Greetings,

My name is Leon Marzillier. I have been a tenured professor at Los Angeles Valley College since 1971. During that time, besides being a classroom instructor, I have held various faculty leadership positions in the Los Angeles Community College District and statewide in California. Having held these positions, I am keenly aware of the way community college faculty members feel about the use of textbooks to supplement their classroom teaching.

University and college students are rightly concerned about the cost of textbooks. In particular, for California community college students, the money they need to spend on textbooks exceeds the tuition that they are required to pay to enroll in their classes. According to the National Association of College Stores (2004), "In the …six years(1999-2004),…the cost of textbooks has risen approximately 35% while COLA has risen approximately 7%." I do not have any substantiating evidence, but there is no indication that this trend has changed in the past three years.

So, what does contribute to the price of a textbook?

First, authors ought to be compensated for their labors in writing the texts that they produce. Since most textbook authors are university or college professors, are they reaping unreasonable rewards for this work? I don't believe that is the case. I authored a text in the 1980s, and a publisher produced it, but I was not able to negotiate an exorbitant cut of the price charged by the publisher, nor to have any say in what the wholesale price of the text should be. I was essentially told what I would receive, and if I didn't like it, my only choice was not to get it published. All publishers have similar arrangements with would-be college professor authors.

At the other end, college bookstores mark up the price that publishers charge them for the texts that college professors require their students to purchase. These mark-ups are applied to cover college bookstores' costs, mostly the salary and benefits of the bookstore employees. No study that I have read claims that college bookstores have changed their practices in recent years in order to make exorbitant profits. In fact, most college bookstores barely break even from the books they sell. They make money by selling other supplies students may need, and by selling candy, sweatshirts, and other related products. Mize(2004) writes, "According to national research from the college bookstore association, over 87% of college stores use a gross profit margin of 25% or less on textbooks." That is, 75% of the price of a textbook goes to the publisher and 25% to pay the expenses of selling it.

So, if we are to look for reasons why textbook prices have risen so sharply over the last few years, those reasons rest with the publishing industry. It is the publishers who decide what the wholesale price of a text should be. It is the publishers who decide what the look of a text should be, things such as the quality of the paper, whether the text is soft-cover or hard-cover, whether to print a lot of graphics and pictures, whether to print a black and white version or to use multi-colors. It is the publishers who decide when and how often

to come out with a new edition of a textbook. And it is the publishers who decide what to bundle a text with – items such as workbooks, CDs, and other such supplements.

I am not an authority on whether publishers are making a reasonable or an unreasonable profit on any particular textbook, but I can comment with authority on what it is college professors, in general, are looking for in textbooks. I can also comment with authority what measures my colleagues have tried in mitigating the cost of textbooks for their students, and what measures they might try in the future.

College instructors have academic freedom when teaching their classes. This freedom includes establishing what published materials the instructor may require students to buy for any particular class. It might appear that it is instructors demanding more and more expensive bells and whistles from the publishers, and that is what is driving up the price for students. It might appear that it is instructors asking publishers to come out with more and more frequent new editions, so that students can get the most updated knowledge. But, I'm here to tell you otherwise. ASCCC(2005) writes, "Faculty members selecting educational material are motivated by the desire for academic excellence of the material's content and its suitability for the curriculum of a particular course." However, when faced with a choice of texts for a particular class, there might only be marginal differences between appropriate texts produced by different publishers. More and more of us are becoming aware of the problems high textbook prices pose for our students. We see them dropping classes because they can't afford the text, or other students trying to pass the class using only class notes. We desperately want our students to succeed. But they won't succeed if they are denied access to a class, and they are less likely to succeed if they are forced to take a class handicapped by a lack of necessary tools. So, statewide faculty and student groups are urging faculty to take cost to the student into consideration when making textbook choices. Not that it should be the primary consideration – that is reserved for appropriateness for the curriculum – but when other things are equal, what will the cost to students be? Before becoming aware of this issue, faculty probably didn't even think to ask. But with awareness, we began to ask publishers' reps what the wholesale price of a book up for adoption would be. For one reason or another, we were told more often than not that they didn't know. Legislation could help here. In Connecticut, a state law, written by Wilma Chan, was enacted to require publishers' reps to disclose the wholesale price of a textbook when asked. Forcing publishers to do this might cause them to think very carefully before raising the price of a text.

According to a CalPirg survey, "65% of faculty surveyed say they "rarely" or "never" use the bundled materials in their courses." But, when those faculty ask if they can adopt only the book without the CDs etc, they are often not given that option. A soft-covered, black and white book by itself would be adequate for many classes and for my colleagues. They have told me as much. As for frequent new editions, that depends. A few disciplines have changed rapidly over the last few years – computer programming and genetics are two that come to mind – and frequent new editions might be necessary to keep students up to speed, although in some cases, older editions with supplemental packets of loose sheets with the newer information might be adequate. Most courses, however, can be well-served by using the same edition for three years or even longer. After all, calculus was

invented about 350 years ago, and not much new information has come to light about the U.S. Civil War in recent years, so the differences in texts addressing such subjects rest on style and exposition. Once an instructor has chosen a text to fit his/her class, newer editions for such classes need not come out super-frequently.

The ASCCC passed the following resolution at its spring 2004 Plenary Session:

20.07 Textbook Pricing
Linda Stroh, Sacramento City College , Area A
Spring 2004
Topic: *Students*

Whereas, Textbook prices have increased beyond the resources of many students;

Whereas, New editions are often published with few content changes, making used books unavailable, and unnecessary bundling increases the costs to students;

Whereas, Marketing costs account for over 15% of the cost to students; and

Whereas, Textbooks are sold to individuals via the Internet for significantly less than they are sold in bulk to college bookstores;

Resolved, That the Academic Senate for California Community Colleges contact textbook publishers and urge them to establish production, business and pricing policies that do not unfairly penalize students who purchase their books at college bookstores; and

Resolved, That the Academic Senate for California Community Colleges encourage faculty to consider the cost of books as one of the criteria in book selection, and that faculty encourage the publishing companies they work with to adopt production, business and pricing policies that are responsive to that concern.

The ASCCC is a federation of all academic senates (representing over 100 community college faculties) in the California Community Colleges, and I was present at that session. In fact, I was sitting on the ASCCC's Executive Committee at the time. Now, some resolutions attract a lot of controversy, with energetic debate on both sides. This was not one of them. It was adopted unanimously, or close to it. If publishers try to tell you that it is faculty that are demanding the practices that drive up textbook prices, this resolution and my remarks today should convince you otherwise. Faculty are sympathetic to this problem for students.

What have students tried? They have tried buying used books, but they are often unavailable and hard to find. This strategy also fails when a new edition is adopted. They have tried buying texts over the Internet, but that doesn't always work, when they can't find the text there. As I said earlier, they have also tried completing the class without the benefit of the text, or simply dropping the class because they can't afford the book.

What have faculty tried? Faculty have tried to pin down publishers' reps as to what the wholesale price will be. They have tried to ask for unbundled texts, which can often cost students less than half the bundled versions, only to be told that unbundled versions are not available. Some instructors have written their own texts, but have not taken the manuscript to a publisher, but instead to a photocopying service, and then arranged for the college bookstore to sell these self-reproduced "books" to the students for the copying costs. Others have posted their unpublished texts to a website, which students can access and read on the screen or printing only those pages they find useful. Some instructors are able to teach their classes without a textbook, asking students to use their class notes, supplemented by references to works on the Internet or in the college library. The trouble with these "solutions" can come with articulation to universities. All college classes must pass muster by having the course outline of record approved by the college curriculum committee, and it is this course outline that universities examine when deciding whether to accept a course as transferable for credit. One of the items that the university will look at, when deciding on transferability, is which textbooks are being used for that course. If no textbook is listed, that transferability may be in jeopardy, and without that transferability, students wishing to transfer will stop taking the course, which in turn jeopardizes the offering of the course at all.

What have colleges tried? Some colleges have experimented with book loan or book rental programs, but success with these has been spotty. Although, I was encouraged by some of the testimony I heard today.

If we all have the desire to improve students' access to higher education, and success once there, we must find solutions to the textbook pricing problem. It is my contention that the vast majority of California community college faculty stand ready to support any efforts to make textbooks for students more affordable. We are not in the business of wanting to price students out of higher education. Why would we even contemplate that when our whole raison d'etre is to help students to succeed!

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ADOPTED SPRING 2005

Textbook Issues: Economic Pressures and Academic Values

THE ACADEMIC SENATE FOR CALIFORNIA COMMUNITY COLLEGES

Educational Policies Committee 2004–2005

Ian Walton, Mission College, Chair

Angela Caballero de Cordero, Allan Hancock College

Bob Grill, College of Alameda

Karolyn Hanna, Santa Barbara City College

Alisa Messer, City College of San Francisco

Zwi Reznik, Fresno City College

Paul Setziol, De Anza College

Carole Bogue Feinour, Monterey Peninsula College, CIO Representative

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Abstract

The rising cost of college textbooks has recently become a topic of intense public debate. It is perceived as a significant barrier to college attendance, and an assortment of legislative remedies has been proposed. This position paper of the Academic Senate for California Community Colleges explains that profit is just one of a complex series of interacting issues that determine the ultimate cost of textbooks to students. Educational and ethical issues surrounding the adoption of course material are explored, and a wide variety of interested parties and their concerns are identified. The paper describes current criticisms of the college textbook situation and presents avenues whereby faculty members can help control costs while still preserving academic integrity. Recommendations are made to local academic senates on possible local responses to the issues, including appropriate college-wide guidelines and steps that can be taken by individual faculty members.

Introduction

At first glance, educational and cost issues often seem in direct conflict.

The selection and sale of college textbooks and other related instructional materials present a multi-dimensional balancing act between broad academic values and competing economic pressures. On the one hand is the long-standing foundation of academic freedom that guarantees that faculty will be free to select the educational materials most suited to the curriculum. Protection of this fundamental tenet involves educational prerogatives of individual faculty and their interaction with collective faculty, such as their departments, and with the institution. On the other hand, students and a variety of other interests, including some from well outside the institution, have competing economic interests that often disregard the faculty's educational concerns. Whereas authors, publishers and book sellers are profit driven, students reasonably expect high quality materials at the lowest possible prices: the cost of these materials can affect the very ability of students to attend college. At first glance, educational and cost issues often seem in direct conflict. Should faculty members constrain their choice of material or should the providers of the materials control their profit margins in order to lower the cost to students? However, educational, ethical, and responsibility issues interact with each other and the cost issues in a variety of ways. This paper discusses the multi-faceted issues surrounding selection and sale of textbooks and other course materials, and explores whether principles can be found that lead to integrated solutions that balance the legitimate interests of all concerned.

... faculty will be free to select the educational materials most suited to the curriculum.

The Current Discussion: Why Now?

... for many students, the price of books is the largest direct cost of attending college.

This section considers the origins of the current debate on the cost of college textbooks and describes the interests of many of the key players.

PUBLIC CONCERN

Recent public discussion of college textbooks and materials has been largely prompted by economic issues. The cost of educational materials has risen much faster than the general cost of living, becoming a significant proportion of the cost of attending college. Coupled with a rapid increase in fees, the cost of textbooks has become a visible barrier to college attendance for many students. California students attracted state legislators' attention regarding the serious impact of textbook costs on the overall affordability of attending college with the January 2004 California Public Interest Research Group (CALPIRG) report *Rip-off 101: How the Current Practices of the Textbook Industry Drive Up the Cost of College Textbooks.* While the report did not contain specific data about community colleges in California, it attracted significant media attention to the issue. In January 2005, a second edition was issued, *Rip-off 101, 2nd edition: How the Publishing Industry's Practices Needlessly Drive Up Textbook Costs.* It included an expanded survey of colleges and reached conclusions similar to those of the first edition.

... the cost of textbooks has become a visible barrier to college attendance for many students.

Faculty have also been concerned about these issues and had previously raised them in resolutions (see Appendix V) and, in 1997, with the publication of the Academic Senate's position paper *Textbook Pricing Policies and Student Access.* That paper examined factors that affect the price of textbooks, both internal and external to the college, and identified areas where faculty and students can exert some influence. It also included a brief discussion of adoption practices. Many of the recommendations of that first paper remain good practice today but may not have been widely adopted; if successfully implemented, they would indeed help to contain costs.

The significance of the issue was documented again in the Academic Senate's Fall 2004 paper, *What's Wrong with Student Fees? Renewing the Commitment to No-Fee, Open-Access Community Colleges in California,* which noted that, for many students, the price of books is the largest direct cost of attending college. But it is recent California legislative activity that has greatly raised public awareness of many of the issues addressed in the Academic Senate's 1997 recommendations and has prompted this updated and deeper investigation of both the economic and

educational issues regarding textbook selection and use.

LEGISLATIVE RESPONSES

Since 1998 there have been more than a dozen legislative proposals[1] introduced in the California Legislature with the expressed intent of lowering the cost of textbooks to students. None of these proposals reached the Governor until 2004, when two bills (AB 2678 and AB 2477) advanced to that level. AB 2678 (Koretz), ultimately vetoed by the Governor, proposed a rental system whereby colleges could opt to purchase a supply of textbooks and then require every student to pay a textbook fee in return for the temporary use of the textbook. This proposal conjured up a nightmare of logistics, especially at large campuses, and academic difficulties surrounding the ability of students to write on texts as a study aid. In addition, both faculty and students objected to the introduction of a new mandatory fee.

AB 2477 (Liu) was signed by the Governor in Summer 2004 and urged publishers to practice cost containment strategies such as unbundling materials, disclosing changes from a previous edition, and informing faculty of the predicted availability of the current edition. It also required the Board of Governors to encourage campuses to promote multiple textbook sources and to work with the Academic Senate to encourage faculty to contain costs. While this procedure sounds promising, it remains to be seen what practical effect there will be in containing costs.

Legislative efforts directed at cost containment are not limited to California. Similar protests have been heard and proposals advanced in Washington, D.C. and in at least six other states. Solutions proposed have included tax credits, a request of the General Accounting Office to investigate the high cost of college textbooks, requests for reductions in ancillary materials packaged with textbooks, and implementation of a "licensing fee," the goal of which is to reduce overall costs while protecting the interests of authors and publishers (Granoff, 2004).

WIDER POLITICAL CONTEXT

At the same time that textbook cost was becoming a high profile issue, a nationwide political movement, referred to as the "academic" or "student bill of rights," was gaining momentum. Both this movement and the cost issue identified above may affect faculty adoption decisions. The "academic bill of rights" is an ideological movement that has the potential to significantly reduce the freedom of faculty to select appropriate educational course materials. It seeks to remove claimed bias and ideological indoctrination in college faculty and curriculum through the passage of state legislation mandating political pluralism and diversity. In the 2003 *Statement on Academic Bill of Rights*, the American Association of University Professors (AAUP) explains why this movement is an attack on the fundamental principles of academic freedom, including the ability of faculty to select appropriate course material and assign grades, rather than a protection of academic freedom, as claimed. AAUP remarks that such bills seek "to distinguish

... it is vital that colleges display a clear, comprehensive and easily accessible student grievance process that can be used to explore and resolve legitimate student concerns.

[1] See Mize, 2004, p. 4 for a complete list.

indoctrination from appropriate pedagogy by applying principles other than relevant scholarly standards, as interpreted and applied by the academic profession." AAUP also warns that under such legislation, "all knowledge would be reduced to opinion, and education would be rendered superfluous" (p. 1). See Appendix I for the complete text of the AAUP statement.

In California such a bill was introduced in 2004 but was defeated (SB 1335, Morrow). At the Spring 2004 Plenary Session the Academic Senate adopted two resolutions in opposition to the concepts proposed in SB 1335 (see Appendix II). In the current legislative session, a similar bill has been reintroduced (SB 5, Morrow). As one example of the extraordinary language it contains, note this requirement: "curricula and reading lists in the humanities and social sciences shall respect the uncertainty and unsettled character of all human knowledge in these areas" (emphasis added). At a time when secondary curriculum is being altered to include creationism alongside evolution in biology classes, such language should not be taken lightly.

In response to such bill of rights issues, as well as to the selection/adoption issues described below, it is vital that colleges display a clear, comprehensive and easily accessible student grievance process that can be used to explore and resolve legitimate student concerns.

INTERESTED PARTIES AND THEIR ROLES

While the Legislature has shown a recent interest in textbooks—presumably on behalf of students and of the general public—the situation is not simple to resolve. The basic cost of textbooks and related materials is affected by many factors and interested parties. Many of these cost factors have a direct impact on educational quality. Let us consider some of the involved parties, their concerns, and their effect on the issues.

If cost were not an issue, most other issues related to textbooks and course materials would disappear...

Faculty

Faculty members selecting educational material are motivated by the desire for academic excellence of the material's content and its suitability for the curriculum of a particular course. Faculty are cognizant that the quality of the presentation and production may affect the motivation of students and their subsequent ability to learn from the material. In this case, more expensive material may have a clear educational benefit. On the other hand, if high cost means that students lack access to the material, then the educational value is lost. If cost were not an issue, most other issues related to textbooks and course materials would disappear or lessen considerably.

It has been argued that the faculty members are the "real" customers of publishing companies, (not students and not bookstores); thus, to the extent that faculty members are willing and able to make cost a concern and exert their influence with publishers, they can actively encourage cost savings. Individual faculty members can communicate their concerns directly to their local publishers' representatives. Specific areas where faculty are most likely to have an impact on costs, such as "unbundling" and edition changes, are discussed later.

Students

As direct purchasers of textbooks, students are stakeholders who have much to gain or lose, both economically and academically, in the outcome of these discussions. Their concerns have focused primarily on the issue of cost and the potential barrier to access and success that is inherent in the high cost of textbooks. At the Fall 2004 Plenary Session of the Academic Senate, a Student Senate representative noted that books comprise nearly 60% of the annual education expenses for California community college students; many students spend more than $800 per year on books. Clearly such costs will play a significant role in students' decisions to attend college.

Complicating the simple view of the direct cost of textbooks are students' expectations that the entire content of all assigned course materials will be used directly in the classroom. From the faculty perspective, there is often considerable educational value to the immediate availability of background or supplementary reading material that encourages further exploration by the student. Faculty should be sure to communicate this value to students. In other circumstances the availability of supplementary materials may be addressed by the use of technology or library resources.

... students are stakeholders who have much to gain or lose, both economically and academically ...

Authors

Authors in general, and faculty authors in particular, are interested parties in two distinct ways. As the original source of course material, authors in some sense control both the availability of a resource and its initial cost. Authors may face a choice amongst several legitimate goals including: a commitment to provide high quality, relevant course materials for students; ensuring availability of course materials when suitable textbooks are not available; provision of materials to students at a lower cost; and, in the case of faculty authors, even personal gain. Faculty authors are lauded for their initiative and the advancement of their respective discipline but at the same time they are urged to consider the extent to which they can contribute to controlling costs.

Publishers

Publishers are obviously key players—without them, textbooks would not be generally available to students. However it must be acknowledged that publishers operate as for-profit businesses, and as such, play a major role in the issue of costs. In the past six years (1999-2004), the cost of textbooks has considerably outpaced the cost of living: the National Association of College Stores (2004) reports that the cost of textbooks has risen approximately 35% while COLA has risen approximately 7%. CALPIRG notes similar results over the longer period since 1994: textbook prices increased by 62%, general books

... the cost of textbooks has considerably outpaced the cost of living...

by 19% and all finished goods by 14% (2005, p. 1). Clearly there are substantial costs attendant to publishing any textbook: publishers note that the cost of production includes "intellectual property costs" and that they must remain both current and competitive in an age when access to current information is almost immediate. In addition, some costs, such as rising costs of paper and shipping/fuel, are beyond their control. The question remains, though, about what constitutes a reasonable profit margin for publishers; publishing in the United States is now a $26 billion industry (Regier, 2004, p. 112). This economic reality diminishes the likelihood of any legislative solution aimed at reducing the profits of such a major industry.

Another issue worthy of discussion is the extent to which publishers and their editorial staffs influence pedagogy. Formatting of textbooks, use of advance organizers, textboxes, photographs and diagrams, critical thinking exercises, and other teaching/learning activities all influence the suitability of a textbook and its ease of use by both faculty and students. In considering a textbook for adoption, faculty must consider both cost and pedagogy to evaluate the degree to which various enhancements add educational value. When reviewing textbooks, it is the faculty member who must distinguish window dressing from educational substance.

Bookstores

A college bookstore is where students normally acquire the textbooks and other course materials. In accordance with California Education Code § 81676.5 (a) and (b), "the governing board of any district may establish a bookstore on district property," and if the governing board "determines not to operate its own bookstore....the governing board may contract for the operation of a bookstore" (see Appendix III for details). It is a bookstore's responsibility to ensure that adequate numbers of the textbooks and other course materials selected by faculty are available to students on a timely basis and to assure that costs borne by students are limited to those necessary to cover reasonable operating expenses. Unlike authors and publishers, bookstores can profit from the sale of both new and used materials; some external operators of college bookstores promise to reduce costs to students by increasing the proportion of used books available. However, a reasonable goal of the college bookstore should be to assure that the profit margin and final cost for students' course materials is less at the college bookstore than in off-campus, commercial bookstores. This would not prevent college bookstores from increasing the profit margin on other items, such as clothing and gifts. Bookstores increasingly face off-campus competition from alternative book sources, especially over the Internet. Online resources provide ready access to new and used texts, often at a reduced or negotiable cost.

...a reasonable goal of the college bookstore should be to assure that the profit margin and final cost for students' course materials is less at the college bookstore than in off-campus, commercial bookstores.

College Staff

Bookstore staff who are directly involved in the ordering and handling of textbooks also have a large role to play. Most importantly, they order books at the times and in the manners most

promising of low cost, while guaranteeing adequate and timely availability at the start of a course. In addition, at least ideally, they provide information to faculty about price, time of availability, availability of used books, and, crucially, they act autonomously on behalf of the best interests of all concerned in the absence of faculty input. Other campus staff, for example in the financial aid office, ideally act as advocates for students by helping them find alternative solutions and supporting and encouraging them to persist in courses when students may feel that the cost of the required texts is prohibitive.

Additionally, college staff members become personal stakeholders when colleges choose to outsource the bookstore to a for-profit entity. In this case, savings to the student are often derived from a loss of college staff positions or reduced salaries for bookstore employees employed by a for-profit entity. The college community should have a full and considered discussion of the consequences and effects of such a course of action.

Used Book Buyers

Independent, professional buyers of "used" textbooks also have a stake in this issue. Typically they appear on college campuses to buy books from both students and faculty. If a particular text is no longer being used on one campus, the local bookstore will not buy it back; however, if the text is still current and in use on another campus, the used book buyer will buy those books from students. Other major customers of used book buyers are faculty who sell "examination copies" either for personal gain or with the proceeds going to a scholarship/loan program. These practices may simultaneously increase the availability of lower-priced used texts to students as well as raise total publisher costs that are then reflected in the price of new texts. Many faculty feel that the sale of examination copies is unethical but it does not violate federal copyright law.

College Administration

In general terms, the role of the administration is to provide the fiduciary framework necessary to ensure maximum access to textbooks and other course materials, for students. This could be accomplished through a college owned and operated bookstore or through the use of an outside vendor. In either case this means ensuring, in consultation with local academic senates and with the participation of student senates, the development of policies that guide textbook selection and sale and that accommodate both student and faculty concerns. Historically, there is a wide range of attitudes with regard to administrative oversight of bookstores. Education Code §76365 and Title 5 §§ 59400 through 59408 refer to the responsibilities that flow from the sale of material bought by students on-campus (see Appendix IV for details). Additional considerations are discussed in the Ethical Issues in Selection section on page 14.

Others

Boards of trustees, legislators, donors, individuals involved in political movements such as the "academic bill of rights" (see Wider Political Context on page 5) and anyone else from the

These practices may simultaneously increase the availability of lower-priced used texts to students as well as raise total publisher costs...

general public expressing an active interest in textbooks and other course materials define their own roles. An example of donor influence might be the effect of donated proprietary software on the content of a general computer science course. Such interests should be considered by the faculty but should not supersede the educational prerogatives of textbook selection. Where student access and success are the common goals, working with and responding to individuals representing these entities are encouraged; however, should their assertions interfere with sound educational decisions, it is the obligation of the faculty and administration to protect the institution from these outside influences.

Practices that artificially drive up the cost of textbooks are often designed by publishers to limit the used textbook market.

What are the Criticisms?

The most widespread and vocal criticisms of the current textbook situation have been motivated by the economic issues discussed previously. But concerns have also been raised in other areas that have a more direct impact on faculty academic roles, such as local adoption procedures, the "academic bill of rights" movement already described, and to a lesser degree ethical considerations. In this section we examine several of these issues in greater depth.

ECONOMIC ISSUES: PROFIT GENERATION

There are three main places where profits are generated in the production and sale of textbooks and related educational materials. The first is compensation to the author. There does not seem to be criticism of author compensation in general, but there are questions regarding ethical adoption procedures for material that is faculty-authored or self-published (see Ethical Issues: Textbook Selection on page 10). The other two loci of profit reside with the publisher and the bookseller respectively.

... it may be time to question the assumption that the cost of textbooks should include a profit for the bookstore or college.

Textbook Production

Practices that artificially drive up the cost of textbooks are often designed by publishers to limit the used textbook market. Specific practices that have dubious educational value include over-frequent edition revisions (with minimal revised content and/or primarily cosmetic changes), and "bundling" of textbooks with other non-returnable course materials with the textbook (e.g. study guides and workbooks, CDs or Internet passwords). These practices, not required by faculty, promote the sale of new books while simultaneously limiting the availability of used books that can be sold to students at a lower cost. Faculty should communicate to their publishers' representatives that "bundles" of supplementary material should be created only for valuable educational reasons, and in a manner that does not eliminate resale options for students.

Textbook Sales

College bookstores routinely mark up the price of textbooks to cover their operating costs and, in many cases, to produce additional revenue for non-textbook aspects of the bookstore operation as well as wholly separate student or other activities. Education Code §81676 states:

> Net proceeds from the operation of a community college bookstore shall be used for the general benefit of the student body as determined by the governing board. Money may be expended for services and property, including, but not limited to, parking facilities, stadia, student centers, student unions, health centers, bookstores or other auxiliary facilities for use of students or faculty members of the community college or employees of the district.

This operational practice can give rise to price increases as bookstore operations become profit centers for unrelated activities which, though inherently worthwhile, may need to be funded in some other manner as textbook costs increasingly become an access issue.

At the time the vast majority of California community college bookstores were put into operation there was no mandatory enrollment fee, and the average percentage of individual student and family income required for a community college education was much lower. It made sense for the bookstore to turn a profit on textbooks. It made sense for the bookstore to aim just a little high on the profit margin in order to make sure it covered its costs and could use additional profits for worthwhile student centered purposes. Given the current climate, however, it may be time to question the assumption that the cost of textbooks should include a profit for the bookstore or college. This is an area where local trustees and student groups need to join the discussion.

Textbook and bookstore policies often demonstrate faculty's assumption that their assigned textbooks will be available at *the* college bookstore and be purchased there by students. The traditional college-run, on-campus bookstore makes it simple to ensure that required materials are easily available to students. But it does not necessarily ensure the lowest possible cost. Recent developments in book purchasing alternatives, such as on-campus outsourcing of the bookstore, having students buy books online or having no bookstore at all, run counter to the ideal of a

campus community. Earlier in this paper we note that, if cost were not an issue, most, if not all, of the other issues would go away or greatly diminish in importance. So it is here. If books at *the* college-operated, on-campus bookstore were less expensive, the alternatives, reluctantly adopted by many campuses in recent years, would greatly diminish in attractiveness.

Another issue related to bookstores is the number of books ordered. It is unlikely that orders placed for individual class sections exceed either the expected enrollment or the maximum seat count for the class. This is due to past experience on the part of the bookstore and to students looking elsewhere for books. Unsold books represent significant additional costs to the bookstore if they need to be returned to publishers or distributors. It has been estimated by the National Association of College Stores (2004) that the cost of staff time to process returns along with shipping charges averages approximately 20¢ per dollar for every new textbook that is returned.

Due dates for book orders may also have a significant effect on costs. Generally, due dates are set far enough in advance to assure that sufficient numbers of books will be on the bookstore's shelves the first day of classes. An early date may facilitate the acquisition of used texts and avoid increased costs for late delivery. The local academic senate has an obligation to monitor the appropriateness of the due date in order to assure faculty sufficient time to consider new texts from one year or term to the next and to encourage faculty compliance with order deadlines.

ETHICAL ISSUES: TEXTBOOK SELECTION

Materials that faculty members choose to adopt clearly present an opportunity for cost savings. The dilemma for faculty members is that content and educational quality must be the primary consideration, which makes cost an important, but secondary factor. Regrettably, too often faculty are not told the cost of their assigned texts and/or are surprised when their required materials are "bundled" with unsolicited materials. Publishers' representatives often claim uncertainty about the costs of textbooks, particularly those yet to be issued. Faculty should insist on receiving a book's exact "net cost" to the bookstore prior to making an adoption decision.

There is a second, separate ethical issue when faculty members adopt required course materials that they or their colleagues write and/or self-publish. In this instance the adoption process must visibly protect both the educational and financial interests of the student. There are often sound educational reasons for such adoptions that may also prove cost effective for the student, but adequate safeguards must be in place. Faculty must be cognizant that their position of power might in some cases give the appearance of coercion; students may feel they do not have a choice as to whether or not to purchase a text when it is authored by the person standing in front of them.

... the adoption process must visibly protect both the educational and financial interests of the student.

Solutions and the Faculty Role

There are many existing responses and partial solutions to the problems and criticisms described. This section considers the faculty role in those responses.

ACADEMIC SENATE ACTIONS

The Spring 2004 Plenary Session passed two resolutions requesting the Academic Senate to examine textbook issues once more (see Appendix V). The first requested that the Academic Senate produce a position paper on model policies and ethical considerations regarding textbooks and other course materials (Academic Senate resolution 20.06 S04). The second resolution urged faculty to consider cost in textbook selection and to encourage publishers to adopt production, business and pricing policies that do not unfairly penalize students (Academic Senate resolution 20.07 S04).

EDUCATIONAL ISSUES AND SOLUTIONS

For faculty, as we have seen, there are many educational concerns that must be considered in addition to cost. While other groups have brought textbook issues to a larger audience, faculty express their own concerns about the need for cost-containment strategies while preserving the academic freedom traditionally associated with textbook selection. They seek to retain excellence in the quality of instruction and the integrity of the curriculum through an ethical adoption process. Where others see only questions about money, faculty see a much more complex set of issues and possible solutions.

Use of Materials in the Public Domain

Recently, there has been a move to promote "free" textbooks and other course materials by encouraging faculty to participate in projects that incorporate materials in the public domain and/or agree to give up or reduce royalties for "courseware" and material made available on the Internet. Care must be taken to avoid the potential for inadvertent or intentional plagiarism. The correct use of such material promotes the student's active involvement in learning and access to current information. There is a growing number of Internet sites dedicated to the provision of high quality, low cost material; a good example is the MERLOT[2] project that the California Community College System has supported for several years.

Faculty Websites

Some of the issues surrounding both textbook costs and content might be resolved by the increasing use of faculty-produced course websites. These have the potential to both reduce the cost to students and improve the currency of available material. At some colleges there are issues of oversight and web access for faculty members. These should be addressed through college computer use policies for faculty, staff, and students. It is acknowledged that websites carry some increased institutional costs, and articulation and course outline requirements may prevent abolition of the primary required text in many cases. However, there remains considerable potential to both enhance educational quality and reduce cost to the student in this area, particularly for supplementary course materials.

[2] Multimedia Educational Resources for Learning and Online Teaching. Available at http://www.merlot.org

Where others see only questions about money, faculty see a much more complex set of issues and possible solutions.

Adoption Procedures

Faculty members have opportunities to incorporate deliberate habits in their adoption decisions that would encourage lower costs for students. For example, faculty might refuse to adopt a particular textbook unless the publisher "guarantees" its availability in an edition for a specified period of time (e.g., 3–4 years) with major changes published only via addendum; they may also refuse to adopt "bundled" products that will impact the students' ability to return and sell back texts or to buy them used. In order to promote low prices for texts and therefore greater access to them on the part of students, faculty—both individually and collectively—should collaborate with college bookstores in ordering the most recent edition of a textbook only when the benefits of the newest edition substantially outweigh the liability of any greater cost, and should encourage continuing availability of previous editions. Similarly, faculty, particularly faculty authors, should work collectively to reduce the number of editions that reflect only marginal or cosmetic changes. Furthermore, faculty members should carefully identify which texts are required and which are optional for their course(s) and should reflect that distinction in both their textbook orders and their syllabi.

Faculty members should also consider cost as a factor in their adoption decision: where two or more options are equivalent, congruent with the course needs, and pedagogically sound, the less expensive text should be considered. It is acknowledged that changing textbooks may necessitate reconfiguration of a course and its outline of record and/or a faculty member's approach to teaching a particular content area. However, the overall merits of each textbook option should be carefully evaluated.

A third area where faculty adoption decisions may affect costs relates to sequenced courses. To the extent that faculty within a given discipline select textbooks that can be used across two or more courses, the net cost per course is reduced and the option of resale for the student is increased.

Libraries and Library Faculty

While it is not their traditional role, college libraries may help alleviate some of the problems created by the high cost of textbooks in strategies such as placing textbooks on reserve and in circulation to allow free access to textbooks for students who cannot afford to purchase them. Additionally, they might coordinate with the bookstore to purchase, at reduced cost, those unsold texts (adopted for use over several semesters) that would otherwise be returned to the publisher at considerable cost. This would, of course, only increase availability after the first semester of use.

Local senate discussion that involves discipline and library faculty can result in the creation of policies regarding textbook availability and circulation that are sensitive to librarians' concerns about space utilization, limited library budgets, and the rapid turnover rate in texts and specific editions of texts. Such local policies could also address how to best inform students of the cost-saving and additional support options available to them.

Although only indirectly related to the issue of textbook costs, it is noteworthy that library

faculty frequently possess the most current and facile knowledge about copyright and "fair use" provisions in law as well as broader academic plagiarism. Library faculty should be asked to take an active role in educating both faculty and students on copyright issues and the appropriate use of copies and electronic materials.

Book Loan Programs

In an effort to offset and even avoid the need for textbook purchases, some student organizations and retention programs have worked with faculty to set up book loan programs for popular texts, allowing students to borrow books for a semester. Such programs might make books available first to low-income students who are more likely to be priced out of their education by the high cost of books.

Oversight and Student Advocacy

Other possible solutions include the effective use of a bookstore oversight committee that includes both faculty and students in the creation and monitoring of ordering and markup policies and in the negotiation of any contract with an outside vendor. This committee—or the college at large, including the local board of trustees—should discuss whether and/or how bookstore "profit" should be used to fund other activities. Many colleges combine bookstore oversight with other auxiliary services such as the cafeteria; however, a separate bookstore committee is more likely to attract vigorous faculty participation and focus attention on this critical area.

Alternative Purchase Locations

The availability of alternatives to the on-campus bookstore also offers a potential solution to controlling costs. Occasionally this is a local, independent bookstore, but more commonly it is an Internet-based bookstore; Mize (2004) lists sixteen such sites. In her *Los Angeles Times* article on techniques to help save money on college textbooks, Ramos (2005) also describes sites such as TextbookX.com that facilitates direct student-to-student book sales and Directtextbook.com that offers a price comparison among thirty different booksellers. While on line purchase of materials may offer a cost savings, the student is faced with a "trade-off" between cost, convenience of purchase, and ease of return (should that be necessary).

ETHICAL ISSUES IN SELECTION

Self-Published Texts and Other Faculty-Authored Materials

Ethical issues arise whenever faculty members adopt course materials that they have written and require students to purchase them. The first issue is simply to ensure appropriate educational content. The second issue is the possibility of personal gain through royalties, which can accrue either when material has an external publisher or when it is self-published. Such personal gain may create an actual or perceived conflict of interest.

The primary issues discussed here involve educational quality and cost. Self-published texts can produce both educational advantages and significant cost savings for students—especially when the faculty member has gathered exactly the material needed for the class and produced it in an inexpensive format. Since faculty members spend much of their professional lives gaining discipline and pedagogical expertise, this can lead to the creation and accumulation of materials suitable for textbooks and other course materials. Frequently colleges encourage faculty to publish texts and are delighted when they do so.

Colleges should have a publicly visible peer review process that confirms the appropriateness to the

curriculum of all adopted course materials. It is especially important that this process be applied to faculty-authored material and self-published material. Local academic senates may also want to discuss an adoption policy that considers discipline or departmental review for adoption of such material.

Legal guidelines only partially address these issues. Title 5 prohibits a requirement for mandatory purchase of instructional materials that incorporate "mark ups" or faculty royalties if the material is only available within the district (§§ 59400(a) and 59402(c)). However, if the material is available through other sources, including "vanity presses" or "on-demand publishing," then such a requirement is legal. More traditionally published texts are not under these legal restrictions: the California Fair Political Practices Commission ruled in 1987 that a community college teacher is permitted to assign his or her own textbook for his or her classes, even though he or she will earn $250 or more in royalties from the sale of the textbook." For a comprehensive discussion of this issue, see the California Community Colleges Chancellor's Office 2002 *Legal Opinion L 02-29 on Faculty Profits from Required Instructional Material* in Appendix VI.

Students are understandably sensitive to the notion that an instructor, whose primary concern should be the educational success of the students, might possibly be motivated by profit instead. Possible mechanisms to guard against any conflict of interest or, indeed, any appearance of impropriety include discipline or departmental participation in the adoption process, rather than adoption decisions made solely by the individual faculty/author. Widely published texts are, of course, already subject to an external peer review process. The local academic senate is encouraged to develop policies and an internal process to resolve adoption disputes amongst faculty, while student concerns should be addressed by a clear and accessible student grievance process. Another possibility, chosen by some faculty members, is the donation of some portion of royalties to benefit students.

Buying/Selling of Examination Copies

Faculty sales of review or examination copies impact costs, since most publishers "give away" millions of dollars in books each year, a cost then passed on to students. Many feel it is unethical or unprofessional for individual faculty members to use these giveaways to increase personal income, and some local senates have adopted statements to discourage this practice. Some colleges have similar policies or encourage redirecting funds from reselling texts to be used for student book scholarships. Other faculty donate examination copies directly to libraries, student laboratories, or individual students, thereby benefiting individual students in need. Such practices, it should be noted, while benefiting some individual students, do not lessen the publisher's production and advertising costs for new texts. In some states (e.g., Kansas and Washington), examination copies are considered property of the college or university and cannot be sold for personal gain (Gaede, 1997; Malarky, 2003). A final suggestion is that individual faculty members refrain from accepting (or ordering) unnecessary, complimentary examination copies.

New Avenues to Consider

At the Academic Senate's Fall 2004 Plenary Session, participants were introduced to a proposal from the Foundation for California Community Colleges that included six options:

1. Competitive Bids—a reverse auction requiring that several colleges agree upon a short list of texts and the lowest bidder is adopted at all the colleges;
2. Special Cover Edition Program (requiring a guaranteed minimum purchase—often department wide);
3. Low Frills Texts—soft cover/no color/ reduced production cost;
4. On-line Text Books—electronic only/no paper copy;
5. Rental of Textbooks—requiring a college infrastructure not presently available; and
6. Overseas Orders—online purchase of non-US editions.

The first three of these options rely on reduced faculty choice to generate economy-of-scale savings. They appeared to tip the educational—economic balance away from academic freedom and individual faculty prerogatives and towards economic necessity. The remaining three options appear to maintain the balance and rely more on technological or college innovation to generate savings for students.

The economy-of-scale approaches rely on adoption decisions being made by groups larger than just a single faculty member—such as faculty in a college discipline/department or perhaps even a consortium of colleges. Current adoption practices vary enormously by discipline: English and humanities courses commonly use materials selected by the individual instructor, whereas math and science courses often have a common department text. In addition, some sequential courses have a common text, thereby allowing students to possibly switch sections or to use one text for several semesters. For a number of reasons, adjunct faculty members are sometimes less likely to make, or be permitted to make, text selections as individuals.

There is therefore precedence for some balancing of interests in textbook selection to benefit the individual faculty member, the student, and the discipline or department. Whatever the process, it is important that it be above reproach. There is a departmental and college interest in ensuring that the required material covers the course curriculum at a suitable level of rigor and that the texts are compatible with the course outline of record. There might also be an agreement to use a text for a minimum period of time. In the case of discipline or department adoptions there must

The local academic senate is encouraged to develop policies and an internal process to resolve adoption disputes amongst faculty, while student concerns should be addressed by a clear and accessible student grievance process.

be a mechanism to resolve disputes that includes appropriate accommodation of minority opinions.

Solutions such as competitive bids or reverse auctions, mentioned above, rely on a much greater loss of autonomy. For example, a given discipline, such as math at several colleges, would have to agree in advance to accept any one of perhaps five calculus texts. This reverse auction could generate substantial savings as publishers bid on the right to supply calculus texts for all calculus classes at that group of colleges. At present, this mechanism seems unlikely to gain the widespread support necessary for it to be successful.

More likely solutions involve constant, increased faculty awareness of the cost of textbooks and adoption procedures that incorporate the ideas described in this paper. Mitigation strategies such as book subsidies, loans, and alternative sources are also important. In *Textbooks: Costs and Issues*, Mize (2004) documents several experimental strategies that might prove valuable in the future and which local senates are encouraged to explore:

- a student run book loan program at San Francisco City College;
- a book board at College of Marin to facilitate direct resale among students;
- a textbook rental program at Taft College;
- an online intellectual property license (Creative Commons) that facilitates material sharing.

Whatever the process, it is important that it be above reproach.

Recommendations

These recommendations describe principles and specific steps that can be taken by local academic senates and by individual faculty members in response to the issues described above. Local academic senates are encouraged to use these ideas to ensure that their college crafts a textbook and materials adoption process that achieves an appropriate balance of economic and academic concerns for the benefit of their students and their institution.

RECOMMENDATIONS TO LOCAL SENATES

1. Local senates should endeavor to make every faculty member aware of the material in this paper so that it may influence their adoption decisions.
2. Local senates should review and implement the recommendations from the 1997 Academic Senate textbook paper (see 1997 Recommendations on page18).
3. Academic freedom should not be compromised in the choice of textbooks and other course materials unless there is overwhelming evidence that the exercise of academic freedom would clearly interfere with student access and/or student success.

4. Local senates should use their collegial consultation process to develop college-wide policies and procedures and guidelines for adoption of textbooks and course materials that:

- protect academic freedom, educational quality and affordability;
- protect the ability of faculty to self-author or publish relevant educational materials;
- delineate requirements for a departmental review that:
  - includes processes for resolving disputes, as well as means to accommodate faculty in the minority;
  - includes evaluation of cost, as well as suitability to teaching content in the course outline;
- provide a local academic senate designed mechanism to resolve disputes not addressed at the department level;
- reduce the cost to students of required instructional materials.

5. Local senates should ensure that textbook adoption procedures:

- protect both individual faculty and discipline prerogatives, especially educational quality;
- provide additional participation, beyond the individual author, in adoption of self-authored or self-published material.

6. Local senates should use their collegial consultation process to develop policies regarding the ethics of selling examination copies for personal gain, and to promote alternative means of textbook disposal that benefit students.

7. Local senates should ensure that the college has an easily accessible, clear, comprehensive student grievance policy that can be used to resolve student complaints about textbook content and adoption decisions.

8. Local senates should facilitate a college and district discussion of the impact of bookstore profits on textbook cost, and subsequently determine whether or not the bookstore should continue to be a profit center that generates revenue for other non-related activities.

RECOMMENDATIONS TO FACULTY

1. Faculty should promote student access and success by:

- knowing the total cost of textbook packages they adopt;
- avoiding practices that add unnecessary costs;
- considering all available options for textbooks and course materials, such as electronic resources, in their adoption decisions.

Local academic senates are encouraged to use these ideas to ensure that their college crafts a textbook and materials adoption process that achieves an appropriate balance of economic and academic concerns ...

2. Faculty should consider and encourage all means to control (reduce) the cost of textbooks and materials that do not compromise academic freedom or educational quality, such as:

- guaranteeing minimum length of time that a text (and edition) will be used;
- discouraging automatic bundling of materials and determining if bundles provide added value for students;
- monitoring (and adhering to) due dates to ensure best price and/or availability of used books;
- minimizing use of expensive texts if other educationally equivalent alternatives are available;
- encouraging library cooperation in obtaining and maintaining reserve and reference copies of textbooks;
- indicating to bookstores and students that a text is required only if it will actually be used;
- using, where possible, materials in public domain as well as free courseware;
- requiring net cost information from publishing representatives and maximizing faculty awareness of exact costs;
- discouraging publishers from making unnecessary new editions and mid-year edition changes;
- encouraging bookstores to provide copies to the campus library at reduced cost to the library (from their profit margin);
- finding (or developing) book loan projects, forms of subsidy, and/or book scholarships;
- making students aware of financial aid and other resources;
- making students aware of alternative sources for textbooks and materials.

3. Faculty representatives should work proactively with campus bookstore staff to ensure best (or competitive) prices on textbooks and should actively participate on the campus committee charged with "oversight" of the campus bookstore.

1997 RECOMMENDATIONS

A. Recommendations to Local Academic Senates

1. Each local academic senate should include bookstore policies in its college/district shared governance agreement.
2. Each local academic senate should determine the goals of the college bookstore and should review bookstore policies in light of the questions raised in this document.
3. Each college should have a shared governance bookstore committee that influences pricing policies and the use of profits.
4. The college shared governance bookstore committee should primarily include student and faculty members.
5. Each local academic senate should encourage the college to track the effect of textbook prices on student success, as part of their student equity and/or matriculation plan. Scholarships or book loans might be used to mitigate the effect of high book costs on student access.

B. Recommendations to Faculty

1. Faculty should be aware of the impact of textbook costs on student access and success.

2. Faculty should consider both academic integrity and financial implications in making their textbook adoption decisions.
3. Faculty should be aware of textbook adoption practices that impact the cost of texts: the use of multiple titles, late orders, bundled materials and frequency of change.
4. Faculty should consider a wide range of practices that might be adopted to lower the cost of textbooks to students, such as:

- ensuring the availability of textbook scholarships and loans;
- putting texts on reserve in the library;
- identifying online sources of materials;
- using custom texts.

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Appendices

Appendix I: AAUP Statement on Academic Bill of Rights

The statement that follows was approved for publication by the Association's Committee A on Academic Freedom and Tenure. Comments are welcome and should be addressed to the AAUP's Washington office.

The past year has witnessed repeated efforts to establish what has been called an "Academic Bill of Rights." Based upon data purporting to show that Democrats greatly outnumber Republicans in faculty positions, and citing official statements and principles of the American Association of University Professors, advocates of the Academic Bill of Rights would require universities to maintain political pluralism and diversity. This requirement is said to enforce the principle that "no political, ideological or religious orthodoxy should be imposed on professors and researchers through the hiring or tenure or termination process."[1] Although Committee A endorses this principle, which we shall call the "principle of neutrality," it believes that the Academic Bill of Rights is an improper and dangerous method for its implementation. There are already mechanisms in place that protect this principle, and they work well. Not only is the Academic Bill of Rights redundant, but, ironically, it also infringes academic freedom in the very act of purporting to protect it.

A fundamental premise of academic freedom is that decisions concerning the quality of scholarship and teaching are to be made by reference to the standards of the academic profession, as interpreted and applied by the community of scholars who are qualified by expertise and training to establish such standards. The proposed Academic Bill of Rights directs universities to enact guidelines implementing the principle of neutrality, in particular by requiring that colleges and universities appoint faculty "with a view toward fostering a plurality of methodologies and perspectives."[2] The danger of such guidelines is that they invite diversity to be measured by political standards that diverge from the academic criteria of the scholarly profession. Measured in this way, diversity can easily become contradictory to academic ends. So, for example, no department of political theory ought to be obligated to establish "a plurality of methodologies and perspectives" by appointing a professor of Nazi political philosophy, if that philosophy is not deemed a reasonable scholarly option within the discipline of political theory. No department of chemistry ought to be obligated to pursue "a plurality of methodologies and perspectives" by appointing a professor who teaches the phlogiston theory of heat, if that theory is not deemed a reasonable perspective within the discipline of chemistry.

These examples illustrate that the appropriate diversity of a university faculty must ultimately be conceived as a question of academic judgment, to be determined by the quality and range of pluralism deemed reasonable by relevant disciplinary standards, as interpreted and applied by college and university faculty. Advocates for the Academic Bill of Rights, however, make clear that they seek to enforce a kind of diversity that is instead determined by essentially political categories, like the number of Republicans or Democrats on a faculty, or the number of conservatives or liberals. Because there is in fact little correlation between these political categories and disciplinary standing, the assessment of

faculty by such explicitly political criteria, whether used by faculty, university administration, or the state, would profoundly corrupt the academic integrity of universities. Indeed, it would violate the neutrality principle itself. For this reason, recent efforts to enact the Academic Bill of Rights pose a grave threat to fundamental principles of academic freedom.

The Academic Bill of Rights also seeks to enforce the principle that "faculty members will not use their courses or their position for the purpose of political, ideological, religious, or antireligious indoctrination."[3] Although Committee A endorses this principle, which we shall call the nonindoctrination principle, the Academic Bill of Rights is an inappropriate and dangerous means for its implementation. This is because the bill seeks to distinguish indoctrination from appropriate pedagogy by applying principles other than relevant scholarly standards, as interpreted and applied by the academic profession.

If a professor of constitutional law reads the examination of a student who contends that terrorist violence should be protected by the First Amendment because of its symbolic message, the determination of whether the examination should receive a high or a low grade must be made by reference to the scholarly standards of the law. The application of these standards properly distinguishes indoctrination from competent pedagogy. Similarly, if a professor of American literature reads the examination of a student that proposes a singular interpretation of *Moby Dick*, the determination of whether the examination should receive a high or a low grade must be made by reference to the scholarly standards of literary criticism. The student has no "right" to be rewarded for an opinion of *Moby Dick* that is independent of these scholarly standards. If students possessed such rights, all knowledge would be reduced to opinion, and education would be rendered superfluous.

The Academic Bill of Rights seeks to transfer responsibility for the evaluation of student competence to college and university administrators or to the courts, apparently on the premise that faculty ought to be stripped of the authority to make such evaluative judgments. The bill justifies this premise by reference to "the uncertainty and unsettled character of all human knowledge."[4] This premise, however, is antithetical to the basic scholarly enterprise of the university, which is to establish and transmit knowledge. Although academic freedom rests on the principle that knowledge is mutable and open to revision, an Academic Bill of Rights that reduces all knowledge to uncertain and unsettled opinion, and which proclaims that all opinions are equally valid, negates an essential function of university education.

Some versions of the Academic Bill of Rights imply that faculty ought not to be trusted to exercise the pedagogical authority required to make evaluative judgments. A bill proposing an Academic Bill of Rights recently under discussion in Colorado, for example, provides:

The general assembly further declares that intellectual independence means the protection of students as well as faculty from the imposition of any orthodoxy of a political, religious or ideological nature. To achieve the intellectual independence of students, teachers should not take unfair advantage of a student's immaturity by indoctrinating him with the teacher's own opinions before a student has had an opportunity fairly to examine other opinions upon the matters in question, and before a student has sufficient knowledge and ripeness of judgment to be entitled to form any definitive opinion of his own,

and students should be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion.[5]

On the surface, this paragraph appears merely to restate important elements of AAUP policy.[6] In the context of that policy, this paragraph unambiguously means that the line between indoctrination and proper pedagogical authority is to be determined by reference to scholarly and professional standards, as interpreted and applied by the faculty itself. In the context of the proposed Colorado Academic Bill of Rights, by contrast, this paragraph means that the line between indoctrination and proper pedagogical authority is to be determined by college and university administrations or by courts. This distinction is fundamental.

A basic purpose of higher education is to endow students with the knowledge and capacity to exercise responsible and independent judgment. Faculty can fulfill this objective only if they possess the authority to guide and instruct students. AAUP policies have long justified this authority by reference to the scholarly expertise and professional training of faculty. College and university professors exercise this authority every time they grade or evaluate students. Although faculty would violate the indoctrination principle were they to evaluate their students in ways not justified by the scholarly and ethical standards of the profession, faculty could not teach at all if they were utterly denied the ability to exercise this authority.

The clear implication of AAUP policy, therefore, is that the question whether it is indoctrination for teachers of biology to regard the theory of "evolution" as an opinion about which students must be allowed "to reserve judgment" can be answered only by those who are expert in biology. The whole thrust of the proposed Colorado Academic Bill of Rights, by contrast, is to express distrust of faculty capacity to make such judgments, and to transfer the supervision of such determinations to a college or university administration or to courts. The proposed Colorado bill thus transforms decisions that should be grounded in professional competence and expertise into decisions that are based upon managerial, mechanical, or, even worse, overtly political criteria. The proposed Colorado bill also facilitates the constant supervision of everyday pedagogic decision making, a supervision that threatens altogether to undercut faculty authority in the classroom. It thus portends incalculable damage to basic principles of academic freedom.

Skepticism of professional knowledge, such as that which underlies the Academic Bill of Rights, is deep and corrosive. This is well illustrated by its requirement that "academic institutions . . . maintain a posture of organizational neutrality with respect to the substantive disagreements that divide researchers on questions within . . . their fields of inquiry."[7] The implications of this requirement are truly breathtaking. Academic institutions, from faculty in departments to research institutes, perform their work precisely by making judgments of quality, which necessarily require them to intervene in academic controversies. Only by making such judgments of quality can academic institutions separate serious work from mere opinion, responsible scholarship from mere polemic. Because the advancement of knowledge depends upon the capacity to make judgments of quality, the Academic Bill of Rights would prevent colleges and universities from achieving their most fundamental mission.

When carefully analyzed, therefore, the Academic Bill of Rights undermines the very academic

freedom it claims to support. It threatens to impose administrative and legislative oversight on the professional judgment of faculty, to deprive professors of the authority necessary for teaching, and to prohibit academic institutions from making the decisions that are necessary for the advancement of knowledge. For these reasons Committee A strongly condemns efforts to enact the Academic Bill of Rights.

The AAUP has consistently held that academic freedom can only be maintained so long as faculty remain autonomous and self-governing. We do not mean to imply, of course, that academic professionals never make mistakes or act in improper or unethical ways. But the AAUP has long stood for the proposition that violations of professional standards, like the principles of neutrality or nonindoctrination, are best remedied by the supervision of faculty peers. It is the responsibility of the professoriate, in cooperation with administrative officers, to ensure compliance with professional standards. By repudiating this basic concept, the Academic Bill of Rights alters the meaning of the principles of neutrality and nonindoctrination in ways that contradict academic freedom as it has been advanced in standards and practices which the AAUP has long endorsed.

Endnotes

[1] This language derives from a Concurrent Resolution (H.Con.Res. 318) proposed in the House of Representatives by Jack Kingston during the 108th Congress. It also appears in a proposed amendment to Article I of Title 23 of the Colorado Revised Statutes, 24-125.5. Both pieces of legislation grow out of a version of the Academic Bill of Rights originally drafted by columnist David Horowitz. See http://studentsforacademicfreedom.org/. Back to text.

[2] H.Con.Res. 318. We note, parenthetically, that, while this embrace of diversity may be reasonable in some circumstances, it may make little academic sense in other contexts, as, for example, when a department wishes to specialize in a particular disciplinary approach.

[3] Con.Res. 318.

[4] H.Con.Res. 318.

[5] Proposed amendment to Article I of Title 23 of the Colorado Revised Statutes, 24-125.5.

[6] "Some Observations on Ideology, Competence, and Faculty Selections," *Academe: Bulletin of the AAUP*, (January-February 1986):1a-2a.

[7] H.Con.Res. 318.

(Posted 12/03)
American Association of University Professors, 1012 Fourteenth Street, NW, Suite #500; Washington, DC 20005
202-737-5900 Fax: 202-737-5526

Appendix II: Academic Senate Resolutions on Academic Bill of Rights

Whereas, The Academic Bill of Rights is not only redundant but, ironically, also infringes on academic freedom in the very act of purporting to protect it;

Whereas, A fundamental premise of academic freedom is that decisions concerning the quality and content of scholarship and teaching are to be made by reference to the standards of the academic profession, as interpreted and applied by the community of scholars qualified by expertise and training to establish such standards, and not by political standards;

Whereas, The result of the statutory enactment of the Academic Bill of Rights would be to transfer responsibility for the evaluation of student competence from faculty to administrators, the courts, or some other governmental entity; and

Whereas, such transfer will inevitably increase the cost to the state of maintaining public higher education in California;

Resolved, That the Academic Senate for California Community Colleges find the Academic Bill of Rights - SB 1335 (Morrow) as amended on April 12, 2004 - to be flawed precisely because it is unnecessary, unwarranted and costly to the state; and

Resolved, That the Academic Senate for California Community Colleges urge legislators to oppose this proposed legislation. [6.04 S04]

Whereas, The California Legislature has directed the California Community Colleges Board of Governors to recognize the Academic Senate as the primary academic authority on most of the professional and academic matters addressed in SB 1335;

Whereas, The California Community College system is organized on the basis of local district control over the matters addressed in SB 1335; and

Whereas, Many of the matters addressed in SB 1335 are already codified through an interplay of state and local academic senate guidelines, district board policies, collective bargaining agreements, as well as Education Code and civil law, specifically I) "Grading" (subsection (b)(1)); II) "Variety of viewpoints" and "indoctrination" (subsections(b)(2) and (b)(3)); III) "Visiting speakers" and "the protection of their free speech rights" (subsections (b)(4) and (b)(5)); IV) "Hiring, firing, promotion, tenure" and "the composition of committees relative to these issues" (subsection (b)(6)); V) And finally "organization neutrality" (subsection (b)(8));

Resolved, That the Academic Senate for California Community Colleges vigorously oppose SB 1335 (Morrow) as amended on April 12, 2004; and

Resolved, That the Academic Senate for California Community Colleges oppose any legislation that erodes the ability of faculty to use their professional expertise in determining course content and materials. [6.05 S04]

Appendix III: Education Code Language on Bookstores

81676. Any person who is employed in a bookstore maintained by a community college pursuant to this section is a member of the classified service of the district in accordance with Section 88020. In the case of a person who, immediately preceding becoming a member of the classified service of a school district pursuant to this section, was employed, other than as a student or substitute employee, in a community college bookstore maintained by a student body organization, such prior service shall, for all purposes, be deemed service in the classified service of the employing community college district.

The disposition and accounting of revenue and expenditures of the bookstore operation shall be as prescribed by the California Community Colleges Budget and Accounting Manual. Net proceeds from the operation of a community college bookstore shall be used for the general benefit of the student body as determined by the governing board. Money may be expended for services and property, including, but not limited to, parking facilities, stadia, student centers, student unions, health centers, bookstores or auxiliary facilities for use of students or faculty members of the community college or employees of the district. Funds derived from the operation of a community college bookstore shall be subject to audit pursuant to Section 84040.

81676.5. (a) Pursuant to the authority granted by subdivision (a) of Section 70902, the governing board of any community college district may establish a bookstore or bookstores on district property.

(b) In the event that the governing board of a district determines not to operate its own bookstore or bookstores, the governing board may contract for the operation of a bookstore or bookstores, provided that any contract, whether a lease agreement, a consultant services contract, or other form of agreement, shall be competitively bid. The governing board shall let the contract pursuant to a fully advertised request for proposals process, awarding the contract on the basis of the best interests of the students of the district. In evaluating or awarding the contract, community college district governing boards shall give preference to student organizations, and shall encourage student organizations to submit bids.

(c) This section shall remain in effect only until, and shall be repealed, one year from the date that this section becomes effective or when the California Supreme Court decision on the appellate court case of 1st Street Books v. Marin Community College District (208 Cal. App. 3d 1275, review granted 6-22-89 (S009983)) becomes final, whichever occurs last.

Appendix IV: Education Code and Title 5 Language on Sale of Materials

EDUCATION CODE 76365

The board of governors shall adopt regulations regarding the authority of community college districts to require students to provide various types of instructional materials. These regulations shall reflect the intent of the Legislature that community college districts are not required to provide all materials, textbooks, equipment, and clothing necessary for each course and program. These regulations shall specify the conditions under which districts may require students to provide those materials that are of continuing value to the student outside of the classroom setting, including, but not limited to, textbooks, tools, equipment, clothing, and those materials that are necessary for the student's vocational training and employment. The regulations shall establish a process for monitoring district compliance with these regulations.

TITLE 5 REGULATIONS

§59400. Required Instructional and Other Materials.

(a) The governing board of a district may, consistent with the provisions of this Subchapter, require students to provide instructional and other materials required for a credit or noncredit course, provided that such materials are of continuing value to a student outside of the classroom setting, and provided that such materials are not solely or exclusively available from the district.

(b) Except as specifically authorized or required in the Education Code, the governing board of a community college district shall not require a student to pay a fee for any instructional and other materials required for a credit or noncredit course.

§59402. Definitions.

For the purposes of this Subchapter the following definitions apply:

(a) "Instructional and other materials" means any tangible personal property which is owned or primarily controlled by an individual student.

(b) "Required instructional and other materials" means any instructional and other materials which a student must procure or possess as a condition of registration, enrollment or entry into a class; or any such material which is necessary to achieve those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

(c) "Solely or exclusively available from the district" means that the material is not available except through the district, or that the district requires that the material be purchased or procured from it. A material shall not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost and:

(1) the material is otherwise generally available, but is provided solely or exclusively by the district for health and safety reasons; or

(2) the material is provided in lieu of other generally available but more expensive material which would otherwise be required.

(d) "Required instructional and other materials which are of continuing value outside of the classroom setting" are materials which can be taken from the classroom setting, and which are not wholly consumed, used up, or rendered valueless as they are applied in achieving the required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

§59404. District Policies and Regulations for Instructional and Other Materials.

(a) The governing board of a community college district which requires that students provide instructional or other materials for a course shall adopt policies or regulations, consistent with the provisions of this Subchapter, which specify the conditions under which such materials will be required.

(b) The policies or regulations specified in Subsection (a) shall be adopted no later than January 1, 1986, forwarded to the Chancellor's Office upon adoption, and thereafter published in each college catalog developed after the date of adoption.

§59406. Report to Chancellor.

The governing board of a community college district which prescribes required instructional and other materials for its courses shall respond to periodic surveys or inquiries of the Chancellor on the subject.

§59406.5. Reports Re Instructional Materials Used.

Each district board shall make reports, whenever required, directly to the Board of Governors or Chancellor's Office, concerning the instructional materials used in its colleges.

§59408. Operative Date and Violations of Subchapter.

(a) The regulations in this Subchapter shall become operative on August 15, 1985, provided that a district governing board which wishes to implement these regulations earlier may do so.

(b) The governing board of a district which prescribes required instructional and other materials in violation of this Subchapter shall be deemed to have established a student fee not expressly established by law.

Appendix V: Academic Senate Resolutions on Textbook Issues

Whereas, The California Performance Review attempts to limit the right of faculty to select textbooks; and

Whereas, selection of materials is a significant matter of academic freedom;

Resolved, That the Academic Senate for California Community Colleges reaffirm the academic freedom of faculty to select textbooks and other course materials. [19.01 F04]

Whereas, Local academic senates face questions and conflicts regarding textbook selection, price, authorship, copyright, etc.; and

Whereas, Local academic senates need guidance on the applicability of academic freedom with regard to textbook issues;

Resolved, That the Academic Senate for California Community Colleges produce a position paper on model policies and ethical considerations regarding textbooks and other course materials. [20.06 S04]

Whereas, Textbook prices have increased beyond the resources of many students; and

Whereas, New editions are often published with few content changes, making used books unavailable, and unnecessary bundling increases the costs o students; and

Whereas, Marketing costs account for over 15% of the costs to students; and

Whereas, Textbooks are sold to individuals via the Internet for significantly less than they are sold in bulk to college bookstores;

Resolved, That the Academic Senate for California Community Colleges contact textbook publishers and urge them to establish production, business and pricing policies that do not unfairly penalize students who purchase their books at college bookstores; and

Resolved, That the Academic Senate for California Community Colleges encourage faculty to consider the cost of books as one of the criteria in book selection, and that faculty encourage the publishing companies they work with to adopt business and pricing policies that are responsive to that concern. [20.07 S04]

Whereas the Academic Senate for California Community Colleges has always supported removal of barriers to student access and success, and

Whereas the average cost per year of community college textbooks is $861, thus creating a barrier to access and success for low income students, and

Whereas AB 2496 (Washington) provides that students receiving Board of Governors' fee waivers will also receive grants for textbooks,

Resolved that the Academic Senate support the concepts in AB 2496 (as of February 24, 2000), which provides textbook grants to low-income students who are eligible for Board of Governors' grants. [20.01 S00]

Whereas the Academic Senate for California Community Colleges supports the full spectrum of student services to be funded by college appropriations, and has historically opposed imposition of any new fees on our students, and

Whereas there is recurrent discussion of new student fees either voluntary or mandatory to pay for such things as textbooks, technology, and instructional materials,

Resolved that the Academic Senate oppose the concept of mandating new fees for student services while allowing student governance bodies to democratically initiate fees that improve student services/life (as per current statute). [6.01 S00]

Whereas the rising cost of textbooks has placed a financial burden on students, and

Whereas the availability of affordable texts and other assigned materials is critical to student success, and

Whereas the California Student Association of Community Colleges (CalSACC), in cooperation with UC and CSU students and faculty organizations, is introducing legislation in January 2000 to eliminate sales tax on textbooks and text-related supplies sold by college bookstores,

Resolved that the Academic Senate support the legislation proposed by the California Student Association of Community Colleges (CalSACC) to eliminate sales tax on texts and text materials sold in college bookstores. [20.06 F99]

Whereas the availability of affordable textbooks and other assigned classroom materials is critical to student success, and

Whereas textbook pricing policies are thereby a major academic concern of faculty,

Therefore be it resolved that the Academic Senate for California Community Colleges collaborate with CalSACC to investigate textbook pricing policies systemwide, identify issues, and report back to the Academic Senate for Fall Session with any appropriate recommendations for action. [20.1 S96]

Whereas the costs of earning an education in the California Community Colleges are on the rise, and

Whereas the rising costs of textbooks and materials increase barriers to those students least able to afford and most in need of the benefits of a community college education,

Resolved that the Academic Senate urge local senates to recommend to faculty that they consider the cost of books as one of the criteria in book selection. [9.07 S93]

Appendix VI: Legal Opinion on Faculty profits

STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES CHANCELLOR'S OFFICE

1102 Q street
Sacramento, Ca 95814-6511
(916) 445-8752
http://www.cccco.edu

December 23, 2002

Stan Arterberry
Chancellor
West Valley-Mission Community College District
14000 Fruitvale Avenue
Saratoga, CA 95814-06511

Re: Faculty Profits from Required Instructional Material
Legal Opinion L 02-29

Dear Dr. Arterberry:

You have asked a number of questions concerning the legality of a faculty member collecting royalties from the instructional materials he or she created when that faculty member makes the acquisition of those materials mandatory to the successful completion of his or her course.

We appreciated receiving input from interested parties including Janice J. Hein, counsel for the West Valley-Mission Community College District (District) and Martin Fassler, Attorney for the Association of College Educators of the District. The primary issue raised by Mr. Fassler is that the Chancellor's Office lacks the jurisdiction to issue an opinion on the questions you raised. Since jurisdiction is a threshold concern, we will address it first by citing Education Code section 70901(b)(14) which provides that one of the functions of the Chancellor's Office is to:

> "Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges."

Thus, the Chancellor's Office has clear authority to respond to the questions you raised and we do so separately below. However, because the issues raised by your inquiry encompass a complex matrix of variables, we will make several preliminary assumptions in an effort to narrow

the scope of our analysis to those issues primarily involving interpretations of Education Code and California Code of Regulations, title 5 provisions. Those assumptions are:

A. That the instructional materials the faculty author requires students to purchase for his or her class qualify for copyright protection, that all or a portion of the copyright is owned by the faculty author, that the materials are not works for hire or if they are works for hire the faculty author's employment contract provides that he or she is entitled to all or a portion of the royalties from such works; and

B. That the District's conflict of interest rules do not prohibit a faculty author from requiring his or her students to purchase instructional materials he or she created and on which he or she collects a royalty.

A. Copyright/Royalties

Districts and faculty should be aware that copyright laws do not necessarily guarantee faculty members the copyright to their articles, instructional materials, and other scholarly works.

Education Code section 72207 provides that the "governing board of a community college district may secure copyrights, in the name of the district, to all copyrightable works developed by the district, and royalties or revenue from said copyrights are to be for the benefit of the district securing said copyrights."

The Copyright Act of 1976 defines a work made for hire as:

"(1) a work prepared by an employee within the scope of his or her employment; or

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire . . . ." (17 U.S.C. § 101.)

The Act further states that, "In the case of a work for hire, the employer or other persons for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright." (17 U.S.C. § 201(b).)

The work for hire provisions of the Copyright Act have been interpreted by courts and scholars to mean that since faculty members are employees of educational institutions

any instructional materials created within the scope of their employment are owned by the employing educational institution.[3]

Although the law is somewhat unsettled in this area, districts and faculty are well advised to develop copyright policies and negotiate copyright ownership rights in employment agreements signed by both parties if the intent of both parties is to alter the traditional work for hire arrangement for faculty.[4]

B. Conflict of Interest

In 1987, The Fair Political Practices Commission (FPPC) was asked whether the Political Reform Act (Act) of Government Code sections 81000 et seq., prohibited a community college instructor from collecting royalties on the sale of a textbook he published with his own publishing company and assigned to his students. (*In re Gilbertie* (1987) Cal. Fair Pol. Prac. Comm. No. A-87-149.)

The FPPC noted that generally the Act prohibits a public official, which includes a community college trustee or employee, from making, participating in making, or using his or her official position to influence the making of a governmental decision in which he or she has a financial

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[3] In *Weinstein* v. *University of Illinois* (7th Cir. 1987) 811 F.2d 1091,1091-1094, the Seventh Circuit reversed the lower court's ruling that under the Copyright Act, the university, not Professor Weinstein owned the rights to an article Weinstein co-authored but in so doing stipulated that the Copyright Act was "general enough to make every academic article a 'work for hire' and therefore vest exclusive control in universities rather than scholars." (*Id.,* at p. 1094, citing Leonard D. DuBoff (1984) An Academic's Copyright: Publish and Perish, 32 J. Copyright Society 17.
"(See [Rochelle Cooper] Dreyfuss, [The Creative Employee and The Copyright Act of 1976, 54 U. Chi. L. Rev. 590 (1987)] supra note 3, at 591 ('[T]he 1976 Act permits universities to claim copyright to, and even "authorship" of, their faculty's output.'); Leonard D. DuBoff, An Academic's Copyright: Publish or Perish, 32 J. COPYRIGHT SOC'Y 17, 18 (1984)(arguing that §201(b) of the Copyright Act is general enough to make every academic article a work for hire); and Todd Simon, Faculty Writings: Are They Works Made for Hire Under the 1976 Copyright Act?, 9 J.C. & U.L 485, 508 (1982-83) ('Unless the courts create an exception, nothing prevents a college or university from laying claim to copyright in faculty writings under the traditional works made for hire analysis.')." Ashley Packard, Copyright Or Copy Wrong: An Analysis Of University Claims To Faculty Work (2002) 7 Comm. L. & Pol'y 275, 278, fn 19.

[4] In *Manning* v. *Board of Trustees of Community College District No. 505 (Parkland College)* (C.D. Ill. 2000) 109 F.Supp.2d 976 the court held that even if it could be deemed to constitute an implied agreement, a policy statement in the college handbook that "[m]embers of the staff who develop materials ... shall have complete copyrights to such materials . . . ." did not meet the statutory requirements of an express, written, signed agreement.

interest. (Gov. Code, § 87100.) Within the meaning of section 87100, a public official has a financial interest in a decision if it will have a reasonably foreseeable material financial effect, distinguishable from its effect on the general public, on the official or a member of his or her immediate family. (Gov. Code, § 87103.) The effect a public official's governmental decision has is material if that official's personal finances will increase or decrease by $250 or more in any 12-month period. (Cal. Code Regs., tit. 2, § 18705.5(a).) Therefore, ordinarily the assignment of a textbook by the faculty author that would result in royalties equal or greater than $250 would not be permitted. However, the FPPC has adopted a number of regulatory exceptions to what constitutes a «governmental action» including an exception for academic «teaching decisions» as follows:

> "Teaching decisions, including the selection by a teacher of books or other educational materials for use within his or her own school or institution, and other decisions incidental to teaching." (Cal. Code Regs., tit 2, § 18702.4(c)(1)(A).)

Therefore, the FPPC ruled that a community college «teacher is permitted to assign his or her own textbook for his or her classes, even though he or she will earn $250 or more in royalties from the sale of the textbook.» (*Gilbertie, supra,* at p. 1.)

In so ruling, the FPPC included language instructing governmental agencies that nothing in the Act prevents an agency from adopting conflict of interest restrictions that exceed those contained in the Act, provided those requirements do not prevent compliance with the Act and provided that the agency do so under separate authority. "Thus, the Act does not prevent the district from adopting its own rules governing procedures for assigning textbooks; however, the district may not base those requirements on the Act or any conflict of interest code adopted pursuant to the Act." (*Id*., at p. 2.)

Government Code section 1126 provides districts with the requisite authority to adopt conflict of interest requirements that exceed the restrictions contained in the Act. This statute provides that a local officer or employee may not engage in any employment activity or enterprise for compensation, which is "inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee . . . ." (Gov. Code, § 1126(a).) However, the provisions of section 1126 are not self-executing and before its restrictions can be enforced a community college district is required to promulgate a statement of incompatible activities and provide notice to its local officers and employees. (Gov. Code, § 1126(c); *Mazzola* v. *City and County of San Francisco* (1980) 112 Cal.App.3d 141.)

Under the authority of Government Code section 1126, the West Valley-Mission Community College District Board of Trustees adopted a conflict of interest policy in Board Policy Chapter 2, section 2.15. We leave to the District the issue of whether its conflict of interest policies prohibit a faculty author from requiring students to purchase his or her own instructional materials and collecting royalties from the sales.

All that said, we proceed now to the questions presented.

1. May a faculty member require his or her students, in order to achieve the objectives of a course, to purchase instructional materials (textbooks, manuals, or workbooks) that the faculty member writes or publishes and from which the faculty member will realize income?

It depends. Education Code section 76365 allows districts to require that students provide various types of necessary instructional materials, including textbooks, that are of continuing value outside the classroom. The Board of Governor's implementing regulations for section 76365 are found in the California Code of Regulations, title 5, sections 59400-59408. In addition to the requirements of section 76365, the regulations specify that a student may not be required to purchase mandatory instructional materials if such materials are solely or exclusively available from the district. (Cal. Code Regs., tit. 5, § 59400(a).) The term «solely or exclusively available from the district» is defined to mean:

> "that the material is not available except through the district, or that the district requires that the material be purchased or procured from it. A material shall not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost . . . ." (Cal. Code Regs., tit. 5, § 59402(c).)

Therefore, the longstanding general rule is that if a faculty member writes or publishes instructional materials and will profit from their sale, then students may not be required to purchase such materials if they are solely and exclusively available from the district. If the faculty author's instructional materials are solely and exclusively available from the district, then those materials must be provided at the district's «actual cost» of producing the materials. However, as we stated in Legal Opinion 01-40, the district's actual cost «may include a small markup necessary for selling the item through the college bookstore.»

2. May a faculty member require his or her students to purchase mandatory instructional materials that the faculty member self-published or published via a faculty-owned publishing company, if these materials are exclusively available at the District bookstore at a price that includes a royalty payable to the instructor?

No. Students may not be required to purchase mandatory instructional materials that are exclusively available from the district unless those materials are provided at the District's cost. (Cal. Code Regs., tit. 5, §§ 59400(a) and 59402(c).) Therefore, inclusion of a markup on the instructional materials for royalties to the faculty/author or District from materials solely and exclusively available from the District is a prohibited practice. As stated in Legal Opinion 01-40, "The overall premise is that neither a district nor its employees ought to be making a profit on materials which the district solely or exclusively provides."

3. May a faculty author require his or her students to purchase mandatory instructional materials that he or she created if the material is published by a nationally recognized publisher service that pays royalties to the faculty member?

   Assuming the instructional materials published by the nationally recognized publisher are not solely and exclusively available from the District but are also offered for sale by other booksellers, a faculty member may require students to purchase instructional materials he or she authored and on which he or she collects royalties unless the practice is otherwise prohibited by the faculty author's employment agreement or the District's conflict of interest rules.

4. May a faculty author require his or her students to purchase mandatory instructional materials that the faculty member wrote if the material is published by a vanity press that pays a royalty to the faculty member?

Yes, provided they are not exclusively available from the District and provided that employment agreements or local conflict of interest rules do not prohibit the practice.

To reach this conclusion, we examined instructional material student fee law from 1984, which was the year the Legislature directed the Board of Governors to adopt regulations to clarify the statutory authority to charge fees for mandatory instructional materials. (Stats. of 1984, ch. 1282 (AB 2808).)

The Board of Governor's implementing regulations, adopted pursuant to this legislative directive, are found in the California Code of Regulations, title 5, sections 59400-59408. One of the foremost guiding principals in the development of the regulations is stated in the rulemaking file's Final Statement of Reasons:

> "With respect to any given material, the critical distinction between payment of a mandatory fee for the material and a requirement for the student to procure ~~for~~ the material is that in the latter instance the student isn't required to purchase or procure the material from the district. Applying this distinction, it would generally be improper for a district to require a certain material and further require that the student buy it from the district. It would also be improper, following this logic, for a district to require a certain material that only it (the district) could supply. For purposes of Board regulations, it appears important that any required materials not be solely or exclusively available from the district." (Rulemaking Reg. File, Instructional Materials, Final Statement of Reasons, p. 6 (1985).)

With this guiding principle in mind, section 59400 was drafted and has remained unchanged since its enactment in 1985. Subsection (a) of section 59400 specifies that a student may not be required to purchase mandatory instructional materials if such materials are "solely or exclusively available from the district." (Cal. Code Regs., tit. 5, § 59400(a).) The term «solely or exclusively available from the district» is defined, and also remains substantively unchanged since its 1985 enactment, to mean:

> "that the material is not available except through the district, or that the district requires that the material be purchased or procured from it. A material shall not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost and:
>
> (1) the material is otherwise generally available, but is provided solely or exclusively by the district for health and safety reasons; or
>
> (2) the material is provided in lieu of other generally available but more expensive material which would otherwise be required." (Cal. Code Regs., tit. 5, § 59402(c).)

During the period allowed for public comment on the proposed regulations, the Chancellor's Office received several objections to the provision that the instructional materials may not be «solely and exclusively available from the district.» These commentators noted that community college faculty members often create their own instructional materials, designed for the unique needs of their courses and students. They argued that faculty-created materials are generally too expensive for the district to provide for the students and are almost always exclusively available from the district. The objections were considered, but the Board of Governors retained the solely and exclusively available requirement with one important modification: language was added which allowed districts to require instructional materials that were solely and exclusively available from the district if the materials were «provided to the student at the district's actual cost.» (*Ibid.*) The reason for including this language was stated as follows:

> "This requirement was included to distinguish requiring a student to obtain an instructional material from a practice which is tantamount to requiring a student to pay a fee." (Rulemaking Reg. File, Instructional Materials, Summary of Comments Received (1985).)

Thus, the intent of the Board of Governors was to promulgate instructional materials regulations that prohibited the practice of charging students a price for mandatory materials that included a profit for the district or faculty author that amounted to an unauthorized student fee.

Since 1985, technology has dramatically changed the way educational materials are published. With the proliferation of subsidy-publishers also known as "vanity presses" or "on-demand publishing" the controversial "solely or exclusively available from the district" provision that once frustrated faculty authors but protected students from additional fees, may today actually work to the disadvantage of students.

Faculty authors of instructional materials, which are unacceptable to traditional publishers, may decide to pay one of these subsidy-publishers to have their materials printed and bound. Subsidy publishers are often sources from which students may purchase faculty-created instructional materials. Therefore, under the current regulations, mandatory instructional materials available from sources in addition to the district's bookstore, including subsidy-publishers, are unrestricted as to price or the inclusion of royalties for districts and/or faculty authors.

It is our understanding that subsidy-publishers generally charge considerable fees for their services. When these fees are passed down to the students, they may end up paying much more for instructional materials than they would have if those same materials had been produced in-house and sold exclusively at the district's bookstore. This might be true even if the bookstore were permitted to include a reasonable royalty. Thus, it seems that changes in technology and publishing practices have created a situation not contemplated when the regulations were originally drafted.

In an effort to keep the costs of faculty-created instructional materials to a minimum, districts may wish to encourage faculty authors to use the district's in-house publishing facilities by making those facilities readily available and stocked with the necessary supplies. Faculty authors who wish to avoid charging students any more than absolutely necessary for faculty-created instructional materials should forgo subsidy publication when that method would add substantial costs and opt to produce those materials in-house.

5. May a faculty member require his or her students to purchase mandatory instructional materials written by the faculty member if that faculty member collects royalties on the sale of the material and it is published by Amazon.com on-demand publishing service and available both from the District bookstore and online at Amazon.com?

Yes, provided they are not exclusively available from the District and provided employment agreements or local conflict of interest rules do not prohibit the practice.

Please see the discussion under question number 4 above.

We appreciate the opportunity to examine these issues and thank you for bringing them to our attention. As you know, our Legislature has a long history of interest and active involvement in student fee issues at community colleges. This year, we received an inquiry from Assemblywoman Elaine Alquist, in her capacity as Chair of the Assembly Committee on Higher Education, about certain student fees being charged at various districts. Most of the fees Assemblywoman Alquist identified as questionable were nominal instructional materials fees. We are in the process of investigating Assemblywoman Alquist's concerns. Your inquiry on faculty publication and collection of royalties has shed light on a matter that apparently neither this office nor the Legislature had previously considered It may well be that the Legislature or the Board of Governors will wish to take action to revise the law on instructional materials to reflect the modern realities of the publishing industry.

If you have questions, please call me at (916) 322-4145.

Sincerely,

Renée Brouillette
Asistant General Counsel
L 02-29

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The Price of Knowledge

Concerned about the high price of college textbooks, CALPIRG, the California Student Public Interest Research Group, released a report entitled "Ripoff 101: How the Current Practices of the Textbook Industry Drive up the Cost of College Textbooks." The report states that publishers drive up the costs by 'bundling,' or adding additional materials such as CD-ROMs and workbooks. However, a majority of faculty surveyed reported that they rarely or never use the bundled materials. Another finding is that publishers also issue new editions frequently, often without significant content changes. Of faculty surveyed, 76% reported that the new editions they use are justified half the time or less.

The report states that students are paying an average of $898 for books this school year. One way to reduce expenses is by buying used texts, but those are getting harder to find. Of students who searched for used books for the Fall 2003 quarter/semester, 59% were unable to find even one. Of the textbooks examined, the new editions cost 58% more than the used copy of the older edition. Bundled books are rarely offered separately, but indications are that they are more expensive; in one case, the bundled version was twice the price of the textbook sold on its own.

The report reflected faculty and student support for reducing textbook costs, including such suggestions as including new information in a supplement rather than producing a new edition, buying and selling used texts through an online book swap, and using online textbooks that would reduce costs. The full text of the report, which gives tips for faculty to help reduce textbook costs, is available at www.calpirgstudents.org.

At the press conference at which CALPIRG released the report, Assemblywoman Carol Liu (D-La Canada Flintridge), head of the Assembly Higher Education Committee, announced that she plans to introduce legislation that would combat high textbook costs by encouraging publishers to provide textbooks that are not bundled with other materials and to explain why a new edition of a text is required. Liu said that the bill would also ask that faculty consider price when making textbook selection decisions.

In December, DAS passed a resolution supporting LACCD's Students' Affairs Committee and student trustee Stacey McMullen in their efforts to rein in the prices of textbooks.