

FROM DIPLOMA MILLS TO FOR-PROFIT COLLEGES AND UNIVERSITIES: BUSINESS OPPORTUNITIES, REGULATORY CHALLENGES, AND CONSUMER RESPONSIBILITY IN HIGHER EDUCATION

AMANDA HARMON COOLEY* & AARON COOLEY**

I. INTRODUCTION

It is clear that the twenty-first century economy requires workers to seek more education and innovation to be competitive in the global marketplace.¹ However, many workers, already burdened with their existing jobs and with limited financial resources, have neither the time nor the money to pursue higher education at a traditional institution.² Private interests, ranging from diploma mills to legitimate and accredited institutions, have stepped into this gap and have attempted to provide the training and credentials needed to increase individuals' earning power.³ However, the regulatory environment of these institutions has been historically lax and the business dealings of many of these companies have been fraught with corruption.⁴ Not surprisingly, there has been much left to sort out for both civil and criminal courts when a school's owners disappear or when its students realize that their degrees are virtually worthless.⁵

* Assistant Professor of Business Law, North Carolina A&T State University; J.D., The University of North Carolina at Chapel Hill, 2003; B.A., The University of North Carolina at Chapel Hill, 2000.

** Ph.D. Candidate, The University of North Carolina at Chapel Hill; M.A., The University of North Carolina at Chapel Hill, 2004; B.A., The University of North Carolina at Chapel Hill, 2000.

¹ See RICHARD FLORIDA, *THE RISE OF THE CREATIVE CLASS: AND HOW IT'S TRANSFORMING WORK, LEISURE, COMMUNITY AND EVERYDAY LIFE* 21–23 (Basic Books 2002); THOMAS L. FRIEDMAN, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY* 316 (Farrar, Straus & Giroux 2006).

² See, e.g., Ann I. Morey, *Globalization and the Emergence of For-Profit Higher Education*, 48 *HIGHER EDUC.* 131, 131 (2004) (stating that rapid advances in globalization, “coupled with the needs of adult learners and the rising tuition at traditional colleges and universities, ha[ve] stimulated the emergence of for-profit higher education in the United States”).

³ See KEVIN KINSER, *FROM MAIN STREET TO WALL STREET: THE TRANSFORMATION OF FOR-PROFIT HIGHER EDUCATION* x (2006) (“Higher education itself has changed as well, and the practical career-oriented education provided by the for-profit sector is increasingly valued as personal and public policy goals. Global trends toward privatization linked with increasing student access to education point to an increasing market for for-profit higher education.”).

⁴ See *id.* at 123 (stating that “[a]lthough the issues related to regulating for-profit distance education and multistate institutions and to the problems posed by diploma mills are important, they are mostly being addressed piecemeal”).

⁵ See, e.g., Valerie Strauss, *Hundreds Linked to Diploma Mill; Government, Military Probed for Violators*, *WASH. POST*, July 31, 2008, at B1.

The focus of this Article is the legal, business, and public policy concerns related to for-profit higher education in all of its diverse manifestations—from the laughable to the innovative and successful. This Article will outline the background of for-profit higher education, starting with the least reputable organizations and institutions. Then, the Article will move to a discussion of the legitimate and accredited for-profit companies that provide needed educational and training services to hundreds of thousands of students across the United States and the globe.⁶ Each of these sections will discuss the overall implications for the edu-business sector; also, each will analyze in greater detail a recent exemplar to flesh out the challenges and benefits of the rise of for-profit colleges and universities. The concluding section of the Article will address the role of existing and proposed governmental regulation at the state and federal levels; will take into account the oversight that international organizations play in this environment; and will discuss the responsibilities and awareness prospective students and employers should have in order to successfully navigate the changing marketplace of higher education.

II. THE RANGE AND BACKGROUND OF FOR-PROFIT HIGHER EDUCATION

The diversity among for-profit higher educational organizations and institutions is truly staggering.⁷ Two extremes are useful to begin this discussion. At the far end of illegitimacy is the enterprise of PhonyDiploma.com.⁸ At its website, an audio pop-up makes clear the less-than-educational purpose of their venture, with a soft voice stating: “Thank you for choosing PhonyDiploma.com for your novelty document needs. We are the best and most reliable replacement and novelty document company on the web and we can prove it.”⁹ This statement and similar ones that are utilized throughout the website make one wonder about the seeming disjuncture of being reliable in their admittedly phony business. Further, after reviewing the repeated warnings that the novelty diplomas should not be used for anything other than amusement,¹⁰ it seems that sinister motives might be at play in the usage of this company’s services. Why, for example, would this company offer a novelty transcript with one of its packages, and why does the company guarantee that the proffered novelty diploma will “be as close to the real thing as possible?”¹¹ Clearly, people do purchase

⁶ See Sarah E. Turner, *For-Profit Colleges in the Context of the Market for Higher Education*, in EARNINGS FROM LEARNING: THE RISE OF FOR-PROFIT UNIVERSITIES 51, 63 (David W. Breneman, Brian Pusser, & Sarah E. Turner eds., State Univ. of N.Y. Press 2006).

⁷ See, e.g., GARY A. BERG, LESSONS FROM THE EDGE: FOR-PROFIT AND NONTRADITIONAL HIGHER EDUCATION IN AMERICA 12 (Am. Council on Educ. & Praeger Publishers 2005) (explaining that the vast diversity among for-profit higher educational organizations makes it difficult to delineate strict definitions in this area).

⁸ See Phony Diploma, Fake Diplomas, Degrees and Transcripts, www.phonydiploma.com (last visited May 1, 2009). This website advertises the sale of fake “[a]uthentic-looking novelty diplomas.” *Id.*

⁹ See *id.*

¹⁰ See PhonyDiploma.com, Help, <http://www.phonydiploma.com/help.aspx> (last visited May 1, 2009) (answering the frequently asked question of “Is This Illegal?” by stating “We make these products for novelty use only. If you intend to use them in any other way you could be stepping over legal boundaries. Do not use them to misrepresent yourself in any way.”).

¹¹ See *id.*

these items for reasons beyond amusement. The attempt to say that these products are just for fun is a transparent mask for those individuals who intend to buy a phony degree so that it can be used for career and economic advancement. Arguably, this business enterprise represents the furthest extreme of what might be deemed an outlet of “for-profit education.”

On the other end of the spectrum is Strayer University (“Strayer”).¹² Strayer is an established institution that has been educating students for over a hundred years.¹³ Further, it is an organization that is seen as a positive model by some outside observers of the for-profit sector because of its insistence on dividing academics from student recruitment and its relatively manageable growth over the last few years compared to its competitors.¹⁴ Additionally, Strayer has a significantly better record of following governmental regulations than most of the other purveyors in the for-profit higher education field.¹⁵

Hence, there are extreme differences in what one can call for-profit higher education—from the wink-and-nod of PhonyDiploma.com to an institution such as Strayer with a commitment to education. Along the continuum and between these two poles are most of the companies and organizations that compose the marketplace of for-profit higher education; yet one would be hard-pressed to state that these businesses share a common or central business model.¹⁶ While there is not a standard business model among these institutions, these organizations are all trying to escape a dubious historical legacy, whether or not that is a fair or accurate characterization. As such, it is important to examine in greater detail the history of impropriety in for-profit education.¹⁷

From the origins of the first universities and the granting of their first diplomas, there have been charlatans willing to forge university credentials and sell them to buyers.¹⁸ There was relatively little disincentive to engage in such a transaction as the modes of communication of the time made it difficult for anyone to check the authenticity of the documents. Further, even if revealed as a fraud in one locale, a buyer of a fraudulent degree could migrate to another city and try to pass the degree off as legitimate. A

¹² See Strayer University, <http://www.strayer.edu> (last visited May 1, 2009).

¹³ See KINSER, *supra* note 3, at 59 (“Strayer has the longest history of any public corporation in the higher education sector. Founded more than one hundred years ago as Strayer Business College, the company has its roots in a shorthand method that was developed by Dr. S. Irving Strayer in 1890.”).

¹⁴ See RICHARD S. RUCH, *HIGHER ED, INC.: THE RISE OF THE FOR-PROFIT UNIVERSITY* 45 (John Hopkins Univ. Press 2001) (deeming Strayer “an effective and well-managed enterprise”); Jason G. Caudill, *Questions and Research Opportunities in Online Education*, 39 *BRIT. J. EDUC. TECH.* 920, 921 (2008) (likening Strayer’s growth to the “expansion strategies of a retail business establishment.”).

¹⁵ Podcast: Educating for Profits (Chron. of Higher Educ. Audio Interviews Feb. 21, 2008), available at http://chronicle.com/multimedia/podcasts/che_interviews.xml (last visited May 1, 2009).

¹⁶ See RUCH, *supra* note 14, at 27 (outlining the unique business approaches taken by the five major providers of for-profit education).

¹⁷ See KINSER, *supra* note 3, at vii (“Although it is often discussed as a recent phenomenon, the for-profit sector has been a component of the educational enterprise in the United States since the early 1800s.”).

¹⁸ See ALLEN EZELL & JOHN BEAR, *DEGREE MILLS: THE BILLION-DOLLAR INDUSTRY THAT HAS SOLD OVER A MILLION FAKE DIPLOMAS* 30 (Prometheus Books 2005) (“There was quite an active traffic in the buying and selling of fake diplomas. It was also the case that it required as much as fifteen years of study beyond the master’s degree to earn a doctorate, a fact that may have motivated some younger scholars to acquire the doctorate by other means.”).

seller of these fraudulent degrees could always set up shop elsewhere. These established disincentives created a viable marketplace and a successful precedent for this illegal activity.

During the antebellum period, from 1760–1860, the strengthening of the United States economy indirectly stimulated the development of diploma mills.¹⁹ These enterprises often centered around a motive of profiting from deception and a complete disregard for the “quality” of the education they provided.²⁰ Government officials have vocalized their concern with this type of educational fraud since at least the late 1800s.²¹ Despite these concerns, the spike in growth in the economy at the turn of the twentieth century continued to spur growth in diploma mills.²²

A century later, these sham institutions still remain extant and thriving.²³ Yet, with the rapid expansion of legitimate online and novel educational programs, it has become increasingly difficult to identify fraudulent businesses in the current educational environment. This is especially true for illegitimate educational purveyors who cloak themselves as innovators, when in fact they are being deceptive about their practices and accreditation.²⁴ In previous eras, before the Internet and increased regulation of many professions, these distinctions between legitimate and illegitimate institutions were much clearer.²⁵ Presently, however, many states and federal agencies have been cautious in labeling institutions as diploma mills.²⁶ Interestingly, this hesitance to label an institution as a degree mill by governmental agencies is not a universal response. Many individuals in higher education are quite willing to pass judgment on these institutions, as status in the for-profit sector mirrors the larger status game in higher education.²⁷ This type of categorization is often based on factors such as how these programs determine what serves as education for advancement towards a degree and what should be recognized as a college

¹⁹ See Tricia Bertram Gallant, *Revisiting the Past: The Historical Context of Academic Integrity*, 33 ASHE HIGHER EDUC. REP. 13, 14 (2008).

²⁰ See *id.* at 23.

²¹ See DAVID W. STEWART & HENRY A. SPILLE, *DIPLOMA MILLS: DEGREES OF FRAUD 181–82* (Am. Council on Educ. & Macmillan Publ'g Co. 1988) (“John Eaton, U.S. Commission of Education in 1876, expressed concern about fraudulent degrees being awarded not only to Americans but to foreign nationals who were already discovering the ease with which they could purchase American degrees.”).

²² See EZELL & BEAR, *supra* note 18, at 30–31 (“During the early years of the twentieth century, fake medical schools proliferated, leading to . . . U.S. Senate hearings . . . held on the matter of fake degrees.”).

²³ See *infra* notes 35–84 & accompanying text.

²⁴ See STEWART & SPILLE, *supra* note 21, at 45–46 (“In recent years, many diploma mills have advertised themselves as ‘nontraditional’ and in the forefront of efforts to make higher education more useful and more accessible to people having adult responsibilities. Deception and fraud is often implicit in such an approach and may not be fully understood by those unfamiliar with new developments in higher education. Herein lies the threat to legitimate nontraditional education.”).

²⁵ See Benjamin Fine, *Fake Schools Rob Public of Millions; 100 ‘Colleges’ Operating as ‘Diploma Mills’ Are Among 1,000 Dubious Institutions*, N.Y. TIMES, Feb. 7, 1950, at 30 (“More than 1,000 questionable or outright fraudulent schools and colleges in this country are fleecing unsuspecting students of millions of dollars annually. At least 100 are nothing more than ‘diploma mills’ where one can buy a bachelor’s degree for as little as \$25 and a high-sounding doctorate for less than \$50.”).

²⁶ STEWART & SPILLE, *supra* note 21, at 9 (stating that “[g]reat care should be exercised before any organization is labeled as a diploma mill”).

²⁷ *Id.* (noting the disagreement in academia over designations of “diploma mills” and in “defining degrees that can be awarded appropriately by academic institutions”).

or university in the eyes of other institutions, faculty, and accreditation bodies.²⁸

Another factor in thinking about the for-profit sector of education, and in delineating the “good” from the “bad,” is the motivation of both the business and its consumers. Here, it is clear that one reason both illegitimate and legitimate companies are established is financial gain.²⁹ Businesses providing established modes of for-profit education or just selling pieces of paper as novelty diplomas can make an incredible amount of money.³⁰ With respect to the for-profit education consumer, these individuals often want to utilize a for-profit educational strategy to improve their personal earning potential and job prospects.³¹ Yet given the costs of traditional higher education (both in time and money),³² many consumers choose illegitimate for-profit educational institutions over legitimate ones to earn their promotions with a minimal outlay of effort, especially when all one’s supervisor wants is a “degree.”³³ Ironically, some of the fields that are most prone to this type of abuse include business, education, and government.³⁴

III. DIPLOMA MILLS

Two recent scandals involving diploma mills typify the harm that these businesses inflict on their consumers, legitimate educational businesses, and the public sector. These examples also demonstrate the need for greater scrutiny of job applicants’ credentials and for greater awareness by prospective students of these institutions. The first scandal involved

²⁸ See EZELL & BEAR, *supra* note 18, at 21 (“Almost no one would deny that a ‘university’ operating from a mailbox service that grants the PhD in three days is a degree mill. But what about an institution that operates legally in a state with minimal regulation and requires three months and a thirty-page paper in order to earn its PhD? What about one that requires six months and sixty pages? How about twelve months and one hundred twenty pages? One person’s degree mill may be another’s innovative new-style university.”).

²⁹ See, e.g., *id.* at 15 (“In 2001, we estimated worldwide sales of fake degrees at \$200 million or more. Things have gotten much worse since then. We believe it is very safe to say that cumulative fake degree sales have exceeded a billion dollars over the past decade.”); see Suzanne Kapner, *Kaplan’s Next Test*, FORTUNE, Sept. 15, 2008, at 100.

³⁰ See Kapner, *supra* note 29 (stating that Kaplan “one of the country’s largest education companies, with one million students, 70 campuses, and an online law school,” had “[s]ales in 2007 total[ing] \$2 billion”); Bill Morlin, *Diploma Mill Ringleader Pleads Guilty*, SPOKESMAN-REV., Mar. 27, 2008, at A1 [hereinafter Morlin, *Pleads Guilty*] (“The diploma mill operation raked in an estimated \$6.3 million in six years, using the Internet to sell more than 8,200 phony college degrees and accompanying transcripts around the world.”).

³¹ See STEWART & SPILLE, *supra* note 21, at 15 (stating that “[i]n business and industry, it is common practice to base decisions about employment and promotion in part upon an individual’s educational credentials”).

³² See, e.g., Linda Stern, *How Will You Pay for It?; College Is More Expensive than Ever, and Financial Aid Isn’t Increasing as Fast as the Cost of Tuition*, NEWSWEEK, Aug. 11, 2008, at 20.

³³ See, e.g., Morlin, *Pleads Guilty*, *supra* note 30. See also Creola Johnson, *Credentialism and the Proliferation of Fake Degrees: The Employer Pretends to Need a Degree; The Employee Pretends to Have One*, 23 HOFSTRA LAB. & EMP. L.J. 269, 272 (2006) (stating “holders of fake degrees use them to obtain jobs and raises; therefore, obtaining bogus degrees is usually profitable although unethical”).

³⁴ See, e.g., Harriet Alexander, *Internet Degree Factories Pump Out Diplomas*, SYDNEY MORNING HERALD, Apr. 25, 2008, at 5; see also STEWART & SPILLE, *supra* note 21, at 18–19 (“[Education] qualifies as a hot spot for diploma mill operators because of the sheer numbers of practicing educators. Education systems and institutions (including primary and secondary schools) place high premium on advanced degrees. Often, a diploma mill master’s degree or Ph.D. can be a guaranteed ticket to a higher position or salary.”).

revelations detailed in a 2004 General Accounting Office (“GAO”) investigation about federal employees who had obtained fake degrees through federal dollars.³⁵ The second controversy comes from an even more recent set of criminal and civil proceedings involving the now defunct St. Regis University and its associated enterprises.³⁶ Each scandal merits attention to give greater texture to how these organizations work and how they often terminate—with litigation and jail time.

A. 2004 GAO INVESTIGATION

In the 1980s, the FBI pursued a crackdown on diploma mills in the “DipScam” investigation.³⁷ Congress held hearings on these for-profit enterprises during this period; however, these hearings resulted only in consternation and outrage among the committee members.³⁸ A comprehensive legislative scheme on diploma mills, which would adequately punish those who perpetrated such crimes or prevent future ones from occurring, was not adopted at that time.³⁹ Many of these same issues were resurrected in Congress approximately two decades later.⁴⁰

The GAO originally issued a report on the purchase of degrees from degree mills in 2002.⁴¹ Subsequently, the GAO conducted a second investigation in response to a request from Congress. Specifically, the GAO was tasked with investigating “whether the federal government has paid for degrees from diploma mills and other unaccredited postsecondary schools . . . [and] whether federal employees who hold senior-level positions have degrees from diploma mills and other unaccredited schools.”⁴² In its report, the GAO detailed the methods and circumstances of its investigation:

We conducted our investigation from July 2003 through February 2004, in accordance with quality standards for investigations as set forth by the President’s Council on Integrity and Efficiency. We searched the Internet

³⁵ See *Diploma Mills: Federal Employees Have Obtained Degrees from Diploma Mills and Other Unaccredited Schools, Some at Government Expense: Hearing Before the S. Comm. on Governmental Affairs*, 108th Cong. (2004) (statement of Robert J. Cramer, Managing Director, Office of Special Investigations, GAO), available at <http://www.gao.gov/new.items/d04771t.pdf> (last visited May 1, 2009) [hereinafter *Diploma Mills: Federal Employees*].

³⁶ See Docket Report, *United States v. Randock*, No. 2:05-CR-180-LRS-1 (E.D. Wash. 2005) (on file with authors); Docket Report, *Regis Univ. v. Lorhan*, No. 2:04-CV-462-RHW (E.D. Wash. 2004) (on file with authors).

³⁷ See Fred M. Hechinger, *Cracking Down on Sale of Fraudulent Degrees*, N.Y. TIMES, May 8, 1984, at C9 (“Under ‘Dipscam,’ for diploma scam, agents have purchased bogus degrees to pave the way for Federal grand jury investigations. Several dozen ‘institutions’ are known to be under observation. Two people involved in the sale of diplomas have been indicted. Further indictments are believed imminent.”); see also EZELL & BEAR, *supra* note 18, at 34 (“DipScam represents the longest-lasting and most effective effort by any government anywhere to deal with the degree-mill problem.”).

³⁸ See Philip M. Boffey, *Falsified Degrees Growing Problem*, N.Y. TIMES, Dec. 12, 1985, at A21.

³⁹ See EZELL & BEAR, *supra* note 18, at 33–34 (stating that despite committee recommendations, no substantive legislation was adopted to curb the growth of diploma mills).

⁴⁰ See generally *Current Safeguards Protecting Taxpayers against Diploma Mills: Hearing Before the H. Subcomm. on 21st Century Competitiveness*, 108th Cong. (2004) (statement of Robert J. Cramer, Managing Director, Office of Special Investigations, GAO).

⁴¹ See Letter from Robert J. Cramer, Managing Director, Office of Special Investigations, GAO, to Senator Susan Collins, U.S. Senate (Nov. 21, 2002), available at <http://www.gao.gov/new.items/d03269r.pdf> (last visited May 1, 2009). The letter details an investigation in which a GAO investigator purchased a degree and transcript for Senator Collins from Degrees-R-U.S.

⁴² *Diploma Mills: Federal Employees*, *supra* note 35, at 1.

for nontraditional, unaccredited, postsecondary schools that offer degrees for a relatively low flat fee, promote the award of academic credits based on life experience, and do not require any classroom instruction. We requested that four such schools provide information on the number of current and former students identified in their records as federal employees and payment of fees for such federal employees by the federal government. In addition, posing as a prospective student who is employed by a federal agency, our investigator contacted three unaccredited schools to obtain information on how he might have a federal agency pay for a degree.⁴³

This investigation was established to discover how much federal money may have been used for the purchase of fraudulent degrees by individuals who were serving the citizens of the country.⁴⁴ These degrees were not simply attained to provide greater prestige to these individuals and their departments, but they were also used to gain higher levels of pay based on the federal government's credential-based salary increases. What the report concluded was shocking:

In summary, 3 of the 4 unaccredited schools responded to our requests for information and provided records that identified 463 students employed by the federal government. . . . Data provided by 8 agencies indicated that 28 senior-level employees have degrees from diploma mills and other unaccredited schools. . . . [H]owever . . . this number is believed to be an understatement of the actual number of employees at these 8 agencies who have degrees from diploma mills and other unaccredited schools.⁴⁵

The 2004 GAO report continued to discuss a blatant agency disregard for any critical attitude towards governmental employees who received degrees from these diploma mills. One of the most shocking incidents relayed in the report involved "Employee #5."⁴⁶ In describing "Employee #5," the report exposed how high into the upper echelons of the federal government the degree frauds went:

Employee #5 was an employee in the Senior Executive Service at DHS [Department of Homeland Security] at the time of our interview but has since resigned. This employee received a series of degrees based on negligible work from unaccredited Hamilton University while working at the Department of Labor (DOL) in various senior capacities. Between March and June 2000, this individual received a bachelor's and a master's degree based on prior training and other life and work experience. Subsequently, in March 2001, Employee #5 received a PhD in computer information systems from Hamilton. This individual left DOL and began working at DHS in a Senior Executive Service position in April 2003. A security clearance update, initiated while the employee was still at DOL but completed after the employee joined DHS, led to the discovery of the degrees from Hamilton.⁴⁷

⁴³ *Id.*

⁴⁴ *See id.*

⁴⁵ *Id.* at 2.

⁴⁶ *See id.* at 8–9.

⁴⁷ *Id.*

Two things that are clear about this GAO report are 1) that these schools inhabit an ambiguous and vague territory and 2) that the accrediting agencies, regulators, hiring committees and supervisors, companies selling these fraudulent degrees, and student-consumers all share some culpability for the harm inflicted by these sham educational enterprises. In some cases, these factions were tacitly supporting fraud, and in other cases, these parties were actively engaging in a fraud against the federal government and the public trust. Further, the report by the GAO is indicative of a complacent, bureaucratic, and hugely uncritical attitude towards officials obtaining degrees of a suspect nature and then advancing in the federal agencies that were responsible for all matters of governance, including national security. Additionally, the GAO investigation revealed instances of a marked disregard for the purpose of higher education, as it was only seen as a tool for advancement and not as a marker of mastering a body of knowledge.

B. ST. REGIS UNIVERSITY

The second recent incident regarding diploma mills is the litigation stemming from the numerous schools that fell under the umbrella of St. Regis University.⁴⁸ In 2005, Dixie and Steven Randock, along with six other associates, were indicted on numerous fraud charges, including conspiracy to commit mail and wire fraud, and conspiracy to launder monetary instruments, in connection with their St. Regis University activities.⁴⁹ These individuals had expanded their “business” from a small scam to a global one in a few short years. St. Regis University “grew from a trickle to a flood from 1999 to 2005 . . . with revenues growing from \$5,000 in 1999 to \$1.65 million in 2005, and churning out more than 10,000 diplomas for customers in 131 countries.”⁵⁰ The scale of the enterprise was facilitated by the ease of the Internet, which allowed them to make their schools obtain an appearance of legitimacy.⁵¹ Further, they could “market themselves internationally at little cost, flood e-mail inboxes with spam and operate without revealing an address or spending heavily on advertising.”⁵²

⁴⁸ See Diana Jean Schemo, *Diploma Mill Concerns Extend Beyond Fraud*, N.Y. TIMES, June 29, 2008, at A14 [hereinafter Schemo, *Beyond Fraud*] (“Monroe was one of more than 120 fictitious universities operated by Dixie and Steven K. Randock Sr., a couple from Colbert, Wash., who sold diplomas for a price, according to a three-year federal investigation that ended in guilty pleas from the Randocks to mail and wire fraud. The inquiry into their diploma mill, which operated most often as St. Regis University, provides the most up-to-date portrait of how diploma factories can harness the rapidly evolving power of the Internet to expand their reach.”). Because so many fictitious institutions were the subject of this litigation, St. Regis will be used as a general moniker for these enterprises.

⁴⁹ See Indictment, at 1, United States v. Randock, No. 2:05-CR-180-LRS-1 (E.D. Wash. Oct. 5, 2005) (on file with authors) [hereinafter Randock Indictment].

⁵⁰ See Schemo, *Beyond Fraud*, *supra* note 48.

⁵¹ See, e.g., Randock Indictment, *supra* note 49, at 5 (alleging that Dixie and Steven Randock “falsely advertised ‘Robertstown University’ on the internet with a web page that had a photograph of Blenheim Castle, the birthplace of Sir Winston Churchill . . . in order to mislead consumers into believing that the building depicted in the photograph was part of the ‘Robertstown University’ campus, of which there was none”).

⁵² Schemo, *Beyond Fraud*, *supra* note 48 (stating that technology had allowed the fraud to reach a “once-unimaginable scale”).

Given the vast implementation of these technological strategies, the Randocks and their associates' efforts to defraud almost succeeded. Prior to the filing of the indictment, the leaders were attempting to move their many businesses to Liberia, Russia, India, or Italy, which might have prevented prosecution in the United States.⁵³ Yet, they were unsuccessful in this move, and St. Regis was eventually shut down by the federal government after a Secret Service agent, posing as a retired Syrian military officer, was able to obtain "three undergraduate and advanced degrees in chemistry and environmental engineering, based on his 'life experience,'" for \$1277.⁵⁴

Criminal prosecution ensued against the Randocks, who were the alleged ringleaders,⁵⁵ and their associates. In October 2005, the Randocks entered initial pleas of not guilty on all counts.⁵⁶ However, after over two years of discovery and multiple hearings on evidentiary motions, on March 26, 2008, Ms. and Mr. Randock entered into individual plea agreements with the U.S. Attorney's Office, in which each pled guilty to the conspiracy to commit mail and wire fraud count.⁵⁷ The district court issued its orders accepting the guilty pleas on March 28, 2008.⁵⁸ On July 8, 2008, the court issued its judgment with respect to Ms. Randock, sentencing her to thirty-six months with credit for time served⁵⁹ and ordering the forfeiture of the St. Regis-enterprise related assets.⁶⁰ On July 15, 2008, Ms. Randock filed a notice of appeal to the U.S. Court of Appeals for the Ninth Circuit of this judgment and sentence.⁶¹ This appeal remains pending.⁶² On August 12,

⁵³ See Diana Jean Schemo, *Fake-Diploma Industry Is Linked to Terror Threat*, INT'L HERALD TRIB., July 1, 2008, at 7 [hereinafter Schemo, *Terror Threat*]; see also Bill Morlin, *Diploma Mill Owners Tried Bribes; Documents Reveal Efforts Made in Russia, India and Italy*, SPOKESMAN-REV., Oct. 1, 2008, at B1 [hereinafter Morlin, *Tried Bribes*]. The international nature of diploma mills and for-profit schools is increasingly making enforcement of existing U.S. laws difficult. See Morlin, *Tried Bribes*, *supra*; see also EZELL & BEAR, *supra* note 18, at 67 ("The champion is Ascension Island in the South Atlantic, whose .ac Internet abbreviation is much in demand, since it is easily confused with the British .ac designation used by academic schools. Several dozen 'universities' call this rock outcropping with no indigenous population their home.").

⁵⁴ See Schemo, *Terror Threat*, *supra* note 53. The "Syrian" scenario that led to the eventual demise of St. Regis University was particularly troubling as it raised issues concerning the possibility of obtaining a student visa to "attend" one of these institutions and thereby gain access to the United States under the cover of education. See *id.*

⁵⁵ See Bill Morlin, *Fraud Conspiracy Admitted; Diploma Mill Web Site Designer Enters Plea*, SPOKESMAN-REV., Oct. 11, 2006, at B1 [hereinafter Morlin, *Enters Plea*].

⁵⁶ See Order on Plea and Setting Conditions of Release, at 1, United States v. Randock, No. 2:05-CR-180-LRS-1 (E.D. Wash. Oct. 27, 2005) (on file with authors).

⁵⁷ See Plea Agreement, at 1, United States v. Randock, No. 2:05-CR-180-LRS-1 (E.D. Wash. Mar. 26, 2008) (on file with authors) [hereinafter Dixie Randock Plea Agreement]; Plea Agreement, at 1, United States v. Randock, No. 2:05-CR-180-LRS-2 (E.D. Wash. Mar. 26, 2008) (on file with authors) [hereinafter Steven Randock Plea Agreement]. In the plea agreements, the United States agreed to move to dismiss the conspiracy to launder monetary instruments criminal counts and the civil forfeiture action that had been asserted against the Randocks. See Dixie Randock Plea Agreement, *supra*, at 22; Steven Randock Plea Agreement, *supra*, at 28. However, the Randocks, pursuant to their plea agreement, agreed to the forfeiture of non-exempt assets as listed in the Indictment. See Dixie Randock Plea Agreement, *supra*, at 29-31; Steven Randock Plea Agreement, *supra*, at 35-37.

⁵⁸ See Order Accepting Guilty Plea, at 1, United States v. Randock, No. 2:05-CR-180-LRS-1 (E.D. Wash. Mar. 28, 2008) (on file with authors); Order Accepting Guilty Plea, at 1, United States v. Randock, No. 2:05-CR-180-LRS-2 (E.D. Wash. Mar. 28, 2008) (on file with authors).

⁵⁹ See Judgment in a Criminal Case, at 2, United States v. Randock, No. 2:05-CR-180-LRS-1 (E.D. Wash. July 8, 2008) (on file with authors).

⁶⁰ See *id.* at 6-7.

⁶¹ See Notice of Appeal, at 1, United States v. Randock, No. 2:05-CR-180-LRS-1 (E.D. Wash. July 15, 2008) (on file with authors).

⁶² See *id.* (on file with authors).

2008, the court issued its judgment with respect to Mr. Randock, sentencing him to thirty-six months with credit for time served⁶³ and ordering the forfeiture of the St. Regis-enterprise related assets.⁶⁴ Like his wife, Mr. Randock filed a notice of appeal to the U.S. Court of Appeals for the Ninth Circuit of this judgment and sentence.⁶⁵ This appeal also remains pending.⁶⁶

With respect to the remaining defendants in the criminal prosecution, three of these defendants, Richard Novak, Blake Carlson, and Amy Hensley, who provided substantial assistance to the government, were placed on three years probation and sentenced to community service for their guilty pleas to conspiracy to commit wire and mail fraud.⁶⁷ The other defendants, Heidi Lohran and Roberta Markishtum, were sentenced after their guilty pleas to the same conspiracy count to a one-year and a four-month sentence respectively.⁶⁸ The St. Regis webmaster, Kenneth Pearson, “who was [also] caught with 11,000 images of child pornography was sentenced . . . to four years in prison—the longest term given any of [the] eight defendants in the case that spanned the globe.”⁶⁹

Yet the criminal prosecution involving St. Regis does not encompass all of the proceedings that this enterprise has faced. Prior to the criminal indictment of the Randocks and their associates, a Lanham Act civil suit was filed in 2004 by the real and respected Regis University against the Randocks, some of their associates, and St. Regis University.⁷⁰ In the complaint, Regis University asserted trademark infringement, false designation of origin, unfair competition, unfair business practices, and trademark dilution claims under the Lanham Act,⁷¹ as well as state law

⁶² See Docket Report, *United States v. Randock*, No. 08-30268 (9th Cir. 2008) (on file with authors). Dixie Randock’s appeal, consolidated with Steven Randock’s appeal, was calendared for hearing before the Ninth Circuit on May 5, 2009. See *id.* at entry 24, Notice of Oral Argument on May Calendar 5/5/09, available at http://www.ca9.uscourts.gov/datastore/calendaring/2009/04/15/nse05_09r.pdf (last visited May 1, 2009).

⁶³ See Judgment in a Criminal Case, at 2, *United States v. Randock*, No. 2:05-CR-180-LRS-2 (E.D. Wash. Aug. 12, 2008) (on file with authors). Interestingly, jail time is not always a deterrent to the operators of fraudulent, for-profit institutions. See, e.g., *EZELL & BEAR*, *supra* note 18, at 53 (In one extreme case, a diploma mill was run out of a prison cell. “While Acton University’s ‘campus’ was a mailbox service in Hawaii, it didn’t require major detective work to learn that it was being run by James Kirk from his prison cell in Beaumont, Texas.”).

⁶⁴ See Judgment in a Criminal Case, at 6–7, *United States v. Randock*, No. 2:05-CR-180-LRS-2 (E.D. Wash. Aug. 12, 2008) (on file with authors).

⁶⁵ See Notice of Appeal, at 1, *United States v. Randock*, No. 2:05-CR-180-LRS-2 (E.D. Wash. Aug. 20, 2008) (on file with authors).

⁶⁶ See Docket Report, *United States v. Randock*, No. 08-30308 (9th Cir. 2008) (on file with authors). See *supra* note 62.

⁶⁷ See Morlin, *Enters Plea*, *supra* note 55.

⁶⁸ See *id.*

⁶⁹ See Bill Morlin, *Diploma Mill Webmaster Gets 4 Years for Fraud, Porn*, SPOKESMAN-REVIEW, Oct. 29, 2008, at B2 (stating that Pearson “was given six months for conspiracy to commit wire and mail fraud—the diploma mill operation—and a concurrent 48-month sentence for receipt of child pornography”).

⁷⁰ See Docket Report, *Regis Univ. v. Lorhan*, No. 2:04-CV-462-RHW (E.D. Wash. 2004) (on file with authors).

⁷¹ See Complaint, *Regis Univ. v. Lorhan*, No. 2:04-CV-462-RHW (E.D. Wash. Dec. 6, 2004) (on file with authors) [hereinafter *Regis Univ. Complaint*]. See generally 15 U.S.C. §§ 1051–1127 (2000). The Lanham Act, or the Trademark Act of 1946, provides a federal cause of action for trademark infringement and was originally passed to prevent the use of deceptive trademarks and unfair competition.

claims for trademark dilution and consumer protection violations.⁷² The central allegations in the complaint included the claim that the use of the infringing name and mark of “Saint Regis University” associated with the “online sale of university credentials” was deceptive and infringed on the plaintiff’s registered trademark of “Regis University.”⁷³

These types of allegations were by no means innovative claims, as similar trademark claims have been asserted against other diploma mills.⁷⁴ However, in this case, the parties eventually reached a settlement, which was evidenced by the filing of a joint stipulation and order for permanent injunction on June 22, 2005.⁷⁵ In the joint stipulation, the parties agreed to release each other from all claims arising out of the action, except for claims of future non-compliance with the order for permanent injunction.⁷⁶ In the injunctive order issued by the court, the defendants agreed to be “permanently enjoined and restrained from using the name, mark or designation SAINT REGIS UNIVERSITY, ST. REGIS UNIVERSITY, the acronym SRU, ST REGIS ACCOUNTING, REGIS UNIVERSITY, REGIS, or any name or mark confusingly similar to REGIS . . . in connection with identifying any business or entity in the United States or in any other country.”⁷⁷ Given that the St. Regis criminal indictment was filed a short four months later,⁷⁸ it is not surprising that no further action took place in this civil suit.⁷⁹

In the review of these two recent examples of the economic and public policy disasters that can be wrought by degree mills, one can see that the harm they do is great in terms of financial loss⁸⁰ and degradation of the public trust in our educational and governmental systems.⁸¹ They also implicate additional negative national security outcomes, such as possible visa violations⁸² and potential mismanagement of U.S. national security agencies and nuclear power plants by people who may be willing to lie about their qualifications.⁸³ Clearly, degree mills and the loose framework

⁷² See Regis Univ. Complaint, *supra* note 71, at 2.

⁷³ See *id.* at 5, 10.

⁷⁴ See EZELL & BEAR, *supra* note 18, at 95 (“Degree mills routinely select names that are either identical to those of real schools (there have been fakes named LaSalle, Stanford, Harvard, and the University of Wyoming), slight variations (Stamford, Cornell, and Berkley, for instance), and slight variations in wording (e.g., the fake ‘Texas University’ instead of the real ‘University of Texas.’”).

⁷⁵ See Joint Stipulation and Order for Permanent Injunction, Regis Univ. v. Lorhan, No. 2:04-CV-462-RHW (E.D. Wash. June 22, 2005) (on file with authors).

⁷⁶ See *id.* at 3.

⁷⁷ *Id.* at 5.

⁷⁸ See Raddock Indictment, *supra* note 49, at 1.

⁷⁹ See Docket Report, Regis Univ. v. Lorhan, No. 2:04-CV-462-RHW (E.D. Wash. 2004) (on file with authors).

⁸⁰ See, e.g., Morlin, *Tried Bribes*, *supra* note 53 (stating that the cooperating defendants in the St. Regis criminal case claimed that the diploma mill “hailed in almost \$8 million”).

⁸¹ See, e.g., Thomas Bartlett, *White House Staffer Was Among Federal Workers Who Bought Fake Degrees from Diploma Mill, Lawyer Says*, CHRON. HIGHER EDUC., Nov. 10, 2006, at 22 (describing Steven Raddock’s attorney’s claims that “among those who purchased phony degrees from Saint Regis are a State Department employee, a National Security Agency employee, a Department of Justice employee, and a White House staff member”).

⁸² See, e.g., Schemo, *Terror Threat*, *supra* note 53.

⁸³ See Bill Morlin & Jim Camden, *List Identifies Buyers of Fake College Degrees*, SPOKESMAN-REV., July 29, 2008, at A1 (stating that a NASA employee, National Security Agency employees, a CIA contract employee, a military advisor, and an operator of two nuclear power plants all purchased counterfeit degrees from St. Regis University).

of accreditation and regulation regarding such institutions continue to allow for the perpetration of much of this fraud. Some suggestions for more aggressive public policy responses are discussed in the conclusion of the Article. However, before moving to those recommendations, the other major part of this for-profit education equation must be discussed: legitimate for-profit schools, colleges, and universities.⁸⁴

IV. LEGITIMATE FOR-PROFIT COLLEGES AND UNIVERSITIES

In stark contrast to completely illegitimate businesses like St. Regis University, there are companies (such as the aforementioned Strayer University) that strive to both educate students for better careers and make a profit. Yet even this legitimate portion of the for-profit sector has seen its fair share of legal issues, ranging from governmental investigations to shareholder lawsuits.⁸⁵ Before exploring these legal problems, it is useful to first discuss the background and some specific examples of these types of institutions.

Arguably, legitimate for-profit colleges and universities are becoming important players in the higher education marketplace and in policy circles.⁸⁶ Several common factors are affecting the increasing significance of legitimate for-profit educational institutions: cost,⁸⁷ focused curriculum that leads to a specific and often growing career field,⁸⁸ and flexibility in terms of instructional time and methods.⁸⁹ Many student consumers of these for-profit educational institutions choose to attend such schools based on one or all of these factors.⁹⁰ However, there have been many questions raised by traditional educational institutions and researchers about the changes that the for-profit sector has brought to higher education.⁹¹

⁸⁴ For the purposes of this paper, only adult for-profit schools, colleges, and universities are analyzed. However, there have been attempts to create for-profit K–12 schools, which have encountered problems as well. *See, e.g.*, Kristen A. Graham, *Edison Schools Settles Lawsuit over Sex Assault*, PHILA. INQUIRER, July 1, 2008, at B6 (describing how Edison Schools, Inc., a for-profit company, lost contracts to run four Philadelphia public schools “after the district found the schools lacking in academic performance and school climate, a measure that include[d] violent incidents”).

⁸⁵ *See, e.g.*, *In re Apollo Group, Inc. Sec. Litig. (Apollo Group)*, No. CV 04-2147-PHX-JAT, 2008 U.S. Dist. LEXIS 61995, at *1 (D. Ariz. Aug. 4, 2008).

⁸⁶ *See* KINSER, *supra* note 3, at 24 (“Although for-profit institutions are of minor significance in terms of overall numbers—representing less than 5 percent of the higher education enrollment and only about 20 percent of all degree-granting institutions—they currently play a major role in policy debates in Washington and portfolio discussions on Wall Street.”).

⁸⁷ *See, e.g.*, Beckie Supiano, *Student Aid Is Up, But the Rise in College Costs Outpaces Family Incomes*, CHRON. HIGHER EDUC., Nov. 7, 2008, at 23 (stating that, in 2008, tuition and fees at private four-year colleges and at public four-year colleges for in-state students increased after inflation, but that tuition and fees at for-profit institutions “declined in constant dollars”).

⁸⁸ *See, e.g.*, David Robinson, *Summer Street Capital Buys Welding School Based in Oklahoma*, BUFFALO NEWS, Oct. 28, 2008, at B8 (“Summer Street was drawn to the career school industry because demand is rising for many skilled trades, such as welding, while the troubles within the nation’s manufacturing sector and a potential recession could displace many workers who need to learn new skills to find a good-paying job.”).

⁸⁹ *See, e.g.*, Kelly Field, *Cost, Convenience Drive Veterans’ College Choices*, CHRON. HIGHER EDUC., July 25, 2008, at 1 (stating that veterans, like many adult students, choose for-profit institutions because they “allow them to balance work, studies, and family obligations”).

⁹⁰ *See id.*

⁹¹ *See, e.g.*, Katherine Mangu-Ward, *Education for Profit: Why Is Everyone Flaming the University of Phoenix?*, REASON, July 1, 2008, at 38 (stating that in “recent years, the University of Phoenix has

Important issues, like the limited role of faculty, centrally designed curriculums, and program standardization at for-profit colleges and universities,⁹² make many faculty and administrators at traditional institutions nervous about the quality of the degrees and certificates offered by these new entrants into the higher education marketplace.⁹³

Further, it has been difficult to develop a solid research base concerning for-profit educational providers, given the proprietary nature of their records and the often non-existent research requirements for their faculty.⁹⁴ Additionally, “remarkably little research is available on students [at for-profit schools] coming from a student affairs perspective.”⁹⁵ Without this transparency, researchers and legislators have questioned “whether for-profit institutional rhetoric regarding a student-centered education is matched by the reality of student services actually offered . . . [and whether] the profit motive may convert student affairs into customer service.”⁹⁶

Another area of legislative and traditional institution concern is what students actually learn in the programs offered at for-profit institutions.⁹⁷ Although this has become an issue for traditional schools in the last few years as well,⁹⁸ the potential perceptual link between legitimate for-profit schools and diploma mills *should* make this a concern of utmost importance to for-profit colleges and universities.⁹⁹ Also, many academicians wonder if the greater aims of a liberal arts curriculum are lost in the acutely vocational atmosphere that is pervasive in for-profit higher education.¹⁰⁰ (Of course, this concern is certainly not exclusive to the for-

become the poster child for everything the mainstream academic establishment thinks is wrong about for-profit higher education”).

⁹² See KINSER, *supra* note 3, at 87.

⁹³ See, e.g., Andrea L. Foster, *Moonlighting for an Unaccredited University*, CHRON. HIGHER EDUC., Apr. 12, 2002, at 35 (stating that “many educators hold Kennedy-Western [an unaccredited distance-learning institution] in low regard, troubled by the institution’s secrecy and slick marketing, decision to avoid oversight by accrediting agencies, awarding of academic credit for work experience, and attempted moves to different states”).

⁹⁴ See, e.g., Goldie Blumenstyk, *The Chronicle Index of For-Profit Higher Education*, CHRON. HIGHER EDUC., Feb. 29, 2008, at 18 (stating that a group of “Tennessee legislators has recommended a series of new laws that would require the colleges to disclose more about their graduation rates and tuition charges” to increase transparency in the for-profit educational realm).

⁹⁵ See KINSER, *supra* note 3, at 79 (stating that it is unclear who bears responsibility for student services in for-profit institutions and what type of training these individuals might or might not have).

⁹⁶ *Id.*

⁹⁷ See, e.g., Goldie Blumenstyk, *Why For-Profit Colleges Are Like Health Clubs*, CHRON. HIGHER EDUC., May 5, 2006, at 35 (“At most for-profit institutions, individual faculty members don’t design courses; they teach a curriculum that is provided to them and, as a result, tend to be paid lower salaries than faculty members at traditional colleges, who play a greater role in creating the courses.”).

⁹⁸ See generally DEREK BOK, *OUR UNDERACHIEVING COLLEGES: A CANDID LOOK AT HOW MUCH STUDENTS LEARN AND WHY THEY SHOULD BE LEARNING MORE* (Princeton Univ. Press 2006).

⁹⁹ See KINSER, *supra* note 3, at 94–95 (“Small classes, self-directed and active learning, practical application of knowledge, and discussion-based instruction are considered the hallmarks of the for-profit sector Given this situation, for-profit institutions ought to be—in theory at least—places where quality learning takes place. The evidence that it does, however, is sparse. Little is known about the learning outcomes of for-profit higher education or the effectiveness of nontraditional teaching models employed by some of the larger for-profit institutions.”).

¹⁰⁰ See James Flanigan, *For-Profit Career Education Gives Universities Growth Lesson*, L.A. TIMES, Apr. 25, 2004, at C1 (“[M]ost for-profit schools are not places where the mind is encouraged to flourish for its own sake. Rather, they pursue industrial efficiency, often requiring faculty to teach from a standard, company-issued textbook. Their classes are directed to mastering specific employment needs.”).

profit sector as many questions have been raised about the aims and the status of the liberal arts in traditional higher education.¹⁰¹)

With the explication of the general background of these institutions complete, it is important to examine some of the major institutions that make up the for-profit sector. The behemoth among these institutions is the University of Phoenix, which is by far the largest of the for-profit schools.¹⁰² The University of Phoenix has seen tremendous growth in its programs and has served as a model for other for-profit colleges and universities.¹⁰³ The institution has solidified its position as, arguably, the most well-known for-profit provider of higher education by advertising in the national television media¹⁰⁴ and by gaining the naming rights to a major sports stadium.¹⁰⁵ However, its reputation has suffered a downturn of late, as a result of being the subject of increasingly negative media attention;¹⁰⁶ agreeing to pay multi-million dollar fines to the federal government after a highly critical U.S. Department of Education Program Review Report was released;¹⁰⁷ and having to defend itself in related federal shareholder lawsuits.¹⁰⁸ In one of these lawsuits, the jury initially found that the University of Phoenix “fraudulently misled investors about its student recruitment policies” and awarded a \$280 million verdict.¹⁰⁹ However, the district court judge overturned the verdict, granting the for-profit institution’s motion for judgment as a matter of law based on evidentiary issues.¹¹⁰

There are other players in the for-profit arena that have also experienced legal trouble resulting from financial and student mismanagement. Career Education Corporation was ensnared in multiple investigations and litigation stemming from its inability to accurately represent its enrollment figures and from allegedly misrepresenting its

¹⁰¹ See BOK, *supra* note 98, at 48 (claiming that a problem with many traditional colleges and universities is a neglect of pedagogy for a discussion of what courses should be required or offered in a curriculum); see also W.R. Connor, President, The National Humanities Center, Keynote Remarks at the Kenan Center Quality Assurance Conference: Liberal Arts Education in the Twenty-First Century (May 19–20, 1998), available at <http://www.aale.org/pdf/connor.pdf> (last visited May 1, 2009) (stating that liberal arts education is struggling in today’s society).

¹⁰² See Sam Dillon, *Troubles Grow for a University Built on Profits*, N.Y. TIMES, Feb. 11, 2007, at A1 (noting that the University of Phoenix is the “nation’s largest private university”).

¹⁰³ JOHN SPERLING, *REBEL WITH A CAUSE: THE ENTREPRENEUR WHO CREATED THE UNIVERSITY OF PHOENIX AND THE FOR-PROFIT REVOLUTION IN HIGHER EDUCATION* 58 (John Wiley & Sons, Inc. 2000) (in which the founder of The University of Phoenix deems its teaching-learning system to be “considered by many to be the nation’s most effective system of education for working adults”).

¹⁰⁴ See *Marketing Campaign Grows University of Phoenix Online Enrollment*, HELLER REP., Aug. 2001, available at http://findarticles.com/p/articles/mi_m0BTY/is_2_7/ai_77378634 (last visited May 1, 2009).

¹⁰⁵ See University of Phoenix Stadium, <http://www.universityofphoenixstadium.com/> (last visited May 1, 2009).

¹⁰⁶ See, e.g., Dillon, *supra* note 102, at A1 (stating that “[the University of Phoenix’s] reputation is fraying as prominent educators, students and some of its own former administrators say the relentless pressure for higher profits, at a university that gets more federal student financial aid than any other, has eroded academic quality”).

¹⁰⁷ See Dawn Gilbertson, *Student-Recruitment Tactics Blasted by Feds; Univ. of Phoenix Audit Leads to \$9.8 Mil Fine*, ARIZ. REPUBLIC, Sept. 14, 2004, at 1A.

¹⁰⁸ See, e.g., *Apollo Group*, 2008 U.S. Dist. LEXIS 61995.

¹⁰⁹ See *Judge Tosses Case Against Apollo*, CHATTANOOGA TIMES FREE PRESS, Aug. 6, 2008, at C1.

¹¹⁰ See, e.g., *Apollo Group*, 2008 U.S. Dist. LEXIS 61995, at *21–22.

program quality.¹¹¹ Another for-profit school, Corinthian College, had similar difficulties related to the lack of transparency it provided to investors about future growth possibilities and student loan management abuses.¹¹² One of the most reported instances in which a for-profit institution has found itself in legal and public relations problems involved ITT, Inc. In 2004, the “U.S. Department of Justice conducted a highly publicized raid on ten ITT campuses and the corporate headquarters, investigating allegations of falsification of attendance records, grades, and job placement statistics. The SEC later opened its own investigation of the same matters, and a shareholder lawsuit predictably followed.”¹¹³

As such, in recent years, considerable attention has been focused on the for-profit sector; clearly, not all of this attention has been beneficial to the companies, their stockholders, and their students. Collectively, problems seem to have arisen when the organizations attempted to expand and continue to increase enrollments to fuel profits.¹¹⁴ Additionally, many of these for-profit colleges and universities found themselves embroiled in controversy when they failed to provide shareholders with negative information, like decreasing profits or admissions, in a timely fashion.¹¹⁵ Certain for-profit institutions have also allegedly been involved in other unscrupulous acts like fraud, mismanagement of the student loan programs, and other improprieties associated with admissions and applications to the organizations.¹¹⁶

Yet, these major institutions are not the only players in the for-profit educational game. Other smaller for-profit enterprises also have the potential to inflict substantial harm to student consumers of these businesses. One recent illustration of this potential involved the 2005 creation of the for-profit American Justice School of Law in Paducah, Kentucky.¹¹⁷ This institution was started to provide legal training in an area of the country that lacked a law school,¹¹⁸ and the founders of the

¹¹¹ See *60 Minutes: For-Profit College: Costly Lesson* (CBS television broadcast Jan. 30, 2005) (transcript available at <http://www.cbsnews.com/stories/2005/01/31/60minutes/main670479.shtml>) (last visited May 1, 2009); Goldie Blumenstyk, *Lawsuit Accuses Career Education Corp. of Deceiving Students on Program's Quality*, CHRON. HIGHER EDUC., Oct. 1, 2007, available at <http://chronicle.com/news/article/3153/lawsuit-accuses-career-education-corp-of-deceiving-students-on-programs-quality> (last visited May 1, 2009).

¹¹² See KINSER, *supra* note 3, at 51 (“Like several other for-profit education companies, Corinthian faced regulatory scrutiny in 2003 and 2004. The Department of Education investigated one of its campuses for student loan violations, SEC opened an inquiry into potentially misleading statements made by the company about its status with the loan program, and several shareholder lawsuits erupted in the wake of these revelations.”).

¹¹³ *Id.* at 56.

¹¹⁴ See, e.g., Dillon, *supra* note 102, at A1 (“‘Wall Street has put [University of Phoenix] under inordinate pressure to keep up the profits, and my take on it is that they succumbed to that,’ said David W. Breneman, dean of the Curry School of Education at the University of Virginia. ‘They seem to have really stumbled.’”).

¹¹⁵ See, e.g., *Apollo Group*, 2008 U.S. Dist. LEXIS 61995.

¹¹⁶ See, e.g., KINSER, *supra* note 3, at 87–88 (“The admission requirements at for-profit institutions have been the subject of regulatory interest, with particular concern directed toward the admission of students with limited ability to benefit from the instruction offered. The concern is that for-profit institutions will be reluctant to deny admission to students because they represent the revenue stream for the school.”).

¹¹⁷ See Bill Bartleman, *Law School Makes Move Toward Accreditation from Bar*, PADUCAH SUN, Aug. 13, 2007 [hereinafter Bartleman, *Accreditation*].

¹¹⁸ See Bill Bartleman, *Paducah, Ky., Plan for Law School Has High Hopes*, PADUCAH SUN, Nov. 29, 2004.

institution had ambitious plans to develop the area around the campus, expanding the school into a more modern and larger facility.¹¹⁹ However, as the law school lacked American Bar Association (“ABA”) accreditation approval at the time of creation,¹²⁰ its students were faced with the possibility that, upon graduation from the unaccredited law school, it might be impossible to sit for admission to their selected bar and become a licensed attorney.¹²¹ As time elapsed, the prospects for accreditation began to fade,¹²² and the school faced faculty resignations, terminations, and student protests.¹²³

This situation culminated with a \$120 million federal class action lawsuit that was filed in 2007 by a group of students against the administrators of the American Justice School of Law.¹²⁴ The lawsuit’s complaint listed sixty claims, ranging from RICO violations to grade manipulation to schemes to present false information to the ABA.¹²⁵ Eventually, in February 2008, the parties to this lawsuit entered into a settlement agreement and release.¹²⁶ Pursuant to the settlement, the defendants, the three owners of the school, “agreed to transfer ownership of the school to an investors’ group . . . and to play no role in its future administration” in exchange for the dismissal of the lawsuit.¹²⁷ Thereafter, the law school was sold; the civil action was dismissed with prejudice; and the name of the law school was changed to the Alben W. Barkley School of Law.¹²⁸

Unfortunately, the institution’s problems did not end there.¹²⁹ In August 2008, Regions Bank filed a state lawsuit against the for-profit law school and its former owners, alleging that the Barkley School of Law was liable

¹¹⁹ See Andrew Wolfson, *Law Students’ Dream Turns Nightmarish*, COURIER-J. (Louisville, Ky.), Feb. 3, 2008, at 1A [hereinafter Wolfson, *Nightmarish*] (stating that in “2006, the school broke ground for a planned \$7 million campus expansion”).

¹²⁰ See Bartleman, *Accreditation*, *supra* note 117 (quoting Paul Hendrick, American Justice School of Law founder and dean, as stating “[r]eceiving accreditation is always a helpful boost in recruiting students Students are then fully confident they can take the bar examination in any state after they graduate.”).

¹²¹ See, e.g., Supreme Court of Georgia, Rules Governing Admission to the Practice of Law, pt. B, § 4(b)(1), available at <http://www.gabaradmissions.org/pdf/admissionrules.pdf> (last visited May 1, 2009) (“Prior to taking the bar examination an applicant must have been awarded the first professional degree in law (JD or LLB) by a law school approved by the American Bar Association.”).

¹²² See C. D. Bradley, *Bar Denies Accreditation: American Justice School of Law Confident It Will Meet All ABA Requirements Soon*, PADUCAH SUN, Sept. 18, 2007.

¹²³ See, e.g., Amy Burroughs, *Difficult Day for School Officials, Students: Concerns over Law School Spark Rally at Noble Park*, PADUCAH SUN, Nov. 29, 2007; Amy Burroughs, *Professors Threaten Resignation If Dean, Associate Dean Remain at School*, PADUCAH SUN, Dec. 1, 2007.

¹²⁴ See Complaint, *Rust v. Hendrick*, No. 5:07-CV-191-TBR, at *1 (W.D. Ky. Nov. 17, 2007) (on file with authors) [hereinafter *Rust Complaint*]; see also *Students Sue Law School Mismanagement, Racketeering Alleged*, LEXINGTON HERALD-LEADER (Lexington, KY), Nov. 26, 2007, at C3.

¹²⁵ See *Rust Complaint*, *supra* note 124, at *2–5.

¹²⁶ See Settlement Agreement and Reciprocal Release, *Rust v. Hendrick*, No. 5:07-CV-191-TBR, at *1 (W.D. Ky. Feb. 18, 2008) (on file with authors).

¹²⁷ Andrew Wolfson, *For-Profit Law School Sold, Settling Suit*, COURIER-J. (Louisville, Ky.), Feb. 16, 2008, at 1B. See also Settlement Agreement and Reciprocal Release, *supra* note 126.

¹²⁸ See Andrew Wolfson, *Paducah Law School’s Future in Doubt*, COURIER-J. (Louisville, Ky.), Mar. 28, 2008, at 2B [hereinafter Wolfson, *Future in Doubt*]; Order of Dismissal, *Rust v. Hendrick*, No. 5:07-CV-191-TBR, at *1 (W.D. Ky. Feb. 18, 2007) (on file with authors).

¹²⁹ See Wolfson, *Future in Doubt*, *supra* note 128, at 2B (detailing the resignation of the interim dean and assistant dean based on claims that the “new owners had failed to provide funding for the school, leaving it unable to pay its bills or recruit students”).

for repayment of the promissory note issued for approximately \$423,000 by the plaintiff to the American Justice School of Law.¹³⁰ The lawsuit was removed to federal court, and it remains pending.¹³¹ In September, the American Justice School of Law filed for bankruptcy.¹³² Faced with these lawsuits, substantial debts, a precipitous drop in student enrollment, and a likely bankruptcy filing, Barkley School of Law announced that it would close at the end of 2008.¹³³

There are many pragmatic lessons to be learned from the saga of the American Justice School of Law. These lessons include how new for-profit colleges and universities should be treated by accrediting agencies and governmental authorities. Further, this example demonstrates how information regarding a for-profit educational institution should be provided to all applicants and enrolled students so that all individuals, especially those persons with lower levels of cultural capital, may not fall victim to for-profit unethical behavior.¹³⁴ Finally, the story of the American Justice School of Law provides a basis for analysis in how one can successfully negotiate the for-profit educational sector.

V. NEGOTIATING THE TURBULENT FOR-PROFIT EDUCATIONAL SECTOR: SUGGESTIONS FOR REGULATORS, PROVIDERS, CONSUMERS, AND EMPLOYERS

Clearly, there have been major problems with certain organizations that have entered into the field of higher education to provide training and credentials for consumers who have decided against traditional public and private institutions. The extensive litigation involving diploma mills, such as St. Regis University; legitimate schools, such as the University of Phoenix; and start-up failures, such as the American Justice School of Law, demonstrates that the present marketplace in for-profit higher education can cause harm to many of its stakeholders.

Students can suffer harm when they are defrauded by unscrupulous for-profit educational institutions or when they are misled by negligent administrators.¹³⁵ Employers can be harmed by hiring individuals who have obtained degrees that may have required insufficient or no substantive

¹³⁰ See Notice of Removal, *Regions Bank v. American Justice Sch. of Law, Inc.*, No. 5:08CV-134-R, Exhibit 1, at 2–4 (W.D. Ky. Aug. 22, 2008) (copy on file with authors).

¹³¹ See Docket Report, *Regions Bank v. American Justice Sch. of Law, Inc.*, No. 5:2008cv-00134 (W.D. Ky. Aug. 22, 2008) (copy on file with authors).

¹³² See Reeves Wiedeman, *Troubled Law School in Kentucky to Close This Year*, CHRON. HIGHER EDUC., Oct. 23, 2008, available at <http://chronicle.com/news/article/5381/troubled-law-school-in-kentucky-to-close-this-year> (last visited May 1, 2009).

¹³³ See *id.*; see Barkley School of Law, <http://www.barkleyschooloflaw.com/> (last visited May 1, 2009) (When one now attempts to access the website for the Barkley School of Law, a monochromatic screen with the single sentence “This site is no longer active” appears.).

¹³⁴ See, e.g., Wolfson, *Nightmarish*, *supra* note 119 (quoting critic of for-profit law schools and legal education scholar Michael Ariens, as stating that “under-capitalized institutions may take advantage of the desire of a lot of people to be minted as a lawyer”).

¹³⁵ See, e.g., Wolfson, *Nightmarish*, *supra* note 119 (recounting the story of a forty-year-old paralegal, who after moving more than 1000 miles to attend American Justice School of Law, was informed by administrators that “the school was having some financial troubles . . . and they could give her only \$1,000 of the \$7,000 she had borrowed from a private loan company for living expenses”).

coursework.¹³⁶ Legitimate for-profit innovators in education can be harmed by the generalized reputation of the for-profit sector as only encompassing diploma mills and poor quality facilities.¹³⁷ Investors can be harmed when a for-profit company is less than transparent in disseminating poor performance and revenue growth, thereby negatively affecting the long term profitability of the companies.¹³⁸ Finally, the public trust can be harmed by corrupt diploma mills and poorly run for-profit schools as these enterprises devalue the overall perception of higher education.¹³⁹

Despite the potential multitude of harms that can result from certain actions in the for-profit educational sector, there are ways to make this marketplace less fraudulent and less prone to litigation. In support of these strategies, both the federal government and states have taken some steps to make it more difficult for diploma mills to operate freely and with ease.¹⁴⁰ Also, there have been global efforts to combat these dishonest enterprises.¹⁴¹ However, much more still needs to be done on legislative and regulatory fronts. Further, increased culpability and accountability is required on the part of employers in their evaluation of job applicants and on the part of student consumers of for-profit education.

At the federal level, several legislative attempts to address fraudulent for-profit institutions have been made; however, these attempts have not gone far enough to protect the stakeholders who may be harmed by corrupt or deficient for-profit educational enterprises. The first such attempt was the inclusion of diploma mills in the statutory reauthorization and modification of the Higher Education Opportunity Act, which was signed into law by then-President George W. Bush on August 14, 2008.¹⁴² There are two aspects of this statute: information and collaboration.¹⁴³ With respect to the first prong, the statute provides that “[t]he Secretary [of Education] shall maintain information and resources on the Department’s website to assist students, families, and employers in understanding what a diploma mill is and how to identify and avoid diploma mills.”¹⁴⁴ With respect to the second prong, the federal statute provides that:

¹³⁶ See, e.g., Shena Abercrombie, *Problem of Phony Diplomas Increasing*, FLINT J., Oct. 20, 2003, at A1 (discussing how “sham degrees” have created “headaches for employers”).

¹³⁷ See, e.g., Op-Ed, *No to Diploma Mills; A Bill to Improve Oversight of For-Profit Vocational Schools in California Is a Necessity, and More Is Required*, L.A. TIMES, Sept. 27, 2008, at A20 (stating that legitimate trade schools should be concerned by diploma mills and other unethical for-profit institutions that are “giving the entire industry a black eye with aggressive, boiler-room sales tactics”).

¹³⁸ See, e.g., Dillon, *supra* note 102 (stating that in the wake of the shareholder lawsuit filed against it, “Apollo stock fell so far that in November [2007], CNBC featured it on a ‘Biggest Losers’ segment”).

¹³⁹ See, e.g., Matt Krupnick, *Veto Prolongs Lack of Oversight of For-Profit Colleges*, CONTRA COSTA TIMES, Oct. 1, 2008 [hereinafter Krupnick, *Lack of Oversight*] (stating that in California “[a] minority of the [vocational] schools gave the industry a bad reputation by closing unexpectedly without returning tuition money”).

¹⁴⁰ John Hechinger, *On Capitol Hill, For-Profit Schools Raise New Debates*, WALL ST. J., Nov. 23, 2005, at B1; see, e.g., John Hechinger, *Inquiry into Florida For-Profit University Widens*, WALL ST. J., June 22, 2006, at A12.

¹⁴¹ See, e.g., UNESCO Portal on Recognized Higher Education Institutions, http://portal.unesco.org/education/en/ev.php-URL_ID=49864&URL_DO=DO_TOPIC&URL_SECTION=201.html (last visited May 1, 2009).

¹⁴² Press Release, Office of the Press Secretary of the White House, President Bush Signs H.R. 4040, H.R. 4137, and H.R. 6432 into Law (Aug. 14, 2008); see 20 U.S.C. § 1011 (2008).

¹⁴³ See 20 U.S.C. § 1011.

¹⁴⁴ *Id.* § 1011(a).

The Secretary shall continue to collaborate with the United States Postal Service, the Federal Trade Commission, the Department of Justice (including the Federal Bureau of Investigation), the Internal Revenue Service, and the Office of Personnel Management to maximize Federal efforts to—(1) prevent, identify, and prosecute diploma mills; and (2) broadly disseminate to the public information about diploma mills, and resources to identify diploma mills.¹⁴⁵

However, there had been much stronger language regarding what the federal government, through the establishment of a task force, would have been able to do in regulating and cracking down on diploma mills.¹⁴⁶ This language was removed from the final bill that was signed into law.¹⁴⁷ In light of the numerous recent allegations of fraudulent diploma mill activity, this was a significant, missed legislative opportunity for establishing a mechanism to distinguish the legitimate from the illegitimate in for-profit higher education. Although the retention of some diploma mill legislation is preferable to having a complete absence of federal comment or direction, Congress should renew its efforts to pass comprehensive legislation in this area.

Like the federal legislature, federal agencies have made some strides towards addressing the problems of maleficent for-profit educational providers. For example, as a part of meeting the reauthorized Higher Education Opportunity Act statutory mandate, the U.S. Department of Education has a webpage devoted to “Diploma Mills and Accreditation.”¹⁴⁸ Additionally, it maintains a list of accredited colleges and universities.¹⁴⁹ Yet the site specifically provides that “[t]he database is provided as a public service without warranty of any kind. The database does not constitute an endorsement by the U.S. Department of Education of any of the educational institutions or programs.”¹⁵⁰ Further, “[t]he U.S. Department of Education recommends that the database be used as one source of qualitative information and that additional sources of qualitative information be consulted.”¹⁵¹ Based on these statements, the Department of Education essentially asserts that its responsibility is only to provide information, which should not be relied on exclusively.

These resources that the Department of Education currently provides should make it clear to any possible consumer of for-profit education that if she chooses to pursue a degree from a non-listed, unaccredited institution, then the value or quality of the degree might be suspect. However, given that the original intent of consumer protection legislation and administrative regulation was to protect persons of “limited means and

¹⁴⁵ *Id.* § 1011(b).

¹⁴⁶ *See* H.R. 4137, 110th Cong. §§ 851–56 (2007).

¹⁴⁷ *See* 20 U.S.C. § 1011.

¹⁴⁸ *See* U.S. Dep’t of Educ., Diploma Mills and Accreditation,

<http://www.ed.gov/students/prep/college/diplomamills/index.html> (last visited May 1, 2009).

¹⁴⁹ *See* U.S. Dep’t of Educ., Database of Accredited Postsecondary Institutions and Programs,

<http://ope.ed.gov/accreditation/> (last visited May 1, 2009).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

limited knowledge,”¹⁵² greater legislative and regulatory efforts should be made on the federal level. Accordingly, the established federal efforts could be bolstered by a greater public awareness campaign or by the passage of a statute or the implementation of an administrative regulation that requires all educational institutions to make reference to the U.S. Department of Education educational accreditation database whenever claims of accreditation are made.

Additionally, other federal government agencies must be active in the regulation of fraudulent activity in for-profit education. Here, the U.S. Justice Department, the Internal Revenue Service, the U.S. Postal Service, the Securities and Exchange Commission, and the Federal Trade Commission must work together to effectively mete out the enforcement of regulations for which they are responsible.¹⁵³ Clearly, these agencies are tasked with a multitude of responsibilities for protecting the public trust and safety, so often their focus is not squarely on preventing the growth of diploma mills and underhanded for-profit higher education. Still, these agencies should build upon past successes in this area, like the St. Regis University prosecutions, to successfully monitor similar fraudulent activities in the future.¹⁵⁴

At the state level, some promising efforts have been made to crack down on diploma mills and unscrupulous activities. For example, Oregon has created an Office of Degree Authorization.¹⁵⁵ Additionally, in Oregon, individuals may not claim to possess an unaccredited degree without noting that the degree is unaccredited, and may incur a civil penalty if they do not abide by this statutory requirement.¹⁵⁶ This statute, in its current manifestation, was the result of a litigation settlement with Kennedy-Western University (“KWU”); the statute prior to the settlement barred individuals from representing that they had a degree if that degree was granted by an unaccredited university.¹⁵⁷ Pursuant to this settlement, the state “would not enforce [its previous statute] as long as KWU degree holders disclose their school’s nonaccredited status when representing their academic achievement.”¹⁵⁸ Florida has also been a leader in the monitoring and regulation of the for-profit educational sector.¹⁵⁹

Other state legislative efforts to monitor unscrupulous for-profit education providers would certainly put pressure on those organizations.¹⁶⁰

¹⁵² See DAVID P. TWOMEY & MARIANNE MOODY JENNINGS, *ANDERSON’S BUSINESS LAW AND THE LEGAL ENVIRONMENT* 708 (20th ed. 2008).

¹⁵³ See 20 U.S.C. § 1011(b) (prescribing the collaboration).

¹⁵⁴ See *supra* notes 48–79.

¹⁵⁵ See Or. Student Assistance Comm’n, Office of Degree Authorization, <http://www.osac.state.or.us/oda/index.html> (last visited May 1, 2009).

¹⁵⁶ See Or. Rev. Stat. § 348.609 (2008).

¹⁵⁷ See *Oregon Settles with Unaccredited University*, PORTLAND BUS. J., Dec. 22, 2004, available at <http://www.bizjournals.com/portland/stories/2004/12/20/daily26.html> (last visited May 1, 2009).

¹⁵⁸ See *id.*

¹⁵⁹ See, e.g., Ron Matus, *After a Long Inquiry, State and FMU Settle*, ST. PETERSBURG TIMES, Nov. 6, 2007, at 1B.

¹⁶⁰ See Or. Student Assistance Comm’n, Office of Degree Authorization—Frequently Asked Questions, <http://www.osac.state.or.us/oda/faq.html> (last visited May 1, 2009) (“Is Oregon the only state that disallows use of unaccredited degrees? No. It is also illegal in North Dakota, New Jersey, Texas, Nevada, Washington and Maine to use unaccredited degrees. It is illegal in Indiana to use an

Yet for each step forward that is made in the regulation of these fraudulent enterprises, it seems there is a commensurate step backward. For example, in August 2008, the California Assembly passed SB 823, a bill that would “renew oversight of California’s 1,700 for-profit and vocational colleges.”¹⁶¹ SB 823 would have created a replacement state oversight agency for a previous agency whose authorization had expired on July 1, 2007.¹⁶² Although the former agency had been criticized, California lawmakers passed this new bill as they “uneasily watched fly-by-night schools known to be diploma mills set up in California” after the disappearance of the original oversight agency.¹⁶³ After the bill was passed, on September 31, 2008, Governor Arnold Schwarzenegger vetoed the bill, to the dismay of consumer advocates.¹⁶⁴ As with the federal level of government, it is imperative that all states need to increase their efforts in the oversight of for-profit educational institutions; unfortunately for California, partisan politics in this realm may lead numerous for-profit stakeholders to incur future harm.¹⁶⁵

Clearly, additional legislation and enforcement is needed nationally and on the state level. Global efforts are required as well. In the example of St. Regis University, that institution had laid the foundation to move its operation to an overseas locale to escape the reach and jurisdiction of U.S. authorities.¹⁶⁶ In response to possible transactions like this one, the United Nations Educational, Scientific, and Culture Organization (“UNESCO”) has attempted to create a database that serves a public information function similar to the U.S. Department of Education’s database.¹⁶⁷ However, this database has become increasingly suspect.¹⁶⁸ As such, UNESCO and other international educational organizations should work to mollify these criticisms. Certainly, with increased levels of globalization, worldwide efforts to put the squeeze on unethical and illegal activities must be strengthened. Although this will be an incredibly difficult task, considering

unaccredited doctorate and Michigan law limits the legal options of users. Illinois limits the use of unaccredited degrees to those licensed by other states. . . . Many other states are considering similar laws in order to prevent fraud.”).

¹⁶¹ Matt Krupnick, *Assembly Passes Contentious For-Profit College Bill*, CONTRA COSTA TIMES, Aug. 19, 2008.

¹⁶² *Colleges Get a Free Ride; State Let Laws on Oversight of For-Profit Higher Education Lapse and Hasn’t Addressed the Issue*, MERCED SUN-STAR (Cal.), Aug. 13, 2007, at B3 (stating that since the original oversight legislation expired, “[t]he state has gone from little oversight to no oversight of private, for-profit institutions”).

¹⁶³ *Id.*

¹⁶⁴ See Krupnick, *Lack of Oversight*, *supra* note 139 (“‘This is almost like after a natural disaster, when you get all kinds of predatory operators,’ said Betsy Imholz, an attorney with the Consumers Union and a strident supporter of a new bureau. ‘We need an alert system before people enter a school.’”).

¹⁶⁵ See *Colleges Get a Free Ride*, *supra* note 162, at B3 (citing an assessment by “Alan Contreras, who heads the Oregon Office of Degree Authorization,” that “California is considered one of the ‘Seven Sorry Sisters,’ states with the worst oversight of career colleges and other for-profit institutions”).

¹⁶⁶ See Morlin, *Enters Plea*, *supra* note 55.

¹⁶⁷ See UNESCO Portal on Recognized Higher Education Institutions, *supra* note 141.

¹⁶⁸ See, e.g., Office of Degree Authorization—Frequently Asked Questions, *supra* note 160 (“The UNESCO list of world colleges is not reliable as an indicator that a college is legitimate. UNESCO does no screening of what is on the list; it simply accepts whatever is submitted by government officials. In recent years some substandard entities have made it onto the list, so ODA and other evaluators consider the list unreliable.”).

the issues of prosecution across national boundaries,¹⁶⁹ it should not be one that is discarded on an international level.

Finally, in order for real change to occur, there has to be active participation in the process by legitimate for-profit schools, by employers, and by student consumers of for-profit education. The leadership and administration of legitimate for-profit colleges and universities should redouble their efforts to avoid future impropriety, especially in light of the recent spate of shareholder lawsuits.¹⁷⁰ Further, institutions that have operated without such scandals should assert themselves as business models for the industry, demonstrating that one can operate successfully without cutting the corners that lead to litigation.¹⁷¹ In addition to these efforts by educational providers, the student consumers and employee beneficiaries of for-profit educational institutions should exercise responsibility as well in making education and employment decisions. Individuals should be skeptical of and avoid organizations that offer degrees for little work and a flat fee.¹⁷² Employers must also be wary of applicants and employees with degrees from suspicious institutions.¹⁷³ Here, there is a shared responsibility on either side of the employment equation. Quite simply, if due diligence is exercised by student consumers and employers, these actions alone could potentially eliminate the marketplace for degree mills.

VI. CONCLUSION

It would be naïve to say that the future will not have more educational scandals and litigation involving both providers of worthless degrees and consumers seeking a maximum credential with little academic effort. The history of the field and, unfortunately, duplicitous human tendencies indicate otherwise. Yet for every harm that can be done by the use of or attempt to buy or sell a fraudulent degree, there are individuals who can prevent the realization of that harm. Governmental bodies at all levels, legitimate for-profit educational providers, prospective employers, and student consumers should all strive to curb abuses in for-profit education and to help this educational arena prosper through innovation rather than deceit.

¹⁶⁹ See, e.g., Schemo, *Beyond Fraud*, *supra* note 48 (stating that had the Randocks been successful in moving the St. Regis University operations to Liberia, they would have been outside of the jurisdiction of the United States).

¹⁷⁰ See, e.g., *Apollo Group*, 2008 U.S. Dist. LEXIS 61995.

¹⁷¹ Podcast: *Educating for Profits*, *supra* note 15.

¹⁷² See KINSER, *supra* note 3, at 121 (“The FTC warns [consumers] of institutions that claim accreditation from an agency not approved by the U.S. Department of Education, have sound-alike names, and require no attendance or offer degrees for flat fees.”).

¹⁷³ See *id.* (“The [FTC] campaign also urges employers to verify applicants’ academic credentials and to look for quickie degrees and degrees awarded from schools in different locations from where the applicant lives and works.”).