

The "Implied Permission" Doctrine

A New Look at the Foundation of the CoB's 2006-07 AACSB Reports

This promises to be an interesting new series here at USMNEWS.net. In it we will present new information on the CoB's use of documents from Central Missouri State University's AACSB efforts during the CoB's 2006-07 attempts to gain a positive maintenance of accreditation review from the AACSB. As shown [here](#) previously, the CoB used those CMSU documents/definitions "**without proper citation.**" When that action was uncovered by USMNEWS.net, its editor filed complaints with both USM and the AACSB. As a result, CoB AACSB team leaders sought *ex post* permission from CMSU to use the documents/definitions. Later, Jerry Trapnell of the AACSB ruled that the CoB's use of the CMSU work-product did not violate AACSB standards.



Jerry Trapnell



Charles Jordan



Karen Tarnoff



Harold Doty

One of the episode's central figures, accounting professor Charles Jordan, recently testified about these matters in a U.S. District Court proceeding. **Part 1** of this series takes a look at Jordan's testimony. Future installments will analyze Jordan's testimony. They will also take a fresh look at documentation previously in possession of USMNEWS.net in light of Jordan's recent federal court testimony. Of particular importance is Karen Tarnoff's Maintenance of Accreditation advice to USM officials. Tarnoff (of East Tennessee State University) was hired as an AACSB consultant by the Harold Doty administration of the CoB, and her advice is housed in USMNEWS.net's vast audio library.

Jordan's testimony is inserted below (Q=counsel's question; A=Jordan's response):

Q. You ever discuss Dr. [Marc] DePree with [former] Dean [Harold] Doty?

A. I recall one conversation I had with -- well, actually two conversations.

Q. Okay. And when were they?

A. They were -- one was the fall of '06. And another one was actually during the AACSB visit or the visit was almost over. It was either the last day of it or the very next day after that.

Q. Okay. And what -- what did you and Doty talk about in the fall of '06?

A. Well, in the fall of '06, we had seen or I had seen on Dr. DePree's website -- I had not been to his website in -- in quite a while. And I went on there and looked and there was -- there was an article where he had where -- it was a rather general article where he said that he had found a document that was gonna be used for AACSB's purposes, that he had located the -- the almost exact document on another university's website. And so he was alleging plagiarism. He did not say -- in this article he did not say which university or what document or anything. It was very general in nature. So I went to Doty and just asked Doty, I said, do you -- I said, have you read DePree's website lately. And he said, yes. I said, have you seen his article on the plagiarism. He said, yes. And I asked him, do you know what it's in reference to. And he said, no. He said -- he said, it could be this; it could be that sort of thing. He said, he was using some information from our SACS maintenance report with permission from Joan Exline at that time. He asked me if I knew. And I said, well, I don't really know what it is. I said, he could be referring to those participating-supporting faculty documents. But I said, I really don't see why he would be referring to those when he approved them himself in that faculty meeting. And so the dean just said, well, you know, just -- we have **implied permission** to use them, just -- just send an e-mail asking for **expressed permission** to use them. And that was -- and that was the -- pretty much the extent -- the extent of that conversation.

Q. You don't recall anything?

A. From that conversation?

Q. Yes.

A. No. It was a relative -- it was a relatively short conversation. Again, we didn't know exactly what Dr. DePree was referring to on his website.

Q. What about the conversation with Doty after the A or -- at the end of or just after the AACSB visit?

A. That was also another relatively short conversation. It was -- again, it was -- it was either -- it was either right at the tail end of the visit or the next day or two after that. There were several accounting faculty in the hallway. And -- and Doty came down at that point. And he told us that the visit team had judged Dr. DePree not to be academically qualified.

Q. And who was present when that statement was made?

A. If I'm not mistaken, Stan Clark. I think Gwen Pate was there, and I think perhaps Rod Posey. But I'm not, you know, I'm not sure that all those were there.

Q. Why did it fall to you to get permission to use this material?

A. I'm sorry. Why did it fall to me?

Q. To get permission to use this material after the fact.

A. You're asking why we sent that e-mail? Is that what you're asking?

Q. I'm asking why were you the person chosen to seek permission?

A. Because I had been the -- I had been the person that visited Central Missouri State [University]. I had been the person that Central Missouri State [University] provided those definitions to. They had provided them to me.

Q. Did you have permission to use those prior to your use of them?

A. There certainly -- there certainly was **implied permission** because that's the whole purpose of the -- of the peer visitation was to benchmark and use best practices and find out what other universities were -- were doing. And before we went on those visits, we -- each dean at -- each dean at our peer or academic institution was contacted and asked would they be willing to help in that manner. They agreed. Before I went on my visit to Central Missouri [State University], I contacted the dean and asked him if he would

supply us with certain information. I sent him with a list of that information. And he said, yes, we'll be happy to. He said, we'd like -- we'd also like to see USM's information. So we had a -- we had a sharing or exchange of information. So there certainly was **implied permissions** for that whole process to do that.

Q. And when you say you share information, did y'all exchange that information in a particular format?

A. Most of the information was exchanged in hard copy format. During the visit and my discussion with the dean, I told the dean -- we had already exchanged our -- our information, all our definitions and criteria and that sort of thing for AACSB accreditation, plus -- plus other things dealing with tenure and promotion. I told the dean that the only thing that we had not yet developed at USM was -- was the definition of participating and supporting faculty. And he said, we're -- I think he said, we're not quite finished with ours, but when I do get it, I'll send it to you.

Q. Okay.

A. And so then a week or two after my visit, he e-mailed that to me.

Q. And who was that dean?

A. That was -- that was Jack Elfrink.

Q. And where is he now?

A. I believe he is now at Western Illinois University.

Q. And have you discussed with him whether or not he intended to give you permission to use or adapt that definition?

A. I have not -- I have not spoken with him personally, no.

Q. You know anyone who has?

A. No.

Q. When you requested the information, did you tell them or inform them that you were doing so with an eye to potentially using or adapting or borrowing their information?

A. I did not tell them that specifically. It was certainly **implied** because of the whole process. The whole notion of benchmarking is fairly common with the AACSB to benchmark in best practice.

Q. And define for me benchmarking if you will.

A. Benchmarking -- or best practicing might be a better term to use than benchmark -- but you -- you identify practices of other institution and you try to emulate those.

Q. Okay. And in order to emulate them, you go ahead and adopt their language?

A. That -- that is -- that is -- that is one way.

Q. Well, what are the other ways?

A. Well, if it's -- if it's -- if it's a -- if it's a practice, for example if it's -- if it's an -- an organization that's manufacturing a product and you identify a cost-saving technique, you would benchmark that cost-saving technique and -- and use it. But -- but this was not an operation. It was preparing a report for AACSB.

Q. Right. But I'm talking about in the context of preparing a report for AACSB. Is there any other way to benchmark other than emulating or emulating them by borrowing and using their text?

A. I'm sure -- I'm sure that you could use their -- their -- yeah, you could benchmark their practices.

Q. And develop your own text?

A. If you -- if you so chose to, you could.

. . .

Q. Dr. Jordan, I'm gonna hand you a document that is a cover letter dated February 14, 2007, to Ms. [Kathryn] Jude from Lee Gore concerning certain documents that the University [of Southern Mississippi] presented to us. And I'm gonna ask you to look through those documents and ask -- ask you if you can tell us what those documents are and if you've ever seen them before.

. . .

A. Okay. This -- this one, this e-mail is an e-mail it's a response from Joan Neal-Mansfield, who was the dean at Central Missouri State [University] at the time that I e-mailed her asking her for [expressed] permission to use the definitions without proper citation.

Q. Right. And what's the date on -- do you know the date on your original letter to her?

A. I -- I don't recall the date.

Q. Would you look through these other e-mails and see?

A. I can see. I don't see the date.

Q. She -- is this where she replied to you?

A. Yeah, this was -- yeah, this is where she replied to me.

Q. What was the date on that?

A. The date on that is November 19.

Q. Of what year?

A. Of 2006.

Q. Okay. And we don't have anything on there that shows the date of your letter to her, do we?

A. Apparently not.

Q. Okay.

A. Yeah. Because I would assume -- I would assume that is -- yeah, that's part of her e-mail because it's before her signature --

Q. Right.

A. -- I would assume.

Q. Right.

A. Okay. And then there is my e-mail to her --

Q. Okay.

A. -- attached here. But that appears to be something that Doty had forwarded. So --

Q. He had embedded her response in your letter in one of his letters from him to Ted -
-

A. That's -- that's what -- that's what -- yes, that's what it appears.

Q. What's Ted's last name?

A. Ted Cummings.

Q. Ted Cummings.

A. Uh-huh.

Q. Okay. If you will keep going.

A. Okay.

Q. And then after that we get to?

A. Yeah. This is a correspondence from myself to -- to George Carter and Harold Doty. It says -- it's my -- it's just my notification of them that I had e-mailed the -- the dean at Central Missouri [State University] and received a response.

Q. Okay. And that was on what date?

A. That was December 1.

Q. Okay. Of what year?

A. Of 2006.

Q. Okay. And what's the next thing in there?

A. The next one is -- it looks like a repeat of the one that was embedded in Doty's e-mail. It's -- it's Joan's -- it's Joan Mansfield's response to me, and then it's my e-mail to her.

Q. Okay.

A. So it's a repeat of this one.

Q. Well, except that -- and I don't know what the case is. There's another letter -- there's another copy of this letter that was sent, is there not?

A. Of this -- of this letter?

Q. Yes. Your letter to Joan. You sent her two copies of it, did you not, to different e-mail addresses?

A. I think -- I think that as I recall because it says down here that I did. Because I had e-mailed her, I believe, and then realized that there was another e-mail address that I might should have been using.

Q. And that's what's addressed in your PS down there?

A. That's -- that's right.

Q. So if Doty used one of the letters in his -- what's embedded in Doty's letter is the first letter, the one without the PS; is that correct?

A. Well, I don't know. Let's see. Yeah. That's what it appears. Yeah.

Q. Okay. Also there's a letter that we don't have here because you wrote her back and thanked her for her permission --

A. Uh-huh.

Q. -- and told her that a formal letter would not be required.

A. That's correct.

Q. And we don't have that correspondence here, do we?

A. That's -- that's correct. That's not here.

In Part 2 we will begin an analysis of Jordan's testimony vis-à-vis everything else that is known about the CoB's use of the CMSU work-product. Stay tuned.