsoring research, the situation becomes even more untenable.

Another danger is that research that properly belongs at the university may be diverted to a private company. The motive for doing this could be financial or could be competitive, but in any event it is important for the institution not to let it happen.

Dissemination of knowledge. The free exchange of scientific information or theories is one of the fundamental virtues of the academic setting. Once again, the profit motive may threaten to jeopardize this exchange. When private interests are at stake, decision-makers may be swayed in their determination to maintain openness. The prospect of profit, or the very success of a private venture, may outweigh the public good if those in a position to make decisions are also those who stand to gain if the release of scientific information is denied or delayed.

Publication could be affected in a number of ways. In the worst case, private interests could cause researchers to suppress or alter information that would be harmful to the outside interest. A less egregious but equally unacceptable outcome would be the simple delay in publication of data in order to gain competitive advantage.

Competition among scientific groups is a common enough phenomenon on university campuses. Adding the prospect of personal financial gain to the existing reasons faculty members may have for wanting to be first with an idea may deal a death blow to the notion of collegiality, leading researchers to become increasingly secretive and proprietary about their results.

Use of public resources for private gain. The principal concern that both legislators and journalists harbor about conflicts of interest focuses on the inappropriate or unauthorized use of public resources for private gain. Private universities are not immune from such concerns about misuse of public resources, because the vast preponderance of support for research comes from tax-supported public agencies. Legislators and journalists, who see themselves as watchdogs acting on behalf of the public, are well aware of the sources of these funds. Many go so far as to describe any funds being used by institutions of higher education, regardless of the source, as essentially public.

Resources, it should be remembered, include not only dollars and staff time, but use of the university's name, facilities and equipment. A university's name is a valuable asset, and private interests often want to enhance the market value of their products or services by putting the weight of the university behind them. Institutions should carefully guard against inadvertently implying endorsement of products or services.

Several classes of expenditures are subject to abuse — or the appearance of it. Travel and purchases that might have been perfectly acceptable university expenses if no private interests are involved may be questionable in other circumstances, in light of new profit-driven arrangements. Uncompensated use of office space, staff or specialized equipment acquired or maintained with public funds constitutes an inappropriate use of public resources unless specifically agreed to in a contract.

One situation that is becoming increasingly common at major research universities is the spin-off company, in which a researcher forms a private enterprise to develop or market a technology developed at the university, frequently with public funds. In some instances, the researcher maintains a formal affiliation with the university. Spin-offs are riddled with possible conflicts, not only for the individual but for the university itself, which may stand to gain financially from a successful company. Despite the possible difficulties, spin-offs sometimes represent

the best way to transfer a new technology from the university to the marketplace. The elements that may signal unacceptable conflicts are the same as those in the other situations we have discussed, but the added layers of complexity in spin-offs call for a particularly scrupulous review.

CONFLICT OF INTEREST POLICIES AND PROCEDURES

A university must have a conflict-of-interest policy that includes provisions for mandatory disclosure of outside activities by its faculty and professional staff. The basic elements of the policy should include early and complete disclosure and an objective process of evaluation, based on uniform standards. The policy could specify that individuals report the time they spend on outside activities, the compensation they receive, or both. The University of Illinois, like many universities, requires disclosure of outside income-producing activities but not of the income generated through those activities. In specific situations, it may be necessary to ask for further details — but that is not always the case. When such details are needed, though, the university must have clear authority to obtain them. Whichever course the university takes, a disclosure process is necessary because it is impossible to evaluate potential conflicts without the fullest possible description of them. And without evaluation, it is impossible to reach sound judgments about which risks are worth taking, and which are not.

No matter how sound the guidelines, they are always susceptible to subversion by the determined. Most people, however, are more than willing to play by the rules as long as they are rational, clear, explicit and published.

Most disclosed information is not troublesome. Our experience so far tends to show that only a relatively small percentage of the forms that are submitted require close scrutiny, and a vastly smaller percentage signal real problems. It is important to keep this in mind when designing a disclosure process. The procedure should be as “user-friendly” as possible, both to encourage compliance and to keep the burden light for the great majority of faculty for whom this represents one more hoop to jump through and an unwelcome diversion from their scholarly pursuits.

Universities, therefore, should require disclosure of the minimum information they need to make informed judgments about which situations require more careful attention. In deciding what to ask, universities always should keep in mind that conflicts are particularly risky if they jeopardize one of the basic missions of the institution. Risks in this category always require close scrutiny and seldom are worth

taking. For this reason, any policy should require disclosure of relationships with companies that specialize in the faculty member's area of expertise, sponsor research, or do business with the university, as well as any outside activities that involve students.

Once all possible conflicts have been disclosed the institution must sort through them and deal with any problem situations. Many conflicts — both actual and potential — may be relatively harmless. It is not possible to attack the contemporary research environment like a homeowner in search of the perfect lawn, weeding out every sign of crabgrass. The individuals conducting the evaluations must understand that some conflicts are acceptable and others are not, and must be adept at knowing the difference. The limits of the acceptable, therefore, must be understood both by those submitting the forms — the faculty — and by those reviewing them. Finally, when unacceptable conflicts are identified, the institution must be willing and able to act. It doesn't do much good to know that conflicts exist if the institution allows them to continue unchecked.

BEYOND DISCLOSURE

The most important result of the formal disclosure process may be the simple fact that it frequently serves as the catalyst that causes faculty and administrators alike to think carefully about these issues. Those who expect the process to yield clean, clear-cut results, revealing all possible conflict situations, will be disappointed. Of all the conflicts that have caused difficulties at the University of Illinois, none first was identified through campus review of the submitted forms. Some might ask, if that is the case, why go to all the trouble of collecting the data? For one thing, department heads may be required to sign faculty and staff conflict-of-interest disclosure forms. This provides a strong motivation for administrators to understand the true nature of the relationships described on the forms submitted by their faculty. In addition, if an individual knowingly omits or falsifies data on these forms, and a problem subsequently is discovered, it may be easier to impose sanctions.

The first line of defense against problems is not the forms; it is the departments. They are closest to the action and in the best position to identify, avert, or flag conflict-of-interest problems. Administrators at the departmental level must be given assistance in understanding the issues, and back-up when problems arise. Colleagues at the departmental level often are the most knowledgeable about the scholarly work of the staff member, and may be in the best position to assess

the effect of outside activities on the ability to carry out university obligations. On the other hand, they are also the most likely to be swayed by personal affinities and feelings.

For these reasons, while the review must begin at the departmental level, it cannot end there. It is important to have guidelines that will direct an impartial central review of certain departmental findings. For example, if the preliminary review turns up a financial relationship between a faculty member and a sponsor of research, this should automatically be forwarded to the central administration for review.

Some individual, or group, should be designated to serve as the central reviewing point for possible conflicts requiring additional attention. The issues and individual cases are seldom black and white; far more often, they fall along a continuum of shades of gray. It requires a good deal of exposure to the variations on the conflict theme before people begin to learn to sort them out with consistency, rationality and equity.

PROTECTIVE MECHANISMS

Protective Mechanisms Once information about a potential conflict has come to the attention of the administration, either through the routine disclosure process or through any other route, it should be analyzed in view of the institution's basic missions as outlined above.

For each possible conflict, consider whether some aspect of the university's mission is in danger. If the answer is yes, try to identify possible ways of protecting against that danger. Brainstorm with those who can provide the best expert advice available, inside or outside of the institution. These are the people who will best be able to suggest specific safeguards in specific situations. This may mean consulting with staff from:

- **Research Administration.** Is the institution's research agenda or credibility likely to be affected adversely? What steps could be taken to protect against that?
- **Department Heads.** Would the proposed situation be likely to jeopardize the free flow of information within the department or within the discipline? If so, is it possible to devise a means to minimize the problem?
- **Graduate Dean.** Are the educational interests of student laboratory assistants adequately protected? How could that be accomplished?
- **Legal Affairs.** Are the university's legal interests adequately protected? Would special contractual arrangements circumvent problems?

- **Public Relations.** How would reporters be likely to respond if they knew about the possible conflict? What steps could be taken to make the situation more acceptable in their eyes?
- **Government Relations.** Do local legislators — state or federal — have particular concerns in this area? Should they be kept informed?

It is absolutely essential to involve the faculty members themselves in these discussions. Their initial reaction to scrutiny may be a defensive one, and they may believe that the university is only attempting to protect itself. In fact, however, though it may not be evident on the face of it, it is in the best interest of individual faculty as well as the institution to avoid these conflicts. In any event, the cooperation of the faculty and departmental administration will be the key to a successful resolution of any problem.

Specific safeguards can be put in place to deal with particular situations. In cases where students' interests are involved, a disinterested party should be asked to take responsibility for monitoring academic progress and maintaining open channels of communication. Another faculty member in the department, the department's graduate advisor, or the head of the department could play this role.

Where private use of university facilities or resources is requested, decisions must be made about whether to allow the use, under what circumstances, and for what compensation. Contracts can be written to spell out these decisions for the protection of both the institution and the individual.

In the event that an individual discloses a financial interest in a company that supplies the university with equipment, purchase decisions can be transferred to or approved by others. If a faculty member who owns or manages a company wants to support research at the university, a disinterested faculty member should be found to supervise the research.

If a faculty member travels to demonstrate a university-developed technology, but might benefit personally in some way from the demonstration, someone with no personal financial interest in the situation can be required to approve travel expenditures. Similar approaches can be taken for other types of travel.

Sometimes, outside professional consultants offer a good mechanism for reviewing projects and progress. Knowledgeable but disinterested outsiders may be the best people to spot subversion of research agendas and improper technology transfer.

The list of possible mechanisms is endless, and at first it may appear that each solution has to be tailored to fit a specific conflict situation. Eventually, however, those working with these issues will begin to build a base of knowledge that will enable them to make all but the least routine decisions without specific consultation. They also will develop working relationships with the professional staff in all of the other relevant areas that will make advice relatively quick and easy to obtain because everyone will be operating from the same set of experiences.

CONCLUSION

Those who spend time thinking about conflict of interest tend to fall into two camps — those who believe the problem is so serious that it will cause the entire research enterprise to grind to a halt, and those who believe it is so trivial that it should be ignored and eventually it will go away. Members of both camps agree that conflict of interest is a bad thing, and they generally believe that they recognize it when they see it. (The one obvious exception to this is that individuals usually can find ways of rationalizing and justifying their own conflict situations.)

The truth lies somewhere in-between. The situations that typically give rise to conflicts of interest in university settings are so much a part of today's culture that hopes that the problem will disappear are quite vain. At the same time, Congress, state legislatures and journalists are more interested than ever in monitoring the integrity, productivity and accountability of universities. On the other hand, fears over conflict need not cause universities to retreat from the important contributions they are making in the areas of technology transfer and economic development.

The best approach is a balanced one that keeps in mind the basic goals and missions of the university; the welfare of its employees; and its broadening social responsibility in the area of technology transfer. The dangers are real and present, but if they are carefully thought through, some of them will be judged to be negligible, and others will be worth the risk. By applying a rational system of guidelines, institutions can do everything possible to keep conflicts within acceptable limits. This will allow them to be participants in the world of affairs without sacrificing their institutional identity and integrity.