

The Used Textbook Resale Market & The Law[©]

Multi-State Comprehensive Edition
With Essential Readings

Formerly titled, “The Rights of My Teachers[©]”

Alan J. Rosenthal

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IN ANY FORMAT OR MEDIUM IN WHOLE OR IN PART
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Nugatory

Futile; ineffectual; invalid; destitute of constraining force or vitality. A legislative act may be “nugatory” because unconstitutional.
Avery & Co. v. Sorrell, 157 Ga. 476, 121 S.E. 828, 829.

Black’s Law Dictionary, 6th Edition

* * * * *

Not Binding

“The opinions expressed in that memorandum, like all opinions of this office, are advisory only and are not binding on any community college.”

March 12, 1991

Edwin M. Speas, Jr.

Senior Deputy Attorney General

Responding to a law firm’s request for clarification of the May 14, 1990 memorandum to North Carolina community college presidents.

* * * * *

No NCCCS Policy or Rule

“In your letter, you specifically request “that the bookselling prohibition be rescinded, thereby setting it in line with federal guidelines.” Again, the State Board has no policy or rule in place, notwithstanding heretofore cited statutes and codes [on unrelated campus bookstore operations], that restrict the operations of bookstores and/or selling and disposal of textbooks. Local boards of trustees, absent any State Board prohibitions, may operate their bookstores consistent with the provisions of the Umstead Act. As such I have no remedy to offer for State Board prohibitions that do not exist. Individual community colleges can operate or contract for services the commerce of textbooks on their campuses, and have done so for decades.”

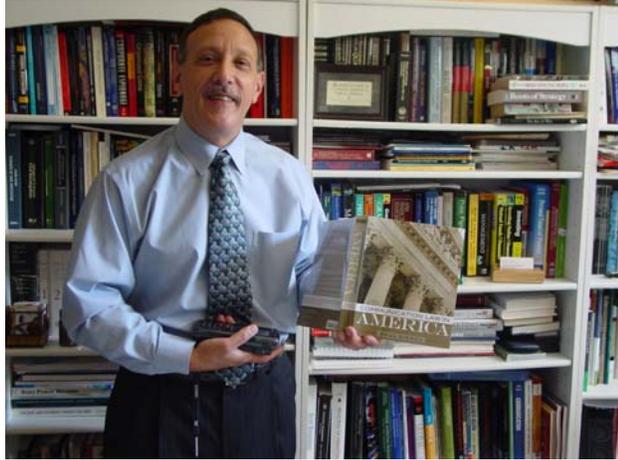
May 12, 2009

Letter from R. Scott Ralls to Alan Rosenthal

* * * * *

An Important Note about Private Institution & Other State Applicability

Due to federal laws regulating the interstate commerce nature of higher education and the textbook resale industry and the Supremacy Clause, the concepts discussed in this report are applicable for both public and private institutions throughout the United States.



Alan Rosenthal
Senior Legislative Affairs Director
Alan's Book Service

After over two decades of providing investigative and litigation support services throughout the country, I diversified and entered the textbook resale business. A small businessman of 30 years, I was shocked to see an endemic restraint of trade on college campuses. Hearing objections that included invectives and character assassinations from educated people just did not make sense. With knowledge and experience in small business practices and law and using my investigative background, I have compiled a comprehensive look at American Small Business Families and a beneficial cottage industry, mostly inhabited by Mom & Pop concerns. I show the reader how obfuscations and manipulations by huge corporations that are in bed with lawmakers have decimated an industry. While case law and examples are cited throughout the book, Section D is a 125-page legal compendium devoted to the laws governing this industry. It is my hope that the teachers whom have had their constitutional rights taken away by school administrators will learn and stand up for themselves as we work together to stop state actors from their highly unlawful and unconscionable pursuit of eradicating the specific occupation of book buyer.

Also available at
AlansBookService.com

*Campus Charity Book Scams
& the Effect on Local Small Business Families[©]*

The Used Textbook Resale Market & The Law[©]
Multi-State Comprehensive Edition

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Section A

The Used Textbook Resale Market in North Carolina

Chapter 1

The Textbook Resale Issue in Brief

I would like to thank you for reading this report about me and my job. I'm just a hard-working American Small Businessman. I have been in the used textbook industry for nine years, an industry that helps reduce textbook costs for college students. I built a territory. I didn't take a job from anyone. I created a job. I created income and spread my money around to other companies in my sphere.

Over the years, more and more schools have banned my industry and the Small Business Families who bring lower-cost textbooks (used) to bookstore shelves. Used textbooks are the only cost-item in academia where students can get a break and save significant amounts of money.

Insults and denigrating behavior from overly zealous faculty members has increased. Then the North Carolina Community College System, under R. Scott Ralls, tacitly banned its teachers from doing business with my industry. I had been researching and cataloging data in an effort to determine just why my industry was under fire. As far as I could see, I perform an honorable job which benefits not only me but the world around me.

International publishing conglomerate trade association, Association of American Publishers, which represents foreign publishing oligopolies such as Pearson Education, Thomson Reuters, etc., funnels foreign money into American legislators' pockets. It may be legal but when AAP actively and intentionally uses this activity to shutter American Small Businesses and putting these families OUT OF THEIR JOBS, one can only label this as immoral, unethical, predatory and inimical to all us Americans hold dear. On "K" Street, these payments are called contributions. On Main Street, we call them bribes. One example of this can be seen in my chapter 11, *Florida Representative Anitere Flores & the \$107,000 Sale of Amendment No. 186521*.

The Association of American Publishers (AAP) is the lead conspirator in the many offenses we will discuss in this report. It is, however, their strong-arm affiliate, the Text & Academic Authors Association (TAA), through which legislators and schools are lobbied. TAA is widely referred to in this report. The reader should keep in mind the joined-at-the-hip relationship between the AAP and TAA.

Over the years, as a proper businessman, I have listened well to both my clients and those who maintain objections to this practice. I have traveled great distances buying books in NINE states with many thousands of faculty member interactions. I have heard just about every objection and opinion regarding my industry, both from detractors and from my active clients. In this report you have a treatment on all of these issues and more. Shown clearly is the unconstitutionality of bans on my industry as well as the illegalities surrounding these bans.

These schools ban the practice by forbidding employees from having contact with a specific industry. **The bans of just Western Piedmont Community College, McDowell Tech Community College, Vance Granville Community College, UNC-Fayetteville and Western Carolina University have caused the LOSS OF OVER 175 OF MY CLIENTS.** These are teachers with whom I have business and personal relationships. The loss of the business relationship ends the personal relationship for obvious reasons. Restraint of trade is covered in this report.

The effect has been that Small Business Families are out of business or just surviving on the brink of closure. To add insult to injury, the University of North Carolina and the North Carolina Community College System and their constituent institutions and individuals have conspired and colluded to send and sell our stock (books) to specific companies in Georgia and Texas in violation of many federal laws, even the N.C. Umstead Act. Teachers often sell their books online, bypassing North Carolina's Small Business Families. The goal is the complete eradication of an industry, a marketplace and the financial ruin of Small Business Families. The college campus textbook scam is discussed in my separate report, *Campus Charity Book Scams & the Effect on Local Small Business Families*®.

The unlawful and unconstitutional (thus, nugatory) bans of just Western Piedmont Community College and McDowell Tech Community College, Vance Granville Community College and Western Carolina University have caused the *LOSS OF OVER 125 OF MY CLIENTS*.

This report is the first insider look at a green industry, providing American jobs right here on U.S. soil. The State of North Carolina must obey the law, honor the U.S. Constitution and repeal any of these unconstitutional and unlawful bans. This report argues the case for the sanctity of American Small Business Families. In effect, this tome is a business textbook in the genre of Applied Small Business Law and Management. As a retired investigator, this report doubles as a chronicle of official and corporate malfeasance, targeting the “least of these” in the business world, American Small Business Families.

"The irony of all this is we're out trying to fill that (financial) hole created by the (recession) which cost 8 million people" their jobs, Vice President Joe Biden said. "At a time when so many families are in so much pain we shouldn't be shutting the few valves of relief. ... We should be opening that spigot a little wider not shutting it down."

Vice President Joe Biden

http://politicalticker.blogs.cnn.com/2010/03/01/dems-rip-gop-senator-for-blocking-jobless-benefits-extension/?fbid=hiUaC_05JQa

I teach also. I guest lecture on investigative issues on college campuses. I teach the contents of this report every day to faculty and administrators. The response is fairly common. For decades, teachers have been wrongfully instructed and sometimes brow-beaten that selling books is unethical, unprofessional, even that is criminal. Faculty has been taught that the Small Business Families (book buyers) are criminals and weasels. Like any good teacher who sees the “light go on” as their students finally “get it”, I have the pleasure of watching the open-minded and curious teacher read this report, think about it and become a client.

When it comes down to it, this report is as much about you, the teacher, as it is about my business and the Moms and Pops who work so hard in this industry. UNC and NCCCS attack my industry and seek to eradicate it. They do this by unlawfully taking away the constitutional and legal rights of teachers under threat of discipline, dismissal or peer shame (bullying). They call teachers “unprofessional” for exercising their constitutional and legal rights. The original title of this report was THE RIGHTS OF MY TEACHERS. I'm fighting for my livelihood by fighting for your rights.

*Please stand up for your rights...for THE RIGHTS OF MY TEACHERS!
Thank you!*



Chapter 2

What is the Textbook Buying & Reselling Business?

Textbook Buying is a bit of a misnomer because this industry buys and sells many other books besides textbooks. What is at issue is the buying and selling of *used* textbooks but this industry is completely precluded from visiting faculty so they can not purchase any books (stock), no matter the genre – or unlawful notice of copyright.

A study conducted by Twentysomething Inc., a consultant firm specializing in young adults, reports that 85 percent of this year's graduating class will be forced to move back home. Meanwhile, 2011 graduates also face historic amounts of student loan debt -- or an average of \$27,200 for graduates that borrowed money in order to finish school.

www.huffingtonpost.com/2011/05/13/college-graduates-moving-home-debt_n_861849.html?icid=main%7Chtmlws-main-n%7Cdl1%7Csec3_Ink3%7C213266

Book buyers buy textbooks and place these books into a used book market which saves students from 25 to 95 percent on the significant textbook expense portion of their education. Book buyers and this industry are the original Textbook Affordability Actors. Without book buyers, there would be only new books available at the campus bookstore and online. On the other side, the Association of American Publishers (AAP) wrote a letter to Jeff Bezos at Amazon.com in which AAP dictates the position of used books on Amazon's platform, decreasing their presence in favor of new books. AAP's and TAA's goal is to eradicate all used books, textbook and otherwise. Amazon complied. See AAP's letter in the Essential Readings section of this chapter.

Book buyers are the reason that there are used books in the campus bookstore.

This industry started with a few people responding to a need. Like so many wonderful entrepreneur stories, the businesses succeeded. Full fledged companies sprouted and grew into well-run, productive examples of interstate trade at its best. They spun off and combined with other companies. Today, the used book industry is growing, thriving and providing a quiver of valuable products and services to students and the academic community at large. The larger companies and the Small Business Families who work locally maintain symbiotic relationships impacting all areas of the book business. Free Enterprise is at the foundation of what book buyers do for a living. These are American Entrepreneurs in action.



The used textbook industry is involved in interstate trade and employs thousands of people. It affects legions of individuals and businesses in its multi-pronged spheres. The industry has brick and mortar warehouses, stores and distribution networks, leads in E-Commerce, reaches into every community and generates large amounts of tax revenue for municipalities, counties, states and Uncle Sam. The effects of this industry can be felt from book buying Mom & Pop's to Jiffy Lube franchisees, local eateries and service providers, United Parcel Service, and Barnes & Noble, to name only a few. Numerous respected and successful, small, mid and large capitalization entities as well as American Small Business Families and the students themselves benefit from their work. They work hard. As American Small Business Families, they are the economic, academic and social fabric of the nation.



History

Nebraska Book Company (NBC) began in 1915 with a single bookstore near the University of Nebraska campus. Following World War II, when the supply of new textbooks could not meet the demand created by returning ex-GI students, NBC began buying books back from students at the end of the term and reselling them as used, thus becoming an integral part of the earliest years of the used textbook division.

With the purchase of The College Book Company of California in 1964, NBC increased its national distribution of used textbooks. As used textbook distribution grew, NBC also began to expand its college bookstore chain, and the company currently operates 250 bookstores nationwide.



Since its inception in 1973, MBS Textbook Exchange has become the industry leader in wholesale textbook distribution. MBS serves more than 4,000 academic institutions nationwide and processes more than 12 million used and new textbooks in our warehouse annually. In our more than 30 years as the standard-bearer, MBS has earned a peerless reputation for excellence and innovation.



Established in 1975, Texas Book Company has become one of the largest companies servicing the College Textbook industry. 25 Retail College Bookstores in the Southwest. Selling more than 2.5 Million textbooks. Our track record is strong and our clientele diverse. We embrace challenge and truly live the phrase “stand and deliver”. Because of this, Texas Book Company is the chosen textbook service provider for the United States Military; having fulfilled their textbook needs for over ten years. These include the U.S. Air Force Academy, the U.S. Naval Academy, and the U.S. Coast Guard Academy.



Barnes & Noble, Inc. (NYSE: BKS), a Fortune 500 company, is the world’s largest bookseller and the nation’s highest rated bookselling brand. The company’s operations comprise of retail bookselling, college bookstore management, online retailing and book publishing. As of October 2009, the company operates 775 retail bookstores in regional shopping malls, major strip centers and freestanding locations in 50 states, and 636 college bookstores serving nearly 4 million students and over 250,000 faculty on college & university campuses in 50 states.

www.barnesandnobleinc.com/for_investors/for_investors.html

"Like all Americans, the 37,000 booksellers who are the backbone of Barnes & Noble are doing all of the big and little things to make business better. Even during the worst of times business activity continues, and the miracle of our economic engine remains the envy of the world."
Leonard Riggio, Barnes & Noble

BARNES & NOBLE 2008 LETTER TO SHAREHOLDERS

The Company is the nation's largest bookseller, and as of January 31, 2009 operated 778 bookstores and a website. Of the 778 bookstores, 726 operate primarily under the Barnes & Noble Booksellers trade name (35 of which were opened in fiscal 2008) and 52 operate primarily under the B. Dalton Bookseller trade name. Barnes & Noble conducts the online part of its business through barnesandnoble.com llc (Barnes & Noble.com), one of the largest sellers of books on the Internet.

The Company purchases new and used textbooks at market prices directly from MBS Textbook Exchange, Inc. (MBS), a corporation majority-owned by Leonard Riggio, Stephen Riggio and various members of the Riggio family. Total purchases were \$8,250, \$7,539 and \$6,945 for fiscal years 2008, 2007 and 2006, respectively.

MBS distributes certain proprietary products on behalf of the Company. Net sales received by the Company after deducting MBS fees were \$340, \$419 and \$362 for fiscal years 2008, 2007 and 2006, respectively. Fees paid to MBS were \$50, \$65 and \$55 during fiscal years 2008, 2007 and 2006, respectively. In fiscal 2006, MBS began selling used books as part of the Barnes & Noble.com dealer network.

MBS pays Barnes & Noble.com the same commission as other dealers in the Barnes & Noble dealer network. Barnes & Noble.com earned a commission of \$1,410, \$1,598 and \$1,626 on the MBS used book sales in fiscal 2008, 2007 and 2006, respectively. In addition, Barnes & Noble.com maintains a link on its website which is hosted by MBS and through which Barnes & Noble.com customers are able to sell used books directly to MBS. Barnes & Noble.com is paid a fixed commission on the price paid by MBS to the customer. Total commissions paid to Barnes & Noble.com were \$130, \$81 and \$34 for FY's 2008, 2007 and 2006, respectively.

B&N College operates campus bookstores pursuant to agreements with a large number of colleges and universities. The Company is the nation's largest bookseller, and as of January 31, 2009 operated 778 bookstores and a website. Of the 778 bookstores, 726 operate primarily under the Barnes & Noble Booksellers trade name (35 of which were opened in fiscal 2008) and 52 operate primarily under the B. Dalton Bookseller trade name. Barnes & Noble conducts the online part of its business through barnesandnoble.com llc (Barnes & Noble.com), one of the largest sellers of books on the Internet. www.barnesandnobleinc.com/for_investors/annual_reports/2008_Annual_Report.pdf

This industry supports and provides stock for Barnes & Noble as book buyers sell books to, among others, MBS Textbook Exchange. See excerpt from Barnes & Noble's 2008 Annual Report above. The books that these Small Business Families provide go into a used book market which decreases the cost of textbooks to students by 25-95 percent. Book buyers do good and beneficial work and conduct constitutionally protected interstate trade in all 50 states.

"Independent textbook buyers are a fact of life on every college campus."
Boston College

This local industry of Small Business Families has another honorable attribute. While they are an independent bunch, they are all job creators. They are entrepreneurs. They didn't go on the dole. They didn't ask for a bailout. They don't operate on derivatives. Their business assets, like so many other Small Business People of all stripes, are found divided between a second bedroom and their vehicles in the driveway. Small Business Families create hope. Small Business Families create opportunity. Small Business Families create jobs. Book Buyers are American Job Creators. Have you directly created a job today? Have your decisions helped to *snuff* out American jobs, NCCCS and UNC?

The ban by State actors on faculty book selling cuts the ties that these Mom & Pop's have with publicly held companies, thereby destroying potential, future opportunities. Not only must they stop doing business on campuses but, as a result of the unlawful estoppels, they are precluded from doing business with other corporations in interstate trade and vice versa. This is anti-competitive and discriminatory restraint of trade and it is against the law. Frankly, this writer finds it ironic whenever I walk past a campus Small Business Development Center (SBDC). I wander past and wonder if anyone is teaching basic business law, If the education is the same as the application, I feel bad for the misdirected entrepreneur-to-be. I can only hope that the small business curriculum is based on the principle of "do as I say, not as I do". Many higher education institutions are, indeed, SBDC's, Small Business *Destruction* Centers.



The purpose of the Small Business Center is to increase the success rate of small businesses in McDowell County and the surrounding counties by assisting prospective small business operators to reach their full potential by utilizing all resources available through the Small Business Center

The Small Business Center is one of 58 Small Business Centers throughout North Carolina. It provides free, confidential counseling services for new and existing businesses. Available on an as-needed basis, the SBC Director serves as a sounding board for ideas and concerns people may have about their business. Our professional staff will help you find solutions to your challenging business questions. No question is too simple or too complicated.

The Small Business Center has a library of professional resources waiting to be tapped. Printed materials including books, pamphlets, magazines and trade journals are available for your use. It also offers access to the Internet.

The Small Business Center offers a variety of seminars and workshops to help small businesses be successful. Some of the topics include:

- **How to Start a Business** • **How to Write a Business Plan** • **Financing a Business** • **Marketing for Success** • **Understanding Your Financial Statements** • **How to Increase Prices**

Via an intentional and orchestrated defamation campaign by the Text and Academic Authors Association (see chapters 24 and 25) with financial and political backing of the international, mega-conglomerate publishing oligopolies (IMCPOs) who have misrepresented the used textbook issue for their own pecuniary gain, these organizations have influenced State actors who then shut down an entire industry by blocking book buyers from procuring stock. **No stock, no trade, no interstate trade.** The State has dictated with whom teacher-clients can enjoy commercial speech and association.

NCCCS' General Counsel, Q. Shanté Martin's opinion in the WPCC matter (see chapter 9) is based on the Merritt Opinion which is based on the wrongful and unlawful Speas Opinion. The Speas Opinion is a textbook example of an appearance of impropriety.

There are fewer Small Business Families in this field. Approximately 800 are left, down from 1500. Territories have narrowed and, in some areas, gone away. With gasoline at \$4.00 per gallon, Small Business Families can not travel profitably outside their home territory so a local ban is a total ban.

An unintended consequence of these bans is that book buyers travel longer distances to less prohibitive schools. This creates a glut of buyers at these schools. While it is not uncommon for a number of buyers to service one school, there is a point that there are just too many to service a particular school. When that happens, the cost of used books is driven up and there is less of a savings for students. This is an economic ploy of the publishers. If used books are non-existent or cost near what a new book costs, the students will buy the new books so that only the publishers make money. This not only applies to "review" books but to all books. The publishers do not want you to sell or give that novel you bought last week to a friend when you are done reading it. In magazine publishing parlance, that book is a pass-along copy. In book publishing, that same kindly act is a lost sale.

Those in this industry keep good enough company leaving "weasel" and "thief" as rather foolish appellations. This is not a nefarious, hidden, criminal operation. These Small Business Families are "out there" and open and part of the global marketplace. This American Small Business – a Mom & Pop business -- is part of the global marketplace. Who would have thought?

The used textbook industry has been Green before Green was in vogue. They were Green before Kermit. Their industry recycles more than textbooks, redistributing trades to reading programs, libraries and numerous other outlets. They find niches that want special books. A teacher-client in a school in Western North Carolina needed to dispose of her father's book collection. The book buyer met her at her storage unit. There was a box of German history and culture books which had no monetary value. The book buyer donated them to a school in Pennsylvania that has a German library and cultural center.

This business is built on the Reuse Reduce Recycle model, buying and selling textbooks while keeping paper and ink out of the landfill. Tons of paper stays out of municipal recycling. The industry provides used books so that fewer resources (trees, water, oil) are diminished. They take a commodity (environmental resources) that would have gone in the landfill and turn it into productive commerce, again and again. This industry maintains green, environmentally sound practices.

Who owns the review books and other books on faculty bookshelves? Textbooks are sent to faculty as marketing materials for review for possible adoption. See Chapter 2 for a discussion of the textbook buying business. Textbooks, novels and other trade books line the shelves. On any teacher's bookshelves, one also finds books purchased at Barnes & Noble, Borders, a local bookstore or from an online service. Books received as gifts from friends and authors are also on my client's bookshelves. Some of these books were received recently and some were placed on their shelves years ago.

Walk into any teacher's office and ask them this question: *Who owns the books on your shelves?*

Does the state own the books because they are sitting on bookshelves in an office in a state-owned building? Does the state own the stress-ball sitting on the state-owned desk that a teacher received at a state-sponsored conference? Does the state own the frames around the pictures of children and students hanging on the walls of state-owned buildings? In other words, can the state walk into a state-employed teacher's office and remove his or her books or any other belongings without consent and just compensation? The answer is obviously NO.

The state does not own these books. These books are not and never were intended to be state property. Federal and state law clearly indicates that these books are the property of the intended recipient. If a faculty member desires to sell their personal property, the state has no right to regulate or prohibit this activity. The state does not own the books that book buyers purchase from faculty. Therefore, when a teacher sells his or her books, they are selling their personal possessions, not state property.



Widely regarded as the industry leader, MBS is the largest used textbook wholesaler, bookstore systems provider, and distance learning distribution service in the United States. Organized into three operating divisions-MBS Wholesale, MBS Direct, and MBS Systems-each division supports our customers with state-of-the-art technology and innovations that continually make doing business with MBS easier.

1909

Operations began as The Missouri Store Company in Columbia, Missouri, selling classroom furniture and teaching supplies to public schools in the state.

1920s-1930s

Began used textbook wholesale operation nationally. Catalogs (forerunner to what is known today as buying guides) were mailed to bookstores and college professors showing both selling and buying prices. Operations expanded with the opening of bookstores in Boulder, Colorado; Berkeley, San Francisco, and Los Angeles, California.

1940s

Used textbook wholesale business ceased with the drafting of most male employees during World War II. Following the war, stores were opened in East Lansing, Michigan; Iowa City, Iowa; Lincoln, Nebraska; Stillwater, Oklahoma; Jefferson City and Rolla, Missouri. College enrollments reached an all-time high due to the GI Bill.

1960s

Additional stores opened in Los Angeles and Irvine, California; Boca Raton and Miami, Florida.

1970s

Wholesale used textbook business re-entered under the name University Book Services. Name subsequently changed to Missouri Book Services (MBS).

1980's

Pioneered many technological innovations laying the foundation for what is now known as the MBS Total Store Solution. All retail stores across the country owned by Missouri Store Company sold to Barnes & Noble College Stores. Name changed to MBS Textbook Exchange, Inc.

1981-1999

Retail invoice price extension, MBS DirectLink, Email notification of book shipments, Field-based customer service representatives, Warehouse automated storage and retrieval system, Book barcoding, Online buyback promotional materials, MBSbooks.com website, 25 systems applications for bookstore management, MBS Internet, eMBS, MBS Direct, UPS/MBS partnership, IBM business partner, 52 dedicated departmental toll-free numbers, Toll-free phone and fax lines, Expanded database to more than 300,000 titles and 90,000 wholesale prices

2000 to the Present

Online solutions: TAonline, GMonline, SFAonline, MBS Realtime Ordering, MBS Service Center, Faculty Center Network website, STUDYtactics.com website, Textbook Trader and Bulletin Board, Exclusive distributor of SparkNotes products, inSite Web Commerce Solution, Expanded database to more than 500,000 titles and 110,000 wholesale prices.



Our Vision

We are not comfortable just being the leader.

Nebraska Book Company continues to change and respond to the marketplace. We are innovators who set our own benchmarks for accomplishment and progress. We envision a future that includes, among other things:

- Collaborative e-commerce solutions leveraging the bookstore
- Partnerships that tie college bookstores, students and consumer products companies together
- Innovative store fronts designed to meet the needs of today's college student
- Cutting-edge technology solutions to improve operations and the delivery of textbooks.

To be the best at what we do—not just now but also in the future—we must have a strong vision for what we want to achieve that guides us as we achieve it:

- We are dedicated to keeping the independent bookstore strong.
- We are obsessed with measurement—it defines the difference between where we are and where we want to be.
- We thrive on change and are willing to take reasonable risks to generate innovation.
- We understand that our employees are the backbone of our company.
- We appreciate and encourage individuality.
- We believe in guarded optimism—we are excited about the future, yet we never underestimate the obstacles that may potentially stand in our way.
- We are fundamentally results-driven—the bottom line is getting the job done right.

Our Customers

Our Textbook Division serves 2,500 college bookstores. Our College Bookstore Division serves 1.5 million students. Our Complementary Services Division assists 1,600 bookstores or universities. In total we touch 80 percent of the college student population.

Our Employees

Great companies are built with great employees, and we have the most experienced staff in the industry. Our full-time or permanent part-time people number more than 2,000. Our 100 most seasoned employees average more than 25 years of service with our company. Thanks, in part, to them, we feel we do a great job of serving the industry. But don't just take our word for it. A Gallup Poll of more than 500 bookstore managers around the country rated our Textbook Division staff as the best in *every category measured*.

Our Mission

At Nebraska Book Company, it is our mission to:

- Be the best source of products and services for the college bookstore industry
- Develop and motivate our employees to be the best
- Provide our bookstore customers with world-class service
- Provide an acceptable rate of growth and return on investment to our shareholders
- Live up to our promise of being our customers' *Complete Connection*

The Used Textbook Resale Market & The Law[©]

Multi-State Comprehensive Edition

Essential Reading

Chapter 2

Market Manipulation: Authors Guild and AAP vs. the Used Book Market

MARKET MANIPULATION
Authors Guild and Association of American Publishers
Press Amazon.com to Alter its Marketing of Used Books

Mr. Jeffrey P. Bezos
Chief Executive Officer
Amazon.com
1200 12th Avenue S., Suite 1200
Seattle, WA 98144
Dear Mr. Bezos:

We are writing on behalf of the more than 8000 members of the Authors Guild and the 278 member companies of the Association of American Publishers to express our grave concern that Amazon's new method of marketing used copies of recently published titles will significantly harm sales of new copies of those titles.

At the moment, when customers view information about a title on the Amazon Web site, a blue box links users to a screen where they may buy or sell used copies of that title. To encourage them to click on the blue-box link, Amazon informs them of the number of used copies of the work available for sale and of the lowest price available for those copies. With one mouse click, customers depart the new book's screen and enter the used book Marketplace.

Some of the used books now available through Amazon Marketplace Sellers are very recently published titles. A quick review of the site reveals that used copies of the following works (among what appears to be thousands of others) are available: *Prodigal Summer* by Barbara Kingsolver (published October 17), *Drowning Ruth* by Christina Swartz (published September 27), *Me Talk Pretty One Day* by David Sedaris (published May); *The River King* by Alice Hoffman (published July 13), *The Blind Assassin* by Margaret Atwood (published September 5), *The Amber Spyglass* by Philip Pullman (published October 10), and *Winter's Heart* by Robert Jordan (published November 7). For every title not yet available in used form, the blue-box link allows a reader to list it for sale "in 60 seconds."

As you know, these Marketplace sales earn no payment for the authors and publishers of the books in question. Only the seller and Amazon are paid. These sales are excluded when calculating sales figures for various bestsellers lists, as well as from the publishers' own sales records of their authors' titles. In addition, Amazon does not appear to have taken any precautions to prevent Marketplace users from selling review copies or other promotional copies not intended for resale.

We understand that Amazon wishes to provide customers with all manner of services including the ability to buy and sell used books. However, as a leader in the bookselling industry, Amazon's sales practices can have a significantly deleterious effect on new book sales. If your aggressive promotion of used book sales becomes popular among Amazon's customers, this service will cut significantly into sales of new titles, directly harming authors and publishers.

We're all in this business together. Without talented authors producing a large number of new titles every year, Amazon's sales will certainly suffer. If book authors and publishers aren't adequately compensated for their work, however, then more and more writers will be compelled to pursue other creative outlets and professions. For the sake of authors, publishers, readers and Amazon, a compromise must be found that will not discourage writers from writing or consumers from buying new books.

We believe the compromise is simple and straightforward: restrict the blue-box link to out-of-print and collectible books and list all used book offerings after all new versions of a title are listed. Our members want nothing more than a fair opportunity to earn royalties for their book sales whatever the sales outlet. We hope that Amazon will respect this very reasonable professional goal.

We are encouraged by your publicly stated commitment not to hurt authors or publishers with your new Marketplace. We welcome the opportunity to discuss other ways to meet that commitment and would be happy to meet with you or your representatives regarding this matter.

Sincerely,

Letty Cottin Pogrebin
President, Authors Guild

Patricia S. Schroeder
President, Assoc. of American Publishers

The Authors Guild is the nation's largest and oldest society of published authors and the leading writers' advocate for fair compensation, effective copyright protection, and free expression.

Chapter 3

Of Weasels and American Small Business Families

"Finally, these book buyers are not raunchy, unethical scoundrels. I have met some of them and they are hardworking individuals who discovered a need, realized (correctly) there was a demand for this service and took advantage of it. This is an example of good ole American entrepreneurship which we applaud except when it has some negative effect on us personally."

Dr. Billy Earl Bompert, Augusta, Georgia

I am in the resale textbook business, buying "samples" which are promotional materials (review books) from faculty on college campuses. I buy books of all kinds, not just textbooks. I am a book buyer, a book reseller, a book consultant. Other labels I wear are Small Businessman, Entrepreneur, Heart of the American economy, Integral part of North Carolina's communities and its economy, Backbone of America and Critical to America's economic recovery and strength. I have been in business for 30 years. I have experience to run a proper company, one that acts in neither an illegal, immoral nor unethical manner. Rather, Small Business Families embody all of what is good in business and entrepreneurialism. We created our jobs. We didn't take someone else's job. We are the foundation of Free Enterprise. We are American Small Business Families.

Entrepreneur: "one who organizes, manages, and assumes the risks of a business or enterprise".

Merriam Webster Dictionary

But wait, some have other labels for me and those in my industry. Weasel. Thief. Parasite. Seedy. I know where these invectives come from and enduring the increasing level of verbal abuse has become part of the job. I work in a state-sanctioned hostile workplace atmosphere.

In North Carolina, it is the state government that fosters and encourages this form of workplace harassment while working diligently to extinguish my ninety-five-plus year old, completely American created and lawfully operated industry. Oh, yes, I have more labels which I forgot to mention...law abiding citizen, community leader, trusted public official and contributor to society.

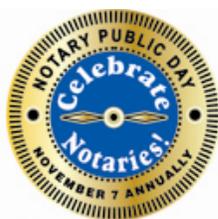
Weasel. Thief. Parasite. Seedy. These are the harassing words I hear leveled at me and others in my industry as we travel from campus to campus. It is not the ninety-five percent of instructors on a campus who participate in my industry, but rather the small minority of uninformed and cajoled teachers and administrators who feel that it is professional behavior to insult, threaten, demean and belittle to basically just ruin my good day. After donating a box of new books to a teacher for her reading program for kids, Nelly Hecker, department chair at Furman University in South Carolina, escorted me out of the building. She told me that I could continue to make donations but that she didn't want my "ilk" in her department. These behaviors make for a nerve-wracking and depressing workplace, no matter how much benefit I bring into the world as I go about my workday. It is the faculty who have been cajoled, lied to and threatened by sales reps of the international mega-conglomerate publishing oligopolies (IMCPOs) and other teachers with their own pecuniary interests who inveigh. They spew tirades of accusations of immorality and criminality, most all with no knowledge of the history, the industry or the law. Some spew this inaccurate information with knowledge of the law, which only serves to indicate an attempt to deceive as they conspire to restrain trade. The Sherman Antitrust and Clayton Acts as well as a host of other violated laws and rules are discussed throughout this report.

Still, I manage to conduct my business with consideration even for the abusive faculty member. I do this by respecting that he has chosen not to sell his books, regardless of his flawed and inaccurate reasoning. What I do is write “DNS” (DOES NOT SELL) next to his name and room number. The next time I come through, I simply walk by his office and go talk to someone who is happy to see me.

Be mindful that I do the same thing for those very lovely teachers who choose not to sell because they *love* books. Many of these non-sellers are ones I have wonderful conversations with on campus. Often, I just poke my head in with a warm hello and no other agenda but to connect with a kind-hearted person. They tell me about their children, parents and siblings. They tell me about their jobs and share their dissertations which, occasionally, I understand. We talk about books and food. They ask me about me. I know they don't need all of those books and they know I'm right. They love books and I know because I love books also. Smiles and hugs with teachers who don't sell their books? What's this world coming to? Do you know that I actually advise teachers to KEEP books in my consulting capacity?

As I listen to those who offer to backup their derogatory comments, I hear the arguments made by the international, mega-conglomerate publishing oligopolies' (IMCPOs) sales reps and the Text and Academic Authors Association (TAA). I'm not going to be kind right here. TAA is an offensively self-serving organization of individuals who know the law but who have violated the law for many years in their determination to snuff out my industry for their own pecuniary gain. Many of the active TAA members are authors first, then teachers. These organizations have conspired to shutter the used book industry, my Small Business and my livelihood. I do not use the term *conspiracy* lightly. In this report, you will read about this conspiracy, the laws and rules violated and the impact this has had on Small Business Families across the nation. I am called unethical. I am called immoral. I am called a trespasser. I am called an ilk. I am an American Small Businessman.

My previous careers were based on my integrity. I have passed numerous federal and state background checks. I have passed numerous FBI backgrounds and State Bureau of Investigation backgrounds in multiple states for positions I hold or have held. My signature is on thousands of Affidavits of Service of Process in almost every state in the nation and many other countries. My veracity is what judges all over the country relied on. My work in the past has saved lives and put lives back together. Fraudsters, identity thieves and others have gone to jail based on the work I provided to law enforcement. Confidence is conferred upon me as a “trusted public official” in my role as a Notary Public in North Carolina (the qualifying coursework completed at a North Carolina community college and authority conferred upon me by the North Carolina Secretary of State), as I was as a Notary Public in New Jersey, New York and Pennsylvania. I find it insulting, harassing and abusive to be called a weasel, a parasite, a thief or any number of negative appellations as I go about my day being one of the vertebrae in the backbone of America. I am an American Small Businessman.



**Notary Public Day is November 7...
Remember to Thank Your Special Notary**

*A message promoting Notary Public Day,
from your Secretary of State.*

“Transactions that are essential to the normal function of our everyday lives would not be possible without the skill and attention of a notary public. There are nearly 4.8 million notaries public in the United States, **all of whom serve the common good as trusted public officials.** Notary Public Day was created in 1974 to “recognize notaries for their public service and their contributions to national and international commerce.” **Today’s notaries are indispensable to the free flow of commerce** and to the many highly sensitive personal transactions that transpire in daily life. By properly executing their duties as impartial witnesses, notaries help deter fraud and promote the integrity and reliability of document transactions.” http://ncnotary.org/documents/national_notary_public_day_2009_flyer.pdf

Profiles of book buyers abound likening us to middle-aged men, losers skulking around the hallways of faculty buildings. Pejoratives aside, we are middle-aged men and we are young family men and we are single women of all ages and we are single mothers now back into the workforce. We are white, black and everything in between. We are all religions. To the single mother, this job is perfect. It pays well -- when the government isn't giving our income to the IMCPOs -- and it has flexibility. In an age when most women need to choose between time at work or time with the kids (the kids almost always losing that contest), the hard working single mother book buyer can drop her kids off at school, go to work, earn a fair living, and be back in time to pick up the children, take them to activities or the doctor, cook dinner and spend some time with the kids who, more often, will be put to bed before her second shift of processing the books begins.

"We call them 'weasels,'" a sales rep. for a top textbook publisher, whom I'll call Marie, says when I sit down with her over coffee to discuss the practice. "It's grand larceny." Later she admits that as far as she knows, "The only law broken is not claiming that income on taxes. Maybe the IRS could stop it."

Adjunct Advocate July/August 2006

We are vilified, called names and cast out. An insurance salesman visiting a faculty client at his or her office is not treated with such rancor. Neither are any other businesses except this Small Family Business industry. **These entrepreneurs and Small Business Families as a specific occupation have been targeted for eradication by the State of North Carolina.** The state is actively shutting down an American success story, a green business which has been around for over ninety-five years. The state has handed our income to international, mega-conglomerate publishing oligopolies and has forced Small Business Families to close their shops, leaving entrepreneurs in the lurch, most stuck without unemployment insurance. Going back to school is not an option. With an effective unemployment rate of almost 20 percent, the state has told the Small Business Families of North Carolina, "we don't want your business and if you go broke, are foreclosed upon, lose your health insurance because you can't afford it and starve, well...we as the agents of the government of the State of North Carolina just don't care and all we have to say to you Small Business Families, well...tough luck."

Downstream, we see the devastating effect of "trickle down" economics. As a result of our businesses being shut down by State actors, we are not buying goods and services. A look at my business sphere shows it quite plainly. I have lessened the amount of storage I rent from a Small Business Family that rents storage space. CVCC Foundation and numerous other charities lost the scholarships and donations I provided in the past. I am not purchasing lodging from motels, owned and operated by Small Business Families. I am not purchasing meals from Small Business Families that operate eateries when I am on the road. I am not purchasing meals from Small Business Families that operate eateries when I am home. I'm having my oil changed and my vehicle serviced less often which diminishes the income of the Small Business Family who takes care of my trucks. I should have purchased new software by now but am putting it off. There are fewer taxes being paid with a 70 percent cut in income. On the other hand, there is a wealth of debt, worry and lack of peace of mind. There is no growth and anyone who understands business knows that no growth is as good as a downward spiral. It's just a matter of time until one hits the ground.



Photo: Alan Rosenthal ©



Even the pumpkin trade is affected by the state shuttering my business. Each year -- well, in past years anyway -- I would always buy something useful or fun to give to my clients. In 2007, I gave away

hundreds of canvas, reusable shopping bags. I had bought them from a green grocery store owned by a Small Business Family. In 2008, I bought hundreds of pumpkins and gourds for a fun, fall promotion. Teachers all over the region smiled as they chose their pumpkin. My Small Business money went to the youth ministries of numerous United Methodist churches (the pumpkin providers). Building goodwill. Bringing smiles to faculty faces. Supporting charities. Doing business. Making textbooks affordable. Being part of our communities. It is what Small Business Families do. It is what I do...when the State isn't shutting me down. We may be micro businesses but we are the economic foundation in the United States. Regardless of the political and economic tide, we still put the key in the door everyday.

*What is another phrase for state government?
Biz kill.*

I come from a working background, raised in a small, family retail and service business dating back to my grandparents' turn-of-the-century department store in South River, New Jersey. My grandparents went from Russia to Brooklyn to South River where they had a premier store in the region. I saw the huge, indoor malls kill the smaller, strip malls where my family had women's and children's clothing stores, also with premier reputations in the region. Folks came from all over the state, New York and Pennsylvania to shop at our stores. My mother used to take me to the garment district in New York City on buying trips. I would run around through the racks of "schmatas" in all colors, shapes and sizes. Decades later, I maintained a few trucking clients on the side, many of which were based in the garment district. What goes around comes around. I am a Third Generation American Small Businessman.

Shortly after I had gone off to college, the family business closed. I came home and went to work. At age 21, I started my first company, providing courier and litigation support services to attorneys. It did very well until then Governor James Florio (D-NJ) decided it was best to tax the hell out of us in the midst of a bad recession*. Within two weeks, I lost 50 percent of my business. Within two months, a full 75 percent of my business was gone. Also gone were 16 employees and my salary. I worked over 100 hours each week for 8 years and was zeroed out by poor public policy. Gone. What remained? A beat up fleet of vehicles all upside down.

It took many years to generate the revenues I had before the regressive tax package went into effect. I was thirty years old then. I'm over fifty years old now with two parents with Alzheimer's Disease, which, like so many others has put me in the living month to month category. I wouldn't be in this category if NCCCS didn't take my income away. This has left me in the lurch, exacerbated by the economy moving to China. Rebuilding now? It doesn't look good, especially when the state has agreed to give my income to the IMCPOs based in the U.K. and Canada. ***What's another phrase for state government? Biz kill.***

*Not only did my diversified industries die but Florio's misstep brought to a halt all mid-size truck sales and boat sales in the peninsula known as New Jersey. Advertising, an industry where a large portion of my billings and profitability resided, died. All those years of hard work were gone in a pen stroke. I changed focus and services, marketed outside of New Jersey (nationally) and rebuilt. After the damage had been done, sales taxes and other aspects of the tax package were repealed or amended.

When I went into business, I knew that I needed to learn...fast. I read Forbes, Fortune, Business Week, Harvard Business Review and Sloan Management Review. I slummed it with INC. magazine and read all of the local business and chambers of commerce rags. When I gained some import clients, I enrolled in a community college to take a few courses in import and export. Learning is important. Being a lifelong learner is essential. Articles on Federal Express and books by Deming, Drucker, Peters and the like were always on my reading table. I was a member of the American Management Association. Libraries and bookstores would find me working on my free time. Free time is time when you are not directly producing income. It is the time you use to prepare for the time when you are directly producing income. There are few business and management professors who can do what I do...run a business. I reviewed numerous business and management textbooks and found it almost non-existent for an author to have experience in running a Small Business or any business. I am an American Small Businessman.

I left litigation support and investigations because it ceased being profitable for a number of reasons. Not the least of these reasons is that my clients – attorneys -- don't pay their bills. It is my guess that there is a vast fortune of money out there from attorney billings that service providers from all industries will never see because they are afraid to sue an attorney. An investigative firm could have

thousands of dollars of billings into a case. If the attorney loses the case, no matter how terrific or turning point your work was, you are not getting paid – certainly not in full. Talk about a haircut!

If there were 80 or 90 hours of work to be had in a week, I'd gladly work them all. I have never worked 40 hours in a week, never in my life. You still have to put the key in the door everyday. Let me repeat that. You still have to put the key in the door everyday. It's the Small Business owner who really knows that mantra because he or she instinctively knows that job one is putting the key in the door everyday. The rest of the day is solving problems. All we do from the time we lock the door at night is make sure that we can put the key in the door on time the next day. We eat, sleep, plan non-business events and anticipate the many factors which would preclude us from putting the key in the door. When we have employees, we better get that key in the door and be there before our employees. Being busy can leave you much like the 7-11 guy...up all night. Not being busy...even more so.

Providing service when folks can not serve themselves is where the Small Business Family Entrepreneur shines. Our staff can go home but we stay until we are sure our clients don't need us anymore. If we leave now, we'll just sit in traffic, our minds justify. We might as well take the time to get work done when the phones aren't ringing. The Small Business owner works until the work is done...and work is never done. Some tell workaholic jokes and we don't get them.

We'll keep the store open. We want to get all the orders out the door. Shipped is billed. We're staying because UPS hasn't picked up our shipments yet. On the other hand, when our UPS driver calls to ask if he can pick up early because of the snowstorm that's on its way, we say yes because he's a good guy with a family and we want him to be safe so we tell our customers we have to be done early and they understand. They are just trying to get out of the office because of the snow. They just want to go home. They're thankful and we love being counted on. We have a satisfied and happy client and that makes us happy and that is who we are and that is why we do what we do. We are American Small Business Families. Workaholics are somebody else.

Come year end, we stare at our QuickBooks printout of our balance sheet and P&L. You only get to have two responses. We are either satisfied with the numbers or we sit shaking our heads, staring at nothing...thinking, constantly thinking. We never stop thinking about our businesses. No matter how good things may be, we never stop worrying. Austerity is a way of life. While we are switching over to the new year, we think of all the good things that happened the last year. We are mildly proud of our accomplishments and we laugh at all the things we really screwed up. Some years, there is a third response...being terrified. But terror is a motivator and any Small Business owner who has been around for awhile has come to consider it a friend. Make peace with the work demons, I say.

I have donated thousands of books to individuals, organizations and schools public and private as well as to early college students. I populate libraries and reading programs gratis. I buy too many donuts, candy bars and pizza slices to benefit school service organizations such as Phi Theta Kappa or any number of student programs and the local church of the department secretary. I also see the good on campuses. Because of this I contribute travel learning scholarships with contributions to school foundations. I buy numerous raffle tickets. My teachers need only fulfill one requirement for financial support from my office, they simply need to ask. I am getting more distress calls from teachers. Meanwhile, schools do not even provide sufficient copy paper and chalk. The following few pages will give the reader an idea of "the little things" American Small Business Families do to make the world a better place.

Most new jobs won't come from our biggest employers. They will come from our smallest. We've got to do everything we can to make entrepreneurial dreams a reality. Ross Perot



NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

- May 12, 2009
-

Mr. Alan J. Rosenthal
Alan's Book Service
Post Office Box 16099
Asheville, NC 28816

Dear Mr. Rosenthal:

I received your letter dated April 27, 2009. On behalf of the North Carolina Community College System (NCCCS), I express my gratitude for the references made in your letter of the instances in which you have helped the System - its faculty and students - with textbooks and other printed materials. In so doing, you have helped all North Carolinians in search of knowledge and understanding.

While textbooks are my industry's primary books, the nature of the customer service and "giving back" aspects of my industry demand the collection and distribution of all sorts of books, from trades to previous editions, from finding a book for a teacher to providing retirement and moving services. Many of the books which have no dollar value, per se, are donated to libraries, bookstores, reading programs, community centers, corporations, public agencies, home school parents, police departments, counseling centers, schools, hospitals, not-for-profits, U.S. Air Force Academy, the U.S. Naval Academy, and the U.S. Coast Guard Academy and many others.

Here is an example of why students need to have previous editions available to them. It is well agreed that there is not much new content from one edition of many books to the next edition. The recapitulation of data into newer editions has been at controversy for decades. Pedagogically, there may be new ways to present information but twenty years ago (6 or 7 editions of a book), there were 206 bones in the human body. Twenty years later and there are still 206 bones to memorize.

The textbook for a recent Anatomy & Physiology course was the 11th edition of the tome. The community college bookstore had the book, bundled with a lab manual and a DVD both of which were not needed for the course. The total cost was just short of \$300. When asked, the instructor stated that the student could use the previous edition as long as he kept up with the pages and the diagrams. All of his instructor's notes and transparencies were from the 9th edition and he was not going to update his notes to the current edition. This is very common as busy teachers don't want to recreate the wheel every time a new edition comes out. The acceptable previous edition was purchased online for \$20.00, including shipping. THIS WAS A SAVINGS OF OVER 93 PERCENT! The used textbook industry populates the used book market which is of GREAT VALUE to society. See Internet Exchanges for Used Books article in the Essential Readings section for this chapter.

The next few pages depict some of the good things we do as American Small Business People and responsible corporate citizens.

Bennett College for Women, a small HBCU in Greensboro, is a recipient of my proper business practices. As a campus vendor, I have the privilege and honor to meet great educators and some wonderful students also. I am proud of the relationships I have fostered with the faculty at Bennett, a school dedicated to minorities and women. To be able to contribute by stocking the college's history library with many scores of books is as much a blessing to me as it is to Bennett. I have been working at Bennett for eight years. It is one of my favorite schools.



In 1873, Bennett College had its beginning in the unplastered basement of the Warnersville Methodist Episcopal Church (*now known as St. Matthew's Methodist Church*). Seventy young men and women started elementary and secondary level studies. In 1874 the Freedmen's Aid Society took over the school which remained under its auspices for 50 years.



Within five years of 1873, a group of emancipated slaves purchased the present site for the school. College level courses and permanent facilities were added. In 1926, The Women's Home Missionary Society joined with the Board of Education of the church to make Bennett College in Greensboro, N.C., formerly co-educational, a college for women. The challenges that were overcome to establish Bennett demand that today's challenges be met and overcome to ensure her survival.

For more than 128 years women have found Bennett to be the ideal place to foster the constant rhythm of ideas. Each student's individual need for self-expression and desire for achievement is constantly nurtured. The College fosters a strong respect for every student. Today, in the midst of a very active renaissance, Bennett is preparing contemporary women to be well educated, productive professionals, informed, participating citizens, and enlightened parents.

* * * * *

I have had the pleasure and privilege of donating hundreds of books to this program as the good folks at Methodist University worked on securing their SACS accreditation. I still collect books for QEP.

Quality Enhancement Plan (QEP)

As part of our reaffirmation of accreditation by the Southern Association of Colleges and Schools (SACS), Methodist University has developed a Quality Enhancement Plan (QEP). QEP projects are designed to focus on an aspect of student learning, must be campus-wide in scope, and involve students, faculty, staff, alumni, and administrators.

After consultation with students, staff, and alumni, the faculty of Methodist University voted in the fall of 2007 to adopt the following as our Quality Enhancement Plan:



The QEP committee is now pleased to present our QEP document (updated April 14, 2009) for faculty, students, staff, alumni, and friends of the University to read. Having been successfully approved by the SACS On-site Committee during its March visitation to campus, Methodist University's QEP will enter the first year of its implementation in August 2009.
<http://www.methodist.edu/academics/qep.shtml>

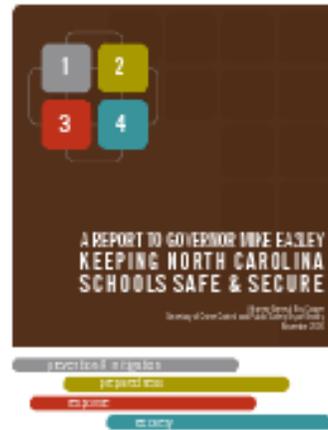
* * * * *

All of McDowell Technical Community College's (MTCC) blackboards were damaged by an errant janitor and left unrepaired and visually impairing. Nothing was done to correct this until I encouraged and offered to pay for their repair. When I found out that MTCC had become a victim of a book scam, I bought used books and donated the money to the school's student service organization, Phi Theta Kappa (PTK). I was able to give PTK four times as much money as the scammers would have.



* * * * *

When one of my teachers at Isothermal Community College was appointed to a school security committee, I sent her my recently received copy of *U.S. Department of Education, Office of Safe and Drug-Free Schools, Action Guide for Emergency Management at Institutions of Higher Education, Washington, D.C., 2009*. Professionals stay on top of all aspects of their industry. The work I do directly contributes to lower book costs and increased chance of success for students. As Small Business people, we look for ways to make our clients' lives better. We contribute. We give back.



* * * * *

For a number of years, I had the great pleasure and privilege to provide scholarships to Catawba Valley Community College's Sociology Southwest Adventure, a learning experience coordinated by some of the most dedicated and talented teachers I know. Even after the ban, I donated. I had to stop when the money ran out.



Source: www.cvcc.edu

* * * * *



MCDOWELL EARLY COLLEGE

MCDOWELL COUNTY SCHOOLS

For a number of years, I had the great pleasure of donating books to children enrolled in the Early College Program at McDowell Technical Community College. This was a service I set up on the campus. I contributed numerous books in all fields to a "Free Book" corner. Early College students used to empty the shelves each week, voraciously taking home knowledge. NCCCS put an end to the program when it Shut Down my business.

* * * * *

The **BIG** READ.net

OVER TWO YEARS ON THE NEW YORK TIMES BESTSELLER LIST
"The Color of Water" made one period to be a member of the "best" list."
—*Washington Post*

10th ANNIVERSARY EDITION

The Color of Water
A Black Man's Tribute to His White Mother

When a book is more than a book.

THE BIG READ 2.0
April 14, 2007 • 7:00 p.m.
James McBride
Author, *The Color of Water*

Catawba Valley Community College
Multipurpose Complex

CVCC Foundation, inc.

May 15, 2006

In Another World, Inc.
P.O. Box 16099
Asheville, NC 28816

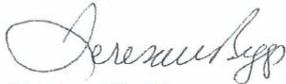
Dear :

Thank you for the donation to the CVCC Foundation, Inc. in the amount of \$275 from the In Another World, Inc. for the anonymous donation to the Southwestern Adventure Class. This letter is to confirm that the CVCC Foundation, Inc. did not provide any goods and services to you in exchange for this donation.

The mission of the CVCC Foundation is to foster and promote the growth, progress, and general welfare of CVCC. Success of this mission depends upon community leaders like you. We appreciate your support.

Again, thank you for helping to make CVCC successful.

Sincerely,



Teresa W. Biggs
Executive Director

TWB/yw

May 15, 2006

In Another World, Inc.
P.O. Box 16099
Asheville, NC 28816

Dear :

Thank you for the donation to the CVCC Foundation, Inc. in the amount of \$275 from the In Another World, Inc. for the anonymous donation to the Southwestern Adventure Class. This letter is to confirm that the CVCC Foundation, Inc. did not provide any goods and services to you in exchange for this donation.

The mission of the CVCC Foundation is to foster and promote the growth, progress, and general welfare of CVCC. Success of this mission depends upon community leaders like you. We appreciate your support.

Again, thank you for helping to make CVCC successful.

Sincerely,



Teresa W. Biggs
Executive Director

TWB/yw

March 20, 2007

Alan Rosenthal
In Another World
P.O. Box 16099
Asheville, NC 28816

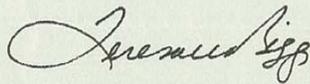
Dear Mr. Rosenthal:

Thank you for the donation to the Catawba Valley Community College (CVCC) Foundation, Inc. in the amount of \$275 from "In Another World" for the Southwestern Adventure. This letter is to confirm that the CVCC Foundation, Inc. did not provide any goods and services to you in exchange for this donation.

The mission of the CVCC Foundation is to foster and promote the growth, progress, and general welfare of CVCC. Success of this mission depends upon community leaders like you. We appreciate your support.

Again, thank you for helping to make CVCC successful.

Sincerely,



Teresa W. Biggs
Executive Director

The Used Textbook Resale Market & The Law[©]

Multi-State Comprehensive Edition

Essential Reading

Chapter 3

Internet Exchanges for Used Books:

Empirical Analysis of Product Cannibalization and Welfare Impact

Internet Exchanges for Used Books: An Empirical Analysis of Product Cannibalization and Welfare Impact

Anindya Ghose

New York University - Leonard N. Stern School of Business

Michael D. Smith

Carnegie Mellon University - H. John Heinz III School of Public Policy and Management

Rahul Telang

Carnegie Mellon University - H. John Heinz III School of Public Policy and Management

September 2005

Information systems and the Internet have facilitated the creation of used product markets that feature a dramatically wider selection, lower search costs, and lower prices than their brick-and-mortar counterparts do. The increased viability of these used product markets has caused concern among content creators and distributors, notably the Association of American Publishers and Author's Guild, who believe that used product markets will significantly cannibalize new product sales.

This proposition, while theoretically possible, is based on speculation as opposed to empirical evidence. In this paper, we empirically analyze the degree to which used products cannibalize new product sales for books - one of the most prominent used product categories sold online. To do this, we use a unique dataset collected from Amazon.com's new and used book market-places to measure the degree to which used products cannibalize new product sales. We then use these estimates to measure the resulting first-order changes in publisher welfare and consumer surplus.

Our analysis suggests that used books are poor substitutes for new books for most of Amazon's customers. The crossprice elasticity of new book demand with respect to used book prices is only 0.088. As a result only 16% of used book sales at Amazon cannibalize new book purchases. The remaining 84% of used book sales apparently would not have occurred at Amazon's new book prices. Further, our estimates suggest that this increase in book readership from Amazon's used book marketplace increases consumer surplus by approximately \$67.21 million annually. This increase in consumer surplus, together with an estimated \$45.05 million loss in publisher welfare and a \$65.76 million increase in Amazon's profits, leads to an increase in total welfare to society of approximately \$87.92 million annually from the introduction of used book markets at Amazon.com.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=584401

Chapter 4

The Teachers You Trust With Your Children aka Clients of American Small Business Families

*“But if you ask what is the good of education in general,
the answer is easy:
that education makes good men,
and good men act nobly.”*
Plato

As quoted in North Carolina Board of Ethics
Volume 7, Issue 1 *Annual Report Edition* January 2004



The used textbook/book buying industry brings income, vital income, to teachers who make way too little. This money comes from a business practice decades old and protected by court decisions (State of Alabama, State Ethics Commission, Advisory Opinion 1155, August 30, 1988; and State of Louisiana, Court of Appeal, First Circuit, and In re: Louisiana Commission on Ethics For Public Employees Advisory Opinion 88-20-B, Docket No. 94 CW 0863, August 15, 1994, (for example), the rules of the Federal Trade Commission (FTC) and the United States Postal Service (USPS). All of these laws and rules as well as many others are discussed in section D of this report.

Federal Trade Commission - Unordered Merchandise

*What do you do when you receive merchandise that you didn't order?
According to the Federal Trade Commission, you don't have to pay for it.
Federal laws prohibit mailing unordered merchandise to consumers and then
demanding payment.*

*Here are some questions and answers about dealing with unordered
merchandise.*

*Q. Am I obligated to return or pay for merchandise I never ordered?
A. No. If you receive merchandise that you didn't order, you have a legal right
to keep it as a free gift.*

*Q. Must I notify the seller if I keep unordered merchandise without paying for it?
A. You have no legal obligation to notify the seller.*

These Small Business Families provide an additional source of income for teachers. It is not a lot of money. Only about five percent of teachers disapprove of the practice but it is important to note that their objections are always the talking points of the sales reps of the international, mega-conglomerate publishing oligopolies (IMCPOs) and the Text and Academic Authors Association (TAA). Ninety-five percent of teachers nationwide opt to sell their promotional books. Less than one per school of faculty members abuse the right and they are routinely shut down. They are out of the realm of my industry. Book buyers, generally, don't buy from these anomalous teachers. They sell their books online to a vast array of web sites offering reselling services. I know who they are on the campuses I work on. They give their fellow faculty members a black eye. But which profession doesn't have a bad apple in it? Any sanctions available would be from the publishers, not the legislature and not the general counsel of NCCCS or UNC. Hundred of thousands of teachers should not have their constitutional rights taken from them for the foibles of a few.

Moreover, my teachers are using this extra income for emergencies, car repairs, Christmas presents, food (FOOD!), braces, some ice cream for the kids after Little League, teaching supplies, other books for kids or for professional development and the one I like to hear, dinner out or in with the spouse. None of my teachers (a term I use fondly for clients) are making the yacht payment from the business I and my colleagues conduct with them.

["Currently, North Carolina is ranked 40th in faculty salaries -- with salaries at 79 percent of the national average -- out of 49 states with community colleges."](#) (The Open Door, Vol. 11, No. 4)

Many department secretaries use this "slush fund" for coffee and for faculty and staff birthday parties along with other life-affirming uses. I've witnessed teachers feeding hungry students behind the closed doors of their offices. I've watched a teacher hand the money I gave her to a teenage, single mother student so she could buy baby food.

Fifty percent of the teachers whom I create income for give the money to departmental "slush" funds. These are not evil slush funds. These slush funds buy an occasional birthday card and a cake. It is used to buy staff coffee. The money goes for student programs also. It's the few dollars in an envelope in a desk drawer. To make a rule based on the profits of the international, mega-conglomerate publishing oligopolies is a slap in the face to North Carolina's Small Business Families and to our teachers. It is a tacit statement to the public that these teachers can interact with and teach our children but they really are not ethical enough to make simple and proper personal business decisions.

There is no connection between the textbook buying business and the textbook adoption process. None!

On the continuum, these books are marketing brochures, more akin to trash as teachers sell books which are not accepted for adoption. Publishers often suggest throwing away the sample rather than sell it. These books are sent to teachers, the packages bearing packing slips, emblazoned with the words, "Free," "Complimentary" and "Gratis." See chapter 27, cleverly titled *Free, Complimentary & Gratis*. Most of the unsold faculty books go in the landfill, many never opened. Yes, an industry developed around trash. We are environmentally sound. We've been green for decades.

The draconian measures (threats of loss of employment, dismissals, encouraging an adversarial and unsafe workplace, fostering harassment and bullying amongst faculty, etc.) of both the North Carolina Community College System and the University of North Carolina indicate a belief that it is optimal to kill off the market for used goods, an economically unsound footing for the marketplace and, eventually, for the oligopolies themselves. Who put this thought in their heads? The international, mega-conglomerate publishing oligopolies and TAA are the organizations that are snuffing out a century of American industry and American Small Business Families. With the assistance of state government, they are shuttering American Mom & Pop businesses and throwing many of us either onto the unemployment roles or simply into the poor house. They do this by stepping on the rights of teachers. They do this by, well, let's use the appropriate word – LYING – to teachers, NCCCS and UNC trustees and legislatures around the country.

Here is an example of a policy by a major school. The points in this policy could have been lifted verbatim from the Text and Academic Authors Association brochures and other propaganda. Read more about TAA's predatory practices in the chapters 24 and 25. It is no coincidence that this 1988 policy follows the 1987 inception of the Text and Academic Authors Association. A professor-author at Boston College was a founder of TAA, hence the policy.

Boston College

Title: Solicitors on Campus -- Independent Textbook Buyers Code: 5-320-020 Date: 8-15-88

Introduction

Independent textbook buyers are a fact of life on every college campus. They solicit faculty members directly, seeking to purchase the complimentary copies of books that accumulate when considering texts for adoption, as well as the desk copies of books no longer used in courses. They then sell these texts to wholesale used book sellers, who, in turn, sell them back to university bookstores. These textbook buyers do not represent the interests of faculty, students, or textbook publishers. In fact, due to the high volume of complimentary/desk copies being sold to these independent buyers, textbook publishers are now beginning to balk at honoring legitimate complimentary/desk copy requests from faculty. Moreover, the loss incurred by publishers from these sales is being passed on to students by way of inflated textbook prices.

Definition

Textbook buyers are independent operators, and they share no affiliation with textbook publishing/buying companies. It is important that these individuals not be confused with the publisher representatives seen regularly on campus for there exists a critical distinction between the two: Independent textbook buyers do not provide a service and are motivated strictly by personal gain, while publisher representatives are employees of established companies who serve the vital function of providing faculty with the most relevant, up-to-date textbooks for use in courses.

Policy

It is the policy of Boston College to ban all independent textbook buyers from campus, and to discourage their dealings with faculty and staff. When approached by such solicitors, faculty and staff are strongly urged to decline to sell them any books, to inform them of this policy, and to ask them to leave the campus. Individuals may choose, however, to ask the Boston College Police to handle the matter fully. In any case, the Boston College Police should be notified if a solicitor refuses to leave the campus after being asked to do so.

No one fact checks the representations made by the international, mega-conglomerate publishing oligopolies. Considering that these same publishers are constantly litigating and settling copyright infringement and breach of contract claims as DEFENDANT, a legislator, rule maker or general counsel would be well advised to consider the source. Houghton Mifflin, to name just one defendant, maintains, as standard operating procedure, the planned and carefully managed theft of royalties, victimizing authors and image producers. They are so brazen in these activities that they continue them for years and simply settle when and IF an author or photographer finds out that he or she has been duped by Houghton Mifflin or the other publishers.

Like a good neighbor, Small Business Families (entrepreneurs) develop relationships with their clients with whom friendships are formed. We talk about our lives and issues. I've made presentations in front of teacher's classes. I've played catch with a teacher's young son. We meet out for lunch and dinner. I enjoyed Passover Seder at a professor's home with other professors and family. We know their families. We are part of their communities and they are a part of ours. Is it appropriate to now make my clients and friends into unethical miscreants just for doing business with my ilk?

These teachers are smart, dedicated, ethical and caring people. I have the pleasure in my job of not only completing a transaction but learning so much from the richness of their knowledge and backgrounds. I consider it an honor when my teachers tell me about their home towns or home countries. I have a two-year backlog of teacher suggested books. We talk about BookTV. I like to think that, once in a blue moon, my rich background somehow enriches *their* lives. These are symbiotic not nefarious relationships. I refuse to skulk. Professional describes me. Furtive does not.

My teacher-clients are hired for their intelligence, their ability to reason, their lack of criminality and, upon hiring, there is tacit understanding by the public that this person was hired because the vetting committee believed the applicant to be of good moral character. As such, bestowed upon this new teacher is the confidence that he or she will make proper ethical and moral decisions. This confidence continues until there is a reason to question it. My industry is neutral. The activity involved is ethical, legal and has been upheld in state and federal courts and agencies, including the FTC and USPS.

More recently, general counsel for NCCCS has advised the presidents of the community colleges throughout North Carolina that teachers should not exercise their constitutional right to sell their books (read, do with their personal possessions as they wish) and that they could face discipline, even dismissal, for doing so. As such, the ninety-five percent of teachers who prefer to exercise their rights (my clients) must go mum. They can not voice their concern without admitting the activity. North Carolina's professional teachers have been muzzled. Through their constituent institutions, NCCCS and UNC PUT MY CLIENTS IN FEAR OF DOING BUSINESS WITH ME.

Individual colleges have no choice but to follow General Counsel Martin's directive though many administrators believe that there is not sufficient problem, if any, to warrant this policy and teachers are their own best and fair regulators. Many faculty members are angry about being treated as less than ethical, even criminal. They see this as NCCCS and UNC reaching right into their wallets and purses. As with so many other costs these days, it is likened to a tax which reaps no benefit to the public, only to the largest international publishing oligopolies. Perhaps, it is another bailout of profitable, multinational corporations.

Who would have thought that it would be the North Carolina Community College System and the University of North Carolina armed with the Office of the State Auditor which would cut off a productive industry and destroy the incomes for hundreds of households, families (including mine) who conduct and benefit from this trade in North Carolina, especially in these long-lasting, dire economic times? The State has actively and purposefully threatened, coerced, and put the fear of loss of employment, discipline or other such recrimination upon my clients should they choose to exercise their constitutional rights.

Shall we conclude that my roster of 1500 instructors and professors with whom I have done business at over 100 colleges and universities for the last 9 years are unethical and law breaking needing the State to set them on a moral path when they are already following both the law and social custom?

NCCCS has acted unlawfully to shut down my industry in the state and strip North Carolina community college instructors of their constitutional rights, simply by the pen of an inexperienced general counsel who did not make the effort to understand the totality of the law.

A note about UNC: The NCCCS directives promulgated by the State Auditor and NCCCS General Counsel Martin only binds institutions under the NCCCS banner. University of North Carolina operates on its own set of guidelines. The most recent activities surrounding MTCC and WPCC (and others) are not the responsibility of UNC. UNC, however, maintains its own unlawful ban on the selling of books. So, similar to NCCCS, UNC is guilty of the same infractions of restraint of trade, defamation, etc. As I am seeking a statewide solution to the attack on my industry with all of its attendant constitutional ramifications, I bring UNC into the discussion. Aside from being asked to leave UNC campuses from UNCW to WCU, I have had no discussions with UNC on a system level. Private institutions, also *burdened* with the law, must follow the same rules I outline for the public institutions.

Our clients like doing business with American Small Business Families. Here is a report and a blog posting about Small Business and my Small Business which make this point.



"What would you do if that convenient corner market or neighborhood hardware store near you suddenly closed? Did you ever consciously make a point to use a small business in the hope that your patronage would help keep it open? If so, you're in good company -- 68 percent of consumers say that they have made purchases at a small business in an effort to keep it from closing."
http://www.rasmussenreports.com/public_content/business/indexes/discover_small_business_watch/discover_r_small_business_watch_sm_small_business_confidence_plunges

* * * * *

MONDAY, APRIL 28, 2008

Ethics of Selling Textbooks

As you may know, academics receive throughout the year unsolicited copies newly published textbooks from academic publishers. The books are sent for review for possible adoption in courses. The hope is that upon receiving a free book, one will look it over and assign it to one's students. A few adoptions of a given textbook apparently offsets the cost to the publisher of giving a few thousand copies away.

Around this time each year, an elderly couple appears, unannounced, at my office door. They ask if I have any textbooks that I'd like to sell. The couple apparently lives in a mobile home, traveling the country, making money in the used textbook market. I usually sell whatever texts I've received that I've had the time to look at. Since I nearly never use textbooks in my classes (I use primary sources and journal articles), it doesn't much matter what I think of the texts I am sent anyway.

The question is whether it's ethical to sell complimentary review copies of textbooks. Some thoughts: Copies sold in the used market do not yield revenue for the publisher, and so no royalties are paid to the author or editor of the book. On the other hand, the copies are unsolicited, and take up space in my office. And used books save students money. But, again, textbooks are so expensive precisely because publishers need to offset losses due to the used market*. Yet I like the elderly couple that shows up at my office, and would like to see them succeed in their little business (emphasis mine).

Philosophers Anonymous: Ethics of Selling Textbooks
<http://philosophersanon.blogspot.com/2008/04/ethics-of-selling-textbooks.html>

* Note that this blogger's assertion that the used textbook market creates losses for publishers and therefore higher prices for students has been debunked in numerous studies including this one. While he believes some of the IMCPO propaganda, he is still pragmatic and shows his respect for the American Small Business Family who knocks on his door. In fact, he wants them to "succeed in their little business."

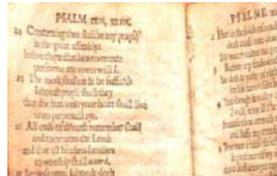
Section B

North Carolina's And Florida's Willful & Dedicated Program to
Eradicate the Occupation of Book Buyer

Chapter 5

Multi-State Book Buyer Occupation Eradication Timeline

America's First Book



The Whole Booke of Psalmes Faithfully Translated into English Metre.
Cambridge, MA: 1640
Rare Book & Special Collections Division

This humble and well-worn hymnal was printed in 1640 in Cambridge, Massachusetts, by Stephen Daye, first printer of the Massachusetts Bay Colony. It is the very first book printed in what is now the United States.

Known as The Bay Psalm Book, but really titled The Whole Booke of Psalmes Faithfully Translated into English Metre, it represents what was most sacred to the Puritans--a faithful translation of God's Word, to be sung in worship by the entire congregation. Other Protestant denominations relied on selected paraphrases of the Scripture, but the Puritans believed this could compromise their salvation. The same faith that compelled them to leave England and strike out for the New World prompted them to commit this text to print before all others. www.loc.gov/exhibits/treasures/trm004.html

The reader will find this timeline in two variations. The first one found on the next page is the full timeline. It includes the many laws that protect the used textbook resale industry and the American Small Business Families in the occupation of book buyer. Some of these laws and regulations go back to the turn of the century. Others go back to the founding of the nation.

The timeline transitions to the bad acts and unclean hands of the Text and Academic Authors Association and many co-conspirators. Finally, the chilling effect that this conspiracy has had with the state as antagonist (by siding with the international mega-conglomerate publishing oligopolies) is shown with many hundreds of the industry's clients being unlawfully threatened and entire markets shutdown.

The second variation is the abridged Speas-related timeline found in the next chapter (in red here). It is important to note how much related law and regulation there was when Edwin Speas penned his ridiculously unlawful opinion. Mr. Speas is a competent attorney. The writing of the Speas Opinion indicates that he was having a bad day...or worse.

Finally, our timeline brings us to today and you have a lot of reading left to do.

Multi-State Book Buyer Occupation Eradication Timeline

1640-1987 Everything was fine. Everyone simply followed the law.

- 1640 First book printed in America
- 1790 Copyright Act of 1790
- 1853 ***Bloomer v. McQuewan***, transfer of ownership transfers all rights of use.
- 1864 ***Bloomer v. Millinger***, transfer of ownership ends monopoly rights.
- 1873 ***Adams v Burke***, transfer of ownership transfers all rights of use.
- 1887 The Interstate Commerce Clause of the Tenth Amendment.
- 1890 The Sherman Antitrust Act.
- 1891 Justice David J. Brewer opinion, "Protection to Private Property from Public Attack."
- 1897 Just Compensation Clause added to Fourteenth Amendment. Private property shall not be taken by government without just compensation.
- 1897 ***Chicago, Burlington & Quincy Railroad Co. v. City of Chicago, 166 U.S. 226 (1897)***, incorporated the takings clause of the 5th amendment into the due process clause of the 14th amendment by requiring states to provide just compensation for seizing private property. Payment of compensation as essential to due process.
- 1898 First used car lot opens in Catskill, NY.
- 1902 Goodwill Industries opens, selling used books.
- 1905 Swift and Co. v. United States, "Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business."
- 1909 ***Bobbs-Merrill v. Strauss***, First Sale Doctrine established.
- 1909 The Missouri Store Company (later, Missouri Book Service) began.
- 1909 Copyright Act of 1909 enacted
- 1911 ***Standard Oil Co., v. United States***. Contracts and conspiracies in restraint of trade are illegal.
- 1913, 1981 N.C.G.S. § 75-1. Combinations in restraint of trade illegal.
- 1913 N.C.G.S. § 75-1.1. Methods of competition, acts and practices regulated.
- 1913 N.C.G.S. § 75-2. Any restraint in violation of common law included.
- 1914 Federal Trade Commission Act enacted.
- 1914 Clayton Antitrust Act of 1914
- 1915 Nebraska Book Company began.
- 1929 The Umstead Act enacted.

- 1938 Wheeler Lea Amendment. Added “unfair or deceptive acts or practices in commerce” to The Federal Trade Commission Act.
- 1940 ***RCA Mfg. Co. v. Whiteman***, sender relinquishes control.
- 1942 ***Wilchard v Filburd***. Restraint on intrastate commerce is restraint on interstate commerce.
- 1946 Trademark Act of 1946 enacted, protecting businesses from TAA-like, defamatory campaigns.
- 1964 ***New York Times Co., v. Sullivan*, 376 U.S. 254, 1964. 84 S.Ct. 710, 11 L.Ed.2d 868.**
To recover against a public official or public figure, plaintiff must prove that the defamatory statement was published with malice. Malice in this context means that it was published either knowing that it was false or with a reckless disregard as to whether it was true or false.
- 1966 ***Doris J. Fesmire v First Union National Bank of North Carolina***
This Speas-cited case in Wills & Estates Law has nothing to do with the book industry.
- 1969 N.C.G.S. Sec. 75-27 adopted. Recipient may use or dispose of the books in any manner without any obligation to the sender.
- 1971 39 U.S.C. § 3009, Postal Reorganization Act.
Delivery transfers all rights of use to recipient.
- 1973 MBS Textbook Exchange began.
- 1973 ***Wolfson v. Kirk, Fla.App., 273 So2d 774, 776 (Fla. 4th DCA 1973)***. The unprivileged publication of false statements which naturally and proximately result in injury to another.
- 1975 Texas Book Company began.
- 1976 Copyright Act of 1976
- 1977 ***McGowen v. Prentice, La. App., 341 So2d 55, 57 (La.App. 3 Cir. 1977)***.
Defamation is that which tends to injure reputation; to diminish the esteem, respect, goodwill or confidence in which plaintiff is held, or to excite adverse, derogatory or unpleasant feelings or opinions against him. Statement which exposes person to contempt, hatred, ridicule or obloquy.
- 1979 ***Sony Corp. of America v. Universal City Studios, Inc. "The Betamax Case"***
First sale doctrine excused merchants from seeking permission for resale from the copyright holders.
- 1981 ***Craig v U.S., C.C.A.Cal., 81 F.2d 816, 822***. A conspiracy may be a continuing one; actors may drop out, others drop in; the details of the operation may change from time to time; members need not know each other or the part played by others; a member need not know all the details of the plan or operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose.
- 1983 DAG wife, Debra W. Stewart, publishes *Organizational Behavior & Public Mgt*, 1st Edition
- 1983 FTC issues Policy Statement on Deception

1987 to Present TAA Rewrites the Law and Teachers Believe Them

- 1987 Text & Authors Association (TAA) now Text & Academic Authors Assoc. (TAA) founded
- 1987 Stomp the Comp campaign begins. Co-Conspirator Lydia Seidick created disinformation pamphlet.
- 1987 **Rankin v. McPherson**. Justice Thurgood Marshall: “[v]igilance is necessary to ensure that public employers do not use authority over employees to silence discourse, not because it hampers public functions but simply because superiors disagree with the content of employee’s speech”.
- 1988 **State of Alabama, State Ethics Commission, Advisory Opinion 1155**. The selling of unsolicited books is ethical.
- 1988 Co-Conspirators Mike Keedy, Richard Hull, Lydia Seidick, John Wakefield, Mike Sullivan, Howard Anton, Paul Siegel and others formed the unlawful conspiracy to eradicate book buyers. TAA adopts formal plan to eradicate book buyers from college campuses. A defamation campaign targeting faculty ensues. Attack of college bookstores begins.
- 1988 TAA targets and infects University of North Carolina System. University of North Carolina at Wilmington’s Faculty Senate declared the sale by faculty of complimentary textbooks as an unprofessional practice. DAG Speas has numerous friends and colleagues at UNC, many as textbook authors and many in the publishing business.
- 1989 **City of Dallas v Stanglin**. Discrimination in commerce is inimical to 14th Amendment.
- 1990 DAG wife, Debra W. Stewart, publishes Organizational Behavior & Public Mgt, 2nd Ed.
- 1990 TAA’s heavy-handed Book Buyer Eradication Plan rejected by AAP.
- 1990 The Speas Opinion issued to NC Community Colleges. Speas bought into the simultaneously rejected TAA Book Buyer Eradication Plan.
- 1990-2011 SPEAS DOCTRINE FALLOUT: Almost all NCCCS and UNC constituent institutions engage in the Speas Conspiracy, unlawfully banning the occupation of book buyer by threatening staff who choose to exercise their constitutional and lawful rights.
- 1991 Wisconsin Public Intervenor, 501 U.S. 597 (U.S. Sup Ct. 1991). Preemption of state law.
- 1994 **State of Louisiana, Court of Appeal, First Circuit, and In re: Louisiana Commission on Ethics For Public Employees Advisory Opinion 88-20-B, Docket No. 94 CW 0863**. Unsolicited textbooks become the property of the person to whom they were sent.
- 1995 N.C.G.S. § 75-2.1. Monopolizing and attempting to monopolize prohibited.
- 1997 Florida enacts Unsolicited Goods law.
- 1997 **Novell v. Network Trade Center**
Transfer of a copyrighted work that is subject to the first sale doctrine extinguishes all distribution rights of the copyright holder upon transfer of title.
- 1998 DAG wife, Debra W. Stewart, publishes Organizational Behavior & Public Mgt, 3rd Ed.
- 2000 SPEAS DOCTRINE FALLOUT: AB Tech CC Bans Book Buying Occupation.

- 2002 Houghton Mifflin California political contributions.
- 2003 Houghton Mifflin California political contributions.
- 2004 Houghton Mifflin California political contributions.
- 2004 AAP hires J. Bruce Hildebrant to bribe legislators for unconstitutional amendments.
- 2006 Houghton Mifflin California political contributions.
- 2006 Houghton Mifflin penalized for Major Donor Violations by California Fair Political Practices Commission
- 2006 **Quanta v L.G. Electronics**, extensions of patents do not limit consumer rights.
- 2006 **David Wisniewski, On Behalf Of Himself And All Others Similarly Situated V. Rodale, Inc., U.S. Court of Appeals – Pennsylvania**. Unordered merchandise may be treated as a gift to the recipient, who shall have the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender.
- 2007 TAA and AAP ramp up collusion to eradicate book buyers.
- 2007 AAP contributions (bribes) to Florida legislators.
- 2007 **SPEAS DOCTRINE FALLOUT: State Auditor Les Merritt issues unlawful advisory.**
- 2007 **SPEAS DOCTRINE FALLOUT: McDowell Tech CC Bans Book Buying Occupation.**
- 2007 **SPEAS DOCTRINE FALLOUT: Western Piedmont CC Bans Book Buying Occupation.**
- 2007 **SPEAS DOCTRINE FALLOUT: Western Piedmont CC wrongfully terminates employee.**
- 2008 **SPEAS DOCTRINE FALLOUT: NCCCS General Counsel Q. Shanté Martin issues unlawful advisory as reported by WPCC's Dr. Helmick.**
- 2008 AAP contributions (bribes) to Florida legislators.
- 2008 Florida Representative Anitere Flores filed unconstitutional amendment to H.B. 603.
- 2008 TAA President Paul Siegel acknowledged right to sell books due to First Sale Doctrine.
- 2008 **Timothy S. Vernor v. Autodesk Inc.**
Citing first-sale doctrine, reseller was entitled to sell used copies of the vendor's software regardless of any licensing agreement that might have bound the software's previous owners because the transaction resembled a sale and not temporary licensing.
- 2009 **Citizens United v Federal Election Commission**, Government may not prefer one speaker over another. Corporate citizens included.
- 2009 NCCCS President Ralls' letter to Rosenthal stating that NCCCS maintains no rule barring the buying and selling of complimentary textbooks.
- 2010 NC General Assembly, Research Division states that there is no law against buying or selling complimentary textbooks.
- 2011 **SPEAS DOCTRINE FALLOUT: UNC Fayetteville Bans Book Buying Occupation.**

Chapter 6

The Speas Connection

N.C.G.S. § 75-2. Any restraint in violation of common law included.

Any act, contract, combination in the form of trust, or conspiracy in restraint of trade or commerce which violates the principles of the common law is hereby declared to be in violation of G.S. 75-1. (1913, c. 41, s. 2; C.S.,s. 2560.)

Fesmire as Irrelevant Case Law

Doris J. Fesmire v. First Union National Bank of North Carolina (1966) is not relevant to the issue at hand. Using Fesmire as the sole case cited (and then rewriting 39 U.S.C. § 3009) is a convoluted jumble game with the words donor, donation, gift, probate, commercial and copyright all mixed up. Webster might as well have set his dictionary in front of the fan before sending it to the bindery.

A key contention in Fesmire revolves around donor intent, better known as donor restrictions. The marketing materials in the form of review textbooks are not donations. IF it was possible to construe them as donations, they have no donor restrictions. Therefore, these books would become unrestricted contributions. IF this is the case, then every educational institution in North Carolina would have to reclassify many hundreds of thousands of textbooks and non-textbooks that are sent to their institutions each year. The books, IF they were donations, would have to be classified as unrestricted contributions and the institution's NET ASSETS would need to be adjusted. This has not been done and not doing so would be in violation of FASB 116 -- IF the marketing materials in the form of review textbooks were, indeed, donations. IF! After every teacher's conference, every Post-It Note, carry bag, pen and potato chip bag clip incentive would have to be handed in to the state, inventoried, undergo a valuation and be reported as an unrestricted asset. All signed novels and trades as well as pedagogical review materials from all sources would have to endure the same process. Any item a teacher ever gets due to their affiliation with the institution would be subject to confiscation, even my pumpkin gifts on page 28.

Thankfully for the constituents of NCCCS and UNC, these marketing materials are not donations as necessary infrastructure and accounting would be extremely expensive for the constituents. See the next chapter for a more detailed look at the accounting pitfall that the Speas Opinion implies. For over twenty years, the State of North Carolina has not affirmatively expressed a state policy nor has it actively supervised the book buying and selling business. The Speas Opinion is simply nugatory. The ensuing Speas Doctrine has been simply devastating to Small Business Families.

State Action Exemption

Various decisions indicate that challenged activity cannot qualify for immunity under this exemption **unless the activity is affirmatively expressed as state policy and actively supervised by the state**. In other words, the price of antitrust immunity is real regulation by the state. The Supreme Court placed a further limitation in the state action exemption by holding that it does not automatically confer immunity on the actions of municipalities. The Local Government Antitrust Act of 1984 precludes damages, leaving only injunctive relief.

Fesmire is about family and probate law and the role of a gift of assets in a contested family matter. Essentially, one party was given stock certificates or similar instruments as a gift between members of the family. The same instruments were held for safe-keeping in the gift-giver's safe. Someone died and someone was unhappy about the distribution. Who owns the instruments? Now you see how far off-base Fesmire is to the book selling issue. The essential elements of a gift inter vivos are 1) donative intent and 2) delivery, actual or constructive. Fesmire v. Bank, 267 N.C. 589, 591-92, 148

S.E.2d 589, 592 (1966). As discussed above and more in the next chapter, there is no “donative intent” because these books are not donations, no matter how hard one tries to twist and bend the Fesmire case. Delivery is stipulated but the intent of the publishers is to place marketing materials in the hands of people who are charged with deciding which texts their students will use, thereby creating the intended monopoly for that subject on that campus. That is as far as “intent” goes in this matter. One needs to be careful with words lest one’s child petition daddy for a goldfish bowl and goldfish and daddy comes home with a bag of crackers.

Somehow from whole cloth, a textbook publisher became a “donor” rather than just a potential vendor providing promotional material so that they could sell textbooks to the students on college campuses. The “intent” of the publisher is to put a representation of the textbook in the hands of the teacher to persuade the teacher to assign the monopoly (term borrowed from Pecorino’s analysis, Rent Seeking, on page 210, and from *Bloomer v. Millinger (1864)*) to that publisher. There is no “intent” to make a donation. This is borne out by the publisher’s tax returns where this promotional material is not categorized as a contribution. Rather, this is a marketing expense. Again, this is borne out by the school’s own tax returns where the value of this promotional material is not entered as a donation or as revenue or an asset. These promotional items are not donations. There is no donor. The intent is solely that of a profit motive. Fesmire does not apply to the issue of book selling and buying.

These promotional items are the personal property of the person whom they are addressed to. That is the federal law of the land and the law in most states, including North Carolina. This ownership issue with its many decades of case law is addressed throughout this report. Teachers are selling their own personal property and not that of the state, which is an activity protected by federal law and the United States Constitution. These protections are considered throughout this report.

The ubiquitous demand that the publishing marketers want their marketing materials back obviates any suggestion that these marketing materials represent a donation.

Coming from the publishers, the books have no value. The publishers do not insure these marketing materials nor do they actively search for and rescue these books from faculty offices, homes, cars, student’s cars or anywhere else. Publishers mail the promotional material and hope for a sale. Unlike every other marketer, publishers have state employees working for them as is the relationship between NCCCS and UNC constituents and the international, mega-conglomerate publishing oligopolies.

If these books were anything more than marketing materials incidental to the profession, then teachers or institutions would have to claim these promotional materials as income or revenue -- **even if they chose not to sell them**. If the books were anything more than marketing materials, then they would create a conflict and that publisher who provided the complimentary book for review would be out of the running for adoption. It is only the aftermarket that creates value. This separates the issue of a financial benefit impropriety as the publishers are completely out of the equation.

The books in question (a book buyer’s stock), by federal and state law are the lawful property of the individuals so addressed to regardless of the address being a work address (a school cannot confiscate a teacher’s money or personal correspondence just because it was addressed to his or her work address) and, as such, are not the school’s property.

Schools are quasi-public, open and federally-funded institutions. The school can not ban a specific occupation and so those in this industry are free to come and go on school property in a lawful manner as with any other industry. Further, any such prohibition impinges on First Amendment rights to free speech as well the amendments, laws and rules addressed in this report regarding, business communications, restraint of trade and interstate commerce. In short, the 1990 A.G.’s advisory opinion was faulty and not based on a thorough analysis of the federal and state laws in place then and in place now. The Speas Doctrine has been repeatedly and overwhelmingly repudiated since the distribution of the Speas Opinion. School administrators (state employees) blindly follow this fallacious advisory, carrying out the state’s plan to eradicate the specific occupation of book buyer.

The Abridged North Carolina Book Buyer Eradication Timeline - Speas Doctrine

The full timeline can be found in the previous chapter.

1640-1987 Everything was fine. Everyone simply followed the law.

1640 First book printed in America

1966 *Doris J. Fesmire v First Union National Bank of North Carolina*
This Speas-cited case in Wills & Estates Law has nothing to do with the book industry.

1983 DAG wife, Debra W. Stewart, publishes *Organizational Behavior & Public Mgt*, 1st Edition

1987 to Date TAA Rewrote the Law and Teachers Believe Them

1987 Text & Authors Association (TAA) now Text & Academic Authors Assoc. (TAA) founded

1987 Stomp the Comp campaign begins. Co-Conspirator Lydia Seidick created disinformation pamphlet.

1988 Co-Conspirators Mike Keedy, Richard Hull, Lydia Seidick, John Wakefield, Mike Sullivan, Howard Anton, Paul Siegel and others formed the unlawful conspiracy to eradicate book buyers. TAA adopts formal plan to eradicate book buyers from college campuses. A defamation campaign targeting faculty ensues. Attack of college bookstores begins.

1988 TAA targets and infects University of North Carolina System. University of North Carolina at Wilmington's Faculty Senate declared the sale by faculty of complimentary textbooks as an unprofessional practice. DAG Speas has numerous friends and colleagues at UNC, many as textbook authors and many in the publishing business.

1990 DAG wife, Debra W. Stewart, publishes *Organizational Behavior & Public Mgt*, 2nd Ed.

1990 The Speas Opinion issued to NC Community Colleges. Speas bought into the simultaneously rejected TAA Book Buyer Eradication Plan.

1990-2011 SPEAS DOCTRINE FALLOUT: Almost all NCCCS and UNC constituent institutions engage in the Speas Conspiracy, unlawfully banning the occupation of book buyer by threatening staff who choose to exercise their constitutional and lawful rights. Thousands of client relationships were halted by threat of dismissal from employment.

1998 DAG wife, Debra W. Stewart, publishes *Organizational Behavior & Public Mgt*, 3rd Ed.

2000 SPEAS DOCTRINE FALLOUT: AB Tech CC Bans Book Buying Occupation.

2007 SPEAS DOCTRINE FALLOUT: State Auditor Les Merritt issues unlawful advisory.

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2008 SPEAS DOCTRINE FALLOUT: NCCCS General Counsel Q. Shanté Martin issues unlawful advisory as reported by WPCC's Dr. Helmick.

2011 SPEAS DOCTRINE FALLOUT: UNC Fayetteville Bans Book Buying Occupation.

The Speas Conflict of Interest

In 1990, then Senior Deputy Attorney General (formerly General Counsel to Jobs Governor, Bev Perdue*), Edwin "Eddie" Speas, took on the endeavor of writing the offensive Speas Opinion that has been used to eradicate a specific occupation in North Carolina, that of book buyer. Speas was and is married to textbook author and publishing association member Debra W. Stewart. Rather than abstain, Speas took no action to avoid this appearance of impropriety. A disinterested attorney should have written the opinion.

It is no wonder that, after attending the Jobs Governor's jobs show and presenting her office with an earlier similar report, it was tossed back to me like a hot potato. At that time, I had not made the Speas Connection until Senator Joe Sam Queen's office was kind enough to send the smoking guns from 1990 and on. We will also look at the activities of the Text and Academic Authors Association at and around that time and how TAA influenced the unlawful Speas Opinion.

It is specious to use Fesmire in such a convoluted and twisted manner when the applicable laws go back to the turn of the century. There is a dearth of related case law on this subject, much of which was available to Speas in 1990. Certainly, the laws were in place for decades prior to the Speas Opinion. See the Book Buyer Occupation Eradication Timeline in the previous chapter for a look at a wealth of law that Speas could have cited which would not attack another man's job, indeed an entire industry...IF he wanted to.

The Speas Opinion has had the chilling effect of summarily denying citizens of fundamental, argued and settled rights. By advising community college presidents to disallow teachers to do with their personal property as they wish, Speas, in effect, vitiated the rights of teachers, said rights so enumerated in federal and state law as well as the U.S. Constitution.

How, then, did Senior Deputy Attorney General Edwin Speas conclude that the practice of book selling by faculty was tantamount to the teacher selling campus property? How did Speas conclude that these promotional items were the property of the campus and/or state? The question as to who owns these books has long been settled and any supposition that the books in question belong to the school or the state has not met well in court decisions and federal rules. For these reasons, one has to wonder what drove the D.A.G. to create his advisory from whole cloth, invalid suppositions and heavy-handed, draconian conclusions. Why would a Senior D.A.G. write an advisory which so flies in the face of law and common decency? What is the motive behind the proffering of the May 14, 1990 Small Business Eradication Opinion?

Speas subverted the laws of personal ownership to the wishes of one industry with the State as the enforcer of corporate profits. It started in 1987 when the Text and Academic Authors Association was founded. TAA, discussed at length in Chapters 24 & 25, began a defamation and deception campaign in 1988, targeting American Small Business Families and their clients. The following box is from TAA's website. Note how they twisted a constitutionally-protected promotional gift given to a professional teacher into an object that the teacher would STEAL or FENCE. In 1988, TAA targeted the University of North Carolina, infecting faculty senates and villainizing teachers. Interestingly, I have never heard of a faculty senate inviting a local book buyer in to learn about the business. Critical thinking on college campuses is sometimes not the standard in deliberations. The first fruit of TAA's labor in North Carolina was the banning of the specific occupation of book buyer at UNC-Wilmington...a school I was asked to leave as I was developing my territories. TAA brags on their web site in the [Stomp the Comp](#) section, "The University of North Carolina at Wilmington's Faculty Senate declared the sale by faculty of complimentary textbooks as an unprofessional practice."

*Shortly after completion of this report, Speas left the Governor's Office and returned back to his position at the law firm of Poyner Spruill.

Teachers –The TAA Called You Thieves Who Fence Hot Property!

The question of ownership may be central to the legality of faculty reselling desk copies. If, for example, the book is solicited by the faculty member as an examination copy, a contractual relationship may exist between the publisher and the faculty member such that the liberty of the faculty member to dispose of the text is constrained. And if the text were sent unsolicited, it may be owned by the institution; in this case, an individual reselling the text may be technically guilty of stealing the text from his or her school and "fencing" the hot property. Publishers may want to provide coded strips similar to the ones schools put on computers and other equipment provided by the institution that would allow an electronic record to be transmitted to the school. Schools may wish to adopt a zero-tolerance policy toward faculty reselling desk copies, with sanctions for violations severe enough to discourage the practice.

Text and Academic Authors Association

The advice to schools to confiscate these promotional materials (alternatively, for book buyer clients to give these promotional materials to the schools they work for) is to advise these schools to violate the Takings Clause of the Fifth Amendment of the U.S. Constitution. The Takings Clause is enforceable through the states through the Fourteenth Amendment, stating “nor shall private property be taken for public use without just compensation.”

The Speas Opinion is so counter to law and fundamental rights it prompted a request for clarification from the law firm of Bates, McLamb and Wehmer. Speas had to write back with the admission that the Speas Opinion is not the law nor based on any law. It was simply an opinion of Speas himself. See Section C for a discussion on appearances of impropriety and conflicts of interest.

Small Business Families to Receive Deference by State

N.C.G.S. § 143-48. State policy; cooperation in promoting the use of small contractors, minority contractors, physically handicapped contractors, and women contractors; purpose; required annual reports.

a) Policy. – It is the policy of this State to encourage and promote the use of small contractors, minority contractors, physically handicapped contractors, and women contractors in State purchasing of goods and services. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage the use of small contractors, minority contractors, physically handicapped contractors, and women contractors in achieving the purpose of this Article, which is to provide for the effective and economical acquisition, management and disposition of goods and services by and through the Department of Administration.

Why did a Senior Deputy Attorney General, learned in law, ignore basic constitutional principles and all of the federal and state law and rules to advise schools to create policies that would violate their employee's constitutional rights in a dedicated and willful effort to eradicate the specific occupation of book buyer? The motive was the PECUNIARY GAIN that this policy would create for the then Deputy Attorney General, now General Counsel to the Governor, Edwin M. Speas, Jr., his wife, textbook author Debra W. Stewart, and their community of authors and publishing industry colleagues.

As Jobs Governor Bev Perdue's General Counsel, it is clear as to why this North Carolina Small Businessman's request to address the unlawful restraint of trade and attack on jobs in North Carolina was summarily denied. No letter of explanation was sent, just a swift and simple telephone call from an aide, stating that the college systems in the State of North Carolina represent a "fourth branch of government" and that the governor refused to address the issue. The Governor chose not to take a position to protect this industry even as she has been traveling around the state touting her "jobs initiatives."

As far as the authority to ban an individual from the property of a community college, These campuses are quasi-public property where one can go to use the library, sit in on a seminar, attend a small business fair or any number of activities. Publisher's sales reps, credit card companies and numerous other businesses are freely allowed on campuses. To ban this ONE SPECIFIC INDUSTRY is to practice discrimination against a specific occupation which is a violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

"In the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment." Chief Justice Rehnquist, in *City of Dallas v. Stanglin*, 490 U.S. 19 (U.S. Sup. Ct. 1989). Mallor, et al. Business Law and the Regulatory Environment, New York: McGraw-Hill Irwin, 2001, 49.

Lawyers on Appearance of Impropriety Standards

ABA Canon 2A. An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct.

http://www.uscourts.gov/library/codeOfConduct/Revised_Code_Effective_July-01-09.pdf



The Bottom Line – Ignore the Speas Opinion

The Speas Opinion should never have been penned. D.A.G. Speas had a clear conflict of interest. The entire issue surrounding book selling is that of author's royalties. Speas' wife is a textbook author who earns royalties only on new books, not used. The research and reasoning included no countervailing arguments. The case law cited is irrelevant. The relevant case law was ignored. Rewriting the Postal Reorganization Act was an act of hubris and obfuscation. The damage to North Carolina Small Business Families has been the almost complete eradication of an industry by the destruction of the client base. There was no public interest to outweigh the damage done to the citizens of the state. The Speas Opinion benefitted one set of companies while vitiating the constitutional and legal rights of the entire population of the state. The Speas Opinion should be ignored.

Potential Speas Violations of Chapter 138A, State Government Ethics Act.

§ 138A-2. Purpose.

The purpose of this Chapter is to ensure that elected and appointed State agency officials exercise their authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence. To this end, it is the intent of the General Assembly in this Chapter to ensure that standards of ethical conduct and standards regarding conflicts of interest are clearly established for elected and appointed State agency officials, that the State continually educates these officials on matters of ethical conduct and conflicts of interest, that potential and actual conflicts of interests are identified and resolved, and that violations of standards of ethical conduct and conflicts of interest are investigated and properly addressed. (2006-201, s. 1.)

(14c) Financial benefit. – A direct pecuniary gain or loss to the legislator, the public servant, or a person with which the legislator or public servant is associated, or a direct pecuniary loss to a business competitor of the legislator, the public servant, or a person with which the legislator or public servant is associated.

Article 3.

Public Disclosure of Economic Interests.

§ 138A-21. Purpose.

The purpose of disclosure of the financial and personal interests by covered persons is to assist covered persons and those who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the covered person's private interests and the covered person's public duties. It is critical to this process that current and prospective covered persons examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the covered person's private interests and the covered person's public duties. Covered persons must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the covered person's public position or duties might impact the covered person's private interests.

Article 4.

Ethical Standards for Covered Persons.

§ 138A-31. Use of public position for private gain.

(a) Except as permitted under G.S. 138A-38, a covered person or legislative employee shall not knowingly use the covered person's or legislative employee's public position in an official action or legislative action that will result in financial benefit to the covered person or legislative employee, a member of the covered person's or legislative employee's extended family, or business with which the covered person or legislative employee is associated.

§ 138A-35. Other rules of conduct.

(a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest. If the public servant is unable to determine whether or not a conflict of interest may exist, the public servant has a duty to inquire of the Commission as to that conflict.

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government applicable to appointees and employees. (2006-201, s. 1.)

Potential Speas Violations of Chapter 138A, State Government Ethics Act Continued

§ 138A-36. Public servant participation in official actions.

(a) Except as permitted by subsection (d) of this section and under G.S. 138A-38, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall participate in an official action by the employing entity if the public servant knows the public servant or a person with which the public servant is associated may incur a reasonably foreseeable financial benefit from the matter under consideration, which financial benefit would impair the public servant's independence of judgment or from which it could reasonably be inferred that the financial benefit would influence the public servant's participation in the official action.

(b) A public servant described in subsection (a) of this section shall abstain from taking any verbal or written action in furtherance of the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself to the extent necessary, to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, partner, member or manager of a limited liability company, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rule making or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

Article 5.

§ 138A-45. Violation consequences.

(a) Violation of this Chapter by any covered person or legislative employee is grounds for disciplinary action. Except as specifically provided in this Chapter and for perjury under G.S. 138A-12 and G.S. 138A-24, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant.

(c) The willful failure of any public servant serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. For public servants who are judicial employees, the Chief Justice shall make all final decisions on the matter in which the offending judicial employee shall be disciplined. For public servants appointed or elected for The University of North Carolina or the Community Colleges System, the appointing or electing authority shall make all final decisions on the matter in which the offending public servant shall be disciplined. For any other public servant serving as a State employee, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(f) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

Debra W. Stewart Bio



Council of Graduate Schools

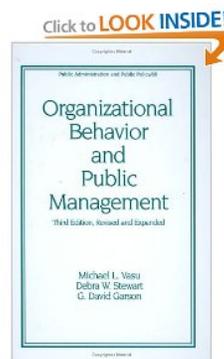
Debra W. Stewart

Debra Stewart became the fifth president of the Council of Graduate Schools in July, 2000. Before coming to the Council, Stewart was Vice Chancellor and Dean of the Graduate School at North Carolina State University. Prior to that she held a variety of leadership positions in North Carolina including Interim Chancellor at UNC-Greensboro (1994), and Graduate Dean (1988-1995) and then Vice Provost and Dean (1995-1998) at N.C. State. Stewart received her Ph.D. in Political Science from University of North Carolina at Chapel Hill, her master's degree in government from the University of Maryland, and her B.A. from Marquette University where she majored in philosophy. The Council of Graduate Schools is the leading U.S. organization dedicated to the improvement and advancement of graduate education. Its over 500 members award 94% of all U.S. doctorates and approximately 75% of all U.S. master's degrees. CGS currently has 26 international universities among its membership.

As a national spokesperson for graduate education, Stewart's service to the community includes chairing the Graduate Record Examination Board, the Council on Research Policy and Graduate Education, the Board of Directors of Oak Ridge Associated Universities, and the Board of Directors of Council of Graduate Schools. She also served as vice chair of the ETS Board of Trustees, as Trustee of the Triangle Center for Advanced Studies, as a member the American Council on Education Board and several National Research Council committees and boards, as well as on advisory boards for the Carnegie Initiative on the Doctorate, the Responsive Ph.D. Project, and the Task Force on Immigration and America's Future.

In November 2007, her leadership in graduate education was recognized by the Universite Pierre et Marie Curie with an honorary doctorate. Her alma mater, the University of North Carolina Chapel Hill honored her in October 2008 with the Distinguished Alumna Award. She is the author or coauthor of books and numerous scholarly articles on administrative theory and public policy. Her disciplinary research focuses on ethics and managerial decision making.

Debra W. Stewart as Author (Third Edition)



From the back of the book -- so she should know better...

Debra W. Stewart is Professor of Political Science and Public Administration as well as Vice Provost and Dean of the Graduate School at North Carolina State University, Raleigh. She is the author or coauthor of three books and numerous articles on administrative theory and public policy. A recipient of the PAR Burchfield Award, Dr. Stewart is a member of the American Society for Public Administration. She received the B.A. degree (1965) in philosophy and political science from Marquette University, Milwaukee, Wisconsin, the M.A. degree (1967) in government from the University of Maryland, College Park, and the Ph.D. degree (1975) in political science from the University of North Carolina at Chapel Hill.



Dec. 15, 1999

NC State Graduate School Dean to Head National Council

FOR IMMEDIATE RELEASE

North Carolina State University Chancellor Marye Anne Fox today announced that Dr. Debra W. Stewart, vice chancellor and dean of the Graduate School at NC State, will take a leave of absence from her position as professor of political science and public administration to serve as President of the Council of Graduate Schools (CGS) in Washington, D.C. She will assume her duties July 1. Stewart succeeds Dr. Jules LaPidus who is retiring after 16 years as head of CGS.

A 435-member organization, CGS represents its member institutions nationally and internationally on issues that affect graduate education and research. It sets standards for graduate education, initiates reforms, and shapes policy. CGS's members confer 99 percent of the doctoral degrees in the United States and nearly 80 of the master's degrees.

In making the announcement Fox said, "This is a tremendous loss to the university, but we will continue to benefit from Dr. Stewart's visionary leadership in her new role as president of CGS." During her tenure as head of the graduate school, Stewart led the effort to adopt a "New Framework for Graduate Education" that resulted in an \$11 million graduate student support plan to provide tuition and health insurance for more than 2,000 teaching assistants, research assistants, and fellowship recipients.

She enhanced the broad professional preparation of NC State graduate students by developing new interdisciplinary degree programs; establishing professional development programs; and spearheading a successful research ethics initiative. Under Stewart's leadership, the graduate school has received more than \$14.5 million in federal fellowships and training grants that have been used to recruit and support more than 220 students in interdisciplinary programs.

A graduate of Marquette University, Stewart received her master's degree in government from the University of Maryland and her doctoral degree in political science from the University of North Carolina at Chapel Hill. Throughout her administrative career, she has maintained a high research profile in political science particularly in the area of administrative ethics. She is co-author of *Organizational Behavior and Public Management* now in its third edition.

Stewart lives in Raleigh with her husband Edwin M. Speas Jr.

-30-



Other Acceptable Used Goods Resale Businesses

When college or university students visit the campus bookstore to purchase their required textbooks, they find two options for each title. One option is the very expensive NEW copy. The other option is a USED copy. Purchasing a used copy at the campus bookstore will save the student approximately 25 to 35 percent as compared to a new copy. Often students can purchase these books used (and sometimes new) online and save 50 to 80 percent or more. Considering tuition, room and board and transportation, used textbooks are the only line item where a student can save money. Mr. Speas' Orwellian mantra is: "New books good. Used books bad."



A walk through Goodwill or the Salvation Army reveals that there is a used market for almost every product. It would be quite a boon to clothing manufacturers if second-hand shops were outlawed. No resale business including Goodwill and Salvation Army would be safe if manufacturers of new products sewed in labels, "Not for Resale".

The beleaguered automobile companies would be happy if a law was passed prohibiting the sale or procurement of used cars. If Ford, Toyota or any other auto manufacturer placed a sticker on the rear bumper of a new car, legislators (or D.A.G.'s like Speas) would be obliged to outlaw the sale of used cars.

Appliance manufacturers would be dancing in the streets if it were illegal to repair and resell home appliances. What if Speas wrote on behalf of North Carolina's furniture manufacturers, requiring them to simply attach a sticker stating "Not for Resale" on a piece of furniture? It would then be unlawful for a state employee to sell their old bedroom set, couch or the no longer needed crib. Staples, Office Max, Office Depot and thousands of other ink cartridge resellers would be outlawed if Hewlett Packard placed those three little words on their ink cartridges, "Not for Resale". None of these scenarios are in place today because there are laws prohibiting such actions and because the public simply would not stand for it.

The used textbook prohibitions are ridiculous in this light. The Speas Doctrine is unlawful and unconstitutional, thereby rendering it nugatory. In a letter of clarification in 1991, Speas admitted that there was no law to substantiate his opinion. Regardless, he wrote that one should honor the textbook publishers' wishes, violating existing state and federal laws. It is unfortunate that Speas did not abstain from writing his opinion given his financial conflict of interest. Speas and his wife, Debra Stewart, a textbook author, stood to gain financially from this opinion, as did many in the Speas' sphere of influence. The Speas Opinion was crafted and proffered by and for the benefit of what is now known as the Text & Academic Authors Association and the IMCPOs.

Used Car Industry



Edwin "Eddie" Speas ended this man's career as a book buyer.

With annual sales of nearly \$370 billion, the used vehicle industry represents almost half of the U.S. auto retail market and is the largest retail segment of the economy.¹ In 2005, about 44 million used cars were sold in the U.S., which is more than double that of the nearly 17 million new cars sold.

History

In 1898, the Empire State Motor Wagon Company in Catskill, New York is one of the very first American used car lots. The used vehicle market is substantially larger than other large retail sectors, such as the school and office products market (\$206 billion in estimated annual sales) and the home improvement market (\$291 billion in estimated annual sales).
http://en.wikipedia.org/wiki/Used_car

Charities, Second Hand Mom & Pops and Consignment Stores



Morgan mission was started originally as an urban outreach ministry, in 1902, of Morgan Methodist Chapel, Boston, Massachusetts, which was pastored by Reverend Edgar J. Helms, a Methodist minister and early social innovator. Helms and his congregation, collected used household goods and clothing being discarded in wealthier areas of the city, then trained and hired those who were unemployed or bereft to mend and repair these items. The products were then redistributed to those in need or were given to the needy people who helped to repair them.

Goodwill will generally always accept donations of clothing, shoes, books, accessories (handbags, belts), dishes, pieces of furniture in good condition, household decorations, and consumer electronics (ex. alarm clocks, blenders, etc.). Even if they are deemed unfit to be sold in Goodwill's retail stores, these items can be sold as bulk lots, and thus can still generate income.
http://en.wikipedia.org/wiki/Goodwill_Industries

The Used Textbook Resale Market & The Law[©]

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Essential Reading

Chapter 6

1. The 1990 Speas Opinion
2. The 1991 Speas-Vanore Correspondence
3. Fesmire v. First Union National Bank of NC, 1966
4. NC Governor Perdue's General Counsel, Edwin "Eddie" Speas Bio
5. Huskins v. Huskins, 1999 (Proper Use of Fesmire Decision)



State of North Carolina

Department of Justice

P.O. BOX 529

RALEIGH

27602-0529

LACY H. THORNBURG
ATTORNEY GENERAL

May 14, 1990

MEMORANDUM

TO: Community College Presidents
FROM: Edwin M. Speas, Jr. *EW*
Senior Deputy Attorney General
RE: Complimentary Textbooks

Publishing companies, as a marketing tool, often distribute unsolicited, complimentary copies of new textbooks to community colleges and their faculty members. The high cost of textbooks has created a market for used textbooks. Used textbook companies have begun purchasing these unsolicited, complimentary textbooks for resale.

A number of questions have arisen regarding whether unsolicited, complimentary textbooks received by community colleges and faculty members are gifts to community colleges or to individuals, and the limitations that may exist on the sale of those textbooks to used textbook companies. These issues were addressed in the April 4, 1989 memorandum forwarded to you by Clay Hines, Director of Legal Services for the Department of Community Colleges. This memorandum is a follow-up to Ms. Hines' memorandum.

Ownership of Unsolicited, Complimentary Textbooks

In our opinion, ownership of unsolicited, complimentary textbooks should be determined by reference to basic principles

of personal property law.¹ Ownership of unsolicited, complimentary textbooks depends primarily on the intent of the publishing company. Fesmire v. First Union National Bank, 267 N.C. 589, 148 S.E. 2d 589 (1966) We recommend that community colleges observe the following guidelines in determining this intent.

1. Declarations or statements by publishing companies that unsolicited, complimentary textbooks are intended as gifts to the college or to individuals should be observed and treated as conclusive on the issue of ownership.

2. Books addressed to a college or to an unnamed college officer or employee, e.g. a book addressed to "Dean of Instruction, Wake Technical College", should be treated as gifts to the college.

3. Books addressed to college officers or employees at their home addresses should be treated as gifts to individuals.

4. Books addressed to named college officers or employees at their college addresses may be intended by publishing companies either as a gift to agents of the college, and hence to the college itself, or to individuals. Colleges should adopt policies (a) treating all such books as gifts to the college; (b) treating all such books as gifts to individuals; or (c) establishing criteria for deciding whether such books should be treated as gifts to the college or as gifts to individuals.

Limitations on Sale of Unsolicited, Complimentary Textbooks

Any limitations established by the publishing companies should be observed. We understand, for example, that many unsolicited, complimentary textbooks are stamped "not for sale or resale." That limitation must be observed whether the textbook is treated as the property of the college or the individual. In addition, textbooks that are determined to be the property of a college can only be sold by the college in accordance with the requirements established by G.S. § 115D-15 for the disposal of surplus property.

¹ State law, G.S. § 75-27, and federal law, 39 U.S.C. § 3009, provide that the "recipient" of unsolicited merchandise may treat that merchandise as a gift. We believe the term "recipient" as used in these statutes should be treated as synonymous with the term "donee."

The 1991 Speas-Vanore Correspondence

YATES, McLAMB & WEYHER
ATTORNEYS AT LAW
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2626 GLENWOOD AVENUE
RALEIGH, NORTH CAROLINA 27608

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CAROL R. MANNING
DAN J. McLAMB
JEAN WALKER TUCKER ***
ANDREW A. VANORE, III
KIRK G. WARNER †
BARBARA E. WEYHER ††
JOSEPH W. YATES, III

*ALSO LICENSED IN WEST VIRGINIA
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***ALSO LICENSED IN FLORIDA
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(919) 783-5300

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(919) 781-7821

February 25, 1991

Edwin M. Speas, Esquire
Senior Deputy Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

RE: Attorney General's Memorandum Position Regarding the Sale of
Unsolicited Textbooks by Faculty Members of North
Carolina's Community College System
Our File No. 643-100

Dear Mr. Speas:

I am attaching a copy of a Memorandum dated May 14, 1990, issued under your signature regarding the sale of complimentary textbooks by community college faculty members. It has come to our attention that several community colleges are interpreting this Memorandum as standing for a "law" that faculty members cannot, under any circumstances, sell any unsolicited, complimentary textbooks. It is our understanding, however, that the Memorandum merely represents the opinion of what the law may be in this area. Further, rather than suggesting legal conclusions, the Memorandum is intended to provide direction to community colleges in the event they desire to consider guidelines for use in adopting procedures pertaining to the sale of such unsolicited, complimentary merchandise.

We ask that you please provide us with a written statement indicating that the contents of the May 14, 1990 Memorandum do not equate to "law" in the State of North Carolina and that the sale of unsolicited, complimentary textbooks by faculty members may be acceptable if and when the issue is reached by a court of law.

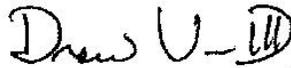
YATES, McLAMB & WEYHER

Edwin M. Speas, Esquire
February 25, 1991
Page 2

Your cooperation is greatly appreciated. If I can be of any assistance, or if you have any questions, please do not hesitate to contact me. This letter follows up an earlier request for a written response.

I remain with best personal regards,

Sincerely yours,

A handwritten signature in cursive script that reads "Andrew A. Vanore, III". The signature is written in dark ink and is positioned above the printed name.

Andrew A. Vanore, III

AAV:gcj

cc(10)



State of North Carolina

Department of Justice

P.O. BOX 629

RALEIGH

27602-0629

LACY H. THORNBURG
ATTORNEY GENERAL

March 12, 1991

Andrew A. Vanore, III
Yates, McLamb & Weyher
Attorneys at Law
P.O. Box 18037
Raleigh, North Carolina 27608

RE: May 14, 1990 Opinion

Dear Mr. Vanore:

On May 14, 1990 we forwarded a memorandum to the presidents of community colleges regarding the ownership and disposition of complimentary textbooks. That memorandum was issued pursuant to the provisions of G.S. §§ 114-1.1 and 114-2, which prescribe the powers and duties of the Attorney General.

The opinions expressed in that memorandum, like all opinions of this office, are advisory only and are not binding on any community college. See Lawrence v. Board of Commissioners, 210 N.C. 362, 261 (1936). Community colleges, however, are bound to comply with the law, and the May 14, 1990 memorandum reflects our best judgment of the law which applies to the ownership and disposition of complimentary textbooks by community colleges.

Sincerely,

LACY H. THORNBURG
Attorney General

Edwin M. Speas, Jr.
Senior Deputy Attorney General

EMSjr/cwh
cc: Clay Hines

1/15/91

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Fesmire v. First Union National Bank of NC, 1966

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Fesmire v. First Union National Bank of North Carolina

SUPREME COURT OF NORTH CAROLINA

Docket Number available at www.versuslaw.com

Citation Number available at www.versuslaw.com

Filed: June 16, 1966.

DORIS J. FESMIRE, PLAINTIFF,
v.
FIRST UNION NATIONAL BANK OF NORTH CAROLINA, EXECUTOR OF JESSE BURNS EARLE, DECEASED, DEFENDANT

Appeal by defendant from Bone, E.J., September 1965 Session of Chatham.

Barber & Holmes for defendant appellant.

Moody & Moody and T. F. Baldwin for plaintiff appellee.

Lake, J. Moore, J., not sitting.

Lake

[267 NC Page 591]

The burden of proof was upon the plaintiff to show each element of the gift inter vivos under which she claims. *Cartwright v. Coppersmith*, 222 N.C. 573, 24 S.E.2d 246; *Duckworth v. Orr*, 126 N.C. 674, 36 S.E. 150. These elements are: (1) The intent by Dr. Earle to give to her the shares of stock so as to divest himself immediately of all right and title to and control of the stock;

[267 NC Page 592]

and (2) the delivery, actual or constructive, of the stock certificate endorsed by him. G.S. 55-75; *Smith v. Smith*, 255 N.C. 152, 120 S.E.2d 575; *Scottish Bank v. Atkinson*, 245 N.C. 563, 96 S.E.2d 837; *Buffaloe v. Barnes*, 226 N.C. 313, 38 S.E.2d 222, rehear. den., 226 N.C. 778, 39 S.E.2d 599; *Cartwright v. Coppersmith*, supra; *Patterson v. Trust Co.*, 157 N.C. 13, 72 S.E. 629; *Newman v. Bost*, 122 N.C. 524, 29 S.E. 848.

Delivery of an endorsed stock certificate is constructive delivery of the shares which it represents, and possession of such certificate by the endorsee establishes prima facie the fact of delivery. *Scottish Bank v. Atkinson*, supra. The act relied upon to establish the delivery must be unequivocal and must deprive the donor of his right to dominion over the thing given. *Cartright v. Coppersmith*, supra; *Handley v. Warren*, 185 N.C. 95, 116 S.E. 168. It is not essential, however, that the article be placed beyond the physical power of the donor to retake it, as is illustrated by the case of a gift of coins to a child by dropping them in a container recognized as the property of the child though the container, itself, remains in the home of the donor and thus subject to his physical control. *Patterson v. Trust Co.*, supra. Furthermore, when there has been an actual transfer of possession with the requisite intent, the gift is not defeated by the subsequent return of the article to the possession of the donor for safe keeping, or its return to a container or place of deposit owned and controlled by the donor. *Bynum v. Bank*, 221 N.C. 101, 19 S.E.2d 121; *Swindell v. Swindell*, 153 N.C. 22, 68 S.E. 892. In the *Swindell* case, the

gift of a horse by a husband to his wife was not defeated by the subsequent return of the horse to the stable or pasture of the husband and the use of it by the husband. In the Bynum case, the donor delivered to the donee a tin box and the keys thereto with intent to make a gift of the documents in the box, and then instructed the donee to return the box to its former resting place in the donor's closet. Again, in *Zollicoffer v. Zollicoffer*, 168 N.C. 326, 84 S.E. 349, a retaking of a stock certificate by the donor and placing it in her Bible for safe keeping did not defeat the gift of the stock.

The testimony by the brother of Dr. Earle that Dr. Earle said he "had given" 500 shares of his stock in the First Union National Bank to the plaintiff and that the stock was kept for her in his safety deposit box in the bank, to which box she had a key, is ample evidence to show a delivery of the certificate by him to her. *Zollicoffer v. Zollicoffer*, supra; *Gross v. Smith*, 132 N.C. 604, 42 S.E. 111. To this testimony there was no objection by the defendant and it was clearly competent.

[267 NC Page 593]

There is no merit in the exception by the defendant to the admission in evidence of the inventory of the contents of the safety deposit box made by its officer, or in its exception to the testimony of such officer as to the contents of the box. This evidence shows conclusively that the certificate in question was endorsed by Dr. Earle, no other certificate in the box was so endorsed, and this certificate was physically separated from the remaining certificates by being enclosed in an envelope, on which was typed the name of the plaintiff, and in which was another document of value admitted to be her property.

The defendant's major contention is that there was prejudicial error in permitting the plaintiff, herself, to testify that the stock certificate came into her possession on 13 March 1964, that she then placed it in the envelope and typed upon the envelope her name, whereupon she placed the envelope in the drawer of her own desk at the office and kept it there approximately one week. The defendant also contends that there was error in permitting the plaintiff to testify that she had the keys to the box in her possession at the time the stock certificate came into her hands, and that for a long period prior to that date she had been keeping her own valuable papers in this safety deposit box. The admission of this testimony was not forbidden by G.S. 8-51 since it is not testimony by the plaintiff of a personal transaction between her and the defendant's testator. It is testimony concerning independent facts. *Lister v. Lister*, 222 N.C. 555, 24 S.E.2d 342; *Jones v. Waldroup*, 217 N.C. 178, 7 S.E.2d 366; *Thompson v. Onley*, 96 N.C. 9, 1 S.E. 620; *Stansbury*, North Carolina Evidence, ¶ 73, Note 45. In the *Lister* case, this Court, speaking through Winborne, J., later C.J., said:

"Where in the trial of this action plaintiff produces paper writings, in the form of negotiable notes purporting to be payable to him and to be signed by intestate of defendants, administrator and administratrix, upon which the action is based, and testifies to his possession of them since certain dates, even though such dates correspond with the purported dates of such paper writings, and identifies the purported signatures thereto to be in the handwriting of said intestate, are such paper writings admissible in evidence? Yes."

Since the admission of this testimony by the plaintiff was not error, the defendant's exception to those portions of the court's instruction to the jury summarizing and referring to this testimony are also without merit.

[267 NC Page 594]

We have examined each of the defendant's assignments of error and find no basis therein for a new trial of this action.

No error.

Disposition

No error.

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NC Governor Perdue's General Counsel, Edwin "Eddie" Speas' Bio

Eddie Speas is Gov. Beverly Perdue's general counsel and a former chief deputy attorney general for North Carolina.

Early Life and Education

Edwin M. Speas Jr. was born April 18, 1945, in Elkin, N.C., to Edwin Sr. and Mary Kelly Speas. His father ran a hardware store and served on the local school board; his mother was a school teacher.

He grew up in Boonville, N.C., 30 miles west of Winston-Salem.

He graduated from Boonville High School in 1963.

He earned a bachelor of arts in history from Wake Forest College (now University) in 1967.

He earned a law degree there in 1971.

Professional Career

During law school, Speas interned at the state attorney general's office.

After passing the bar exam in 1971, he went to work there on criminal appeals, but soon came to work on educational issues.

He served under attorneys general Robert Morgan, James H. Carson Jr., Rufus Edmisten, Lacy Thornburg, Mike Easley and Roy Cooper.

From 1975 to 1990, he was special deputy attorney general and head of the education section, handling legal matters regarding the state Board of Education and the UNC system.

From 1990 to 1998, he was senior deputy attorney general and head of the special litigation/education division, which was created by Attorney General Thornburg to handle complex litigation that would otherwise require hiring outside counsel. In that role, he represented the state on a Congressional redistricting case, a series of cases dealing with the taxes on state pensions and a cap on the number of prison inmates.

From 1998 to 2003, he was chief deputy attorney general, supervising the 250 attorneys who represent state agencies.

In 2004, he retired from state government and joined Poyner & Spruill as a partner at the firm. He focused on helping clients with government-related issues.

In 2006, then Speaker Jim Black's attorneys hired him to argue that it was not illegal to sign over blank checks to another politician.

In 2007, Governor Easley appointed him to a four-year term on the N.C. Education Lottery Commission. He resigned in 2009.

In 2008, N.C. Supreme Court Chief Justice Sarah Parker appointed him to the State Judicial Council, a group which works on issues facing the judiciary. He resigned in 2009.

Perdue Administration

He was named Perdue's general counsel in January of 2009.

In that role, he will work on a daily basis with the governor and her staff to resolve legal issues.

http://projects.newsobserver.com/under_the_dome/profiles/eddie_speas

Huskins v. Huskins, 1999 (Proper Use of Fesmire Decision)

Huskins v. Huskins, 134 NC App 101 (98-1147) 07/06/1999



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****FINAL****

IN RE: ELIZABETH V. HUSKINS, Individually and as Executrix of the ESTATE OF DAVID H. HUSKINS Plaintiff, v. SCOTT E. HUSKINS; JAMES C. HUSKINS; LISA H. MOORE; CYNTHIA H. SITTON; JONATHAN HUSKINS, a minor by and through his guardian ad litem, DAVID P. HUSKINS; JOE D. HUSKINS, Defendants

No. COA98-1147

(Filed 6 July 1999)

1. Gifts--contents of safe--combination mailed to son--no gift to wife

The trial court erred by granting summary judgment for plaintiff-wife in an action to determine whether certain monies represented completed gifts where defendants argued that decedent's mailing of the combination of a safe to his son before committing suicide was not a gift of the contents of the safe to his wife. Although there was a notation that the contents of the safe belonged to Mrs. Huskins, there is a serious question about whether mailing the combination to the son was a constructive delivery of the contents to the wife.

2. Gifts--check--not paid before death--not a gift

The trial court erred by deciding that a check mailed to decedent's son made payable to decedent's wife constituted a completed gift to the wife where the bank had not paid the check when the donor died. Decedent's death revoked the relationship with the bank and precluded the bank from honoring the check; the check is a part of the decedent's probate estate.

3. Wills--cash on decedent's person--personal effect

The trial court properly found that cash found on decedent's body is a personal effect and would pass under a personal effects clause rather than under a residuary clause. It would not be prudent to formulate a bright line rule that large amounts of cash are not personal effects as a matter of law. The courts must continue to ascertain the intention of each testator afresh in each case, analyzing the wording of each will as it relates to the circumstances of each individual testator

Appeal by defendants Scott E. Huskins, James C. Huskins, Lisa H. Moore, Cynthia H. Sitton, and Jonathan Huskins, a minor by and through his guardian ad litem, David P. Huskins from judgment entered 17 June 1998 by Judge Zoro J. Guice, Jr., in McDowell County Superior Court. Heard in the Court of Appeals 28 April 1999.

On or about 8 September 1996, David H. Huskins (decedent) mailed an envelope to his son Scott E. Huskins (Scott) containing a check payable to decedent's wife, Elizabeth V. Huskins (Mrs. Huskins), in the amount of \$220,000.00. The envelope also contained a handwritten note which gave the combination to a safe in decedent's apartment with the statement, "the contents belong to your mother" underneath the combination. In addition, a separate entry on the note stated "cash the check before my will is probated."

Later on the day of 8 September 1996, decedent committed suicide. The police officer who arrived on the scene found a white envelope on decedent's person which contained the amount of \$8,720.00 in cash. An

<http://www.aoc.state.nc.us/www/public/coa/opinions/1999/981147-1.htm>[6/22/2010 10:01:44 AM]

additional \$1,330.25 was in decedent's wallet which was in his pocket. On 10 September 1996, Scott met with Peggy Neighbors (Ms. Neighbors), a twenty-year employee of decedent, who gave Scott the combinations to decedent's safe which was located in the apartment in which decedent and Mrs. Huskins lived. Ms. Neighbors told Scott that decedent had given her the combination to the safe about a year before he died and instructed her to give the combination only to Scott and no one else. Mrs. Huskins was never given the combination to the safe before decedent died even though the safe was in the residence that she shared with decedent.

On 12 September 1996, Mrs. Huskins and four of decedent's five children, Scott, Cynthia Sitton (Cynthia), Lisa Moore (Lisa), and David P. Huskins (David), opened the safe with the combination provided by Ms. Neighbors. The upper vault of the safe contained approximately \$220,000.00 in cash. On 13 September 1996, Scott returned to his home in Georgia and received the envelope mailed by decedent containing the check payable to Mrs. Huskins and the combination to the safe. The decedent died testate. His will provided in part:

I bequeath to my wife, ELIZABETH VANCE HUSKINS, if she shall survive me, all household furniture and furnishings which I may own at the time of my death, all of my personal effects and any automobiles which I may own at the time of my death.

The will also provided for the establishment of two trusts: the Elizabeth V. Huskins Trust (a marital trust), and the David H. Huskins family trust. Mrs. Huskins is the sole beneficiary of the marital trust and is a beneficiary of the income from the family trust. Scott, Lisa, Cynthia, David, Jonathan Huskins and James Huskins (collectively, defendants) may also benefit from the family trust income in the trustee's discretion.

An amount in excess of \$400,000.00, which includes the proceeds from decedent's check made payable to Mrs. Huskins, the cash found in the safe, plus earned interest, was placed in an escrow account. Mrs. Huskins and the five children signed an agreement on 6 April 1997 which stated that the "approximately four hundred nineteen thousand dollars currently being held in escrow by Dameron and Burgin Law firm on behalf of the Estate of David H. Huskins be provided to establish the marital trust specified in the last will and testament of David H. Huskins." Mrs. Huskins then filed this complaint in July 1997 to determine whether any of the money in the escrow account represented completed gifts to her so that they would not be subject to the testamentary trusts established in decedent's will. Both Mrs. Huskins and defendants filed motions for summary judgment. The trial court granted Mrs. Huskins' motion for summary judgment and denied defendants' motion. Defendants appealed, assigning errors.

Carnes and Franklin, P.A., by Hugh J. Franklin, for plaintiff appellee Elizabeth V. Huskins.

Adams Hendon Carson Crow & Saenger, P.A., by Philip G. Carson and Joy Gragg, for defendant appellants Scott E. Huskins, James C. Huskins, Lisa H. Moore, Cynthia H. Sitton; and Jonathan Huskins, by David P. Huskins, guardian ad litem.

HORTON, Judge.

The issues in this case are whether: (I) mailing the combination to the safe constituted a completed gift of the contents of the safe to Mrs. Huskins; (II) the check mailed to Scott was a completed gift to Mrs. Huskins; and (III) the cash found on decedent's body was a "personal effect" and passed to Mrs. Huskins under decedent's will.

I

[1] Defendants argue that decedent's act of mailing the combination to the safe was not a gift of the contents of the safe to Mrs. Huskins because the cash in the safe was never actually or constructively delivered to Mrs. Huskins; the letter mailed to Scott was not received before decedent's death, thereby delivery did not take place; and the letter was sent to Scott who was not a trustee of Mrs. Huskins. We agree with defendants' contention that there is insufficient evidence of an actual or constructive delivery of the contents of the safe for the reasons set out below.

There are two types of gifts recognized in North Carolina: *inter vivos* gifts and gifts *causa mortis*. *Creekmore v. Creekmore*, 126 N.C. App. 252, 256, 485 S.E.2d 68, 71 (1997). "In all cases of gifts, whether *inter vivos* or *causa mortis*, there must be a delivery to complete the gift. And, in North Carolina, the law of delivery is the same for gifts *inter vivos* and gifts *causa mortis*." *Atkins v. Parker*, 7 N.C. App. 446, 450, 173 S.E.2d 38, 41 (1970) (citations

omitted).

In order to constitute a valid gift, there must be present two essential elements: 1) donative intent; and 2) actual or constructive delivery. These two elements act in concert, as the present intention to make a gift must be accompanied by the delivery, which delivery must divest the donor of all right, title, and control over the property given. . . . The intention to give, unaccompanied by the delivery, constitutes a mere promise to make a gift, which is unsupported by consideration, and, therefore, non-obligatory and revocable at will. Likewise, delivery unaccompanied by donative intent does not constitute a valid gift.

Courts v. Annie Penn Memorial Hospital, 111 N.C. App. 134, 138- 39, 431 S.E.2d 864, 866 (1993) (citations omitted). Delivery of a gift may be "actual, constructive, or symbolic," therefore, there is no absolute rule as to the sufficiency of a delivery which is applicable to all cases. *Taylor v. Coburn*, 202 N.C. 324, 326, 162 S.E. 748, 749 (1932). Indeed, "[t]he delivery must be as perfect and as complete as the nature of the property and attendant circumstances will permit. . . . If actual delivery is impracticable, then there must be some act equivalent to it; it is not necessary that there be a manual delivery, or an actual tradition from hand to hand" 38A C.J.S. *Gifts* § 94 (1996).

In this case, there was some evidence of donative intent from the written notation that "the contents belong to yourmother." Because this notation was found immediately below the combination to the safe, we may reasonably infer that decedent was making reference to the contents of the safe. Further, there is no elaboration as to the items included in the term "contents." We note that in this case, the safe in question had both upper and lower compartments, each of which had a combination. Decedent included both combinations in his handwritten note to Scott, and we might also reasonably infer that the term "contents" included everything to be found within either compartment. There is, however, a serious question about whether mailing the combinations and the note to Scott was a constructive delivery of the contents of the safe to Mrs. Huskins. Had the combinations of the safe and the accompanying note been mailed to Mrs. Huskins, or left for her in the apartment which she shared with decedent, her argument would be far stronger. Mrs. Huskins cites *Bynum v. Bank*, 221 N.C. 101, 19 S.E.2d 121 (1942), in which that decedent gave the key to a lockbox to a person and stated:

Mattie, everything in this box is yours and this key unlocks this box and in this box it is that little box you sent to Pa, in that box is a little wooden box, the deed is in that, and in the box you sent to Pa, the big bank book and the little bank book is in there.

Id. at 104, 19 S.E.2d at 122. A jury found that there was a delivery of the bank book to the donee Mattie, and our Supreme Court upheld the jury verdict, stating:

The delivery of a lock box and the keys thereto by a donor to a donee, together with a recital of the contents of the box and the statement that "Everything in this box is yours," would constitute delivery of the contents of the box

Id. at 105, 19 S.E.2d at 123 (emphasis added). In *Bynum*, however, there was an actual delivery of the box to the donee, unlike the case before us. Therefore, although decedent in *Bynum* retained the box for safekeeping, the jury properly found that there was a valid delivery. *Accord, Fesmire v. Bank*, 267 N.C. 589, 592, 148 S.E.2d 589, 592 (1966) ("when there has been an actual transfer of possession with the requisite intent, the gift is not defeated by the subsequent return of the article to the possession of the donor for safekeeping[.]" (Emphasis added.))

We find no authority in North Carolina as to whether there is sufficient delivery of a gift when the subject of the gift is mailed by the donor to the donee, but not received by the donee until after the donor's death. There is authority in other jurisdictions that a valid delivery had been made when the gift was deposited with the United States Post Office. 38 Am. Jur. 2d *Gifts* § 23 (1999). Indeed, in *Ray v. Leader Federal Sav. & Loan Ass'n*, 40 Tenn. App. 625, 292 S.W.2d 458 (1953), it was determined that a gift of a bank deposit was completed when the passbook containing an assignment by the donor was picked up by the post carrier from the donor's mailbox and the donor then committed suicide. *But see, Pikesville Nat. Bank & Trust Co. v. Shirley*, 281 Ky. 150, 135 S.W.2d 426 (1939) (holding that there was no valid gift of the money in a savings account when the decedent directed his bank to transfer a deposit to his sister and enclosed the passbook, mailed the letter and committed suicide, and the bank did not receive the letter and passbook until after the death of decedent).

We note that in *Ray* the mailing was directed to the donee, not to a third person. In this case, however, the combinations were not mailed to the donee, Mrs. Huskins, but to a third party. Although the third party, Scott,

was informed that the contents were his mother's property, there was no instruction that he deliver the property to his mother. In fact, although it is reasonable to interpret the note to Scott to mean that the contents in the safe were to be the separate property of Mrs. Huskins, the same language may be interpreted to mean that the moneys in the safe were to be used to fund the marital trust of which Mrs. Huskins is the sole beneficiary.

Other circumstances lead us to the conclusion that there was no valid delivery of the contents of the safe. While we agree with Mrs. Huskins that one cannot easily deliver a safe, that same consideration does not apply to the delivery of the contents of the safe, especially when the parties in this case resided together in the apartment in which the safe was located. Considering the large amount of money found in the safe, decedent could have also delivered the combinations directly to Mrs. Huskins with an express statement of his intent that she have the contents.

Finally, we think it is crucial to our analysis that had decedent wanted to change his will to provide that the contents of the safe were to be the property of his wife, the record demonstrates that he was well aware of how to make those changes. On the day of his death, he wrote a second codicil to his will relating to the disposition of a certain tract of real estate in Mitchell County. The codicil was in his own handwriting, and read as follows:

Sept 8 - 1996

Codicil to my will

**I David H. Huskins will
to my brother Joe D Huskins
the tract of land I own
in Mitchell County registered
in book 274 page 571 -**

David H. Huskins

The codicil prepared by decedent identifies the property in question, is an unmistakable statement of his donative intent, and is dated and signed by him. Clearly, decedent could have easily done the same as to the contents of his safe. Under the circumstances of this case, all of which we have carefully weighed and considered, we are not able to say that there was a valid delivery of the contents of the safe to Mrs. Huskins. The judgment of the trial court in this respect is reversed.

II

[2] In *Creekmore*, this Court adopted the rule that "a donor's own check drawn on a personal checking account is not, prior to acceptance or payment by the bank, the subject of a valid gift either *inter vivos* or *causa mortis*." *Creekmore*, 126 N.C. App. at 257, 485 S.E.2d at 72. This holding was based on the fact that until the bank accepts and pays the money, the donor retains control over the funds. *Id.* at 257-58, 485 S.E.2d at 72. This is true even if the donor dies, because the donor's command to the bank to pay the funds is revoked at the death of the donor. *Id.*

In this case, the check was not a valid gift because the bank had not paid on the check before decedent died, and the death of decedent revoked the relationship between decedent and the bank. Indeed, the death of decedent precluded the bank from honoring the check. As a result, the check to Mrs. Huskins was not a gift and is a part of decedent's probate estate. The decision of the trial court to the contrary is reversed.

III

[3] Defendants next argue that the cash found on decedent's person was not a "personal effect" which would pass to Mrs. Huskins under Article II of decedent's will, but instead was a part of the residue which would pass to the trusts to be set up under the will. We disagree.

"When a will is presented for construction the intention of the testator is to govern and this is to be ascertained from the language used by him, giving effect, if possible, to every clause, phrase, and expression in the entire instrument." *Adler v. Trust Co.*, 4 N.C. App. 600, 603, 167 S.E.2d 441, 442 (1969). The *Adler* Court defined "personal effects" as "'property especially appertaining to one's person and having a close relationship thereto.'" *Id.* at 605, 167 S.E.2d at 444 (quoting Webster's Third New International Dictionary (1968)). In *Adler*,

the testator bequeathed his "personal effects" to his brother, Harold Adler. The trial court determined that Harold Adler did not receive the houseboat "Heaven" as a part of that bequest, and this Court affirmed. Noting that ascertaining the correct meaning of the phrase "personal effects" had often "occasioned considerable difficulty," we held that the testator in *Adler* did not intend the words "personal effects" to include all of his personal property, because that interpretation would have rendered the residuary clause nugatory. *Id.* at 604-05, 167 S.E.2d at 443-44. Further, the testator in *Adler* clarified the meaning of the term "personal effects" as used in his will by expressly

includ[ing] jewelry, clothing, and his household furniture, as well as such of his china, silver and crystal as should not be desired by his two cousins. By using the words "personal effects" in conjunction with these other items, it is apparent that testator intended to include only things *ejusdem generis* with those covered by the other terms. A houseboat is clearly not *ejusdem generis* with articles of jewelry, clothing, household furniture, china, silver or crystal.

Id. at 605, 167 S.E.2d at 444.

In the present case, decedent clearly did not intend that "personal effects" be as broad in meaning as "personal property." In Article II, decedent bequeathed to his wife "all household furniture and furnishings which I may own at the time of my death, all of my personal effects and any automobiles which I may own at the time of my death." Then in Article III, which contains a residuary clause, decedent made disposition of the "rest, residue and remainder of [his] estate, both real and *personal* property . . ." (Emphasis added.) We believe it is significant that decedent made no explicit disposition of any cash money which might be on his person at the time of his death. Although decedent knew well how to draft a holographic codicil to his will, as we pointed out above, he did not make any disposition of the cash money on his person at the time he decided to commit suicide. He also did not leave any other directions for the disposition of the funds, nor did he place them in his safe or other secure place. Moreover, by way of contrast, the other items of personal property expressly bequeathed by decedent were larger items including furniture and automobiles, both categories of personal property not carried on or about the person. In the absence of any clear indications to the contrary, in order to carry out the intention of decedent, the term "personal effects" should be given its ordinary and usual meaning.

Black's Law Dictionary defines "personal effects" as "[a]rticles associated with person, as property having more or less intimate relation to person of possessor . . ." Black's Law Dictionary 1143 (6th ed. 1990). Likewise, "personal effects" are defined by The American Heritage Dictionary as "privately owned items, [such as] a wallet . . . that are . . . carried on one's person." The American Heritage Dictionary 925 (2d ed. 1985). In this case, decedent states in his will that *all* of his personal effects were bequeathed to his wife, Mrs. Huskins. If items such as a wallet are considered personal effects, it is impractical and arbitrary to then state that any items within the wallet are not personal effects or because the item was found in another pocket of the clothes decedent was wearing, that item was not a personal effect. Although the amount of cash in this case was substantial, we do not believe it would be prudent to formulate a "bright line" rule that large amounts of cash on a decedent's person and in his wallet are as a matter of law not "personal effects." Instead, we must continue to ascertain the "true intention of each testator as expressed in his will . . . afresh in each individual case[.]" analyzing "the wording of each particular will as it relates to the circumstances of each individual testator." *Adler*, 4 N.C. App. at 604, 167 S.E.2d at 443. Considering the wording of the will and the circumstances of decedent in the case before us, we hold that the trial court properly concluded that the cash money found on decedent's body is a "personal effect" and belongs to Mrs. Huskins according to decedent's will. The decision of the trial court in this regard is affirmed.

Affirmed in part, and reversed in part.

Judges LEWIS and TIMMONS-GOODSON concur.

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Chapter 7
Generally Accepted Accounting Principles
&
The Notion of Complimentary Textbooks as State Donations



FINANCIAL ACCOUNTING STANDARDS BOARD

FASB 116

Reporting by Not-for-Profit Organizations

14. A not-for-profit organization shall distinguish between contributions received with **permanent restrictions**, those received with **temporary restrictions**, and those received without donor-imposed restrictions. A restriction on an organization's use of the assets contributed results either from a donor's explicit stipulation or from circumstances surrounding the receipt of the contribution that make clear the donor's implicit restriction on use. Contributions with donor-imposed restrictions shall be reported as restricted support; however, donor-restricted contributions whose restrictions are met in the same reporting period may be reported as unrestricted support provided that an organization reports consistently from period to period and discloses its accounting policy. Restricted support increases **permanently restricted net assets** or **temporarily restricted net assets**. Contributions without donor-imposed restrictions shall be reported as unrestricted support that increases **unrestricted net assets**.

The Speas Opinion maintains that the complimentary textbooks provided to teachers are the property of the state as they are donations made by the publishing companies. In the previous chapter, this view is soundly dismissed and has been repudiated all over the country in courts and policies for many decades. In the last chapter, we debunked the idea of publishers as donors and that the marketing materials are not donations. This chapter is simply the nuts and bolts IF the world was such that these marketing materials were donations. Essentially, this chapter is a waste of your time and mine but, since the donor red herring swam downstream, angling is required. Upon careful analysis, the Speas Opinion is, indeed, a red herring that spawned quite prolifically.

I will not add to these self-explanatory passages. The reader should understand the scope of the undertaking that the Speas Opinion implies should complimentary textbooks be deemed as donations or contributions to the state. As discussed in the previous chapter, the state legislature has never shown an interest turning these marketing materials into revenue and then assets of the state.

Using Ruppel's Not-for-Profit Accounting Made Easy, let's review the important passages that clearly show that, from an accounting standpoint (as with the view of the law), these promotional and marketing materials are not donations and the publishers are not donors. The marketing materials in the form of review textbooks do not meet any of the three criteria to be considered a donation or net asset of the institution. On State of North Carolina balance sheets, these promotional materials are not listed as revenue or support.

State ownership of these marketing materials would result in an increase in the state's net assets. Selling these assets would be 1) counter to the publisher's purpose of removing these review books from the marketplace...the entire reason for the Speas Opinion in the first place; and 2) a violation of The Umstead Act as the state would be competing with local businesses. The State of North Carolina has never enacted legislation leading to the confiscation of its employees' personal possessions. Rather, North Carolina law holds that "delivery [of a gift] must divest the donor of all right, title, and control over the property given." If the promotional books were donations, then all donor control is divested per federal law. The donor threshold has not been met.

The following pages are taken from the college textbook, *Not-for-Profit Accounting Made Easy*, 2nd Edition, Warren Ruppel, John Wiley & Sons, Inc. 2007. ISBN 978-0-471-78979-6.

Net Assets

The difference between the assets and liabilities of a not-for-profit organization is its net assets. Net assets are a not-for-profit organization's equivalent of stockholder's equity in the commercial world. While the total of net assets is simple to calculate (assets less liabilities), what makes net assets somewhat difficult to understand is that when preparing financial statements in accordance with GAAP, net assets must be reported in three different classifications:

- Unrestricted net assets
- Temporarily restricted net assets
- Permanently restricted net assets

three classifications. The not-for-profit organization's financial statements must also display the increases and decreases for each of the three classifications, in its statement of activities. Remember that net assets are the result of a calculation (assets less liabilities), so that to classify net assets, the financial statement preparer needs to know what assets and liabilities fall into each of these classifications. In practice, this is not as difficult to do as it

Contribution Definition

Continuing with the examination of the actual meanings of complicated accounting definitions started in Chapter 1, let us start with FASB 116's definition of a contribution: "A contribution is an unconditional transfer of cash or other assets to an entity or a settlement or cancellation of its liabilities in a voluntary nonreciprocal transfer by another entity acting other than as an owner. Other assets include securities, land, buildings, use of facilities or utilities, materials and supplies, intangible assets, services, and unconditional promises to give those items in the future." The two most important terms in this definition for determining when a contribution is recorded are "unconditional transfer" and the inclusion of "unconditional promises to give" as one of the other factors included in the definition of a contribution.

Unrestricted Net Assets

Unrestricted net assets represent the net assets of a not-for-profit organization that are not temporarily restricted or permanently restricted. As will be explained in the following sections, the

exemption designation, and so on. While it is true that the net assets of a not-for-profit organization that runs a homeless shelter are restricted in that it cannot simply take its assets and build a casino, this is not a specific donor restriction that would result in assets being classified as anything but unrestricted. The same goes for the argument “Well, although our donors made general contributions to our organization, they clearly gave us money to run a homeless shelter, not build a casino. Therefore, the assets are restricted.” This is not correct, because there are no specific restrictions from a donor related to specific contributions. These are general contributions that are not restricted by the donors in any way other than the nature of the organization, its articles of incorporation, bylaws, and so forth.

Temporarily Restricted Net Assets

Temporarily restricted net assets are those net assets whose use is limited by either a donor-imposed time restriction or a donor-imposed purpose restriction. A time restriction requires that the donor specify when the asset could be spent (time restriction) or used by the organization or for what purpose that asset could be used (purpose restriction).

Permanently Restricted Net Assets

As the name implies, permanently restricted net assets represent those net assets that a donor has instructed the not-for-profit organization to maintain in perpetuity, that is, permanently. The

Revenues

FASB 6 defines revenues as “inflows or other enhancements of assets of an entity or settlement of its liabilities (or a combination of both) from delivering or producing goods, receiving services or other activities that constitute the entity’s ongoing major or central operations.” Not-for-profit organizations usually refer to donations as “support” and display support amount separately from other revenues that the organizations earn. The term “support” acknowledges that contributions do not fit nicely into the true definition of a revenue, but are usually not-for-profit organizations’ principal source of resources and should be treated as revenues.

WHEN SHOULD CONTRIBUTIONS BE RECORDED?

Determining when a contribution should be recorded sounds like an easy task. The not-for-profit organization should record the contribution in the fiscal year that it receives the contribution. If it were as simple as that, this would be a pretty short chapter. To start the discussion, let’s first look at the definition of *contribution* as contemplated by FASB 116.

Unconditional Transfers

In order for a contribution to be recorded as revenue by a not-for-profit organization, the transfer (whether cash or another asset) must be unconditional. That means it can have no donor-imposed conditions on whether or not the not-for-profit organization gets to keep the asset. According to FASB 116, a donor-imposed condition is: “A donor stipulation that specifies a future and uncertain event whose occurrence or failure to occur gives the promisor a right of return of the assets it has transferred or releases the promisor from its obligation to transfer its assets.” This means that if the not-for-profit organization’s right to keep the contribution is dependent on some future event that may or may not occur, the not-for-profit should not record this contribution as revenue.

organization’s statement of activities. If the contribution received was unconditional, the asset received would be recorded when received and contribution revenue would be recorded as an in-

ACCOUNTING FOR OTHER NONCASH CONTRIBUTIONS

As can be learned from the above discussion, contributions to not-for-profit organizations are not always in the form of cash (or a promise to pay cash in the future). Sometimes the contributions are for services and sometimes the contributions are for noncash assets. Noncash assets received by not-for-profit organizations should be recorded as contributions in the same way that cash contributions are. They should be categorized as unrestricted, temporarily restricted, or permanently restricted.

The accounting question for recording noncash contributions often centers around what value to record as the amount of the contribution. The basic rule is that noncash contributions are reported at their fair value. Determining the actual fair value (this was sometimes referred to as fair market value in older accounting literature) may be easy or difficult, depending on the nature of the asset.

inventory. Determining the level of effort needed to determine fair value will depend on the type and significance of the asset.





DONATED PROPERTY

G.S. 115D -15 permits for the board of trustees to sell or lease real or personal property that has been donated to the college and to use the proceeds for educational purposes as specified by the donor. The procedures are as follows:

1. The State Board of Community Colleges (State Board) must approve the acquisition, by any means, of all real property.
2. Prior to a board of trustees accepting any donated real or personal property that has conditions as to how to use the proceeds from the sale or lease of the property, the college must submit to the Community College System Office, Administrative and Facility Services Section, a copy of the documents transferring the real or personal property.
3. The System Office staff will review the documents for compliance with the legislation and present those donations that meet the requirements of the legislation to the State Board for approval.
4. If approved by the State Board, the college may accept the donation of this real or personal property. If not approved by the State Board, the college cannot accept the donation of this real or personal property.
5. When a college intends to sell or lease any real property, regardless of whether it was donated or purchased, they must obtain State Board approval prior to selling the property.
6. The college shall follow the disposal methods authorized under Article 12 of Chapter 160A of the General Statutes to sell or lease any donated real or personal property that has conditions as to how to use the proceeds from the sale or lease of that property.
7. The college shall follow the disposal methods authorized under G.S. 115D-15(a) to sell or lease any real property that does not have conditions as to how to use the proceeds from the sale or lease of that property.
8. If a donation of real or personal property does not have any conditions as to how to use the proceeds from the sale or lease, the proceeds must be used for capital outlay purposes.

These statutes do not apply to donations made to a college's foundation and retained by the foundation. If the foundation subsequently transfers the donation to the college, the above procedures would have to be followed.

PURCHASING AND EQUIPMENT MANUAL 18 March 2006

EQUIPMENT INVENTORY PROCEDURES

All records described in this section, as required for inventory purposes, are necessary to comply with standards established by the North Carolina Community College System Office, State Auditors Office, and the Division of Purchase and Contract.

III. DONATED EQUIPMENT

Donated items of equipment which have a value of \$1,000 or more must be assigned an inventory number and placed on inventory.

PURCHASING AND EQUIPMENT MANUAL 21 March 2006

Chapter 8

Analysis of Anti-Competitive & Discriminatory Policies on College Campuses

Throughout this book we are looking at laws, rules and policies that infringe upon the rights of faculty and staff members at colleges and universities. We are also looking at laws that impinge upon American Small Business Families. These policies are unlawful and unconstitutional. They are inimical to any reasonable semblance of a free market. Much of the law that is discussed in this chapter can be found in Section D. The following First Amendment concepts repeated here are found in Chapter 15, *The Constitution, The Declaration of Independence & The Bill of Rights*. Having laid this groundwork, the anti-competitive and unlawful policies of five institutions are briefly analyzed throughout this chapter. Finally, The Instructor Lydia Powell Story documents how the system is being gamed by two anomalous Vance-Granville Community College teachers. Every industry has bad apples and my industry stands shoulder to shoulder to weed out thieves and others acting unprofessionally and unethically. I would much rather work and operate my business on a mutually beneficial, symbiotic, law-abiding, competitive and level playing field. Still, we don't shut down an entire university every time an instructor gets arrested. Similarly, the unethical behavior of a college employee should not shut down an entire industry merely by association.

The First Amendment and Commercial Speech

CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

“[v]igilance is necessary to ensure that public employers do not use authority over employees to silence discourse, not because it hampers public functions but simply because superiors disagree with the content of employee’s speech,” Justice Thurgood Marshall in *Rankin v. McPherson* (1987). Stephens and Scheb, American Constitutional Law, Belmont, CA: Thomson Learning Wadsworth, 2003. Pg. 458.

Constituent school administrators of federally funded learning institutions NCCCS and UNC violate the First Amendment rights of American Small Business Families as well as those of their teachers (my clients) by banning this industry’s legitimate and lawful business. Banning this business is a violation of the industry’s clients’ First Amendment right to Free Speech as well as other constitutionally protected commercial speech.

Whether they are ordered by a state agency or simply affected by the harassing efforts of a department chairperson, any ban on this industry’s interaction with faculty is in violation of the First Amendment right to Free Speech and Freedom of Assembly. In order for a government to censor content, it must show 1) the censorship is necessary to promote a compelling government interest; 2) the censorship actually advances the compelling government interest; and 3) the censorship is not overly broad. There is no compelling government interest in banning this industry from college campuses. The censorship inures only to the benefit of the few international, mega-conglomerate publishing oligopolies (IMCPOs). Any censorship about buying or selling books is overly broad, putting American Small Business Families OUT OF BUSINESS with no compelling reason.

As many of one's clients become friends, discussions about any number of life's issues are prohibited by constituents of NCCCS and UNC. An industry being banned from campuses censors this speech by not allowing any contact with faculty during working hours.

"But while the First Amendment's free speech guarantee is not absolute, government action restricting speech usually receives very strict judicial scrutiny. On justification for this high level of protection is the "marketplace" rationale. On this view, the free competition of ideas is the surest means of attaining truth and the marketplace of ideas best serves this end when restrictions on speech are kept to a minimum and all viewpoints can be considered." Mallor, et al. Business Law and the Regulatory Environment, New York: McGraw-Hill Irwin, 2001, pg 43.

If an instructor's life insurance salesman, financial consultant, old college chum, or any number of other people (including IMCPO sales reps) can visit him or her at their place of work without censorship of the content of their communication, then unlawful bans of the NCCCS and UNC are simply discriminatory against a specific occupation, in violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

The test is that laws regulating commercial speech must directly advance a substantial government interest and must be no more extensive than necessary to meet that interest. The usual justification for protecting commercial speech is to promote informed consumer choice by removing barriers to the flow of commercial information. Mallor, et al. Business Law and the Regulatory Environment, New York: McGraw-Hill Irwin, 2001, pg 43.

CITIZENS UNITED v. FEDERAL ELECTION COMMISSION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 08–205. Argued March 24, 2009—Reargued September 9, 2009—Decided January 21, 2010

JUSTICE KENNEDY delivered the opinion of the Court.

<http://www.supremecourtus.gov/opinions/09pdf/08-205.pdf>

Selected Excerpts (emphasis, mine)

First Amendment standards, however, “must give the benefit of any doubt to protecting rather than stifling speech.” *WRTL*, 551 U. S., at 469 (opinion of ROBERTS, C. J.) (citing *New York Times Co. v. Sullivan*, 376 U. S. 254, 269–270 (1964)).

Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints. See, e.g., *United States v. Playboy Entertainment Group, Inc.*, 529 U. S. 803, 813 (2000) (striking down content-based restriction). Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. See *First Nat. Bank of Boston v. Bellotti*, 435 U. S. 765, 784 (1978). As instruments to censor, these categories are interrelated: Speech restrictions based on the identity of the speaker are all too often simply a means to control content.

Quite apart from the purpose or effect of regulating content, moreover, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker’s voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each.

Corporations and other associations, like individuals, contribute to the ‘discussion, debate, and the dissemination of information and ideas’ that the First Amendment seeks to foster” (quoting *Bellotti*, 435 U. S., at 783)). The Court has thus rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not “natural persons.”

Commercial Expression

In an important 1976 decision, the Supreme Court struck down Virginia's ban on the advertisement of prescription drug prices (Virginia State Board of Pharmacy v. Virginia Citizen's Consumer Council). Writing for the Court, Justice Harry Blackmun stated that although reasonable time, place, and manner restrictions on commercial speech are legitimate and although the state is free to proscribe "false and misleading" advertisements, consumers have a strong First Amendment interest in the free flow of information about goods and services available in the marketplace.

In his Opinion for the Court in Central Hudson Gas and Electric Corporation v. Public Service Commission of New York (1980), Justice Lewis Powell articulated the general rationale for First Amendment protection in this area:

Commercial expression not only serves the economic interest of the speaker, but also assists consumers and furthers the societal interest in the fullest possible dissemination of information. In applying the First Amendment to this area, we have rejected the "highly paternalistic" view that government has complete power to suppress or regulate commercial speech.

In the same opinion, Justice Powell outlined a four-part test for evaluating regulations of commercial speech. To begin with, commercial speech must "concern lawful activity and not be misleading" if it is to be protected under the First Amendment. If this prerequisite is met, then three additional questions must be considered:

(1) Is the "asserted governmental interest" in regulation substantial?

(2) Does the regulation directly advance the asserted governmental interest?

(3) Finally, is the regulation more extensive than is necessary to serve that purpose? This test is an attempt to balance the need for consumer protection on one hand with the value of a free marketplace of ideas on the other.

Stephens and Scheb, American Constitutional Law, Belmont, CA: Thomson Learning Wadsworth, 2003. Pg. 456.

It is abhorrent that the community colleges and universities are being bolstered and promoted by American taxpayer funds (\$78.2 billion, 2011) through the American Recovery and Reinvestment Act of 2009 as well as other initiatives which are saving their jobs, while they simultaneously attack another industry and the Small Business Families who eke out a living within it.

Small Businesses have been called the engine of the American economy, without which there is no economic recovery. Unlawfully, state governments and agencies are favoring one set of businesses over another. In this case, state officials are favoring international, mega-conglomerate, publishing oligopolies over the life blood of the nation, America's Small Business Families, their employees and economic spheres. The State of North Carolina (and others) is creating unemployment and misery by unlawfully and unconstitutionally eradicating a specific occupation.

Asheville Buncombe Technical Community College

POLICY

BOOK SOLICITATIONS

Complimentary copies of textbooks are considered personal property of the individual. Since such books are acquired through affiliation with the College, staff members are encouraged to use complimentary books as references, share them with colleagues, donate them to the LRC, or share them with students.

College regulations prohibit visitor solicitation and/or purchasing of books or other materials on campus. Individual visitors coming on campus for the purpose of purchasing textbooks should be referred to the Vice President, Instructional Services. In the absence of the Vice President, Instructional Services, they should be referred to the Vice President, Administrative Services or the President, who will offer to inform the staff of the company's services. Purchasers who wish may leave or send specific information concerning their plan for purchases. This information will then be distributed as considered appropriate.

ANALYSIS

Complimentary copies of textbooks are considered personal property of the individual.

Finally! AB Tech is absolutely correct! The books are the personal property of the individual. This book is about the rights of these individuals to do what they want with their personal property. Bravo!

Since such books are acquired through affiliation with the College, staff members are encouraged to use complimentary books as references, share them with colleagues, donate them to the LRC, or share them with students.

Affiliation with the college does not divest individuals of their constitutional and lawful rights. AB-Tech should neither encourage nor discourage its employees as to how they handle their personal affairs and belongings. This statement indicates that AB-Tech finds the constitutionally-protected practice of selling one's personal possessions to be inappropriate.

College regulations prohibit visitor solicitation and/or purchasing of books or other materials on campus.

Using the umbrella term "solicitation" and then making it a policy is an old dodge. The proper term is "commercial speech". The college can not dictate the subject matter of which visitors and staff talk about. College campuses are quasi-public. Anyone can visit the campus and have discussion with anyone on any subject. These unlawful policies dictate that teachers can not discuss their books with one specific occupation. The term "solicitation" is used to further the State of North Carolina's goal of eradicating a specific occupation, in violation of federal law.

Individual visitors coming on campus for the purpose of purchasing textbooks should be referred to the Vice President, Instructional Services.

If an instructor's insurance agent or Avon lady visits the instructor at his or her office, are they similarly directed to the Vice President, Instructional Services? This hurdle is a restraint of trade and an attempt, as a State of North Carolina agency, to target and eradicate a specific occupation.

In the absence of the Vice President, Instructional Services, they should be referred to the Vice President, Administrative Services or the President, who will offer to inform the staff of the company's services. Purchasers who wish may leave or send specific information concerning their plan for purchases. This information will then be distributed as considered appropriate.

This will lead to considerable delay and loss of income producing time in a book buyer's day. In other words, "Stay off our campus, book buyer! Publisher reps...step right this way. Can I get you a beverage?" In the second sentence, AB-Tech already stated that they considered the practice to be inappropriate. So the Vice President, Administrative Services or the President need only throw a book buyer's marketing material in the trash to fulfill the requirements of this policy.

McDowell Technical Community College -- 31 Lost Clients

POLICY

From: Bryan Wilson
To: All McDowell
Date: 10/26/2007 4:32 pm
Subject: Complimentary Textbooks and Secondary Employment in Distance Education

At least weeks president's meeting, two issues came to my attention that have become audit issues at other colleges. The first issue involves textbooks. One of our sister institutions had an employee that was collecting complimentary textbooks shipped to the college to faculty that had already retired. The employee was taking these textbooks and selling them to used book vendors. This according to the state auditor is illegal.

The state's position on these books is they are the property of the college and not a faculty member. If they are resold all proceeds are to go the college.

I am still researching what happens next, **it is illegal for a faculty/staff member to sell these books and financially benefit since they are deemed to be state property.** Several other colleges already have policies in place to clarify this. We plan to develop policy to clarify and address this issue, as soon as possible.

Policy

It is the opinion of the Attorney General that complimentary textbooks are the property of the college and may be disposed of only in accordance with G.S. 115D-15 and with the approval of State Board of Community Colleges. Any proceeds must be used for capital outlay purposes.

Desk and complimentary copies of books and other instructional materials, whether solicited or unsolicited, sent to faculty or staff because of their position with the college must not be sold for personal gain.

ANALYSIS

At least weeks president's meeting, two issues came to my attention that have become audit issues at other colleges. The first issue involves textbooks.

[At last week's Presidents Meeting...If a man of Wilson's character seeks to attack the job of another man, he really should do it with proper grammar, punctuation and spelling.](#)

One of our sister institutions had an employee that was collecting complimentary textbooks shipped to the college to faculty that had already retired. The employee was taking these textbooks and selling them to used book vendors. This according to the state auditor is illegal.

NCCCS constituents relied on an opinion written by then State Auditor, Leslie Merritt. A department secretary at Western Piedmont Community College was **wrongfully discharged** for selling complimentary textbooks addressed to retired faculty. I've bought books from this woman. My experience with her was diametrically opposed from what I have heard about the matter. I have the book buying and investigative experience to know when teachers are gaming the system as some will do, albeit very rarely. See *The Instructor Lydia Powell Story* later in this chapter. I only interviewed a few people about the matter but I believe that this was a mountain made of a molehill. This department secretary, ill with lupus, was run off without benefit of knowing her constitutional rights. One staff member I interviewed suggested that the dismissed employee was targeted by her department chair or another person of authority who holds the practice of selling review books in disdain. In a nutshell, the "complainant" in this matter would not be the state. Rather, it would be a civil matter brought by the publishers or other faculty whose books she may have sold. Due process was not out the door, it was never allowed on the campus. The books "belonging to" other faculty were for faculty who were retired or had moved on, meaning she sold trash. She needs to be reinstated, made whole and apologized to.

The state's position on these books is they are the property of the college and not a faculty member. If they are resold all proceeds are to go the college.

Proceeds going to the college is a violation of the Umstead Act and the federal Takings Clause. Wilson's direction as to what to do with the monies received if the books are resold anyway results in the state receiving ill-gotten gains from this "illegal" practice. His argument just doesn't work.

I am still researching what happens next, **it is illegal for a faculty/staff member to sell these books and financially benefit since they are deemed to be state property.**

It is not illegal for a faculty/staff member to sell these books. It is illegal for Wilson to threaten state employees for their lawful and constitutionally-protected practices. The books are not the property of the state. If they were, the state would have a huge inventory and unreported income problems. Wilson is wrong. AB-Tech holds an opposite view..."Complimentary copies of textbooks are considered personal property of the individual."

Policy

It is the opinion of the Attorney General that complimentary textbooks are the property of the college and may be disposed of only in accordance with G.S. 115D-15 and with the approval of State Board of Community Colleges. Any proceeds must be used for capital outlay purposes.

As presented in Chapter 6 and elsewhere in this report, the referenced opinion is non-binding and nugatory as it violates preemptive federal law. The use of these funds for capital outlay purposes constitutes a Taking in violation of The Takings Clause of the U.S. Constitution. The books in question are the property of the teachers until disposed as each person deems fit. Proscribing what one may do with their own property is tantamount to a taking. It sets the value at zero with no compensation regardless of true value. In effect, the *value* of their property has been confiscated by government activity. These books are not counted as income for the constituent institutions.

Desk and complimentary copies of books and other instructional materials, whether solicited or unsolicited, sent to faculty or staff because of their position with the college must not be sold for personal gain.

All textbook authors profit because of their position with their colleges and universities, Teacher-authors couldn't sell even one book without their affiliation. The latter admonition is invalid and addressed above. In the law section of this report, we see clearly how unlawful it is for institutions to require staff to not sell or how to sell their personal property and what to do with their money.

POLICY

6.5
COMPLIMENTARY TEXTBOOKS

As a policy of the Trustees of Western Piedmont Community College, any textbook sent to the College as a complimentary copy, review copy, or desk copy, regardless of how it is addressed, is considered to be the property of the College. Any limitation on disposal of said textbooks as established by the publishing company shall be observed, including any request to return any unwanted textbooks to the publisher. Textbooks stamped "not for sale or resale" shall not be sold, resold, or given as gifts. Such textbooks should be returned to the publisher when deemed to be of no further value. Any textbook determined to be property of the College and no longer useful to the College, may be sold by the College in accordance with the requirements established by G.S. 115D-15 for the disposal of surplus state property.

Limitations on Sale of Unsolicited, Complimentary Textbooks: Any limitations established by the publishing company shall be observed. Textbooks stamped "not for sale or resale" shall not be sold or resold. This limitation must be observed whether the textbook is treated as the property of the College or the individual. Such textbooks should be returned to the publisher when deemed to be of no further value. Textbooks, not so labeled, and determined to be property of the College, may be sold by the College in accordance with the requirements established by G.S. 115D-15 for the disposal of surplus state property.

7.1
VISITORS

Western Piedmont Community College prides itself on being an open door institution. The open door, while important to the College Mission, applies to the admissions process. To protect the safety of students, faculty, staff, and others on the campus, the College welcomes visitors and guests identified with a specific college purpose or function during normal operating hours. Only registered students are permitted to attend College classes and laboratories and utilize certain College support services. Persons who are not conducting business or purposely engaged in a sanctioned activity of Western Piedmont Community College may be asked to leave the premises. Visitors on campus are subject to the same code of conduct required of students.

*(Section 7.1, **VISITORS**, approved by Trustees on July 21, 2003.)*

ANALYSIS

6.5 COMPLIMENTARY TEXTBOOKS

As a policy of the Trustees of Western Piedmont Community College, any textbook sent to the College as a complimentary copy, review copy, or desk copy, regardless of how it is addressed, is considered to be the property of the College.

Federal law states otherwise. The books are the property of the addressee teacher, not the institution or state. This is a long established federal law based in the U.S. Constitution. There is no NC state law allowing for colleges to dictate the disposition of personal materials. The full text of the McCraw letter is in the Essential Reading section for this chapter.

G.S. 75-27 provides that, unless otherwise agreed, where unsolicited goods are delivered to a person, the person has a right to refuse to accept delivery of the goods and is not bound to return such goods to the sender. If such unsolicited goods are addressed to and intended for the recipient, they shall be deemed a gift to the recipient, who may use them or dispose of them in any manner without any obligation to the sender.

In May 1990, the Attorney General's office sent a memo to community college presidents on the issue of complimentary textbooks. This memo stated that it was the Attorney General's opinion that books addressed to a college or unnamed college officer or employee should be treated as gifts to the college, and that books addressed to college officers or employees at their home addresses should be treated as gifts to individuals. The Attorney General's memorandum stated that books addressed to named college officers or employees at their college addresses could be intended as a gift to the college through its agents, or as gifts to the individuals themselves, and recommended that the community college adopt policies either a) treating all such books as gifts to the colleges, b) treating all such books as gifts to individuals, or c) establishing criteria for deciding whether such books should be treated as gifts to the college or as gifts to individuals.

Attorney General's opinions are advisory and are not binding on the community colleges. Several community colleges have elected to follow the memorandums advice and institute policies, however. Mr. Rosenthal mentioned 3 colleges in his materials, Western Piedmont Community College, McDowell Technical Community College, and Asheville-Buncombe Technical Community College. I spoke with the presidents of the three community colleges regarding their policies, which vary.

*Kara A. McCraw
Staff Attorney and Legislative Analyst
NC General Assembly, Research Division
06-21-2010*

*"In the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment." Chief Justice Rehnquist, in *City of Dallas v. Stanglin*, 490 U.S. 19 (U.S. Sup. Ct. 1989). Mallor, et al. *Business Law and the Regulatory Environment*, New York: McGraw-Hill Irwin, 2001, pg 49.*

Any limitation on disposal of said textbooks as established by the publishing company shall be observed, including any request to return any unwanted textbooks to the publisher. Textbooks stamped “**not for sale or resale**” shall not be sold, resold, or given as gifts. This limitation must be observed whether the textbook is treated as the property of the College or the individual. Such textbooks should be returned to the publisher when deemed to be of no further value.



Hey, wait a minute!

“Not for Sale” Notices are Unlawful Extensions of Copyright Law and Invalid.

See Notices of Copyright and Unlawful Extensions -- How the IMCPOs’ Textbook Notice of Copyright Extends Beyond Copyright Law in Chapter 26. The limitation about not giving these books as gifts is just draconian and an over the top abuse of the institution’s employees. The wording is straight from the Text and academic Authors Association propaganda discussed in detail in Chapters 24 and 25.

United States Attorney’s Manual

Title 9, Criminal Resource Manual

1854 Copyright Infringement—First Sale Doctrine

The first sale doctrine, codified at 17 U.S.C. § 109, provides that an individual who knowingly purchases a copy of a copyrighted work from the copyright holder receives the right to sell, display or otherwise dispose of that particular copy, notwithstanding the interests of the copyright owner.

The IMCPOs knowingly, willfully, repeatedly and continually violate federal law as it pertains to deceptive practices. These deceptive practices include labeling books meant for consumers with false and misleading Notices of Copyright. These false statements are in violation of Section 506(c) of the *Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code*. The act of affixing these false and misleading Notices of Copyright to hundreds of thousands of books sent to hundreds of thousands of consumers is a violation of the Federal Trade Commission Act of 1914 and the Copyright Law found in the *United States Code*. As these books are mailed, annually hundreds of thousands of acts of Mail Fraud are also committed by the IMCPOs.

(c) Fraudulent Copyright Notice.—Any person who, with fraudulent intent, places on any article a notice of copyright or words of the same purport that such person knows to be false, or who, with fraudulent intent, publicly distributes or imports for public distribution any article bearing such notice or words that such person knows to be false, shall be fined not more than \$2,500.

It is unlawful for the State of North Carolina through its state agencies, NCCCS, UNC and their constituent institutions to advocate for and choose to protect the interests of one set of companies while actively working for the eradication of a specific occupation. WPCC is not the international publishers' watchdog, promoter, defender or apologist. The requirement that my teacher-clients are to "observe" the limitations placed on their marketing materials set by the marketers (private companies hoping to do mega-millions of dollars in business) is based on the language of the IMCPOs and their unlawful "Stomp the Comp" campaign. See Chapters 24 and 25 where the "Stomp the Comp" campaign is discussed. These state institutions do not work for the international mega-conglomerate publishers and are not the marketing or legal departments for these companies. The books are simply marketing materials for the publishing industry. These actions are violations of federal law and restrain trade and interstate commerce.

Any textbook determined to be property of the College and no longer useful to the College, may be sold by the College in accordance with the requirements established by G.S. 115D-15 for the disposal of surplus state property.

See my report on the WPCC Auction in Chapter 9, *A Tale of Two Community Colleges*. See Chapter 23 on the federal and preemptive Takings Clause. The use of these funds for institutional purposes constitutes a Taking in violation of The Takings Clause of the U.S. Constitution. The books in question are the property of the teachers until disposed as each person deems fit. Proscribing what one may do with their own property is tantamount to a taking. It sets the value at zero with no compensation regardless of true value. The *value* of their property has been confiscated by government activity. These books are not revenue or assets for the constituent institutions.

State ownership of these marketing materials would result in an increase in the state's net assets. Selling these assets would be 1) counter to the publisher's purpose of removing these review books from the marketplace...the entire reason for the Speas Opinion in the first place; and 2) a violation of The Umstead Act as the state would be competing with local businesses.

7.1 VISITORS

Western Piedmont Community College prides itself on being an open door institution. The open door, while important to the College Mission, applies to the admissions process. To protect the safety of students, faculty, staff, and others on the campus, the College welcomes visitors and guests identified with a specific college purpose or function during normal operating hours. Persons who are not conducting business or purposely engaged in a sanctioned activity of Western Piedmont Community College may be asked to leave the premises. Visitors on campus are subject to the same code of conduct required of students.

Using the umbrella term "solicitation" and then making it a policy is an old dodge. The proper term is "commercial speech". The college can not dictate the subject matter of which visitors and staff talk about. College campuses are quasi-public. Anyone can visit the campus and have discussion with anyone on any subject. These unlawful policies dictate that teachers can not discuss their books with one specific occupation. The term "solicitation" is used to further the State of North Carolina's goal of eradicating a specific occupation, in violation of federal law. If an instructor's insurance agent or Avon lady visits the instructor at his or her office, are they subject to such scrutiny? This is an attempt, as a State of North Carolina agency, to target and eradicate a specific occupation.

As many of one's clients become friends, discussions about any number of life's issues are prohibited by constituents of NCCCS and UNC. An industry being banned from campuses censors this speech by not allowing any contact with faculty during working hours. If an instructor's life insurance salesman, financial consultant, old college chum, or any number of other people (including IMCPO sales reps) can visit him or her at their place of work without censorship of the content of their communication, then unlawful bans of the NCCCS and UNC are simply discriminatory against a specific occupation, in violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

University of North Carolina – Fayetteville State University -- 67 Lost Clients

POLICY

From: Womble, Jeffrey
Sent: Tuesday, February 15, 2011 11:57 AM
To: FSU Campus Faculty and Staff
Subject: Solicitor on Campus

Dear FSU Family,
There have been instances whereby individuals have been showing up at campus offices soliciting to buy books. He states that he is willing to give cash on the spot. He also states that he has been given university approval to be on campus. He has not. If you encounter him or anyone else soliciting, please contact the FSU Police Department immediately.

ANALYSIS

There have been instances whereby individuals have been showing up at campus offices soliciting to buy books.

This email does not reference me. Still, the problems are the same and I have experienced the same behavior at other campuses. Womble makes issue of one's having approval to be on campus. It is against the law to discriminate against individuals and occupations by judging the nature of a conversation between private parties. As you can see on the next page, I, like my fellow book buyers, obey the law. The parking permits represented below are all that is required for me to be on campus, whether I am using the library or having a conversation with a faculty member about an infinite number of topics.

He states that he is willing to give cash on the spot.
That's what we do. It is not the implied nefarious behavior.

He also states that he has been given university approval to be on campus. He has not.
Um, yes, we have. See parking permits below.

If you encounter him or anyone else soliciting, please contact the FSU Police Department immediately.
Threat of arrest and prosecution simply for performing one's lawful business in a lawful manner while following the organization's rules is an indication of UNC's goal of eradicating a specific occupation, a violation of federal law.

Fayetteville State University
Temporary Parking Permit
(Valid only when 1 day is approved)

ISSUED TO: A. Pessenden
TAG NO: _____

FAC STAFF RESIDENT
CONTRACTOR VISITOR
COMMUTER

AREA: Visitor

MONTH: _____
DATE: _____
YEAR: 10 12 13 14
ISSUED BY: P. Pessenden

Fayetteville State University
Temporary Parking Permit
(Valid only when 1 day is approved)

ISSUED TO: A. Pessenden
TAG NO: _____

FAC STAFF RESIDENT
CONTRACTOR VISITOR
COMMUTER

AREA: Visitor

MONTH: _____
DATE: _____
YEAR: 10 12 13 14
ISSUED BY: P. Pessenden

FAYETTEVILLE STATE UNIVERSITY
TEMPORARY OR VISITOR PERMIT
Name: A. Pessenden
Phone: 11-02-10
Lic: 742 No G
Com: B. Pessenden
APPLY TO LOWER LEFT FRONT WINDOW

Vance Granville Community College -- 43 Lost Clients

POLICY

Date: Wed, 21 Apr 2010 09:08:12 -0400
From: "Bobby VanBrunt" vanbruntb@vgcc.edu
Subject: Faculty Selling of Textbooks

All, It is my understanding that a person stopped by some of our faculty offices requesting to buy back books sent to us by publishers. It is the position of the VGCC administration that books received by faculty in the name of Vance-Granville are not the personal property of the faculty who request them and faculty should not sell them for personal gain. Typically, they are requested using VGCC letterhead, email or other official VGCC correspondence as a result of their employment with the college and as such are the property of the college for use by the faculty member requesting the books. I would politely tell anyone requesting buying of books be told it is in violation of VGCC policy. bvb

VISITOR'S PASS & PARKING PERMIT
Good for the following date only:
4-20-10

Issued to: (please print)
Name: A. ROSEVILLE
Street Address: PO BOX 1689
City/State/Zip: ASHEVILLE NC
Phone (daytime): 828-251-1111
Vehicle License No.:
Visitor's Location: V-1234

Issued by:
Name: Bobby Van Brunt
Time: 2:15 PM

A copy of this form will remain on file in the Security Office. Keep one copy on your person to serve as a visitor's pass and place one copy on your dashboard to serve as a parking permit. Any visitor who receives a parking ticket is required to settle the ticket with campus security (Room 3106) within 5 working days of the ticket date. After such time, the ticket will be referred to District Court (General Statute 115A-14.1).

Thank you for your cooperation.
VGCC Security Office
408-2081, ext. 329

SE-07
3/00

ANALYSIS

It is my understanding that a person stopped by some of our faculty offices requesting to buy back books sent to us by publishers.

This time this email is about me. On this day, I was having a private conversation with a faculty member. We were talking about her health and some vacation plans she had with her boyfriend. Then there was a knock on the door and a security guard advised me to leave the campus. I complied but stopped by the administration building to drop off my card and some industry materials. I offered to provide information on the issue. I was denied this opportunity and never contacted by the school. A few months later, when talking to a client, I was provided this unlawful and aggravating email. In a few keystrokes from an uneducated NCCCS constituent administrator, I lost 43 clients that I was providing service to for over seven years. I am a member of their family. I have been with my wonderful clients at VGCC through births and deaths, marriages and divorces as well as illnesses and celebrations. My client-friends at VGCC have shared the deepest of thoughts and feelings with me and I share mine with them. One faculty member at VGCC suggested that her sister and I might date. All of this was gone when this unlawful and unconscionable email was sent to VGCC faculty. I am no longer a friend and confidant nor a professional, service-providing American Small Businessman. I am only a trespasser, All of that work. All of that time. All of that investment. All of that success. All thrown in the garbage like a textbook review copy that was never sold.

It is the position of the VGCC administration that books received by faculty in the name of Vance-Granville are not the personal property of the faculty who request them and faculty should not sell them for personal gain.

It is not illegal for a faculty/staff member to sell these books. It is illegal for an institution to threaten state employees for their lawful and constitutionally-protected practices. The books are not the property of the state. If they were, the state would have huge inventory and unreported income problems. AB-Tech holds an opposite view..."Complimentary copies of textbooks are considered personal property of the individual."

Typically, they are requested using VGCC letterhead, email or other official VGCC correspondence as a result of their employment with the college and as such are the property of the college for use by the faculty member requesting the books.

If you don't want staff to use school letterhead, then ask them not to use school letterhead. The response should not be to restrain trade. Simply ask them not to use the letterhead. If the publishers require such letterhead, then they won't ship the books and the problem is solved without such an affront to the rights of the faculty and without the numerous violations of federal and state laws that these unlawful and unconstitutional restraining policies cause.

Affiliation with the college does not divest individuals of their constitutional and lawful rights. AB-Tech should neither encourage nor discourage its employees as to how they handle their personal affairs and belongings.

I would politely tell anyone requesting buying of books be told it is in violation VGCC policy.

At this point, the American Small Businessperson becomes a trespasser with no valid purpose on campus and is subject to physical removal, detention or arrest.

The back of my business card...

[Alan's Book Selling Ethics Guidelines](#)

Sell UNSOLICITED Books...ETHICAL

Sell a REQUESTED Book that you ordered in good faith but don't like or need...ETHICAL

Requesting a book for the purpose of selling it...

THIS IS WRONG and causes problems for your colleagues who sell their books ethically.

www.AlansBookService.com

The Instructor Lydia Powell Story - Room 6126

As I have mentioned in this report, there are teachers who game the system, ordering more books than they are entitled to. Obtaining review textbooks should be pedagogical and incidental. The percentage of these thieves is a small fraction of one percent though their actions can shut down the activity on an entire campus. As a businessman, I agree that this anomalous behavior should be frowned upon and the unethical staffer should be disciplined. My industry, as with most others, is better off operating in sunshine. This is a proper business that is better off working with ethical faculty rather than the anomalous miscreant.

Powell colludes to fraudulently obtain numerous books worth many thousands of dollars with her next door office neighbor, Instructor Gloria Freeman (Room 6128). My understanding is that Powell orders the books and has some addressed to Freeman. If this is incorrect, then Freeman is over-ordering all by herself. There are others on campus who have periodic and unusually high book inventories, considering the courses offered and the number of instructors. Powell is the one who made the admission to me, "I put my son through college selling these books [on FacultyBooks]." This admission came in response to a price objection where Powell was advising me as to how well she knew book prices and that she had been selling these books online for years. Powell is a professional book seller. An audit of Powell's and Freeman's income through FacultyBooks.com as well as their ordering patterns with Cengage and other publishers would be illuminating, requiring the consideration of their discipline and possibly dismissal from VGCC.

In this case, the ban is used by Powell to get rid of snooping book buyers. Since Powell keeps these books in her office and then takes them home for secretive selling on FacultyBooks.com, she doesn't care that her colleagues and my industry are being unfairly penalized and shunned to hide her criminal behavior. Teachers who over-order review copies for the sole purpose of selling these books are thieves. Unlike Powell and Freeman, MY clients are ethical in their behavior. Upon being handed my business card with the ethics guidelines, Powell met with security. Within minutes, to conceal her illegal behavior, I was thrown off campus.

My Transaction Notes for Powell & Freeman...

Lydia Powell, VGCC

08-21-2006 \$20 P-S/FB Sells online

04-12-2007 \$473.50 matched FB

11-05-2009 \$190 Just sold a bunch.

Gloria Freeman, VGCC

08-21-2006 \$55

04-12-2007 \$75 P-S

11-05-2009 \$305

04-20-2010 \$300 Selfish Money Grubber wants \$50 per book

P-S = Price Sensitive FB = FacultyBooks.com

The Used Textbook Resale Market & The Law[©]

Multi-State Comprehensive Edition

Essential Reading

Chapter 8

Statutory Review by NC General Assembly, Research Division, June 21, 2010

Statutory Review by NC General Assembly, Research Division, June 21, 2010

In a message dated 6/21/2010 2:46:36 P.M. Eastern Daylight Time, Queenla@ncleg.net writes:

Mr. Rosenthal,
Here is the initial information I have gotten back from our research department. In addition to what has been provided, I have linked the general statute 115D-15.
http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_115D/GS_115D-15.html
I did pass along the message about the Umstead Act, but she felt that the issue of who owned the textbooks was more the issue at hand.
Let us know if you have questions.
Thanks,
Lisa Nelson
919-733-3460

From: Kara McCraw (Research)
Sent: Thursday, June 17, 2010 05:18 PM
To: Lisa Nelson (Sen. Queen)
Cc: Sen. Joe Sam Queen; Shirley Iorio (Research)
Subject: [RTS-2010-01194] Resell of Complementary Textbooks (Sen. Joe Sam Queen)

Lisa,
I'm sorry that it's taken so long to get this information to you, but I now have the information from the various parties related to the constituent question regarding resale of complimentary textbooks provided to faculty members at community college campuses.

You had requested information on: 1) whether community colleges could forbid teachers from reselling complementary textbooks received from a textbook company to a third party, and 2) prevent individuals from coming on to campus for the purpose of seeking such textbooks for resell. There is not a specific statutory answer to this question, but the Attorney General's office has issued an opinion which has guided the creation of some community college policies.

Question 1: Barring Resell of Textbooks by Teachers

State statutes do not specifically address the issue of resell of complimentary textbooks to a third party. The key issue in determining if teachers can be barred from reselling complementary textbooks is who owns the textbook – the State or the teacher.

G.S. 75-27 provides that, unless otherwise agreed, where unsolicited goods are delivered to a person, the person has a right to refuse to accept delivery of the goods and is not bound to return such goods to the sender. If such unsolicited goods are addressed to and intended for the recipient, they shall be deemed a gift to the recipient, who may use them or dispose of them in any manner without any obligation to the sender.

In May 1990, the Attorney General's office sent a memo to community college presidents on the issue of complimentary textbooks. This memo stated that it was the Attorney General's opinion that books addressed to a college or unnamed college officer or employee should be treated as gifts to the college, and that books addressed to college officers or employees at their home addresses should be treated as gifts to individuals. The Attorney General's memorandum stated that books addressed to named college officers or employees at their college addresses could be intended as a gift to the college through its agents, or as gifts to the individuals themselves, and recommended that the community college adopt policies either a) treating all such books as gifts to the colleges,

b) treating all such books as gifts to individuals, or c) establishing criteria for deciding whether such books should be treated as gifts to the college or as gifts to individuals.

Attorney General's opinions are advisory and are not binding on the community colleges. Several community colleges have elected to follow the memorandums advice and institute policies, however. Mr. Rosenthal mentioned 3 colleges in his materials, Western Piedmont Community College, McDowell Technical Community College, and Asheville-Buncombe Technical Community College. I spoke with the presidents of the three community colleges regarding their policies, which vary.

Western Piedmont Community College: Jim Burnett, President of Western Piedmont, reported they have a policy that any textbook sent to the College as a complimentary copy, review copy, or desk copy, regardless of how it is addressed, is considered to be the property of the College. The policy then directs that textbooks determined to be property of the College and no longer useful may be sold by the College in accordance with the requirements established by G.S. 115D-15 for the disposal of surplus state property.

McDowell Technical Community College: Bryan Wilson, President of McDowell Tech, reported that they have a policy, based on the Attorney General's opinion, that complimentary textbooks are the property of the college and must be disposed of in accordance with G.S. 115C-15. The policy further states that desk and complimentary copies of books, whether solicited or unsolicited, that are sent to faculty because of their position with the college must not be sold for personal gain.

Asheville-Buncombe Technical College: President of AB-Tech reports that their policy provides that complimentary copies of textbooks are considered personal property of the individual. The policy states that since such books are acquired through affiliation with the College, staff members are encouraged to use complimentary books as references, share them with colleagues, donate them to the LRC, or share them with students.

Question 2) Authority to prevent individuals from coming on to campus for the purpose of seeking such textbooks for resell.

G.S. 115D-20(7) gives local boards of trustees broad authority to "perform such other acts and do such other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption and enforcement of all reasonable rules, regulations, and bylaws for the government and operation of the institution under this Chapter and for the discipline of students." Under this authority, a local board could enact regulations governing circumstances in which visitors may be permitted on campus, or the process for resell of textbooks. The McDowell Tech policy does not address this issue, but following are polices from Western Piedmont and AB Tech which do.

Western Piedmont: Policy 7.1 - Western Piedmont Community College prides itself on being an open door institution. The open door, while important to the College Mission, applies to the admissions process. To protect the safety of students, faculty, staff, and others on the campus, the College welcomes visitors and guests identified with a specific college purpose or function during normal operating hours. Only registered students are permitted to attend College classes and laboratories and utilize certain College support services. Persons who are not conducting business or purposely engaged in a sanctioned activity of Western Piedmont Community College may be asked to leave the premises. Visitors on campus are subject to the same code of conduct required of students.

AB Tech: College regulations prohibit visitor solicitations and/or purchasing of books or other materials on campus. Individual visitors coming on campus for the purpose of purchasing textbooks should be referred to the Vice President, Instructional Services. In the absence of the Vice President, Instructional Services, they should be referred to the Vice President, Administrative Services or the President, who will offer to inform the staff of the company's services. Purchasers who wish may leave or send specific information concerning their plan for purchases. This information will then be distributed as considered appropriate.

I hope this information is helpful, and please let me know if you have additional questions. I have attached copies of the AGs opinion and the 3 community college policies for your reference.

Thanks,
Kara
Kara A. McCraw
Staff Attorney and Legislative Analyst
NC General Assembly, Research Division
545 Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925
Phone: 919-733-2578 FAX: 919-715-5460
karam@ncleg.net

Chapter 9

The Tale of Two Community Colleges Unlawful Policies by Uninformed Policymakers



Every business has its problems to overcome. There are market driven problems and supplier problems. There are personnel, automobile, weather and health problems. Some of these problems put Small Mom and Pops out of business. This is natural. It is okay. I wouldn't complain if the dynamics of the demise of my job, my income, my industry were organic but they are not. The 40-80 percent loss of income that faces my company and those of my colleagues and competitors and their families is primarily due to the decisions made by a few people who have not pursued the available information or who had their information provided to them by the international, mega-conglomerate publishing oligopolies (IMCPOs), thereby protecting their profits by eradicating local Small Business Families. In their wake, they lay waste to constitutionally protected practices with the attendant legal and ethical underpinnings. As we will see later in this chapter, the opinion of the General Counsel for NCCCS was so far off base so as not to be even relevant to my industry. Yet, it was used to shut down North Carolina's and the surrounding regions' Small Business Families who work in my constitutionally-protected American industry.

I have been to dozens of North Carolina's community colleges and have many stories to tell from how wonderful some of my teacher-clients are to having educators literally chase me off of a campus. I've been removed by security, informed of my weasel status and have had my books confiscated. There are unlawful policies at some campuses which will get my faculty-clients fired if they do business with me or get myself arrested for trespassing. Still, I have wonderful clients in the North Carolina Community College System. Well...to be accurate...I HAD wonderful clients. Now, I just have hundreds of friends who are afraid to do business with me.

McDowell Technical Community College (MTCC) and Western Piedmont Community College (WPCC) are both in Western North Carolina, within a reasonable driving distance from my home in Asheville. A Tale of Two Community Colleges is a story of great business relationships torn asunder by NCCCS, an example of a state sanctioned book scam which takes place on a regular basis at NCCCS campuses throughout the state and unconstitutional policies yielding disastrous results. It will encompass a *perceived* wrongdoing leading to a wrongful discharge of an ill state employee, draconian policies and a ridiculous and complete failure of an ignorant resolution to the problem. Finally, the story includes an state attorney who is reported to have advised NCCCS. NCCCS, not thinking how completely wrong counsel was/is, then acted in a manner which continues to violate numerous rights of thousands of people. Get a cup of your favorite beverage and let's take a look at a bunch of bad, unlawful, unconstitutional decision making. This is too serious to be a comedy of errors.

A note about Dr. R. Scott Ralls and NCCCS

I wish to be fair in my reporting. Although the problems on the community college level are played out on the constituent institution campus, NCCCS promulgates rules and maintains oversight over its constituents. NCCCS is the leader and sets certain policies that it expects its constituents to adhere to. Certainly no accreditation process would go well for a rogue constituent institution.

I expect NCCCS to require of its constituents adherence to federal law. It is in that area that I hold Dr. Ralls and NCCCS responsible as I do their counterparts on the university level. Fairness and accuracy dictates reporting that, in this discovery process, Dr. Ralls has been helpful, responsive, thorough and thoughtful. He never picked up the ball and set to fixing the problem but I have not exhorted him to after my initial letter.

I also take note, as does Dr. Ralls, that NCCCS has no system-wide policy banning the practice of book buying or of teachers selling their constitutionally-protected personal property. With that as fact, Dr. Ralls, as he stated, could not set right a policy that did not exist.

Now, with gratitude for his efforts to date, I ask that NCCCS develop a policy that requires constituent institutions to follow the laws outlined in section D of this report and to formally acknowledge the North Carolina Small Business Families who are the backbone of North Carolina's economic foundation as well as the Used Textbook Reselling Industry they work within – said industry being the only place in academia where a student can save some money.

“North Carolinians need us to play our customary role as North Carolina's ‘economic cavalry.’”

-R. Scott Ralls, President of NCCCS

The Open Door Fall 2008: Vol. 11, No. 2

North Carolina Mom & Pop Businesses Targeted for Eradication

I had been providing service to McDowell Tech in Marion, North Carolina since when I first went into this business nine years ago. I was building a territory. When I first went into business thirty years ago, I would “cold call” at office buildings in Metro Park, Newark, Manhattan, Philadelphia, Washington, D.C. and hundreds of office and industrial parks...one right after the other. Providing service in these more rural areas of The South means that one goes great distances to service one's clients...or to just find clients.

In 2003, I was “cold calling” and had the pleasure of meeting many of the honorable and dedicated professionals at MTCC and WPCC. Over the years, I bought books and provided service. I was part of their family. My relationships with these clients were and are very important to me. They are who I have intelligent conversations with. I read their books and review their dissertations. And, as much as they are a blessing for me, for some, I am a blessing to them. For me to drive over fifty miles one way to see my clients was a pleasure. One should be able to work in a respectful and mutually beneficial atmosphere. I had a very nice, respectful, professional, friendly and mutually profitable working relationship with clients whom I developed by exercising my business skills and acumen and my sterling, wonderful and charming personality. Well, let's just say that I'm thankful for my business skills and acumen.

Conversely, the atmosphere at Asheville Buncombe Technical Community College (AB Tech) in Asheville, NC was simply just nasty and rude when I visited this campus in 2003. Nasty and rude is defined as teachers simultaneously telling me to get off the campus immediately and to “wait right there for security”, not exactly your business incubator. They have had a ban for years. Much of UNCA has a ban. Blue Ridge Community College has a ban. The bottom line is that I live in Asheville but can’t make a living in my own city. This means that I have to travel great distances (100-300 miles) every day. I don’t get a light day where I just have to drive across town to see clients. Since the perceived system wide NCCCS ban I have to go out of state to make a living and then drive home at night. At \$3.50 and \$4.00 per gallon for fuel, margins are tight, even on a good day. NCCCS, for my Small Business, is an incubus, not an incubator.



Loss of Hope * Lost Opportunity * Loss of Job

The economy was spiraling down, fuel was going through the roof and my teacher-clients had Christmas presents to buy. NCCCS, through its constituent institutions, put an end to hundreds of my business relationships just before Christmas 2007, leaving my clients in an even greater frenzy. It left me and the Small Business Families in this business broke. The devastating decision by NCCCS constituent presidents gutted six years of business and client development. There was no research or consideration to inquire of the industry itself. I immediately lost 75 percent of my community college business. Business can be defined as MY INCOME, MY LIVELIHOOD. It is as if NCCCS President Ralls called me into his office, put a Trump wig on his head, pursed his lips and said to this Private American Small Businessman, “You’re fired!”

“I’m 61. My husband is 65. This was our income. NCCCS took away our business. They just threatened all the teachers and now I’m escorted off the campuses so I don’t even go out most days. Alan, I don’t know what I’m going to do.”

North Carolina Small Business Woman & Book Buyer (2009)

NCCCS constituents relied on an opinion written by then State Auditor, Leslie Merritt. A department secretary at Western Piedmont Community College was **wrongfully discharged** for selling complimentary textbooks addressed to retired faculty. I’ve bought books from this woman. My experience with her was diametrically opposed from what I have heard about the matter. I have the book buying and investigative experience to know when teachers are gaming the system as some will do, albeit very rarely. See *The Instructor Lydia Powell Story* in Chapter 8. I only interviewed a few people about the matter but I believe that this was a mountain made of a molehill. This department secretary, ill with lupus, was run off without benefit of knowing her constitutional rights. One staff member I interviewed suggested that the dismissed employee was targeted by her department chair or another person of authority who holds the practice of selling review books in disdain. If the state can not justify the discharge of Lydia Powell, then the WPCC department secretary needs to be reinstated and made whole.

In a nutshell, the “complainant” in this matter would not be the state. Rather, it would be a civil matter brought by the publishers or other faculty whose books she may have sold. Due process was not out the door, it was never allowed on the property. My understanding is that the books “belonging to” other faculty were for faculty who were retired or had moved on, meaning she sold trash. She needs to be reinstated, made whole and apologized to. I do not suggest that Lydia Powell be discharged. Her behavior is offensive to private corporations and American Small Business Families (book buyers), not the state.



Leslie W. (Les) Merritt, Jr.

To be fair, NCCCS, et al., as I wrote, relied on an opinion from Merritt. Still, Ralls is the man at the top and, as such is responsible for my loss of income, the loss of income of many Small Business Families, the loss of income of my clients and a series of events which have left teachers feeling like criminals as many of them are forced to exercise their constitutional rights “underground.” Underground may be defined as online book services and out of state companies which have been handed my clients, gift wrapped, with a bow and a note inscribed, “***Enjoy our Small Business Families’ livelihoods! Scott***”. In a letter to me, President Ralls stated that there is no policy against the activities of my business, preferring to defer to individual college trustees who are following the same directive. There is a *de facto* policy in place and the direction needs to come from NCCCS, not 100 different schools and sets of trustees. Can you imagine my having to go school to school, trying to make presentations to trustees and wait a year or two for each to make a decision? Yet I find myself going school to school, trying to make presentations to trustees?

In April 2007, I stimulated the economy and purchased a new truck, taking on SIXTY MONTHS of a considerable payment. Business was good enough to justify the purchase. By December, my business was decimated by 75 percent as a result of the ban. Similar to Florio in New Jersey, I'm left with no business and I'm upside down on the vehicle that is not producing. Every month when I mail that truck payment, I think of NCCCS. Thanks, Les! Next time, read the federal law.

Who owns the review books and other books on faculty bookshelves? Textbooks are sent to faculty as marketing materials for review for possible adoption. See Chapter 2 for a discussion of the textbook buying business. Textbooks, novels and other trade books line the shelves. On any teacher's bookshelves, one also finds books purchased at Barnes & Noble, Borders, a local bookstore or from an online service. Books received as gifts from friends and authors are also on my client's bookshelves. Some of these books were received recently and some were placed on their shelves years ago.

Walk into any teacher's office and ask them this question: *Who owns the books on your shelves?*

Does the state own the books because they are sitting on bookshelves in an office in a state-owned building? Does the state own the stress-ball sitting on the state-owned desk that a teacher received at a state-sponsored conference? Does the state own the frames around the pictures of children and students hanging on the walls of state-owned buildings? In other words, can the state walk into a state-employed teacher's office and remove his or her books or any other belongings without consent and just compensation? The answer is obviously NO.

The state does not own these books. These books are not and never were intended to be state property. Federal and state law clearly indicates that these books are the property of the intended recipient. If a faculty member desires to sell their personal property, the state has no right to regulate or prohibit this activity. The state does not own the books that book buyers purchase from faculty. Therefore, when a teacher sells his or her books, they are selling their personal possessions, not state property.



Dr. Bryan W. Wilson

It is the system wide application of Leslie Merritt's opinion emanating from the WPCC debacle which caused President Bryan Wilson to invoke the ban at MTCC and other NCCCS constituent presidents to do the same. Wilson knew how I made my living as I was a regular on campus, buying books, donating books to Early College students and contributing corporately to campus fundraisers. I even edited a few papers for both students and teachers while I was there. I found it unprofessional and rude that Wilson did not reach out to me to discuss the matter. I was a phone call, an email or a walk across campus away. He was about to tell all in his charge not to do business with me (or my industry) and this guy wasn't bright enough or courteous enough to talk to the Small Businessperson he knew whose job was no longer welcome on his campus. As we say in the less gentile part of the country I came from, "Thanks a lot, pal!" To be quite frank, if I was in Wilson's shoes, I would have called Les Merritt and said, "Hey, I know one of these guys (book buyers). He's a nice guy who contributes to my campus. I need you to rethink your opinion. Maybe you can talk to Mr. Rosenthal." Instead, Wilson's response was, "Uh, okay."

On October 26, 2007, Wilson issued his grammatically-challenged memorandum banning my clients from doing business with me and my industry. I didn't find out that my livelihood was taken away until December 03 of that year when one of my teacher-clients showed me a memo. That wasn't fair to me nor was it to Wilson's staff, many of whom I made uncomfortable while trying to go about my business. I am sure that Leslie Merritt is an honorable man and was an adept public servant but I know of no one in my industry who was ever contacted by Mr. Merritt or anyone in his office. Merritt also did not account for the federal law. Rather, he used the unrelated NC Umstead Act and the spurious and non-binding Speas Opinion we discussed in Chapter 6.

A subsequent conversation with President Wilson provided me with the Leslie Merritt story. I was told that North Carolina's Umstead Act, 23 NCAC 02C .0403 Surplus and Irreparable Books and Book-Like Media, N.C.G.S. 115D-5, Administration of Institutions by State Board of Community Colleges and the NCCCS Accounting Procedures Manual guided this decision. ***What is the problem with this?*** The only problem with using these statutes and policies to create a policy that addresses what I do for a living is that NONE of the above statutes nor policies have anything at all to do with my activities. NONE! The items we buy are the property of the faculty members and not state property. Our activities do not influence buying decisions. Most of the NCCCS guidance is about campus bookstores. My business has nothing to do with campus bookstores, though sometimes I'll pop in and buy a supportive baseball cap or t-shirt. Well, not anymore.

23 NCAC 02C .0403

SURPLUS AND IRREPARABLE BOOKS AND BOOK-LIKE MEDIA

Books and book-like media originally purchased from state or federal funds, when they are no longer desired by an institution shall be de-accessioned at the institution. These materials may be disposed of by the institution through a local sale; through donations to non-profit, tax-exempt organizations or tax-supported agencies or institutions; through public bid sale by the State Surplus Property Agency; or by using other procedures prescribed by the Department. Records and receipts of each sale shall be maintained for auditing purposes.



NCCCS and UNC, through their respective constituent institutions and individual campuses but giving tacit and active support, maintain a de facto, unlawful and unconstitutional policy that local Small Business Family companies can not do business on their campuses. These Small Business Families can donate time and money to the respective foundations or spend money on tuition to attend classes. Even after donating and supporting the local school, **the book buyer is the only and specific occupation targeted for eradication by NCCCS and UNC and, as such is persona non grata on campus.** As if that was not bad enough, NCCCS (a NC state agency) and its constituent campuses are TRANSFERRING OUR STOCK to out of state for-profit corporations, in violation of the same Umstead Act they use to justify eradicating an entire state industry.

Let me make this clear. Think of any Mom & Pop retail or service store. Put a sign out front telling all their customers that you will prosecute them if they buy from that Mom & Pop. Then, outside of all law and reason, walk into their store, remove all of their stock and ship it out of state to a clearance center. This is what NCCCS did to my business. Making matters worse is that the "clearance center" that NCCCS is sending my stock to is a scam, but NCCCS is too short sighted to see it. See my separate report on Campus Charity Book Scams. I have made them aware but NCCCS' (and UNC) goal is to let their constituents put American Small Business Families OUT OF BUSINESS. NCCCS and UNC and their constituent institutions, maintain as a goal and corporate purpose to eradicate a specific occupation in violation of numerous federal laws, not the least is the Equal Protection Clause. See the discussion of the Fourteenth Amendment in Section D.

Western Piedmont Community College



Dr. Michael S. Helmick
Vice President Academic Affairs

Similar to McDowell Technical Community College (MTCC), Western Piedmont Community College (WPCC) is a school I had been working at for the better part of a decade. Over that time, I developed business relationships with thirty-three teachers and staff. Do you know how hard it is to develop thirty-three clients or how many years that takes? Do you know how difficult it is to gather these clients when you compete with knowledge, professionalism and customer service in an industry where most compete solely on price alone? Do you know how professional one has to be to walk each day into a marketplace where there are organizations and individuals who defame, denigrate and insult you, all while maintaining a smile and a “thank you?” Do you know how depressing it is to work in an adversarial atmosphere (read, a hostile workplace), especially knowing that your job is lawful, ethical and worthwhile? Do you know how depressing it is to do your job well and lawfully and have to wonder if you can pay the rent because a lawyer who does not know the law terrorizes your clients with unlawful and uneducated policies?

The Helmick Conversation

In the fall of 2009, I stopped by WPCC. I asked a number of my clients if the policy had changed. It had not. None of my clients are happy with the policy which, they feel, has criminalized their right to do with their possessions as they see fit. That day, I met with Michael S. Helmick, Ed.D., Vice President for Academic Affairs at WPCC. Dr. Helmick’s comments were illuminating. Dr. Helmick was in a Small Business and I appreciated his appreciation for me as a Small Businessman.

I showed Dr. Helmick the letter I had received from NCCCS President R. Scott Ralls, wherein Ralls debunks the idea of there being any NCCCS policy whatsoever banning my industry. Ralls, however, added verbiage deferring any such decisions to the trustees of individual schools in the system. How bizarre! My business is lawful on every campus in the state, public or private, community college or university. One school in the system cannot choose to ban my industry. There is currently a *de facto* system wide ban requiring a system wide remedy. The full Ralls Response can be found in the Essential Reading section at the end of this chapter. The pertinent part of that letter appears on the next page.

While Dr. Helmick understood some of the issues I presented, he was powerless to do anything about it, referring me to the trustees of the school, as Ralls had suggested. Perhaps I could educate them and persuade them to lift the ban. Even if I could get on a trustees meeting agenda, I ask once again, am I supposed to do this with 58 separate boards of trustees? Besides, the trustees generally prefer to follow advice from NCCCS’ general counsel. It keeps them from having to look up the law and read it. As a Small Businessman and service provider, I have done that for you.

In the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment.” Chief Justice Rehnquist, writing in *City of Dallas v. Stanglin*, 490 U.S. 19 (U.S. Sup. Ct. 1989. Mallor, et al. Business Law and the Regulatory Environment, New York: McGraw-Hill Irwin, 2001, pg 49.

I'll never stop fighting for an economy where hard work is rewarded, where responsibility is honored, where accountability is upheld, where we're creating the jobs of tomorrow.

President Barack Obama, Lorain County CC, Elyria, OH
January 22, 2010



Portion of the May 12, 2009 letter from Ralls to Rosenthal

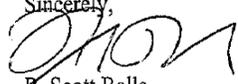
The second important point to note is the references to dates and instances wherein the State Board has revised its policies. It is a significant fact that the State Board has not made changes to its policies since March 2006.

In conclusion, there have been no recent decisions by the State Board or NCCC System Office that affect the operations of colleges *viz* their bookstores, procurement of textbooks for students, faculty relationships, private vendors, or otherwise. Any other bookstore decisions about procurement are made by local boards of trustees, or by the delegation of their authority to the campus president. There are rules governing the disposition of surplus textbooks, which can be located in 23 North Carolina Administrative Code 2C.0403.

In your letter, you specifically request “*that the bookselling prohibition be rescinded, thereby setting it in line with federal guidelines.*” Again, the State Board has no policy or rule in place, notwithstanding heretofore cited statutes and codes, that restrict the operations of bookstores and/or the selling and disposal of textbooks. Local boards of trustees, absent any State Board prohibitions, may operate their bookstores consistent with the provisions of the Umstead Act. As such, I have no remedy to offer for State Board prohibitions that do not exist. Individual community colleges can operate or contract for services the commerce of textbooks on their campuses, and have done so for decades.

I appreciate the seriousness with which you have communicated your concerns. My response attempts to address those concerns as they surround the issue of the textbook business operations in the NCCCS.

With kindest regards, I am

Sincerely,

R. Scott Ralls

Helmick reported that General Counsel for NCCCS, Q. Shanté Martin, wrote an opinion (letter of advice) to WPCC. It is my understanding that President Ralls was copied on this letter. This letter advised WPCC to ban the practice of book selling and, as Dr. Helmick noted, "...to avoid the appearance of impropriety". I was told that the letter advised teachers to hand all their unwanted books over to the school to be sold in an annual auction. Oh My! As you will read, **NONE OF THESE BOOKS MADE IT TO THE AUCTION. WHERE DID THEY GO?** The letter to ban the practice of book selling reverberated throughout the community college system. It was nuts. My teachers are afraid to let me in their offices. **NCCCS PUT MY CLIENTS IN FEAR OF DOING BUSINESS WITH ME!** In one correspondence, General Counsel Martin repealed the Takings Clause of the United States Constitution, instructing teachers to give their personal belongings to the State.

On Skulking Around in Strip-Mall Parking Lots

Let me be clear about the off-campus option or the anyplace else option. We meet teachers in their offices, not in clandestine parking lots. We don't skulk and hide and act like we have some nefarious purpose. We are open and proud American Small Business People. We are not furtive. Any solution that requires my clients to feel like criminals restrains trade. Teachers are busy people. We meet on their terms, on their timing, at their convenience. Forcing them to go out of their way which includes carrying their books to their car, meeting in a supermarket parking lot and then driving back to the school, not to mention looking over one's shoulder and feeling like a criminal restrains trade and violates the law as we will see in later chapters.

"As far as we're concerned, teachers can sell their books to you off campus if they want," Dr. Helmick explained, "We just don't want to see it." Though I think much is left to be desired in this policy, I greatly appreciated Dr. Helmick's candor. Putting Small Businesses OUT OF BUSINESS, I might add, does not make WPCC appear to be proper. Appearance of Impropriety is discussed in Section C, Ethics, Appearances and Conflicts. Dr. Helmick then explained the Annual Surplus Auction to me. I address the auction a couple of pages from now in this chapter.

The Attorney Q. Shanté Martin Ban

Merritt had moved on. Then it was up to another attorney to write an opinion or directive which **shuttered my industry**. Q. Shanté Martin did not take the time to research the law. The industry and practices that I am involved in are protected by the United States Constitution, The U.S. Code, federal agencies, state laws and has been debated and decided favorably by state courts and administrative agencies. There is only one aspect of my industry that is illegal, I'm sorry to report. That is the practice by State actors and other agents to Restrain Trade, thereby restraining my business and industry. Martin's opinion was so incredibly wrong. Teachers and others can sell their books and treat promotional materials shipped to them in any manner they see fit. This is the law. NCCCS, not thinking how completely wrong counsel was/is, ran with this unconstitutional and nugatory opinion and acted in a manner which continues to violate numerous rights of thousands of people. Laws may unconstitutionally burden interstate commerce when they directly regulate that commerce.

Q. Shante' Martin

General Counsel at NC Community College System 2008 — Present (2 years)

Provide legal consultation and advice to the State Board of Community Colleges; provide legal consultation and advice to individual community colleges; serve as Rule-making Coordinator

Assistant Attorney General at NC Department of Justice 2003 — 2008 (5 years)

Education: University of North Carolina School of Law, Juris Doctor, Law, 1999 — 2002

LAW for US, Guardian Ad Litem

University of North Carolina at Chapel Hill, Bachelor, Psychology - Child Development, 1995 — 1999

The following laws, regulations and rulings were not taken into consideration by General Counsel Martin as she issued her advisory:

The Constitution
The Declaration of Independence
The Supremacy Clause
Sherman Antitrust Act of 1890
Clayton Act of 1914
Federal Trade Commission Act of 1914
The Takings Clause
The Lanham Trademark Act of 1946
U.S. Code

The Copyright Act & The First Sale Doctrine
Federal Trade Commission Rules
United States Postal Service Rules
Federal Court Rulings
North Carolina State Laws
Unordered Merchandise Laws
Administrative and Court Rulings
Invasion of Privacy and Opening Personal Mail

Admittedly, Attorney Martin wrote her opinion before the U.S. Supreme Court decided the following case. Still, these laws and precedents have been around for a while.

CITIZENS UNITED v. FEDERAL ELECTION COMMISSION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
No. 08–205. Argued March 24, 2009—Reargued September 9, 2009—Decided January 21, 2010
JUSTICE KENNEDY delivered the opinion of the Court.
www.supremecourtus.gov/opinions/09pdf/08-205.pdf

Selected Excerpts

First Amendment standards, however, “must give the benefit of any doubt to protecting rather than stifling speech.” *WRTL*, 551 U. S., at 469 (opinion of ROBERTS, C. J.) (citing *New York Times Co. v. Sullivan*, 376 U. S. 254, 269–270 (1964)).

Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints. See, e.g., *United States v. Playboy Entertainment Group, Inc.*, 529 U. S. 803, 813 (2000) (striking down content-based restriction). **Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others.** See *First Nat. Bank of Boston v. Bellotti*, 435 U. S. 765, 784 (1978). As instruments to censor, these categories are interrelated: Speech restrictions based on the identity of the speaker are all too often simply a means to control content.

Quite apart from the purpose or effect of regulating content, moreover, **the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker’s voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration.** The First Amendment protects speech and speaker, and the ideas that flow from each.

The Auction- Who Stole the Books at WPCC?

We have arrived at the 2009 WPCC Annual Surplus Auction where garbage is treasure. The policy for the last few years at WPCC, as related to me by Dr. Helmick, is that teachers are to hand in their review books to the school. The school would treat these books as surplus and sell them at the annual auction. This means that books which lose value weekly and monthly, sit in a warehouse for up to twelve months. While they are in the warehouse, they are losing value. At least 75 percent go to zero value. Books, to booksellers, have expiration dates. At the auction, after the books had lost 75-100 percent of their value, I was then able to compete and pay the highest dollar possible for the lowest value possible. If there is any profit at all, it is meager. I went to the 2009 auction. I paid \$250 for \$350 worth of books. After one year, WPCC netted me \$100. It wasn't worth the four hours of driving, fuel and my time.

My meager profit is not the story here. Not only does the process diminish the value of the book stock (while making the books moldy and smelly for not being stored correctly) but, when I was there, my question was, **WHERE ARE THE BOOKS?** After a full year of the entire faculty handing in their unwanted review books, I expected to find books across all curricula and numerous titles within the curricula. I expected to see duplicates. I expected to see hundreds of books of value. There was almost nothing there. There was less than one percent of what I thought would be there. There was not one new book. There were none marked "Instructors Edition." There was a bunch of old books and ancillary materials, all damaged, musty and dirty. Only TWO TEACHERS contributed books. **WHO TOOK THE BOOKS? Somebody is stealing the books.** Dr. Helmick was at the auction and I had an opportunity to show him the lack of books. This is just a ridiculous and complete failure of an ignorant resolution to the problem. Prior to this outrageous, ineffective and predatory policy, **THE AMERICAN FREE MARKET SYSTEM WAS WORKING JUST FINE.**

Thousands of dollars of books were pilfered to stop one department secretary from "pilfering" a few books. In short, the Auction solution to the book selling "problem" is a fraudulent failure. In short, WPCC, at the direction of NCCCS, took my livelihood and gave it to others. Whatever perceived marginal advantage the policy provided is outweighed by the numerous problems it posed for interstate commerce, freedom of expression and association, freedom of commercial speech and a host of other laws and regulations, as well as the damage to American Small Business Families. In short, NCCCS has put my Small Business and those of other Small Business Families OUT OF BUSINESS.

Well, not all of the books are being pilfered. Actually, teachers have taken some of the business underground. Underground means listing their books on Amazon.com, FacultyBooks.com or dozens of other book reselling sites. See Essential Readings for this chapter for an example of an online buying service. In effect, they are doing as Dr. Helmick suggested, taking it off campus. This doesn't solve the underlying bandied about "ethics" issue nor does it the author royalty issue. See Chapter 12, Ethics, Appearances and Conflicts. Actually, it makes the school complicit in violating the advice of counsel. What does the whole auction process accomplish? It forces faculty to bypass me and my industry. It victimizes my Small Family Business with no due process.

A Note on Online Buying Services

Online buying services allow a faculty member to sell their complimentary review books from home or their office. NCCCS and UNC prohibitions do not stop teachers from selling their books. They take the books home or stack them in their office. Then teachers sell these books online, bypassing the local book buyer. An unintended consequence is that the institutions' misguided "goal" of unlawfully protecting the profits of publishers (a favored industry) fails as the books end up in the same place, used book venues both online and brick & mortar. Online buyers, however, do not contribute to lower book costs for students as their model results in the inability to discount fully. The State is complicit in eradicating a specific occupation (a violation of federal law) by barring faculty from having constitutionally protected contact, expression and freedom of business. Local book buyers offer the same and additional services to their faculty-clients and can compete on a level playing field. NCCCS and UNC constituents continue to willfully and maliciously work towards the eradication of a specific industry, putting Small Business Families Out Of Business while violating federal equal protection laws.

Buffeted from all sides, North Carolina's Small Business Families have been attacked by severe policies promulgated after unlawful advice was provided to NCCCS by various counsel. Not only have the policies of NCCCS created a ban on teachers selling their books (doing business with me) but they are giving our stock to out of state For Profit concerns. The policy has no other goal but to eradicate a specific occupation of North Carolina's Small Businesses. We know this as teachers are free to sell their books online but they may not sell their books to local businesses. Teacher's constitutional rights have been and continue to be violated. The specific occupation of book buyer is being eradicated by the North Carolina government.

NCCCS' efforts to destroy North Carolina's Small Business Families are unlawful, immoral and unethical. Draconian policies terrorizing faculty and making them afraid to do business with me is unlawful, violating numerous trade statutes and policies. NCCCS' actions divert business to out of state concerns. NCCCS and its constituents have colluded to restrain interstate trade. NCCCS and its constituents collude to put American Small Business Families OUT OF BUSINESS by eradicating a specific occupation. NCCCS, by its unlawful and anti-competitive, restraint of trade policies have affirmatively acted to achieve that goal. NCCCS and UNC have received hundreds of millions, perhaps billions of dollars of public funds. Some of these funds are being used to target for eradication the specific occupation of book buyer. **At federally-funded NCCCS, there is no hope, no opportunity and no job for a specifically and intentionally targeted occupation.**

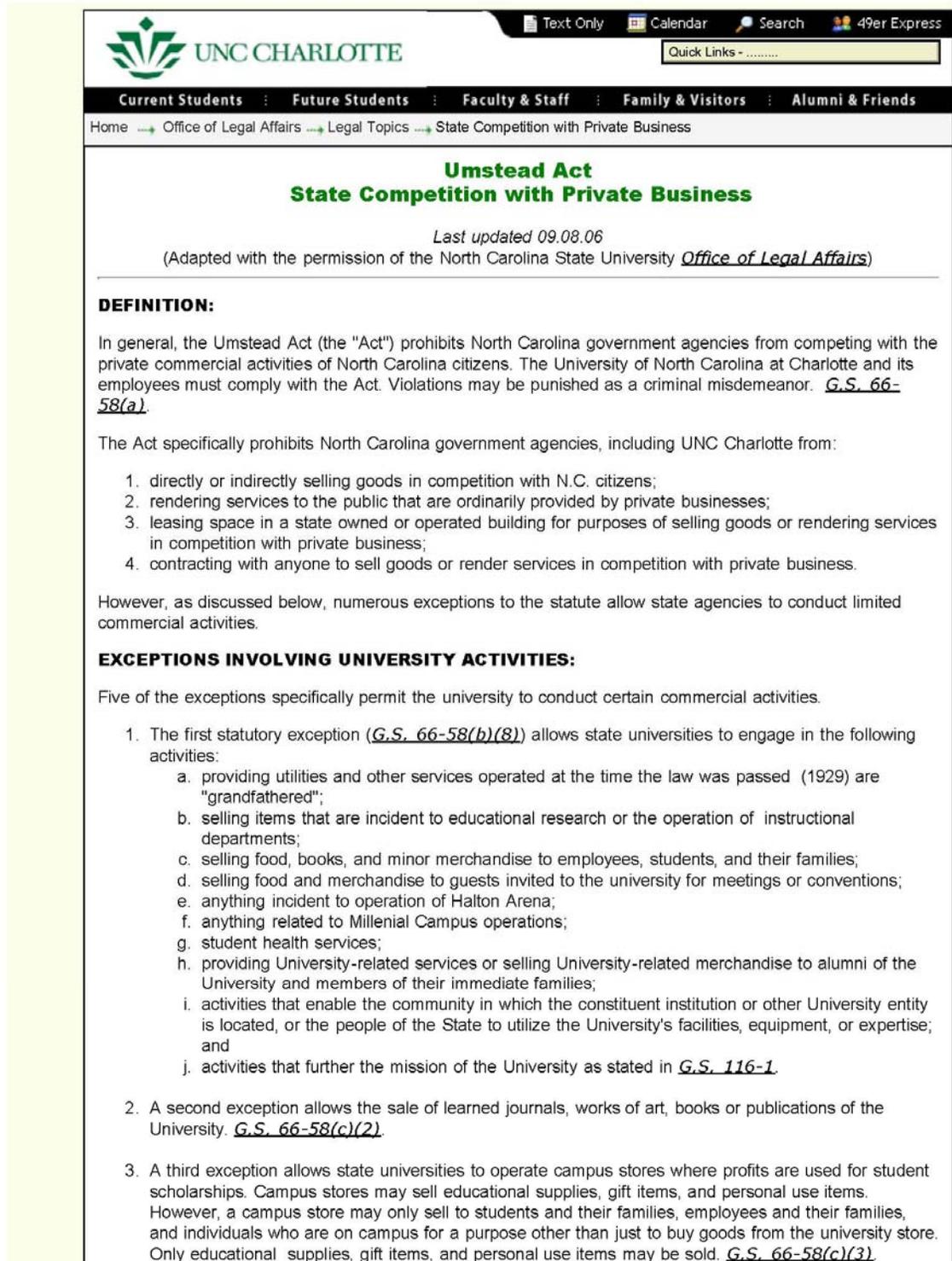
The Used Textbook Resale Market & The Law[©]

Multi-State Comprehensive Edition

Essential Reading

Chapter 9

1. North Carolina Umstead Act
2. FacultyBooks.com Advertisement –
The Party Continues But at Someone Else's Home
3. NCCCS President Ralls' Letter to Rosenthal, May 12, 2009



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Umstead Act State Competition with Private Business

Last updated 09.08.06
(Adapted with the permission of the North Carolina State University *Office of Legal Affairs*)

DEFINITION:

In general, the Umstead Act (the "Act") prohibits North Carolina government agencies from competing with the private commercial activities of North Carolina citizens. The University of North Carolina at Charlotte and its employees must comply with the Act. Violations may be punished as a criminal misdemeanor. [G.S. 66-58\(a\)](#).

The Act specifically prohibits North Carolina government agencies, including UNC Charlotte from:

1. directly or indirectly selling goods in competition with N.C. citizens;
2. rendering services to the public that are ordinarily provided by private businesses;
3. leasing space in a state owned or operated building for purposes of selling goods or rendering services in competition with private business;
4. contracting with anyone to sell goods or render services in competition with private business.

However, as discussed below, numerous exceptions to the statute allow state agencies to conduct limited commercial activities.

EXCEPTIONS INVOLVING UNIVERSITY ACTIVITIES:

Five of the exceptions specifically permit the university to conduct certain commercial activities.

1. The first statutory exception ([G.S. 66-58\(b\)\(8\)](#)) allows state universities to engage in the following activities:
 - a. providing utilities and other services operated at the time the law was passed (1929) are "grandfathered";
 - b. selling items that are incident to educational research or the operation of instructional departments;
 - c. selling food, books, and minor merchandise to employees, students, and their families;
 - d. selling food and merchandise to guests invited to the university for meetings or conventions;
 - e. anything incident to operation of Halton Arena;
 - f. anything related to Millennial Campus operations;
 - g. student health services;
 - h. providing University-related services or selling University-related merchandise to alumni of the University and members of their immediate families;
 - i. activities that enable the community in which the constituent institution or other University entity is located, or the people of the State to utilize the University's facilities, equipment, or expertise; and
 - j. activities that further the mission of the University as stated in [G.S. 116-1](#).
2. A second exception allows the sale of learned journals, works of art, books or publications of the University. [G.S. 66-58\(c\)\(2\)](#).
3. A third exception allows state universities to operate campus stores where profits are used for student scholarships. Campus stores may sell educational supplies, gift items, and personal use items. However, a campus store may only sell to students and their families, employees and their families, and individuals who are on campus for a purpose other than just to buy goods from the university store. Only educational supplies, gift items, and personal use items may be sold. [G.S. 66-58\(c\)\(3\)](#).

In 1989, the U.N.C.-Chapel Hill campus store stopped selling crock-pots and other small appliances after local merchants complained. However, in 1994, although local store owners complained, the District Attorney refused to prosecute U.N.C.-C.H. for selling such items as children's books. The statute is unclear concerning the types of items that may be sold, other than educational items.

4. Another exception allows the sale of products from experimental stations or test farms. [G.S. 66-58\(c\)\(1\)](#).

DEFENSES:

1. The simplest defense is to establish a clear connection between the goods sold or the service rendered and the University's educational purpose. In 1986, the NC Attorney General stated that activities which are incidental to the legitimate function of a state agency are not violations of the Umstead Act. (Attorney General's Opinion, March 4, 1986, 55 NCAG 101). The function of the university is to educate, so the law permits any sale of goods or services that are a function of educational operations.
2. A federal court in North Carolina has ruled that the Umstead Act creates an exclusive remedy. This means that although an agency or employee may be found criminally guilty of a misdemeanor, a private citizen cannot sue in civil court. (See Bd. Of Governors v. Helpingstine, 714 F. Supp. 167 (M.D.N.C. 1989).)
3. For employees of state institutions, the statute applies only when they act in their capacity as employees. [G.S. 66-58\(a\)](#).

IMPORTANT QUESTIONS TO ASK:

1. Is the activity a direct or indirect sale of goods, wares, or merchandise?
2. Does the activity offer a service that is normally performed by private businesses?
3. Is the activity directly related to the university's educational function?
4. Would the activity fall under any other exception, such as a product of an experimental station or test farm, a learned journal, or other exception?

**If the answer to 1 or 2 is "yes," then proceed to answer 3 and 4. If neither 3 or 4 is "yes," then the activity is likely prohibited by the Umstead Act.

MOST IMPORTANT: [Consult with the Office of Legal Affairs](#) if there is any question about the applicability of the Umstead Act.

ADDITIONAL CONCERNS:

An activity that is acceptable under the Umstead Act may still be inappropriate or raise other legal issues. For example, revenue from an activity that is not substantially related to the educational mission, as determined by the IRS, may be subject to [Unrelated Business Income Tax \(UBIT\)](#).

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NCCCS President Ralls Letter to Rosenthal, May 12, 2009



NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

May 12, 2009

Mr. Alan J. Rosenthal
Alan's Book Service
Post Office Box 16099
Asheville, NC 28816

Dear Mr. Rosenthal:

I received your letter dated April 27, 2009. On behalf of the North Carolina Community College System (NCCCS), I express my gratitude for the references made in your letter of the instances in which you have helped the System - its faculty and students - with textbooks and other printed materials. In so doing, you have helped all North Carolinians in search of knowledge and understanding.

The second important point to note is the references to dates and instances wherein the State Board has revised its policies. It is a significant fact that the State Board has not made changes to its policies since March 2006.

In conclusion, there have been no recent decisions by the State Board or NCCC System Office that affect the operations of colleges *viz* their bookstores, procurement of textbooks for students, faculty relationships, private vendors, or otherwise. Any other bookstore decisions about procurement are made by local boards of trustees, or by the delegation of their authority to the campus president. There are rules governing the disposition of surplus textbooks, which can be located in 23 North Carolina Administrative Code 2C.0403.

In your letter, you specifically request *"that the bookselling prohibition be rescinded, thereby setting it in line with federal guidelines."* Again, the State Board has no policy or rule in place, notwithstanding heretofore cited statutes and codes, that restrict the operations of bookstores and/or the selling and disposal of textbooks. Local boards of trustees, absent any State Board prohibitions, may operate their bookstores consistent with the provisions of the Umstead Act. As such, I have no remedy to offer for State Board prohibitions that do not exist. Individual community colleges can operate or contract for services the commerce of textbooks on their campuses, and have done so for decades.

I appreciate the seriousness with which you have communicated your concerns. My response attempts to address those concerns as they surround the issue of the textbook business operations in the NCCCS.

With kindest regards, I am

Sincerely,

R. Scott Ralls

Chapter 10

Presidents of North Carolina Higher Education

Erskine B. Bowles, Former President, University of North Carolina



Some of us would simply just like to make a nice living. Mr. Bowles seems to maintain the weasel and parasite view of my industry. Going back to under his leadership, the University of North Carolina System unlawfully maintains a policy wherein faculty would be disciplined or dismissed should they exercise their constitutional rights and conduct their personal business with my industry and the Small Business Families who make their living in it. UNC is receiving a huge amount of money (over \$50 MILLION) on the public dole through recovery and stimulus public money. UNC is making a lot of money. They should allow the rest of us to do the same. After all, we are North Carolina's Small Business Families and Entrepreneurs.

Meet Mr. Bowles:

- President of the University of North Carolina since January 2006
- Chairman of Erskine Bowles & Co., LLC since 2003
- Senior advisor to Carousel Capital since 2002
- Director of General Motors and Morgan Stanley
- United Nations Under Secretary General
- Deputy Special Envoy for Tsunami Recovery
- Managing Director of Carousel Capital and Partner of Forstmann Little & Co
- White House Chief of Staff
- Director of Merck & Co., VF Corporation and First Union Corporation;
- Director of Wachovia Corporation in 2001
- Director of Krispy Kreme Doughnut Corporation in 2003
- Director of North Carolina Mutual Life Insurance Company.

Mr. Bowles has annual income rivaling the combined income of many of my industry's Small Business Families yet he begrudges us a fair AND LAWFUL living. I would like to make the same comment about President Bowles as I have about President Ralls of the North Carolina Community College System. While UNC maintains an unlawful, collusive and conspiratorial ban on my industry, I don't believe that President Bowles is an evil man, looking for ways to put people out of work. Still, UNC is violating numerous laws and constitutional protections and Mr. Bowles was the man at the top. So, it was President Bowles' responsibility to keep his institution within the law. He failed at that.

Thomas W. Ross, President, University of North Carolina



THOMAS W. ROSS

Now it is the responsibility of UNC President Thomas W. Ross to correct these blatant violations of federal and state law. President Ross must end the ban on my *specific occupation* at UNC and to work with the Small Business Families in this lawful business, restoring our livelihoods.

Thomas W. Ross became President of the 17-campus University of North Carolina on January 1, 2011. Born and raised in Greensboro, N.C., he holds a bachelor's degree in political science from Davidson College (1972) and graduated with honors from the UNC-Chapel Hill School of Law (1975).

As an Assistant Professor of Public Law and Government at UNC-Chapel Hill's School of Government, Ross joined the Greensboro law firm of Smith Patterson Follin Curtis James & Harkavy in 1976. He left the firm in 1982 to serve as chief of staff in the Washington, D.C., office of U.S. Congressman Robin Britt. At the age of 33, Ross was appointed to the North Carolina Superior Court. He held the position for the next 17 years.

From his vantage point on the bench, Ross witnessed first-hand a state justice system beleaguered by uneven sentencing and a fast-growing prison population. In 1990, North Carolina's Chief Justice tapped him to lead a new Sentencing and Policy Advisory Committee

In 1999, Ross was appointed director of the state's Administrative Office of the Courts. In 2001, he left the bench to serve as executive director of the Z. Smith Reynolds Foundation, a philanthropic organization **devoted to improving the lives of the people of North Carolina**. During his seven-year tenure at Reynolds, (2001-2007), the foundation awarded about \$20 million annually to non-profit groups focused on community economic development, democracy and civic engagement, environment, pre-college education, and social justice. Ross returned to Davidson as President, until he assumed leadership of UNC.

Active in civic and community activities, Ross currently serves on the Board of Governors of the Center for Creative Leadership, advisory boards for the NC Humanities Council and the NC State University Institute for Emerging Issues, and the honorary Board of Directors of the Conservation Trust of North Carolina. A former chairman of the UNC Greensboro Board of Trustees, he has previously served on the Boards of Visitors for UNCG, UNC-Chapel Hill, and Wake Forest University. In addition, he has served on the boards of Davidson College, the North Carolina New Schools Project, the Kenan Institute for the Arts, the Institute of Government Foundation, the UNC-Chapel Hill School of Law Alumni Foundation, the Wake Forest Comprehensive Cancer Center, and the North Carolina Independent Colleges and Universities.

Ross has received numerous awards and accolades for his vast public service and professional achievements. His many contributions to the judicial system have been recognized through the William H. Rehnquist Award for Judicial Excellence (2000), given annually to one state judge in the nation; the NC Academy of Trial Lawyers Trial Judge of the Year Award (1996); the American Society of Criminology President's Award for Distinguished Contributions to Justice (2007); the NC Justice Center Defenders of Justice Award (2008); and the NC Bar Association Citizen Lawyer Award (2010). He has been honored with Distinguished Alumni Awards from Davidson (2001) and the UNC-Chapel Hill School of Law (2005) and holds an honorary doctorate from UNCG.

In the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment." Chief Justice Rehnquist, writing in *City of Dallas v. Stanglin*, 490 U.S. 19 (U.S. Sup. Ct. 1989). Mallor, et al. *Business Law and the Regulatory Environment*, New York: McGraw-Hill Irwin, 2001, pg 49.

Ross has been married since 1972 to Susan Donaldson Ross, a graduate of the UNC-Chapel Hill School of Education and a former executive director of the Greensboro Bar Association. They have two adult children. www.northcarolina.edu/president/index.htm (edited for space)

University of North Carolina Entrepreneurial Programs

UNC maintains the Entrepreneurial program at UNC Kenan-Flagler in Chapel Hill, all while prohibiting my industry in violation of restraint of trade laws. Go figure. The University Press of North Carolina is a member of the Association of American Publishers, the same trade organization which is actively trying to shut down my industry of American Small Business Families, local entrepreneurs who began businesses and contribute to society...hence the unlawful prohibition. UNC Press is a member of the same organizations that fight textbook affordability legislation all over the country.

It would be nice if the organization that took over \$50 million of America's bailout money to save jobs for its own would see fit to not attack my industry, restrain trade and put North Carolina's Mom & Pop Small Business Families out of work.

UNC gets a lot of money for talking about entrepreneurialism. When NC and regional Small Business Families try to DO entrepreneurialism, we are told, "you're business is not welcome here!" and then we are escorted off the campus.

"The University of North Carolina at Wilmington's Faculty Senate declared the sale by faculty of complimentary textbooks as an unprofessional practice."

Stomp the Comp
by Richard Hull, TAA Executive Director

Dr. R. Scott Ralls, President, North Carolina Community College System



R. Scott Ralls, President of NCCCS

“North Carolinians need us to play our customary role as North Carolina’s ‘economic cavalry.’”

-R. Scott Ralls, President of NCCCS
The Open Door Fall 2008: Vol. 11, No. 2

It appears that my colleagues and clients have taken some friendly fire. The above quote is from the paradoxically named NCCCS newsletter, “The Open Door.” My industry’s door has been slammed closed in our faces by the NCCCS. I am disappointed in the misguided decisions made by the legal counsel for NCCCS.

My colleagues and competitors are local Small Business people. We are the backbone of America referred to by President Barack Obama, Senator John McCain as well as legislative leaders on both sides of the aisle. The decisions and policies (tacit or otherwise) made by NCCCS are counter to federal and state law, public policy and inimical to the rhetoric we hear regarding Community College’s role in the nation’s economic recovery. NCCCS’ policies regarding my industry oppose the mission of NCCCS’ own Small Business Centers:

“The mission of each SBC is to help the many Small Businesses within its service area survive, prosper and contribute to the economic well-being of the community and the state.”

A Matter of Facts. The NCCCS Factbook. 2003.

There is also a grand chasm between NCCCS’ policy and the policies and initiatives of the North Carolina Department of Commerce:

“We’re working hard to create a state of minds that leads to great success stories. We’d like to make sure you’re one of them.”

<http://www.nccommerce.com/en/BusinessServices>

The actions of the NCCCS are diametrically opposed to even NCCCS’ own mission statement:

“The mission of the North Carolina Community College System is to open the door to high-quality, accessible educational opportunities that minimize barriers to postsecondary education, maximize student success, and improve the lives and well-being of individuals by providing:

- Education, training and retraining for the workforce, including basic skills and literacy education, occupational and pre-baccalaureate programs.
- Support for economic development through services to and in partnership with business and industry.
- Services to communities and individuals which improve the quality of life.”

A Matter of Facts. The NCCCS Factbook. 2003.

The Used Textbook Resale Market & The Law[©]

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Essential Reading

Chapter 10

1. 2011 Congressional Earmarks for Higher Education
Total \$78,200,000,000 and change
2. UNC-So You Want to Be an Entrepreneur?
3. University of North Carolina Trustees

And you begrudge me a reasonable, American Small Business income?

THE CHRONICLE

of Higher Education

Earmarks are noncompetitive grants directed by Congress to specific constituents, including colleges and universities, usually in lawmakers' own districts or states. This practice -- also known as pork-barrel spending -- is controversial because it bypasses the normal competitions for federal grants.

<http://chronicle.com/stats/pork/index.php?state=NC&sort=institution&offset=0&sponsor=0&institution=0&q=>

Congressional Earmarks for Higher Education, 2008

EARMARK TOTAL :\$50,961,980,000

Congressional Earmarks for Higher Education, 2011

EARMARK TOTAL :Over \$78,200,000,000

Institution	Agency	Earmarks	Description	Sponsors
Appalachian State University	Energy	\$295,200	for combustion-analysis equipment for modular biofuels testing	Rep. Foxx (R, N.C.) Rep. Shuler (D, N.C.) Sen. Dole (R, N.C.)
Bennett College for Women	Energy	\$984,000	for construction of a science and technology facility	Rep. Watt (D, N.C.) Sen. Dole (R, N.C.)
Bennett College for Women	Education	\$516,811	for technology upgrades on campus	Rep. Watt (D, N.C.) Sen. Dole (R, N.C.) Sen. Burr (R, N.C.)
Caldwell Community College and Technical Institute	Education	\$95,305	for teacher and special-education curriculum development	Rep. McHenry (R, N.C.) Sen. Burr (R, N.C.)
Campbell University	Education	\$306,549	for its Advancement for Underrepresented Minority Pharmacists and Pharmaceutical Scientists Program	Rep. Etheridge (D, N.C.)
Central Piedmont Community College	Education	\$191,593	for construction at the Center for Integrated Emergency Response Training	Rep. Hayes (R, N.C.)
Central Piedmont Community College	Justice	\$352,500	for high-tech crime-scene-investigation training	Rep. Myrick (R, N.C.) Rep. Hayes (R, N.C.) Rep. Watt (D, N.C.) Sen. Burr (R, N.C.)

Central Piedmont Community College	Justice	\$470,000	for high-tech crime-scene-investigation training	Sen. Burr (R, N.C.) Rep. Myrick (R, N.C.) Rep. Hayes (R, N.C.) Rep. Watt (D, N.C.)
Duke University	Defense	\$2,400,000	to be shared with four shared universities, for development of the Medical Free Electron Laser	Rep. Price (D, N.C.) Sen. Burr (R, N.C.) Sen. Dole (R, N.C.)
East Carolina University	Health and Human Services	\$560,042	to be shared with the University of North Carolina at Chapel Hill, for a program on racial disparities in cardiovascular disease	Rep. Watt (D, N.C.) Sen. Dole (R, N.C.)
East Carolina University	Health and Human Services	\$238,755	for a project at the Brody School of Medicine to study racial disparities in cardiovascular diseases	Rep. Butterfield (D, N.C.) Sen. Dole (R, N.C.) Sen. Burr (R, N.C.)
East Carolina University	Health and Human Services	\$335,043	for the Metabolic Institute	Rep. Jones (R, N.C.) Sen. Burr (R, N.C.) Sen. Dole (R, N.C.)
Elizabeth City State University	Health and Human Services	\$373,361	to upgrade the Lester Hall and Jenkins Science Building	Rep. Butterfield (D, N.C.) Sen. Dole (R, N.C.)
Elon University	Justice	\$235,000	for the School of Law to develop a Juvenile Justice Intervention and Mediation Clinic	Rep. Coble (R, N.C.) Rep. Miller (D, N.C.) Sen. Dole (R, N.C.)
Fayetteville Technical Community College	Education	\$238,755	for equipment and salaries for the Congressional Scholars Program	Rep. Hayes (R, N.C.)
Gaston College	Health and Human Services	\$143,449	to complete construction on the Health Education Institute building	Rep. Myrick (R, N.C.) Sen. Burr (R, N.C.)
Livingstone College	Justice	\$329,000	to combat gang influence with the Criminal Justice Program and the college's social-work program	Rep. Watt (D, N.C.) Sen. Dole (R, N.C.)
Methodist University	Justice	\$399,500	for the Methamphetamine Educational Training Project	Rep. Etheridge (D, N.C.) Rep. McIntyre (D, N.C.) Sen. Burr (R, N.C.)

North Carolina A&T State University	Education	\$383,187	for a project to reduce suspension rates of students in the Guilford County School System	Rep. Miller (D, N.C.) Rep. Watt (D, N.C.) Sen. Dole (R, N.C.) Sen. Burr (R, N.C.)
North Carolina A&T State University	Defense	\$1,200,000	for tailored naval material research at the Center for Nanoscience and Nanomaterials	Rep. Watt (D, N.C.)
North Carolina A&T State University	Defense	\$1,000,000	shared to be shared with five universities, to support the Defense Threat Reduction University Consortium	Rep. Udall (D, N.M.) Sen. Bingaman (D, N.M.)
North Carolina Central University	Education	\$162,117	for academic-enrichment activities, including parental involvement	Rep. Price (D, N.C.) Sen. Burr (R, N.C.)
North Carolina Central University	Justice	\$282,000	for technology support for first responders at the Leadership Academy for African-American Males	Rep. Price (D, N.C.)
North Carolina State University	Energy	\$984,000	for research at the Nanostructural Materials for Safe Alternative Energy	Rep. Miller (D, N.C.) Rep. Price (D, N.C.) Sen. Dole (R, N.C.)
North Carolina State University	Transportation	\$462,000	for research by the Center for Transportation and the Environment	n/a
North Carolina State University	Agriculture	\$372,375	for research into swine and other animal waste management	Rep. Etheridge (D, N.C.) Rep. Price (D, N.C.) Sen. Burr (R, N.C.) Sen. Dole (R, N.C.)
North Carolina State University	Agriculture	\$240,306	for research on crop pathogens	Rep. Etheridge (D, N.C.) Rep. Price (D, N.C.) Sen. Dole (R, N.C.)
North Carolina State University	Agriculture	\$242,292	for research to further an environmentally sustainable aquaculture industry	Rep. Etheridge (D, N.C.) Rep. Price (D, N.C.) Sen. Burr (R, N.C.) Sen. Dole (R, N.C.)
North Carolina State University	Agriculture	\$211,509	for the Forest Biotechnology initiative	Rep. Etheridge (D, N.C.) Rep. Price (D, N.C.) Sen. Dole (R, N.C.)
North Carolina State University	Defense	\$2,400,000	for the Vertical Lift Center of Excellence at the Institute of	Rep. Jones (R, N.C.) Sen. Dole (R, N.C.)

			Maintenance, Science and Tech	
North Carolina State University	Agriculture	\$4,840,875	shared to be shared with 10 universities, to research new uses for forest resources through the Wood Utilization Research program	Rep. Allen (D, Me.) Rep. Blumenauer (D, Ore.) Rep. Etheridge (D, N.C.)
North Carolina State University	Agriculture	\$319,746	shared to be shared with a federal agency, for tech assistance to the livestock and poultry industries	Rep. Butterfield (D, N.C.) Rep. Etheridge (D, N.C.) Rep. Price (D, N.C.)
North Carolina State University	Commerce	\$4,700,000	shared to be shared with seven institutions, for continued research through the National Textile Center	Sen. Burr (R, N.C.) Sen. Dole (R, N.C.)
North Carolina State University	Energy	\$984,000	to establish the Integrated Biomass Refining institute	Rep. Etheridge (D, N.C.) Rep. Price (D, N.C.)
North Carolina State University	NASA	\$376,000	to support research on sustainable life-support systems for human space exploration	Rep. Price (D, N.C.) Sen. Dole (R, N.C.)
Richmond Community College	Education	\$191,593	for equipment and construction at the Industrial Training Center	Rep. Hayes (R, N.C.)
Shaw University	Defense	\$1,000,000	for a nanotechnology initiative	Rep. Etheridge (D, N.C.)
Tri-County Community College	Housing and Urban Development	\$196,000	for construction of an occupational and technical training facility	Rep. Shuler (D, N.C.)
Tri-County Community College	Education	\$47,161	to support technical and metal-machining workforce training	Rep. Shuler (D, N.C.) Sen. Burr (R, N.C.)
University of North Carolina at Asheville	Housing and Urban Development	\$98,000	for construction and interior build-out of the Zeis Science and Multimedia Building	Rep. Shuler (D, N.C.)
University of North Carolina at Chapel Hill	Health and Human Services	\$560,042	shared to be shared with East Carolina University, for a program on racial disparities in cardiovascular disease	Rep. Watt (D, N.C.) Sen. Dole (R, N.C.)
University of North Carolina at Chapel Hill	Energy	\$984,000	for biomedical-imaging equipment	Rep. Hayes (R, N.C.) Rep. Price (D, N.C.)

University of North Carolina at Chapel Hill	Commerce	\$3,572,000 shared	to be shared with five institutions, to support Regional Climate Centers, a cooperative agreement with National Climatic Data Center	Sen. Obama (D, Ill.)
University of North Carolina at Chapel Hill	Health and Human Services	\$95,305	to study the impact of a primary-care practice model utilizing clinical pharmacist practitioners	Sen. Burr (R, N.C.)
University of North Carolina at Chapel Hill	Homeland Security	\$450,000	to support Coast Guard participation in the exec educ program at the Kenan Flagler Business School, through the Center for Excellence in Logistics and Technology (LOGTECH)	Rep. Price (D, N.C.)
University of North Carolina at Charlotte	Energy	\$492,000	for the Building Materials Reclamation Program	Rep. Myrick (R, N.C.) Sen. Dole (R, N.C.)
University of North Carolina at Charlotte	Defense	\$1,600,000 shared	to be shared with a corporation, for superlattice nanotechnology research	Rep. Hayes (R, N.C.) Sen. Burr (R, N.C.)
University of North Carolina at Greensboro	Education	\$66,812	for a teletherapy program to address the shortage of speech-language pathologists	Rep. Watt (D, N.C.) Sen. Burr (R, N.C.) Sen. Dole (R, N.C.)
University of North Carolina at Wilmington	Education	\$373,361	for development of the Assistive Technology Center	Rep. McIntyre (D, N.C.) Sen. Dole (R, N.C.)
University of North Carolina at Wilmington	Agriculture	\$234,348	to research alternative feed for fish bred in the maritime aquaculture environment	Rep. Doyle (D, Pa.) Rep. McIntyre (D, N.C.)
University of North Carolina at Wilmington	Education	\$201,419	to support nursing programs, clinical research, and distance learning	Sen. Dole (R, N.C.)
University of North Carolina System	Housing and Urban Development	\$171,500	for UNC Hospitals to build a "family house" for the families of critically ill patients	Rep. Price (D, N.C.)
Wake Forest University	Energy	\$984,000	to support research at the Institute for Regenerative Medicine to use tissues from patients' own bodies as an alternative to organ transplantation	Rep. Foxx (R, N.C.) Sen. Dole (R, N.C.) Sen. Burr (R, N.C.)

Wake Forest University	Transportation	\$1,506,120	for transportation improvements at the Piedmont Triad Research Park	n/a
Wake Forest University	Defense	\$3,200,000	shared to be shared with Virginia Tech, for the study of technologies to reduce head, neck, and chest injuries in military personnel, at the Center for Injury Biomechanics	Rep. Boucher (D, Va.) Rep. Goode (R, Va.) Sen. Warner (R, Va.) Sen. Webb (D, Va.)
Wake Forest University	Defense	\$2,000,000	to support the Advanced Regenerative Medicine Development program	Rep. Foxx (R, N.C.)
Wake Forest University	Defense	\$2,400,000	to support the Institute for Regenerative Medicine	Sen. Burr (R, N.C.) Sen. Dole (R, N.C.)
Western Carolina University	Education	\$143,449	for equipment at the North Carolina Center for Engineering Technologies	Rep. McHenry (R, N.C.)
Western Carolina University	Homeland Security	\$27,000,000	shared for work through the Southeast Region Research Initiative to help local, state, and tribal leaders develop ways to anticipate and stop terrorist events and enhance disaster response	Sen. Alexander (R, Tenn.) Sen. Corker (R, Tenn.) Sen. Cochran (R, Miss.)

Congressional Earmarks for Higher Education, 2008

EARMARK TOTAL :\$50,961,980,000

Congressional Earmarks for Higher Education, 2011

EARMARK TOTAL :Over \$78,200,000,000



UNC Professor Ralph Byrns

So You Want to Be an Entrepreneur . . . ?

Work provides many people with the primary meaning for their lives. Surveys indicate that most students want interesting, secure, and remunerative careers. Many also seek jobs that reward hard work with rapid advancement or that contribute to social well-being. Finding “the right job” may entail a little job hopping, but even in the 21st Century, many people will still spend most of their working lives employed by one large firm. With luck, it will have a good pension plan. Successful entrepreneurs, however, usually march to the beat of their own drummers.

Entrepreneurial activity entails coordinating services provided by other resources so that previously unmet wants are accommodated.

An **entrepreneur** perceives potentially profitable unmet wants and then absorbs *risks and uncertainty* in the process of establishing and operating an organization (usually a firm) to produce new types of goods or to innovate new production technologies.

Many successful entrepreneurs seem misfits early in their careers, losing one job after another because they are not team players. Most highly successful entrepreneurs equate compromise with losing and will do almost anything to get their own way. People afflicted with personalities that conflict with large organizations often express desires to “be my own boss,” but few who go off on their own enjoy much success. Indeed, most who eventually succeed do so only after a series of failures. Overstating how devastating bankruptcy can be is difficult, especially for entrepreneurs who stake their dreams on the success or failure of an enterprise.

Several characteristics seem to separate highly successful entrepreneurs from most small proprietors or heads of giant corporations:

1. *Vision and timing*. Entrepreneurs see opportunities where others see only problems. Being in the right place at the right time is often a key. Different people interpret the same complex facts differently. Successful entrepreneurs tend to organize information so that solutions seem obvious. Their solutions may improve quality in existing goods, cut production

2. *Conviction and action.* Entrepreneurs act when they perceive a problem. Other people may see solutions, but fear of losing regular paychecks prevents pursuit of their ideas. Entrepreneurs tend to have powerful egos; they want to leave their marks on the world.
3. *Bearing of risk and uncertainty.* Successful entrepreneurs typically have such faith in their plans that they are willing to risk all their time and capital (and, where possible, other people's time and capital), rejecting the financial security most people seek.
4. *Workaholism.* Most people want high income from a job that allows leisure every evening and on weekends and regular vacations. A 40-hour, 9-to-5 job is not a goal of most successful entrepreneurs, some of whom put in 100+ hours per week for decades.

G.L.S. Shackle, a famous economic theorist, describes enterprise as "action in pursuit of the imagined, deemed possible."^{*} Entrepreneurs imagine alternative uses of resources, and by organizing resources to match their visions, they alter the course of history. If this brief discussion has not squelched any desire you might have to be an entrepreneur, then you need to watch for opportunities to provide things that people want, be willing to absorb incredible amounts of risk and uncertainty, and work extraordinarily hard. Then pray for luck.

^{*} Robert F. Hebert and Albert N. Link, *The Entrepreneur*, "Forward" by G.L.S. Shackle (New York: Praeger Publishers, 1982). http://www.unc.edu/depts/econ/byrns_web/Economicae/Essays/Entrepreneur.htm

Prior to joining the Department of Economics at UNC-Chapel Hill in 2001, Ralph Byrns taught at Rice, Clemson, Metropolitan State College at Denver, the University of Colorado at Denver, the University of Colorado, Boulder, Loyola University of Chicago, Greensboro College, and Duke University. His interests include economic methodology and philosophy, behavioral economics, the sociology of economics as a discipline, and the economics of personal relationships. He sponsors the Carolina Economics Club. His Economics text (with Gerald W. Stone, now in a 6th edition) has been used by more than one million students at over 1200 universities since 1981. Byrns is a fellow of UNC's Parr Center for Ethics and named as Core Faculty for the Philosophy, Political Science, and Economics [PPE] Program.

Carolina Entrepreneurial Initiative (CEI)

In 2003, UNC-Chapel Hill was one of 8 universities nationwide selected by the Ewing Marion Kauffman Foundation to receive a multimillion-dollar grant supporting campus-wide entrepreneurship education – the Carolina Entrepreneurial Initiative (CEI). The CEI focuses upon traditional business entrepreneurship, as well as social, civic and academic entrepreneurial endeavors. Its objective is to make entrepreneurship part of the weave and fabric of the UNC experience.

UNC is building a permanent foundation of faculty expertise, exciting educational opportunities for students and productive engagement with the wider entrepreneurial community. The grant is viewed as an opportunity to make entrepreneurship a life-changing experience for a wide array of undergraduate and graduate students and faculty, and will complement the BSBA and MBA entrepreneurial program at UNC Kenan-Flagler.

<http://www.kenan-flagler.unc.edu/Programs/MBA/concentration/entrepreneurial/CEI.cfm>

Entrepreneurship

Entrepreneurs provide a specialized human resource; they combine labor, land, and capital to produce goods while incurring risk in their quest for profits. After paying wages, rent, and interest for the use of other resources, entrepreneurs keep any funds left over from their sales revenue. An entrepreneur's profit is a reward for organizing production, bearing risks and uncertainty, or introducing innovations that improve the quality of life.

The most successful entrepreneurs tend to be innovators of new technologies—better production methods, or new products. Advances in communications (e.g., dotcoms) and biogenetics have recently been hot areas. But risk of loss (negative profit) to an entrepreneur can be enormous. Over half of all new ventures fail within two years. Thousands of oil companies went bankrupt when oil prices plummeted in the 1980s and hundreds of firms have lost fortunes trying to develop personal computers and software. On the other hand, Bill Gates established Microsoft (a major software developer) and quickly became the world's youngest self-made billionaire after dropping out of Harvard. Only prospects of profit can overcome fears of loss.

http://www.unc.edu/depts/econ/byrns_web/Economicae/entrepreneurship.html

Chapter 11

Florida Representative Anitere Flores & the \$107,000 Sale of Amendment No. 185621

In the mid and late 2000's, a number of states and the U.S. Congress attempted to cobble textbook affordability legislation. The International Mega-Conglomerate Publishing Oligopolies (IMCPOs) and the Text and Academic Authors Association co-opted the issue, fighting every effort to bring textbook costs under control. By keeping used books out of the market, Florida's college and university students have to pay full price for their assigned textbooks.

The textbook industry has always had its fair share of malfeasance and price manipulation. The IMCPOs act with impunity as they monopolize the textbook industry, thereby keeping textbook prices as high as possible. Textbook costs often equal or exceed tuition costs for America's students. With over 38 billion dollars of government money in the form of Pell grants which forces students to buy their textbooks from the college bookstore (the highest price option), colleges and universities willingly collude with what can be fairly labeled as criminal entities. Since more affordable used textbook options are available, these companies do everything they can to keep these lower priced products out of the marketplace. One of the methods that has proven fruitful for these criminal publishing outfits is the tried and true practice of bribing legislators in an effort to hijack the implementation of textbook cost savings for students.

Riding the wave of textbook affordability legislation, Florida legislators, like those in many states, began half-hearted inquiries into how to stem the high cost of textbooks. Who were the primary consultants to Florida legislators? The IMCPOs represented by the Text and Academic Authors Association (TAA) and the Association of American Publishers (AAP). The entities that were ignored in the process were used textbook wholesalers, retailers and the many Small Business Families in this industry that make their livings, feed their families and pay for their children's tuition. The same families who now have to pay full price for textbooks for their children have had their livelihoods taken away by textbook publishers and errant legislators.

What is at issue is the buying and selling of *used* or *review* textbooks from faculty but this industry is completely precluded from visiting faculty so they can not purchase any books (stock), no matter the genre – or unlawful notice of copyright. Those in the resale textbook business buy “samples” which are promotional materials (review books) from faculty on college campuses. These books are, in effect, marketing brochures, more akin to trash as teachers sell books which are not accepted for adoption. These books are coincidental to the teaching profession. There is no connection between the textbook buying business and the textbook adoption process.

Publishers often suggest throwing away the sample rather than sell it. These books are sent to teachers with packages bearing packing slips emblazoned with the words “Free,” “Complimentary” and “Gratis.” See chapter 27 for a discussion of the terms, *Free, Complimentary & Gratis*. Many of the unsold faculty books go in the landfill. Book buyers buy textbooks and place these books into a used book market, inuring to students substantial savings on the significant textbook expense portion of their education. Book buyers and this industry are the original Textbook Affordability Actors. Without book buyers there would be only new books available at the campus bookstore and online.

Via an intentional and orchestrated defamation campaign by the Text and Academic Authors Association (see chapters 24 and 25) and with financial and political backing of the IMCPOs that have misrepresented the used textbook issue for their own pecuniary gain, these organizations have influenced state actors who then shut down an entire industry by blocking book buyers from procuring stock. No stock, no trade, no interstate trade. The State has dictated with whom teacher-clients can enjoy commercial speech and association. These unlawful bans also preclude any other business or personal relationships as book buyers are summarily removed from campuses and their clients are threatened with discipline or dismissal. Book buyers are the reason that there are used books in the campus bookstore.

Florida Legislators Take Contributions to Put Small Business Families Out of Business With Unconstitutional and Unlawful Legislative Amendments

The Text & Academic Authors Association lobbied Representative Anitere Flores (R), Senator Jeff Atwater (R), and their committees, convincing Florida's legislators that the IMCPOs, in effect, should set all pricing and that the families of Florida's Small Businesses should stand in line in unemployment. They convinced Florida's legislators to transfer the income of these Small Business Families to foreign oligopolies. The savings that students realize buying used textbooks was also transferred to the IMCPOs.

"In the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment."
Chief Justice Rehnquist, in *City of Dallas v. Stanglin*, 490 U.S. 19 (U.S. Sup. Ct. 1989). Mallor, et al. *Business Law and the Regulatory Environment*, New York: McGraw-Hill Irwin, 2001, 49.

AAP's henchman and Small Business Predator in Chief, J. Bruce Hildebrand, set up the "contributions" of over \$107,000, bribing each and every voting committee member and the Florida Republican Party. Then Florida Governor Crist (R) signed the legislation into law. When Crist's signature hit the paper on H.B. 603, Florida's Small Business Families who made their living in the used textbook market were put OUT OF BUSINESS. No studies. No reports. No due process.

Unconstitutional Florida Statute Chapter 1004.085, Textbook Affordability
2) An employee may receive:
(a) Sample copies, instructor copies, or instructional materials. *These materials may not be sold for any type of compensation if they are specifically marked as free samples not for resale.*

Florida's legislators simply wiped Small Family Businesses off the economic map. Those who conduct interstate trade with their Florida clients began to see new signs at the Florida border, "Book Buyers -- Your Specific Occupation Is Not Welcome in Florida. Buy some oranges at the next U-turn. -- Governor Crist." Unlawful restraint of trade and violations of the Equal Protection Clause became as ubiquitous as Florida palm trees. As addressed in the law section of this report, these actions and the 2008 law itself are violations of, among others, The Constitution & the Declaration of Independence, The Supremacy Clause, Sherman Antitrust Act of 1890, Clayton Antitrust Act of 1914, Federal Trade Commission Act of 1914, The Takings Clause, The Lanham Trademark Act of 1946, U.S. Code, The Copyright Act, The First Sale Doctrine of 1909, Federal Trade Commission rules, United States Postal Service rules, federal court rulings, Florida state laws including unordered merchandise laws and administrative and court rulings. See Section D for a more thorough discussion of these and other laws and regulations.

The offending Flores amendment is so unlawful and unconstitutional that Flores had to sneak it in at the last moment to avoid analysis by the Florida Board of Governors and the Bill Analysis staff of the Florida House of Representatives. Had the amendment been scrutinized, the Florida Board of Governors would have rejected it as being both unconstitutional and a violation of Florida Statute 570.545, Unsolicited Goods; no obligation on part of recipient (see box below). A discussion of unsolicited goods (unordered merchandise) and "licenses" in this context can be found in chapter 26. Summarizing this point, requiring a "license" to order a review book has been adjudicated as restraint of trade.

Florida Statute 570.545 Unsolicited goods; no obligation on part of recipient.
When unsolicited goods are delivered to a person, the person may refuse delivery of the goods, or, if the goods are delivered, the person is not obligated to return the goods to the sender. If unsolicited goods are either addressed to or intended for the recipient, they shall be deemed a gift and the recipient may use or dispose of them in any manner without obligation to the sender.
History. s. 1, ch. 69-43; s. 1, ch. 79-37; s. 899, ch. 97-103. Note. Former s. 570.284.

Florida's universities have policies that are in line with federal and state laws. Flores ignored these sources of guidance also.

Florida International University Policy on Unsolicited Goods

RECEIPT OF UNSOLICITED GOODS Florida Statutes 570.545 states that when unsolicited goods are delivered, the person is not obligated to return the goods to the sender. The law also states that unsolicited goods shall be deemed a gift and recipient may use or dispose of them in any manner without obligation to the sender.
<http://facilities.fiu.edu/operations/maint/bbc/bbcreceiving.htm>

Legislation Favoring Contributors Not Based on Data, Equal Protection Clause Violated

The attack on the used book market has gone on for many decades. No report or study indicating a detriment to the IMCPOs nor a benefit to students by this unconstitutional amendment was presented or referred to in the discussions leading up to the proffering of any of the related bills right through to the vote on H.B. 603. Florida legislators rely on reports from the Florida Board of Governors (BOG) as well as outside sources. The outside source in this case was the U.S. General Accounting Office (GAO).

As the studies and reports of the BOG and the GAO indicate nothing about the used textbook resale industry, a red flag is hoisted high as there appears to be but one logical reason for Atwater's and Flores' amendments. Follow the money. The money trail is presented in the Essential Readings section of this chapter. The 8:29 AM Flores amendment to H.B. 603 had the sole purpose of transferring Small Business Family income to the textbook publishing companies, while lining the pockets of Flores, Atwater and other legislators.

In the midst of a long-term economic downturn and lingering double-digit unemployment, AAP and foreign companies paid \$107,000 to include the language which would eventually shutter scores of American Small Business Families and put hardworking, productive people out of their jobs. Houghton Mifflin, CALPAC, Association of American Publishers, Authors Guild and the Text and Academic Authors Association conspired and colluded with Florida Small Business Family predators, Jeff Atwater and Anitere Flores to intentionally insert known unconstitutional and unlawful language into the textbook affordability legislation. Houghton Mifflin, et al, has been buying legislation all over the country. There appears to be no shortage of legislators who, for \$500 or \$1,000, will sell the constitutional rights of American Small Business Families.



Florida's Small Business Family Predator, Senator Jeff Atwater

Even though Atwater knew his bill would be tabled and H.B. 603 would be the lead textbook affordability legislation, this Small Business Killer knew he needed to fulfill his contract to eradicate Florida's Small Business Families for which he charged and was paid \$1,000. On February 27, 2008, Senator Atwater filed an amendment to this bill which changed the S.B. 2350 language to the wording in Flores' unconstitutional and unlawful amendment found on the next page.



Florida's Small Business Family Predator, Representative Anitere Flores

8:29 AM

On April 15, 2008 at 8:29 AM, Florida Representative Anitere Flores, still clutching the \$500.00 she was paid by the Association of American Publishers, looked over both of her shoulders and cursed the ubiquitous security cameras filming her every move as she filed the unconstitutional amendment, changing the H.B. 603 language to the wording below. It is the exact Atwater verbiage. The total fee charged to the benefactor of this legislation was \$107,000. Contributions (bribes) were made in smaller denominations directly to Flores, Atwater and all of the committee members. Pay to Play is the name of the game when you're playing with Jeff Atwater and Anitere Flores. The payments made to all the members of the committee can be found in the Essential Readings section of this chapter.

On April 16, at 01:46 PM, just 29 hours later, the bill was voted into law...an unconstitutional law. The extensive 16-page legislative calendar for April 16 indicates that there would have been only enough time to read the amendment, waive reading of the rest of the bill, vote and move on. Flores successfully put her hard-working and honorable constituents out of work.

"Not For Resale" – Unlawful Extensions of Copyright Law

Flores' \$107,000 Amendment on behalf of the Text and Academic Authors Association

"Representative Flores offered the following amendment:

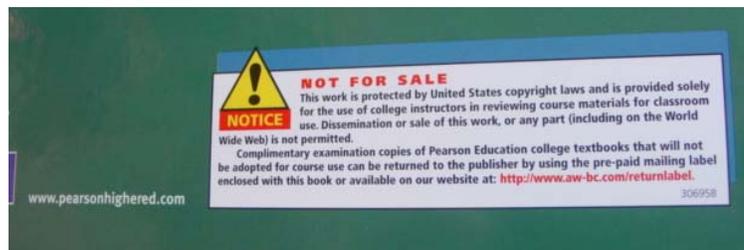
7 These materials may not be sold for any type of compensation if

8 **they are specifically marked as free samples not for resale.**"



Hey, wait a minute!

"Not for Sale" Notices are Unlawful Extensions of Copyright Law and Invalid.



United States Attorney's Manual

Title 9, Criminal Resource Manual

1854 Copyright Infringement—First Sale Doctrine

The first sale doctrine, codified at 17 U.S.C. § 109, provides that an individual who knowingly purchases a copy of a copyrighted work from the copyright holder receives the right to sell, display or otherwise dispose of that particular copy, notwithstanding the interests of the copyright owner.

Author's Note: Transfer of ownership is all that is required to be protected by the First Sale Doctrine.

The IMCPOs knowingly, willfully, repeatedly and continually violate federal law as it pertains to deceptive practices. These deceptive practices include labeling books meant for consumers with false and misleading Notices of Copyright. These false statements are in violation of Section 506(c) of the Copyright Law of the United States and related laws contained in Title 17 of the United States Code. The act of affixing these false and misleading notices of copyright to hundreds of thousands of books sent to hundreds of thousands of consumers is also a violation of the Federal Trade Commission Act of 1914. See chapter 26 for a thorough discussion of copyright violations. As these books are mailed annually hundreds of thousands of acts of mail fraud are committed by the IMCPOs each year.

Copyright Law – Title 17, Sec. 506(c)

Fraudulent Copyright Notice.—Any person who, with fraudulent intent, places on any article a notice of copyright or words of the same purport that such person knows to be false, or who, with fraudulent intent, publicly distributes or imports for public distribution any article bearing such notice or words that such person knows to be false, shall be fined not more than \$2,500.

Flores Amendment Violates Equal Protection Clause and the Law of Agency

It is unlawful for the State of Florida through its state agencies, community college and university systems and their constituent institutions to advocate for and choose to protect the interests of one set of companies while actively working for the eradication of a specific occupation. See chapter 17 for a discussion of the Equal Protection Clause of the 14th Amendment. The state is not the international publishers' watchdog, promoter, defender or apologist. The requirement that teacher-clients are to "observe" the limitations placed on their marketing materials set by the marketers (private companies doing many millions of dollars in business) is based on the language of the IMCPOs and their unlawful "Stomp the Comp" campaign. See Chapters 24 and 25 for a discussion of TAA's "Stomp the Comp" campaign. These state institutions do not work for the international mega-conglomerate publishers and are not the marketing or legal departments for these companies. The books are simply marketing materials for the publishing industry. These actions are violations of federal law, restraining trade and interstate commerce. The law of agency precludes employers from forcing their employees to act unlawfully. Chapter 30 discusses the law of agency as it pertains to the used textbook resale market.

Crist, Flores, Atwater, TAA, AAP, Houghton Mifflin and others intentionally and with the purpose of targeting and eradicating a specific occupation colluded and conspired to create legislation which they knew to be unlawful and unconstitutional. Flores was happy to serve up the heads of Florida Small Business Families for the fee of thirty pieces of silver, currently valued at \$107,000.00. And they call book buyers weasels and seedy. No, really, they do call book buyers weasels and seedy. See chapter 3, titled Of Weasels and American Small Business Families.

Flores' Intended Result – The Unlawful Eradication of Small Business Families Engaged in a Specific Occupation

The Text and Academic Authors Association admitted to this collusive and anticompetitive conspiracy to shut down a specific occupation on their website. TAA Executive Director, Richard Hull (a Tallahassee resident who lobbied Flores) celebrated what TAA called, "a reasonable success." From the TAA website:

TAA Newsletter Announcement
Florida 'Textbook Affordability Bill' includes language regarding comp copy sales

Due in part to the efforts of TAA and its members, Florida's HB603 "Textbook Affordability Bill" has been amended by Representative Anitere Flores to include language regarding the sale of complimentary copies.

The bill was amended to include the following: "These materials may not be sold for any type of compensation if they are specifically marked as free samples not for resale."

"While this means that comp copies that are not specifically marked as 'free samples not for resale' can still be sold, on the whole, our effort to modify Florida's comp copy law was a reasonable success," said TAA Executive Director Richard Hull. "Now it is up to publishers to make sure comp copies are appropriately marked."
www.taaonline.net/actionissues/index.html#1

A few months prior to the vote on H.B. 603, representatives from the century-old used and resale textbook industry, Sterling Educational Media, traveled to Tallahassee from South Florida and met with the already oligopoly-paid Flores. The impact on Florida's Small Business Families and students was made clear to the \$500 richer Flores. The federal law and precedents were presented to Flores. This fell on deaf ears as the clarion call from the \$107,000 payout on the table was too loud. Flores promised the Sterling representatives that the offensive and unconstitutional language would not be in the final bill. Nevertheless, just hours before the vote (so that the amendment could not be scrutinized and analyzed), Flores filed the unconstitutional amendment.

Then Florida governor, Charlie Crist, at the behest of the Association of American Publishers, shuttered scores of Florida Small Businesses and put hardworking Floridians out of business and out of a job. Crist overrode federal interstate commerce law and threw federal preemption to the manatees. After Crist made sure the \$70,000 was deposited into Republican coffers, he looked over both shoulders and signed the legislation, putting Florida's Small Business Families OUT OF BUSINESS. Crist declared when he signed the law that, "I have singlehandedly rendered the United States Constitution INVALID IN FLORIDA.

Flores' Unlawful Amendment No. 185621 Must Be Repealed

To bring H.B. 603 and Florida Statute Chapter 1004.085 into compliance with federal and state law, Flores' questionable amendment no. 185621 must be repealed.

The Used Textbook Resale Market & The Law[©]

Multi-State Comprehensive Edition

Essential Reading

Chapter 11

Florida Statute 570.545, Unsolicited Goods, No Obligation of Recipient

Statutes & Constitution : View Statutes : Online Sunshine



Official Internet Site of the Florida Legislature

August 6, 2011 Search Statutes: 2010

Select Year: 2010

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- House
- Statutes, Constitution, & Laws of Florida
 - Florida Statutes
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Interpreter Services for the Hearing Impaired



The 2010 Florida Statutes(including Special Session A)

Title XXXV	Chapter 570	View Entire Chapter
AGRICULTURE, HORTICULTURE, AND ANIMAL INDUSTRY	DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES	

570.545 Unsolicited goods; no obligation on part of recipient.—When unsolicited goods are delivered to a person, the person may refuse delivery of the goods, or, if the goods are delivered, the person is not obligated to return the goods to the sender. If unsolicited goods are either addressed to or intended for the recipient, they shall be deemed a gift and the recipient may use or dispose of them in any manner without obligation to the sender.

History.—s. 1, ch. 69-43; s. 1, ch. 79-37; s. 899, ch. 97-103.
Note.—Former s. 570.284.

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Florida International University Policy on Receipt on Unsolicited Merchandise

Florida International University

FIU FLORIDA INTERNATIONAL UNIVERSITY Facilities Management	
Links <ul style="list-style-type: none">» FIU Home» FMD Home» FIU Phonebook	BBC Central Receiving <p>BBC Central Receiving is a central campus location for the receipt and inspection of all incoming purchase order merchandise and equipment, and delivers the merchandise to the using department. Central Receiving is also a central campus location for shipping university merchandise outside the of the BBC campus.</p>
Staff <ul style="list-style-type: none">» Clifford Dubray Stores/Receiving Supervisor Off. 305-919-5526 Fax. 305-919-5578	General Information <p>RECEIVING REPORT A computergenerated receiving report is kept of all orders whose delivery is consigned to, or is under the supervision of, Central Receiving. As partial shipments are received against the purchase order, the computer file will be updated until all items on the purchase order are received.</p> <p>FREIGHT TICKETS, PACKING LISTS, WAYBILLS, BILLS OF LANDING The original copy of all freight tickets, waybills, bills of lading, and invoices shall be attached to the original copy of the receiving report for use by the University Controller's Office.</p> <p>A. Except in case of direct delivery to departments, Central Receiving will retain copies of all freight company documents. Instruction manuals, parts lists, catalogs, and other similar documents received become the property of the ordering department.</p> <p>B. When items are shipped directly to or picked up by the department, the department shall forward all documents received with the shipment to the Purchasing Office with the invoice.</p> <p>REPORT OF UNSATISFACTORY SHIPMENT- Damage to shipments must be recorded and processed in accordance with regulations Applying to common carriers. Visible damage shall be noted on the freight company's receipt at the time of delivery. Concealed damage must be officially reported to the freight company within fifteen calendar days after the company delivers the items to the University. Failure to report damages in this time frame will result in the University's loss of right to file a claim and collect for damages. In most instances, Central Receiving will inform the company by telephone and confirm with a completed damage report. Upon receipt of the damage report, the carrier will visit the University, inspect the alleged damage, and furnish a copy of the inspection report. A copy of the freight report must accompany any claim for damage.</p> <p>Departments should inspect their orders carefully and report any discrepancies (shortages/overages, damage, wrong item, etc.) to Central Receiving within 48 hours. If you are storing your order for future use, make sure to inspect it prior to storage. Concealed damaged claims have a 15 day limit and the sooner we are advised of a problem the easier it will be to correct. When unpacking your order make sure the boxes you are discarding are empty. The custodial workers have found boxes with computer cables, software, power cords, furniture parts, etc. in trash receptacles.</p> <p>RECEIPT OF UNSOLICITED GOODS are delivered, the person is not obligated to return the goods to the sender. The law also states that unsolicited goods shall be deemed a gift and recipient may use or dispose of them in any manner without obligation to the sender.</p> <p>PACKAGE TRACKING: http://www.fiu.edu/~receive/package.htm</p> <p>CORRECT DELIVERY LOCATION: Accurate delivery information is extremely important to avoid the major inconvenience of having to arrange for the redelivery of an order. Central Receiving delivers to the location indicated on the Purchase Order. When initiating your requisition make sure to type the actual delivery location for the merchandise.</p> <p>Central Receiving does not deliver or pickup merchandise off campus. If you have merchandise to be</p>

<http://facilities.fiu.edu/operations/maint/bbc/bcreceiving.htm>[8/5/2011 9:23:58 PM]

The 8:29am \$107,000.00 Flores Small Family Business Killing Amendment



FLORIDA REPRESENTATIVE & SMALL BUSINESS KILLER ANITERE FLORES

HOUSE AMENDMENT

Bill No. HB 603

Amendment No.

CHAMBER ACTION

Senate

House

1 Representative Flores offered the following:

2

3

Amendment

4

Remove line 50 and insert:

5

materials. These materials may not be sold for any type of

6

compensation if they are specifically marked as free samples not

7

for resale.

186521

4/15/2008 8:29 AM

The Funding of Florida Textbook Affordability Legislation

FLORIDA LEGISLATORS SOLD OUT FLORIDA SMALL BUSINESS FAMILIES TO AMERICAN ASSOCIATION OF PUBLISHERS											
Prepared by Alan Rosenthal		Sources: www.myfloridahouse.com and www.followthemoney.org									
Candidate	Office	Status	Party	Recs	↓Total↓	Schools & Learning Council	Policy & Budget Council	Comm on Post Sec Education	Comm on Higher Ed Appropria	Sponsor CoSponsor HB 603	Sponsor CoSponsor Prior Leg
ALTMAN, THAD	SEN	Won	Rep	2	\$1,000	X				CoSponsor	
HELLER, BILL	HOUSE	Won	Dem	2	\$1,000	X		X			
KIAR, MARTIN DAVID	HOUSE	Won	Dem	2	\$1,000	X					
LEGG, JOHN	HOUSE	Won	Rep	2	\$1,000	X					CoSponsor
LONG, JANET C	HOUSE	Won	Dem	2	\$1,000	X					
PROCTOR, BILL	HOUSE	Won	Rep	2	\$1,000	X		X			
WISE, STEPHEN	SEN	Won	Rep	2	\$1,000						CoSponsor
ABRUZZO, JOSEPH	HOUSE	Won	Dem	1	\$500						
ALEXANDER, JD	SEN	Won	Rep	1	\$500						
AMBLER, KEVIN C	HOUSE	Won	Rep	1	\$500		X			CoSponsor	
ARONBERG, DAVE	SEN	Won	Dem	1	\$500						
ATWATER, JEFF	SEN	Won	Rep	1	\$500						
AUBUCHON, GARY	HOUSE	Won	Rep	1	\$500						
BOGDANOFF, ELLYN	HOUSE	Won	Rep	1	\$500		X				
BOYD, DEBBIE	HOUSE	Won	Dem	1	\$500						
BRANDENBURG, MARY	HOUSE	Won	Dem	1	\$500						CoSponsor
BULLARD, LARCENIA J	SEN	Won	Dem	1	\$500						
BURGIN, RACHEL	HOUSE	Won	Rep	1	\$500						
CHESTNUT IV, CHARLES	HOUSE	Won	Dem	1	\$500			X			
COLEY, MARTI	HOUSE	Won	Rep	1	\$500	X		X			
CULP, FAYE	HOUSE	Won	Rep	1	\$500						
DEPERT, NANCY C	SEN	Won	Rep	1	\$500						
DOCKERY, PAULA	SEN	Won	Rep	1	\$500						
DOMINO, CARL J	HOUSE	Won	Rep	1	\$500						
DRAKE, BRAD	HOUSE	Won	Rep	1	\$500						
FITZGERALD, KEITH	HOUSE	Won	Dem	1	\$500						
FLORES, ANITERE	HOUSE	Won	Rep	1	\$500	X				Sponsor	
GARDINER, ANDY	SEN	Won	Rep	1	\$500						
GELBER, DAN	SEN	Won	Dem	1	\$500				X		
HASNER, ADAM	HOUSE	Won	Rep	1	\$500		X				
KELLY, KURT	HOUSE	Won	Rep	1	\$500						
LYNN, EVELYN	SEN	Won	Rep	1	\$500				X		CoSponsor
Candidate	Office	Status	Party	Recs	↓Total↓	Schools & Learning Council	Policy & Budget Council	Comm on Post Sec Education	Comm on Higher Ed Appropria	Sponsor CoSponsor HB 603	Sponsor CoSponsor Prior Leg
MCKEEL, SETH	HOUSE	Won	Rep	1	\$500	X					
PATTERSON, PAT	HOUSE	Won	Rep	1	\$500			X			
RICHTER, GARRETT	SEN	Won	Rep	1	\$500						
SASSO, TONY	HOUSE	Lost -	Dem	1	\$500						
SMITH, CHRISTOPHER	SEN	Won	Dem	1	\$500						
SOBEL, ELEANOR	SEN	Won	Dem	1	\$500						
TRAVIESA, ANTHONY	HOUSE	Withdr	Rep	1	\$500	X	X				
WILSON, FEDERICA	SEN	Won	Dem	1	\$500						
WORKMAN, RITCH	HOUSE	Won	Rep	1	\$500						
Dem					13,000						
Rep					\$70,000						
					\$107,000						

Association of American Publishers \$107,000 Distribution to Legislators

Follow The Money | Contributions to FLORIDA REPUBLICAN PARTY From ASSOCIATION OF AMERICAN PUBLISHERS



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L-CAT
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& ANALYSIS TOOL

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The L-CAT is a mashup of state legislative committee rosters and campaign donor data. It illustrates the intersection of campaign money with the law.

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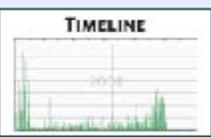
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Total number of records: 6
Total amount: \$70,000

More Tools

TIMELINE



Contributor <i>Industry</i>	Recipient Name	Location	?Amount?	Date
ASSOCIATION OF AMERICAN PUBLISHERS <i>Printing & Publishing</i>	FLORIDA REPUBLICAN PARTY	NEW YORK, NY	\$20,000	10/21/2008
ASSOCIATION OF AMERICAN PUBLISHERS <i>Printing & Publishing</i>	FLORIDA REPUBLICAN PARTY	NEW YORK, NY	\$10,000	08/28/2007
ASSOCIATION OF AMERICAN PUBLISHERS <i>Printing & Publishing</i>	FLORIDA REPUBLICAN PARTY	NEW YORK, NY	\$10,000	03/05/2008
ASSOCIATION OF AMERICAN PUBLISHERS <i>Printing & Publishing</i>	FLORIDA REPUBLICAN PARTY	NEW YORK, NY	\$10,000	01/19/2007
ASSOCIATION OF AMERICAN PUBLISHERS <i>Printing & Publishing</i>	FLORIDA REPUBLICAN PARTY	NEW YORK, NY	\$10,000	09/12/2007
ASSOCIATION OF AMERICAN PUBLISHERS <i>Printing & Publishing</i>	FLORIDA REPUBLICAN PARTY	NEW YORK, NY	\$10,000	02/11/2008

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833 N. Last Chance Gulch -- Helena, MT 59601
Phone: (406) 449-2480 | (406) 457-2091 (fax)

http://www.followthemoney.org/database/StateGlance/contributor_detail.php?t=1&c=3169&d=852028869[1/14/2010 8:39:43 PM]



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The nonpartisan, nonprofit Institute participates in Combined Federal Campaign workplace donation drives. We provide free online access to public records in all 50 states, to document political donor and lobbyist contributions to policymakers. Please support this critical work. (CFC #27995)

Florida 2008

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Time Machine

Take a trip through our data! Select a different year and see how giving compares across cycles. Or, select another state altogether.

Related Reports

[Diversity in State Judicial Campaigns, 2007-2008](#)
In August 2009, Circuit Judge Sonia Sotomayor became not only the first Hispanic to serve on the U.S. Supreme Court, but the third female. The historic significance of her selection and her subsequent confirmation was overshadowed by discussions

Home > Florida 2008 > Contributors > ASSOCIATION OF AMERICAN PUBLISHERS

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Contributor Summary ✉ ?

ASSOCIATION OF AMERICAN PUBLISHERS

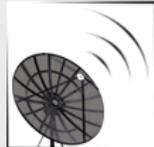
Total Given to Date:
\$107,000 (57 records)

Contributor Type:
Institution

Address: **Multiple Cities, NY**

Occupations Listed:
VARIOUS

PAC: **CALPAC**



Communications & Electronics
Printing & Publishing
Book, newspaper & periodical publishing

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Contributions Breakdown ✉ ?

TABLE 1: Contributions by Political Affiliation

Party	Records	Total	% of Overall
Democrat	21	\$22,000	20.56%
Republican	36	\$85,000	79.44%
Nonpartisan	0	\$0	0.00%
Third Party	0	\$0	0.00%
Ballot Measures	0	\$0	0.00%

FIGURE A: Contributions by Political Affiliation

about gender, race and ethnicity. In a majority of state courts across the nation, women and members of ethnic or racial minorities are underrepresented, and likely face situations similar to the ones that confronted Justice Sotomayor.

Building Their Immunity

The Freedom of Choice in Health Care Act asked Arizona voters to change their state Constitution to forever prohibit certain aspects of health care reform--such as single-payer and individual mandates. The voters declined to pass the resulting Proposition 101 in 2008, but the American Legislative Exchange Council, or ALEC, adopted the Act as a model for legislation in many states.

Take \$2 Million...and Call Me in the Session

In the last six years, major players in the health care industry gave \$394 million to officeholders, party committees and ballot measure committees in the 50 states. At least one proposal being discussed before Congress would allow states to engage in health care co-ops. States also regulate the various health care interests and administer Medicaid, which makes the states a major purchaser of goods and services from health care interests.

Virginia Is For Lovers...Of Millions

Earlier this month Virginia held races for three statewide offices--governor, lieutenant governor and attorney general--in a high-stakes showdown that almost reached the \$50 million mark. The gubernatorial race was widely touted as a contest that could signal the winds for the 2010 elections, and national party committees poured in money accordingly, providing nearly one-fourth of the money raised by the two

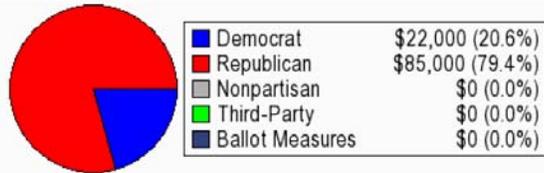


FIGURE B: Contributions to Candidates by Incumbency

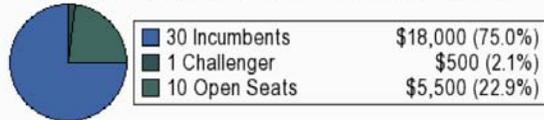
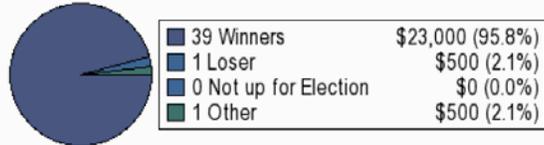


FIGURE C: Contributions to Candidates by Election Status



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Contributions to Candidates

TABLE 2: Contributions to Candidates

Candidate	Office	Status	Party	Records	?Total?	
ALTMAN, THAD	SENATE	Won	REPUBLICAN	2	\$1,000	See Records
HELLER, BILL	HOUSE	Won	DEMOCRAT	2	\$1,000	See Records
KIAR, MARTIN DAVID	HOUSE	Won	DEMOCRAT	2	\$1,000	See Records
LEGG, JOHN	HOUSE	Won	REPUBLICAN	2	\$1,000	See Records
LONG, JANET C	HOUSE	Won	DEMOCRAT	2	\$1,000	See Records
PROCTOR, BILL	HOUSE	Won	REPUBLICAN	2	\$1,000	See Records
WISE, STEPHEN	SENATE	Won	REPUBLICAN	2	\$1,000	See Records
ABRUZZO, JOSEPH	HOUSE	Won	DEMOCRAT	1	\$500	See Records
ALEXANDER, JD	SENATE	Won	REPUBLICAN	1	\$500	See Records
AMBLER, KEVIN C	HOUSE	Won	REPUBLICAN	1	\$500	See Records
ARONBERG, DAVE	SENATE	Won	DEMOCRAT	1	\$500	See Records
ATWATER, JEFF	SENATE	Won	REPUBLICAN	1	\$500	See Records
AUBUCHON, GARY	HOUSE	Won	REPUBLICAN	1	\$500	See Records
BOGDANOFF, ELLYN	HOUSE	Won	REPUBLICAN	1	\$500	See Records
BOYD, DEBBIE	HOUSE	Won	DEMOCRAT	1	\$500	See Records
BRANDENBURG, MARY	HOUSE	Won	DEMOCRAT	1	\$500	See Records

general election gubernatorial candidates, Democrat R. Creigh Deeds, and Republican William F. "Bill" McDonnell.

The Money Behind the 2008 Same-Sex Partnership Ballot Measures

(UPDATED 11/19/2009) The struggle between gay and lesbian rights interests and conservative and religious interests continues: in 2008, voters in Arizona, Arkansas, California and Florida passed measures opposing same-sex marriage or benefits. Underscoring the intensity of the conflict, these two interest groups were among the top contributors overall in each of the four states.

See a Problem?

Let us know.

Industry Influence

See how this giving from this industry compares to previous election cycles. Click [here](#).

Other Resources

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Did You Know?

The five communications companies in the report hired 2,609 lobbyists around the country. Again, AT&T and Verizon led the pack, with 1,373 and 868, respectively.

Read more: [Buying Broadband A Boost](#)

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BULLARD, LARCENIA J	SENATE	Won	DEMOCRAT	1	\$500	See Records
BURGIN, RACHEL	HOUSE	Won	REPUBLICAN	1	\$500	See Records
CHESTNUT IV, CHARLES S (CHUCK)	HOUSE	Won	DEMOCRAT	1	\$500	See Records
COLEY, MARTI	HOUSE	Won	REPUBLICAN	1	\$500	See Records
CULP, FAYE	HOUSE	Won	REPUBLICAN	1	\$500	See Records
DEPERT, NANCY C	SENATE	Won	REPUBLICAN	1	\$500	See Records
DOCKERY, PAULA	SENATE	Won	REPUBLICAN	1	\$500	See Records
DOMINO, CARL J	HOUSE	Won	REPUBLICAN	1	\$500	See Records
DRAKE, BRAD	HOUSE	Won	REPUBLICAN	1	\$500	See Records
FITZGERALD, KEITH	HOUSE	Won	DEMOCRAT	1	\$500	See Records
FLORES, ANITERE	HOUSE	Won	REPUBLICAN	1	\$500	See Records
GARDINER, ANDY	SENATE	Won	REPUBLICAN	1	\$500	See Records
GELBER, DAN	SENATE	Won	DEMOCRAT	1	\$500	See Records
HASNER, ADAM	HOUSE	Won	REPUBLICAN	1	\$500	See Records
KELLY, KURT	HOUSE	Won	REPUBLICAN	1	\$500	See Records
LYNN, EVELYN	SENATE	Won	REPUBLICAN	1	\$500	See Records
MCKEEL, SETH	HOUSE	Won	REPUBLICAN	1	\$500	See Records
PATTERSON, PAT	HOUSE	Won	REPUBLICAN	1	\$500	See Records
RICHTER, GARRETT	SENATE	Won	REPUBLICAN	1	\$500	See Records
SASSO, TONY	HOUSE	Lost - General Election	DEMOCRAT	1	\$500	See Records
SMITH, CHRISTOPHER (CHRIS)	SENATE	Won	DEMOCRAT	1	\$500	See Records
SOBEL, ELEANOR	SENATE	Won	DEMOCRAT	1	\$500	See Records
TRAVIESA, ANTHONY (TREY)	HOUSE	Withdrew	REPUBLICAN	1	\$500	See Records
WILSON, FREDERICA	SENATE	Won	DEMOCRAT	1	\$500	See Records
WORKMAN, RITCH	HOUSE	Won	REPUBLICAN	1	\$500	See Records

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Contributions to Party Committees



TABLE 3: Contributions to Party Committees

Committee	Party	Records	Total	
FLORIDA REPUBLICAN PARTY	REPUBLICAN	6	\$70,000	See Records
FLORIDA DEMOCRATIC PARTY	DEMOCRAT	3	\$13,000	See Records

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FAIR POLITICAL PRACTICES COMMISSION
MAJOR DONOR VIOLATION
STIPULATION, DECISION AND ORDER

Complainant, Executive Director of the Fair Political Practices Commission, Mark Krausse, and Respondent(s) hereby agree that this stipulation will be presented to the Commission at its next regularly scheduled meeting, or as soon thereafter as the matter can be heard, as a final disposition of the Major Donor reporting violation(s) described herein.

FPPC NO. 2006-0822

RESPONDENT: Houghton Mifflin Company
222 Berkeley Street
Boston, Massachusetts 02116

GOVERNMENT CODE SECTION VIOLATED: 84200

DESCRIPTION OF VIOLATION: RESPONDENT QUALIFIED AS A MAJOR DONOR COMMITTEE BUT FAILED TO TIMELY FILE THE MAJOR DONOR COMMITTEE STATEMENT, FORM 461, AS REQUIRED, WITH THE SECRETARY OF STATE.

REPORTING PERIOD: JANUARY 1, 2002 THROUGH JUNE 30, 2002
JULY 1, 2002 THROUGH DECEMBER 31, 2002
JANUARY 1, 2003 THROUGH DECEMBER 31, 2003
JANUARY 1, 2004 THROUGH DECEMBER 31, 2004
JANUARY 1, 2006 THROUGH JUNE 30, 2006

REPORT DUE DATE: JULY 31, 2002, JANUARY 31, 2003, JANUARY 31, 2004, JANUARY 31, 2005 AND JULY 31, 2006, RESPECTIVELY

MONETARY PENALTY: \$2,000.00 **NUMBER OF COUNTS:** 5

STATEMENT BY RESPONDENT(S):

I acknowledge that the violation(s) of the Political Reform Act described above and on Exhibit 1 attached have occurred and voluntarily request that the Fair Political Practices Commission resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* on the reverse side of this form and voluntarily waive any and all procedural rights to contest this matter in an administrative hearing. I have attached a check or money order made payable to the General Fund of the State of California in the amount of the penalty described above.

Dated: _____ X _____

Printed Name (and Title) _____

STATEMENT BY EXECUTIVE DIRECTOR:

I have reviewed the above stipulation and recommend its approval.

Dated: _____
MARK KRAUSSE, EXECUTIVE DIRECTOR

ORDER OF THE COMMISSION:

The foregoing stipulation has been adopted by a majority vote of the Fair Political Practices Commission as its final decision and order and is effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____
LIANE M. RANDOLPH, CHAIRMAN

**Streamlined Major Donor
Stipulation Attachment**

Case: **2006-0822**

Respondent: **Houghton Mifflin Company**

Number of Contributions Made: **9**

Total Amount Contributed: **\$145,000.00**

Summary of Contributions Made:		
Recipient	Amount	
COUNT 1		
Contributions During Reporting Period		
05/02/2002	Association of American Publishers, Inc.-CALPAC Two	\$25,000.00
COUNT 2		
Contributions During Reporting Period		
10/17/2002	Association of American Publishers, Inc.-CALPAC Two	25,000.00
10/17/2002	Association of American Publishers, Inc.-CALPAC	5,000.00
COUNT 3		
Contributions During Reporting Period		
07/11/2003	Association of American Publishers, Inc.-CALPAC Two	25,000.00
07/11/2003	Association of American Publishers, Inc.-CALPAC	5,000.00
COUNT 4		
Contributions During Reporting Period		
07/29/2004	Association of American Publishers, Inc.-CALPAC Two	25,000.00
07/29/2004	Association of American Publishers, Inc.-CALPAC	5,000.00
COUNT 5		
Contributions During Reporting Period		
03/31/2006	Association of American Publishers, Inc.-CALPAC	5,000.00
05/09/2006	Association of American Publishers, Inc.-CALPAC Two	25,000.00

EXHIBIT 1

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Higher Education Appropriations Committee

BILL: CS/SB 2350

INTRODUCER: Senate Committee on Higher Education Appropriations and Senators Atwater and Haridopolos

SUBJECT: Textbook Affordability

DATE: April 8, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Matthews	HE	Favorable
2.	Bryant	Hamon	HI	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires the State Board of Education (SBE) and the Board of Governors (BOG) to adopt policies by March 1, 2009, to further efforts to minimize the cost of textbooks for community college and state university students.

The bill prohibits employees of a community college or state university from demanding or receiving any payment or anything of value in exchange for requiring a student to purchase a specific textbook for coursework and instruction. The bill provides exceptions for sample copies, royalties for one's own work, review of course materials and supporting materials, and training in the use of course materials.

The bill requires community colleges and state universities to post on their websites the books that would be required for each course and requires the SBE and BOG to adopt policies for textbook notification for classes added after the notification deadline.

This bill creates section 1004.09, Florida Statutes.

II. Present Situation:

Textbook affordability is a national issue because the rising cost of textbooks affects the affordability of postsecondary education. A 2005 study by the U.S. Government Accountability Office found that college textbook prices nearly tripled from December 1986 to December

2004.¹ College textbook prices rose at double the rate of inflation for the preceding two decades. The study found that the increasing costs were related to the evolution of the college textbook as a stand-alone book to bundling the book, ancillary instructional aids, and technology.²

In the fall of 2006, the BOG administered a survey to all state universities for information on their textbook ordering policies and practices. According to BOG, the survey responses revealed that:

- Most universities require instructors or academic departments to select and order textbooks at least two months in advance of the term.
- Many universities' online registration tools allow students to view and even purchase their textbooks at the time they register for classes, which can be three or four months in advance of the beginning of the term.
- Advance notice is helpful to bookstores and students in permitting the ordering and purchasing of used textbooks, but it can be difficult to implement fully as course sections are often added or course enrollment capacities are increased at the beginning of the term to meet student demand.
- Over half of the state's universities do not have a written policy regarding textbooks. Some universities that do not have written policies do have reporting requirements to recommend policies to improve the timeliness and availability of textbook ordering and purchasing.
- Students at a majority of universities can find out required course materials either from the university's online textbook-ordering tool at the time of registration, from the university's bookstore website, or the course syllabus at the beginning of the term.
- Most of the state's public universities have no express prohibition to faculty entering into agreements with publishers to receive some form of compensation from the sale of required texts or course materials. They do have policies whereby faculty members wishing to use their own textbooks must either receive permission to do so or complete an outside activities/conflict of interest form.
- The selection of bundled textbook packages is a common practice at all universities. Usually, this decision was made by a course instructor or academic department. None of the universities had information regarding whether or not the supplemental materials included in the bundles were used. For some classes, such as foreign language classes, bundled packages were the most likely to be ordered and used. For other classes, supplemental materials were to be used as resources for students needing additional study opportunities.

Florida's Office of Program Policy and Government Accountability is finalizing a report on textbook affordability. In this review, OPPAGA surveyed community colleges and universities about the price of textbooks and required course materials for the courses with the most student enrollment across 13 disciplines. Preliminary information found that community college students can expect to pay about \$117 for required course materials per course. This results in an expense of approximately \$468 per semester if a student takes a full course load (four courses), which is 58 percent of the tuition cost for those courses. At state universities, students can expect to pay

¹ United States Government Accountability Office, "College Textbooks: Enhanced Offerings Appear to Drive Recent Price Increases," GAO-05-806, July 2005, p. 2.

² *Id.* at 25.

about \$127 per course for required materials. This results in an expense of approximately \$508 per semester for a full course load (four courses), which is 37 percent of the tuition cost for those courses.

OPPAGA's preliminary information shows that students can, on average, save a small amount by purchasing required course materials either online or from local, private bookstores. OPPAGA identified five commonly used potential cost-saving mechanisms among the state's public postsecondary institutions:

- Provide textbooks on reserve in the school library;
- Implement textbook buy-back programs;
- Encourage faculty to consider textbook costs before selecting and assigning course materials;
- Provide unbundled course materials; and
- Provide electronic textbook subscriptions.

Fewer institutions use the following five potential cost-saving mechanisms:

- Provide students with money-saving tips;
- Request publishers to disclose textbook shelf-life;
- Use customized textbooks;
- Request publishers to disclose textbook revisions; and
- Implement a textbook advisory committee.

III. Effect of Proposed Changes:

This bill prohibits employees of a community college or state university from demanding or receiving any payment or anything of value in exchange for requiring a student to purchase a specific textbook for coursework and instruction. The bill provides exceptions that permit an employee to receive:

- Sample copies, instructor copies, and instructional materials;
- Royalties for books that include the instructor's own work;
- Honoraria for peer review of course materials;
- Compensation for activities such as reviewing and preparing supporting material that are performed under guidelines adopted by the SBE and the BOG; and
- Training in the use of course materials.

The bill requires community colleges and state universities to post on their websites the books that will be required for each course, including the International Standard Book Number (ISBN) and other relevant information for identifying the book, at least 30 days before the first day of class. The SBE and BOG are required to adopt policies for textbook notification for classes added after the notification deadline.

This bill requires the SBE, for community colleges, and the BOG, for state universities, to adopt policies by March 1, 2009, to further efforts to minimize the cost of textbooks. These policies must include:

- Sufficient time for bookstores to confirm availability, especially with regard to used books;
- Confirmation, as part of the adoption process, that all required bundled materials would be used;
- Confirmation, as part of the adoption process, that the new edition differs substantially from the earlier editions; and
- Ways to provide required textbooks to students who could not otherwise afford them.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

To the extent that the required policies and procedures lead to lower costs for textbooks, postsecondary students would realize a cost savings.

C. Government Sector Impact:

The requirement to provide textbooks to students who could not otherwise afford them would require community colleges and universities to determine who meets this specific qualification and perhaps to pay for the provision of the textbooks.

The cost of posting textbook information on the institutions' websites should be minimal. At the present time a number of institutions already do this.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Higher Education Appropriations Committee, April 8, 2008:

The CS for SB 2350 delineates the accompanying information a community college or university must post on its website about a required textbook. This information must include, at a minimum, the title, all authors, publishers, edition number, copyright date, published date, and other information necessary to identify the textbooks required for a course.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

State of Florida Board of Governors Staff Analysis

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 603 Textbook Affordability

SPONSOR(S): Flores

TIED BILLS: IDEN./SIM. BILLS: SB 2350

SUMMARY ANALYSIS

A recent study by the United States Government Accountability Office found that college textbook prices have risen at twice the rate of annual inflation over the last two decades.

This bill prohibits employees of a community college or state university from receiving anything of value in exchange for requiring a student to purchase a specific textbook for coursework and instruction. The bill does provide exceptions that permit an employee to receive: sample copies, instructor copies, and instructional materials; royalties for books that include the instructor's own work; honoraria; compensation for reviewing and preparing supporting material; and, training in the use of course materials.

This bill requires community colleges and state universities to post on their websites the books that will be required for each course, including the International Standard Book Number (ISBN) and other relevant information for identifying the book, at least 30 days before the first day of class. The State Board of Education (SBE) and Board of Governors (BOG) are required to create policies, procedures, and guidelines for textbook notification for classes added after the notification deadline.

This bill requires the SBE and the BOG to adopt policies, procedures, and guidelines by March 1, 2009 to further efforts to minimize the cost of textbooks. These policies, procedures, and guidelines must include: sufficient time for bookstores to confirm availability, especially with regard to used books; confirmation, as part of the adoption process, that all required bundled materials will be used; confirmation, as part of the adoption process, that a new edition differs substantially from the earlier editions; and, ways to provide required textbooks to students who could not otherwise afford them.

This bill prohibits employees of a community college or state university from receiving anything of value in exchange for requiring a student to purchase a specific textbook for coursework and instruction. The bill provides exceptions that permit an employee to receive: sample copies, instructor copies, and instructional materials; royalties for books that include the instructor's own work; honoraria; compensation for activities such as reviewing and preparing supporting material; and, training in the use of course materials.

This bill requires community colleges and state universities to post on their websites the books that will be required for each course, including the International Standard Book Number (ISBN) and other relevant information for identifying the book, at least 30 days before the first day of class. The SBE and BOG are required to create policies, procedures and guidelines for textbook notification for classes added after the notification deadline.

This bill requires the SBE and the BOG to adopt policies, procedures, and guidelines by March 1, 2009 to further efforts to minimize the cost of textbooks. These policies, procedures, and guidelines must include: sufficient time for bookstores to confirm availability, especially with regard to used books; confirmation, as part of the adoption process, that all required bundled materials will be used; confirmation, as part of the adoption process, that the new edition differs substantially from the earlier editions; and, ways to provide required textbooks to students who could not otherwise afford them.

The BOG suggests that the terms "textbook" and "bundled materials" should be clearly defined in this bill. The BOG also notes that some publishing companies require faculty to use the most recent edition of the textbook, and that this obligation would interfere with the requirement for faculty to determine if there is a significant difference between newer and older editions of the textbook.

The DOE indicates that the requirement to provide textbooks to students who could not otherwise afford them will require community college and university faculty to determine who meets this specific

qualification.¹⁴ The BOG suggests that it could be hard to implement a program that provides textbooks to students with financial need without funding support, because libraries normally do not carry every textbook that is used and if the library does carry the textbook, normally it will not carry a sufficient supply of that textbook.

III. Effect of Proposed Changes:

This bill prohibits employees of a community college or state university from demanding or receiving any payment or anything of value in exchange for requiring a student to purchase a specific textbook for coursework and instruction. The bill provides exceptions that permit an employee to receive:

- Sample copies, instructor copies, and instructional materials;
- Royalties for books that include the instructor's own work;
- Honoraria for peer review of course materials;
- Compensation for activities such as reviewing and preparing supporting material that are performed under guidelines adopted by the SBE and the BOG; and
- Training in the use of course materials.

FINDINGS

In the fall of 2006, the BOG administered a survey to all state universities for information on their textbook ordering policies and practices. According to BOG, the survey responses revealed that:

Most universities require instructors or academic departments to select and order textbooks at least two months in advance of the term.

Many universities' online registration tools allow students to view and even purchase their textbooks at the time they register for classes, which can be three or four months in advance of the beginning of the term.

Advance notice is helpful to bookstores and students in permitting the ordering and purchasing of used textbooks, but it can be difficult to implement fully as course sections are often added or course enrollment capacities are increased at the beginning of the term to meet student demand.

Over half of the state's universities do not have a written policy regarding textbooks. Some universities that do not have written policies do have reporting requirements to recommend policies to improve the timeliness and availability of textbook ordering and purchasing.

Students at a majority of universities can find out required course materials either from the university's online textbook-ordering tool at the time of registration, from the university's bookstore website, or the course syllabus at the beginning of the term.

Most of the state's public universities have no express prohibition to faculty entering into agreements with publishers to receive some form of compensation from the sale of required texts or course materials. They do have policies whereby faculty members wishing to use their own textbooks must either receive permission to do so or complete an outside activities/conflict of interest form.

The selection of bundled textbook packages is a common practice at all universities. Usually, this decision was made by a course instructor or academic department. None of the universities had information regarding whether or not the supplemental materials included in the bundles were used. For some classes, such as foreign language classes, bundled packages were the most likely to be ordered and used. For other classes, supplemental materials were to be used as resources for students needing additional study opportunities.

ABRIDGED.

History of Florida's Textbook Affordability Legislation

HB 254 (2007), Textbook Affordability
Filed 12/14/2006, Died: 05/07/2007

GENERAL BILL by Finance and Tax and Higher Education and Wise
Sponsor(s): Wise

Textbook Affordability [SPCC]: prohibits certain actions by employees of state university or community college re purchase of required textbooks by students; requires that community colleges & state universities notify students of textbooks required for each course by listing such textbooks on community college or university website; requires adoption of certain policies & practices designed to minimize the cost of textbooks, etc. Creates 1004.09. **Effective Date:** 07/01/2007

Last Event: 05/04/07 S Died in Committee on Higher Education Appropriations
on Mon, May 07, 2007 7:01 AM

Unconstitutional Language in Bill:

The original bill does not include the unconstitutional language.

The unconstitutional language was added to this bill as a Committee Amendment (No. D 933558):

27 (a) Sample copies, instructor copies, or instructional
28 materials. These materials may not be sold.

* * * * *

HB 289 (2007), Textbook Affordability
Filed: 01/16/2007, Died: 05/07/2007

GENERAL BILL by Schools & Learning Council and Flores
Sponsor(s): Anitere Flores (**Paid \$500.00 for her vote**)
Co-Sponsor(s): Baxley; Bendross-Mindingall; Brandenburg; Cusack; Galvano; Holder;
Legg (**Paid \$500.00 for his vote**); Lopez-Cantera; Meador; Patronis; Precourt

Textbook Affordability: Prohibits certain actions of community college or state university employees that relate to student purchase of required textbooks; authorizes receipt of certain instructional materials, compensation, & training; requires student notification of required textbooks; requires adoption of specified policies & practices to minimize cost of textbooks; requires study & report by OPPAGA. **Effective Date:** July 1, 2007.

Last Event: 05/04/07 S Died in Messages on Monday, May 07, 2007 7:01 AM

Unconstitutional Language in Bill:

110 (a) Sample copies, instructor copies, or instructional
111 materials, not to be sold.

* * * * *

History of Florida's Textbook Affordability Legislation continued

SB 2492 (2007), Textbook Affordability
Filed: 03/01/2007, Died: 05/07/2007

GENERAL BILL by Higher Education and Haridopolos

Sponsor(s): Haridopolos
Co-Sponsor(s): None

Textbook Affordability [SPCC]: prohibits certain actions by employees of state university or community college re purchase of required textbooks by students; requires that community colleges & state universities notify students of textbooks required for each course by listing such textbooks on community college or university website; requires adoption of certain policies & practices designed to minimize the cost of textbooks, etc. Creates 1004.09. Effective Date: 07/01/2007
Last Event: 05/04/07 S Died in Committee on Higher Education Appropriations
on Monday, May 07, 2007 7:02 AM

Unconstitutional Language in Bill:

110 (a) Sample copies, instructor copies, or instructional
111 materials, not to be sold.

* * * * *

SB 2350 (2008), Textbook Affordability
Filed: 02/27/2008, Laid on Table, Referred to (2008) HB 603: 04/17/2008

GENERAL BILL by Higher Education Appropriations and Atwater

Sponsor(s): Atwater (Paid \$500.00 for his vote)
Co-Sponsor(s): Haridopolos; Baker; Lynn (Paid \$500.00 for her vote);
Charlie Crist (WHO, AS GOVERNOR, SIGNED THE LAW for \$70,000.00)

Textbook Affordability [SPCC]: Prohibits employees of a community college or state university from demanding or receiving any payment or anything of value in exchange for requiring a student to purchase a specific text book for coursework and instruction. Authorizes receipt of certain instructional materials, compensation, and training. Requires adoption of specified policies and practices to minimize the cost of textbooks, etc. Effective Date: 07/01/2008
Last Event: 04/17/08 S Laid on Table, Link/Iden/Sim/Compare passed, refer to HB 603
Ch. 2008-78) -SJ 00683 on Thursday, April 17, 2008 11:31 AM

Original Lawful and Constitutional Language in Bill:

48 (2) An employee may receive:
49 (a) Sample copies, instructor copies, or instructional
50 materials.

Unconstitutional Language in Bill:

"Senator Atwater moved the following amendment:
7 These materials may not be sold for any type of
compensation if
8 they are specifically marked as free samples not for
resale."

* * * * *

History of Florida's Textbook Affordability Legislation continued

HB 603 (2008), Textbook Affordability

Filed: 01/18/2008

Approved by Governor CHARLIE CRIST on Wednesday, May 28, 2008.

GENERAL BILL by Flores (CO-SPONSORS)

Sponsor(s): Anitere Flores (Paid \$500.00 for her vote)

Co-Sponsor(s): Altman (Paid \$1,000.00 for his vote); Ambler (Paid \$500.00 for his vote);
Attkisson; Fields; Hukill; Nehr; Reagan; Richardson; Schenck; Scionti;
Williams, T.

Textbook Affordability: Prohibits certain actions of community college or state university employees that relate to student purchase of required textbooks; authorizes receipt of certain instructional materials, compensation, & training; requires student notification of required textbooks; requires adoption of specified policies & practices to minimize cost of textbooks. Effective Date: July 1, 2008

Last Event: 05/28/08 Approved by Governor; Chap No. 2008-78 on Wed, May 28, 2008 2:58 PM

Original Lawful and Constitutional Language in Bill:

48 (2) An employee may receive:

49 (a) Sample copies, instructor copies, or instructional
50 materials.

Unconstitutional Language in Bill:

"Representative Flores offered the following amendment:

7 These materials may not be sold for any type of
compensation if

8 they are specifically marked as free samples not for
resale."

Meet Senate President Jeff “Thousand Dollar Bill” Atwater



Jeff's high school yearbook quote: "Just make the check payable to Jeff Atwater, that's A-T-W..."

The Miami Herald

Posted on Sun, Mar. 15, 2009

Florida lawmakers feed on special-interest money

BY STEVE BOUSQUET, MARC CAPUTO, MARY ELLEN KLAS, BREANNE GILPATRICK AND ALEX LEARY
Herald/Times staff writers

In the latest election cycle, dozens of Florida legislators raked in \$6 million in special-interest campaign money and spent a good deal of it on themselves for meals, rental cars, plane trips and hotels. Some lawmakers are feeding at the trough of contributors, enjoying expensive dinners at upscale restaurants with donors' money at a time when one in 10 Floridians are on food stamps. Others are churning cash from one political committee to another, using it to finance direct contributions and attack ads for other candidates, thereby strengthening their own clout in a virtually untraceable shell game.

All of this is legal. Florida law bans legislators from accepting more than \$500 from each donor who contributes to their individual campaign accounts. But there is no limit on the amount of cash that lawmakers can collect from all manner of special interests in separate fundraising committees that the lawmakers create to advance broadly defined public purposes, such as getting one another reelected. "If I do it over coffee, I have to pay for my own coffee, but I can accept a \$10,000 check," said Sen. Dave Aronberg, a Democrat from Greenacres who has used political committees to recruit candidates and steer money to several Democratic legislative campaigns.

Florida law says money raised for the committee can be spent only in support of its often nebulous mission. Lawmakers defend the growing practice of using the contributions for personal expenses, citing their own modest means and the demands of being visible in the fourth-largest state. "We are traveling the state, and we're going to eat and sleep over in different places," said Sen. Mike Haridopolos, R-Melbourne, a possible future Senate president. "We're not charging the state. This is not taxpayer money."

The enormous amounts of money have also spawned a cottage industry for advertising, media and political consulting firms, many of which create their own political committees to send money back to the accounts of the legislators who hire them. A Herald/Times review of fundraising and spending patterns of about 40 lawmaker-connected political committees shows that legislators have spent substantial amounts on consultants, advertising, staff, travel and meals not directly tied to the committees' stated missions. No law prohibits the practice, and legislators themselves write the campaign finance laws.

NOBLE NAMES

The committees operate under noble-sounding names, such as Senate President Jeff Atwater's Preserve the American Dream, Sen. Mike Fasano's Floridians for Principled Government and Sen. Dan Gelber's A Better Way for Florida.

The one controlled by Haridopolos, the Committee for Florida's Fiscal Future, which is connected with Rep. Carlos Lopez-Cantera, R-Miami, spent the most on food in the past two years -- \$12,495. The biggest dinner tab, for \$530, was at Ruth's Chris Steak House in Coral Gables. Their committee also used donations to buy flowers and gasoline and to pay cell phone bills, and Haridopolos reimbursed himself for thousands of dollars in expenses.

"I'm going out there currying my leadership votes and gaining support around the state," said Haridopolos, who noted that most donor-paid meals are in the \$25 range. "We're not wining and dining too many people."

Most of the 40 committees are controlled by Republicans, who make up a solid majority in the Legislature. But the No. 4 committee in fundraising since 2007 is controlled by Democratic Sen. Dave Aronberg of Greenacres.

"I try to help recruit candidates under the Democratic Party brand, to run as centrist candidates in competitive districts," Aronberg said. He used the money to hire a consultant to help him recruit candidates and travel to rural areas of the state where "the party's brand was suffering."

Aronberg has filed legislation this year that would ban these slush funds, known as Committees of Continuous Existence. One major problem: He can't find a House sponsor. "We need a different set of rules because I think there is too much money in this process," he said. "But you have to change them for everyone. I'm playing by the rules, because if you don't, you could be destroyed in this process. Unilateral disarmament does not work." Aronberg is an attorney-general hopeful. Republican Attorney General Bill McCollum has his own committee, the Building Integrity and Lasting Leadership fund, or BILL.

After news reports on secret slush funds a few years ago prompted former Gov. Jeb Bush to say the practice "stinks," lawmakers required all donations to be promptly disclosed on committee websites. But the fundraising continues unabated.

This year, the fundraising frenzy continued until the last hours before the legislative session began March 3. Rep. Adam Hasner, R-Delray Beach, collected \$48,700 that day alone, some of it at a fundraiser at the Governor's Club at which a Herald/Times reporter was denied entry.

Hasner is the only legislator who controls three separate committees, called Florida on the Move I, II and III. Hasner's single biggest check recorded March 2 was \$10,000 from the American Council of Life Insurers. Four months ago, he cruised to reelection as the first state House candidate to raise more than \$1 million. "I have a lot of supporters," Hasner said. "Just because they contribute to me doesn't mean I adopt their platform. They are adopting mine."

BIGGEST GIVERS

The Hospital Corporation of America, a major hospital chain seeking to change the way more than \$1 billion in hospital money is awarded each year, donated the most money to the committees: \$269,500 in the past two years. HCA also donated an additional \$865,000 to other committees and to individual lawmaker campaigns in the same two-year period.

U.S. Sugar Corp. of Clewiston, which has hired 41 lobbyists in seeking to sell much of its land to the state, is next with \$226,260. It donated an additional \$365,000 to lawmakers and other political groups this election cycle.

AT&T, which is seeking favorable phone legislation this year, was the No. 3 contributor with \$151,500.

Many of the committees' mission statements cite a goal of helping to elect like-minded candidates. But over the past two years, they collectively spent a total of \$210,500 in \$500 contributions directly to candidates. More than \$1 million, or five times as much money, went in payments to consultants.

A 'BALKANIZED MESS'

In many cases, it is impossible to track who really donated the money to a committee or a legislator. Atwater's committee paid \$196,000 to Public Concepts, the political consulting firm of Randy Nielsen. Nielsen's firm has its own political action committee, Free Speech PAC, which last year received a \$200,000 check from a political committee controlled by Republican Sens. Alex Diaz de la Portilla, J.D. Alexander, Mike Bennett, Mike Haridopolos, Carey Baker and Ken Pruitt. Then Free Speech PAC gave \$90,000 to the Florida Medical Association's political action committee.

Why? Nielsen doesn't recall. But he noted that because of Florida's "convoluted" election laws, committees controlled by legislators can't buy ads for candidates and therefore must shift money around to other entities to accomplish their goals.

"It's a balkanized mess," he said. "I'm an advocate for simplification of the whole system." He suggests that the fundraising caps be removed for legislators, the political committees be allowed to operate unfettered, and every dime they collect be reported within 48 hours to the state Division of Elections. This month, the Alliance for a Strong Economy fund connected to the six senators paid \$10,000 to a lobbying firm tied to Ralph Arza, a former GOP House leader whose rapid downfall followed an expletive-laden phone rant against a colleague in 2006.

None of the senators would take responsibility for the committee's expenditures. They say they just raised money for it, but did not know who spent the money.

Senators Alexander and Diaz de la Portilla have their own committees as well, and say they shy away from ringing up big meal tabs in favor of spending money on candidates and consultants. Diaz de la Portilla used two committees to help back a failed but low-key race against Miami Rep. David Rivera for a Miami-Dade Republican committee man post. Rivera, who has two well-funded committees of his own, would not disclose the names of the donors who helped fund the race, which is legal in party-post elections.

Some lobbyists complain that demand for big money donations is increasing, even during a recession when fundraising isn't permitted. As a result, it's becoming harder for their generosity to gain a legislator's attention. They also say that donations to committees are spent for so many different purposes that it's impossible to link a donation to a candidate or cause. "It's like giving to the parties," said lobbyist Travis Moore. "Is it being spent on messaging, or travel?"

\$10,000 CHECKS

Fort Lauderdale Rep. Ellyn Bogdanoff's fund, fortified by \$10,000 checks from insurers and lobbyists, has paid campaign consultant Todd Richardson \$110,000. Bogdanoff chairs the House Finance and Tax Council, which is reviewing whether to eliminate some of the hundreds of business-friendly sales-tax exemptions.

Donors to her committee, called Creating Possibilities, include hospitals, insurance agents, land surveyors, race tracks, real-estate agents and restaurants. Bogdanoff has spent \$140,564 in the past two years, of which \$12,500, less than 10 cents of every dollar, went directly to candidates.

Bogdanoff blames the 2006 gift ban for the rise in lawmaker-controlled slush funds. As a leading lawmaker on tax policy, she said, she is invited to speak to groups around the state, but the gift ban ended the practice of the sponsoring organization underwriting lawmakers' travel costs. "You can't do that anymore unless you're independently wealthy," she said.

Attorney Anitere Flores' Oath to Uphold the Constitution

Henry Latimer Center for Professionalism Oath of Admission to The Florida Bar

The general principles which should ever control the lawyer in the practice of the legal profession are clearly set forth in the following oath of admission to the Bar, which the lawyer is sworn on admission to obey and for the willful violation to which disbarment may be had.

"I do solemnly swear:

"I will support the Constitution of the United States and the Constitution of the State of Florida;

"I will maintain the respect due to courts of justice and judicial officers;

"I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

"I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and *will never seek to mislead the judge or jury by any artifice or false statement of fact or law;*

"I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval;

"I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

"I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice. So help me God."

www.floridabar.org

Representative Anitere Flores' Oath to Uphold the Constitution

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of _____

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Signature

Sworn to and subscribed before me this ____ day of _____, _____.

Signature of Officer Administering Oath or of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

Street or Post Office Box

Print name as you desire commission issued

City, State, Zip Code

Signature

DS-DE 56 (Rev. 02/10)

Section C

Ethics, Appearances and Conflicts

Chapter 12

Is it Unethical or Do You Simply Disapprove?



“However selfish man believes himself to be, there is no doubt that there are some elements in his nature which lead him to concern himself about the fortune of others, in such a way that their happiness is necessary for him, although he obtains nothing from it except the pleasure of seeing it.”
Adam Smith, *The Wealth of Nations*, 1759

The profit motive, when it is the sole basis of an economic system, encourages a cutthroat competition and selfish ambition that inspires men to be more concerned about making a living than making a life.
Martin Luther King, Jr.

Whose Ethics Are Right?

I wish I had the ultimate quote. I wish I had the quintessential joint statement on ethics cobbled by the top ethicist, philosopher and moralist in the nation. But I don't. And neither do you nor the State nor UNC nor NCCCS nor the International Mega-Conglomerate Publishing Oligopolies (IMCPOs) nor the Text and Academic Authors Association (TAA).

Not expecting my wishes to be granted, I endeavored to include a chapter on the ethics of what I do for a living. This is that chapter. The writings on ethics go back before there were books and continue to the current day in a vast body of work that I can not do justice here. Upon review of much of the materials on ethics, I have determined that I don't want to waste the reader's time with a recounting of every ethical tangent I can think of.

Too many moralists begin with a dislike of reality.

Clarence Day, *This Simian World* (1920)

It does not matter if we quote Kant, Wellman or Saints Peter and Paul. It does not matter if we discuss moral theory and reasoning from relativism to deontology to virtue. We can sit over a glass of wine at a bistro and offer up opinions on Leibniz, Descartes and Spinoza. How about some transcendental idealism with a little noumenal philosophy for dessert? Invite me out and we'll have a nice conversation. In the meantime, you might want to hold off on the "unethical" appellations and the character assassinations. My job is ethical, lawful and beneficial. Any other denigrating and insulting characterizations are a mirror unto those tossing the barbs. Some of them, however, are in a position to make policies which are only rooted in their frame of reference. One's frame of reference is not another's moral code.

"If any one of you is without sin, let him be the first to throw a stone at her." John 8:7 NIV

"Why do you look at the speck of sawdust in your brother's eye and pay no attention to the plank in your own eye?" Matthew 7:3 NIV

Using North Carolina General Statute Chapter 138, State Government Ethics Act, I find nothing in what my industry or faculty-clients do which would create a breach of any ethical guidelines. Further, to a REASONABLY EDUCATED INDIVIDUAL, I find no way that an appearance of impropriety can be construed.

[Ethics is a matter of principled sensitivity to the rights of others.](#)

The Social Science Encyclopedia, Edited by Adam Kuper and Jessica Kuper 1985

The State of North Carolina has promulgated statute and policy to govern the ethical behavior of State actors. The statutes were enacted to address malfeasance by State actors. For State actors to moralize my industry out of existence is simply beyond all reason. In fact, it is unethical and against federal law.

[Distaste sounds more emphatic when expressed as moral disapproval. With most of the moral counterblast is nothing more than the angry rendering of a yawn.](#)

Frank Moore Colby, "Pleasures of Anxiety," The Margin of Hesitation (1921).

What I do for a living is not unethical. It is legal and customary. I am offended by the State's statement of its opinion of my character which is how I view the shuttering of my industry, my business, my job and my income. When God fails to speak in audible tones, we are left with the opinions of men. We are also left with a roadmap to get us around this planet. That road map is called **THE LAW**.

Appearance of Impropriety and Conflict of Interest?
None here...Except on the State's Behalf.

There is No Appearance of Impropriety

After speaking with Dr. Helmick at Western Piedmont Community College, I sat in my car and sighed. As a professional businessman, a salesman, a customer service manager, a "the buck stops here" guy, the fix every problem that ever comes your way American Small Businessman, I was bewildered. I couldn't be angry with Dr. Helmick. He's a good guy. I like him. He's doing his job.

Sigh...how do I do that? How do I disprove a negative? There is no ethical violation and I'll prove it to you? How would I do that? I suppose one can assign repugnancy to almost any situation.

For over two decades as an investigator, professional process server and vehicle reposessor, I drove around and around the swankest of neighborhoods and the most run down of tenements. No matter where I was, I appeared to be improperly there. Serving doctors, sports figures or the poorest of the poor, I always appeared to be out of place of there improperly. At times when the police were involved, at first glance, I was the interloper. To the **casual observer**, I was the trespasser. Upon inspection of the court order or the bank notice, the **reasonably educated** person would always conclude that there was **no appearance of impropriety** and that I was acting within the law. One is required to be **reasonably educated** before one cry foul in the form of an Appearance of Impropriety claim. Going off half-cocked with casual observations and pecuniary bias is not the standard.

It is this REASONABLY EDUCATED observer that all Appearance of Impropriety standards are based on. These standards are not based on the uneducated opinion of a casual observer.

Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from **the perspective of a reasonable person with knowledge of the relevant facts.**

Ethics Counselor Fundamentals, 2007 Ethics Deskbook

http://www.dod.mil/dodgc/defense_ethics/resource_library/2007Deskbook/5ECC_TAB_A_Ethics_Counselor_Fundamentals.doc

Since Sarbanes Oxley, every aspect of life is under scrutiny. Is the behavior improper? We are looking for places to apply Sarbanes Oxley where it is not intended. After all, we don't want another Enron or Bernie Madoff here in Music City.

Most book buyer – teacher transactions are done in the privacy of the teacher's office, often the door is shut. Doors are shut not because the activity is nefarious but because it is simply private. I have personal conversations with many of my clients. I give them investigative advice when they are having a problem or just need to talk things through with a friend who knows how to solve problems. I buy too many donuts, candy bars and pizza slices to benefit school service organizations such as Phi Theta Kappa or any number of student programs and the local church of the department secretary. I buy raffle tickets. I am part of these communities.

The pace on campus is usually frenetic. WE DO NOT OPERATE LIKE A BAZAAR. Business is quiet, respectful of all concerned and professional. The atmosphere is dissimilar to *The Price is Right*. To the student or visitor, there is no appearance of impropriety. To a teacher who has been convinced by the IMCPOs or TAA, he or she is going to maintain whatever position he or she wants to. That person's belief system, however, does not set an ethical benchmark

To a REASONABLY EDUCATED (AND UNBIASED) individual, there is no way that an appearance of impropriety can be construed in the activities of my day. Invoking the appearance of impropriety standard is nothing more than a red herring. People who attack my industry enjoy bandying around the term "unethical" to describe me, my business model and the entire industry I represent. From my thirty years as an "ethical" businessman and my studies on the subject, I maintain all confidence that

these detractors are simply wrong in assigning the term “unethical” to me or my industry. The Text and Academic Authors Association, et al, simply want to destroy our industry for their own pecuniary gain, attempting to remove all USED books from the market so the IMCPOs and TAA members can sell more profitable NEW books. They do this by lying to and cajoling faculty (my clients) and persuading administrators that the placing of the words “Not for Sale” on a product somehow changes the law.

If Ford, Toyota or any other auto manufacturer placed a sticker on the rear bumper of a new car, then legislators would be obliged to outlaw the sale of used cars. No resale industry including Goodwill and Salvation Army would be safe if manufacturers of new products sewed in labels, “Not for Sale”. The used textbook prohibitions are ridiculous in this light. They are unlawful, unconstitutional and nugatory.

Conflict of Interest

There is no connection between my industry and textbook adoption. The books are provided by companies which do not buy them back from teachers. On the continuum, these books are marketing brochures, more akin to trash as teachers sell books which are not accepted for adoption. There is no influence on the part of the book buyer.

There is no connection between the book buying business and the textbook adoption process. None!

The practice I am engaged in is ethically neutral. It was never against the law and the general public does not have a problem with the practice. I am certainly not a pariah in my neighborhood for the work I do. Most people believe that fostering a less expensive, used book market for students is more on the noble side. It is only when a rule banning the practice comes about that the issue of ethics is forced. To act ethically is to obey the rules. What happens when rules based on innuendo and without necessary input favoring one business over another are set in place? What happens when rules are set in place that? What happens when a legislature or government entity creates a rule favoring one business, a rule which puts Small Business Families out of work, closing down their Small Businesses? What happens, aside from the damage to Small Business Families, is RESTRAINT OF TRADE and that is illegal.

“We will focus on reform. We will crack down on corruption, strengthen the ethics, and find waste, fraud and abuse.” Governor Bev Perdue

In preparation for this paper, specifically this section on ethics, I read or reviewed the business ethics section in almost all of the popular business Law textbooks. I have surveyed dozens of resources on morality and ethics in the areas of philosophy, government, the bar and the bench, medicine, economics and many others. I have read scores of commentaries on ethics, conflicts of interest and appearance of impropriety, even the Bible and Torah. I have the luxury to be able to report that there is no reference anywhere to my industry’s model. There are no inferences to be made. Further, NINETY-FIVE PERCENT OF FACULTY MEMBERS OPT TO SELL THEIR BOOKS. I estimate that half of the remaining five percent would sell their books if it were not for discipline or stigma. I and my fellow Small Business Families in this industry conduct lawful and beneficial businesses. It just so happens that we are the ethical ones in this discussion.

There is one appearance of impropriety that did occur relevant to the book buying business. In 1990, then Senior Deputy Attorney General (currently General Counsel to Jobs Governor, Bev Perdue), Edwin “Eddie” Speas, took on the endeavor of writing the offensive opinion that has been used to eradicate a specific occupation in North Carolina. Speas was and is married to textbook author and publishing association member Debra Stewart. Speas took no action to avoid this appearance of impropriety. A disinterested attorney should have written the opinion. The opinion came from whole cloth. The use of “Fesmire” as case law was entirely irrelevant. There is a plethora of federal and state law that Speas could have used for guidance. This was an improper opinion and is nugatory in its effect...except that administrators keep taking it seriously. The Speas Opinion is discussed more fully in Chapters 6 to 9.

State of North Carolina State Government Ethics Act

EXCERPT

Chapter 138A. State Government Ethics Act.

Article 1. General Provisions.

§ 138A-1. Title. This Chapter shall be known and may be cited as the "State Government Ethics Act". (2006-201, s. 1.)

§ 138A-2. Purpose.

The purpose of this Chapter is to ensure that elected and appointed State agency officials exercise their authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence. To this end, it is the intent of the General Assembly in this Chapter to ensure that standards of ethical conduct and standards regarding conflicts of interest are clearly established for elected and appointed State agency officials, that the State continually educates these officials on matters of ethical conduct and conflicts of interest, that potential and actual conflicts of interests are identified and resolved, and that violations of standards of ethical conduct and conflicts of interest are investigated and properly addressed. (2006-201, s. 1.)

j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

k. For the Community College System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community College System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.

Our system of morality is a body of imperfect social generalizations expressed in terms of emotion.

Oliver Wendell Holmes, Jr., "Ideals and Doubts,"
Illinois Law Review (1915), v. 10.

Professor Billy Earl Bompert on the Ethics of Book Selling

The following letter has been written for a Faculty Policies Committee at Augusta College in Georgia. This letter has been reprinted with the professor's permission, and expresses his opinion which we would like to share with you.

MEMORANDUM

TO: Faculty Policies Committee

FROM: Bill Bompert

SUBJECT: Ethics

We have been asked to review the practice of selling complimentary textbooks and to consider adopting a statement regarding the practice.

Although I agree with some of the argument, I think the information we have received is very one-sided. In the interest of fairness, I think the points below should be considered before we take any action. I do not agree with all of these, although I do many.

1. The material to be reviewed has been written by the publishers. Their primary interest is profit, as well it should be. However, sales of college texts were \$1512.2 Million in 1987, up 7.9% over 1986. Profits from college texts in 1987 were \$261 Million, an increase of 22% over 1986 (far greater than our raises). Total sales of textbooks, workbooks, and standardized tests came to \$4.2 Billion in 1988, a gain of over 23% above 1987. This gain is apparently due to increased prices, because there has been no gain in unit sales.
2. The Alabama Ethics Commission, in a hearing on August 26, 1988 amended their original statement to indicate that only solicited copies are not to be sold for financial gain. They agreed that unsolicited copies become the sole property of individual faculty members and may be disposed of in any legal manner. (To prohibit the sale of unsolicited copies would violate U.S. Postal regulations if sent through the postal service.)
3. To suggest that publishers and authors lose \$90 Million per year is nonsense. They simply increase their prices to cover their losses. This is the way industry has always covered losses. Their profit figures show that they are successful at this. Why not accept this as a legitimate business expense and let it go at that?
4. Publishers are not primarily concerned about their authors (there are exceptions). The royalties they pay are at most 15% and many times, less. If they were really concerned about the authors losing royalties, they would not publish two or more texts in the same area at the same time. The newsletter of the Textbook Authors Association is full of horror stories about how publishers have mistreated authors or would-be authors. I can show you the material and even give you some personal experience.
5. Suggestions for disposing of copies not needed are not sensible. They suggest giving them to the library, but our library sells all duplicate copies of books at the end of the year for an average of \$.25 cents each. They suggest giving them to some institution but then they would lose sales to that institution. Someone else suggested throwing them away and that is just downright wasteful. Some suggestions, however, such as using departmental libraries have merit, although we have very little room to do that. It is also wasteful to let a book sit on my shelf if I will never have any use for it.
6. Students do lose when prices are raised but they get some of that back by buying used books.
7. The publishers are trying to get someone else to do their job. If a professor solicits more than one copy of a given text, they should have records to prevent such a request from being granted. They should send copies to only those on the selection committee. It makes no sense for me to get a text on physical geology, and they should have records that would prevent that from happening. The problem could be greatly reduced if these companies would develop reasonable marketing strategies. The publishers admit to receiving complimentary copies for credit at the warehouse; that is a problem of their own making.
8. Publishers are not primarily concerned about costs to students either. Otherwise books would not be revised every two or three years in an effort to combat the complimentary copy problem and the sale of used books.
9. The information from the publishers fails (strangely enough) to mention the increasing and far more unethical practice of offering kickbacks to schools that adopt their books. Certainly, not all companies do this (just like not all professors sell complimentary books) but rebates to the department for each book sold, free meals, trips, gifts of computer hardware and software, etc., are frequent enough that many professional organizations (American Accounting Association, American Psychological Association, Academy of Management, etc.) have adopted policy statements against these practices. A number of states have passed laws governing this situation. Even AAP has a code of ethics for college publishers which opposes the practice. I wonder why they didn't mention that?
10. They also fail to mention that when professors examine their texts and adopt them, they are making money for the publishers and authors. They only mention the other side of the coin. They need to be aware of exactly who holds the key to any profit at all.
11. Publishers are spending tremendous amounts of money drilling, cropping, dyeing, leaving out pages, imprinting covers, etc. in an attempt to deter the selling of complimentary copies. I would guess that this expense is close to what they lose in revenue each year and is, by their own admission, largely unsuccessful. Thus, the publishers are (perhaps) doubling the problem by trying to correct it. It's not worth it.
12. Finally, these book buyers are not raunchy, unethical scoundrels. I have met some of them and they are hard-working individuals who discovered a need, realized (correctly) there was a demand for this service and took advantage of it. This is an example of good ole American entrepreneurship which we applaud except when it has some negative effect on us personally.

Lawyers on Appearance of Impropriety Standards

CANON 2: A TEACHER SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

A. *Respect for Law.* A teacher should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. *Outside Influence.* A teacher should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A teacher should neither lend the prestige of the judicial office to advance the private interests of the teacher or others nor convey or permit others to convey the impression that they are in a special position to influence the teacher. A teacher should not testify voluntarily as a character witness.

ABA Canon 2A. An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the teacher's honesty, integrity, impartiality, temperament, or fitness to serve as a teacher is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by teachers. A teacher must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A teacher must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen. Because it is not practicable to list all prohibited acts, the prohibition is necessarily cast in general terms that extend to conduct by teachers that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code.

http://www.uscourts.gov/library/codeOfConduct/Revised_Code_Effective_July-01-09.pdf

(with the word "judge" replaced with the word "teacher").

* * * * *

ABA CANON 9. A Lawyer Should Avoid Even the Appearance of Professional Impropriety - ETHICAL CONSIDERATIONS

Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer. On occasion, ethical conduct of a lawyer may appear to laymen to be unethical. In order to avoid misunderstandings and hence to maintain confidence, a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client. While a lawyer should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession, his duty to clients or to the public should never be subordinate merely because the full discharge of his obligation may be misunderstood or may tend to subject him or the legal profession to criticism. When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.

www.law.cornell.edu/ethics/aba/mcpr/MCPR.HTM

* * * * *

CC1.ROTUNDA 10/6/2006 5:21:14 PM, 1337
JUDICIAL ETHICS, THE APPEARANCE OF IMPROPRIETY, AND THE PROPOSED
NEW ABA JUDICIAL CODE
Ronald D. Rotunda

Canon 9: Appearance of Impropriety -- This means that a lawyer should not do things in poor taste, but another meaning of the word "impropriety" is to avoid making mistakes and always "keep up appearances" that one is "on top of their game." In some ways, *this is a silly thing to have in a Code of Ethics*, but in other ways, it's inevitable that some profession, sooner or later, would hop onto the "higher standard" bandwagon that Nietzsche (1844-1900) articulated in his famous formulation of ethical irrationalism involving "superman" heroics and a higher calling. The so-called *Public Servant Ethics* movement in public administration doesn't even go so far as to recommend avoiding all appearances of impropriety. Glendon (1994) does a good job of criticizing this Canon as really representing a "double standard," not any "higher standard." *Double standards are the typical fate of feigned attempts at elitism*. This Canon perpetuates a lack of diversity and multiculturalism in the legal profession, and serves the purpose of excluding women, minorities, and the lower class, because of elitist (usually white male) standards for etiquette and manners which are hard for non-white, non-males to assimilate. Besides, do we really want a "cookie-cutter" mold for all lawyers?

Unnecessarily imprecise ethics rules allow and tempt critics, with minimum effort, to levy a plausible and serious charge that the judge has violated the ethics rules. Overuse not only invites abuse with frivolous charges that have the patina of legitimacy, but also may eventually demean the seriousness of a charge of being unethical.

www.abanet.org/judicialethics/resources/comm_rules_minkoff_063004.pdf

* * * * *

The Used Textbook Resale Market & The Law[©]
Multi-State Comprehensive Edition

Essential Reading

Chapter 12

Dr. Billy Bompart Obituary

Dr. Bill Earl Bompert Obituary



Dr. Billy Earl Bompert (AUGUSTA, Ga.)
Augusta State University

AUGUSTA, Ga. - Dr. Billy Earl Bompert, 70, of Lincolnton, Ga., entered into rest Wednesday, August 11, 2004 at University Hospital in Augusta, Ga. following a lengthy illness. Funeral services will be 3 p.m. , Saturday, at The Hill Baptist Church with Rev. Brent Dowis officiating and burial at Westover Memorial Park. Visitation will be 5-8 p.m. Friday at the funeral home. Bill Bompert was a native of Dallas, Texas. He retired from Augusta State University as vice president for academic affairs, June 30, 2002 after serving more than 40 years in higher education, 11 of them as the Chief Academic Officer. He came to Augusta College in 1967. He chaired the Department of Mathematics and Computer Science from 1983-1988. Dr. Bompert received a Bachelor's Degree from the University of Texas, Master's Degrees from Southwestern Baptist Theological Seminary and North Texas State University and a Doctoral degree from the University of Texas at Austin. He was a member of Crossbridge Baptist Church and formerly a member of The Hill Baptist Church where he served faithfully as a deacon, Sunday school teacher and moderator. He was a member of the Clark Hill Bassmasters and a tournament bass fisherman. He bowled in a church league for 30 years. Dr. Bompert was a frequent lecturer at regional and national conferences of the National Council of Teachers of Mathematics and was well known wherever he went for his keen sense of humor and dry wit. He was a man of strong faith and of highest integrity. He is survived by his loving wife of 47 years, Beverly; three daughters, Melanie Bompert, St. Petersburg Beach, Fla., Laura Bompert-Sprowls and husband, Frank, Martinez, Ga., Terri Stewart and husband, Bobby, Altha, Fla. and two grandsons, Jacob Boland, Atlanta, Ga. and Joey Stewart, Altha, Fla. Pallbearers will be Mark Fissel, Ed Pettit, Fred Maynard, Loy Butler, Sullie Starnes, Bo Roberts and Jim Holton. The family will receive friends on Friday, August 13, 2004 from 5 until 8 p.m. at the Funeral Home. In lieu of flowers, Memorials may be made to Crossbridge Baptist Church Building Fund or Dr. Bill Bompert Education Fund at Crossbridge Baptist Church, 3130 Skinner Mill Road, Augusta, Ga. 30909. Platt's Funeral Home 337 N. Belair Road, Evans, Ga. 860-6166 Sign the guestbook at AugustaChronicle.com

The Augusta Chronicle August 13, 2004

http://chronicle.augusta.com/stories/081304/obi_081304-11.shtml

Section D

The Law and the Used Textbook Resale Business

Abridged list of law textbooks and other legal references used in this report.

Legal Environment of Business in the Information Age
Baumer, David L. (North Carolina State University)
Poindexter, J.C. (North Carolina State University)
McGraw-Hill Irwin
1st ed., 2004

The Legal and Regulatory Environment of Business
Reed, O. Lee (University of Georgia)
Shedd, Peter J. (University of Georgia)
Morehead, Jere W. (University of Georgia)
Corley, Robert N. (University of Georgia)
McGraw-Hill Irwin
13th ed., 2005

Business Law and the Regulatory Environment – Concepts and Cases
Mallor, Jane P. (Indiana University)
Barnes, A. James (Indiana University)
Bowers, Thomas (Indiana University)
Phillips, Michael J. (Indiana University)
Langvardt, Arlen W. (Indiana University)
McGraw-Hill Irwin
11th ed., 2001

American Constitutional Law
Stephens, Jr., Otis H. (University of Tennessee)
Scheb II, John M. (University of Tennessee)
Thomson Learning/West Publishing/Wadsworth
3rd ed., 2003

American Constitutional Law
Tribe, Lawrence (Harvard Law School)
Foundation Press
2nd Ed., 1988

American Legal History Cases and Materials
Hall, Kermit L. (State University of New York)
Finkelman, Paul (Albany Law School)
Ely, Jr., James W. (Vanderbilt University)
Oxford University Press
4th ed., 2004

Chapter 13

The Used Textbook Resale Business A Lawful Endeavor

Small Businessmen. Small Businesswomen. Small Business Families who depend on Small Business men and women to make a living. Not even so much to thrive these days, but simply to survive. Small Business Families with their few employees whose homes survive because of Small Businessmen and Small Businesswomen. Small Business Families do business with other Small Business Families, buying supplies, or having their vehicles repaired. Small Business Families provide for other spheres of Small Business Families and help them to survive. They are synergistic. All the way on the other side of the spectrum are state and federal coffers enriched by Small Businesses run by Small Businessmen and Small Businesswomen, trying to provide for their Small Business Families. Some have claimed that the used textbook industry is unethical and that those in the business are immoral. Small Business Families try to make the world a better place for their clients, students, their families and for society. The immoral ones are those who attempt to muzzle the Small Business oxen while they are out there everyday treading out a living. President Obama said it best...

“Well, look, let me just say generally, one of the things that my administration has been able to do over the last year that does not cost money is just enforcing laws that are on the books a little more aggressively.”

President Barack Obama

There is a dearth of substantive law which overwhelmingly protects America's Small Business Families from the actions of the constituents and employees of the North Carolina Community College System (NCCCS) and the University of North Carolina (UNC). Yet these organizations either are flagrantly choosing to ignore it all or are ignorant of the law. They are in violation of many state and federal laws. While I use lofty legal terms like Restraint of Trade and Sherman Act, I urge the reader to remember that this report is about Small Businesses – very Small Businesses – Mom & Pops. Restraint of trade is regressive and stifles the innovation and growth of larger companies. For Small Business Families, restraint of trade simply puts them out of business.

The international, mega-conglomerate publishing oligopolies (IMCPOs) and the Text and Academic Authors Association (TAA), separately and often in collusion with constituent and independent colleges and universities and their parent systems are in violation of numerous state and federal laws and regulations. In this report, you will be shown substantial examples of how the textbook resale business is a lawful one. Attacks on this industry and individual Small Business Families are criminal, unethical, economically regressive and unjust.

In the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment.” Chief Justice Rehnquist, writing in *City of Dallas v. Stanglin*, 490 U.S. 19 (U.S. Sup. Ct. 1989). Mallor, et al. Business Law and the Regulatory Environment, New York: McGraw-Hill Irwin, 2001, pg 49.

If the Used Textbook Industry Small Business Families Were Boy Scouts...



BOY SCOUTS OF AMERICA
SCOUTSOURCE

Merit Badges



Citizenship in the Community



Citizenship in the Nation



Citizenship in the World



American Business



Entrepreneurship



Salesmanship



Law

Chapter 14

Previous Administrative and Court Rulings Favorable to the Used Textbook Industry

Alabama



STATE OF ALABAMA
STATE ETHICS COMMISSION
817 SOUTH COURT STREET
SUITE 28 ANNEX
MONTGOMERY, ALABAMA 36104

August 30, 1988

James J. Hicks, M.D.
Curdell Wynn, Ph.D.
Sandra K. Skelton, Ph.D.
James H. Anderson, Esq.
J. Ray Warren

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Executive Director
Howard C. McKee
Assistant Director

To whom it may concern:

ADVISORY OPINION NO. 1155

FACTS:

In a promotional effort to encourage professors in institutions of higher learning to use their textbooks, publishers furnish faculty members with complimentary copies of their publications. Those textbooks not selected for use in their classes by professors are often sold to bookstores and/or individuals for personal profit.

QUESTION:

May faculty members at institutions of higher learning sell complimentary copies of textbooks furnished by textbook publishers without violating the Alabama Ethics law?

OPINION:

Yes, provided the faculty member does not solicit the textbook from the publisher and then, in turn, sell the publication for personal gain. The Alabama Ethics Commission recognizes that the only method teachers and professors have to select the correct textbook for a particular course of instruction is to review the various books in that academic field.

Individuals in the teaching profession secure these complimentary books in one or both of two ways. First, they may solicit complimentary textbooks from the publishing companies directly. Second, the publishing companies may send

copies of new textbooks to all teachers and faculty members in a specific academic field. In the former case, it is the opinion of the Alabama Ethics Commission that those texts which faculty members solicit and do not use must not be sold for financial gain in violation of Section 36-25-5(a), Code of Alabama, 1975 (The Ethics law), which reads as follows:

"No public official or employee shall use an official position or office to obtain direct personal financial gain for himself, or his family, or any business with which he or a member of his family is associated unless such use and gain are specifically authorized by law."

Unsolicited textbooks become the sole property of the individual faculty member or teacher and may be disposed of in any legal manner. Solicited textbooks may be sold only if the proceeds of the sale are returned to the institution or department. Additionally, these textbooks may be donated to the school library or disposed of in any manner which would not violate the aforementioned section of the Alabama Ethics law.

/s/ James J. Hicks

James J. Hicks
Chairman
Alabama Ethics Commission



STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

IN RE: LOUISIANA COMMISSION ON
ETHICS FOR PUBLIC EMPLOYEES
ADVISORY OPINION '88-20-B

NO. 94 CW 0863

AUG 15 1994

In re: Amtext, Inc. applying for supervisory writs and writs of certiorari, prohibition and mandamus, Commission on Ethics for Public Employees, Docket No. 88-20-B.

WRIT GRANTED. The writ hereby is granted and the advisory opinion is vacated insofar as it concludes that each person wishing to buy or sell a textbook must automatically file a request for an advisory opinion with the Commission on Ethics for Public Employees. Unsolicited textbooks become the property of the person to whom they are sent. See 39 U.S.C.A. §3009. Therefore, they may be disposed of in any manner which would not violate the Louisiana Code of Ethics for Public Employees. Should the person buying or selling the unsolicited textbooks have any concern that such a sale would constitute a violation, that person should seek an advisory opinion from the Commission prior to the sale for a determination of whether or not the books had "substantial retail value". Solicited materials may not be sold for financial gain unless the funds earned are turned over to the university or the department to which they were sent.

HJC
DWL
DMG

COURT OF APPEAL, FIRST CIRCUIT

Pennsylvania - U.S. District Court

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 06-1305

DAVID WISNIEWSKI, ON BEHALF OF HIMSELF AND ALL OTHERS
SIMILARLY SITUATED v. RODALE, INC.

David Wisniewski, Appellant

On Appeal from the United States District Court for the Eastern District of Pennsylvania
District Court, No. 03-cv-00742

District Judge: The Honorable Paul S. Diamond, Argued September 18, 2007

Section 3009(b) states that unordered merchandise “may be treated as a gift by the recipient, who shall have the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender.” 39 U.S.C. § 3009(b) (emphasis added). As the majority recognizes, “the ‘rights-creating’ language so critical to the Court’s analysis” is unquestionably present here. *Alexander v. Sandoval*, 532 U.S. 275, 288 (2001) (citing *Cannon v. Univ. of Chicago*, 441 U.S. 677, 690 n.13 (1979) (asserting that “the right- or duty-creating language of the statute has generally been the most accurate indicator of the propriety of implication of a cause of action”)). We shift, then, to Congress’ intent to create a remedy, with primary focus on the statute’s text and structure.

Congress expressly defined the legal status of unordered merchandise, deeming it “a gift” to the recipient. Recognizing that the senders of unordered merchandise would likely attempt to “trick or bully” recipients into paying for that merchandise, 116 Cong. Rec. 22,314 (1970), Congress confirmed the recipient’s right of possession by providing that the receipt of the merchandise was to be free of any obligation to the sender. Therefore, the functional effect of Congress’ language was to vest in the recipient unencumbered title to the merchandise. See *Ray Andrews Brown, The Law of Personal Property* §§ 2.6, 7.12 (3d ed. 1975). The creation of this property right implies that Congress contemplated that a recipient of unordered merchandise would be entitled to the attendant rights of ownership, including the ability to enforce his or her right to title.

The structure of § 3009 also supports a private right of action. Section 3009 is comprised of four subsections. Subsection (a) declares that the mailing of unordered merchandise and related communications, as defined in subsection (c), “constitutes an unfair method of competition and an unfair trade practice in violation of section 45(a)(1) of title 15 [the Federal Trade Commission Act (“FTCA”)].” Subsection (b) creates the property right at issue in this litigation and requires the senders of unordered merchandise to mark all merchandise with a message notifying the recipients of that right. Subsection (c) prohibits senders of unordered merchandise to “mail to any recipient of such merchandise a bill for such merchandise or any dunning communications.” Finally, subsection (d) defines “unordered merchandise.” In summary, the statute defines the prohibited activities in subsections (c) and (d), declares that those activities are violative of the FTCA in subsection (a), and provides a property right for the parties impacted by the prohibited activities in subsection (b).

Chapter 15

The Constitution, the Declaration of Independence & the Bill of Rights

The First Amendment and Commercial Speech

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

“[v]igilance is necessary to ensure that public employers do not use authority over employees to silence discourse, not because it hampers public functions but simply because superiors disagree with the content of employee’s speech,” Justice Thurgood Marshall in *Rankin v. McPherson* (1987).
Stephens and Scheb, *American Constitutional Law*, Belmont, CA: Thomson Learning Wadsworth, 2003. Pg. 458.

School administrators of, among many other federally funded leaning institutions, NCCCS and UNC violate the First Amendment rights of American Small Business Families as well as those of their teacher-clients by banning this industry’s legitimate and lawful business. Banning this business is a violation of the industry’s clients’ First Amendment right to Free Speech as well as other constitutionally protected commercial speech. These bans are neither necessary nor proper.

Whether they are ordered by a state agency or simply affected by the harassing efforts of a department chairperson, any ban on this industry’s interaction with faculty is in violation of the First Amendment right to Free Speech and Freedom of Assembly. In order for a government to censor content, it must show 1) the censorship is necessary to promote a compelling government interest; 2) the censorship actually advances the compelling government interest; and 3) the censorship is not overly broad. There is no compelling government interest in banning this industry from college campuses. The censorship inures only to the benefit of the few international, mega-conglomerate publishing oligopolies. Any censorship about buying or selling books is overly broad, putting American Small Business Families OUT OF BUSINESS with no compelling reason.

As many of one’s clients become friends, discussions about any number of life’s issues are prohibited by constituents of NCCCS and UNC. An industry being banned from campuses censors this speech by not allowing any contact with faculty during working hours.

“But while the First Amendment’s free speech guarantee is not absolute, government action restricting speech usually receives very strict judicial scrutiny. On justification for this high level of protection is the “marketplace” rationale. On this view, the free competition of ideas is the surest means of attaining truth and the marketplace of ideas best serves this end when restrictions on speech are kept to a minimum and all viewpoints can be considered.”
Mallor, et al. *Business Law and the Regulatory Environment*, New York: McGraw-Hill Irwin, 2001, pg 43.

If an instructor's life insurance salesman, financial consultant, old college chum, or any number of other people (including IMCPO sales reps) can visit him or her at their place of work without censorship of the content of their communication, then unlawful bans of the NCCCS and UNC are simply discriminatory against a specific occupation, in violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

The test on commercial speech is that laws regulating commercial speech must directly advance a substantial government interest and must be no more extensive than necessary to meet that interest. The usual justification for protecting commercial speech is to promote informed consumer choice by removing barriers to the flow of commercial information. Mallor, et al. Business Law and the Regulatory Environment, New York: McGraw-Hill Irwin, 2001, pg 43.

Just recently, the U.S. Supreme Court (Citizens United v. Federal Election Commission, No. 08-205) ruled that businesses have First Amendment rights, equating my Small Business and those of other American Small Business Families with "individuals," stating, "Corporations and other associations, like individuals, contribute to the 'discussion, debate, and the dissemination of information and ideas' that the First Amendment seeks to foster."

Simply, any policy or state law restricting this industry from conducting a lawful endeavor is a violation of the constitutionally founded and protected First Amendment right to Free Speech and must be rescinded or repealed immediately. There is collusion and conspiracy to infringe upon the freedom of speech of those who attempt to make a living in this specific industry. As such, these actions are also violations of restraint of trade as well as numerous other laws and regulations.

CITIZENS UNITED v. FEDERAL ELECTION COMMISSION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
No. 08–205. Argued March 24, 2009–Reargued September 9, 2009—Decided January 21, 2010

JUSTICE KENNEDY delivered the opinion of the Court.

www.supremecourtus.gov/opinions/09pdf/08-205.pdf

Selected Excerpts (emphasis, mine)

First Amendment standards, however, “must give the benefit of any doubt to protecting rather than stifling speech.” *WRTL*, 551 U. S., at 469 (opinion of ROBERTS, C. J.) (citing *New York Times Co. v. Sullivan*, 376 U. S. 254, 269–270 (1964)).

Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints. See, e.g., *United States v. Playboy Entertainment Group, Inc.*, 529 U. S. 803, 813 (2000) (striking down content-based restriction). Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. See *First Nat. Bank of Boston v. Bellotti*, 435 U. S. 765, 784 (1978). As instruments to censor, these categories are interrelated: Speech restrictions based on the identity of the speaker are all too often simply a means to control content.

Quite apart from the purpose or effect of regulating content, moreover, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker’s voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each.

This protection has been extended by explicit holdings to the context of political speech. See, e.g., *Button*, 371 U. S., at 428–429; *Grosjean v. American Press Co.*, 297 U. S. 233, 244 (1936). Under the rationale of these precedents, political speech does not lose First Amendment protection “simply because its source is a corporation.” *Bellotti*, *supra*, at 784; see *Pacific Gas & Elec. Co. v. Public Util. Comm’n of Cal.*, 475 U. S. 1, 8 (1986) (plurality opinion) (“The identity of the speaker is not decisive in determining whether speech is protected. Corporations and other associations, like individuals, contribute to the ‘discussion, debate, and the dissemination of information and ideas’ that the First Amendment seeks to foster” (quoting *Bellotti*, 435 U. S., at 783)). The Court has thus rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not “natural persons.”

The entire commercial speech doctrine, after all, represents an accommodation between the right to speak and hear expression about goods and services and the right of Government to regulate the sales of such goods and services.”

Lawrence Tribe, *American Constitutional Law*, p 903, 2nd Ed., 1988

Commercial Expression

In an important 1976 decision, the Supreme Court struck down Virginia’s ban on the advertisement of prescription drug prices (Virginia State Board of Pharmacy v. Virginia Citizen’s Consumer Council). Writing for the Court, Justice Harry Blackmun stated that although reasonable time, place, and manner restrictions on commercial speech are legitimate and although the state is free to proscribe “false and misleading” advertisements, consumers have a strong First Amendment interest in the free flow of information about goods and services available in the marketplace.

In his Opinion for the Court in Central Hudson Gas and Electric Corporation v. Public Service Commission of New York (1980), Justice Lewis Powell articulated the general rationale for First Amendment protection in this area:

Commercial expression not only serves the economic interest of the speaker, but also assists consumers and furthers the societal interest in the fullest possible dissemination of information. In applying the First Amendment to this area, we have rejected the “highly paternalistic” view that government has complete power to suppress or regulate commercial speech.

In the same opinion, Justice Powell outlined a four-part test for evaluating regulations of commercial speech. To begin with, commercial speech must “concern lawful activity and not be misleading” if it is to be protected under the First Amendment. If this prerequisite is met, then three additional questions must be considered:

(1) Is the “asserted governmental interest” in regulation substantial?

(2) Does the regulation directly advance the asserted governmental interest?

(3) Finally, is the regulation more extensive than is necessary to serve that purpose? This test is an attempt to balance the need for consumer protection on one hand with the value of a free marketplace of ideas on the other.

Stephens and Scheb, *American Constitutional Law*, Belmont, CA: Thomson Learning Wadsworth, 2003. Pg. 456.

Chapter 16

The Tenth Amendment and the Interstate Commerce Clause

With the original purpose of stemming the acts of protectionist states and to ensure free trade across state borders, Congress enacted the Commerce Clause, often called the Interstate Commerce Clause. The Commerce Clause, Article 1, Section 8, Clause 3 purpose is to: *To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.*

The textbook resale industry and the Small Business Families who operate within participate in interstate commerce. Teacher-clients participate in interstate commerce. The schools where these SBF's conduct their businesses participate in *interstate commerce*. As NCCCS and UNC are North Carolina state agencies, it is important to remember that these entities are completely vested in interstate activities, from marketing to tuitions to investments to endowments as well as the purchasing of textbooks, etc. Teachers maintain their right to sell their personal possessions to out of state book buyers. It is unlawful to restrain interstate commerce. Restraining *intra*state commerce is a precursor to restraining interstate commerce.

NCCCS and UNC maintain policies, *de facto* or otherwise, in violation of the U.S. Interstate Commerce Clause. Such policies need to be immediately rescinded.

The Supreme Court rejected the intrastate-only defense of Raleigh, North Carolina's Rex Hospital by stating that Rex Hospital ordered medical supplies and medicines from across state lines and served patients who came from other states and that its financing for planned expansions was also from out of state. *Hospital Building Co. v. Trustees of Rex Hospital, et al.*, 425 U.S. 738 (1976).

Notes from Baumer and Poindexter's textbook, *Legal Environment of Business in the Information Age*:

- ✚ In addition to empowering Congress to regulate interstate commerce, the commerce clause also limits the states' ability to burden such commerce.
- ✚ Burden-on-commerce issues also arise when states try to aid their own residents by blocking export of scarce or valuable products, thus denying out-of-state buyers access to those products.
- ✚ In a 1994 case, the Court said that laws that discriminate against interstate commerce must satisfy the strictest scrutiny to be constitutional.
- ✚ State laws might also discriminate even though they are neutral on their face so far as interstate commerce is concerned. This occurs when their effect is to burden or hinder such commerce.
- ✚ State laws that regulate evenhandedly and have only incidental effects on interstate commerce are constitutional if they serve legitimate state interests (which must be legislated) and their local benefits exceed the burden they place on interstate commerce.

Baumer and Poindexter, Legal Environment of Business in the Information Age
New York: McGraw Hill Irwin 2004

The standard that emerged from *Wichard* and other parallel cases was that Congress had the power to regulate everything *in* interstate commerce and everything that *affects* interstate commerce.

Baumer and Poindexter, Legal Environment of Business in the Information Age
New York: McGraw Hill Irwin 2004. 125

Wichard v. Filburn, 311 (1942)

The Court's recognition of the relevance of the economic effects in the application of the Commerce Clause ex- [317 U.S. 111, 124] amplified by this statement has made the mechanical application of legal formulas no longer feasible. Once an economic measure of the reach of the power granted to Congress in the Commerce Clause is accepted, questions of federal power cannot be decided simply by finding the activity in question to be 'production' nor can consideration of its economic effects be foreclosed by calling them 'indirect.' The present Chief Justice has said in summary of the present state of the law: 'The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce. The power of Congress over interstate commerce is plenary and complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. It follows that no form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress. Hence the reach of that power extends to those intrastate activities which in a substantial way interfere with or obstruct the exercise of the granted power.' *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 119, 62 S.Ct. 523, 526.

Whether the subject of the regulation in question was 'production,' 'consumption,' or 'marketing' is, therefore, not material for purposes of deciding the question of federal power before us. That an activity is of local character may help in a doubtful case to determine whether Congress intended to reach it. 26 The same consideration might help in determining whether in the absence of Congressional action it would be permissible for the state [317 U.S. 111, 125] to exert its power on the subject matter, even though in so doing it to some degree affected interstate commerce. But even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.'

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=317&page=111>

Chapter 17

The Fourteenth Amendment and the Equal Protection of American Small Business Families

Fourteenth Amendment Rights Guaranteed Privileges and Immunities of Citizenship Due Process and Equal Protection

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Equal Protection

Constituents of NCCCS enacted (and UNC maintains) a policy and rule distinguishing between citizens on some basis; such as race, gender, occupation, etc. When these constituent institutions enacted rules singling out the occupation of textbook reseller as the one occupation that its employees cannot have dealings with, it violated the Fourteenth Amendment right to Equal Protection.

Routinely, state employees make decisions and set policy without considering the law. In this case, only the rational basis test is required. Once this minimum scrutiny is applied, after thoughtful consideration of the facts and the law, one can easily see how NCCCS' and UNC's attacks on this industry and its hard-working families are an affront to these American Small Business Families as well as being wholly unconstitutional and illegal. In other words, there is no rational basis for the State or its actors to shut down the livelihoods of this industry's American Small Business Families.

The Fourteenth Amendment's equal protection clause says that "[n]o State shall...deny to any person...the equal protection of the laws." The law inevitably makes distinctions among people, benefiting or burdening some groups but not others. The equal protection guarantee sets the standards such distinctions must meet to be constitutional.

In the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment." Chief Justice Rehnquist, writing in *City of Dallas v. Stanglin*, 490 U.S. 19 (U.S. Sup. Ct. 1989). Mallor, et al. *Business Law and the Regulatory Environment*, New York: McGraw-Hill Irwin, 2001, pg 49.

Constituents of NCCCS and UNC issue edicts that deprive this industry's clients (their employees) of their personal possessions, constituting a TAKING without Due Process. NCCCS, as the overseeing state agency, through its constituents, targets one occupation denying American Small Business Families of Equal Protection.

Rule of Reason

Agreements (such as those between the IMCPOs and State agencies or agents) or practices (such as deceiving all involved as to copyright protections and the economic impact of this industry) that are so plainly anticompetitive (such as shuttering an entire industry statewide) and so lacking in any redeeming values (such as decreasing textbook costs) that they are conclusively presumed to be illegal without further examination under the rule of reason.

These agreements and practices have such a pernicious effect on competition that elaborate inquiry as to the precise harm they may cause or a business excuse for them is unnecessary. They are said to be illegal *per se*. It is not necessary to examine them to see if they are reasonable. They are conclusively presumed to be unreasonable.

The rule of reason was announced in *Standard Oil Co. v. United States* (221 U.S. 1 [1911]). The Supreme Court in that case held that contracts or conspiracies in restraint of trade were illegal only if they constituted undue or unreasonable restraints of trade and that only unreasonable attempts to monopolize were covered by the Sherman Act. As a result, acts that the statute prohibits may be removed from the coverage of the law by a finding that they are reasonable. The inquiry is confined to a consideration of impact on competitive conditions.

In North Carolina, the clients of textbook resellers are no longer allowed to do business with these Small Business Families. As Dr. Helmick at Western Piedmont Community College explained to this writer, this ban is to avoid the “appearance of impropriety”. The faculty and staff of WPCC and other constituents of NCCCS are not banned from doing business with any other service provider. In North Carolina, the below-depicted companies are licensed and authorized to do business. The textbook reselling industry and the American, local, Small Business Mom & Pop’s are outlawed. One can understand why these families brought to financial ruin by the state are perplexed.



There is no ban on doing business with human traffickers and prostitutes, just the book buyers who make college textbooks affordable.

Chapter 18

The Supremacy Clause The Law Time and State Rule Makers Forgot

Nugatory

Futile; ineffectual; invalid; destitute of constraining force or vitality. A legislative act may be “nugatory” because unconstitutional. *Avery & Co. v. Sorrell*, 157 Ga. 476, 121 S.E. 828, 829. Black’s Law Dictionary, 6th Edition

The Supremacy Clause of the U.S. Constitution makes federal law supreme over state laws so that, if there is a conflict between state and federal law, federal law prevails. Is a state statute or rule that sets a more stringent standard than is set by federal law legal? Sometimes, but not in the instant matter.

A state law is **CONSTITUTIONAL** if, among other requirements, it does not unduly burden interstate commerce. In this case, the state has threatened an entire customer base with disciplinary action (even leading to dismissal) if they do business with the used textbook industry. This is the ultimate burden on interstate commerce, criminalizing and demonizing an entire customer base. Federal law created preemption from state laws. Preemption occurs when state laws are considered a nuisance.

A state law is **UNCONSTITUTIONAL** when it imposes an excessive burden on interstate commerce. **The State, through its agencies (NCCCS and UNC) and their constituents have threatened the entire customer base of a specific industry with disciplinary action (even leading to dismissal) if they do business with these Small Business Families.** NCCCS, UNC, the State of North Carolina and others have violated the numerous laws and constitutional protections enumerated throughout this paper. These capricious rules which have destroyed the incomes of families and their local businesses, an American industry conducting interstate commerce, are UNCONSTITUTIONAL.

Such a concept was decided in *Raymond Motor Transportation, Inc. et al. v. Rice*, Secretary of Department of Transportation of Wisconsin, et al, 434 U.S. 429 (1977), wherein a statute limiting tractor trailer sizes on certain roads was found to be unconstitutional as it created an undue burden on interstate commerce. In this case, the “UNDUE BURDEN” is the CLOSING OF AMERICAN SMALL BUSINESSES!

NCCCS and UNC policies are UNCONSTITUTIONAL as they contain rules which are counter to federal law with no countervailing benefit to anyone other than the IMCPOs. Florida’s underhanded handling of this legislation and the legislation itself is discussed in chapter 11, *Florida Representative Anitere Flores & the \$107,000 Sale of Amendment No. 186521*.

FLORIDA HB 603 - Textbook Affordability

GENERAL BILL by Flores (CO-SPONSORS) Altman; Ambler; Attkisson; Fields; Hukill; Nehr; Reagan; Richardson; Schenck; Scionti; Williams, T.

Textbook Affordability: Prohibits certain actions of community college or state university employees that relate to student purchase of required textbooks; authorizes receipt of certain instructional materials, compensation, & training; requires student notification of required textbooks; requires adoption of specified policies & practices to minimize cost of textbooks. Effective Date: July 1, 2008

THE FINAL LEGISLATION INCLUDES THE STEALTH \$107,000 AMENDMENT!

Florida Statute Chapter 1004.085 Textbook affordability

2) An employee may receive: (a) Sample copies, instructor copies, or instructional materials. These materials may not be sold for any type of compensation if they are specifically marked as free samples not for resale.

Federal Preemption and Unconstitutional State Laws

The constitutional principle of federal supremacy dictates that where state law conflicts with valid federal law, the federal law is supreme. In *Wisconsin Public Intervenor*, 501 U.S. 597 (U.S. Sup Ct. 1991), federal preemption of state law occurs for one or more of four reasons. The two reasons which apply to this matter are: (1) The federal regulation is pervasive and, (2) The state regulation is an obstacle to fulfilling the purposes of the federal law.

The federal regulation is pervasive. The fact that Congress has “occupied the field” by regulating a subject in great breadth and/or considerable detail suggests its intent to displace state regulation of that subject. This may be especially true where Congress has given an administrative agency broad regulatory power in a particular area.

The state regulation is an obstacle to fulfilling the purposes of federal law. Here, the party challenging the state law’s constitutionality typically claims that the state law interferes with the purposes she attributes to the federal measure (purposes usually found in its legislative history).

Under general “conflict pre-emption” principles that flow directly from the Supremacy Clause of the U.S. Constitution, a state law cannot lawfully regulate contracts in a manner antithetical to federal mandates on the same subject.

Article 1, Section 8 of the United States Constitution gives Congress and the federal government the power to regulate interstate and foreign commerce between the states. The Commerce Clause puts restraints on state laws. Mallor, et al. Business Law and the Regulatory Environment, New York: McGraw-Hill Irwin, 2001, pg 52.

“Of course, self interest hasn’t gone away, so there continue to be both economic and political reasons why elected and appointed state officials seek to enact protectionist laws that favor in-state interests.”

Baumer and Poindexter, Legal Environment of Business in the Information Age
New York: McGraw Hill Irwin 2004. 127

Chapter 19

Sherman Antitrust Act of 1890

The two aspects of the Sherman Antitrust Act of 1890, Restraint of Trade and Monopolies, apply to the issues which are contributing to the demise of Small Business Families in the used textbook industry. NCCCS, UNC, through their constituents and at the hands of their employees, practice Restraint of Trade as they have banned one particular lawful industry, in violation of federal equal protection and preemption rules.

This paper now turns to illuminate, in addition to the Restraint of Trade issues of NCCCS and UNC, the conspiracy between the international, mega-conglomerate publishing oligopolies (IMCPOs) and the anti-competitive and criminal, self-serving Text and Academic Author's Association (TAA). These offenses are FELONIES and per count penalties range from \$1 million for single actors to \$100 million for corporations. There is no exemption for states or their employees.

U.S. Code, Title 15, Chapter 1, § 1

Trusts, etc., in restraint of trade illegal; penalty:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

Justice Hugo Black & the Used Textbook Business

The trade restraining book selling prohibition and diversion of business on the part of NCCCS and UNC are inimical to the letter and spirit of The Sherman Antitrust Act of 1890.

A competitive system that allows easy entry to and withdrawal from the marketplace is consistent with individual freedom and economic opportunity. In 1958, Justice Hugo Black in *Northern Pacific Ry. Co. v. United States* (356 U.S. 1), reflected on the purpose of the Sherman Act.

"The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic, political and social institutions."

Reed, et al. The Legal & Regulatory Environment of Business, New York: McGraw-Hill Irwin, 2005, pg 380.

Restraint of Trade

- ✚ An attempt to extend the economic power of a patent or copyrights to unrelated products or services is anticompetitive and in restraint of trade.

In this matter, the international, mega-conglomerate publishing oligopolies (IMCPO) and the Text and Academic Authors Association (TAA) have intentionally and unlawfully extended their copyright protection by the endemic use of misleading and deceptive notices of copyright and through Deceptive Trade Practices to the extent of overriding the First Sale Doctrine. These same organizations have and continue to lobby and influence entities such as NCCCS, UNC and the State of Florida. TAA and the IMCPOs have colluded to influence the clients of these Small Business Families with the deceptive practice of falsely extending copyright protections and defaming an industry and the individuals (Small Business Families) who serve this market, in violation of the Lanham Act.

- ✚ The acceptance of an invitation to participate in a plan that is in restraint of interstate commerce is sufficient to establish an unlawful conspiracy.

The invited and accepted conspiracy between TAA and IMCPOs is well documented.

- ✚ Sherman Act must satisfy an interstate commerce element.

Every aspect of this industry is involved in interstate commerce, with books sold and transported across state lines numerous times. These Small Business Families participate in interstate commerce as do their clients.

- ✚ The facts need not prove a change in the volume of interstate commerce but only that the activity had a substantial and adverse or not insubstantial effect on interstate commerce.

This is easily proven as NCCCS, UNC, TAA & the IMCPOs have not only conspired and colluded, but also succeeded to not only change the volume of interstate commerce but to ERADICATE entire large segments of the market. TAA brags about its successes on its website (www.taaonline.net.)

The NCCCS Restraint of Trade alone has taken away more than half of the business in this industry in North Carolina. There are a number of Small Business Families who have shuttered their doors or have seen their income drop by NINETY percent. One older Small Business Woman in North Carolina told this writer what she planned on doing now that her business has dwindled to almost nothing. Her response:

“I’m 61. My husband is 65. This was our income. NCCCS took away our business. They just threatened all the teachers and now I’m escorted off the campuses so I don’t even go out most days. Alan, I don’t know what I’m going to do.”

North Carolina Small Business Woman

Combination in Restraint of Trade.

An agreement or understanding between two or more persons, in the form of a contract, trust, pool, holding company, or other form of association, for purpose of unduly restricting competition, monopolizing trade and commerce in a certain commodity, controlling its production, distribution, and price, or otherwise interfering with freedom of trade without statutory authority. Such combinations are prohibited by the Sherman Antitrust Act.

Blacks' Law Dictionary, 6th Edition

Conspiracy

A combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or some act which is lawful in itself, but becomes unlawful when done by the concerted action of he conspirators, or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful.

A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he: a) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or (b) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime, Model Penal Code, Sec. 5.03

A conspiracy may be a continuing one; actors may drop out, and other drop in; the details of the operation may change from time to time; the members need not know each other or the part played by others; a member need not know all the details of the plan or the operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose. *Craig v U.S.*, C.C.A.Cal., 81 F.2d 816, 822.

Conspiracy in restraint of trade

Term which describes all forms of illegal agreements such as boycotts, price fixing, etc., which have as their object interference with free flow of commerce and trade.

Monopolies with Oligopolies -- Federal

U.S. Code, Title 15, Chapter 1, § 2 Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

“The textbook market is an oligopoly – just five major publishing houses dominate the whole market. And, unusually, the purchasers of textbooks (students) are not the ones who make the purchasing decision (the faculty). This leads to price inelasticity – meaning that a rise in price will not lead to much of a response from the market (decrease in demand), because students are more or less a captive market and will buy whatever their professors assign.”

Student PIRGs, February 2007

www.maketextbooksaffordable.org/Exposing_the_Textbook_Industry.pdf

- ✚ Section 2 of the Sherman Act regulates monopoly and the attempts to monopolize any part of interstate or foreign commerce.

For many years now, TAA and the IMCPOs have conspired to defame and disparage all of those who work within the used textbook industry as a class. This has caused irreparable economic harm to Small Business Families throughout the United States. TAA and the IMCPOs even successfully purchased legislation in Florida from Rep. Anitere Flores (R-FI). See chapter 11, [Florida Representative Anitere Flores & the \\$107,000 Sale of Amendment No. 186521.](#)

TAA and the IMCPOs have conspired to control the Used Textbook Market. TAA and the IMCPOs have conspired to ERADICATE the Used Textbook Market for the purpose of increasing the sale of more profitable NEW books, thereby maintaining the highest cost possible for students to pay for their textbooks.

TAA and the IMCPOs, by using Unfair, Deceptive and Predatory practices, influenced NCCCS, UNC and their many constituent “governing bodies”, resulting in the gutting of entire markets and the closing of business with its attendant loss of jobs. American Small Business Families have been forced OUT OF BUSINESS. As markets close, the remaining entrepreneurs are forced to travel to other markets, thereby increasing competition and decreasing profitability. This downward spiral sparked in North Carolina is seeing the collateral damage of Small Family Businesses in the closing of shops as far away as Florida, Arkansas, Pennsylvania and New York as well as all states in these regions.. Older and women entrepreneurs make up the majority of the industry. As such, this monopolistic behavior has irreparably harmed the economic wellbeing of the nation’s women, children and senior populations.

- ✚ A conspiracy to monopolize requires proof of specific intent to monopolize and at least one overt act to accomplish it. Proof of monopoly power or even that it was attainable is not required.

TAA and the IMCPOs have conspired and colluded to produce not only talking points for sales reps and others, but even printed materials. The printed materials (in chapters 24 and 25 indicate the DEPTH of defamation and written policies from TAA. Among the documents (most taken from TAA's web site), the reader can see the relationships between the IMCPOs and TAA, indicating the collusion and the plan to defame and control the market.

- ✚ A firm is guilty of monopolization when it acquires or maintains monopoly power by a course of deliberate conduct that keeps other firms from entering the market or from expanding their share of it. Deliberativeness is not difficult to prove in most cases.

As in the above comments, the intent and acts of defamation and monopolistic behavior are reduced to writing on the TAA web site, like a brash but stupid criminal who pays for his cigarettes with his credit card before robbing the same convenience store. An important aspect of TAA and all of their criminal behavior, obfuscations, lies and abject DISREGARD FOR THE LAW, is that TAA is comprised mostly of academics. Harvard is represented as is Boston College and many others. TAA is a corrupt organization.

Here's the rub...THEY (the Officers, Directors and Members of TAA) KNOW THE LAW AND CHOOSE TO IGNORE IT. They do this by using thug-like, reprehensible methods of defamation, embarrassment, shaming, causing divisiveness amongst faculty, deception on numerous levels and, among others, political contributions (bribes). This criminal behavior extends to every state, thereby impeding interstate commerce by eradicating markets. As individuals within an organization and as an organization aligned with other organizations, TAA (and its Officers, Directors and Members), with full intent, continues to cross state lines (encompassing the entire nation) to conspire and collude to commit crimes against a class of individuals. They have done and continue to commit crimes impacting individuals in every state. The sheer number of major federal and state statutory violations is staggering, leaving this organization with no credibility. See RICO in chapter 31.

- ✚ Conduct that proves deliberativeness may be anything in restraint of trade. For example, predatory conduct would prove deliberativeness. Predatory conduct is seeking to advance market share by injuring actual or potential competitors by means other than improved performance. It may be for the purpose of driving out competitors, for keeping them out, or for making them less effective.

NCCCS, UNC, TAA and IMCPOs have in the past and continue an intentional and deliberate planned attack on the characters of the individuals who work in this industry, based on a class. The conduct of these parties can only be labeled predatory as their stated goal is to "STOMP" out this industry and the American Small Business Families of which it is comprised. They collude and conspire to achieve the goals of their "STOMP" campaign by a course of conduct which includes the use of unethical and predatory behaviors which do not improve the performance of the offender's businesses. Actually, teacher-clients report that the efforts of TAA and the IMCPOs are a pain in the neck, resulting in poor customer relations. Still, it is a very effective tactic to dissuade new and non-tenured teachers from selling their personal possessions. The tactic includes peer pressure and threats of loss of livelihood. It is management by thuggery.

- ✚ Monopolization is “the willful acquisition or maintenance of monopoly power in a relevant market as opposed to growth as a consequence of superior product acumen, or historical accident,” This means that to be liable for monopolization, a defendant must have possessed not only monopoly power but also an *intent to monopolize*.

It is understood that oligopolies can have the same deleterious effect on a market as a full-fledge, perfectly-defined monopoly. Rather than use “superior product acumen”, TAA, et al use more terroristic means to achieve monopolistic goals. IMCPOs, with their “partner in crime”, TAA, possess oligopolies and the intent to monopolize. **The IMCPOs have, as a stated goal, diminishing the used book market so that only new books will be sold.** This is tantamount to banning the sale of used cars to bolster the new car market. This is tantamount to banning Goodwill Industries to bolster new clothing sales. **The IMCPOs have shown their INTENT to monopolize by the totality of their actions.**

- ✚ Monopoly power is usually defined for antitrust purposes as the power to fix prices or EXCLUDE COMPETITORS.

TAA and the IMCPOs have conspired and colluded with each other, NCCCS, UNC and Florida Rep. Anitere Flores (among others) to EXCLUDE COMPETITORS. Flores sold out Florida’s Small Business Families for \$107,000. Who signed the law? Republican Governor Charlie Crist.

- ✚ Firms that have not yet attained monopoly power may nonetheless be liable for an attempt to monopolize in violation of section 2 if they are dangerously close to acquiring monopoly power and are employing methods likely to result in monopoly power if left unchecked. Unlike monopolization cases, however, attempt cases also require proof that the defendant possessed a specific intent to acquire monopoly power through anticompetitive means. Attempts to monopolize cases require proof of intent to destroy competition or achieve monopoly power.

Currently, three publishers control over 60 percent of the college textbook market. In recent years, there have been several mergers in the textbook industry, and the top three firms, Pearson, Thomson, and McGraw-Hill, control about 62 percent of the market
Paul Pecorino
University of Alabama

Monopolies with Oligopolies – North Carolina

North Carolina Chapter 75, Monopolies, Trusts and Consumer Protection.

§ 75-1. Combinations in restraint of trade illegal.

Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in the State of North Carolina is hereby declared to be illegal. Every person or corporation who shall make any such contract expressly or shall knowingly be a party thereto by implication, or who shall engage in any such combination or conspiracy shall be guilty of a Class H felony. (1913, c. 41, s. 1; C.S., s. 2559; 1981, c. 764, s. 2.)

§ 75-1.1. Methods of competition, acts and practices regulated; legislative policy.

(a) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.

§ 75-2. Any restraint in violation of common law included.

Any act, contract, combination in the form of trust, or conspiracy in restraint of trade or commerce which violates the principles of the common law is hereby declared to be in violation of G.S. 75-1. (1913, c. 41, s. 2; C.S., s. 2560.)

§ 75-2.1. Monopolizing and attempting to monopolize prohibited.

It is unlawful for any person to monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of trade or commerce in the State of North Carolina. (1995 (Reg. Sess., 1996), c. 550, s. 1.)

§ 75-4. Contracts to be in writing.

No contract or agreement hereafter made, limiting the rights of any person to do business anywhere in the State of North Carolina shall be enforceable unless such agreement is in writing duly signed by the party who agrees not to enter into any such business within such territory:

§ 75-9. Duty of Attorney General to investigate.

The Attorney General of the State of North Carolina shall have power, and it shall be his duty, to investigate, from time to time, the affairs of all corporations or persons doing business in this State, which are or may be embraced within the meaning of the statutes of this State defining and denouncing trusts and combinations against trade and commerce, or which he shall be of opinion are so embraced, and all other corporations or persons in North Carolina doing business in violation of law; and all other corporations of every character engaged in this State in the business of transporting property or passengers, or transmitting messages, and all other public service corporations of any kind or nature whatever which are doing business in the State for hire. Such investigation shall be with a view of ascertaining whether the law or any rule of the Utilities Commission or Commission of Banks [Commissioner of Banks] is being or has been violated by any such corporation, officers or agents or employees thereof, and if so, in what respect, with the purpose of acquiring such information as may be necessary to enable him to prosecute any such corporation, its agents, officers and employees for crime, or prosecute civil actions against them if he discovers they are liable and should be prosecuted. (1913, c. 41, s. 8; C.S., s. 2567; 1931, c. 243, s. 5; 1933, c. 134, s. 8; 1941, c. 97, s. 5; 1969, c. 833.)

Monopolies with Oligopolies – Florida

542.18 Restraint of trade or commerce

Every contract, combination, or conspiracy in restraint of trade or commerce in this state is unlawful.

542.19 Monopolization; attempts, combinations, or conspiracies to monopolize

It is unlawful for any person to monopolize, attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of trade or commerce in this state.

State Action Exemption

Various decisions indicate that challenged activity cannot qualify for immunity under this exemption **unless the activity is affirmatively expressed as state policy and actively supervised by the state**. In other words, the price of antitrust immunity is real regulation by the state. The Supreme Court placed a further limitation in the state action exemption by holding that it does not automatically confer immunity on the actions of municipalities. The Local Government Antitrust Act of 1984 precludes damages, leaving only injunctive relief.

Evidence of Subsequent Bad Acts Show Recidivism and Establishes Plaintiff's Right to Punitive Damages

In reviewing punitive damages awards, the South Dakota Supreme Court has held that it is relevant to show that the defendant has a proclivity to repeat wrongful conduct. For instance, in *Schaffer v. Edward D. Jones & Co.*(*Schaffer II*), 552 N.W.2d 801, 813 (S.D.1996), the Court held that a major purpose of punitive damages is to deter future misconduct of a similar nature. In that case, the Court said:

Punitive damages may properly be imposed to further a State's legitimate interests in not only punishing unlawful conduct but also to deter its repetition.

Schaffer II at 813 (citation omitted). See also *Veeder v. Kennedy*, 589 N.W.2d 610, 622 ("Punitive damages may properly be imposed to further a State's legitimate interests in not only punishing unlawful conduct but also to deter its repetition."); *Grynberg v. Citation Oil & Gas Corp.*, 573 N.W.2d 493 (S.D. 1997)(proper punitive damage award must take into account not only the harm to the plaintiff, but also the harm that might result to other victims if similar misconduct is not deterred); *Roth v. Farner Bocken Co.*, 667 N.W.2d 651 *48 (SD 2003)(In determining "degree of reprehensibility," one consideration is whether "the conduct involved repeated actions or was an isolated incident."

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Essential Reading

Chapter 19

1. Rent Seeking: Anticompetitive Efforts to Monopolize
2. The Urge to Merge and Form Oligopolies
3. USA v Pearson, LLC., Judgment on Monopolistic Behavior and Divestiture

Rent Seeking: Anticompetitive Efforts to Monopolize

Rent Seeking: A Textbook Example by Paul Pecorino

Abstract: The author argues that the college textbook market provides a clear example of monopoly seeking as described by Tullock (1967, 1980). This behavior is also known as rent seeking. Because this market is important to students, this example of rent seeking will be of particular interest to them.

In his classic article, “The Welfare Costs of Tariffs, Monopolies and Theft,” Tullock (1967) offered insights into three separate but related phenomena. The first of these is tariff seeking, under which a firm in an import competing industry spends real resources in an attempt to obtain tariff protection from the government.

The second is monopoly seeking, in which resources are spent by a firm attempting to obtain or maintain a monopoly. The third activity is theft, in which an individual spends real resources in the activity of illegally obtaining another person’s property. In each case, real resources are spent in an attempt to obtain a transfer of income. Because these resources produce no good or service, they are a deadweight loss to society. In addition, resources are lost to society as individuals make expenditures resisting the imposition of tariffs, opposing the establishment of monopoly, and taking costly measures to prevent theft.

Monopoly seeking can take many forms, including anticompetitive practices by which a firm can attempt to monopolize a market. It might also include lobbying efforts by a firm in an attempt to receive a monopoly from the government. For example, a cable franchise can lobby a local government in a bid to be awarded the exclusive right to provide service to a community. If the award of a monopoly by a government is a given, with only the identity of monopolist at issue, then the efforts to obtain the monopoly can be modeled as a rent-seeking contest along the lines described by Tullock (1980). In this case, the rents at issue correspond to the monopoly profits obtained by the firm chosen by the government.

Many classroom examples of rent seeking involve individuals attempting to receive some benefit from the government. Clearly, these examples are important to any understanding of rent seeking, but there are also important examples of rent seeking that do not involve the government. This is suggested by Tullock who wrote (1967, 224), “the Department of Justice is not dealing with a miniscule problem in its attacks on monopoly.”

In this article, I discuss an example of rent seeking in a market that is of vital importance to students, the textbook market. In brief, when professors have discretion to determine the textbook used for their course, they have the power to award a monopoly to a textbook publisher. Even though there are many competing textbooks for, say, introductory microeconomics, from a student’s perspective, potentially competing textbooks are an extremely poor substitute for the textbook assigned by their professor.³ Thus, textbook publishers are engaged in a contest to be awarded the monopoly right to sell a textbook to a particular class. I discuss the nature of the rent-seeking contest in which the textbook publishers engage, as well as some of the economic implications of this behavior.

I argue that the choice of a textbook by a professor is equivalent to the award of a monopoly rent to a textbook publisher. Because the publishers must compete to obtain this monopoly rent, their economic profit from this market is not necessarily very large. In practice, however, college textbook publishing is generally perceived to be quite profitable, which suggests that rent dissipation is not nearly complete. Referring to both the K–12 and higher education textbook markets, the Wall Street Journal quoted an unnamed publishing executive as noting, “It can be very profitable, with margins north of 10 percent.” If economic profits are earned in college textbook publishing, then this is consistent with my basic premise in this article, which is that publishers capture economic rents when a professor assigns their book to a class.

Currently, three publishers control over 60 percent of the college textbook market. In recent years, there have been several mergers in the textbook industry, and the top three firms, Pearson, Thomson, and McGraw-Hill, control about 62 percent of the market

THE TEXTBOOK MARKET

The textbook market is unusual in that there is a separation between the decision of which textbook to purchase and the person who actually makes the purchase. The decision on which textbook to use for a course is usually made by an individual instructor. The actual purchase is made by students, who also bear the associated cost. Although there may be many textbooks that would be appropriate for a particular course, competition among the publishers of those textbooks ceases once the professor makes the choice for the course.

Because professors will tend to tailor their course to the textbook they choose, other textbooks are, from the student perspective, highly imperfect substitutes for the textbook chosen by their professor. Thus, the publisher whose book is chosen for a particular course has a large degree of monopoly power over sales to students in that course. This is a good example of how the number of firms in an industry may be a poor indicator of the degree of competition in a market; once the textbook decision is made, the degree of monopoly power the publisher has over the students is largely independent of the number of firms in the market for that particular textbook.

How do the textbook publishers compete for the rent associated with having one of their books chosen for a course? In thinking about this, it is useful to conceive of x_i as an effective level of rent-seeking effort, not a simple expenditure of dollars. Thus, there is a production function for x , which, along with input prices, determines the cost $c(x)$. What are the inputs to x ?

First, firms often publish several titles for a given course. For example, Thomson Learning carries 11 microeconomics titles in its catalog. If any one of Thomson's titles is selected for a course, the firm will receive the monopoly profits from being able to sell to that class. To the extent that some professors prefer one title over another, maintaining a large portfolio of titles will increase a firm's probability of being chosen. Of course, even if the textbook market did not have a rent-seeking game embedded in it, firms might still have an incentive to maintain a portfolio of titles. However, because of the monopoly rents associated with textbook sales, the incentives to introduce new titles are larger than in a market in which these rents did not exist.

Although diversity of titles is socially desirable, there is a presumption that the structure of the textbook market leads to an excess proliferation of titles. Each title has a fairly large up-front sunk cost that consists of the writing of the book and the costs associated with setting up an initial publication run. After these initial costs, textbooks presumably are produced at something close to a constant marginal cost. Thus, one would expect average cost to decrease with production of a given title (i.e., textbook production exhibits economies of scale). Combined with a demand for variety on the part of consumers, these conditions would normally combine to give a classic example of a monopolistically competitive market. Instead, the monopoly rents associated with a book adoption mean that textbooks with inefficiently small production runs can still be profitable for a book publisher. As a result, publishers operate at a higher point on their average cost curve than they would if the market were more competitively structured.

Second, firms compete through their production of ancillary materials. Some of these materials, such as study guides, are aimed directly at students, and one would expect these materials to be produced even in the absence of large monopoly rents. Other materials are aimed at the professor, the person who chooses the textbook for the class. For large introductory classes, where the rents are large, these ancillary materials are quite extensive. These include computerized test banks, class notes, PowerPoint presentations, and course Web sites. These ancillary materials clearly have social value, but the nature of the rent-seeking contest in which book publishers are engaged strongly suggests that there are excessive investments in these materials.

The third way the publishers compete is through the use of book representatives. From the publisher's perspective, the most important role of the book representative is to establish personal contact with the professor. If the textbooks for a course are very similar, then a professor is more likely to choose a book whose publisher sends a representative. In part, this may be from better information or expectations of better service (e.g., if there are problems with the test bank), but, in part, this is from the natural sympathy a book representative paid on commission is likely to generate.

The relationship between a professor and a book representative bears some resemblance (on a much smaller scale) to the relationship between a politician and a lobbyist. The book representative provides information to the professor on what have become (because of the ancillary materials) fairly complex products. Some book representatives may offer to buy a meal for a professor or offer to give the faculty member small gifts. Although the scale is much smaller, this is the type of behavior observed in the politician-lobbyist relationship. None of this is to suggest a quid pro quo; no one is going to adopt what they view as an inferior textbook, simply because someone bought them lunch. However, these activities are designed to create good will, and good will can be a decisive factor when a professor is choosing between two books of similar quality.

Again, there are some social benefits created by book representatives, but it is likely that the same benefits could be attained more cheaply through the maintenance of a service desk available via phone or e-mail. If the rents associated with having a textbook assigned to a class were not so large, it is unlikely that publishers would invest as heavily as they now do in book representatives. The National Association of College Stores (NACS) puts publisher marketing costs at 15.6 percent of the retail price of the average textbook. This total includes the cost of field representatives but also includes other promotional costs as well, including advertising and free copies of the text provided to professors. The NACS puts after-tax publisher profits at 7.2 percent of the retail dollar. By this measure, marketing costs appear to be quite large.

The high price of textbooks encourages students to sell them back at the end of the semester. Typically, students will receive 50 percent of the retail price when they sell the book back, assuming it is on order for future use at that college or university. If a new edition has come out, or if the book is not on order, students may get little or nothing for their text. Used books sell at about 75 percent of the retail price of new books. A commonly cited figure is that 20–40 percent of college textbook sales represent the sale of used books. The existence of a secondary market cuts into the sale of new books. This encourages textbook publishers to make more frequent updates of their textbooks, many of which appear (in economics at least) to be on a three-year cycle. Because changes between editions often appear to be quite minimal, the direct social costs associated with these frequent updates may not be large, but these updates do have the effect of rendering obsolete a large number of used textbooks. The high price of textbooks also encourages a small army of book buyers to go door-to-door asking professors if they have any books they would like to sell. If textbooks were more competitively priced, it is likely that the number of book buyers would be greatly reduced.

This is a sore point with textbook authors because they do not receive royalties on the sale of used textbooks, but there are several points to make in this regard. First, the fact that students can resell the book increases their willingness to pay upfront. Any money captured on the initial sale can be divided between the publisher and author via negotiation. Second, authors know about the resale market before they write the book and can factor this into their decision to become an author. If resale lowers the return to being an author, it will reduce entry into the market, which will help restore the returns to being an author.

Foster and Horowitz (1996) provided an interesting analysis of the used textbook market. They focused on the effect on edition life of professors selling their exam copies into the secondary market. They argued that this would tend to increase edition life. Also see Kamp (1998).

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The Urge to Merge and Form Oligopolies

Big Business: Why the Sudden Rise In the Urge to Merge And Form Oligopolies?

Higher Payoffs, a Lowering Of Antitrust Obstacles And Some Burst Bubbles
Consumers Can Win or Lose

By Wall Street Journal staff reporters Yochi J. Dreazen, Greg Ip and Nicholas Kulish
02/25/2002

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Everywhere you look, powerful forces are driving American industries to consolidate into oligopolies -- and the obstacles are getting less formidable.

The rewards for getting bigger are growing, particularly in the world of technology, media and telecommunications, where fixed costs are especially large and the cost of serving each additional customer is small. Some snapshots:

- In 1990, three big publishers of college textbooks accounted for 35% of industry sales. Today they have 62%.

An oligopoly, a market in which a few sellers offer similar products, isn't always avoidable or undesirable. It can produce efficiencies that allow firms to offer consumers better products at lower prices and lead to industry-wide standards that make life smooth for consumers.

But an oligopoly can allow big businesses to make big profits at the expense of consumers and economic progress. It can destroy the competition that is vital to preventing firms from pushing prices well above costs and to forcing companies to change or die. Rates for cable television, for instance, have soared 36%, almost triple the amount of overall inflation, since the industry was deregulated in 1996 and then consolidated in a few big firms. The Organization of Petroleum Exporting Countries is a classic oligopoly. Members manipulate their control over the supply of oil to force consumers to pay prices well above levels at which market forces would otherwise set them.

"A certain amount of consolidation does generate a certain amount of efficiency and is good for customers," says economist Carl Shapiro, who served in the Clinton Justice Department's antitrust division and now teaches at the University of California at Berkeley. "That's what economies of scale are about. Particularly in a lot of these industries that have heavy fixed costs, it's natural to have some consolidation."

"Twenty [competitors] to four is good," Mr. Shapiro says. "It's four to two that is much more dubious."

For a textbook case of the pros and cons of oligopoly, look no further than the industry that produces textbooks. Last year, Thomson Co., No. 2 in the \$3.2 billion-a-year college-text business, bid for the college-book line of Harcourt General Inc., No. 4. Charles James, the Justice Department's assistant attorney general for antitrust, initially objected, warning that competition in certain courses "will be substantially lessened, resulting in students paying higher prices." But the government cleared the deal after Thomson agreed to sell certain titles, from psychology to intermediate Spanish, as well as a testing company.

Today, three big companies -- Britain's Pearson PLC, Canada's Thomson, and New York-based McGraw-Hill -- dominate the U.S. college-textbook business. The industry says consolidation helps shareholders and students. In a bigger company, says Peter Jovanovich, chief executive of Pearson Education, sales representatives are more specialized and know more about the books they're hawking.

But the textbook industry also shows two big economic risks that consolidation poses for consumers.

The first is rising prices. The best-selling introductory economics textbooks go for more than \$100 now. The Labor Department's measure of textbook prices that publishers charge bookstores and distributors has climbed 65% over the past 10 years while overall producer prices rose just 11.2%. The other risk is that the textbook oligopoly, with its profits dependent on hard-backed textbooks and its Web sites primarily intended to help sell books rather than replace them, will stifle innovation.

http://aplia.com/company/press/wsj_022502.jsp

USA v Pearson, Judgment on Monopolistic Behavior, Divestiture

[Proposed] Final Judgment : U.S. v. Pearson plc, et al. (Viacom)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PEARSON plc,
PEARSON INC., and
VIACOM INTERNATIONAL INC.

Defendants.

No. 1:98-CV-02836
Judge James Robertson

PROPOSED FINAL JUDGMENT

WHEREAS plaintiff the United States of America (hereinafter "United States"), has filed its Complaint herein, and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture of certain assets to one or more third parties to ensure that competition is substantially preserved is the essence of this agreement;

AND WHEREAS, the parties intend to require defendants to divest, as viable lines of business, certain assets so as to ensure, to the sole satisfaction of the United States, that the Acquirer will be able to publish and market the assets as viable lines of business for the purpose of maintaining the current level of competition;

AND WHEREAS, defendants have represented to the United States that the divestitures required below can and will be made as provided in this Final Judgment and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

<http://www.justice.gov/atr/cases/f213500/213516.htm>[2/6/2010 9:01:05 PM]

I.

JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II.

DEFINITIONS

As used in this Final Judgment:

A. "Acquirer" means the person(s) to whom Pearson shall sell the Divestiture Products (as defined below).

B. "Divestiture Products" means all of the products identified on Exhibits A and B attached hereto. Each Divestiture Product includes all of the following:

- 1. unless non-assignable, all licenses, permits and authorizations issued by any governmental or private organization relating to the Divestiture Product;**
- 2. unless non-assignable, all contracts, teaming arrangements, agreements, leases, commitments and understandings and their associated intangible rights pertaining to the Divestiture Product, including, but not limited to author permissions and other similar agreements, adoption and other agreements with purchasers, distribution agreements that relate to the Divestiture Product, vendor or supply agreements with respect to components of the Divestiture Product;**
- 3. unless non-assignable, all original and digital artwork, film plates, and other reproductive materials relating to the Divestiture Product, including, but not limited to all manuscripts and illustrations and any other content and any revisions or revision plans thereof in print or digital form;**
- 4. all sales support and promotional materials, advertising materials and production, sales and marketing files relating to the Divestiture Product;**
- 5. all existing customer lists and credit records, or similar records of all sales and potential sales of the Divestiture Product, and all other records maintained in connection with the Divestiture Product;**
- 6. except as provided in definition B.7, below, and unless non-assignable, all intangible assets relating to the Divestiture Product, including but not limited to all patents, copyrights and trademarks (registered and unregistered), common law trademark rights; licenses and sublicenses, contract rights, intellectual property, maskwork rights, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, quality assurance and control procedures; design tools; and all manuals and technical information relating to the Divestiture Product provided to employees, customers, suppliers, agents or licensees;**
- 7. all titles of existing products comprising the Divestiture Product, including, but not limited to the titles "Discovery Works," "Science Horizons," "Discover the Wonder," and "Destinations in Science," as applicable, but not any corporate**

trademarks or trade names of Pearson or Viacom;

8. all research data concerning historic and current research and development efforts relating to the Divestiture Product; and
9. at Acquirer's option, computers and other tangible assets used primarily for production of the Divestiture Product.

Pearson shall use its best efforts to facilitate the assignment to the Acquirer of any of the above that Pearson presently holds or uses pursuant to a license or any other agreement.

C. "Pearson" means defendants Pearson plc, a U.K. corporation with its headquarters in London, England, and Pearson Inc., a Delaware corporation with its headquarters in New York, New York, and includes their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

D. "Retained Product" means any product offered for sale or in development by Pearson or Viacom as of November 1, 1998, that is not a Divestiture Product.

E. "Scott Foresman Addison Wesley" means the publishing activities of Addison Wesley Longman, Inc. and Addison Wesley Educational Publishers, Inc., both wholly owned subsidiaries of Pearson Inc., that result in products bearing the "Scott Foresman," "Addison Wesley," "SFAW" or "Scott Foresman Addison Wesley" titles or imprints.

F. "Silver Burdett Ginn Inc." is a Delaware corporation with its headquarters in Parsippany, New Jersey, and is one hundred percent owned (through various subsidiaries) by Viacom.

G. "Viacom" means defendant Viacom International Inc., a Delaware corporation with its headquarters in New York, New York, and includes its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

III.

APPLICABILITY

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their parents, subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Pearson, as a condition of the sale or other disposition of any or all of the Divestiture Products, shall require the Acquirer to agree to be bound by the provisions of this Final Judgment.

IV.

DIVESTITURE OF ASSETS

A. Pearson is hereby ordered and directed, in accordance with the terms of this Final Judgment, within two (2) months from the date this Final Judgment is filed with the Court, or within ten (10) calendar days from the date on which the sixty-day notice-and-comment period established by 15 U.S.C. § 16(b) has expired, whichever is later, to divest one of the two Divestiture Products listed on Exhibit A to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may

agree to an extension of this time period of up to thirty (30) calendar days.

B. Pearson is hereby ordered and directed, within five (5) months from the date this Final Judgment is filed with the Court, or within ten (10) calendar days from the date on which the sixty-day notice-and-comment period established by 15 U.S.C. § 16(b) has expired, whichever is later, to divest all of the Divestiture Products listed on Exhibit B. The United States, in its sole discretion, may agree to an extension of this time period of up to thirty (30) calendar days.

C. Divestiture of the Divestiture Products shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Products can and will be operated by the Acquirer as viable, ongoing businesses. Divestiture of the Divestiture Products shall be made to an Acquirer for whom it is demonstrated to the sole satisfaction of the United States that (1) the purchase is for the purpose of competing effectively in the publication and sale of the Divestiture Products, and (2) the Acquirer has the managerial, operational, and financial capability to compete effectively in the publication and sale of the Divestiture Products. Defendants are prohibited from entering into any agreement with the Acquirer to license exclusively any Divestiture Product to the Defendants for sale in the United States.

D. Pearson shall retain the right to use a Divestiture Product listed on Exhibit A to the extent necessary to fulfill the terms of agreements, in effect as of the date this Final Judgment is filed with the Court, with purchasers of the product lines listed on Exhibit A. The Acquirer of one of the Divestiture Products listed on Exhibit A shall grant Pearson a royalty-free license to continue to use that Divestiture Product to the extent necessary to fulfill the terms of such existing agreements. The Acquirer of any Divestiture Product that Pearson currently uses, in whole or in part, in any Retained Product, shall grant Pearson a royalty-free license to continue to use the Divestiture Product to the same extent in the production and sale of the Retained Product.

E. In accomplishing the divestiture ordered by this Final Judgment, the defendants shall make known, as expeditiously as possible, the availability of the Divestiture Products. The defendants shall provide any person making inquiry regarding a possible purchase a copy of the Final Judgment. The defendants shall also offer to furnish to any bona fide prospective Acquirer, subject to customary confidentiality assurances, all reasonably necessary information regarding the Divestiture Products, except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person. Defendants shall permit bona fide prospective purchasers of the Divestiture Products to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the divestiture required by this Final Judgment.

F. Defendants shall use all commercially practical means to enable the Acquirer of one of the Divestiture Products listed on Exhibit A to employ those personnel primarily responsible for the editorial content of that Divestiture Product, including editors, authors, and science experts. Defendants shall encourage and facilitate employment of such employees by the Acquirer of one of the Divestiture Products listed on Exhibit A, and shall remove any impediments that may deter these employees from accepting such employment.

G. Defendants shall make available to the Acquirer of any Divestiture Product, as applicable, information about any Pearson or Viacom employee primarily responsible

for the editorial content of any Divestiture Product listed on Exhibit B, and any Pearson or Viacom employee primarily responsible for the production, design, layout, sale or marketing of any Divestiture Product. Defendants shall not interfere with any negotiations by the Acquirer to employ any such employee, but may make counter-offers for employment.

H. Pearson shall take all reasonable steps to accomplish quickly the divestitures contemplated by this Final Judgment.

V.

APPOINTMENT OF TRUSTEE

A. In the event that Pearson has not divested a Divestiture Product within the time specified in Section IV.A or IV.B of this Final Judgment, Pearson shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States, in its sole discretion, to effect the divestiture of the Divestiture Products. Unless the United States otherwise consents in writing, the divestiture shall be accomplished in such a way as to satisfy the United States that the Divestiture Products can and will be used by the Acquirer as viable on-going businesses. The divestiture shall be made to an Acquirer for whom it is demonstrated to the United States' sole satisfaction that the Acquirer has the managerial, operational, and financial capability to compete effectively in the publication and sale of the Divestiture Products, and that none of the terms of the divestiture agreement interfere with the ability of the Acquirer to compete effectively in the publication and sale of the Divestiture Products.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Products. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall have the power and authority to hire at the cost and expense of Pearson any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. Pearson may select which of the two Divestiture Products listed on Exhibit A shall be sold by the trustee, provided that the United States determines, in its sole discretion, that the Divestiture Product selected by Pearson has been developed and maintained at levels sufficient to ensure its competitive viability. Pearson shall provide the United States with information to enable the United States to make this determination. Should the United States determine, in its sole discretion, that the Divestiture Product selected by Pearson has not been developed and maintained at levels sufficient to ensure its competitive viability, the trustee shall sell the other Divestiture Product listed on Exhibit A.

D. The trustee shall serve at the cost and expense of Pearson, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the

sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Pearson and the trust shall then be terminated. The compensation of such trustee and that of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Products and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

E. Pearson and Viacom shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of Pearson and Viacom, and defendants shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire or was contacted about acquiring any interest in any Divestiture Product, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Divestiture Products.

G. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed on the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI.

NOTIFICATION

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, Pearson or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture pursuant to Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Pearson. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Products, together with full details of the same. Within fifteen (15) days after receipt of the notice, the United States may request additional information from Pearson, the proposed

Acquirer, or any other third party concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Pearson or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request unless the parties agree otherwise. Within thirty (30) days after receipt of the notice or within twenty (20) days after the United States' receipt of the additional information, whichever is later, the United States shall notify in writing Pearson and the trustee, if there is one, stating whether it objects to the proposed divestiture. If the United States notifies in writing Pearson and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to Pearson's limited right to object to the sale under Section V.B of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer, or upon objection by the United States, a divestiture proposed under Section IV or V shall not be consummated. Upon objection by Pearson under Section V.B, the proposed divestiture shall not be accomplished unless approved by the Court.

VII.

FINANCING

Pearson shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment.

VIII.

PRESERVATION OF ASSETS

Until the divestitures required by Section IV.A and IV.B of this Final Judgment have been accomplished:

A. Defendants shall take all steps necessary to ensure that each Divestiture Product will be maintained and developed as an independent, ongoing, economically viable and active competitor in its respective line of business and that the product management for all Divestiture Products, including the product development, marketing and pricing information and decision-making be kept separate and apart from, and not influenced by, Pearson's and Viacom's businesses in other products.

B. Defendants shall use all reasonable efforts to maintain and increase sales of the Divestiture Products, and shall maintain at 1998 or previously approved levels for 1999, whichever is applicable, development, promotional advertising, sales, marketing, and merchandising support for the Divestiture Products.

C. Defendants shall take all steps necessary to ensure that the Divestiture Products are fully maintained. Defendants shall not transfer or reassign those personnel primarily responsible for the editorial content of the Divestiture Products listed on Exhibit A, including editors, authors, and science experts. Each of defendants' employees whose predominant responsibility is the editorial content of any Divestiture Product listed on Exhibit B, or the production, design, layout, sale or marketing of any Divestiture Product shall not be transferred or reassigned to any other of defendants' products, except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy, provided that defendants give the United States and Acquirer ten (10) days' notice of such transfer.

D. Defendants shall continue to fund and develop the Divestiture Products listed on Exhibit A as they would have been funded and developed without their transaction until one is sold pursuant to this Final Judgment.

E. Except as part of a divestiture approved by the United States, in its sole discretion, defendants shall not sell any Divestiture Products.

F. Defendants shall take no action that would jeopardize the sale of the Divestiture Products, or that would interfere with the ability of any Trustee to effect a sale of any Divestiture Product.

G. Defendants shall appoint a person or persons to manage the Divestiture Products, and who shall be responsible for defendants' compliance with this section.

IX.

AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this action, and every thirty (30) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or V of this Final Judgment, Pearson shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person, who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in all or any portion of the Divestiture Products, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Pearson has taken to solicit an Acquirer for any of the Divestiture Products and to provide required information to prospective Acquirers, including the limitation, if any, on such information.

B. Within twenty (20) calendar days of the filing of the Complaint in this action, Pearson shall deliver to the United States an affidavit that describes in reasonable detail all actions Pearson has taken and all steps Pearson has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The affidavit shall describe, but not be limited to, Pearson's efforts to maintain and operate the Divestiture Products as active competitors, maintain the management, staffing, research and development activities, sales, marketing and pricing of the Divestiture Products, and maintain the Divestiture Products in operable condition at current capacity configurations. Pearson shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Pearson's earlier affidavit(s) filed pursuant to this section with fifteen (15) calendar days after the change is implemented.

C. Until one year after a divestiture has been completed, or, if a divestiture is not completed, one year after the trust under Section V is terminated, Pearson shall preserve all records of all efforts made to preserve and divest the Divestiture Products.

X.

COMPLIANCE INSPECTION

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States, including consultants and other persons retained by the United States, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to

Pearson made to its principal offices, be permitted:

- 1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Pearson, which may have counsel present, relating to any matters contained in this Final Judgment; and**
- 2. subject to the reasonable convenience of Pearson and without restraint or interference from it, to interview, either informally or on the record, directors, officers, employees, and agents of Pearson, which may have counsel present, regarding any such matters.**

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to Pearson at its principal offices, Pearson shall submit written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in this Section X shall be divulged by any representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Pearson to the United States, Pearson represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Pearson marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give ten (10) days' notice to Pearson prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Pearson is not a party.

XI.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII.

TERMINATION OF PROVISIONS

This Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

United States District Judge

EXHIBIT A

1. All textbooks or other educational materials offered for sale or provided or under development by any subsidiary or division of Silver Burdett Ginn Inc. that refer or relate to the subject matter of science for grades Kindergarten through six, including, but not limited to (1) student editions; (2) teacher editions; (3) supplemental materials, including, but not limited to workbooks, notebooks, charts, audio, video, software, CD-ROM, Internet and broadcast components, manipulatives and equipment, and similar materials; (4) teacher support and staff development materials, including, but not limited to teacher resource books, assessment materials and answer keys, test generators, teaching guides, overhead transparencies, lesson plans and outlines and curriculum materials; and (5) any other materials in any form, format or media marketed or intended to be marketed as being ancillary to the program or to an individual title within the program. This Divestiture Product does *not* include any products that are necessary to fulfill the terms of agreements between Silver Burdett Ginn Inc. and purchasers of products relating to the subject matter of science for grades Kindergarten through six that are in existence as of the date this Final Judgment is filed with the Court.

or

2. All textbooks or other educational materials offered for sale or provided or under development by any subsidiary or division of Pearson Inc. doing business as Scott Foresman Addison Wesley that refer or relate to the subject matter of science for grades Kindergarten through six, including, but not limited to (1) student editions; (2) teacher editions; (3) supplemental materials, including, but not limited to workbooks, notebooks, charts, audio, video, software, CD-ROM, Internet and broadcast components, manipulatives and equipment, and similar materials; (4) teacher support and staff development materials, including, but not limited to teacher resource books, assessment materials and answer keys, test generators, teaching guides, overhead transparencies, lesson plans and outlines and curriculum materials; and (5) any other materials in any form, format or media marketed or intended to be marketed as being ancillary to the program or to an individual title within the program. This Divestiture Product does *not* include any products that are necessary to fulfill the terms of agreements between Pearson Inc. and purchasers of products relating to the subject matter of science for grades Kindergarten through six that are in existence as of the date this Final Judgment is filed with the Court.

EXHIBIT B

COLLEGE COURSE	DIVESTITURE PRODUCTS
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Abstract Algebra	Herstein, <i>Abstract Algebra</i> (Prentice Hall) Dummit/Foote, <i>Abstract Algebra</i> (Prentice Hall)
Anatomy & Physiology (One Term)	Tortora, <i>Introduction to the Human Body: The Essentials of Anatomy and Physiology</i> (Addison Wesley)
Anatomy & Physiology (Two Term)	Tortora/Grabowski, <i>Principles of Anatomy and Physiology</i> (Addison Wesley)
Art Appreciation	Fichner-Rathus, <i>Understanding Art</i> (Prentice Hall)
Circuits and Networks	Irwin, <i>Basic Engineering Circuit Analysis</i> (Prentice Hall) Johnson/Johnson/Hilbrun/Scott, <i>Electric Circuit Analysis</i> (Prentice Hall) Thomas/Rosa, <i>The Analysis & Design of Linear Circuits</i> (Prentice Hall) Johnson/Hilbrun/Johnson/Scott, <i>Basic Electric Circuit Analysis</i> (Prentice Hall)
Classical Mythology	Morford/Lenardon, <i>Classical Mythology</i> (Addison Wesley)
Classroom Management	Wolfgang, <i>Solving Discipline Problems</i> (Allyn & Bacon) Cangelosi, <i>Classroom Management Strategies</i> (Addison Wesley) Edwards, <i>Classroom Discipline & Management</i> (Prentice Hall) Burden, <i>Classroom Management & Discipline</i> (Addison Wesley)
Concrete Engineering	McCormac, <i>Design of Reinforced Concrete</i> (Addison Wesley) Wang/Salmon, <i>Reinforced Concrete Design</i> (Addison Wesley)
Controls Engineering	Nise, <i>Control Systems Engineering</i> (Addison Wesley) Kuo, <i>Automatic Control Systems</i> (Prentice Hall)
Environmental Economics	Goodstein, <i>Economics and the Environment</i> (Prentice Hall)
Fortran	Etter, <i>Structured Fortran 77 for Engineers</i>

	<i>and Scientists (Addison Wesley)</i> Etter, Fortran 90 for Engineers (Addison Wesley)
Human Anatomy	Tortora, Principles of Human Anatomy (Addison Wesley)
Human & Cultural Geography	Jordan-Bychkov/Domosh, The Human Mosaic: A Thematic Introduction to Cultural Geography (Addison Wesley)
Instructional Design	Smith/Ragan, Instructional Design (Merrill -- Prentice Hall) Kemp/Morrison/Ross, Designing Effective Instruction (Merrill -- Prentice Hall) Rothwell/Kazanas, Mastering the Instructional Design Process: A Systematic Approach (Jossey-Bass Publishers)
Intermediate Microeconomics	Browning/Zupan, Microeconomic Theory and Applications (Addison Wesley)
International Corporate Finance	Shapiro, Multinational Financial Management (Prentice Hall) Shapiro, Foundations of Multinational Financial Management (Prentice Hall)
International Economics	Salvatore, International Economics (Prentice Hall)
K-12 Curriculum	McNeil, Curriculum: A Comprehensive Introduction (Addison Wesley)
Manufacturing Engineering	Groover, Fundamentals of Modern Manufacturing (Prentice Hall) Degarmo/Black/Kohser, Materials and Processes in Manufacturing (Prentice Hall)
Mathematics for Elementary Teachers	Musser/Burger, Mathematics for Elementary Teachers (Prentice Hall)
Measurement and Assessment of Students	Kubiszyn/Borich, Educational Testing & Measurement (Addison Wesley)
Microbiology (Non-majors)	Black, Microbiology: Principles and Applications (Prentice Hall)
Multicultural Education	Banks/Banks, Multicultural Education: Issues and Perspectives (Allyn & Bacon) Grant/Sleeter, Turning on Learning: Five Approaches for Multicultural Teaching Plans for Race, Class, Gender and Disability

	<p>(Prentice Hall)</p> <p>Sleeter/Grant, <i>Making Choices for Multicultural Education: Five Approaches to Race, Class, and Gender</i> (Merrill -- Prentice Hall)</p>
Operating Systems	<p>Silberschatz/Galvin, <i>Operating System Concepts</i> (Addison Wesley)</p>
School Administration: Supervision	<p>Acheson/Gall, <i>Techniques in the Clinical Supervision of Teachers</i> (Addison Wesley)</p> <p>Oliva/Pawlis, <i>Supervision for Today's Schools</i> (Addison Wesley)</p>
Structural Engineering	<p>McCormac/Nelson, <i>Structural Analysis: A Classical & Matrix Approach</i> (Addison Wesley)</p>
Surveying	<p>McCormac, <i>Surveying Fundamentals</i> (Prentice Hall)</p>
Teaching Math to Elementary Students	<p>Reys/Suydam/Lindquist/Smith, <i>Helping Children Learn Mathematics</i> (Allyn & Bacon)</p> <p>Hatfield/Edwards/Bitter, <i>Mathematics Methods for Elementary and Middle School</i> (Ally & Bacon)</p> <p>Sheffield/Cruikshank, <i>Teaching and Learning Elementary and Middle School Mathematics</i> (Merrill -- Prentice Hall)</p> <p>Heddens, <i>Today's Mathematics</i> (Prentice Hall)</p>
Teaching Reading to Secondary Students	<p>Ruddell, <i>Teaching Content Reading & Writing</i> (Allyn & Bacon)</p> <p>Ryder, <i>Reading and Learning in the Content Areas</i> (Prentice Hall)</p> <p>Cooter/Flynt, <i>Teaching Reading in Content Areas</i> (Prentice Hall)</p> <p>Manzo/Manzo, <i>Content Area Literacy</i> (Merrill -- Prentice Hall)</p>
Technical Math	<p>Calter, <i>Technical Mathematics</i> (Prentice Hall)</p>
Technical Math with Calculus	<p>Calter, <i>Technical Mathematics with Calculus</i> (Prentice Hall)</p>
Technical Writing	<p>Houp, <i>Reporting Technical Information</i> (Allyn & Bacon)</p>

Chapter 20

Clayton Antitrust Act of 1914

TAA, IMCPOs, NCCCS, UNC and others have conspired and colluded to violate numerous statutes including those enumerated in The Sherman Antitrust Act and The Clayton Antitrust Act. As such, all parties are not only liable, but liable on multiple counts spanning many years.

The Clayton Antitrust Act declares certain enumerated practices in commerce illegal. These were practices that might adversely affect competition but were not themselves contracts, combinations, or conspiracies in restraint of trade; such practices did not go far enough to constitute actual monopolization or attempts to monopolize. Further, the enumerated practices did not have to actually injure competition to be wrongful; they were outlawed if their effect may substantially lessen competition or tends to create a monopoly. Thus, the burden of proving a violation was eased. The Clayton Act made it possible to attack in their incipiency many practices which, if continued, eventually could destroy competition or create a monopoly. The idea was to remedy these matters before full harm was done. Individuals or organizations injured by a violation could obtain injunctive relief on their own behalf. In addition, they were given the right to collect three times the damages suffered plus court costs and reasonable attorney's fees.

The first sanction is criminal punishment. Crimes under the Sherman Act are felonies. An individual found guilty by the preponderance of the evidence may be fined up to \$350,000 per count. Corporations can be on the hook for \$10 million for each offense.

Baumer and Poindexter, Legal Environment of Business in the Information Age New York: McGraw Hill Irwin 2004. 640

Chapter 21

Federal Trade Commission Act 1914 or Gifts...They are *Gifts to Individuals!*



Source: www.ftc.gov

Federal Trade Commission - Unordered Merchandise

What do you do when you receive merchandise that you didn't order? According to the Federal Trade Commission, you don't have to pay for it.

Federal laws prohibit mailing unordered merchandise to consumers and then demanding payment.

Here are some questions and answers about dealing with unordered merchandise.

Q. Am I obligated to return or pay for merchandise I never ordered?

A. No. If you receive merchandise that you didn't order, you have a legal right to keep it as a free gift.

Q. Must I notify the seller if I keep unordered merchandise without paying for it?

A. You have no legal obligation to notify the seller.

www.ftc.gov/bcp/edu/pubs/consumer/products/pro15.shtm

In this chapter, we look at the Federal Trade Commission Act, specifically as it relates to Unfair Trade Practices. The FTC enforces Section 5 of the Federal Trade Commission Act, which made "*unfair methods of competition*" in commerce unlawful. The purpose of Section 5 was to establish that anticompetitive acts or practices that *fall short* of transgressing the Sherman or Clayton Act may be restrained by the FTC as being "unfair methods of competition." If a business practice is such that it is doubtful that the evidence is sufficient to prove a Sherman or Clayton Act violation, the FTC may nevertheless proceed and find the business practice is unfair.

§ 45. Unfair methods of competition unlawful; prevention by Commission

(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

(2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 57a (f)(3) of this title, Federal credit unions described in section 57a (f)(4) of this title, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to part A of subtitle VII of title 49, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 U.S.C. 181 et seq.], except as provided in section 406(b) of said Act [7 U.S.C. 227 (b)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

The term *unfair methods of competition* was designed by Congress as a flexible concept, the exact meaning of which could evolve on a case-by-case basis. Section 5's prohibition of unfair acts or practices enables the FTC to attack behavior that, while not necessarily deceptive, is objectionable for other reasons, though the acts enumerated in this report are, and have been, intentionally deceptive.

(4)(A) For purposes of subsection (a), the term "unfair or deceptive acts or practices" includes such acts or practices involving foreign commerce that—

(i) cause or are likely to cause reasonably foreseeable injury within the United States; or

(ii) involve material conduct occurring within the United States.

(B) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims.

Two of the three largest international, mega-conglomerate textbook publishing oligopolies (IMCPOs), Thomson and Pearson, are based in Canada and the United Kingdom, respectively. These oligopolies conduct international trade with the United States government, states, counties, municipalities, corporations and individuals effecting Interstate Commerce. The third largest, Houghton Mifflin, is based in the United States and conducts international trade and interstate commerce similar to Thomson and Pearson Education.

(n) Standard of proof; public policy considerations

The Commission shall have no authority under this section or section 57a of this title to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

The predatory acts of all of the IMCPOs injure interstate commerce and American consumers. Consumers cannot avoid injury while remaining involved with my industry. There is no countervailing benefit to anyone which would justify the attacks on this industry, Small Business Families and their clients. The de facto NCCCS and actual UNC bans currently in place are injurious in and of themselves.

To violate Section 5, the injury:

- ✚ Must be substantial. Monetary loss and unwarranted health and safety risk usually constitute substantial harm.

The conspiratorial acts of TAA, IMCPOs, NCCCS, UNC and others have substantially injured many Small Family Businesses and the used textbook resale industry itself and marketplace. Some American Small Business Families have shuttered their operations.

- ✚ Must be one that consumers could not have reasonably avoided. An injury is considered reasonably unavoidable when a seller's actions significantly interfered with a consumer's ability to make informed decisions that would have prevented the injury.

The bottom line...Be injured by TAA, IMCPOs, NCCCS, UNC and the State of Florida (Rep. Anitere Flores) or go out of business.

Defamation, Libel & Slander

To carry out the acts of Unfair and Deceptive Practices, the Text and Academic Authors Association (TAA) and IMCPOs conspired and colluded to devise and carry out (ongoing) a pattern of defamation by both libel and slander. One example of libel in the written materials they prepare would be TAA's brochure, *Stomp the Comp*, in which a book buyer is depicted as a thief in an illustration. Slander occurs on a daily basis from the lips of the traveling army of sales reps the oligopolies employ.

Defamation

- ✚ An intentional false communication, either published or publicly spoken, that injures another's reputation or good name. Holding up of a person to ridicule, scorn or contempt in a respectable and considerable part of the community; may be criminal as well as civil. Includes both libel and slander.
- ✚ Defamation is that which tends to injure reputation; to diminish the esteem, respect, goodwill or confidence in which plaintiff is held, or to excite adverse, derogatory or unpleasant feelings or opinions against him. Statement which exposes person to contempt, hatred, ridicule or obloquy. *McGowen v. Prentice, La. App.*, 341 So2d 55, 57. The unprivileged publication of false statements which naturally and proximately result in injury to another. *Wolfson v. Kirk, Fla.App.*, 273 So2d 774, 776.
- ✚ To recover against a public official or public figure, plaintiff must prove that the defamatory statement was published with malice. Malice in this context means that it was published either knowing that it was false or with a reckless disregard as to whether it was true or false. *New York Times Co., v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 868.
- ✚ A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community **or to deter third persons from associating or dealing with him.**
- ✚ To establish a prima facie case of defamation, four elements are generally required: **a false statement purporting to be fact concerning another person or entity; publication or communication of that statement to a third person; fault on the part of the person making the statement amounting to intent or at least negligence; and some harm caused to the person or entity who is the subject of the statement.**

Libel

Libel is a method of defamation expressed by print, writing, pictures, signs, effigies, or any communication embodied in physical form that is injurious to a person's reputation, exposes a person to public hatred, contempt or ridicule, or injures a person in his/her business or profession.

Slander

A false statement usually made orally, which defames another person.

Defaming People, Corporations and Products

Individuals are not the only potential libel plaintiffs. Corporations often sue for libel, as do nonprofit associations and labor unions, To falsely claim that an organization has engaged in fraudulent or deceptive practices can be, as one would expect, just as libelous as to make the same charges against an individual...Sometimes corporations will sue because of negative comments made about products or services themselves. In such situations, where there is not even a hint in the allegedly libelous report that the company itself has engaged in dishonesty, only that the product [service] is an inferior [unethical, immoral, illegal] one, the cause of action is called trade libel, or product disparagement.

Communication Law in America

Paul Siegel, President of Text and Academic Authors Association

3rd Edition, 2011

Rowman & Littlefield Publishers

Pgs 93-94

Brackets are the author's.

Wheeler Lea Amendment

The Wheeler-Lea Amendment in 1938 added that “unfair or deceptive acts or practices in commerce” are also unlawful under Section 5. Answering any one of these three major questions affirmatively, then the practice is considered unfair by the FTC.

✚ Does the conduct injure consumers significantly?

YES

✚ Does the conduct offend an established public policy?

YES

✚ Is the conduct oppressive, unscrupulous, immoral or unethical?

YES, Quite!

Laws only declare rights; they do not deliver them.

The oppressed must take hold of laws and
transform them into effective mandates.

Martin Luther King, Jr.

The Legal Definition of “And”, for example

A conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first. Added to; together with; joined with as well as; including.

It expresses a general relation or connection, a participation or accompaniment in sequence, having no inherent meaning standing alone but deriving force from what comes before and after. In its conjunctive sense the word is used to conjoin words, clauses, or sentences, expressing the relation of addition or connection, and signifying that something is to follow in addition to that which proceeds and its use implies that the connected elements must be grammatically co-ordinate, as where the elements preceding and succeeding the use of the words refer to the same subject matter. While it is said that there is no exact synonym of the word in English, it has been defined to mean “along with”, “also”, “and also”, “as well as”, “besides”, “together with”. *Oliver v. Oliver*, 286 Ky. 6, 149 S.W.2d 540, 542.

Black’s Law Dictionary, Sixth Edition, 1990

Published by West Publishing Co. which is owned by Thomson Reuters

Over the years, the international, mega-conglomerate publishing oligopolies (IMCPOs) have tried everything from placing notices on books such as those found below to producing almost blank covers. The IMCPOs lie to, scare, shame, coerce and intimidate teachers not to sell their personal possessions. In a moment, we will take a look at the same deceptive message, presented in three different statements. The Federal Trade Commission Policy Statement on Deception can be found later in this chapter.

Deceptive Example 1:



Let’s break down this Notice of Copyright. Before we do that, let’s look at the author and the audience. Then we’ll come back to the message conveyed.

Message Conveyors – Lawyers

These Notices of Copyright are statements rooted in law. This reporter has never met a teacher who has forked over a fee to a lawyer to obtain a legal opinion on the copyright notice. *The IMCPOs own Westlaw. They own Thomson Reuters. They own the statutes. They have LOTS of lawyers. THEY KNOW THE LAW!*

Message Recipients – Generally Non-lawyers.

Smart but very busy faculty and administrators. Generally teachers know about what they teach. If they are not teaching Con Law, they don’t know the materials provided in this paper. And then, perhaps not the minutiae.

The intent of this Notice of Copyright label is to convey that the book is protected by copyright laws and that those laws extend to the personal use or disposition of the book. They do not but we're not done there. The obfuscation is purposeful. The Notice of Copyright is worded EXACTLY as the lawyers wanted to see it. It had to meet the corporate attorney's approval. Why? It is a statement of one's responsibility under the law. It is an opinion rendered by the publisher's attorneys PROVIDING LEGAL ADVICE to the general public. It is factually and lawfully incorrect. It is a LIE and this LIE is being told with the motive to deceive. The same line of thought relates to Deceptive Examples 2 and 3.

Black's again..."It expresses a general relation or connection, a participation or accompaniment in sequence, having no inherent meaning standing alone but deriving force from what comes before and after. In its conjunctive sense the word is used to conjoin words, clauses, or sentences, expressing the relation of addition or connection, and signifying that something is to follow in addition to that which proceeds and its use implies that the connected elements must be grammatically co-ordinate, as where the elements preceding and succeeding the use of the words refer to the same subject matter."

Deceptive Example 2:

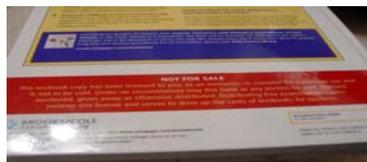
NOTICE: This work is protected by U.S. copyright laws and is provided solely for the use of college instructors in reviewing course materials for classroom use. Dissemination or sale of any part of the work (including on the World Wide Web) will destroy the integrity of the work and is not permitted. The work and materials from it should never be made available to students except by instructors using the accompanying text in their classes. All recipients of this work are expected to abide by these restrictions and to honor the pedagogical purpose and the needs of other instructors who rely on these materials. Prentice Hall Higher Education

These two are the easiest Notices of Copyright to debunk. They have the usual suspect in "AND" which deceptively combines copyright law with the IMCPOs' pecuniary preference for one handling his or her personal possessions. The books, as we have determined, are "gifts" and instructors are free to do with their gift as they wish. This is SETTLED LAW. This Notice of Copyright and threat instructs instructors as to the acceptable ways to handle their books which are GIFTS, FREE OF LICENSE. They are not DONATED. The IMCPOs are NOT DONORS. *Fesmire vs. First Union National Bank* (1966), as we will see later, has no application to the matter at hand.

The IMCPOs try to connect the protections of the copyright laws to the selling and even the giving away of the books. They unlawfully *extend the copyright*. If a needy student can not afford a textbook and a teacher has an extra copy, the IMCPOs suggest placing that book in recycling or trash and sending the needy student packing to the campus bookstore.

What the law does not allow and what the IMCPOs attempt everyday is to control information and attempt to exact an undue toll for any and all data under their copyrights. The IMCPOs try to force consumers to handle their personal belongings in the manner they direct. There is an implied threat should the teacher not, "ABIDE BY THESE RESTRICTIONS." This is in violation of the **First Sale Doctrine**. See Chapter 26.

Deceptive Example 3:



NOT FOR SALE

This textbook copy has been licensed to you, as an instructor, to consider for classroom use and is not to be sold. Under no circumstances may this book or any portion be sold, licensed, auctioned, given away or otherwise distributed. Distributing free examination copies violates this license and serves to drive up the costs of textbooks for students.

Abridged for this Paper *My Comments in Italics*

FTC POLICY STATEMENT ON DECEPTION

Appended to Cliffdale Associates, Inc., 103 F.T.C. 110, 174 (1984).

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

October 14, 1983

The Honorable John D. Dingell, Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

I. SUMMARY

First, there must be a representation, omission or practice that is likely to mislead the consumer.⁴ Practices that have been found misleading or deceptive in specific cases include false oral or written representations.

The international, mega-conglomerate publishing oligopolies (IMCPOs) and the Text and Academic Author's Association (TAA) conspire and collude to deceive the consumer by publishing and willfully and knowingly disseminating false legal advice on their Notices of Copyright and by willingly and knowingly making false, misleading, deceptive and defamatory oral and written remarks and representations about me, my business and my industry in a dedicated, planned, intentional, ongoing and unlawful campaign to injure me, my business and my industry. NCCCS, UNC, the State of Florida and others have bought into the claims of TAA and the IMCPOs and actively conspire and collude to injure me, my business and my industry of American Small Business Families. The reader is encouraged to review Chapters 24 and 25 for a TAA-self-published overview of decades of CRIMINAL BEHAVIOR, including the defamatory, deceptive and misleading TAA brochure, "Stomp the Comp." Also review the "Stomp the Comp" campaign in violation of the many laws discussed in this paper, including the Racketeer Influenced and Corrupt Organization Act. The IMCPOs own Westlaw. They own Thomson Reuters. They own the statutes. They have LOTS of lawyers. THEY KNOW THE LAW! Examples of these deceptive and defamatory statements include:



"We call them 'weasels,'" a sales rep. for a top textbook publisher, whom I'll call Marie, says when I sit down with her over coffee to discuss the practice. "It's grand larceny." Later she admits that as far as she knows, "The only law broken is not claiming that income on taxes. Maybe the IRS could stop it."

Adjunct Advocate July/August 2006

"The current "Stomp the Comp" campaign builds on our history of advocating for ethical practices by faculty and enforcement of campus policies to keep textbook resellers off college campuses." Text and Academic Authors Association

"Bookbuyers seek to evade campus regulations." Text and Academic Authors Association

Second, we examine the practice from the perspective of a consumer acting reasonably in the circumstances.

The acts of banning my clients from doing business with my industry by the use of defamatory and threatening acts and STOMPING on their and our constitutional rights precludes my clients from carrying on their normal lawful affairs for fear of discipline or other recrimination. The deceptive written and oral statements and practices of the conspirators have irreparably harmed me, my business, my clients and industry.

Individuals and State actors have responded to the “smear campaign” aka The Stomp the Comp Campaign by altering their behavior or conducting their lawful personal business “behind closed doors.”

Third, the representation, omission, or practice must be a “material” one. The basic question is whether the act or practice is likely to affect the consumer’s conduct or decision with regard to a product or service.

The matter is a manipulation, obfuscation and breaching of the fundamental rights due citizens of the United States. The deceptive statements and practices are not only material, they are fundamental.

Thus, the Commission will find deception if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer’s detriment.

The acts take away the rights of American Small Business Families and their clients. The acts damage the reputation of me and those in my industry. Our clients are vilified and called unethical, ridiculed amongst their peers. The financial damages are great, zeroing out an industry and putting American Small Business Families OUT OF BUSINESS.

II. THERE MUST BE A REPRESENTATION, OMISSION, OR PRACTICE THAT IS LIKELY TO MISLEAD THE CONSUMER.

To be considered reasonable, the interpretation or reaction does not have to be the only one.²¹ When a seller’s representation conveys more than one meaning to reasonable consumers, one of which is false, the seller is liable for the misleading interpretation.²² An interpretation will be presumed reasonable if it is the one the respondent intended to convey.

To an educated reader, the meaning in the above Notices of Copyright can ONLY be construed as there being a connection between the two parts of the sentence and that connection is “copyright law.” The Notice of Copyright extends the copyright protection in an unlawful manner. It denies the recipient of the “gift” and her peaceful and unencumbered use of it.

In these Notices of Copyright, “And” is a conjunction. Therefore, the first part of the sentence is directly related to the second part of the sentence. The statement is then, “This book is protected by copyright laws and these copyright laws control how you use and handle this book and our legal department’s legal advice is, given the copyright laws, you may not dispose of this book the way you see fit as it is for instructor’s use ONLY”.

If there is another interpretation of this Notice of Copyright, I am not aware of it. It does not matter as the above interpretation is deceptive, misleading and unlawful. For this reason, the seller is liable for either of the two misleading representations.

The Third Circuit stated succinctly the Commission’s standard. “The tendency of the advertising to deceive must be judged by viewing it as a whole, without emphasizing isolated words or phrases apart from their context.” *Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976), *cert denied*, 430 U.S. 983 (1977).

Black's again..."It expresses a general relation or connection, a participation or accompaniment in sequence, having no inherent meaning standing alone but deriving force from what comes before and after. In its conjunctive sense the word is used to conjoin words, clauses, or sentences, expressing the relation of addition or connection, and signifying that something is to follow in addition to that which proceeds and its use implies that the connected elements must be grammatically co-ordinate, as where the elements preceding and succeeding the use of the words refer to the same subject matter."

IV. THE REPRESENTATION, OMISSION OR PRACTICE MUST BE MATERIAL

The third element of deception is materiality. That is, a representation, omission or practice must be a material one for deception to occur.⁴⁴ A "material" misrepresentation or practice is one which is likely to affect a consumer's choice of or conduct regarding a product.⁴⁵ In other words, it is information that is important to consumers. If inaccurate or omitted information is material, **injury is likely**.⁴⁶

The matter is a manipulation, obfuscation and breaching of the fundamental rights due citizens of the United States. The deceptive statements and practices are not only material, they are fundamental. There has been great injury to reputation, standing in the community and income (sales).

Injury exists if consumers would have chosen differently but for the deception.

Ninety percent of faculty members sell their unwanted personal possessions, in this case, books. When one factors in the teachers who would sell but do not due to a State, school or department policy, that percentage would be much higher. Many teachers have been forced to accept the unlawful policies denying them their right to sell their personal possessions.

Many teachers cannot make a choice as their Department Chairperson often makes it for them. Dr. John Kelly, Chairperson & Associate Professor, Department of Electrical and Computer Engineering at North Carolina Agricultural & Technical State University (NCAT) is an example of one of these department chairpersons who make policy with no understanding of the law. More about Dr. Kelly is at the end of this chapter. Note, however, that the Dr. Kelly story is indicative of a cause and effect between the oral and written representations of the TAA and the IMCPOs and the banning of book selling in the nation.

Endnotes:

⁴ A misrepresentation is an express or implied statement contrary to fact. A misleading omission occurs when qualifying information necessary to prevent a practice, claim, representation, or reasonable expectation or belief from being misleading is not disclosed.

²¹ A secondary message understood by reasonable consumers is actionable if deceptive even though the primary message is accurate. *Sears, Roebuck & Co.*, 95 F.T.C. 406, 511 (1980), *aff'd* 676 F.2d 385, (9th Cir. 1982); *Chrysler*, 87 F.T.C. 749 (1976), *aff'd*, 561 F.2d 357 (D.C. Cir.), *reissued* 90 F.T.C. 606 (1977); *Rhodes Pharmacal Co.*, 208 F.2d 382, 387 (7th Cir. 1953), *aff'd*, 348 U.S. 940 (1955).

⁵⁸ The prohibitions of Section 5 are intended to prevent injury to competitors as well as to consumers. The Commission regards injury to competitors as identical to injury to consumers. Advertising and legitimate marketing techniques are intended to "lure" competitors by directing business to the advertiser. In fact, vigorous competitive advertising can actually benefit consumers by lowering prices, encouraging product innovation, and increasing the specificity and amount of information available to consumers. **Deceptive practices injure both competitors and consumers because consumers who preferred the competitor's product are wrongly diverted.**

<http://www.ftc.gov/bcp/policystmt/ad-decept.htm>

*Meet Dr. John C. Kelly, Small Business Killer
from UNC Constituent, NC Agricultural & Technical State University*



Dr. John C. Kelly, Jr.
Chairperson & Associate Professor
Small Business Killer
Electrical and Computer Engineering Dept.
NC Agriculture and Technical State University

Ph.D. Electrical Engineering
University of Delaware, 1988.
B.S. Electrical Engineering
University of Delaware, 1981

Dr. Kelly is adamant about his book selling prohibition policy. With a research- and verify-averse attitude, Dr. Kelly is the Poster chairperson for a chair who makes policy without trying to understand the details --- or the law. Even a smart man sometimes doesn't know what he is talking about. When one parrots a textbook publisher's sales rep, it would be helpful if one would fact check. Parts of an IMCPOs sales representative's presentation are very deceptive and misleading.

I have been working and providing service on the NCAT campus for eight years. I have EIGHTY-EIGHT clients on the NCAT campus. Do you know how hard it is to develop eighty-eight clients? Do you know how many years that takes? I was visiting my wonderful clients at NCAT back in October of 2009 when I introduced myself to Dr. Kelly in the Engineering Building. Dr. Kelly was cordial but wrong. He has a pleasant demeanor as he explained his completely off-base reasoning for prohibiting bookselling.

Dr. Kelly goes further than most when he made it clear that he would bring any teacher in his department up for disciplinary proceedings if they sold books (exercised their constitutional rights). He stated that the policy was to make sure that there is no "appearance of impropriety. State employee Kelly is on a mission to shut down the American Small Business Families in this industry. He would prefer that they go hungry, face foreclosure and be impoverished.

As a State actor, this again makes the State liable for the eradication of this specific and targeted industry. As teacher's change jobs, the ones like Kelly infect their new environment. As such, private schools, which are not under the State ban, often have their own unlawful bans as teachers take their wrong belief systems with them as they move from job to job. Primacy is often hard to overcome.

A critical thinker, Kelly is not. Close-minded as he was, I was able to voice a short, alternative view. Kelly dismisses book buyer's viewpoints as being profit-motivated while entertaining the profit-and commission-motivated IMCPO sales reps.

The Used Textbook Resale Market & The Law[©]

Multi-State Comprehensive Edition

Essential Reading

Chapter 21

FTC Policy Statement on Deception Full Text

FTC Policy Statement on Deceptions Full Text

FTC POLICY STATEMENT ON DECEPTION

Appended to Cliffdale Associates, Inc., 103 F.T.C. 110, 174 (1984).

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

October 14, 1983

The Honorable John D. Dingell, Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter responds to the Committee's inquiry regarding the Commission's enforcement policy against deceptive acts or practices.¹ We also hope this letter will provide guidance to the public.

We have therefore reviewed the decided cases to synthesize the most important principles of general applicability. We have attempted to provide a concrete indication of the manner in which the Commission will enforce its deception mandate. In so doing, we intend to address the concerns that have been raised about the meaning of deception, and thereby attempt to provide a greater sense of certainty as to how the concept will be applied.³

I. SUMMARY

Certain elements undergird all deception cases. **First, there must be a representation, omission or practice that is likely to mislead the consumer.**⁴ Practices that have been found misleading or deceptive in specific cases include false oral or written representations, misleading price claims, sales of hazardous or systematically defective products or services without adequate disclosures, failure to disclose information regarding pyramid sales, use of bait and switch techniques, failure to perform promised services, and failure to meet warranty obligations.⁵

Second, we examine the practice from the perspective of a consumer acting reasonably in the circumstances. If the representation or practice affects or is directed primarily to a particular group, the Commission examines reasonableness from the perspective of that group.

Third, the representation, omission, or practice must be a "material" one. The basic question is whether the act or practice is likely to affect the consumer's conduct or decision with regard to a product or service.

If so, the practice is material, and consumer injury is likely, because consumers are likely to have chosen differently but for the deception. In many instances, materiality, and hence injury, can be presumed from the nature of the practice. In other instances, evidence of materiality may be necessary.

Thus, the Commission will find deception if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.

II. THERE MUST BE A REPRESENTATION, OMISSION, OR PRACTICE THAT IS LIKELY TO MISLEAD THE CONSUMER.

Most deception involves written or oral misrepresentations, or omissions of material information. Deception may also occur in other forms of conduct associated with a sales transaction. The entire advertisement, transaction or course of dealing will be considered. The issue is whether the act or practice is likely to mislead, rather than whether it causes actual deceptions.

Of course, the Commission must find that a representation, omission, or practice occurred in cases of express claims, the representation itself establishes the meaning. In cases of implied claims, the Commission will often be able to determine meaning through an examination of the representation itself, including an evaluation of such factors as the entire document, the juxtaposition of various phrases in the document, the nature of the claim, and the nature of the transactions.⁷

Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.⁹ Information may be omitted from written¹⁰ or oral¹¹ representations or from the commercial transaction.¹²

In some circumstances, the Commission can presume that consumers are likely to reach false beliefs about the product or service because of an omission.

There may be a concern about the way a product or service is marketed, such as where inaccurate or incomplete information is provided.¹⁷

III. THE ACT OR PRACTICE MUST BE CONSIDERED FROM THE PERSPECTIVE OF THE REASONABLE CONSUMER

The Commission believes that to be deceptive the representation, omission or practice must be likely to mislead reasonable consumers under the circumstances.¹⁹ The test is whether the consumer's interpretation or reaction is reasonable.²⁰

To be considered reasonable, the interpretation or reaction does not have to be the only one.²¹ When a seller's representation conveys more than one meaning to reasonable consumers, one of which is false, the seller is liable for the misleading interpretation.²² An interpretation will be presumed reasonable if it is the one the respondent intended to convey.

In a case involving the sale of encyclopedias, the Commission observed "[i]n determining the meaning of an advertisement, a piece of promotional material or a sales presentation, the important criterion is the net impression that it is likely to make on the general populace."²⁵

The Commission will evaluate the entire advertisement, transaction, or course of dealing in determining how reasonable consumers are likely to respond.

The Commission's right to scrutinize the visual and aural imagery of advertisements follows from the principle that the Commission looks to the impression made by the advertisements as a whole. Without this mode of examination, the Commission would have limited recourse against crafty advertisers whose deceptive messages were conveyed by means other than, or in addition to, spoken words. *American Home Products*, 695 F.2d 681, 688 (3d Cir. Dec. 3, 1982).³²

The Third Circuit stated succinctly the Commission's standard. "The tendency of the advertising to deceive must be judged by viewing it as a whole, without emphasizing isolated words or phrases apart from their context." *Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976), *cert denied*, 430 U.S. 983 (1977).

Commission cases reveal specific guidelines. Depending on the circumstances, accurate information in the text may not remedy a false headline because reasonable consumers may glance only at the headline.³³

IV. THE REPRESENTATION, OMISSION OR PRACTICE MUST BE MATERIAL

The third element of deception is materiality. That is, a representation, omission or practice must be a material one for deception to occur.⁴⁴ A "material" misrepresentation or practice is one which is likely to affect a consumer's choice of or conduct regarding a product.⁴⁵ In other words, it is information that is important to consumers. If inaccurate or omitted information is material, injury is likely.⁴⁶

A finding of materiality is also a finding that injury is likely to exist because of the representation, omission, sales practice, or marketing technique. Injury to consumers can take many forms.⁵⁸ **Injury exists if consumers would have chosen differently but for the deception.** If different choices are likely, the claim is material, and injury is likely as well. Thus, injury and materiality are different names for the same concept.

/s/James C. Miller III
Chairman

Endnotes:

⁴ A misrepresentation is an express or implied statement contrary to fact. A misleading omission occurs when qualifying information necessary to prevent a practice, claim, representation, or reasonable expectation or belief from being misleading is not disclosed. Not all omissions are deceptive, even if providing the information would benefit consumers. As the Commission noted in rejecting a proposed requirement for nutrition disclosures, "In the final analysis, the question whether an advertisement requires affirmative disclosure would depend on the nature and extent of the nutritional claim made in the advertisement." *ITT Continental Baking Co. Inc.*, 83 F.T.C. 865, 965 (1976). In determining whether an omission is deceptive, the Commission will examine the overall impression created by a practice, claim, or representation. For example, the practice of offering a product for sale creates an implied representation that it is fit for the purposes for which it is sold. Failure to disclose that the product is not fit constitutes a deceptive omission. [See discussion below at 5-6] Omissions may also be deceptive where the representations made are not literally misleading, if those representations create a reasonable expectation or belief among consumers which is misleading, absent the omitted disclosure.

Non-deceptive emissions may still violate Section 5 if they are unfair. For instance, the R-Value Rule, 16 C.F.R. 460.5 (1983), establishes a specific method for testing insulation ability, and requires disclosure of the figure in advertising. The Statement of Basis and Purpose, 44 FR 50,242 (1979), refers to a deception theory to support disclosure requirements when certain misleading claims are made, but the rule's general disclosure requirement is based on an unfairness theory. Consumers could not reasonably avoid injury in selecting insulation because no standard method of measurement existed.

⁵ Advertising that lacks a reasonable basis is also deceptive. *Firestone*, 81 F.T.C. 398, 451-52 (1972), *aff'd*, 481 F.2d 246 (6th Cir.), *cert. denied*, 414 U.S. 1112 (1973). *National Dynamics*, 82 F.T.C. 488, 549-50 (1973); *aff'd and remanded on other grounds*, 492 F.2d 1333 (2d Cir.), *cert. denied*, 419 U.S. 993 (1974), *reissued*, 85 F.T.C. 391 (1976). *National Comm'n on Egg Nutrition*, 88 F.T.C. 89, 191 (1976), *aff'd*, 570 P.2d 157 (7th Cir.), *cert. denied*, 439 U.S. 821, *reissued*, 92 F.T.C. 848 (1978). The deception theory is based on the fact that most ads making objective claims imply, and many expressly state, that an advertiser has certain specific grounds for the claims. If the

advertiser does not, the consumer is acting under a false impression. The consumer might have perceived the advertising differently had he or she known the advertiser had no basis for the claim. This letter does not address the nuances of the reasonable basis doctrine, which the Commission is currently

⁹As the Commission noted in the Cigarette rule, "The nature, appearance, or intended use of a product may create the impression on the mind of the consumer . . . and if the impression is false, and if the seller does not take adequate steps to correct it, he is responsible for an unlawful deception." Cigarette Rule Statement of Basis and Purpose, 29 FR 8324, 8352 (July 2, 1964).

²⁰An interpretation may be reasonable even though it is not shared by a majority of consumers in the relevant class, or by particularly sophisticated consumers. A material practice that misleads a significant minority of reasonable consumers is deceptive. See *Heinz W. Kirchner*, 63 F.T.C. 1282 (1963).

²¹A secondary message understood by reasonable consumers is actionable if deceptive even though the primary message is accurate. *Sears, Roebuck & Co.*, 95 F.T.C. 406, 511 (1980), *aff'd* 676 F.2d 385, (9th Cir. 1982); *Chrysler*, 87 F.T.C. 749 (1976), *aff'd*, 561 F.2d 357 (D.C. Cir.), *reissued* 90 F.T.C. 606 (1977); *Rhodes Pharmacal Co.*, 208 F.2d 382, 387 (7th Cir. 1953), *aff'd*, 348 U.S. 940 (1955).

³²Numerous cases exemplify this point. For instance, in *Pfizer*, the Commission ruled that "the net impression of the advertisement, evaluated from the perspective of the audience to whom the advertisement is directed, is controlling." 81 F.T.C. 23, 58 (1972).

³⁴In *Giant Food*, the Commission agreed with the examiner that the fine-print disclaimer was inadequate to correct a deceptive impression. The Commission quoted from the examiner's finding that "very few if any of the persons who would read Giant's advertisements would take the trouble to, or did, read the fine print disclaimer." 61 F.T.C. 326, 348 (1962).

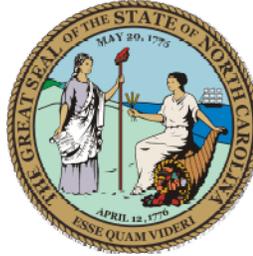
Cf. Beneficial Corp. v. FTC, 542 P.2d 611, 618 (3d Cir. 1976), where the court reversed the Commission's opinion that no qualifying language could eliminate the deception stemming from use of the slogan "Instant Tax Refund."

⁵⁸The prohibitions of Section 5 are intended to prevent injury to competitors as well as to consumers. The Commission regards injury to competitors as identical to injury to consumers. Advertising and legitimate marketing techniques are intended to "lure" competitors by directing business to the advertiser. In fact, vigorous competitive advertising can actually benefit consumers by lowering prices, encouraging product innovation, and increasing the specificity and amount of information available to consumers. Deceptive practices injure both competitors and consumers because consumers who preferred the competitor's product are wrongly diverted.
<http://www.ftc.gov/bcp/policystmt/ad-decept.htm>

Chapter 22

Sampling of State Unordered Merchandise Laws

Most states have Unordered Merchandise statutes. If any do not, then the federal laws are effective. Some of those state's laws are listed here:



North Carolina General Statutes § 75-27 Unsolicited Merchandise

Unless otherwise agreed, where unsolicited goods are delivered to a person, he has a right to refuse to accept delivery of the goods and is not bound to return such goods to the sender. If such unsolicited goods are addressed to and intended for the recipient, they shall be deemed a gift to the recipient, who may use them or dispose of them in any manner without any obligation to the sender.



Maine Revised Statutes 33 §1101. UNSOLICITED MERCHANDISE; DUTY OF RECEIVER

Where unsolicited merchandise is delivered to a person for whom it is intended, such person has a right to refuse to accept delivery of this merchandise or he may deem it to be a gift and use it or dispose of it in any manner without any obligation to the sender.



**State of Alaska
Department of Law
Unordered Merchandise - AS 45.45.105 - AS 45.45.110
Sec. 45.45.105. Unsolicited merchandise.**

(a) A person may not offer merchandise for sale, in any manner, when the offer includes the voluntary and unsolicited sending of merchandise not actually ordered or requested by the recipient, either orally or in writing.

(b) Unsolicited merchandise received shall be considered an unconditional gift to the recipient who may use or dispose of it in any manner the recipient sees fit without obligation to the sender.



**Missouri Revised Statutes
Chapter 407
Merchandising Practices
Section 407.200
August 28, 2009**

Unsolicited merchandise, how disposed of.
407.200. Where unsolicited merchandise is delivered to a person for whom it is intended, such person has a right to refuse to accept delivery of this merchandise or he may deem it to be a gift and use it or dispose of it in any manner without any obligation to the sender.

Chapter 23

The Takings Clause

The very existence of social order [, according to English philosopher John Locke,] presumes some loss of personal and economic freedom. To protect individual rights and advance the public good, government might restrict liberty and might even take private property for public use. But in the latter instance, it would have to provide just compensation to the previous owner, and in limiting individual liberty, it would be required to act reasonably. In short, under this social contract theory, governmental restrictions would be balanced against the high priority afforded to individual rights. The Lockean perspective pervades the U.S. Constitution.
Stephens and Scheb, American Constitutional Law, Belmont, CA: Thomson Learning Wadsworth, 2003. Pg. 376.

The shutting down of numerous American Small Business Families' Small Businesses is a TAKING. It is a major taking. It is unconscionable. It is unethical and it is at the top of the list of immoral things to do others, to take away a family's living, their support, their underpinnings, their security. Poof. Gone. The Takings Clause mandates that the aggrieved be compensated for this Grand Taking.

The books in question (stock) are the property of the teachers until book buyers buy them. Proscribing what one may do with their own property is tantamount to a taking. It sets the value at zero with no compensation regardless of true value. In effect, the *value* of their property has been confiscated by government activity. Interestingly, one issue that makes inverse condemnation suits winnable is when a government action has had the effect of destroying all, or nearly all, of the value of the property as was the case at Western Piedmont Community College. See chapter 9, The Tale of Two Community Colleges.

In the real world, teacher-clients would have a large, class-action claim...if they were allowed to come forward with impunity. As it is now, any teacher who takes NCCCS to task would be "admitting" the violation. The State (NCCCS, UNC, others), in effect, has taken the value of its employees' personal property. They then threaten to discipline or dismiss these employees should they stand up for themselves. One law instructor shook her head and told me, "Teachers aren't going to risk their salaries for the extra income." NCCCS and UNC have put their employees IN FEAR by their draconian and unconstitutional rules.

This is a Taking from faculty and, ultimately from the Small Business Families which serve them. Whether the school collects the books or simply bans my industry, this constitutes a taking. Confiscating books which have value to be sold by the State for the State's benefit is a TAKING. Allowing teacher-clients to keep their books but not allowing them to sell their personal possessions eradicates the value. As such, this is also a TAKING. It is a taking without Due Process.

Property is...certainly destroyed when the use of that which is the subject of property is taken away, as if the thing itself was appropriated, for that which gives value to property, is its capacity for use. If it cannot be used, it is worth nothing; when the use is taken away, the value is gone.
Address of Justice David J. Brewer (1891). Hall, et al., American Legal History Case and Materials, New York: Oxford University Press, 2004. Pg. 371.

Just Compensation Clause

The Takings Clause of the Fifth Amendment, enforceable through the states through the Fourteenth Amendment, states that “nor shall private property be taken for public use without just compensation.” In *Barron v. Baltimore* (1833), the Supreme Court held that the Just Compensation Clause, like the other provisions of the Bill of Rights, was applicable only to the acts and policies of the national government. However, in 1897, this clause became the first provision of the Bill of Rights to be incorporated into the Fourteenth Amendment and thus made applicable to the states (*Chicago, Burlington & Quincy Railroad v. Chicago*). There are circumstances in which a regulation may be so severe as to constitute a “taking.” The salient legal questions raised by the Just Compensation Clause are these:

- (1) What constitutes a “taking” of private property?
- (2) What constitutes a “public use”? and
- (3) What constitutes “just compensation”?

Stephens and Scheb, *American Constitutional Law*, Belmont, CA: Thomson Learning Wadsworth, 2003. Pg. 394.

- ✦ The Takings Clause recognizes government’s power to take private property and also limits the exercise of that power. It does so by requiring when property is subjected to governmental taking, the taking must be for a public purpose and the property owner must receive just compensation.
- ✦ The Takings Clause protects other property interests besides land and interests in land. Although its full scope is unclear, the clause has been held to cover takings of personal property, liens, trade secrets, can contract rights.
- ✦ It has long been recognized that government regulation may so diminish the value of property or the owner’s enjoyment of it as to constitute a taking. Among the factors courts consider in such “regulatory taking” cases are the degree to which government deprives the owner of free possession, use, and disposition of the property.
- ✦ There is an automatic taking where the government denies the owner all economically beneficial uses of the land (or property). *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (U.S. Sup. Ct. 1992)
- ✦ Once a taking has occurred, it is unconstitutional unless it is for a public use. Even if a taking of property is for public use, it still is unconstitutional if the property owner does not receive just compensation.
- ✦ These rules and understandings must give a person a legitimate claim of entitlement to a benefit, not merely some need, desire or expectation for it. This definition includes almost all of the usual forms of property and, in many cases, jobs.

Due Process

- ✦ The Fifth and Fourteenth Amendments require that the federal government and the states observe due process when they deprive a person of life, liberty, or property. Due process has both procedural and substantive meanings.
- ✦ The traditional conception of due process, called procedural due process, establishes the procedures that government must follow when it takes life, liberty, or property. People are entitled to adequate notice of the government action to be taken against them and to some sort of fair trial or hearing before that action can occur.

Chapter 24

The Trademark Act of 1946 (Lanham Act) & The Textbook Resale Business

Let's take a look at yet another violation of U.S. Code. This time the State and State actors are expressly included with civil liability by statute. It is one thing to be sued in federal court because your company had an over the top ad campaign which violated the Lanham Act. It is quite another when your organization's very existence is based on violating the Lanham Act, individually and in conspiracy and collusion with others. The Text and Authors Association (now Text and Academic Authors Association (TAA)), since its inception in 1987, has as a PRIMARY FUNCTION the violating of the Lanham Act of 1946. My Small Business and those Small Business Families similarly situated have been and continue to be damaged by the acts described in this chapter as well as others.

U.S. Code, TITLE 15, Commerce and Trade Chapter 22, Trademarks Subchapter III, General Provisions

§ 1125. False designations of origin, false descriptions, and dilution forbidden

(a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

In conspiracy and collusion with the international, mega-conglomerate, publishing oligopolies (IMCPOs) through co-conspirators, the Association of American Publishers (AAP), the Text and Academic Authors Association (TAA) has and continues to attack the used textbook industry not based on any reasonable competitive interest. This conspiracy interferes with prospective advantage. These unlawful attacks are often carried out in conspiracy and/or collusion with State actors and other organizations. The conspiracy is known to most conspirators. This industry competes indirectly with the IMCPOs, providing USED books to the market and lowering textbook costs for students. TAA and the IMCPOs sell NEW books and endeavor to ERADICATE the USED BOOK MARKET, thereby keeping textbook costs high.

Analysis of TAA's writings is in italics between the TAA statements. One important premise that jumps out from the brochure is TAA's Mission. See page 267 for the Stomp the Comp brochure.

“Since its inception in 1987, TAA members have held the problems of complimentary copies and used textbooks to be amongst the most worrisome and aggravating ones of the profession. An historical look at TAA’s fight against the sale of complimentary can be found on its website at www.TAAOnline.net/mediaroom/stompcomp.html.”

While we are focusing on the Lanham Act (with civil remedies) in this chapter, it is important to note that each of these defamatory remarks is Restraint of Trade, Defamation of Character and a host of other crimes. Proving a crime requires means, motive and opportunity. We have the smoking gun and the body. And so the war on the used textbook industry, in earnest, began. Here’s a historical look at the motive courtesy of the TAA web site:



Message from John Wakefield
TAA Immediate Past President,
Co-Conspirator

Reflections on our 20th anniversary
by John Wakefield, TAA President

"An organization of textbook authors was formed in the spring of 1987." Thus rather modestly began our first newsletter, the TAA Report, 20 years ago. The first issue, as well as all subsequent issues, can today be accessed by members through our archive on the TAA website. That first year, only two issues were put out to describe the formation and direction of the infant association, but they provide some insight into both the origins and development of TAA. The first steps of what was then called Textbook Authors Association were uncertain. "We are newly formed and growing," the lead article in the first issue stated. "The directions in which the organization goes will be determined by the membership." Early topics of interest that emerged were the distribution and resale of complimentary copies of textbooks, the purchase price of textbooks, contractual relations with textbook publishers, and enforcement of copyright laws. By the second issue, new members had already responded by suggesting another topic of interest—the used textbook market. Early interests were essentially financial.

This section is all about early topics of interest to the association members. The last sentence summarizes the yellow section, "Early interests were essentially financial." These early financial interests included "the purchase price of textbooks." The used textbook industry is the student’s friend. The members of the TAA want one of two outcomes. Either they want textbook prices to go up so they can make more money or they want to Restrain Trade and misrepresent (in an alarming manner) this industry to restrict supply of used textbooks and increase royalties on new textbooks. Publisher royalty malfeasance costs authors hundreds of times what TAA contends they lose by lower priced used books being in the marketplace.

A Look at TAA's Attack on the Used Book Market

Open the commercial advertising and promotion brochure or go to TAA's web site (www.taaonline.net) and the litany of statements misrepresenting the nature, characteristics (character) and qualities of the used textbook industry and those Small Business Families in this industry unfolds. Here are some of the false, misleading and defamatory representations of fact that have as their STATED intended goal: STOMPING OUT AN AMERICAN INDUSTRY! (Underline, mine). Remember, the bulleted items are direct from Richard Hull, Executive Director of TAA.

- ✚ TAA developed a pamphlet entitled, "Stomp the Comp," that discourages faculty from selling complimentary copies to book resellers, a practice that is harmful to authors and contributes to the rising cost of textbooks.

This is Restraint of Trade. While TAA boasts a membership of 2000, the distribution of their defamatory propaganda reaches hundreds of thousands. It is a mainstay of their website and a program of indoctrination carried out in collusion with the sales reps of the IMCPOs.*

*Interview with Richard Hull, Executive Director, TAA

How do you make use of the Internet? Have you already tried all the possibilities that the Net can offer you?

We are using a major webist, listservs, blogs,m twitter, facebook linkedin, and now whohub. But there are numerous new features we have not tried. For example, I don't yet have an Avitar!

<http://www.whohub.com/richardthull>

- ✚ While CALPIRG is blaming what they see as frequent and unnecessary revisions as the cause of high textbook prices, the real culprits behind the rising cost of textbooks are the sale id used books and complimentary copies.

The CALPIRG and other Student PIRG textbook affordability reports are accepted documents by everyone including the U.S. Congress. TAA states a claim for which there is NO SUPPORT. See "Seven Hundred Professors Address Unnecessary Textbook Revisions" in the Essential Readings section of Chapter 34.

- ✚ By selling Complimentary copies, you contribute to the used book problem, and the high cost of textbooks.

Again, there is NO BASIS FOR THIS CLAIM. The TAA still attempts to demonize teacher-clients.

- ✚ They [one's students] only see you [the faculty member] as a greedy professor who doesn't want students to take your course if your don't get some money for it, so they ignore your explanations, and they say you are only greedy, and you want your students to suffer at your expense.

Not only is this not grammatically correct, but this is just offensive to teachers (especially English teachers), students and the American Small Business Families who perform this important work. It is unprofessional, immature and calls into question the reasonability and veracity of the textbook authors who run TAA and the books they author.

- ✚ Why does the faculty member need to skulk around to resell his or her comp copies? Because it's wrong to do so and even the book resellers know it.

Faculty members do not "skulk around." Book buyers and teachers make private transactions which are completed out in the open or behind a closed door. TAA, however, makes a good point. Are some teachers "concerned" about how they will be viewed for selling their books, their personal possessions? Yes and the biggest reason for this is the smear campaign discussed here. The TAA has caused a hostile workplace between those who exercise their constitutionally protected rights and those who believe TAA's lies.

As I have been writing this book, my faculty-clients have been telling me their stories about bookselling. What they believe to be true, what they have been told, how they feel about it. I have these discussions with non-selling teachers also. The non-selling teachers generally parrot the TAA brochure and IMCPO sales reps. The selling teachers know in their hearts that there is nothing illegal or untoward about their selling of books and they are fascinated and relieved to know how lawful and constitutionally protected their actions are. Still, they shut the door because the non-selling teachers are more often aggressive and invasive and factually incorrect zealots. They are like that because they have been shamed into believing the TAA propaganda.

This statement is an admission of guilt by TAA rather than the misleading suggestion of impropriety as was its intent. TAA's smear campaign has created divisiveness and mistrust with faculty departments and senates. TAA has educated their colleagues with lies, pitting faculty against one another.

- ✚ The Text and Academic Authors Association (TAA) asks that rather than selling your complimentary copies to book buyers, you donate them to your university library, send them back to the publisher, or destroy them.

Libraries don't want the textbooks on their limited bookshelves. Most book buyers donate to libraries. There is no need to send back that which is a lawful gift and for which these teacher-clients lawfully possess. Many teachers give these books to needy students. TAA shuns shun these acts of kindness as one less sale in their pockets. The suggestion to destroy books is not "green" which indicates that these authors (TAA) don't understand the product they sell or their market. Book people (as most faculty are) find destroying books to be repugnant, sometimes viscerally so. Book buyers find homes for books and strive to keep books out of landfills.

- ✚ TAA realizes that selling complimentary books is not illegal, buy, and many colleges and universities agree, it is unethical. It is the seediest side of the entire used book problem.

There is nothing to suggest that the lawful used textbook business is unethical or that doing business with book buyers is unethical. The "seediest" remark is a violation of the Lanham Act of 1946. In case anyone is wondering...Yes, American Small Business Families are offended by this morally vacuous and rapacious remark.

As the TAA is hand in hand with the IMCPOs, one can easily understand these quotes:

"We call them 'weasels,'" a sales rep. for a top textbook publisher, whom I'll call Marie, says when I sit down with her over coffee to discuss the practice. "It's grand larceny." Later she admits that as far as she knows, "The only law broken is not claiming that income on taxes. Maybe the IRS could stop it."

Adjunct Advocate July/August 2006

"The current "Stomp the Comp" campaign builds on our history of advocating for ethical practices by faculty and enforcement of campus policies to keep textbook resellers off college campuses." Text and Academic Authors Association

"Bookbuyers seek to evade campus regulations." Text and Academic Authors Association

Then there is the *Stomp the Comp* campaign brochure drawing depicting a thief book buyer in Professor Greedy's office. TAA is off the wall, a criminal organization...but stupid criminals. If Professor Greedy is selling his books, how does that make book buyers thieves? The childish artist tries to have his cake and eat it too in that he is using this caricature to defame both teacher and book buyer. TAA defames and shames the same people with whom they want to sell their books to.

There are two sides to this brochure. The other side has the same drawing but juxtaposes the name on the box for the intended recipient. The first one says, "Univ Library." The next one is addressed to the "Book Resellers" warehouse. Evidently, that is to suggest that book buyers are lying to the instructors as to the destination of their books. That deception is on the part of Better World Books and Books For Africa, State sanctioned books scams that are discussed in my separate report, *Campus Charity Book Scams & the Effect on Local Small Business Families*.

U.S. Code, TITLE 15, Commerce and Trade Chapter 22, Trademarks, Subchapter III, General Provisions

§ 1125. False designations of origin, false descriptions, and dilution forbidden

(2) As used in this subsection, the term "any person" includes any State, instrumentality of a State or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

This is too bad for the State and State actors. By colluding with TAA and IMCPOs, State actors have opened themselves as well as their respective states, colleges and departments to liability. I know that when I am faced with liability issues, I seek to solve the underlying problem. In this case, that would include ceasing all of the bans on my industry nationally and on a state level. Most of the federal and state laws prohibiting such bans are in place, only in need of enforcement.

Partial List of TAA Violations of the Trademark Act of 1946

These instances are taken from the TAA website, www.taaonline.net. For more information on TAA and their Stomp the Comp Campaign, see Chapters 24 and 25.

- ✚ December 2003: We are also preparing a position paper on the ethics of professors selling Instructor's Editions.

The practice of book selling and book buying has been adjudicated as lawful and upheld in state and federal venues over and over. This position paper was never published. Evidently, someone is smart enough to not put his or her name on such a foolhardy endeavor. The TAA, oddly enough, acknowledges the lawfulness of the textbook buying industry. This does not preclude them from moralizing and lying to theirs and book buyer's clients.

- ✚ June 2004: Call for action on sale of complimentary copies. We authors continue to write our books, saying nothing of a practice that not only contributes to the high cost of textbooks, but that we all know is also morally and ethically reprehensible.

The TAA acknowledges the lawfulness of this industry. Labeling the exercising of one's constitutional rights as morally and ethically reprehensible is morally and ethically reprehensible.

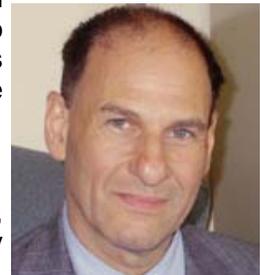
November 2008

Diminish used book market with more memorable prose

Of course one of the main reasons for the high cost of textbooks is the used book market. The "first sale doctrine" in American copyright law dictates that no monies are due to the publisher or author of a work when the book changes hands from its first user to another user (or, more frequently, to a college bookstore or to a freelance "jobber" re-sells the book to the next user).

I cannot help but muse about why so many students re-sell their textbooks. At the risk of stating the obvious, there is a difference between books, especially textbooks, and most other consumer goods. If a friend covets my rocking chair, and I give it to her, I am deprived of both the chair and its utility. With textbooks, perhaps even unlike most other kinds of publications, I have already enjoyed the *utility* of the item by getting to use it in the semester in which I take the class. Thus, while I give up the *possession* of the material object (the bound book), I do not miss out on its primary function by selling it to a classmate or a bookstore.

http://www.taaonline.net/notes/presmessage_archive.html#pres22



Paul Siegel
TAA President
Senior Co-Conspirator

The TAA, oddly enough, acknowledges the lawfulness of this industry. This does not preclude them from moralizing and lying to my clients. This megalomaniacal, anti-civil liberties control freak doesn't really get how one does business here in the United States and most of the world. One does business by making a better product (as Siegel suggests) or providing a better service. The reason one succeeds in the world is by focusing on how one can be better, not on how well one tries to diminish another's standing. What Siegel really needs to understand is that his model means that his giving his friend his rocking chair meant one less rocking chair to be sold by the rocking chair maker, thereby depriving him of profits. Siegel's mantra: "I know it is legal but it is wrong."

Anatomy of a Lanham Act Violation – A Criminal Playbook

The acts of TAA, et al, form a pattern of behavior that has for many years victimized the used book market, specifically those Small Business Families who work within the used textbook market. This victimization includes the use in commerce of various words, terms, symbols and devices which describe and defame these Small Business Families in this industry by the use of false and/or misleading descriptions of fact and false and/or misleading representations of fact. These instances of commercial communications, misrepresenting the nature, characteristics and qualities of these Small Business Families' goods, services, and commercial activities have resulted in irreparable damage to myself and all those similarly situated as well as my clients-teachers who routinely have their constitutional rights violated by TAA, et al. TAA, in a bizarre twist is headed up by a long-time ACLU member and author of a communications law textbook. Paul Siegel, TAA President and Chief Hypocrite, knows how to violate someone's civil rights for a buck and he is good at it.

The following TAA article, ***Stomp the Comp***, was written by Richard Hull, Executive Director. Hull has no business experience but now runs this organization from his retirement from teaching. The article is an admission of violations of various civil matters, to wit, the Lanham Act. It is the playbook of an abusive and coercive criminal enterprise. It is also an outline of activities planned and carried out which violate a number of criminal statutes as well as rules promulgated by federal and state regulatory agencies. There are many federal and state laws broken by TAA, This chapter outlines the motive, the plan, the conspiracy, how it was and is being carried out, measured and evaluated. Hull lives in Tallahassee, Florida and had a direct hand in the bribing of government officials. See chapter 11, *Florida Representative Anitere Flores & the \$107,000 Sale of Amendment No. 18652*. TAA is a criminal organization so brazen that they post their exploits on the internet.

[Defaming People, Corporations and Products](#)

Individuals are not the only potential libel plaintiffs. Corporations often sue for libel, as do nonprofit associations and labor unions, To falsely claim that an organization has engaged in fraudulent or deceptive practices can be, as one would expect, just as libelous as to make the same charges against an individual...Sometimes corporations will sue because of negative comments made about products or services themselves. In such situations, where there is not even a hint in the allegedly libelous report that the company itself has engaged in dishonesty, only that the product [service] is an inferior [unethical, immoral, illegal] one, the cause of action is called trade libel, or product disparagement.

Communication Law in America
Paul Siegel, President of Text and Academic Authors Association
3rd Edition, 2011
Rowman & Littlefield Publishers
Pgs 93-94
Brackets are the author's.

STOMP THE COMP



Stomp the Comp by Richard Hull, TAA Executive Director Senior Co-Conspirator

The old bugbear of textbook authors and publishers, the purchaser of used books, is on the prowl again, this time on a Northeastern U.S. college campus. And this time, the effort to purchase instructors' copies to resell to students is blatant.

These purchasers are the Small Business Families who do not prowl, hide nor skulk. These are hardworking, American entrepreneurs who work hard to make a living.

Recent developments

A faculty member at the college (who asks that identities remain undisclosed) recently received an e-mail from a textbook reseller offering to buy textbooks, complimentary copies, annotated instructor editions, special editions, and more.

These services to faculty, however, do exist and have a right to exist in the national marketplace of interstate trade.

The faculty member, a textbook author, was particularly incensed by the prospect of annotated instructor editions containing answers to homework exercises assigned from the text being in circulation among students. The academic noted that students at the college had ordered what they took to be used student copies, but had gotten instructor's desk copies, the cost of which is already factored into the price of textbooks.

Once again, Hull makes no sense.

1) This story teller is not a dispassionate party. He is incensed because he values his profit motive over that of others.

2) The used textbook industry generally does not work with annotated copies of textbooks. IT IS VERY IMPORTANT TO NOTE THAT MOST "ANNOTATED" COPIES ARE ONLY STAMPED AS SUCH WITH NO ADDITIONAL INFORMATION OR ADVANTAGE TO THE STUDENT, an important nuance. At the behest of the IMCPOs and others, most online services prohibit the sale of these books. The warehouses won't pay for them. The annotated marking is, simply another deceptive Notice of Copyright.

3) Online sellers notate the listings of annotated editions for buyers to read prior to purchase. THERE IS ALSO A MARKET FOR ANNOTATED'S OUTSIDE THE CLASSROOM AS CORPORATIONS, PUBLIC AGENCIES AND HOMESCHOOLERS BUY THEM.

4) Academics who only use the homework exercise from the book have other resources to choose from to produce tests.

5) This paragraph serves to acknowledge that the review copies have already been factored into the price of a book.

The problem arises from two sources: the companies that deal in this way with faculty desk copies, and the faculty who sell their free copies to those companies. Further, such companies sell direct to students, bypassing the campus bookstore where faculty at least have the opportunity to prevent reselling of annotated copies to students.

TAA contends that the problem arises from a dozen different sources, including students, faculty, administrators, book stores, online services, book buyers, book resellers, legislators, Student PIRG's, Google and probably my cat. It never stops. Think about this. This industry is almost one hundred years old. These authors (TAA) have been writing textbooks for a fraction of that time. Still, these book-selling-author-entrepreneurs have decided that they don't want to work within an established framework. It is tantamount to basing one's business strategy on how one wants the market to be rather than how the market actually is. It is absurd that the TAA decided that their profit margins are fine IF they "STOMP" out a competitive industry.

The faculty member contacted campus police to complain, and discovered that the college has had a policy for nearly ten years prohibiting the practices in question and banning textbook purchasers who engage in them from campus. The campus police contacted the textbook buyer to indicate that he was not welcome on campus and that he would be ejected should he attempt to enter without permission. Finally, the faculty member contacted us, asking whether there is anything TAA can do about this practice.

This is a terrific story in that it clearly outlines an unlawful ban, an attack on the First Amendment rights of those Small Business Families in this industry (a class of individuals) as well as their teacher-clients. These clients are TAA's colleagues. Remember, book buyers go where teachers sell. Someone wanted the buyer in this story on campus. Public and private campuses can not ban book buyers as a class for constitutional reasons, as well as long-held and oft-decided rulings on the public nature of college campuses.

TAA's leadership

Since its inception in 1987, TAA members have held the problems of complimentary copies and used textbooks to be among the most worrisome and aggravating ones of the profession. In 1988, a committee was formed under the leadership of Howard Anton to study these problems and propose ways of dealing with them.

And so we have the multi-decade-long motive to commit injury and various crimes against me and those similarly situated.

The committee's plan for solving the complimentary copy problem was as follows:

Legal Classification -- Complimentary copies are currently unsolicited and consequently not subject to any restrictions by the sender. In order to exercise control over their use and distribution, they must be made solicited items. To achieve this we propose that each department that is to receive complimentary copies be required to fill out a request form annually or on a one-time basis. All complimentary copies will be mailed to the department office, or if the department chairperson so designates, to individual professors.

In essence, TAA wants each school to form a bureaucracy to address the concerns of a trade organization which purports to represent the pecuniary interest of approximately one-half of one percent of faculty, when over ninety-five percent of faculty members desire the current Free Market System. All of these suggested policies and procedures would burden an already overburdened administrative system. Who will be the appointed Department Book Sheriff? I have seen this attempted and it is a mess. It doesn't work for numerous reasons. All of the suggested policies and procedures are unlawful on state and federal levels.

Identification -- Complimentary copies must be clearly identifiable as such in an unalterable way. Various measures were proposed, from tinted paper to altered covers bearing "Free Book" over and over, to drilled holes.

These processes may mollify this trade organization, but it would (as it has in the past) increase production and marketing costs which would then be passed along to students. It is long understood that 1) these modifications have not solved the "problem"; and 2) teachers (the consumer) are offended by the practice. IMCPOs maintain the practice of complimentary copies because the practice SELLS BOOKS. The complimentary copies are merely elaborate advertising brochures and all attendant costs are figured into profits and royalties. Alienating the consumer, even for the IMCPOs, is not a preferable marketing strategy.

License Agreement - Every complimentary copy must be accompanied by a license agreement which specifies restrictions on its use.

Contracts in contravention of federal law are invalid. Settled law precludes such actions. Teachers, administrators and schools are not about to go into a civil liability binding contract to regulate the marketing practices of the IMCPOs. For an administration to oversee all of their faculty and every book they receive is not only constitutionally in error, it is an affront to the professional teachers and would simply be tantamount to herding cats.

Controlling Purchase and Sale -- The TAA will seek the cooperation of NACs, university administrators, and wholesalers in eliminating all trade in complimentary copies. Because such copies will be clearly and permanently identifiable, and because they will be controlled by the initial license agreements, authors and publishers will have legal grounds on which to challenge violators.

This is collusion and conspiracy to circumvent federal laws. Just the title of this paragraph says so much. First Sale Doctrine provides for consumers to do what they wish with items they lawfully own, in this case complimentary textbooks. IT IS UNLAWFUL TO RESTRAIN THE SALE OF THESE LAWFULLY POSSESSED ITEMS. As much as the TAA desires to "Control Purchase and Sale" of all books at all times, the problem is that this practice is ILLEGAL.

Facilitating the Return of Unwanted Copies -- To facilitate the return of unwanted complimentary copies in accordance with the license agreement, all complimentary copies should be accompanied by an easy-to-use postage-paid return mailer. Moreover, additional mailers should be supplied to the department on a regular basis through sales representatives or by mail when requested.

Here is what often happens to "returned" copies:

*Atlanta is where the US Postal Service conducts auctions of undeliverable and returned books, CD's and all sorts of merchandise. I've been there. There are thousands of books. Bins, pallets and truckloads of books leave the auction. I even learned a lesson when I was there. Books and CD's are, most often, not returned to the sender. They are sent to postal auction. For example, if Columbia Music sends a CD to you and you send it back, writing "return to sender" on it. It never sees its home again. It goes to Atlanta and a few other locations for auction. Better World Books, located near the Auction Center buys the books the publishers advise faculty to send back. **Banning book selling transfers the sale to Better World Books and other online vendors. It does not reduce royalty shrinkage.***

Education -- TAA should undertake a program to educate professors and others on the long-term benefits that the new policy will have for the educational community.

The TAA wants to educate faculty members on the long-term benefits to the TAA, an organization representing approximately one-half of one-percent of faculty in the U.S.

Publishers' compliance - TAA will urge all authors to obtain clauses in their contracts that will require the publisher to comply with the foregoing items.

Publishers cannot include in an author's contract the promise to violate the consumer's constitutional rights. These are the teachers who are teaching the next generation of thinkers?

Some successes

Later that year, the ethics commissions of Alabama and Louisiana ruled the sale of complimentary copies of texts given to professors in state schools to be illegal; Alabama later rescinded their ruling, holding that text which faculty members solicit may not be sold for financial gain, but unsolicited textbooks were the property of the individual faculty member and may be disposed of in any legal manner.

See Chapter 14 titled, *Previous Rulings Favorable to the Used Textbook Industry*.

Wallace's College Book Company of Lexington, KY, announced a new policy of refusing to purchase any book identified as an instructor's desk copy. And the Faculty Senate of Cal State, Sacramento, resolved that it is unethical for faculty members to sell copies of texts given them by publishers for the purpose of adoption consideration. Scott, Foresman and Company altered its comp copy cover to identify it as a free copy.

These are all unlawful policies for reasons outlined throughout this book.

In late 1988, the Faculty Senate of Kearney State College, Nebraska, recommended strongly against comp copy sale. A similar resolution was passed by the Faculty Senate at the University of Cincinnati. **The University of North Carolina at Wilmington's Faculty Senate declared the sale by faculty of complimentary textbooks as an unprofessional practice.**

These are all unlawful policies for reasons outlined throughout this book.

During 1989, TAA's committee continued to experiment with means of identifying comp copies, with dye, trimmed corners, and drilled holes. The TAA newsletter reported a fight between a book buyer representative and a publisher representative. TAA President Mike Keedy and charter member Karl J. Smith made a proposal to the Association of American Publishers during May of that year, for complimentary copies to be unalterably identified, and such copies to be distributed only on request of the faculty member, on a request form that includes a statement that the book may not be sold and is subject to an enclosed licensing agreement. Pennsylvania State University's Bookstore undertook a student education program about the problem, admitting that it had agreed not to purchase and offer such books only if competing bookstores followed suit.

This indicates the extremes that TAA, et al, have gone to (and continue to go to) to damage this industry and the American Small Business Families who make a living within it.

In the next year, McGraw-Hill began identifying comp copies with a repetitive pattern on the back cover and front pages, prompting one used book seller to declare that text-books so marked were of no value and that they would not buy them. Clemson's Faculty Senate categorized the selling of complimentary copies of texts by any employees as unprofessional conduct. AAP developed the idea of a pre-addressed adhesive mailing strip attached to each comp copy that would result in the return of the complimentary copy to the publisher when a faculty member dropped the copy in a mail box. Montclair State College's Faculty Senate found itself paralyzed between student interests and authors. But other institutions and organizations had no such ambivalence. The California Association of Administrators of Justice Educators resolved that selling complimentary copies by any member of the Association was unprofessional conduct; Georgia State University's Faculty Senate banned the resale of complimentary textbooks, banned solicitors for such copies from campus, and forbade the campus bookstore from selling any such copies whatever their source.

These are all unlawful policies for reasons outlined throughout this book. This indicates the extremes that TAA, et al, have gone to (and continue to go to) to damage this industry and the American Small Business Families who make a living within it.

And some mixed results

But by April of 1990, TAA's proposal to the AAP was rejected, with AAP's Chair stating that "the first publisher to adopt the proposal will immediately be put at a competitive disadvantage." Such concerns did not deter a small publishing company in Texas, PST, Inc., of Dallas, which adopted the policy that no books are ever sent without being requested, and that copies sent to potential adopters are either to be returned, purchased, or given to the adopter upon adoption of the text. Holt, Rinehart & Winston made a door sticker available to members of TAA that showed graphically that the office occupant opposed selling review copies. The American Mathematical Association for Two Year Colleges took a stand against selling comp copies, as did the National Association of College Stores.

These are all unlawful policies for reasons outlined throughout this book. This indicates the extremes that TAA, et al, have gone to (and continue to go to) to damage this industry and the American Small Business Families who make a living within it.

Point counter-point

Counter arguments appeared in the TAA newsletter from time to time. An extended letter in the TAA Report from TAA member Bill Bompert, Vice President for Academic Affairs at Augusta College, reviewed counter arguments to TAA's policy statements for his faculty, pointing out that it was implausible to expect publishers to show much concern over the concerns of textbook authors about their royalties. In a subsequent issue, Parker Ladd responded to Bompert's memorandum, pointing out that publishers were making efforts to curb the practice of reselling comp copies.

See Chapter 12 on Ethics, Appearances of Impropriety and Conflicts of Interest.

The issue wanes . . .

The next several issues of TAA Report had relatively few articles devoted to the comp book problem. Miami-Dade school district banned comp solicitation; publishers tried return mailers to cut comp copy revenue losses. The issue resurfaced in 1993 with a review by Thomas Lathrop of the efforts of TAA to solve the problem, and a report on the practice of Sterling Educational Media of buying comp copies. In 1995, a note identified thieves posing as used book company reps who scouted out comp copies during the day at Plymouth State College, River College, and Saint Anselm College, then returned at night to steal them. In 1996, The Academic Author, TAA's renamed newsletter, reiterated TAA's opposition to the purchase and sale of comp copies of textbooks and asked members to report instances of the practice. Prophetically, the article stated, "The used book problem is not going to go away. TAA is not going to solve the problem with any one initiative but we can chip away at it little by little.... Support . . . TAA's initiative of opposing complimentary copies of text books from being sold." In 1997, the newsletter reported a resolution from the University of North Dakota calling on faculty to donate comp copies to an appropriate library or a colleague.

Author's Note ...

The above reference to "thieves" is yet another immoral and salacious accusation with no merit other than "a note."

These are all unlawful policies for reasons outlined throughout this book. This indicates the extremes that TAA, et al, have gone to (and continue to go to) to damage this industry and the American Small Business Families who make a living within it.

And resurfaces

The issue remained in the background in TAA newsletters until revisited by President Mike Sullivan in 2003 and again in 2004. He reported blatant advertising on internet websites of instructor's editions that emphasized that these editions, unlike student ones, had all the answers in the back. He pointed out how this compromises the integrity of the book.

It is extremely rare for a student to take advantage of the answers in the back of a book. First, the answers are usually for odd or even questions. In this way, students can learn with some of the answers and teachers can test on the remaining answers. Books usually span a few semesters and teachers know that templates and such can be reproduced. For this reason, teachers who are good at their craft create their own or take advantage of alternative testing measures. There is also a market for annotated outside the classroom as corporations, public agencies and homeschoolers buy them.

Bookbuyers seek to evade campus regulations (**Another absurd, defamatory allegation**)

Investigation discloses that if one puts the ISBN of an instructor's annotated edition into several websites that buy and resell texts over the internet to students, thereby bypassing campus-wide efforts to stop the practice, purchase prices for the desk copies are quoted. We have found that Amazon.com gave no results, but Bookbyte Textbooks, Textbookreusers, ValoreBooks, Booksintocash, Collegetextbookhub, Popfuzz, and Textbookbuyer all would give a price when the ISBN was entered. The latter even advises, "We understand your need for privacy; if other instructors or students see that you sell college textbooks (desk copies, etc.), they might not understand that sometimes shelf-space is more important than collecting dozens of books on the same subject! While packing your books to ship to our online service, your colleagues will assume you are merely, 'taking your books home.'"

Campus wide bans are unconstitutional and unlawful. Teachers enjoy their right to privacy. If teachers are trying to be private, it is more a response to TAA's successful shame-based campaign to smear this industry and the reputation of its teacher-clients.

TAA goes to great lengths to "educate" faculty as to what is ethical behavior. Over 95 percent of teachers sell their books so TAA is constantly at odds with non-author faculty, labeling those who don't fall in lockstep as unethical. From my experience in the halls of over one hundred schools, I see everyday the effects on the faculty. TAA has fostered an air of divisiveness and anger within the faculty, pitting loyalists against teachers who are just doing their jobs and living their lives...ethically, morally, lawfully. I receive verbal abuse of TAA apologists. Non-selling faculty believe they can be abusive to me. There are many teachers who would like to sell but fear the wrath of a department chair or co-worker.

The question of ownership may be central to the legality of faculty reselling desk copies. If, for example, the book is solicited by the faculty member as an examination copy, a contractual relationship may exist between the publisher and the faculty member such that the liberty of the faculty member to dispose of the text is constrained. And if the text were sent unsolicited, it may be owned by the institution; in this case, an individual reselling the text may be technically guilty of stealing the text from his or her school and "fencing" the hot property. Publishers may want to provide coded strips similar to the ones schools put on computers and other equipment provided by the institution that would allow an electronic record to be transmitted to the school. Schools may wish to adopt a zero-tolerance policy toward faculty reselling desk copies, with sanctions for violations severe enough to discourage the practice.

These ideas are unlawful and unconstitutional. Those who advocate these positions should not have their books purchased as these beliefs and actions indicate a lack of critical thinking and ability to reason.

Clearly, this is a problem that won't go away. This faculty member's recent experience is but the latest in a long series of incursions by market-driven values that are not tempered by the realities of the classroom. A strict policy of zero tolerance of students using instructor copies and of faculty selling them would seem to be the only way to stop the practice. Short of those extremes, education of our students and colleagues through the measures documented by TAA over the years is our constant challenge.

End of Stomp the Comp.

It is often stated that teachers should not benefit financially from their positions in their respective institutions which allow them to receive publisher's promotional materials such as books. It is important to understand that textbook authors who are instructors, by and large, are running businesses out of their faculty offices. If a public school, then they are using public space and equipment (computers, copiers, paper, etc.) to research, write and edit their books as well as handling the administrative matters (daytime calls with editors, publishers, sources, etc.). They are in the writing biz. The textbook biz. The publishing biz. Like any business, they are looking to maximize profits. Their teaching positions give them the "street cred" to write. Without demonizing an entire industry (as they have book buyers) but these teacher/authors are running their own for-profit businesses right from their faculty offices. Illuminating this point are all the textbooks listing authors with their respective higher education institution prominently featured under their names. These academic authors benefit financially using their positions in their respective institutions.

These same "entrepreneurs" with publicly paid for office space, photocopiers, computers and resources then belittle the teacher down the hall who just sold her books. This reporter has seen it in action. I've watched many teachers walk into other teacher's offices and scold them right in front of me as if I didn't exist. I don't begrudge them their small business but the fact is that their small business is trying to destroy other small businesses and they are using the resources of the general public, the paying student and the IMCPOs to violate federal law. They take an adverse position regardless of law, the research of every outfit which has studied textbook pricing and the fact that over ninety-five percent of faculty prefer to sell their books. Their Animal Farm-like mantra is simply, "New Books Good. Used Books Bad." They are not, however, sheepish in their actions.

There is one more aspect which follows from the eradication of the used book market. Paul Siegel's and TAA's utopia would be to have NO USED BOOKS in the marketplace. This would mean that the cash strapped student (the focus of the textbook affordability issue) will not be able to sell his or her books back to the bookstore at the end of a semester. Custom textbooks force students to pay full price and receive nothing after the semester has been completed. I repeat TAA's view on used books here:

"Since its inception in 1987, TAA members have held the problems of complimentary copies and used textbooks to be amongst the most worrisome and aggravating ones of the profession. An historical look at TAA's fight against the sale of complimentary can be found on its website at www.TAAOnline.net/mediaroom/stompcomp.html."

Co-Conspirator Paul Siegel's View of the World

TAA president Paul Siegel believes that all used books should be taken out of the book market. In November 2008, Siegel wrote for the TAA website:

"Not every communication medium *suffers* from this selling (or giving, or lending) to second and third users. In the magazine industry, those recipients of their friends' kindness are collectively referred to as the "pass-along readership," which publishers add to their circulation data when they argue for higher payments from advertisers. Unless and until textbooks routinely run ads, our own pass-along readers will not represent a source of income

But let's get back to that notion of utility as applied to textbooks. Why must a text's utility end something during Finals Week? Imagine if our own writing were the kind that students felt they needed to retain for the rest of their lives. It would certainly be one way to put a damper on the used book market. "

Co-Conspirator Paul Siegel



Paul Siegel, TAA President -
Academic Author (communication law, political communication, mass communication)
Textbook Author (communication law).
Senior Co-Conspirator & Schnorrer
PSiegel@hartford.edu
TAA Term: July 1, 2008 - June 30, 2010

Bio

Paul Siegel is Professor of Communication at the University of Hartford, where he teaches a wide variety of classes. His specialty is communication law, and it is in this field where he writes textbooks. *Communication Law in America* and its companion *Cases in Communication Law* are in their second editions, available from Rowman & Littlefield.

Siegel's Ph. D. is from Northwestern, with an M.A. from Wisconsin and a B.A. from New Mexico. He has been on the board of the ACLU for about twenty years, and was on staff as executive director for the ACLU of Kansas and Western Missouri back in the 1980s. His favorite things are theatre and his cats; his least favorite are mortality, and this nonsense about having to work for a living.

What to Do With Unwanted Examination Copies

The control of every aspect of a book's life, the relinquishing of which only occurs after TAA, et al has finally decided that their constituents can no longer make a penny on the book is the goal of TAA. Here are some of TAA's suggestions (with my comments in italics) for what to do with unwanted examination copies:

1. Don't open boxes of books that you are not expecting (e.g. from orders you have placed). Mark them "Return to Sender" and give them back to the postal service.

Federal Trade Commission - Unordered Merchandise

What do you do when you receive merchandise that you didn't order? According to the Federal Trade Commission, you don't have to pay for it. Federal laws prohibit mailing unordered merchandise to consumers and then demanding payment.

Here are some questions and answers about dealing with unordered merchandise.

Q. Am I obligated to return or pay for merchandise I never ordered?

A. No. If you receive merchandise that you didn't order, you have a legal right to keep it as a free gift.

Q. Must I notify the seller if I keep unordered merchandise without paying for it?

A. You have no legal obligation to notify the seller.

www.ftc.gov/bcp/edu/pubs/consumer/products/pro15.shtm

2. Write publishers to ask for a stack of postpaid mailers for return of unwanted comp copies.

Faculty are busy people. They are not extensions of the publisher's marketing department.

3. Put unwanted comp copies in a departmental library for other faculty to examine; circulate a list of the books you receive and ask if any one wants them.

Libraries do not have room for and do not want multiple copies of textbooks. Faculty are not the IMCPOs' administrative staff. Departmental libraries are more often a shelf behind the administrative assistant's desk and the other faculty probably got their copy.

4. Write a review for your particular field's journal (mine has one called Teaching Philosophy) of the book.

Faculty are busy people who decide how they want to spend their professional time.

5. Have an arrangement with a colleague at a local other school who would like to look over your unwanted desk copies.

Faculty are busy people who decide how they want to spend their personal time.

6. Ask your faculty senate to hold comp copy drives for distribution of books to third world countries' educational institutions' libraries that cannot afford to buy them.

The Third World book distributions are almost all scams. See my separate report on campus books scams.

7. Tear off the covers and recycle the paper in your campus paper recycling system.

Not exactly "Green." The janitors do not enjoy lugging trash bins of ripped up books. And this one is a mind boggler for those of us (almost all faculty) who love books. Ripping the covers off of books (no matter how crappy the book is) is viscerally repugnant. That publishers and authors don't know that about their product is counter-intuitive.

8. Send a standard letter to publishers of unwanted texts that you would never adopt asking that they remove your name from their distribution lists.

Faculty are busy people. They are not extensions of the publisher's marketing department.

The point of all of these measures is to keep comp copies from being sold by used book dealers to students, thereby depriving authors and publishers of the potential of at least one and probably half a dozen or more new book sales. For once a desk copy gets into the system of used book sales, it will be resold and resold until either it falls apart or a new edition is widely adopted. Richard Hull, TAA

The point of all these measures is to protect TAA member and IMCPO profits. Faculty are busy people. They are not extensions of the publisher's marketing department. Desk copies get into the system of used book sales and are resold and resold until either they fall apart or a new edition is widely adopted. It's a great thing. Using resources over and over and over. Reduce, Reuse, Recycle. Thank you, TAA, for the affirmation of this industry!

Seven Hundred Professors Address Unnecessary Textbook Revisions

TAA, et al are in lockstep with the IMCPOs who desire to eradicate the used book market. This section is taken from an April 07, 2005 letter, signed by seven hundred professors to Thomson Learning. Find the full text of the press release and two letters with signatures from faculty in 100 colleges and universities in the Essential Reading section of Chapter 34.

SEVEN HUNDRED PHYSICS AND MATH PROFESSORS FROM OVER ONE HUNDRED UNIVERSITIES CALL ON THOMSON LEARNING TO STOP UNNECESSARY TEXTBOOK REVISIONS

Vast Price Difference Between New and Used Books Spur Faculty Call to Action, Industry Unresponsiveness Prompts Search for Alternatives

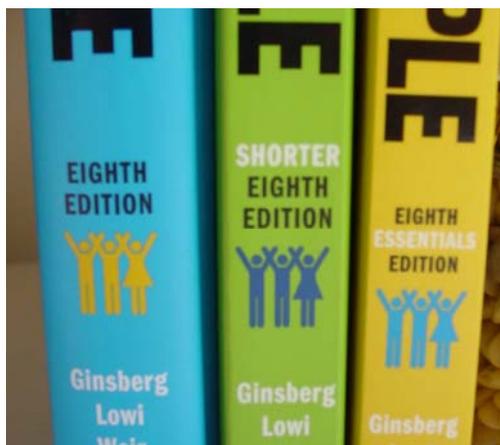
"There are of course good reasons for writing a new edition of a textbook. Three such reasons are: there is new material to be taught, there is a new understanding of how to present the material, or there is a new audience for the book. In introductory physics, the nature of the subject is such that new material almost never occurs at the level that can justify an entire new textbook, and the audience is relatively stable. This leaves only substantial educational improvements, which also don't occur that often. In my role as one of the people selecting textbooks, I have often raised this issue with publishers," said Dr. Michael Dennin, Chair of the UC Irvine Physics Department's Undergraduate Committee, and one of the faculty members leading the call to action.

While publishers themselves have been careful not to admit that they issue new editions with the intent of defeating the used book market, many academics and industry observers have all but concluded this motive.

In an opinion editorial published in the New York Times, Erwin V. Cohen, a former publishing industry executive for the Academic Press wrote, "Publishers release new editions of successful textbooks every few years - not to improve content, although that may be a byproduct - but to discourage the sales of used books by making them seem obsolete."

"Many of them admit that one of their main reasons for publishing new editions is to counteract losses to the used book market," said Dr. Dennin.

[Another Reason for the High Cost of Textbooks – Unnecessary Editions...](#)



The Trademark Act of 1946 (Lanham Act) Violated A Case Study



TAA's Attacks on the Used Textbook Resale Market & the Reputation of American Small Business Families

While this chapter would seem like the appropriate place to discuss the **STOMP THE COMP** Campaign of the Text and Academic Authors Association (TAA), the meat of this issue is considered throughout the previous chapter on The Trademark Act of 1956. Familiarize yourself with some of the TAA propoganda found in this chapter.

Today, the vast majority of college bookstores are operated by Barnes & Noble or Follett's. Missouri Books' and Nebraska Books' freelancers **SNEAK** around campus with carts in hand and cash in pocket engaging in the **SLEEZY** practice of offering cash to professors for clearing their shelves of books.

Mike Sullivan, Former TAA President (emphasis, mine)

Oh my! Text and Academic Authors Association is a trade association with a primary goal of eradicating another industry and its American Small Business Families who make their livelihoods in this beneficial American industry. I have included numerous documents, all developed by and placed on the web site of the Text and Academic Authors Association (TAA). TAA has only the personal profits of their membership at heart. I imagine some of their members would be authors of textbooks on economics, business law and the Constitution. One is hard pressed to find a more anti-free market organization than TAA.

TAA does not shy away from framing the issue in any way that suits them as they cajole and coerce (harass and put in fear, to be less kind) colleagues to change their conduct to preserve the profitability of TAA's members. At the same time, however, TAA put out a paper outlining how what they seek is unlawful and how they need to get the law changed. What was their only real obstacle? They would need to have enacted an amendment to the Constitution. Until that happens, my fellow Small Business Families and I would like to go back to work.

To analyze the legality of TAA's **STOMP THE COMP** campaign is to take a journey through criminal, civil and administrative law. The offenses of defamation, libel and slander are addressed in chapter 21.

For now, let's visit TAA's web site and see what predatory mischief they are conspiring to commit. I bet it is all about putting me and other Small Business Families out of business. Most of TAA's anti-competitive attack on my industry is self-explanatory.

The Stomp the Comp Brochure & Campaign

About TAA

The Text and Academic Authors Association (TAA) is the only nonprofit membership association dedicated solely to assisting textbook and academic authors. TAA's overall mission is to enhance the quality of textbooks and other academic materials, such as journal articles, monographs and scholarly books, in all fields and disciplines, by providing its textbook and academic author members with educational and networking opportunities.

TAA was founded in 1987 by math author Mike Keedy.

TAA is governed by a TAA Council made up of textbook and academic authors.

TAA is a voice for textbook and academic authors.

TAA developed a pamphlet entitled, "**Stomp the Comp**," that discourages faculty from selling complimentary copies to book resellers, a practice that is harmful to authors and contributes to the rising cost of textbooks. TAA has also written a position statement on the academic value of textbooks, a Code of Ethics for Authors and a guide for authors in negotiating contracts with publishers.

The Text and Academic Authors Association (TAA) is a nonprofit membership association of more than 1,200 textbook and academic authors. TAA is the only association committed solely to assisting and protecting the rights of textbook and academic authors. TAA was established in 1987 for those interested in developing and publishing educational materials, including textbooks, articles for academic journals and other academic writing, software, videos, monographs, reference books, and multimedia CD-ROM disks. TAA's mission is to enhance the quality of educational materials and assist text and academic authors in matters involving them, including taxes, copyright, royalties and better appreciation of their work within the academic environment.

Since its inception in 1987, TAA members have held the problems of complimentary copies and used textbooks to be among the most worrisome and aggravating ones of the profession. An historical look at TAA's fight against the sale of complimentary copies can be found on its website at: www.TAAonline.net/mediaroom/stompcomp.html

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TEXT AND ACADEMIC AUTHORS ASSOCIATION

www.TAAonline.net

Stomp the Comp

Why You Should Stop Selling Your Comp Copies to Book Resellers

> By selling complimentary copies, you contribute to the used book problem, and the high costs of textbooks



The high cost of textbooks is a hot topic in the news these days. Congress is initiating a probe into the cost of college textbooks; California and other states are proposing legislation aimed toward curbing the price of textbooks at both el-hi and college levels; and CALPIRG, the California arm of PIRG (Public Interest Research Group), gained national attention with its call for publishers to reduce the price of textbooks and to lengthen the time between revisions. While CALPIRG is blaming what they see as frequent and unnecessary revisions as the cause of high textbook prices, the real culprits behind the rising cost of textbooks are the sale of used books and complimentary copies.

The general public is unaware of this practice, mainly because those who profit from it don't want it to go away. Most college administrators do not want to discuss it; book vendors and college bookstores exploit it; and faculty who are doing it don't want to lose the money it generates.

STOMP THE COMP!

[TAA's fight against the sale of complimentary copies](#)

Since its inception in 1987, TAA members have held the problems of complimentary copies and used textbooks to be among the most worrisome and aggravating ones of the profession. An historical look at TAA's fight against the sale of complimentary copies can be found in the Media Center: [click here](#)

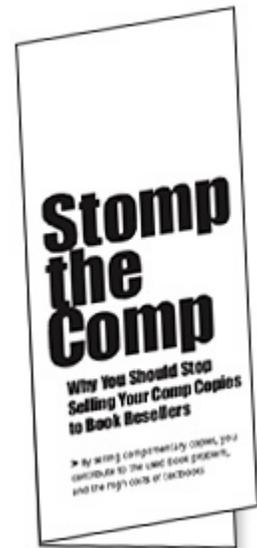
[Stomp the Comp e-pamphlet and door signs](#)

TAA has developed an e-pamphlet that explains to faculty why they shouldn't sell complimentary copies to book buyers. The e-pamphlet, titled "Stomp the Comp," and its accompanying sign that faculty can post on their doors to ward off book buyers, are available on the TAA website as downloadable and printable PDFs.

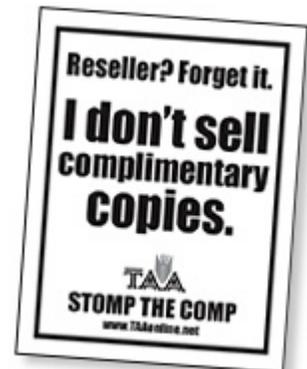
"TAA has long lamented the sale of complimentary copies," said TAA President John Wakefield. "With this e-pamphlet, we are hoping to bring the issue back to the forefront, by sharing valid reasons why faculty should refrain from selling complimentary copies to book buyers."

The selling of complimentary copies, said Wakefield, has a detrimental effect on textbook authors and publishers, who receive no profit from these sales. Complimentary copy sales also contribute to the used book problem, he said.

The e-pamphlet outlines those reasons, and uses editorial-style cartoons that depict a faculty member disposing of unwanted complimentary copies the correct way (by donating them to a library or mailing them back to the publisher) and the wrong way (by shipping them off to a book reseller).



[Download e-pamphlet PDF](#)
(1.5 MB)



[Download door sign PDF](#)
(400K)

December 2003

Resale of Instructor's Edition copies just plain wrong

As president of the Text and Academic Authors Association and a textbook author, I am concerned about the way complimentary copies are contributing to the used book problem. I am particularly concerned about the Instructor Edition copies that are finding their way into students' hands. I recently paid a visit to the Amazon website and asked about purchasing my textbook. I found that after advertising the new book for sale, Amazon encouraged me to look at the list of new/used books for sale.

About 10 sites offered the Instructor's Edition of my textbook for sale at one-third the cost of the new book. Moreover, the ads emphasized that this book had all the answers in the back, unlike the Student Edition, which only has the odd-numbered ones. It went on to point out that the Instructor's Resource CD was also included.

This selling of the Instructor's Edition of textbooks not only loses revenue for the publisher and royalties for the author, but compromises the integrity of the book.

TAA has a responsibility to its members and to the educational community to do what it can to stop this practice. First, we need to gather facts. Are your books being compromised in this way? Visit the Amazon web site and find out if the Instructor's Editions of your textbooks are being sold. Pass on your findings to us.

Also, is your bookstore selling Instructor's Editions? Find out and let us know the books and who operates the bookstore.

I have asked the Author Relations Committee to take on this issue and report back by the April 2004 TAA Convention. We are also preparing a position paper on the ethics of professors selling Instructor's Editions. Through the Publisher Relations Committee, I am articulating this issue with publishers. You can help by sharing information with us.

In other business:

- The TAA Convention will be held for the first time in April, rather than June, in response to suggestions from TAA members. The convention will be held in St. Petersburg, Florida, April 2-3 at the Heritage Holiday Inn Hotel. The TAA Council meeting will be held March 31 and April 1. On the morning of April 1, TAA committees will meet to discuss policy that will be recommended to the Council for action. I encourage you, if you want to help shape the future of TAA, plan to attend.
- The TAA Foundation received tax-exempt status from the IRS. The Foundation needs only \$6,000 to reach its start-up goal. If you have not yet pledged or if you are able to increase your existing pledge, please contact TAA headquarters. The start-up funds will be used to launch the Foundation's fundraising efforts, including the securing of grants and other sources of funding, to improve member services.
- TAA is preparing to conduct a member royalty/contract survey. If you have any issues or questions you want included in the survey, please send them to me m_sullivan@att.net. The results of the royalty survey will be available on the TAA website. The contract questions will be used by the Author Relations Committee to draft a revised model contract for authors.

As always, I welcome any suggestions you may have for improving your organization.

Sincerely,

Mike Sullivan

TAA President

February 2004

Bookstores' Pricing Hurts Authors

I want to thank the many members of TAA who responded to my last article on Instructor's Editions being sold to students. Many of you pointed out, correctly, that Amazon and other website vendors are not the only ones engaged in this practice; college bookstores also routinely sell Instructor's Editions as used (and sometimes as new) books. The effect of these practices on the price of textbooks was also noted by many respondents.

In this President's Message, I want to explore with you the pricing of textbooks at college and university bookstores. Twenty years ago, the landscape of publishing and selling textbooks changed dramatically. Prior to this time, most college bookstores were operated by the college or university or were privately owned and operated. Barnes & Noble and Follett's were mostly trade stores, dealing with non-fiction trade books and novels. Publishers set list prices for their books and sold them at a 20 percent discount to bookstores. Bookstores ordered a sufficient (enough to handle projected enrollments) number of new books from the publisher, marked up the price they paid 25 percent (to bring the price back to the publisher's list price) and sold them to students. Any used books on the shelf were there because of student buy-backs from that school, and these were offered to students at buy-back price plus 25 percent. Unsold copies could be returned to the publisher for full credit. The price students paid for their books was fair and reasonable, the publisher had a workable system of distribution for their books, bookstores made a reasonable profit for the university, and authors received fair compensation for their development of intellectual property.

This has changed dramatically in the last 20 years. **Today, the vast majority of college bookstores are operated by Barnes & Noble or Follett's. Missouri Books' and Nebraska Books' freelancers sneak around campus with carts in hand and cash in pocket engaging in the sleazy practice of offering cash to professors for clearing their shelves of books.** And what has happened to textbook prices? Well, the publisher now sets a net price at which they sell textbooks to the bookstore. But the net price the publisher sets today is equivalent to the discounted price they charged bookstores in the past. However, bookstores today mark up the price they pay the publisher by 35 percent (remember, it used to be 25 percent), and they order the books first from the used book vendors and mark up that price by 50 percent or more.

Who are the winners in this new pricing structure? Bookstores, universities and used book dealers. Bookstores' margins are higher due to the 35 percent markup on new books and 50 percent markup on use books so they are getting more. Universities receive 15 to 20 percent of the bookstore revenue for the exclusive right to operate the bookstore. Used book dealers buy books from professors for very little, sell them to bookstores at a much higher price, and the bookstore marks that price up 50 percent or more for the student.

Who are the losers? Students, publishers and authors. Students used to pay net plus 25 percent for a new book and the buy-back price plus 25 percent for a used book. Now they pay net plus 35 percent for a new book and buy-back plus 75 percent for a used book. It is not uncommon for adoptions of several hundred textbooks to result in no revenue to the publisher and no royalties to the author.

Are there solutions? Possibly. Publishers could cut back on the number of "complementary copies" they routinely send out to professors. Or better, publishers should retain ownership of these copies so they cannot be legally sold. Stamp something like "This book is the property of XYZ Publisher and may not be sold without the express written permission of the publisher. You may retain this book as long as you please. If you wish, it may be returned in the enclosed postage-free mailer." Now we know the cover might get ripped off and the book sold anyway, so let's place electronic markers in it so we can track its progress through the selling chain.

Publishers could also go back to list pricing and offer an alternative web-based distribution system for their product at prices to the student that are lower than currently available through bookstores. Universities could take back control of the bookstores and return to earlier textbook pricing practices.

What are your thoughts? Mike Sullivan, TAA President

June 2004

Call for action on sale of complimentary copies

The high cost of textbooks is a hot topic in the news these days. Congress is initiating a probe into the cost of college textbooks; California and other states are proposing legislation aimed toward curbing the price of textbooks at both el-hi and college levels; and CALPIRG, the California arm of PIRG (Public Interest Research Group), gained national attention with its call for publishers to reduce the price of textbooks and to lengthen the time between revisions. While CALPIRG is blaming what they see as frequent and unnecessary revisions as the cause of high textbook prices, the real culprits behind the rising cost of textbooks are used books and examination copy sales.

The general public is unaware of this practice, mainly because those who profit from it don't want it to go away. Most college administrators do not want to discuss it; book vendors and college bookstores exploit it; and faculty who are doing it don't want to lose the money it generates.

I visited the website of a large book buyer that buys complimentary copies from faculty. They supply boxes and free UPS mailing labels. They pay within two days of receipt of the books. They then sell the books directly to students (at a different website they maintain). For two of my just-published texts, they pay faculty from \$36.75 to \$44.75 and then sell the book to students for \$102.20! At Amazon.com, my just-published text, which will not be used in a classroom until this summer, is already for sale. The comment line in the Amazon ad reads: "Instructor's Edition, 7th. Same as student text except with ALL the answers." When the examination copy is, in fact, an Instructor's Edition, containing all the answers and perhaps annotations and sample tests and quizzes, the sale of that text back to the student compromises the integrity of the very course for which the course was written.

While publishers have made an effort to respond to criticisms by CALPIRG and others about the high cost of textbooks, including challenging statements made by CALPRIG in its report and announcing programs that will help reduce the cost of textbooks, both the AAP and publishers need to do far more to increase public awareness of the real reasons behind the cost of textbooks. But let's not forget our responsibility.

We authors continue to write our books, saying nothing of a practice that not only contributes to the high cost of textbooks, but that we all know is also morally and ethically reprehensible.

What should we do as members of TAA? I am asking every teaching member of TAA to take the following actions:

- Write a letter to your bookstore manager asking them what their position is on the resale of texts that are labeled as an Instructor's Edition, Annotated Version, Examination Copy, Free Copy, and Not For Resale. Copy TAA on the letter and the response you receive.
- Ask your Faculty Senate to discuss the practice of faculty selling textbooks they receive for examination purposes and to develop an Ethics Statement for faculty that condemns the practice.

For its part, TAA will be working with other interested associations to address this issue from the top down. Do your part by gathering information and starting dialogue from the bottom up.

I look forward to hearing from you.

Sincerely,

Mike Sullivan, TAA President

August 2007

Textbook price controversy

Each year now, news articles appear about the high cost of attending college, including the cost of college textbooks. Most recently, the Department of Education's Advisory Committee on Student Financial Assistance reported on May 25th that "the marketplace for textbooks and learning resources is broken."

The argument is that because teachers order the books and students must pay, "the end consumer has little, if any, direct influence over price, format or quality of the product." It is questionable whether or not teachers would want students to have direct influence over the format or quality of textbooks. (If students were learning experts, who would need teachers?) But what about price?

The ACSFA report assumes that students are paying too much for their textbooks and other learning materials. As our Executive Director Richard Hull wrote in his reaction to the report, "textbook prices have been rising at a rate approximately equal to the increase in room and board, transportation and Consumer Price Index, but equal to only a fraction of the increase and tuition and fees". This data comes out of a chart in the ACSFA report. If students are paying too much for their textbooks, it is not evidenced by this chart.

What seems to motivate the conclusion that the market is broken is the assumption that student should pay *less* for their books and instructional materials than they historically have. The proposed means to accomplish this end, in the long run, is government sponsorship of a national digital marketplace. In other words, the government should step in and fix things. Hmm. Let's try some of our own solutions first, and see what we can do to lower the costs of textbooks.

First, letters to the editor of the local newspaper can be used to promote our "Stomp the Comp" campaign. Stomping out the resale of complimentary copies would have the effect of relieving some of the pressure for publishers to increase wholesale prices. Should it help, here is a letter that I wrote to my local Alabama newspaper editor when the "broken market" headline appeared this past summer.

* * * * *

August 3, 2007

This letter is in regard to your July 23rd article about the "broken" college textbook market. As the article indicated, many who work in and around colleges are trying to keep textbook costs down. For their part, textbook authors are conducting a campaign among college faculty to discourage the sale of complimentary textbooks (also known as "comp" copies) that are provided free of charge to them.

These freebies aren't really free — sales to students must pay for them. That is a legitimate cost of doing business, but every year a large number of comp copies find their way into the used textbook market, decreasing new book sales. Many of these copies are purchased from faculty by resellers. Under the 1995 Ethics Law, it is highly unlikely that the Alabama Ethics Commission would be of the opinion that a complimentary textbook, whether solicited or unsolicited, could be sold by a faculty member for personal gain.

My observation is that the textbook market is not broken. Many instructors care deeply about how much students pay for their books, but not all are aware that one way to keep textbook costs down is to "stomp the comp" by using these copies for reference, returning them to the publisher, giving them to a colleague, or donating them to a library.

*John Wakefield
President, Text and Academic Authors Association*

The current "Stomp the Comp" campaign builds on our history of advocating for ethical practices by faculty and enforcement of campus policies to keep textbook resellers off college campuses.

John Wakefield

The current "Stomp the Comp" campaign builds on our history of advocating for ethical practices by faculty and enforcement of campus policies to keep textbook resellers off college campuses. (See Stomp the Comp info here)

Second, we should remain vigilant in response to attempts to dictate how faculty choose textbooks and course materials. On June 25th, Oregon State Senate Bill 365 was signed into law. The bill requires publishers to make textbook prices accessible to faculty, to list textbooks separately from their ancillaries, and to inform potential adopters of previous editions. Although the burden of any changes in current marketing practices will fall on publishers, TAA supported the Association of American Publishers in their efforts to educate legislators about some of the more burdensome aspects of the original bill. (See AAP's site)

Authors too want to help keep the costs of textbooks and educational materials low. At the same time, we want to keep the quality of textbooks and instructional materials high. These are not incompatible goals, but achieving them both requires that we all do our part.

John Wakefield

November 2008

Diminish used book market with more memorable prose

Of course one of the main reasons for the high cost of textbooks is the used book market. The "first sale doctrine" in American copyright law dictates that no monies are due to the publisher or author of a work when the book changes hands from its first user to another user (or, more frequently, to a college bookstore or to a freelance "jobber" who will then re-sell the book to the next user).
[tp://www.taaonline.net/notes/presmessage_archive.html#pres22](http://www.taaonline.net/notes/presmessage_archive.html#pres22)



**TAA President
Paul Siegel
Senior Co-Conspirator**

Florida 'Textbook Affordability Bill' includes language regarding comp copy sales

Due in part to the efforts of TAA and its members, Florida's HB603 "Textbook Affordability Bill" has been amended by Representative Anitere Flores to include language regarding the sale of complimentary copies.

The bill was amended to include the following: "These materials may not be sold for any type of compensation if they are specifically marked as free samples not for resale."

"While this means that comp copies that are not specifically marked as 'free samples not for resale' can still be sold, on the whole, our effort to modify Florida's comp copy law was a reasonable success," said TAA Executive Director Richard Hull. "Now it is up to publishers to make sure comp copies are appropriately marked." <http://www.taaonline.net/actionissues/index.html#1> We discuss this underhanded legislation in chapter 11, "Florida Representative Anitere Flores & the \$107,000 Sale of Amendment No. 186521"

The Used Textbook Resale Market & The Law[©]

Multi-State Comprehensive Edition

Essential Reading

Chapter 25

Small Business Predator in Chief and Killer of Teacher's Rights, J. Bruce Hildebrandt

*Small Business Predator in Chief &
Killer of Teacher's Rights, J. Bruce Hildebrand*

Profile of a Predator

Predator Hildebrand knows that the laws he is buying in state after state are unconstitutional.

**J. Bruce Hildebrand, Small Business Predator (Liar, Briber)
Henchman for Association of American Publishers**



Bruce Hildebrand is Executive Director for Higher Education for the Association of American Publishers. Bruce has crisscrossed the nation over the last four years, serving as the principal spokesman for higher education publishers at textbook forums; before legislative committees; and with policy makers, advocates and the media. A former journalist, he served as a senior vice president at Hill and Knowlton International Public Relations immediately prior to joining AAP.

<http://uso.edu/opportunities/textbooks/symposium/documents/textbookAgenda.pdf>

**With Cash Stuffed in His Jacket Pockets, Hildebrand to Head AAP Higher Ed
by Staff -- Publishers Weekly, 8/9/2004 2:00:00 AM**

J. Bruce Hildebrand, a former executive with Hill & Knowlton, has been named executive director of higher education at the Association of American Publishers. Hildebrand, based in Washington, D.C., will oversee all programs related to higher education, working with federal and state policy makers, students and faculty, and acting as an advocate for publishers. Hildebrand has a long career in government affairs and political consulting, including his own public relations firm. He has also held senior positions with the Republican National Committee.

Quiz: How do you know when Bruce Hildebrand is lying?

Answer: When he opens his mouth.



HIGHER EDUCATION

AAP's Higher Education group serves the needs and interests of AAP members who publish for the post-secondary educational market. John Isley (Pearson Education) chaired the Higher Education Executive Committee in 2007/08.

AAP continued to work at the federal and state levels with legislators and policymakers, bookstores, and students to address concerns about the price of college course materials. AAP worked to head off or defeat misguided legislative initiatives that would limit the ability of textbook publishers to develop the best materials for faculty and students, restricting the sale of course materials and the release of new editions, and mandating methods for disclosing pricing and product information.

AAP monitored legislative activity in 32 states and was able to amend or defeat more than 80 legislative proposals that would have adversely affected college textbook publishers and impaired the education of post-secondary students. Amended bills were passed and signed into law in 10 states: Arkansas, California, Maryland, Minnesota, New York, Oklahoma, Oregon, Tennessee, Texas and Washington.

The Public Interest Research Group (PIRG) continued to target publishers with a disinformation campaign, enlisting the assistance of state student associations and ratcheting up pressure at the federal level. In February, Massachusetts PIRG released a study entitled "Exposing the Textbook Industry: How Publishers' Pricing Tactics Drive Up the Cost of College Textbooks," claiming that "that publishers withhold price and product information from faculty members" while ignoring the vast quantity of such information readily available online, specifically via publishers' websites and online catalogues.

www.publishers.org



Chapter 26

The Copyright Act, The First Sale Doctrine of 1909 & The Textbook Resale Business



Read All About It!

The First Sale Doctrine Permits the Owner of a Copy to
Resell that Copy.
Period.
It's the Law!

The international, mega-conglomerate publishing oligopolies (IMCPOs) maintain copyright protections under federal law – the whole federal law and all its little provisions, details, precedent and settled arguments. The IMCPOs willfully and with malicious intent, violate civil and criminal laws as well as numerous regulations and rules.

Copyright law is a particularly difficult area for the IMCPOs who, as a regular course of business (EVERY DAY), infringe upon the copyright and trademark rights of authors and image producers, forcing these Small Businesses and Mom & Pops to sue for proper payment of royalties. These authors and image producers often don't know that a publisher has printed hundreds of thousands or millions of images, exceeding the contractual limitations. Most don't know the IMCPOs have duped them. The IMCPOs then have these authors and image producers under their thumbs. If the victims sue the IMCPOs, it is likely that they would lose any other work they are getting or future work. Authors and image producers (mostly one-person or Mom & Pop shops) are forced to work for less than their contract calls for to have an income at all down the road. The IMCPOs dismiss this as a contract dispute. The authors and image producers see it as theft, lying and CONGLOMERATES ATTACKING THE SMALL BUSINESS PERSON. It is theft. It is a crime. It is interstate and it is pervasive and ongoing as you are reading this. The IMCPOs are the largest infringers upon Copyright Law and they violate these laws purposefully and with intent of pecuniary gain EVERY DAY!

Copyright laws, per se, do not apply in the issue of textbook reselling as the resale industry is not copying, reconfiguring or claiming authorship of the books they work with. This industry simply buys and sells books. It is ironic that teachers and book buyers are accused of violating "copyright laws." What book buyers and their clients are guilty of is exercising their constitutional rights so enumerated in the First Sale Doctrine of 1909 (*Bobbs-Merrill v Straus*, 1908).

The Copyright Act reinforces the position of this industry. The First Sale Doctrine within the act specifically denies a right to the author or publisher in this circumstance to control the destiny of the book after the transfer of ownership, paid or gifted. It is well-settled law. Imagine if Ford or Toyota placed a "Not for Resale" sticker on the back bumper. The used car market would die. The economic fallout would be great. In this case, the fallout is the death of the used book market.

The IMCPOs connect the protections of the copyright to, not only the selling of the books, but even giving them away. If a needy student can not afford a textbook and a teacher has an extra copy, the IMCPOs and TAA suggest placing that book in recycling or the trash and then sending the needy student packing to the campus bookstore to pay list price plus 25-35 percent markup.

Marybeth Peters,
Register of Copyrights

Welcome to the U.S. Copyright Office

The Office's mission is: "To promote creativity by administering and sustaining an effective national copyright system."



"To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries" (U.S. Constitution, Article I, Section 8)

What Is a Copyright?



What Is Copyright?

Copyright is a form of protection provided by the laws of the United States (title 17, *U. S. Code*) to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the work;
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- To display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and
- In the case of sound recordings,* to perform the work publicly by means of a digital audio transmission.

*Here is where the copyright issues end
and the First Sale Doctrine begins...*

It is illegal for anyone to violate any of the rights provided by the copyright law to the owner of copyright. **These rights, however, are not unlimited in scope. Sections 107 through 121 of the 1976 Copyright Act establish limitations on these rights. In some cases, these limitations are specified exemptions from copyright liability. One major limitation is the doctrines of “fair use” [and “first sale,”] which is [are] given a statutory basis in section 107 of the 1976 Copyright Act.**

<http://www.copyright.gov/circs/circ1.pdf>

What Is the First Sale Doctrine?

17 U.S.C. Sec. 10, Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord

§ 109. Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord

(a) Notwithstanding the provisions of section 106 (3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord.

(3) Nothing in this subsection shall affect any provision of the antitrust laws. For purposes of the preceding sentence, “antitrust laws” has the meaning given that term in the first section of the Clayton Act and includes section 5 of the Federal Trade Commission Act to the extent that section relates to unfair methods of competition.

The First Sale Doctrine Permits the Owner of a Copy to Resell that Copy. Period. It is the Law!

An important premise here is that no one understands copyright law and First Sale Doctrine as well as the copyright lawyers for the IMCPOs. They should know better and they do know better, yet they lie and obfuscate and they do these things to and in conjunction with state agencies which contract with them.

What the law does not allow and what the IMCPOs attempt everyday is to control information and attempt to exact an undue toll for any and all data under their copyrights. The IMCPOs try to force consumers to handle their personal belongings in the manner they direct. There is an implied threat should the teacher (book buyer's client) not, "ABIDE BY THESE RESTRICTIONS." This is in violation of the **First Sale Doctrine and 39 U.S.C. Sec. 3009, Mailing of Unordered Merchandise.**

One can not better elucidate the lawfulness of the used textbook industry and the Small Business Families trying to make a living than the statutes and the case law. The concept is that the IMCPOs have no rights to the books that the teachers sell after gifting these books are gifted to them. The books are not donations and the publishers that send them are not donors. As such, all rules, statutes and policies which hinder this industry in this regard are unlawful and unconstitutional as they RESTRAIN TRADE AND INTERFERE WITH INTERSTATE COMMERCE.

Notwithstanding defined...

In spite of the fact that; Although

Houghton Mifflin's American Heritage Dictionary

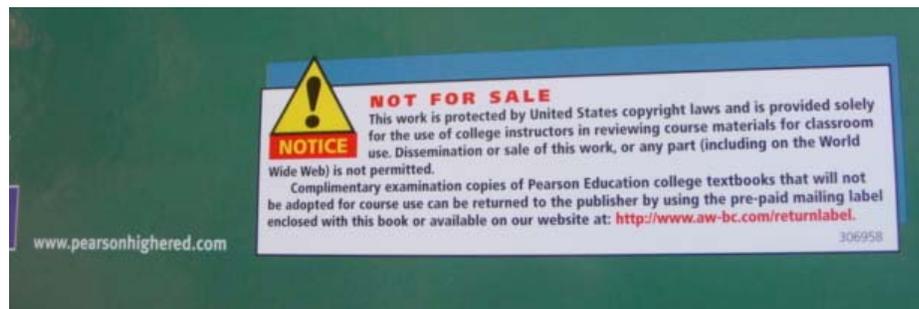
United States Attorney's Manual

Title 9, Criminal Resource Manual

1854 Copyright Infringement—First Sale Doctrine

The first sale doctrine, codified at 17 U.S.C. § 109, provides that an individual who knowingly purchases a copy of a copyrighted work from the copyright holder receives the right to sell, display or otherwise dispose of that particular copy, **notwithstanding** the interests of the copyright owner.

http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm01854.htm



Bobbs-Merrill Co. v. Straus (1908)

In *Bobbs-Merrill Co. v. Straus*, 210 U.S. 339 (1908), **the First-Sale Doctrine was established.**

In our view the copyright statutes, while protecting the owner of the copyright in his right to multiply and sell his production, do not create the right to impose, by notice, such as is disclosed in this case, a limitation at which the book shall be sold at retail by future purchasers, with whom there is no privity of contract.

To add to the right of exclusive sale the authority to control all future retail sales, by a notice that such sales must be made at a fixed sum, would give a right not included in the terms of the statute, and, in our view, extend its operation, by construction, beyond its meaning, when interpreted with a view to ascertaining the legislative intent in its enactment.

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=210&invol=339>

Quanta v. LG Electronics

Supreme Court Victory for Patent First Sale Doctrine

"once you buy a product, you own it and the patent owner generally can't interfere with your subsequent use."

"you bought it, you own it"

"This should help consumers who purchase patented (and copyrighted) products festooned with "single use only" and "not for resale" notices rest a bit easier."

<http://www.eff.org/deeplinks/2008/06/supreme-court-victory-patent-first-sale-doctrine>

QUANTA COMPUTER, INC. v. LG ELECTRONICS, INC. (No. 06-937)
453 F. 3d 1364, reversed. SUPREME COURT OF THE UNITED STATES

The Court held that the extension of the patent term did not affect the rights already secured by purchasers who bought the item for use "in the ordinary pursuits of life." *Bloomer v. McQuewan*, 14How. 539, 549 (1853); see also *ibid.* ("[W]hen the machine passes to the hands of the purchaser, it is no longer within the limits of the monopoly"); *Bloomer v. Millinger*, 1Wall. 340, 351 (1864). In *Adams v. Burke*, 17Wall. 453 (1873), the Court affirmed the dismissal of a patent holder's suit alleging that a licensee had violated post sale restrictions on where patented coffin-lids could be used. "[W]here a person ha[s] purchased a patented machine of the patentee or his assignee," the Court held, "this purchase carrie[s] with it the right to the use of that machine so long as it [is] capable of use." *Id.*, at 455.

Accordingly, it reiterated the rule that "the right to vend is exhausted by a single, unconditional sale, the article sold being thereby carried outside the monopoly of the patent law and rendered free of every restriction which the vendor may attempt to put upon it." *Id.*, at 516.

<http://www.law.cornell.edu/supct/html/06-937.ZS.html>

UMG v. Augusto

Portions most relevant to the instant issue are presented as follows:

US DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
UMG RECORDINGS, INC., Plaintiff, v. TROY AUGUSTO, et al., Defendants.
NO. CV 07-03106 SJO (AJWx)

The First Sale Doctrine Permits the Owner of a Copy to Resell that Copy.

The first sale doctrine limits a copyright owner's exclusive right to distribute copies of a copyrighted work to the public: "[T]he owner of a particular copy or phonorecord lawfully made under [Title 17 of the United States Code] . . . is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord." 17 U.S.C. § 109(a); see also 2 Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 8.12[B][1][a] (2008) [hereinafter Nimmer] ("Section 109(a) provides that the distribution right may be exercised solely with respect to the initial disposition of copies of a work, not to prevent or restrict the resale or other further transfer of possession of such copies.").

Although this statutory limitation is commonly referred to as the first sale doctrine, its protection does not require a "sale." The doctrine applies after the "first authorized disposition by which title passes." 2 Nimmer § 8.12[B][1][a]. This passing of title may occur through a transfer by gift. See 4 William F. Patry, Patry on Copyright § 13:15 ("Since the principle [of the first sale doctrine] applies when copies are given away or are otherwise permanently transferred without the accoutrements of a sale, 'exhaustion' is the better description."); 2 Paul Goldstein, Goldstein on Copyright § 7.6.1 n.4 (3d ed.) ("[A] gift of copies or phonorecords will qualify as a 'first sale' to the same extent as an actual sale for consideration.").

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The Only Apparent Benefit to a License Is to Restrain Trade.

Finally, the only benefit to a license for UMG is to restrain transfer of its music. This purpose was rejected 100 years ago by the Supreme Court. See *Bobbs-Merrill Co. v. Strauss*, 210 U.S. 339 (1908) (rejecting a book publisher's attempt to restrict resale of a book through a label that prohibited sales for less than one dollar); see also *RCA Mfg. Co. v. Whiteman*, 114 F.2d 86, 90 (2d Cir. 1940) (Hand, J.) ("[RCA] had no power to impose the pretended servitude upon [its] records [by placing a 'Not Licensed for Radio Broadcast' label upon them]."); *SoftMan*, 171 F. Supp. 2d at 1084 ("Adobe frames the issue as a dispute about the ownership of intellectual property. In fact, it is a dispute about the ownership of individual pieces of Adobe software.").

Looking to the economic realities of the transaction, UMG's distribution of Promo CDs provides the recipient with many critical rights of ownership, including the right to perpetual possession and the freedom from obligations to UMG. Accordingly, UMG's distribution of Promo CDs to the music industry insiders is properly characterized as a gift or sale, not a license, and title to the CDs transferred to the insiders. Augusto is thus protected by the first sale doctrine.

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The Promo CDs Are a Gift Under Federal Law.

Augusto also argues that UMG transferred title to the Promo CDs to the music industry insiders under federal law. The Postal Reorganization Act prohibits "the mailing of unordered merchandise" without "the prior expressed request or consent of the recipient." 39 U.S.C. § 3009(a), (c).5 This merchandise "may be treated as a gift by the recipient, who shall have the right to retain, use, discard, or dispose of it in any manner he sees fit without obligation whatsoever to the sender." 39 U.S.C. § 3009(b). "The purpose of [§ 3009] was to 'control the unconscionable practice of persons who ship

unordered merchandise to consumers and then trick or bully them into paying for it." Kipperman v. Academy Life Ins. Co., 554 F.2d 377, 379 (9th Cir. 1977).

Here, UMG's actions fall within the plain text of § 3009. UMG mails merchandise – the Promo CDs – to music industry insiders without their "prior expressed request or consent." Still, UMG argues that § 3009 does not apply to their mailing of the Promo CDs because § 3009: (1) applies only to merchandise received by "consumers"; (2) applies only to merchandise for which payment is requested; and (3) does not nullify agreements between the mailer and the recipient.

Augusto's Actions Are Protected by the First Sale Doctrine.

Because title to the Promo CDs transferred from UMG to the music industry insiders, Augusto's resale of those CDs is protected by the first sale doctrine. Augusto is entitled to summary judgment on UMG's claim for copyright infringement.

http://www.eff.org/files/filenode/umg_v_augusto/LA07CV03106SJO-O.pdf

* * * * *

Liberation Day for Promo CDs: Victory in UMG v. Augusto

Fred von Lohmann, June 11th, 2008

In an important victory for the first sale doctrine, a federal district court today ruled that selling "promo CDs" on eBay does not infringe copyright. The court threw out a lawsuit by Universal Music Group (UMG), which had argued that the "promotional use only" labels affixed to these CDs somehow conveyed eternal ownership on UMG, making it illegal to resell the CDs (or even throw them away).

For decades, record labels have mailed out millions of promotional records and CDs to radio stations, music reviewers, DJs, and music industry insiders. Troy Augusto, an eBay seller, finds these "promos" at used record stores, where he buys those that have value as collectibles and resells them on eBay. After an abortive attempt to use DMCA takedowns to block Augusto's eBay auctions, UMG ultimately sued him in federal court, claiming that the "promotional use only" labels on the CDs mean that UMG owns them forever and that any resale infringes copyright.

EFF and the San Francisco law firm of Kecker & Van Nest took Augusto's case to fight for the proposition that a copyright owner can't take away a consumer's first sale rights just by putting a "promotional use only, not for resale, remains the property of UMG" label on a CD. After all, the first sale doctrine had its origin in a Supreme Court case involving book publisher's effort to enforce a "may not be sold for less than one dollar" label on a book.

In its ruling, the district court found that the initial recipients of "promo CDs" own them, notwithstanding "not for resale" labels. The court rejected the notion that these labels create a "license," concluding that the CDs are gifts. According to the opinion, "UMG gives the Promo CDs to music industry insiders, never to be returned. Nor does the licensing label require the recipient to provide UMG with any benefit to retain possession." (The court also found that federal postal laws relating to "unordered merchandise" establish that promo CDs are gifts to their recipients.) <http://www.eff.org/deeplinks/2008/06/liberation-day-promo-cds-victory-umg-v-augusto>

Other Applicable First Sale Doctrine Court Decisions and Settled Law

Timothy S. Vernor v. Autodesk Inc.

In 2008, in *Timothy S. Vernor v. Autodesk Inc.*,⁶ a U.S. Federal District Judge in Washington rejected a software vendor's argument that it only licensed copies of its software, rather than selling them, and that therefore any resale of the software constituted copyright infringement. Judge Richard A. Jones cited first-sale doctrine when ruling that a reseller was entitled to sell used copies of the vendor's software regardless of any licensing agreement that might have bound the software's previous owners because the transaction resembled a sale and not a temporary licensing arrangement.

Novell v. Network Trade Center

In 1997 in *Novell v. Network Trade Center* 25 F. Supp. 2d 1218 (C.D. Utah 1997) purchaser is an "owner" by way of sale and is entitled to the use and enjoyment of the software with the same rights as exist in the purchase of any other good. Said software transactions do not merely constitute the sale of a license to use the software. The shrinkwrap license included with the software is therefore invalid as against such a purchaser insofar as it purports to maintain title to the software in the copyright owner. Under the first sale doctrine, NTC was able to redistribute the software to end-users without copyright infringement. Transfer of a copyrighted work that is subject to the first sale doctrine extinguishes all distribution rights of the copyright holder upon transfer of title.

Sony Corp. of America v. Universal City Studios, Inc.

In 1979 *Sony Corp. of America v. Universal City Studios, Inc.* (often called "The Betamax Case"), determined that because the VCR was capable of substantial noninfringing uses, copyright owners objecting to infringement could not prevent its sale. The ruling, coupled with the high price of the first few movies on VHS and Betamax tapes (\$50 each) created a large market for home video rental. Retailers purchased the expensive tapes and rented them to consumers at an affordable price, while studios earned considerable revenue from volume sales to rental stores. First-sale doctrine excused these merchants from seeking permission from the copyright holders.

*Notices of Copyright and Unlawful Extensions --
How the IMCPOs' Textbook Notice of Copyright Extends Beyond Copyright Law*

The International, Mega-Conglomerate Publishing Oligopolies rewrote the law:

Deceptive Extension of Copyright Protection Example 1



Deceptive Extension of Copyright Protection Example 2

NOTICE: This work is protected by U.S. copyright laws and is provided solely for the use of college instructors in reviewing course materials for classroom use. Dissemination or sale of any part of the work (including on the World Wide Web) will destroy the integrity of the work and is not permitted. The work and materials from it should never be made available to students except by instructors using the accompanying text in their classes. All recipients of this work are expected to abide by these restrictions and to honor the pedagogical purpose and the needs of other instructors who rely on these materials. Prentice Hall Higher Education

The wording is so restrictive as to be violative of the statute.

These two examples are the easiest Notices of Copyright to debunk. They have the usual suspect in "AND" deceptively combining copyright law with the IMCPOs' pecuniary preference for one handling their personal possessions. The books, as we have determined, are "GIFTS" and instructors are free to do with their GIFT as they wish. This is SETTLED LAW. This Notice of Copyright is a threat while it instructs instructors as to the IMCPOs' acceptable ways to handle their books which are GIFTS, FREE OF LICENSE.

Black's again..."It expresses a general relation or connection, a participation or accompaniment in sequence, having no inherent meaning standing alone but deriving force from what comes before and after. In its conjunctive sense the word is used to conjoin words, clauses, or sentences, expressing the relation of addition or connection, and signifying that something is to follow in addition to that which proceeds and its use implies that the connected elements must be grammatically coordinate, as where the elements preceding and succeeding the use of the words refer to the same subject matter."



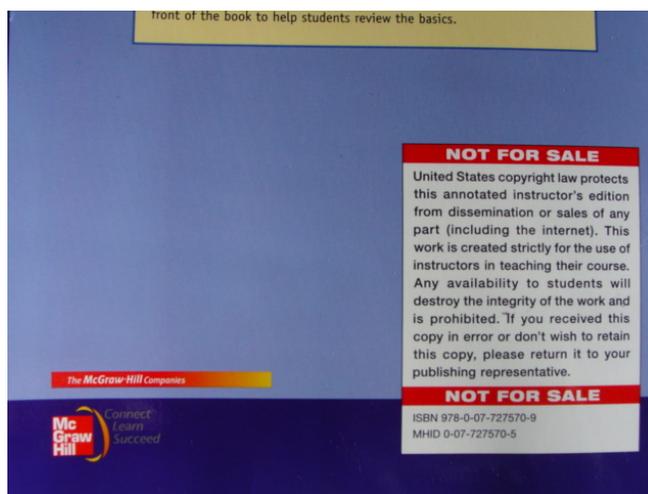
Hey, wait a minute!

“Not for Sale” Notices are Unlawful Extensions of Copyright Law and Invalid.

The intent of the Notice of Copyright label is to convey that the book is protected by copyright laws and that those laws extend to the personal use or disposition of the book. They do not but we're not done there. The obfuscation is purposeful. The Notice of Copyright is worded EXACTLY as the lawyers for the IMCPOs wanted to see it. It had to meet the corporate attorney's approval. Why? It is a statement of one's responsibility under the law. It is an opinion rendered by the publisher's attorneys PROVIDING LEGAL ADVICE to the general public. It is factually and lawfully incorrect. It is a LIE being told with the motive to deceive.

By misleading the consumer, the IMCPOs unlawfully extend the copyright into an area that is not only not in the statute and, but is purposefully protected by the statute. As such, these notices of copyright are invalid and deceptive.

McGraw Hill's Version of an Invalid Notice of Copyright



(c) **Fraudulent Copyright Notice.**—Any person who, with fraudulent intent, places on any article a notice of copyright or words of the same purport that such person knows to be false, or who, with fraudulent intent, publicly distributes or imports for public distribution any article bearing such notice or words that such person knows to be false, shall be fined not more than \$2,500.

The IMCPOs knowingly, willfully, repeatedly and continually violate federal law as it pertains to deceptive practices. These deceptive practices include labeling books meant for consumers with false and misleading Notices of Copyright. These false statements are in violation of Section 506(c) of the *Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code*. The act of affixing these false and misleading Notices of Copyright to hundreds of thousands of books sent to hundreds of thousands of consumers is a violation of the Federal Trade Commission Act of 1914 and the Copyright Law found in the *United States Code*. As these books are mailed, annually hundreds of thousands of acts of Mail Fraud are also committed by the IMCPOs.

United States Attorney's Manual

Title 9, Criminal Resource Manual

1854 Copyright Infringement—First Sale Doctrine

The first sale doctrine, codified at 17 U.S.C. § 109, provides that an individual who knowingly purchases a copy of a copyrighted work from the copyright holder receives the right to sell, display or otherwise dispose of that particular copy, notwithstanding the interests of the copyright owner.

The IMCPOs and TAA argue that it is unlawful (read, criminal) to violate their Notices of Copyright by selling one's personal possessions. Yet, the First Sale Doctrine precludes the United States Attorneys from prosecuting one who sells his personal possessions. These accusations are merely obfuscations and that the crimes committed are insanely numerous and ongoing and are at the hands of the TAA and the IMCPOs, in RICO-like fashion.

The U.S. Bureau of Labor Statistics reports that there are more than 1,529,500 postsecondary educators in the U.S. The fine for each offense of fraudulent copyright notices is \$2500 before one adds fines for deceptive practices and mail fraud. The potential in fines would be over twenty billion dollars.

The IMCPOs and TAA know all this. We know they know simply by visiting TAA's web site. TAA performed an exhaustive study, concluding that what they are trying to accomplish, indeed, violates the United States Constitution. They are actively seeking options to sidestep the law. The conspiracy is in their writing. See chapters 24 and 25.

Book buyers (American Small Business Families) go to work each day to insults and threats. They are escorted off campuses and chased out of buildings. Teacher-clients bear the brunt of over-zealous co-workers who have bought into the IMCPO sales rep rap. Book buyers have watched their income fall precipitously. All of these events, all of the hostile workplaces, all of the harassment, all of the nerve-wracking days trying to make a living are because the IMCPOs lie and TAA's SMEAR CAMPAIGN has been working. These terroristic and predatory campaigns that are shuttering American Small Business Families must stop. Faculty members need to stand up and claim their constitutional rights without fear of recrimination.

The Used Textbook Resale Market & The Law[©]

Multi-State Comprehensive Edition

Essential Reading

Chapter 26

First Sale Doctrine Case Law

United States Attorney's Manual

Title 9, Criminal Resource Manual

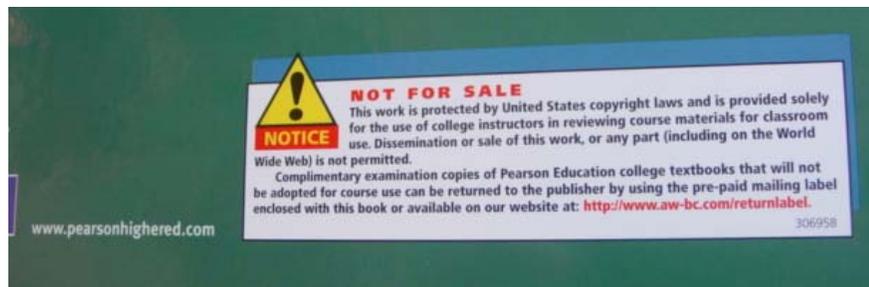
1854 Copyright Infringement—First Sale Doctrine

Few issues have created greater confusion in criminal copyright prosecutions than the "first sale doctrine." The doctrine is one of the specific statutory restrictions which Congress has placed on the exclusive rights of copyright owners. Criminal defendants frequently resist prosecution by claiming that they believed that the works they were selling had been the subject of a legitimate first sale. Moreover, several criminal copyright convictions have been overturned because of inadequacies in the government's proof on this issue. For this reason, a federal prosecutor should have a clear understanding of the first sale doctrine when considering whether to bring a criminal copyright case.

The first sale doctrine, codified at 17 U.S.C. § 109, provides that an individual who knowingly purchases a copy of a copyrighted work from the copyright holder receives the right to sell, display or otherwise dispose of that particular copy, notwithstanding the interests of the copyright owner. The right to distribute ends, however, once the owner has sold that particular copy. See 17 U.S.C. § 109(a) & (c). Since the first sale doctrine never protects a defendant who makes unauthorized reproductions of a copyrighted work, the first sale doctrine cannot be a successful defense in cases that allege infringing reproduction.

Further, the privileges created by the first sale principle do not "extend to any person who has acquired possession of the copy or phonorecord from the copyright owner, by rental, lease, loan, or otherwise, without acquiring ownership of it." See 17 U.S.C. § 109(d).

http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm01854.htm



When is it Optimal to Kill off the Market for Used Durable Goods?

John Rust

Econometrica, Vol. 54, No. 1 (Jan., 1986), pp. 65-86

Published by: The Econometric Society

Stable URL: <http://www.jstor.org/stable/1914157>

"a secondary market provides close substitutes for new durable goods limiting profits of the monopolist in the primary market. This creates an incentive for "planned obsolescence" in order to restrain competition from the secondary market. By reducing built-in durability the monopolist ensures that used assets are poor substitutes for new assets, leading to more frequent replacement, higher sales and higher profits. Under the most extreme form of planned obsolescence the monopolist might even "kill off" the secondary market by producing assets of zero durability; i.e. assets whose useful lifespan is only one period. A commonly cited example is the case of text books where yearly edition changes can be viewed as creating zero durability assets."

www.jstor.org/pss/1914157

Bobbs-Merrill Co. v. Straus (1908)

In Bobbs-Merrill Co. v. Straus, 210 U.S. 339 (1908), **the first-sale doctrine was established.**

The precise question, therefore, in this case is, Does the sole right to vend (named in 4952) secure to the owner of the copyright the right, after a sale of the book to a purchaser, to restrict future sales of the book at retail, to the right to sell it at a certain price per copy, because of a notice in the book that a sale at a different price will be treated as an infringement, which notice has been brought home to one undertaking to sell for less than the named sum? We do not think the statute can be given such a construction, and it is to be remembered that this is purely a question of statutory construction. There is no claim in this case of contract limitation, nor license agreement controlling the subsequent sales of the book.

In our view the copyright statutes, while protecting the owner of the copyright in his right to multiply and sell his production, do not create the right to impose, by notice, such as is disclosed in this case, a limitation at which the book shall be sold at retail by future purchasers, with whom there is no privity of contract. This conclusion is reached in view of the language of the statute, read in the light of its main purpose [210 U.S. 339, 351] to secure the right of multiplying copies of the work, - a right which is the special creation of the statute. True, the statute also secures, to make this right of multiplication effectual, the sole right to vend copies of the book, the production of the author's thought and conception. The owner of the copyright in this case did sell copies of the book in quantities and at a price satisfactory to it. It has exercised the right to vend. What the complainant contends for embraces not only the right to sell the copies, but to qualify the title of a future purchaser by the reservation of the right to have the remedies of the statute against an infringer because of the printed notice of its purpose so to do unless the purchaser sells at a price fixed in the notice. **To add to the right of exclusive sale the authority to control all future retail sales, by a notice that such sales must be made at a fixed sum, would give a right not included in the terms of the statute, and, in our view, extend its operation, by construction, beyond its meaning, when interpreted with a view to ascertaining the legislative intent in its enactment.**

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=210&invol=339>

Quanta v. LG Electronics

Supreme Court Victory for Patent First Sale Doctrine
Fred von Lohmann June 9th, 2008

The Supreme Court today issued a unanimous opinion in Quanta v. LG Electronics, its first ruling in 66 years addressing the patent exhaustion doctrine. Patent exhaustion is the patent law equivalent to copyright law's first sale doctrine -- **once you buy a product, you own it and the patent owner generally can't interfere with your subsequent use.** EFF filed an amicus brief on behalf of itself, Consumers Union, and Public Knowledge in the case.

The Supreme Court today ruled against LG Electronics. So the upshot is a victory for the principle of "**you bought it, you own it.**" a mere unilateral notice to customers is not enough to prevent a patent from being exhausted upon first authorized sale. **This should help consumers who purchase patented (and copyrighted) products festooned with "single use only" and "not for resale" notices rest a bit easier.** Today's ruling suggests that those kinds of notices, too, would have no force under patent law.

<http://www.eff.org/deeplinks/2008/06/supreme-court-victory-patent-first-sale-doctrine>

QUANTA COMPUTER, INC. v. LG ELECTRONICS, INC. (No. 06-937)
453 F. 3d 1364, reversed. SUPREME COURT OF THE UNITED STATES

The longstanding doctrine of patent exhaustion provides that the initial authorized sale of a patented item terminates all patent rights to that item. This Court first applied the doctrine in 19th-century cases addressing patent extensions on the Woodworth planing machine.

The Court held that the extension of the patent term did not affect the rights already secured by purchasers who bought the item for use "in the ordinary pursuits of life." *Bloomer v. McQuewan*, 14How. 539, 549 (1853); see also *ibid.* ("[W]hen the machine passes to the hands of the purchaser, it is no longer within the limits of the monopoly"); *Bloomer v. Millinger*, 1Wall. 340, 351 (1864). In *Adams v. Burke*, 17Wall. 453 (1873), the Court affirmed the dismissal of a patent holder's suit alleging that a licensee had violated post sale restrictions on where patented coffin-lids could be used. "[W]here a person ha[s] purchased a patented machine of the patentee or his assignee," the Court held, "this purchase carrie[s] with it the right to the use of that machine so long as it [is] capable of use." *Id.*, at 455.

Accordingly, it reiterated the rule that "the right to vend is exhausted by a single, unconditional sale, the article sold being thereby carried outside the monopoly of the patent law and rendered free of every restriction which the vendor may attempt to put upon it." *Id.*, at 516.

<http://www.law.cornell.edu/supct/html/06-937.ZS.html>

UMG v. Augusto

Portions most relevant to the instant issue are presented as follows:

US DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
UMG RECORDINGS, INC., Plaintiff v. TROY AUGUSTO, et al., Defendants.
NO. CV 07-03106 SJO (AJWx)

ORDER GRANTING COUNTER-DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO COUNTER-CLAIM [Docket No. 37]; DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO LIABILITY ON COMPLAINT [Docket No. 40]; AND GRANTING IN PART AND DENYING IN PART DEFENDANT AND COUNTER-CLAIMANT'S MOTION FOR SUMMARY JUDGMENT [Docket No. 43]

The First Sale Doctrine Permits the Owner of a Copy to Resell that Copy.

The first sale doctrine limits a copyright owner's exclusive right to distribute copies of a copyrighted work to the public: "[T]he owner of a particular copy or phonorecord lawfully made under [Title 17 of the United States Code] . . . is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord." 17 U.S.C. § 109(a); see also 2 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 8.12[B][1][a] (2008) [hereinafter *Nimmer*] ("Section 109(a) provides that the distribution right may be exercised solely with respect to the initial disposition of copies of a work, not to prevent or restrict the resale or other further transfer of possession of such copies.").

Although this statutory limitation is commonly referred to as the first sale doctrine, its protection does not require a "sale." The doctrine applies after the "first authorized disposition by which title passes." 2 *Nimmer* § 8.12[B][1][a]. This passing of title may occur through a transfer by gift. See 4 William F. Patry, *Patry on Copyright* § 13:15 ("Since the principle [of the first sale doctrine] applies when copies are given away or are otherwise permanently transferred without the accoutrements of a sale, 'exhaustion' is the better description."); 2 Paul Goldstein, *Goldstein on Copyright* § 7.6.1 n.4 (3d ed.) ("[A] gift of copies or phonorecords will qualify as a 'first sale' to the same extent as an actual sale for consideration.").

To invoke the first sale defense for his sale of UMG Promo CDs, Augusto must show: (1) the CDs were lawfully manufactured with UMG's authorization; (2) UMG transferred title to the CDs; (3) Augusto was the lawful owner of the CDs; and (4) Augusto disposed of, but did not reproduce, the CDs. 2 *Nimmer* § 8.12[B][1][a] ("An affirmative answer to each question validates the defense. Failure to qualify under any prong dooms it.").

Here, two of these elements are undisputed. The parties agree that the Promo CDs were lawfully manufactured (UMG Answer ¶ 13) and Augusto is accused only of selling the Promo CDs, not of reproducing them (UMG Compl. ¶ 10).

The remaining two elements hinge on one question: Did UMG transfer title to the music industry insiders when it mailed them the Promo CDs? If the answer is yes, then UMG transferred ownership of the CDs and Augusto lawfully owned the CDs at the time he sold them, which permitted Augusto to sell the CDs under the first sale doctrine. If the answer is no, then UMG retained title to, and ownership of, the CDs and Augusto was not the lawful owner of those CDs at the time he sold them, which excludes Augusto's actions from the protection of the first sale doctrine. UMG argues that Augusto should have to trace the chain of title from him back to UMG. This is incorrect. By showing that UMG transferred ownership of the Promo CDs to the music industry insiders, Augusto would show that UMG no longer has a copyright interest in the Promo CDs, which is sufficient under the first sale doctrine.

One Hallmark of a License Is the Owner's Intent to Regain Possession.

The right to perpetual possession is a critical incident of ownership. See *Krause v. Titleserv, Inc.*, 402 F.3d 119, 123 (2d Cir. 2005) (describing a person's "degree of ownership of a copy" as "complete" when "he may lawfully use it and keep it forever, or if so disposed, throw it in the trash").³ Accordingly, the distributor of a copyrighted product's intent to regain possession is strong evidence that the product was licensed, not sold, to the recipient. The absence of this intent is strong evidence that the product was sold.

The Ninth Circuit's decision in *United States v. Wise* demonstrates the importance of regaining possession of the licensed product. 550 F.2d 1180 (9th Cir. 1977). In *Wise*, the court evaluated several contracts under which movie studios transferred movie prints. Most of the contracts required that the recipients return the movie prints after a fixed term. *Id.* at 1185 ("The license agreements with respect to the films involved in this case generally . . . required their return at the expiration of the license period."). The Ninth Circuit determined that these contracts were licenses.

However, some of the contracts permitted the recipient to keep the film print. In particular, one contract allowed an actress to keep possession of the film print "at all times" for her "personal use and enjoyment," but prevented her from transferring the print to anyone else. *Id.* at 1192. The Ninth Circuit determined that this contract was a sale, not a license.

Here, UMG gives the Promo CDs to music industry insiders, never to be returned. The recipients are free to keep the Promo CDs forever. Nothing on the packaging of the Promo CDs or in the licensing label requires that the recipient return the Promo CDs to UMG. (Kossowicz Decl. Ex. 11.) There are no consequences for the recipient should she lose or destroy the Promo CDs— which UMG allegedly considers its property. (Kossowicz Decl. Ex. 11.) UMG does not request that any recipients return the Promo CDs (Strouse Decl. ¶ 9) and does not otherwise make any affirmative effort to recover possession of the Promo CDs. Further, it appears that UMG could not take these actions; UMG does not keep permanent records identifying who received which Promo CDs. (Strouse Decl. ¶ 7.)

Accordingly, the music industry insiders' ability to indefinitely possess the Promo CDs is a strong incident of ownership through a gift or sale.

UMG does passively receive Promo CDs returned by the postal service as undeliverable or returned by recipients as unwanted. (Strouse Decl. ¶ 10(a).) Rather than keep these Promo CDs as an asset, UMG destroys them. (Strouse Decl. ¶ 10(a).)

THIS IS THE SAME PRACTICE AS THE PUBLISHERS. IT ALL GOES TO UNCLAIMED MAIL WHICH IS AUCTIONED OFF BY THE US POSTAL SERVICE AND THEN RESOLD IN VARIOUS MARKETS.

The Absence of a Recurring Benefit to UMG Suggests the Transfer to Music Industry Insiders Is a Gift or Sale.

Generally, licenses provide recurring benefits for the copyright owner. Microsoft, 66 F.3d at 1096 (determining that Microsoft sold its software to DAK in part because Microsoft received a set payment independent of DAK's length of use of the software); see also SoftMan Prods. Co. v. Adobe Sys., 171 F. Supp. 2d 1075 (C.D. Cal. 2001) (determining that Adobe sold its software in part because "the license runs for an indefinite term without provisions for renewal").

Here, UMG receives no recurring benefit from the recipients' continued possession. As an initial matter, UMG has no guarantee that it will receive any benefit from the distribution of a Promo CD. The licensing label does not require that the recipient promote or expose the material on the Promo CD. (To the contrary, most of the Promo CDs at issue contain a label with the phrase "for personal use only," indicating that any license would prohibit the recipient from making professional use of the Promo CD.) Nor does the licensing label require the recipient to provide UMG with any benefit to retain possession. At the time UMG distributes the Promo CDs, it is not guaranteed to get anything in return.

The Only Apparent Benefit to a License Is to Restrain Trade.

Finally, the only benefit to a license for UMG is to restrain transfer of its music. This purpose was rejected 100 years ago by the Supreme Court. See *Bobbs-Merrill Co. v. Strauss*, 210 U.S. 339 (1908) (rejecting a book publisher's attempt to restrict resale of a book through a label that prohibited sales for less than one dollar); see also *RCA Mfg. Co. v. Whiteman*, 114 F.2d 86, 90 (2d Cir. 1940) (Hand, J.) ("[RCA] had no power to impose the pretended servitude upon [its] records [by placing a 'Not Licensed for Radio Broadcast' label upon them]."); *SoftMan*, 171 F. Supp. 2d at 1084 ("Adobe frames the issue as a dispute about the ownership of intellectual property. In fact, it is a dispute about the ownership of individual pieces of Adobe software.").

Looking to the economic realities of the transaction, UMG's distribution of Promo CDs provides the recipient with many critical rights of ownership, including the right to perpetual possession and the freedom from obligations to UMG. Accordingly, UMG's distribution of Promo CDs to the music industry insiders is properly characterized as a gift or sale, not a license, and title to the CDs transferred to the insiders. Augusto is thus protected by the first sale doctrine.

The Promo CDs Are a Gift Under Federal Law.

Augusto also argues that UMG transferred title to the Promo CDs to the music industry insiders under federal law. The Postal Reorganization Act prohibits "the mailing of unordered merchandise" without "the prior expressed request or consent of the recipient." 39 U.S.C. § 3009(a), (c).5 This merchandise "may be treated as a gift by the recipient, who shall have the right to retain, use, discard, or dispose of it in any manner he sees fit without obligation whatsoever to the sender." 39 U.S.C. § 3009(b). "The purpose of [§ 3009] was to 'control the unconscionable practice of persons who ship unordered merchandise to consumers and then trick or bully them into paying for it.'" *Kipperman v. Academy Life Ins. Co.*, 554 F.2d 377, 379 (9th Cir. 1977).

Here, UMG's actions fall within the plain text of § 3009. UMG mails merchandise – the Promo CDs – to music industry insiders without their "prior expressed request or consent." Still, UMG argues that § 3009 does not apply to their mailing of the Promo CDs because § 3009: (1) applies only to merchandise received by "consumers"; (2) applies only to merchandise for which payment is requested; and (3) does not nullify agreements between the mailer and the recipient.

Augusto's Actions Are Protected by the First Sale Doctrine.

Because title to the Promo CDs transferred from UMG to the music industry insiders, Augusto's resale of those CDs is protected by the first sale doctrine. Augusto is entitled to summary judgment on UMG's claim for copyright infringement.

http://www.eff.org/files/filenode/umg_v_augusto/LA07CV03106SJO-O.pdf

Chapter 27

Free, Complimentary & Gratis & Defined... A Fun Vocabulary Lesson for Higher Education Academics & Administrators



Free

Not subject to legal constraint of another.

Unconstrained; having power to follow the dictates of own will. Not subject to the dominion of another. Not compelled to involuntary servitude. Available to all citizens alike without charge. Not despotic; assuring liberty; defending individual rights against encroachment by any person or class; instituted by a free people; said of governments, institutions, etc.

Black's Law Dictionary, Sixth Edition, 1990

Published by West Publishing Co. which is owned by Thomson Reuters

Complimentary

Date: 1714. Given free as a courtesy or favor <complimentary tickets>.

<http://www.merriam-webster.com/dictionary/complimentary>

Gratis

Without reward or consideration. Done or received freely or gratuitously.

Black's Law Dictionary, Sixth Edition, 1990

Published by West Publishing Co. which is owned by Thomson Reuters

Freedom

The power of acting, in the character of a moral personality, according to the dictates of the will. Without other check, hindrance, or prohibition than such as may be imposed by just and necessary laws and the duties of social life. The prevalence, in the government and constitution of a country, of such a system of laws and institutions as secure civil liberty to the individual citizen.

Black's Law Dictionary, Sixth Edition, 1990

Published by West Publishing Co. which is owned by Thomson Reuters

Chapter 28

United States Postal Service Rules



Postal Reorganization Act, Public Law 91-375

39 U.S.C. Sec. 3009

Mailing of Unordered Merchandise.

(Applies to all modes of transportation).

(a) Except for

(1) free samples clearly and conspicuously marked as such, and

(2) merchandise mailed by a charitable organization soliciting contributions, the mailing of unordered merchandise or of communications prohibited by subsection (c) of this section constitutes an unfair method of competition and an unfair trade practice in violation of sec.45(a)(1)of title 15.

(b) Any merchandise mailed in violation of subsection (a) of this section, or within the exceptions contained therein, may be treated as a gift by the recipient, who shall have the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender. All such merchandise shall have attached to it a clear and conspicuous statement informing the recipient that he may treat the merchandise as a gift to him and has the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender.

(c) No mailer of any merchandise mailed in violation of subsection (a) of this section, or within the exceptions contained therein, shall mail to any recipient of such merchandise a bill for such merchandise or any dunning communications.

(d) For the purposes of this section, "unordered merchandise" means merchandise mailed without the prior expressed request or consent of the recipient.

Chapter 29

Tortious Interference with Prospective Economic Advantage

Similar to the Lanham Act, tortious interference claims are civil matters where aggrieved parties can sue for financial damages and injunctions against unlawful anti-competitive behaviors. Each state has its own "tort" laws regarding unfair competition and harmful actions that go beyond the fair and competitive but the elements of proof are fairly standard throughout the United States.

What is a Tort?

A negligent or intentional civil wrong not arising out of a contract or statute. These include "intentional torts" such as battery or defamation, and torts for negligence.

A tort is an act that injures someone in some way, and for which the injured person may sue the wrongdoer for damages. Legally, torts are called civil wrongs, as opposed to criminal ones. (Some acts like battery, however, may be both torts and crimes; the wrongdoer may face both civil and criminal penalties.)

Torts may be committed with force, as trespasses, which may be an injury to the person, such as assault, battery, imprisonment; to the property in possession; or they may be committed without force. Torts of this nature are to the absolute or relative rights of persons, or to personal property in possession or reversion, or to real property, corporeal or incorporeal, in possession or reversion: these injuries may be either by nonfeasance, malfeasance, or misfeasance.

<http://www.lectlaw.com/def2/t032.htm>

The elements of **Tortious Interference with Prospective Economic Advantage** are: '(1) an economic relationship between [the plaintiff and some third person] containing the probability of future economic benefit to the [plaintiff], (2) knowledge by the defendant of the existence of the relationship, (3) intentional acts on the part of the defendant designed to disrupt the relationship, (4) actual disruption of the relationship, [and] (5) damages to the plaintiff proximately caused by the acts of the defendant.' (Buckaloo v. Johnson (1975) 14 Cal.3d 815, 827.)

As a matter of law, there is a threshold causation requirement in order to establish the tort of intentional interference with prospective economic advantage. What is required is 'proof that it is reasonably probable that the lost economic advantage would have been realized but for the defendant's interference. (Youst v. Longo (1987) 43 Cal.3d 64, 71.) 'Over the past several decades, California courts analyzing the tort of interference with prospective economic advantage have required such a threshold determination. In Buckaloo v. Johnson . . . , where we set out the five elements of the intentional form of the tort, we stated that the first element requires 'the probability of future economic benefit.' Although varying language has been used to express this threshold requirement, the cases generally agree it must be reasonably probable that the prospective economic advantage would have been realized but for defendant's interference.' (Id., at 71, fn. omitted.) <http://www.lectlaw.com/def/i084.htm>

The First District Illinois Appellate Court held that the tort of interference with prospective economic advantage recognizes that a person's business relationships constitute a property interest, and as such, are entitled to protection from unjustified tampering by another. *The Film and Tape Works, Inc. v. Junetwenty Films, Inc.*, 368 Ill.App.3d 462 (1st Dist. 2006).

Five Elements of a Tortious Interference Claim

While there is much more to consider, these last two paragraphs give us a good sense of what is required to prevail in a civil action for tortious interference of prospective economic advantage. This chapter will not be an exhaustive study. As the reader must have realized by now, there are many civil and criminal avenues to pursue to prosecute those who endeavor to destroy the used textbook industry. Tortious interference is an important matter. Again, the five elements of a Tortious Interference for Prospective Economic Advantage:

- ✚ **An economic relationship between [the plaintiff and some third person] containing the probability of future economic benefit to the [plaintiff].**
- ✚ **Knowledge by the defendant of the existence of the relationship.**
- ✚ **Intentional acts on the part of the defendant designed to disrupt the relationship. Intentional interference by defendant inducing termination of the relationship or preventing the expectancy from ripening into a valid business relationship.**
- ✚ **Actual disruption of the relationship.**
- ✚ **Damages to the plaintiff proximately caused by the acts of the defendant.**

The Text and Academic Authors Association (TAA), the IMCPOs and numerous State actors have and continue to, with knowledge of ongoing economic relationships, conspire and collude to disrupt these relationships, thereby irreparably damaging all those Small Business Families engaged in this industry. Said lost economic advantage would have been realized but for the defendant's interference.

Conspiracy to Interfere with Prospective Economic Advantage

- ✚ A combination of two or more persons,
- ✚ For the purpose of injuring the plaintiff.
- ✚ Causing the plaintiff special damage.

Chapter 30

The Law of Agency

The Law of Agency as it pertains to the used textbook resale industry considers aspects of employment law as it relates to a faculty member's right to sell (or manage in any other manner) their personal property. In this case, the personal property refers to review textbooks. The subject is covered in the context of the author's letter to Vance-Granville Community College after the institution unlawfully severed the long-held relationships between faculty-employees and the American Small Business Families that operate in this industry. We start with the offending emailed issued to faculty on April 21, 2010. Further discussion of these policies at Vance-Granville and other schools can be found in chapter 8, Analysis of Unlawful Anti-Competitive & Discriminatory Policies on College Campuses.

Memorandum

Date: Wed, 21 Apr 2010 09:08:12 -0400
From: "Bobby VanBrunt" vanbruntb@vgcc.edu
Subject: Faculty Selling of Textbooks

All, It is my understanding that a person stopped by some of our faculty offices requesting to buy back books sent to us by publishers. It is the position of the VGCC administration that books received by faculty in the name of Vance-Granville are not the personal property of the faculty who request them and faculty should not sell them for personal gain. Typically, they are requested using VGCC letterhead, email or other official VGCC correspondence as a result of their employment with the college and as such are the property of the college for use by the faculty member requesting the books. I would politely tell anyone requesting buying of books be told it is in violation of VGCC policy. bvb

Rosenthal Letter to Vance-Granville Community College

July 12, 2011

Bobby Van Brunt
Dean, Business & Applied Technologies
Vance-Granville Community College
PO Box 917
Henderson, NC 27536

Re: The Law of Agency and VGCC's Unlawful Ban on Review Book Selling and Buying

Dear Mr. Van Brunt,

Thank you for being so gracious and taking the time out of your day to meet with me to discuss VGCC's policy regarding your faculty's rights to sell their review textbooks and how unlawful it is to ban the practice on your campus. Please remember that neither the state nor NCCCS has any interest in regulating this activity. Further, state agencies such as VGCC and their employees, in such restraint of trade actions, maintain no exemption from prosecution for acts that are anti-competitive in their scope.

It is noted that the memorandum referred to below that advised faculty to sever their personal business relationships with the specific occupation of book buyer came one day after one faculty member (referred to on page 99 of my report, "The Used Textbook Resale Market & the Law"), complained to you about a book buyer on campus. That book buyer was me. The complaint occurred after I handed this teacher my business card and made note of the ethical guidelines on the reverse of the card. This teacher, (along with her cohort in the adjacent office) who has for years committed theft from publishers, attempted to obfuscate her illegal activity. We discussed this in your office. There is a difference between the legitimate request for books for pedagogical review and the purposeful defrauding of publishers. I mentioned to you that this unethical behavior is an anomaly in the industry and that no policy should be promulgated that globally removes fundamental, constitutional rights from all faculty for the greedy missteps of a few.

My 323-page report that I handed to you unequivocally indicates that VGCC's policy, as stated in your email to faculty of April 21, 2010, is a violation of numerous state and federal laws. Any one of the laws outlined in my report override the institution's claim of sovereignty in these issues. Chapter 8 of my report offers additional discussion of the anti-competitive and discriminatory policies on VGCC's and other college campuses. The legal references used in this letter refer to the addendum at the end of this letter.

You mentioned that the law of agency might be why it would be lawful to ban the practice. Even if agency were a valid reason for the policy, it would not trump the many federal and state laws and regulations that make such anti-competitive, restraint of trade policies into criminal violations with large civil consequences and with no exemption for state employees. Having left your office, appropriately enough with homework, I reviewed the laws of agency in this context and provide my findings here. You will be surprised to read that the same law of agency that one might think would mitigate my argument actually bolsters it.

U.S. Code, Title 15, Chapter 1, § 1

Trusts, etc., in restraint of trade illegal; penalty:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

In a private setting such as a commercial office building occupied by ExxonMobil or General Motors, for example, an employee might not be allowed to entertain "guests" regardless of the nature of the discourse or transaction. In a quasi-public setting such as a college campus, a wider berth is necessary and overreaching principal-agent policies then become unlawful, perhaps even jeopardizing the implied or expressed principal-agent contract.

In corporate America, one might conclude that an agent must abide by all rules and demands of the principal. This is only partially correct as there are limitations to such servitude. For *government* employees, the employer-employee relationship has strikingly different attributes. In this case, the state agency (VGCC and all other constituents of NCCCS) has no right under laws of agency to destroy the relationships (personal and business) between me and my teacher-clients. Faculty of NCCCS and UNC constituent institutions are government employees. As such, the same employment-at-will restrictions enjoyed by private companies do not apply. That is, there are even greater limits to the control a school-employer has over faculty-employees.

An employee working for any level of government has a protected interest that courts have held cannot be taken without some *due process* procedures. As a result, federal and state employees are not subject to employment-at-will status; for these workers, there must be a showing that their discharges were due to a lack of productivity or for some other valid reason. When government employees are discharged, they are entitled to be notified in advance and can request a hearing to state their side of the story. Baumer 501

Removing numerous personal constitutional rights is unreasonable and not envisioned when accepting the offer of employment. There is no compelling institutional interest. The State of North Carolina has never expressly stated a policy on this issue nor has it ever actively supervised any activity to thwart the practices of this industry. VGCC has no lawful right or purpose when requiring faculty to call security on a quasi-public property to have a book buyer ousted, denying the businessperson access to new or ongoing relationships while allowing everyone from book publisher representatives to the Pepsi supplier and the photocopier repairman to roam free on campus. This purposeful eradication of the specific occupation of book buyer, as I state repeatedly and in depth in my report, is restraint of trade and a violation of the Equal Protection Clause.

As a general rule, restrictive covenants in employment contracts will be enforced if they are reasonable under the particular circumstances. Carlson 837

This rule [of reasonableness] provides that unless the circumstances indicate bad faith on the part of the employer, a court will enforce covenants not to compete to the extent that they are reasonably necessary to protect the employer's interest "without imposing undue hardship on the employee when the public interest is not adversely affected." Ehlers v. Iowa Warehouse Co., supra at 370. Carlson 840

Because an agent acts under the principal's control and for the principal's benefit, she has a duty to *obey the principal's reasonable instructions* for carrying out the agency business. Also, agent's generally have no duty to obey orders to behave illegally or unethically. Mallor 752

There are, however, a few rules to restrain an employer from overreaching. Carlson 844

An employee is not liable for violating an unenforceable covenant. Carlson 845

The Rule of Reasonableness precludes overtly unlawful covenants such as restrictions on freedom of speech and association, etc. Capricious enforcement of trespass rules does not pass muster. Allowing book publisher sales representatives to roam freely on campus while threatening and removing book buyers does not stand up to a test of reasonability. Colluding with Cengage or any number of publishers to bolster their profits while eradicating Small Business Families not only does not stand the test but it is diametrically opposed to North Carolina's own policy giving deference to small businesses. Destroying Small Business Families is simply immoral and criminal.

[a]n employer's extrajudicial actions, such as threatening the employee's associates and new or prospective employer, could result in the employer's liability for tortious interference with the employee's contractual and business relations if the employer had no reasonable basis for believing the covenant was enforceable. Sevier Ins. Agency v. Willis Carroon Corp., 711 So. 2d 995 (Ala. 1998); Stebins & Roberts, Inc. v. Halsey, 265 Ark. 903, 582 S.W.2d 266 (1979). Finally, some states provide statutory remedies against employers who seek enforcement of unreasonable or unjustified covenants. See e.g., Tex. Bus. & Com. Code § 15.51 (awarding employee costs, including attorney's fees, in defending against employer's action for enforcement). Carlson 845

Small Business Families to Receive Deference by State
N.C.G.S. § 143-48. State policy; cooperation in promoting the use of small contractors, minority contractors, physically handicapped contractors, and women contractors; purpose; required annual reports.

a) Policy. – It is the policy of this State to encourage and promote the use of small contractors, minority contractors, physically handicapped contractors, and women contractors in State purchasing of goods and services. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage the use of small contractors, minority contractors, physically handicapped contractors, and women contractors in achieving the purpose of this Article, which is to provide for the effective and economical acquisition, management and disposition of goods and services by and through the Department of Administration.

Any restriction of an employee in a corporate setting must serve a legitimate business interest. VGCC's policy, as stated in the April 21, 2010 memorandum to faculty, is illegitimate as there is no compelling reason for this policy. Government employees are exempt from such overreaching and unenforceable rules. The term "unenforceable" is used in the legal sense here. Nevertheless, sending an unlawful

memorandum to VGCC's employees threatening them and their associates has resulted in the intended enforcement of the illegal policy.

If a covenant satisfies the basic requirement of contract law, such as mutual assent and consideration, the employer must still show that the agreement was designed to protect a legitimate business interest. A legitimate business interest is not only an essential ingredient for enforceability, it also determines the limits of what the covenant can reasonably prohibit. Carlson 846

There is wide agreement among the courts that an employer's anti-competitive goal is not a legitimate purpose for a covenant. *Jacobson & Co. v. Intl. Evt. Cp.*, 427 Pa. 439, 235 A.2d 612 (1967); Restatement (Second) of Contracts § 186 ("A promise is unenforceable on grounds of public policy if it is unreasonably in restraint of trade." And "A promise is in restraint of trade if its performance would limit competition in any business or restrict the promisor in the exercise of a gainful occupation."). In fact, the public's interest in promoting competition is so strong that even if an employer has some legitimate goal in mind, the anti-competitive effects of a covenant might require the denial of enforcement in an otherwise strong case for the employer. See, e.g., *Bruce D. Graham, M.D., P.A., c. Cirocco*, 31 Kan. App. 2d 563, 69 P.3d 194 (2003) (enforcement denied because covenant would have resulted in monopoly control over local market). Carlson 846

Most states prohibit an employer from firing an employee who refuses to perform an act that is illegal or violates public policy, such as committing perjury. Goldman 392

A state agency shall not act in an anti-competitive manner. The banned activity cannot qualify for immunity under the State Action Exemption when the activity is not affirmatively expressed as state policy and actively supervised by the state. This becomes a federal violation of law due to the interstate commerce nature of all colleges and universities, both public and private, as administrators enact capricious and discriminatory policies in restraint of trade affecting interstate commerce. In other words, the price of antitrust immunity is real regulation by the state. The Supreme Court placed a further limitation in the state action exemption by holding that it does not automatically confer immunity on the actions of government employees.

The enforceability of a covenant not to compete is determined by state law, except in the rare case when a covenant violates federal antitrust law by causing an adverse impact on competition in the relevant market. See *Lektro-Vend Corp. c. Vendo Co.*, 660 F.2d 255 (7th Cir.), cert. denied, 455 U.S. 921, 102 S. Ct., 1277, 71 L. Ed. 2d 461 (1982). Carlson 856

The issue of ordering one's review books using a school's computers, letterhead or simply as a teacher from the institution is a non-starter. The fact is that teachers in every school use their position for sanctioned personal financial gain every time a faculty member becomes an author. Almost every textbook is written by a teacher and under each teacher's name is the name of the institution that gave them the "cred" to write the book. If every school was to have an airtight policy that no teacher can financially benefit in any other way than their salaries, no textbooks would be produced. Honoraria, consulting and all extracurricular activities where the teacher is identified with a school would be prohibited.

We talked about how such unlawful policies have the additional deleterious effect of severing personal and business relationships. Over the years, I have developed many wonderful relationships at VGCC. Not only am I viewed as an adept and honorable businessman, but I have also had the pleasure and privilege to be a part of the lives of numerous VGCC faculty members. I have seen births, illnesses, recoveries and deaths. I have seen marriages and breakups and children born. One instance of the honor that I have received is when one teacher suggested that I get to know her professional sister. Evidently, the idea of this book buyer becoming a friend of the family was not so far-fetched. When one teacher's family business had problems, I was able to apply my investigative experience and help them with free services based on my expertise. One teacher shared a deeply held personal story, not shared with another...an immense honor I value to this day. Discussions about diets, vacations and ill parents

permeate my day. Whether on VGCC or other campuses, teachers discuss their dissertations, teaching frustrations and any number of academic subjects. They learn from me, and I learn from them. It is entirely inappropriate and immeasurably offensive and insulting for school administrators to cavalierly and capriciously sever these relationships.

Banning these discussions is a violation of constitutionally afforded free speech and association. As far as book buying goes, these bans are also a violation of the rights of commercial expression. There is yet another unlawful violation that often goes without thought. Anti-competitive policies that ban communications also destroy future opportunities. As a writer who happens to be a book buyer, I have the opportunity to discuss my research and the works I develop with my faculty-clients. When these communications are thwarted by state actors for no acceptable reason, the state actor opens himself up to a claim for anti-competitive behavior even without the direct nexus of e.g. author to publisher. I would not have an opportunity to become an author if not for the relationships I have developed as a result of my book business. Banning these relationships is restraint of trade. Such policies destroy VGCC's credibility when teaching business or business law. In other words, VGCC can not teach business practices and the law while simultaneously acting to destroy sound, constitutionally-protected business practices and purposefully violating the law.

An example of this surrounds a short story that I wrote, "She Was My Client". As any author knows, it is very difficult to get someone to read one's work. One might get a friend to read it or pay an editor to read it. To have someone of substance who is a professional, experienced and published author read one's work and then provide a review is an incredible honor. It is this encouragement that helps a writer to continue. It could mean the difference between giving up and a career. When a published and successful English professor at a North Carolina university read "She Was My Client" this summer and actually wrote a review of the work, I was encouraged to keep writing. The short story is actually the beginning of a novel I began long ago. Her review (below) gave me the impetus to continue. While VGCC's unconstitutional and unlawful policies seek only to destroy my livelihood with no regard for my quality of life (or my life at all), this educator wants only that I do well, succeed, thrive and be fed and happy. Destroying another man's job, on the other hand, remains one of the lowest, immoral, unethical and unlawful acts one can perpetrate on another.

"Thanks for letting me read "She Was My Client." I enjoyed the ride through the cigarette-and-liquor soaked environs of the noir. I felt right away that the writer knew his way around a courthouse, which is of course true. At first I felt a little bit unsettled, wanting more physical details, but Chapter 2 really took me there. What great scene-setting, the details like the Western telephones and Purple Heart that not only fill in the landscape but tell the reader so much about the characters. The fact that Rita is almost exactly my age, and my father also a Korean vet, really pulled me in. Great twists and turns – the stolen money, the clerical con man, the closing scene in the church with just one more clue to unfold. The only things that made me question – why Leavers went after both boys and girls. "Most days, we watch doors that never open." – a lovely line. Best of luck with your writing!"

For these reasons and those referred to in my report, "The Used Textbook Resale Market & the Law", I respectfully demand that the "policy" referred to in your memorandum to faculty dated, April 21, 2010, be immediately rescinded. Faculty should be advised of this action without any pejorative language that would make them feel uncomfortable in reestablishing their long held relationships with me and those in my industry. The sooner that VGCC and NCCCS constituents return to a lawful position, the lesser the financial liability of the institution. Under the Takings Clause (chapter 23 of my report), VGCC owes each participating faculty member the amount that they would have received for their books retroactive to the unlawful memorandum of April 21, 2010.

This fall, I intend to continue business as it was prior to the unlawful memorandum. I am hoping that VGCC will comply with federal and state law and discontinue the act of threatening me, my clients, and those in my industry.

As we discussed in your office, I am entirely in favor of maintaining policies that assist in the security of the campus, such as signing in. As VGCC already has a parking pass policy, there is not much left to do, except that I suggest returning to the tri-copy form so that visitors can keep a pass on their

dashboard and on their person. Any other procedures must apply to all visitors from any company or type of business, lest they be discriminatory. Nevertheless, I support the idea of maintaining a registry of sorts of book buyers as long as it is fair and not overly invasive. I look forward to working with you and desire a confirmation that your campus welcomes the Small Business Families who operate in the specific occupation of book buyer.

This letter is being distributed to your faculty as many have asked me how their right to sell their personal property was summarily taken away from them, with no due process. It is also being placed on my website, www.AlansBookService.com, along with my report, "The Used Textbook Resale Market & the Law", both of which can be downloaded in .pdf format. My teachers can also request a complimentary, full-color, bound copy of the report by emailing their request with the address that they would like it mailed to. My email address is Alan@AlansBookService.com.

With warm regards,

Alan J. Rosenthal
American Small Businessperson
Book Buyer

cc: VGCC Faculty
Dr. R. Scott Ralls, President, North Carolina Community College System

Addendum to Rosenthal letter to VGCC, dated, July 12, 2011

Abridged list of law textbooks and other legal references used in this report.

Legal Environment of Business in the Information Age
Baumer, David L. (North Carolina State University)
McGraw-Hill Irwin, 1st ed., 2004

Business Law and the Regulatory Environment – Concepts and Cases
Mallor, Jane P. (Indiana University)
McGraw-Hill Irwin, 11th ed., 2001

Business Law – Principles and Practices
Goldman, William D. (Law Firm of Goldman & Goldman)
Houghton Mifflin Company, 6th ed., 2004

Employment Law
Carlson, Richard R. (South Texas College of Law)
Aspen Publishers, 1st ed., 2005

The Used Textbook Resale Market & the Law
Rosenthal, Alan J. (Alan's Book Service)
Box Canyon Press, 1st ed., 2011

Chapter 31

Racketeer Influenced and Corrupt Organization (RICO)



It is unclear if the violations of federal and state laws by TAA and the IMCPOs are actionable under RICO. These actions may be indictable offenses. If government lawyers would consider the ongoing, collusive, interstate and harmful violations of federal and state laws prosecutable under the RICO statute, they may find widespread collusion. Still, when one considers the totality of the violations and add that to the offender's own writings of intent to commit interstate crimes upon individuals throughout the United States, one must, once again, raise the red flag.

18 USC 1962

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

CHAPTER 96 - RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

§ 1962. Prohibited activities

(a) It shall be unlawful for any person who has received **any income derived, directly or indirectly, from a pattern of racketeering activity** or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to **use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.** A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) **It shall be unlawful for any person through a pattern of racketeering activity** or through collection of an unlawful debt **to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.**

(c) **It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity** or collection of unlawful debt.

(d) It **shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.**

Chapter 32

Invasion of Privacy and Opening Personal Mail

Not only is the matter of the State taking teacher's personal possessions (for auction, for example), a Takings Issue, but it could be argued that this is also an Invasion of Privacy issue. It is settled law that the review books received by faculty from publishers are "gifts" and that these gifts are the personal property of the intended recipients, such packaging bearing their names. The correspondence within the package is also intended for the addressee. By taking control, opening and reading the contents of the packages, school departments, employees as well as the schools and school system are at risk of an Invasion of Privacy claim. It is settled that this practice is unlawful and the liability is great. Roth v. Farner Bocken Co is not only an Invasion of Privacy case but it is also seminal as to the high level of punitive damages for the behavior.

THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA
667 N.W.2d 651

GREG ROTH, PLAINTIFF AND APPELLEE,
v.
FARNER-BOCKEN COMPANY, DEFENDANT AND APPELLANT.

Although we have not addressed an invasion of privacy claim based on the opening and reading of personal mail, other jurisdictions have found that such a claim lies in an action for invasion of privacy. See *Birnbaum v. U.S.*, 588 F2d 319, 326 (2d Cir 1978) (recognizing state law claim against a private person for intrusion of privacy based on opening and reading sealed mail); *Vernars v. Young*, 539 F2d 966, 969 (3d Cir 1976) (recognizing cause of action and indicating private individuals have a "reasonable expectation that their personal mail will not be opened and read by unauthorized persons); and *Doe v. Kohn, Nast & Graf, P.C.*, 866 FSupp 190, 195-96 (ED Penn 1994) (indicating "[a]n employer is not authorized to open mail addressed to a person at his workplace that appears to be personal[.]" and reasonable minds could differ as to whether intrusion occurred when letters were opened, copied and retained)(citation omitted)).

http://sd.findacase.com/research/wfrmDocViewer.aspx/xq/fac.%5CSD%5C2003%5C20030716_0000080.SD.htm/qx

There is sufficient case law regarding the handling of one's private mail at the workplace. The caveat of most consultants: Regardless of how it is addressed, leave it alone. It is important to note that "personal" does not have to be on the package. All that is required to make any letter or parcel "personal" is that it is addressed to an individual.

Opening an employee's personal mail marked "personal" is a long standing violation of privacy. In *Roth v. Farner-Bocken*, there was no such marking and the jury handed out what has been one of the most highly contested large punitive awards.

Section E

Public Policy and American Small Business Families

Chapter 33

Public Policy on Small Business and Jobs

The President of the United States, governors, legislators and many other leaders all call for the creation and saving of jobs. Many hundreds of billions of dollars has been spent on the economy and many more hundreds of billions to come. Teachers on all levels had their jobs saved with bailout money from the American Recovery & Reinvestment Act and other programs. While the state of North Carolina (and other states) through their agents and agencies, which have been influenced by the Text and Academic Authors Association (TAA), their agents or agents of the international, mega-conglomerate publishing oligopolies (IMCPOs) through, continue their relentless, unlawful, and unconstitutional attack on my industry forcing me and others similarly situated out of business, I couldn't help but notice the following quotes and programs found in this chapter.

But wait a minute, I and others like me already created jobs. We have jobs. We are entrepreneurs. We are trying to work. We created jobs. In collusion with private, for-profit entities (in the guise of non-profit lobbying associations) and with no compelling reason or statute, states have TARGETED A SPECIFIC OCCUPATION FOR ERADICATION. State actors have destroyed the market in some areas as county after county goes dark, leaving American Small Business Families jobless, broke and perhaps homeless. The irony is that the additional income for an author (IF one was to accept their unrealistic royalty argument) is fairly small, a fraction of the family income that a book buyer brings home to his or her family. To secure the last penny in royalties (again IF their royalty argument held water), these altruistic souls are willing to have their neighbor's small business go under and the family lose everything they have. Am I the only who sees the public policy problem here?

The Higher Education System in 2011 received over \$78,000,000,000 (Fifty billion dollars in 2008) from PUBLIC MONEY, all while waging war against the Small Business Families they serve. They are destroying American Small Business Families in contravention of public policy. This wholesale destruction of an entire industry and a specific occupation to mollify international, mega-conglomerate publishing oligopolies is immoral, unethical and shameful.

This chapter illuminates the public policies on jobs and magnifies the states' responsibilities to preserve and grow jobs and to protect the jobs which are still available. In other words, when one weighs the various bans on my industry, on American Small Business Families against public policy and the rhetoric of officials, one can only conclude that these bans are unconstitutional, wrong, against public policy and (eradicating American Small Business Families. As such, these bans need to be repealed and rescinded immediately.

"With state agencies, local governments, business leaders and citizens working together we will create new jobs, put people back to work, and train our workers for success. Through JobsNOW, we can get our economy back on track while laying the foundation for a strong and sustainable economic future. *The only occupation we are seeking to eradicate is that of campus used textbook buyer and we are doing a very good job thanks to General Counsel Speas and his lovely wife and textbook author, Debra Stewart.*"

- Bev Perdue (*editorial italics courtesy of the author*)

Hey, I'm Workin' Here!...Well, I'm Trying To



Source: www.whitehouse.gov

For Immediate Release March 16, 2009
The White House

**REMARKS BY THE PRESIDENT TO SMALL BUSINESS OWNERS,
COMMUNITY LENDERS AND MEMBERS OF CONGRESS**

Small Businesses are the heart of the American economy. They're responsible for half of all private sector jobs -- and they create roughly 70 percent of all new jobs in the past decade. So Small Businesses are not only job generators, they're also at the heart of the American Dream. After all, these are businesses born in family meetings around kitchen tables. They're born when a worker takes a chance on her desire to be her own boss. They're born when a part-time inventor becomes a full-time entrepreneur, or when somebody sees a product that could be better or a service that could be smarter, and they think, "Well, why not me? Let me try it. Let me take my shot."

Well, I want to say to John and to every American running a Small Business or hoping to run a Small Business one day: You deserve a chance. America needs you to have that chance. And as President, I will continue to do everything in my power to ensure that you have the opportunity to contribute to your community, to our economy, and to the future of the United States of America.

But I think Mr. Liddy and certainly everybody involved needs to understand this is not just a matter of dollars and cents. It's about our fundamental values. All across the country, there are people who are working hard and meeting their responsibilities every day, without the benefit of government bailouts or multi-million dollar bonuses.

You've got a bunch of Small Business people here who are struggling just to keep their credit line open -- that they are foregoing pay, as one of our entrepreneurs talked about, they are in some cases mortgaging their homes, and doing a whole host of things just in order to keep things afloat. All they ask is that everyone, from Main Street to Wall Street to Washington, play by the same rules. And that is an ethic that we have to demand.

http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-to-small-business-owners/



Creating Jobs

President Obama's first priority in confronting the economic crisis is to put Americans back to work. The American Recovery and Reinvestment Plan signed by the President will spur job creation while making long-term investments in health care, education, energy and infrastructure. The recovery plan will save or create about 3.5 million jobs while investing in priorities that create sustainable economic growth for the future.

Keeping Americans in Their Homes

Millions of hard-working, responsible Families are at risk of losing their homes as home prices fall and jobs are threatened.

<http://www.whitehouse.gov/issues/economy>

Helping Small Businesses

The Obama Administration is committed to using all of our available tools to help small businesses access capital, create jobs and support a durable economic recovery.

http://www.whitehouse.gov/assets/documents/small_business_final.pdf

Let me tell you - so long as I have the privilege of serving as your President, I'll never stop fighting for you. I'll never stop fighting to bring jobs back to Elyria.

President Barack Obama

That's why I'm calling on Congress to pass a jobs bill to put more Americans to work rebuilding roads and railways, to provide tax breaks to small businesses for hiring people, and to offer families an incentive to make their homes energy efficient, saving them money while creating jobs.

President Barack Obama

I ran for this office to rebuild our economy so it works not just for a fortunate few, but for hardworking people in this country. To create good jobs that can support a family.

President Barack Obama

Would it be presumptuous of me to wait by the phone?

Chalene Mudd, 35, of Elyria told the president she got no official response from government agencies when her son, 3, suffered from lead poisoning caused by lead-based paint in her home.

"Well, guess what?" Obama answered. "I guarantee you that somebody from the EPA is going to call you in about — in about five minutes."

"Before you sit down, there's going to be a phone call from the EPA," the president said as the crowd roared.

<http://www.news-herald.com/articles/2010/01/23/news/nh1986886.txt>



"One Job Lost is One Job Too Many, and It's Still Too Much Pain"

Posted by Jesse Lee on October 02, 2009 at 01:41 PM EST



Vice President Joe Biden holds a Middle Class Task Force meeting on the Economy in the Roosevelt room, Friday, October 2, 2009. Also in attendance were Christy Romer, Larry Summers, Peter Orzag, Terrell McSweeney and Jared Bernstein. Official White House Photo by David Lienemann

This morning, the Vice President discussed the latest unemployment figures, making clear that although things are not on the catastrophic path they were on when the President took office, there will be no rest or celebration until we are creating jobs at a pace to recover what we've lost. In a short address, Vice President Biden outlined the steps the administration is taking to ensure economic stability for Americans:

We are working hard on every front to turn this economy around. And as bad as things are, they would be far worse without the recovery plan, or these other efforts. That's why we've worked hard to accelerate the recovery spending, getting money out the door on schedule; and that's why we announced yesterday nine ambitious goals for the Recovery Act to perform between now and December 31st.

Today's tough news is a reminder though that -- as if anybody would need it -- how critical this work is in making the Recovery Act work and why. As I told the Cabinet assembled yesterday, those efforts need to be redoubled in the weeks ahead. Let me be clear about one thing: Today's bad news does not change my confidence in the fact that we are going to recover. We will be producing jobs. The American economy and the job engine is going to be created and moving once again.

http://www.whitehouse.gov/blog/One_Job_Lost_is_One_Job_Too_Many_and_Its_Still_Too_Much_Pain

The American Recovery and Reinvestment Act of 2009: Saving and Creating Jobs and Reforming Education, March 7, 2009



Spend funds quickly to save and create jobs. ARRA funds will be distributed quickly to states, local educational agencies and other entities in order to avert layoffs, create and save jobs and improve student achievement. States and LEAs in turn are urged to move rapidly to develop plans for using funds, consistent with the law's reporting and accountability requirements, and to promptly begin spending funds to help drive the nation's economic recovery.

<http://www.ed.gov/print/policy/gen/leg/recovery/implementation.html>



Jobs for Main Street Act of 2010

On December 16th, the House passed the Jobs for Main Street Act to create or save jobs here at home with targeted investments (\$75 billion) for highways and transit, school renovation, hiring teachers, police, and firefighters, small business, job training and affordable housing – key drivers of economic growth that have the most bang for the buck. These investments are fully paid for by redirecting TARP funds from Wall Street to Main Street.



“*The U.S. Small Business Administration* (SBA) was created in 1953 as an independent agency of the federal government to aid, counsel, assist and protect the interests of small business concerns, to preserve free competitive enterprise and to maintain and strengthen the overall economy of our nation. We recognize that Small Business is critical to our economic recovery and strength, to building America's future, and to helping the United States compete in today's global marketplace. The SBA helps Americans start, build and grow businesses.”

<http://www.sba.gov/aboutsba/index.html> 1/2/2010

2008 Republican Platform on My Business



Small Business: the Engine of Job Growth

We proudly call ourselves the party of small business because small businesses are where national prosperity begins. Small businesses such as Main Street retailers, entrepreneurs, independent contractors, and direct sellers create most of the country's new jobs and have been the primary means of economic advancement by women and minorities.

Eight years ago, when Democrats controlled the Executive Branch, small business faced a hostile regulatory agenda, from OSHA's ergonomics standards and attempts to intrude into the homes of telecommuting employees to IRS discrimination against independent contractors. Republicans turned back those threats, along with much of the onerous taxation that limited the growth of small businesses. We reduced their marginal tax rates, quadrupled the limit on their expensing of investments, and phased out the death tax on family owned small businesses and family farms. We enacted Health Savings Accounts to help small business owners secure health insurance for themselves and their employees. All those gains are jeopardized if Democrats gain unfettered power once again.

Republicans will advance a multi-pronged plan to support small business and grow good-paying jobs:

- Through the energy agenda laid out elsewhere in this platform, we will attack the rise in energy costs that is making it so difficult for entrepreneurs to compete.
- Our tax reduction and tax simplification agenda will allow businesses to focus on producing and selling their products and services – not on paying taxes.
- Our plan to return control of health care to patients and providers will benefit small business employers and employees alike.
- Our determination to vigorously open foreign markets to American products is an opportunity for many small businesses to grow larger in the global economy.
- Our approach to regulation – basing it on sound science to achieve goals that are technically feasible – will protect against job-killing intrusions into small businesses.
- Our commitment to legal reform means protecting small businesses from the effects of frivolous lawsuits.

Using history as our guide, we look to innovative entrepreneurs for the ingenuity and daring that can give us the next generation of technological progress. The advances our country needs, in everything from health care to energy to environmental protection, are most likely to come from the men and women of small business.

Bev Perdue, The Jobs Governor of North Carolina



*"With state agencies, local governments, business leaders and citizens working together we will create new jobs, put people back to work, and train our workers for success. Through JobsNOW, we can get our economy back on track while laying the foundation for a strong and sustainable economic future."
- Bev Perdue*

"The number one priority for this state and for all of our people is to keep jobs and to grow jobs in North Carolina," Perdue said. "I am and will continue to be known as the 'jobs governor,' not the education governor."

Keynote speaker Bev Perdue, governor of North Carolina, addressing the Greensboro Partnership 2010 Annual Dinner.



"With state agencies, local governments, business leaders and citizens working together we will create new jobs, put people back to work, and train our workers for success. Through JobsNOW, we can get our economy back on track while laying the foundation for a strong and sustainable economic future."

- *Bev Perdue*

Small Business Families to Receive Deference by State

N.C.G.S. § 143-48. State policy; cooperation in promoting the use of small contractors, minority contractors, physically handicapped contractors, and women contractors; purpose; required annual reports.

a) Policy. – It is the policy of this State to encourage and promote the use of small contractors, minority contractors, physically handicapped contractors, and women contractors in State purchasing of goods and services. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage the use of small contractors, minority contractors, physically handicapped contractors, and women contractors in achieving the purpose of this Article, which is to provide for the effective and economical acquisition, management and disposition of goods and services by and through the Department of Administration.

"The number one priority for this state and for all of our people is to keep jobs and to grow jobs in North Carolina," Perdue said. "I am and will continue to be known as the 'jobs governor,' not the education governor, although it breaks my heart."

- *Bev Perdue*

"Jobs, jobs and more jobs have to define every day of work for me."

- *Bev Perdue*

"We will focus ... on reform. We will crack down on corruption, strengthen the ethics, and find waste, fraud and abuse."

- *Bev Perdue*



Small Businesses are our chief generators of new jobs and business innovation. As North Carolina's next Governor, Bev will make sure that targeted pro-Small Business policies are a centerpiece of our state's economic development strategy by cutting taxes on Small Businesses and on entrepreneurs who develop breakthrough products or businesses.

Bev Perdue's Small Business First Approach - 2/29/2008

The Small Business sector is a key policy target for such adjustments because it has emerged in recent decades as the chief generator of new jobs and business innovation. As our next Governor, Bev Perdue will make sure that this targeted pro-Small Business approach is a centerpiece of our state's economic development strategy.

96% of all businesses in North Carolina have 100 employees or less and 77% have 10 employees or less. While our "Mom and Pop" Main Street businesses have long been the lifeblood of our smaller communities, fledgling start-up ventures – particularly those of women and minorities – increasingly represent the "new faces of Small Business" in our state.

Create jobs: Creating and retaining jobs will be her focus for the next three years, Perdue said. She plans to propose a tax credit for homegrown small business and wishes to expand a business assistance program that assists with credit, advice and salaries.

Many small businesses struggle for years simply to survive, and they need the legal protections provided by incorporation. Taxing the first dollar of their profits at the highest corporate rate does not send the right message about their importance to our economy and way of life in North Carolina. 96% of all businesses in North Carolina have 100 employees or less and 77% have 10 employees or less. While our "Mom and Pop" Main Street businesses have long been the lifeblood of our smaller communities, fledgling start-up ventures – particularly those of women and minorities – increasingly represent the "new faces of small business" in our state.

**I created my job. I created my Small Business.
It is unlawful. It is immoral. It is certainly unethical to destroy another man's job.**
Alan Rosenthal

Walter Dalton, Lieutenant Governor



"During this economic crisis, we've watched as big business received massive bailouts, but not enough attention has been paid to Small Businesses, which really are the foundation of our economy," Dalton said. "As I have talked with Small Business owners in Roanoke Rapids and around the state, I have heard loud and clear that more help is needed. I hope the State can help get capital flowing to these Small Businesses through my Small Business Assistance Fund, so that we can keep North Carolinians working."

<http://www.ltgov.state.nc.us/News/PressReleaseDetail.aspx?newsItemid=34>

"Small Business is an integral part of North Carolina's communities and its economy. In the last 10 years, Small Businesses have accounted for 70 percent of the country's new jobs, and 86 percent of businesses in North Carolina have fewer than 100 employees."

<http://www.ltgov.state.nc.us/News/PressReleaseDetail.aspx?newsItemid=34>



[The North Carolina Chamber's Agenda to Strengthen our Economy & Create Jobs](#)

The North Carolina Chamber is focused on creating jobs and strengthening and growing North Carolina's economy. With direct input from employers of all sizes and sectors across all parts of our state, our Chamber is ready to be a proactive, positive force for growth and transformation.

The North Carolina Chamber's Legislative Agenda encompasses three main priority areas that we believe represent the pillars of a strong economy and provide the best opportunities for North Carolinians now and in the future:

- 1) Education and workforce development
- 2) Infrastructure
- 3) Competitiveness

Together, we will position North Carolina to lead in job creation on the other side of economic recovery. Together, we are shaping North Carolina's future.

The North Carolina Chamber will oppose new laws that increase the cost-of-doing-business and threaten jobs, particularly during this time of economic uncertainty and unprecedented job loss. Our state Chamber will work to prevent proposals that would do irreparable harm to North Carolina's business climate, such as union-backed "card check" legislation, from becoming law.

<http://www.ncchamber.net/mx/hm.asp?id=...index&HitCount=10&hits=31+15d+198+1b1+20e+2c3+2dc+33a+3ee+3f9+&hc=54&req=jobs>

A number of months back, I got a call from our local Chamber of Commerce. They asked if I might have a job available for a young, single mother who needed, among other things, to pay off her school loan. There was no job available in her field of study. This young mom came well referred and I wanted to hire her. I would have spent about \$4000 for equipment and all one needs to do this job. She would have been able to help with the current workload and help to expand my Small Business. Then the NCCCS ban was put in place. After promising her a job, I had to call her to tell her that I could not provide the income she and her child so desperately need.

Alan Rosenthal

The Used Textbook Resale Market & The Law[©]

Multi-State Comprehensive Edition

Essential Reading

Chapter 33

1. OP-ED by Vice President Joe Biden in USA Today
2. Bev Perdue's Small Business First Approach
3. Erskine Bowles Quotes & References

OP-ED by Vice President Joe Biden in USA Today

The White House
Office of the Vice President
For Immediate Release
February 17, 2010

OP-ED by Vice President Joe Biden in Today's USA Today

The following op-ed, written by Vice President Joe Biden, was published in today's USA
Assessing the Recovery Act: 'The best is yet to come' By Joe Biden

A year ago today, President Obama signed the Recovery Act into law. Time and again I am asked, "How can you say that the Recovery Act has worked when the unemployment rate is so much higher today than it was when the act was signed?" It's a fair question — and one worth answering on this anniversary day.

First, we think the Recovery Act is working because of the progress we've made in slowing job loss. In the three months before the act took effect, America lost 750,000 jobs a month. In the last three months, we've lost about 35,000 jobs a month. That's progress — not good enough, not where we need to be, but progress. And most economists agree that that progress is thanks in a very large part to the Recovery Act.

Independent economists believe that, thanks to the Recovery Act, about 2 million people are on the job today who would not have work otherwise. Is that good enough in an economy that has lost more than 8 million jobs? Of course not. But it is a lot better than the alternative.

Second, the Recovery Act is working because it is helping hard-hit families get through tough economic times. If you get a paycheck, you got a tax cut from the Recovery Act, which lowered the amount of withholding for over 95% of working Americans. If you are a senior citizen, or a veteran, you got a \$250 check to help pay your bills. If you are unemployed, your benefits were extended thanks to the Recovery Act. In fact, these tax cuts and direct aid to individuals are the largest parts of the Recovery Act — more than half of all Recovery Act spending has gone to cut taxes or provide relief to seniors, veterans and the unemployed.

Look around for results

Third, we know that the Recovery Act is working because we can see the results all around us. Thousands of road projects are not only creating jobs — they are making for faster, safer transportation. Superfund sites are being cleaned up and commuter rail tracks are being repaired. Work is underway on water, weatherization and construction projects — creating jobs now, and making critical improvements in our nation's infrastructure for the future.

And yet, to me, the most exciting thing about the Recovery Act is not what we've done, but what lies ahead. Many Recovery Act programs that will build the groundwork for the economy of the 21st century will be implemented in the next few months. Broadband access for small and rural communities. New factories where electric cars and clean fuel cells will be made. Wind farms, solar panels — and the facilities to construct them. New health technologies and smarter electrical power grids will be creating jobs this year thanks to the Recovery Act. Truly, the best is yet to come.

'A long way to go'

We've gotten the act moving ahead of schedule, and most projects are coming in under budget. A tough, independent group of inspectors general is on the lookout for fraud, and we've killed scores of projects that don't pass muster. Your tax dollars are being used wisely and quickly to turn the economy around.

We're on track to meet or beat our goal of saving or creating 3.5 million jobs by the end of this year. Work on road, rail, bridge, airport and other infrastructure projects will expand dramatically as warm weather returns. Projects that needed final planning in 2009 will see construction in 2010.

Americans know this downturn isn't over yet — we have a long way to go before we are over the economic chasm left by the Great Recession. Year Two of the Recovery Act will build on the successes of Year One, continuing to generate jobs while seeding the transformative investments needed to ensure that our economy remains the world's strongest.

Joe Biden is vice president of the United States.

<http://www.whitehouse.gov/the-press-office/op-ed-vice-president-joe-biden-todays-usa-today>



Bev Perdue's Small Business First Approach

Bev Perdue is proud of North Carolina's continued strong position in state economic development rankings. In 2007, for the sixth out of the last seven years, North Carolina finished No. 1 nationally in business climate for relocating and expanding businesses. North Carolina is now ranked No. 3 nationally in the key growth sector of biotechnology. And in 2007, North Carolina achieved the highest approval ranking in the National Federation of Independent Businesses' survey of its small business members throughout the 50 states.

Yet Bev knows that North Carolina must increasingly compete in the global and ever-changing economy of the 21st century. That means we must have the best educated and healthiest workforce possible – a goal which will require continual improvement in our public education system and significant reforms to make health care more available and affordable for our working families. North Carolina's economy must also diversify and become more highly entrepreneurial. Bev has demonstrated her leadership on this front by taking such actions as:

- Developing the state's first Green Business Fund to stimulate environmentally-oriented industries;
- Organizing North Carolina corporate CEOs and retired military commanders to collaborate through the new North Carolina Military Foundation to establish North Carolina as a national hub for business activity related to defense and homeland security, and aerospace concerns; and
- Proposing a Main Street Solutions initiative to focus on the economic revitalization of our smaller cities and towns.

Bev also recognizes that the state's tax structure is an important underlying factor in economic development. She understands that a smart approach to business taxation requires balancing multiple concerns about our tax structure.

It is important for North Carolina to maintain an overall tax burden that is highly competitive vis-à-vis other states and that avoids placing a disincentive on business activity here. The good news is that the business-backed Council on State Taxation (COST) has ranked North Carolina's business tax burden as one of the most competitive in the nation, especially in light of our relatively low property tax rates.

But the specific tax rates on corporations and individuals matter – and must be subject to periodic reevaluation and adjustment if we hope to send the right competitive signals to businesses we want to attract or retain. At the same time, revenue also matters. A state's tax structure must always raise enough revenue to fund quality education, an adequate health care safety net, and other services vital to businesses and their employees and to keep our state's economy ahead in today's competitive global race.

One traditional view holds that a state's economic development strategy should concentrate simply on lowering business tax rates, even at the expense of maintaining current levels of revenue available for education and other social infrastructure. The John Locke Foundation and a few others still express the most extreme version of this view, advocating total elimination of the state's corporate income tax – a move that could create a hole in the state's budget as large as \$1.7 billion.[1]

As a lawmaker, Bev explored these issues in the mid-1990's as the General Assembly considered steps it could take to render the state more attractive to businesses contemplating expansions and relocations here.[2] She helped sponsor bills that offered various strategies for reducing corporate taxes, including one that proposed a significant phased-in reduction.[3]

But from that experience, Bev took away a strong belief that the state should make targeted adjustments to its corporate tax structure and take other actions to enhance its economic competitiveness in particular spheres, rather than attempt drastic reductions. The small business sector is a key policy target for such adjustments because it has emerged in recent decades as the chief generator of new jobs and business innovation. As our next Governor, Bev Perdue will make sure that this targeted pro-small business approach is a centerpiece of our state's economic development strategy.

Below are two examples of the targeted approach that Bev will pursue as North Carolina's next Governor:

1. A Bottom-Up Approach for Small Business Tax Relief

North Carolina's single corporate tax rate of 6.9% applies to the very first dollar of income earned by a business. Yet our biggest corporations often gain significant tax relief in multiple ways – ranging from their status as multi-state and even multi-national organizations to their greater eligibility for tax incentives and their overall financial sophistication. As a result, their effective tax rates can be far lower than 6.9%.

Our smallest corporate entities, however, have few, if any, such advantages. That makes their effective rate much closer to 6.9% on every dollar of income they earn –often much higher than most bigger and more profitable businesses.

Bev Perdue believes that North Carolina should change the way our corporate tax rate applies to our smaller businesses. As our next Governor, Bev will institute a “bottom-up” approach for small business tax relief.

Many small businesses struggle for years simply to survive, and they need the legal protections provided by incorporation. Taxing the first dollar of their profits at the highest corporate rate does not send the right message about their importance to our economy and way of life in North Carolina. 96% of all businesses in North Carolina have 100 employees or less and 77% have 10 employees or less. While our “Mom and Pop” Main Street businesses have long been the lifeblood of our smaller communities, fledgling start-up ventures – particularly those of women and minorities – increasingly represent the “new faces of small business” in our state.[4]

Bev believes a good starting point for change is the small-business tax reform plan first developed in the state Senate during the 2004 session. Under that plan, companies that make a net profit of less than \$100,000 would be able to exempt their first \$25,000 of net income from the 6.9% rate. Companies making between \$100,000-200,000 would be able to exempt the first \$15,000. The estimated budgetary cost of such a targeted exemption plan was estimated to be \$18 million.[5]

2. Providing a Leg Up to North Carolina's High Technology Start-Ups

A bottom-up tax relief approach will signal that North Carolina recognizes the importance of developing its entrepreneurial economy. But Bev also believes we should even more specifically encourage successful high-tech entrepreneurial risk-taking that results in new North Carolina jobs. We especially need to target assistance to such promising ventures in their infancy when they may be earning no profit and thus have no tax liability. Such assistance needs to include business activity conducted through partnerships and “Sub Chapter S” entities.

Over the last two years, the state has been developing this kind of targeted initiative to boost high-technology ventures across North Carolina.

The One North Carolina Small Business Fund currently provides an automatic matching grant to North Carolina start-up companies that win Phase I Small Business Innovative Research (SBIR) grants or a Small Business Technology Transfer Research (STTR) grants from the federal government.

The federal SBIR and STTR programs award grants to companies to develop marketable technologies that are of special interest to the federal government. Eleven federal agencies participate – ranging from the Department of Defense to the Department of Agriculture and the National Science Foundation. Each agency, by law, must set aside 2.5% of its annual budget for SBIR-STTR awards. While SBIR grants go exclusively to private sector entities, STTR grants target business-university partnerships. The SBIR-STTR grant process is highly competitive and known for its very rigorous merit-based standards.

Phase I SBIR-STTR grants typically provide crucial funding of around \$100,000 – the kind “seed” of funding so many infant high-technology enterprises need to start their development. The One NC Small Business Fund provides a state matching grant that in effect doubles the amount of seed capital available for North Carolina companies that win federal SBIR-STTR grants. The goal, as the Triangle Business Journal has put it, “is to give North Carolina a competitive edge over those in other states that are vying for the same pot of federal dollars.”[6] North Carolina entrepreneurs have especially noted that the state’s matching Phase I support gives them a clear advantage when vying for the larger Phase II SBIR-STTR grants that are valued at up to \$750,000.[7]

The Business Journal has also observed that North Carolina start-ups are “flooding” to the state’s new matching grant initiative. In 2006, all of the fund’s initial \$1 million appropriation was awarded and disbursed to North Carolina companies. In 2007, all of its expanded \$5 million in annual funding was similarly accounted for.[8]

Underscoring the program’s success, Phase 1 SBIR grants from the federal government to North Carolina companies rose to \$12 million in 2006, up 29% from 2005.

The program has made, to date, 120 grant awards totaling \$8.2 million to North Carolina small businesses. The program was expanded this year to reimburse fledgling North Carolina firms for up to \$3,000 of the cost to prepare competitive proposals – boosting the quality of North Carolina’s applications and increasing our state’s chances to securing a bigger slice of the federal government’s national research dollars.

Bev is a strong supporter of the state’s new SBIR matching-grant initiative. And as North Carolina’s next Governor, Bev will champion a phased-in expansion of the One North Carolina Small Business Fund to \$10 million a year.

[1] John Locke Foundation, “Agenda 2006: A Candidate’s Guide to Key Issues in North Carolina Public Policy”

[2] *E.g.*, from the 1995 session, Senate Bill 12, Senate Bill 69, Senate Bill 79, Senate Bill 826, Senate Bill 8 (1995E2) and House Bill 18 (1995E2).

[3] *See, e.g.*, Senate Bill 826 (phase corporate rate to 1.75%); Senate Bill 12 (phase corp rate to 7%).

[4] *See News and Observer*, “New Faces of Small Business: Minorities and Women Fill an Entrepreneurial Void.” (June 11, 2000).

[5] *Associated Press*, “Senate Democrats Seeking Corporate Income Tax Break in Budget” (June 14, 2004). The Senate plan was a somewhat scaled-down version of a small-business tax reduction plan proposed by Governor Easley in his 2004 budget.

[6] Triangle Business Journal, “State’s Small Business Bureaus Match Has Companies Queuing Up,” (February 23, 2007).

[7] Triangle Business Journal, “Feds Pay, State Pays, Startups Win,” (September 30, 2005).

[8] Triangle Business Journal, “State’s Small Business Bureaus Match Has Companies Queuing Up,” (February 23, 2007).

Erskine Bowles Quotes and References

"I support the bipartisan "Job Protection Act of 2003" because we need smart tax incentives **to keep jobs in America**. It provides direct tax incentives to American manufacturers to maintain and increase their production in the US. It is entirely revenue neutral because it is designed to replace existing business tax incentives that were ruled illegal by the WTO [[WTO, here, is tantamount to our own NCCCS](#)]. It would provide companies that employ 100 percent domestic production with up to a 10 percent reduction of the top current corporate tax rate."

Source: Bowles Jobs Plan Jul 5, 2004

"Erskine will fight to close the gender gap in pay, expand opportunities for women's economic advancement, and fight for their economic self-sufficiency. As head of the Small Business Administration, Erskine dramatically increased loans to minority and women-owned businesses. **In order to help women re-entering the workforce, Erskine will support additional funding targeted to women in business.**"

Source: Campaign website, www.bowlesforsenate.com, "Issues" Oct 15, 2004

BOWLES HAS PROVEN HE UNDERSTANDS THE NEEDS OF NC'S SMALL BUSINESSES
"Bowles Is A Successful Small Businessman. Before turning to a career in public service, Erskine Bowles built two successful financial services companies. Bowles has also served on the board of directors of Krispy Kreme, and the Golden LEAF Foundation, which provides resources to economically distressed communities in order to **help them attract and keep jobs**. After serving as President Clinton's Deputy Chief of Staff, Bowles returned to North Carolina and started Carousel Capital, a merchant bank that invests in midsize Southeastern companies."

Bowles for Senate Web Page, About Erskine Bowles, Business-North Carolina, January 1998

"We are extremely grateful that House members made the very difficult decision to recommend a modest revenue package to help balance the State budget and thereby lessen deep cuts to education and other critical State services. **The revenue package added to the House budget today would restore about \$75 million of the cuts** that had previously been assigned to the University in the first year of the biennium. As a result, our proposed net funding reduction for 2009-10 under the House plan would drop from \$338 million (11.2%) to \$263 million (8.7%). Across our 17 campuses, **this partial restoration of funding would save 600 jobs and enable us to teach 1,300 more class sections**, helping our students get the courses they need to graduate on time. This vital funding would be applied directly to the University's academic core.

At Appalachian State University, for example, these additional dollars would save about 40 jobs—more than half of them faculty—and restore 175 class sections. Western Carolina would save another 30 jobs in an economically distressed region of the state. Elsewhere, NC Central University would save more than 20 faculty and staff jobs and 75 class sections; East Carolina University would save 75 jobs, including nursing faculty; and UNC Wilmington would save another 50 jobs and 120 course sections. Restored funds would also help soften the impact of budget cuts on critical academic and counseling services and campus safety.

June 11, 2009, UNC President Erskine Bowles statement on the draft 2009-11 state budget.

Section F

Final Thoughts

Chapter 34

Until We Amend the U.S. Constitution, Please Leave My American Small Business Alone



Source: www.loc.gov

It is abhorrent that the community colleges and universities are being bolstered and promoted by American taxpayer funds (\$78.2 billion, 2011) through the American Recovery and Reinvestment Act of 2009 as well as other initiatives which are saving their jobs, while they simultaneously attack another industry and the Small Business Families who eke out a living within it.

Small Businesses have been called the “engine” of the American economy, without which there is no economic recovery. Unlawfully, state governments and agencies are favoring one set of businesses over another. In this case, state officials are favoring international, mega-conglomerate, publishing oligopolies over the life blood of the nation, America’s Small Business Families, their employees and economic spheres. The State of North Carolina (and others) is creating unemployment and misery by unlawfully and unconstitutionally eradicating a specific occupation.

In an interesting declaration dated July 4, 1776, John Hancock added a notable thought, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights. -- That among these are Life, Liberty and the pursuit of Happiness.” For many of us, these lofty ideals are encapsulated in our work.

Work is an entrepreneur’s identity. We only know how to work. Work is our Declaration of Independence. Our responsibility is to maintain our work *constitution* and foster that in others. Our work defines us. It sustains us. It provides for all we need: financially, socially, and spiritually. Our work provides our food and our shelter. Our work allows us to give to the less fortunate. Working is our happiness, providing for what we need and want. These unconstitutional, unconscionable actions trample our pursuit of happiness by trampling on our liberty to make a living. Happiness and Liberty are two connected components to Life. These unconstitutional actions are antithetical to the Declaration of Independence and to the American Way.

Whether intended or not, numerous individuals and organizations, such as NCCCS, UNC, TAA, AAP, the IMCPOs, state legislators and other officials have partnered (sometimes colluded and conspired) to keep the cost of textbooks to students at the highest possible level and to systematically destroy the used book market and American Small Business Families. It is these Small Business Families who work hard everyday on behalf of students and the environment to keep textbook costs down and books out of the landfill.

The conspirators accomplish this by violating federal and state laws which prohibit anti-competitive activities. Some of these acts are done maliciously and for profit. To be fair, some of the decisions made were under the influence of ignorance. In this report, I have outlined numerous criminal, civil and regulatory offenses by State actors, public officials and other anti-competitive profiteering organizations and individuals. These actions have destroyed the businesses of over seven hundred other American Small Business Families all over the nation.

I am calling for a change. I am calling for all of the unconstitutional bans on this industry to be lifted immediately. I am calling for the cessation of the practice of lawmakers taking bribes (contributions) for the purpose of destroying the lives of their constituents. The Florida matter was clearly just that. The textbook resale industry informed Flores, et al, of the consequences to Florida's Small Businesses. Yet, for 30 pieces of silver (\$107,000), Flores, Atwater and Crist extinguished the incomes of citizens whom they are sworn to protect. D.A.G. Speas favored the same IMCPOs over North Carolina Small Business Families when he wrote the 1990 Speas Opinion, extinguishing the incomes of citizens whom he was and is sworn to protect.

Immediately following the more famous part of Hancock's declaration is this enjoiner:

"That to secure these rights, Governments are instituted among Men, deriving their just powers from the *consent of the governed*, --That *whenever any Form of Government becomes destructive* of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."

I'm not looking for a coup or an overthrow. I won't have time for that if I'm busy working. I'd rather be busy working. The American Small Business Families who have had their lives destroyed by these government actors would rather be busy working...as our current President and his predecessor has called us to do. Our jobs are our Charters of Freedom.

We can never undo the harm done by these lawmakers and rule setters. Indeed, the industry will take years to recover from the decades of Lanham Act violations. So be it. We can, however, affect change that will allow American Small Business Families to, once again, constitutionally prosper. Unlike others who come to Capitol Hill and State capitols with their palms up, what I am seeking is at no cost to the federal or state treasuries. Essentially, I am seeking an executive order, declaration or resolution recognizing and honoring this industry and with language that forces these economic predators to, simply, FOLLOW THE LAW.

Whether you are a colleague in the book buying business, a teacher who has had his or her rights unlawfully taken away, an administrator who must maintain lawful and constitutional policies or a legislator who seeks to do the right thing by supporting American Small Business Families and rejecting the lies of the Association of American Publishers and the criminal Text and Academic Authors Association, I respectfully yet firmly request your assistance to affect the following:

- ✚ Individual constituent institutions to adjust their book selling prohibitive policies to reflect adherence to federal and state law and work the book buying industry to formulate secure and mutually beneficial policies.
- ✚ Official recognition of this century-old American Small Business.
- ✚ Executive order to immediately halt the unconstitutional bans, putting American Small Business Families back to work.
- ✚ Repeal of all State unconstitutional book selling prohibitive laws and regulatory directives.
- ✚ North Carolina Community College and University of North Carolina Systems to work with the used textbook resale industry to overcome decades of defamatory and Lanham Act behavior and create a healthy and secure working environment for all concerned. NCCCS to pay for continuing education (specifically business and con law) for their general counsel.
- ✚ Remove age discrimination barriers for older adults to return to education.

The Used Textbook Resale Market & The Law[©]

Multi-State Comprehensive Edition

Essential Reading

Chapter 34

1. United States Postal Inspectors Rules Rule
2. References, Studies and Reports
3. Seven Hundred Professors Address Unnecessary Textbook Revisions
4. Association of American Publishers Report on Increased Textbook Profits

United States Postal Inspectors Rules Rule



Here is what the U.S. Postal Inspectors have to say about it.

Receipt of Unsolicited Merchandise

A company sends you a gift in the mail--a ball point pen, a key chain, a tie. But you didn't order it. What do you do? If you are the type of person this company is looking for, you may feel guilty about accepting the item without paying for it. Don't feel guilty! It's yours, and you are under no obligation to pay anything.

You, the consumer, may only legally be sent two types of merchandise through the mail without your consent or agreement:

- Free samples which are clearly and conspicuously marked as such.
- Merchandise mailed by a charitable organization that is soliciting contributions.

And in these two cases, you can consider the merchandise a gift if you wish. In all other situations, it is illegal to send merchandise to someone, unless that person has previously ordered or requested it.

These rules are codified in Title 39, United States Code, Section 3009. That section of the Postal Reorganization Act of 1970 incorporates these protections for American consumers and makes the mailing of unordered merchandise unfair methods of competition and unfair trade practices under the law.

If you do not wish to pay for unsolicited merchandise or make a donation to a charity sending such an item, you may do one of three things (in each case, by law, you have no obligation to the sender):

- If you have not opened the package, you may mark it "Return to Sender," and the Postal Service will return it with no additional postage charged to you.
- If you open the package and don't like what you find, you may throw it away.
- If you open the package and like what you find, you may keep it for free. In this instance, "finders-keepers" applies unconditionally.

Furthermore, it is illegal for a company that sends you unordered merchandise to follow the mailing with a bill or dunning communication.

If you are aware of violations of the federal law prohibiting the mailing of unordered merchandise, or if you have personally had difficulty with such items--especially if you are sent statements demanding payment for the merchandise--you should contact your local postmaster or the nearest Postal Inspector.

<https://postalinspectors.uspis.gov/investigations/MailFraud/fraudschemes/othertypes/UnsolicitedFraud.aspx>

References, Studies and Reports.

5 Tips to Help College Students Get the Most Bang For Their Used Books

2009-12-07

With textbooks costing the average student about \$900 per year, reselling used textbooks to the bookstore is a common practice to recoup some of this hefty expense. However, many students are shocked at how little they get back. The Student PIRGs offer the following tips to help students be smart consumers and get the most bang for their books.

New Report Finds That E-Textbooks Are More Expensive, Less Practical for College Students

2008-08-26

Textbook publishers' digital "e-textbooks" do not give students any relief from skyrocketing costs, according to a new report released by the Student Public Interest Research Groups (Student PIRGs). With textbooks already amounting to a \$700-\$1000 yearly expense, the report criticizes publishers for offering yet another unaffordable option.

Congress Moves to Cut Textbook Costs in Landmark Bill

2008-07-31

Marking the first major federal action to curb the skyrocketing cost of college textbooks, Congress approved legislation today that will bring down prices for millions of students.

1,000 Professors from 300 Colleges Declare Preference for Affordable Textbooks

2008-04-15

One thousand professors from over 300 colleges in all 50 states released a statement today declaring their preference for high-quality, affordable textbooks, including open textbooks, over expensive commercial textbooks.

U.S. House Passes Landmark Affordable Textbooks Legislation

2008-02-07

Marking the first major federal action to curb the increasing cost of college textbooks, the U.S. House of Representatives passed legislation on Feb. 6 that will bring down textbook prices for millions of students.

5 Ways to Save on Textbooks Now, 3 Ways to Lower Prices Long Term

2007-08-22

With the new school year quickly approaching, students will soon be slammed with the high cost of textbooks. Students have a few tools they can use right now to find cheaper books. And, there are three emerging ideas that, together, might help permanently drive down prices in the future.

Government Report Finds Textbook Costs Still Skyrocketing

2007-05-25

The Advisory Committee on Student Financial Assistance, which advises the Department of Education and Congress on student financial aid policy, has completed a yearlong report to Congress on potential solutions to the problem of skyrocketing college textbook prices.

Washington Governor Signs College Textbook Transparency Act

2007-04-21

Making Washington the first state to act in 2007 on the growing problem of college textbook prices, Governor Christine Gregoire signed a landmark measure this morning that will help lower the cost of textbooks for Washington college students. The law requires textbook publishing companies to disclose prices and change-of-edition information when marketing course materials to faculty in the state of Washington.

New Report Exposes Publishing Industry Tactics That Drive Up the Cost of College Textbooks

2007-02-08

Students are still paying too much for their textbooks, as book prices skyrocket at four times the rate of inflation, according to the new report from the Massachusetts Public Interest Research Group. The report highlights one major cause for the artificially high prices – publishers don't provide clear information about their prices to faculty.

New Report Details Latest Examples of Textbook Ripoffs

2006-10-31

A new report, released today by The Make Textbooks Affordable Campaign, presents new case studies of how the college textbook publishing industry deliberately undermines the used book market and inflates prices. Based upon surveys and interviews of bookstore managers and university faculty across the country, the report – "Required Reading: A Look at the Worst Publishing Tactics at Work" – identifies specific textbooks that employ types of publishing tactics, and illustrates how they inflate the cost of textbooks for students.

GAO Report Finds Textbook Prices Skyrocketing

2005-08-16

A new report by the United States Government Accountability Office (GAO) confirms previous research conducted by the Student Public Interest Research Groups (Student PIRGs) into textbook prices. The GAO report, requested by Congressman David Wu last year, found that textbook prices have risen at twice the rate of annual inflation over the last two decades, an average of 6 percent each year since 1987-1988, compared with overall price increases of 3 percent per year.

New Report Shows College Textbook Costs Increasing Sharply Ahead of Inflation

2005-02-01

College textbook prices have increased at nearly four times the rate of inflation for all finished goods since 1994 and textbook publishers engage in practices that artificially inflate textbook costs, according to a new study by the Student PIRGs. With textbook costs already high - an average of \$900 a year, or a fifth of tuition at a public four year university - the Student PIRGs called on publishers to stop needlessly inflating textbook costs.

Textbook Bills Pass Legislature, Head to Governor's Desk

2004-08-25

Today, the California Legislature passed two college textbook bills, AB 2477 authored by Assemblywoman Liu (D-La Canada Flintridge) and AB 2678 authored by Assemblyman Koretz (D-West Hollywood). Both bills are sponsored by the California Student Public Interest Research Group (CALPIRG), and now head to the Governor's Desk.

CALPIRG Announces Top Ten Ways Students Can Avoid Textbook Publisher Rip-offs As They Head Back to School

2004-08-19

It's that time of year: when college students head to the campus bookstore. New students are in for a big surprise once they get through the long line to the register. Many of them will pay \$900 or more, according to a survey conducted by the California Student Public Interest Research Group (CALPIRG) that found that students spent an average of \$898 on textbooks last year. Fortunately, there are simple things students can do to save money on their textbooks now, and at the same time, push for changes within the textbook publishing industry.

New Report Shows College Textbooks are "Ripoff 101"

2004-01-29

University professors and students from around the country came together today to release a new report which finds that textbook publishers engage in a number of market practices that drive up the price of textbooks for students.

Source: www.studentpirgs.org/release/news-releases/textbooks

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Seven Hundred Professors Address Unnecessary Textbook Revisions

SEVEN HUNDRED PHYSICS AND MATH PROFESSORS FROM OVER ONE HUNDRED UNIVERSITIES CALL ON THOMSON LEARNING TO STOP UNNECESSARY TEXTBOOK REVISIONS Vast Price Difference Between New and Used Books Spur Faculty Call to Action, Industry Unresponsiveness Prompts Search for Alternatives

As a prominent publisher continues to issue "new" editions of textbooks that are not significantly "new", hundreds of college physics and mathematics professors issued a joint call to action. The call to action was sparked by the latest research from the State PIRGs that found that new textbook revisions reduce the availability of used books, which are 45% cheaper than new books. With students paying an average of \$900 a year for textbooks - one-fifth of in-state tuition at a four-year university - the faculty objected to a practice that adds nothing significant to the learning experience and serves to make college costs even more burdensome for students.

The call to action, signed by over seven hundred mathematics and physics faculty at over 150 of the largest and most prestigious universities nationwide, calls on Thomson Learning to stop issuing new editions of its widely-used introductory calculus and physics books until there is significantly new content to justify a revision.

Recent reports by the State PIRGs have found that that students are paying an average of \$900 a year for textbooks, and that college textbook prices have increased four times the rate of inflation for other finished goods since 1994.

The State PIRGs' research found that one of the major ways publishers increase textbook costs is by frequently issuing new textbook editions - often with very few content changes. New editions force used textbook editions - which are an average of 45% cheaper than new textbooks - off the market. There were many extreme examples - a new copy of the 6th Campbell's Biology, published by Pearson, was found to be 97% more expensive than a used copy of the previous edition.

In addition, the research found that publishers then increase the price of a new textbook edition by an average of 12%, or twice the rate of inflation. Houghton Mifflin's Macroeconomics textbook increased in price at four times the rate of inflation between the fifth and sixth editions, issued three years apart.

Among the examples cited in the State PIRGs' research and by the faculty members were two of Thomson Learning's widely used Calculus and Physics textbooks:

- Physics for Scientists and Engineers, 6th edition (\$134.96, 2004) and 5th edition (2000).
- Calculus: Early Transcendentals, 5th edition (\$132.26, 2003) and 4th edition (1999).

In both instances, the differences between the two editions are minimal, and the differences that do exist, such as some of the new problem sets and technological tools, could have been easily provided via supplement verses an entirely new edition.

"There are of course good reasons for writing a new edition of a textbook. Three such reasons are: there is new material to be taught, there is a new understanding of how to present the material, or there is a new audience for the book. In introductory physics, the nature of the subject is such that new material almost never occurs at the level that can justify an entire new textbook, and the audience is relatively stable. This leaves only substantial educational improvements, which also don't occur that often. In my role as one of the people selecting textbooks, I have often raised this issue with publishers," said Dr. Michael Dennin, Chair of the UC Irvine Physics Department's Undergraduate Committee, and one of the faculty members leading the call to action.

While publishers themselves have been careful not to admit that they issue new editions with the intent of defeating the used book market, many academics and industry observers have all but concluded this motive.

In an opinion editorial published in the New York Times, Erwin V. Cohen, a former publishing industry executive for the Academic Press wrote, "Publishers release new editions of successful textbooks every few years - not to improve content, although that may be a byproduct - but to discourage the sales of used books by making them seem obsolete."

"Many of them admit that one of their main reasons for publishing new editions is to counteract losses to the used book market," said Dr. Dennin.

The call to action includes the following requests to Thomson Learning:

- Continue to publish the current edition of these textbooks until there has been significantly new content in these fields, applications of these fields, and/or the teaching of these fields that would justify an update.
- For the foreseeable future, offer new problem sets, tutorials and other ancillary teaching aids as an optional supplement that faculty may choose to order.
- Ensure that company sales representatives distribute materials that include all of the company's textbooks and related instructional materials, prices, and the length of time the company intends to keep these products on the market.

To date, textbook publishers - including Thomson Learning - have refused to acknowledge their role in this problem, despite large amounts of correspondence between students, faculty members, and publishers. All of the current correspondence can be found at www.MakeTextbooksAffordable.org.

Many professors, frustrated by the publishers' unresponsiveness, are switching publishers or attempting other alternatives in an effort to reduce textbook prices for their students:

- UC Santa Cruz Physics professor Dr. Dave Dorfan, frustrated with the physics textbooks he was using, convinced Wiley to reprint a 1980 version of a physics textbook that he says is just as good - and much cheaper - than current books on the market. The book - sold in two volumes - sells for \$78.
- Duke University professor Dr. Robert Brown is writing his own physics textbook that he plans to post online for free.
- Texas A&M professor Wayne Saslow wrote an introductory physics book, and insisted to his publisher (Academic) that it be published without color. The book sells for under \$70.
- UCLA Math professor Dr. Ronald Miech negotiated a 20% cut in the price of Thomson Learning introductory Calculus books.

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The State PIRGs are non-profit, non-partisan public interest advocacy organizations with campus chapters on nearly 100 colleges and universities around the country

April 6, 2004

Ronald Schlosser, CEO
Thomson Learning, Inc.
290 Harbor Drive
Stamford, CT 06902

Dear Mr. Schlosser,

We, the undersigned mathematics faculty, are writing to express our concern with the cost of your undergraduate mathematics textbook and to respectfully request that your company take some simple steps to alleviate this problem.

As you know, the cost of college textbooks has risen considerably in the last few years. Recent surveys done by the University of California (UC), the California Student Public Interest Research Group (CALPIRG), and the Oregon Student Public Interest Research Group (OSPIRG) show that a student now pays an average of \$900 a year for textbooks. In contrast, a 1997 UC study found that students paid on average \$642 a year during the 1996-1997 academic year. Compounded with the overall recent increases in tuition and other college costs, we are increasingly concerned for our students' ability to either pay for college or to fully take advantage of all of the educational opportunities available to them while at college.

Naturally, we would like to ensure that textbooks are priced as fairly as possible, and we are concerned with the cost of your introductory calculus textbook - Calculus: Early Transcendentals, Edition Five. We are generally satisfied with the actual content of the text. We are concerned, however, with a number of items:

1. The previous edition of the book (Edition Four) was out on the market for only three years before you produced the most current edition (Edition Five), in 2003. While textbook editions must be updated periodically to reflect new teaching methods and so forth, we do not believe that the content of this particular update justified an entirely new edition. This is especially the case when one takes into account the additional expense new editions create for many students and the additional time faculty members must take to revise syllabi and other instructional materials to accommodate the changes to the text.

2. Your website offers the book for \$122.36 in the United States, but the equivalent of \$59.36 (33.29 pounds) in England and \$96.78 (\$125.95 Canadian) in Canada. We see no reasonable explanation for such a pricing disparity.

We believe that you would be sympathetic to these issues, and so, as a remedy, we are asking your company to commit to the following changes in your publishing plan for the aforementioned textbook:

1. Continue to publish the current edition of this textbook until there has been significantly new content in the field of calculus, applications of calculus, and/or the teaching of calculus that would justify an update.
2. Establish a more transparent and fair pricing scheme so that students in America are getting charged the same amount as their counterparts in other countries.
3. Ensure that your sales materials and sales representatives disclose to faculty all of products, their prices, and the length of time you intend to keep on the market the current editions of their textbooks and related instructional materials.
4. In addition to the hardcover version, produce an online version of Calculus: Early Transcendentals, and pass the cost savings on to students.

College costs have risen dramatically in the past year. Subsequently, we believe that quick action must be taken to reduce students' costs in as many ways as reasonably possible. Therefore, we request your urgent action on this matter.

Given the urgency of the matter, we will be urging our colleagues to base our departments' future textbook orders on both the quality of the text and on the fairness of the text's price. We will also urge our colleagues to give strong consideration to the industry member who produces the first online version of this textbook. Given the high quality of your particular text, we hope that we can continue a relationship with your company for many years to come.

Sincerely,

Ralph Abraham, University of California Santa Cruz
Bernardo Abrego, California State University Northridge

The full list of 700 signatories can be found at www.alansbookservice.com

April 7, 2005

Ronald Schlosser, CEO
Thomson Learning, Inc.
290 Harbor Drive
Stamford, CT 06902

Dear Mr. Schlosser

We, the undersigned physics faculty, are writing to express our concern with the cost of your undergraduate physics textbook and to respectfully request that your company take some simple steps to alleviate this problem.

As you know, the cost of college textbooks has risen considerably in the last few years. A recent survey by the student Public Interest Research Groups found that students are now paying an average of \$900 a year for textbooks, which amounts to a fifth of in-state tuition at a four-year university and half of tuition at a community college. With other college costs rising as well, we are concerned about students' ability to either pay for college or to fully take advantage of all of the educational opportunities available to them while at college.

Naturally, we would like to ensure that textbooks are priced as fairly as possible, and we are concerned with the cost of your introductory physics textbook -- Physics for Scientists and Engineers, 6e, by Serway. We are generally satisfied with the actual content of the text. We are concerned, however, with a number of items:

1. The previous edition of the book (5e) was out on the market for only four years before you produced the most current edition (6e), in 2004. While textbook editions must be updated periodically to reflect new teaching methods and so forth, we do not believe that the content of this particular update justified an entirely new edition. This is especially the case when one takes into account the additional expense new editions create for many students and the additional time faculty members must take to revise syllabi and other instructional materials to accommodate the changes to the text.
2. Your website offers the book for \$134.96 in the United States, but the equivalent of \$72.43 in the U.K., African and the Middle East. We see no reasonable explanation for such a pricing disparity.

We respectfully ask your company to do the following:

1. Continue to publish the current edition of this textbook until there has been significantly new content in the field of this branch of physics, applications of this branch of physics, and/or the teaching of this branch of physics that would justify an update.
2. For the foreseeable future, offer new problem sets, tutorials and other ancillary teaching aids as an optional supplement that faculty may choose to order.
3. Charge American students a fairer price for this book, comparable to what their counterparts are being charged in other countries.
4. Ensure that your sales representatives distribute materials that include all of your textbooks and related instructional materials, their prices, and the length of time you intend to keep these products on the market.

College costs have risen dramatically in the past year. Subsequently, we believe that quick action must be taken to reduce students' costs in as many ways as reasonably possible, and so we request your urgent action on this matter.

We will be encouraging our colleagues to base our departments' future textbook orders on both the quality of the text and on the fairness of the text's price. We hope that we can continue a relationship with your company for many years to come.

Sincerely,

A. J. Stewart Smith, Stanford University
Adam Keith Leibovich, University of Pittsburgh
Alex Weiss, University of Texas Arlington

The full list of 700 signatories can be found at www.alansbookservice.com

Association of American Publishers Reports on Increased Profits

Remember, these are MONTHLY figures. The publishers are doing just fine without their partnership with the state to eradicate the specific occupation of book buyer in North Carolina.



Here are the monthly details from the Association of American Publishers:

Figures for the first month of the new year show that E-book net sales increased by 115.8% vs January 2010 (from \$32.4 Million to \$69.9M). Sales of Downloadable Audio Books also rose by 8.8% vs the previous year (\$6.0M to \$6.5M). As AAP reported last month in its **December 2010** monthly report and full 2010 analysis, E-book sales have increased annually and significantly in all nine years of tracking the category.

Among the other highlights of the January 2011 report:

- Total books sales on all platforms, in all categories, hit \$805.7 Million for January. This was a slight drop from January 2010's \$821.5M sales (-1.9%).
- Adult Hardcover category fell from \$55.4M to \$49.1M (-11.3%), Adult Paperback dropped from \$104.2M to \$83.6 (-19.7%) and Adult Mass Market declined from \$56.4M to \$39.0 (-30.9%)
- In the Children's/Young Adult category, Hardcover sales were \$31.2M in January 2011 vs \$31.8M in January 2010 (-1.9%) while Paperbacks were \$25.4M, down 17.7% from \$30.9M in January 2010.
- Physical Audio Books sales were \$7.3M vs \$7.9M the previous year (-6.7%).
- Sales of Religious Books grew by 5.6%, from \$49.8M to \$52.6M.
- Sales in Higher Education were \$382.0M for January 2011, a slight drop (-1.4%) from \$387.6M the previous year. K-12 sales hit \$82.6M for the month vs \$97.0M for the previous year (-14.9%).
- In Professional and Scholarly Books, sales grew 1.3%, from \$51.2M to \$51.8M. Sales of University Press Hardcovers were \$3.9M in January 2011 vs \$4.5M the previous year (-14.0%) while University Press Paperbacks were \$6.2M vs \$6.7M (-7.8%).

All figures cited represent domestic net sales for U.S. book publishers.

For Immediate Release
Contact: Tina Jordan
(212) 255-0200 ext. 263

Book Publishing Sales Post Gains in October E-Books Year To Date Post Sales of \$130 Million

New York, NY, December 17, 2009: Book sales tracked by the Association of American Publishers (AAP) for the month of October increased by 10.2 percent at \$725.8 million and were up by 4.1 percent for the year.

The Adult Hardcover category rose 6.3 percent in October with sales of \$259.9 million; year-to-date sales were up by 3.9 percent. Adult Paperback sales jumped up 37.5 percent for the month (\$130.4 million) but were down by 4.8 percent for the year. The Adult Mass Market category was down 1.8 percent for October with sales totaling \$61.2 million; sales were down by 0.4 percent year-to-date. The Children's/YA Hardcover category declined by 0.5 percent for the month with sales of \$87.9 million, but sales for year-to-date increased 4.4 percent. The Children's/YA Paperback category was up by 20.2 percent in October with sales totaling \$52.7 million, reflecting a 4.1 percent increase for the year.

Publishers' net sales for e-books in particular for the month of October reached \$18.5 million for the month of October, compared to \$5.2 million last year. Year-to-date sales in aggregate for the period of January-October 2009, reached \$130.7 million, compared to \$46.6 million in 2008 for the same period last year, reflecting a 180.7% increase. Currently trade market e-books according to AAP reports account for 3% of total trade sales.

Audio Book sales posted a decrease of 1.8 percent in October with sales totaling \$19.7 million; sales to-date decreased by 18.8 percent. Religious Books saw a decrease of 8.5 percent for the month with sales totaling \$60.3 million; sales were down by 10.7 percent for the year.

Sales of University Press Hardcover books reflected a 1.5 percent decrease in October with sales of \$5.3 million; sales decreased by 6.4 percent for the year. University Press Paperback sales posted a decrease of 1.4 percent for the month with sales totaling \$3.6 million; sales were down 2.6 percent for the year.

Sales in the Professional and Scholarly category were up by 3.5 percent in October (\$48.0 million) but decreased by 3.9 percent for the year. Higher Education publishing sales rose by 6.9 percent for the month (\$-23.4 million) and increased 13.1 percent for the year. The net EI-Hi (elementary/high school) basal and supplemental K-12 category posted an increase of 29.6 percent in October with sales of \$190.6 million; the category was down by 16.8 percent for the year.

The Association of American Publishers is the national trade association of the U.S. book publishing industry. AAP's more than 300 members include most of the major commercial publishers in the United States, as well as smaller and non-profit publishers, university presses and scholarly societies—small and large. AAP members publish hardcover and paperback books in every field, educational materials for the elementary, secondary, postsecondary, and professional markets, scholarly journals, computer software, and electronic products and services. The protection of intellectual property rights in all media, the defense of the freedom to read and the freedom to publish at home and abroad, and the promotion of reading and literacy are among the Association's highest priorities.

NOTE: All sales figures cited in this release are domestic net sales.

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http://www.publishers.org/main/PressCenter/Archives/2009_December/BookPublishingSalesPostGainsinOctober.htm

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