
COMPLEXITIES IN LEGISLATIVE SUPPRESSION OF DIPLOMA MILLS

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INTRODUCTION

The connection between education and personal economic advantage drives a global market for higher education. Diploma mills, businesses that sell bogus degrees to customers in search of easy credentials, are a dark response to these market forces. The easy profits and minimal risk associated with selling degrees to this market lead those who traffic in unearned university credentials to build sophisticated businesses that are international in footprint and global in customer base. They create networks of fake universities, accrediting bodies, government agencies, and credential evaluating services that are full-blown imitations of the web of legitimate colleges, universities, and administrative structures that comprise international higher education.¹

It is quite possible that diploma mills sell more degrees than are issued by

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1. See, e.g., Indictment, United States v. Randock, No. CR-05-0180-LRS (E.D. Wash. 2008), 2005 WL 5890006 (describing one such operation). In particular, to appreciate the extent and sophistication of the St. Regis artifice, see Affidavit of John E. Neirinckx, II, No. MJ-05-222-00 (E.D. Wash. 2008) (accompanying application for search warrant submitted to Magistrate Judge Cynthia Imbrogno), available at <http://www.hep.uiuc.edu/home/g-gollin/pigeons/> (follow "Affidavit for search warrant" hyperlinks); United States' Sentencing Memorandum, *Randock*, No. CR-05-0180-LRS; United States' Sentencing Memorandum, Government Exhibit A, *Randock*, No. CR-05-0180-LRS (2008). We rely heavily on these documents in all discussions of the St. Regis diploma mill.

all the colleges and universities in any single state except for New York and California.² Roughly five percent of the buyers are federal employees; another five percent are state government workers.³ Perhaps one-fifth of the degrees are sold to foreign customers. One-third of the degrees are at the postgraduate level.⁴ The ranks of diploma mill customers include U.S. intelligence officers and other government workers, engineers, public school teachers, a college president, and bogus physicians and psychiatrists who take on unsuspecting patients.⁵

Surely diploma mills pose threats to public safety. We do not want untrained engineers designing our airliners, or untrained physicians running pharmaceutical research programs. And we do not want our children taught by teachers with purchased credentials. National security issues are significant: foreign customers could use their purchased credentials to seek U.S. entry visas.⁶ In the developing world, where doctors, engineers, and teachers are in desperately short supply, the bribery of education officials by diploma mills can interfere with the establishment of legitimate universities. We know from recent history that problems and conflicts from unstable and failed states overflow national boundaries and spread through the rest of the world.

Nearly all legitimate U.S. colleges and universities award degrees under legal authority issued by a state government. It is natural to expect the states to play the leading role in suppressing illegal degree providers since these businesses are operated in violation of state laws, not federal laws. However, state lawsuits against diploma mills have often been ineffective, doing little more than causing a diploma mill to relocate to a different jurisdiction from which it continues to sell its product unimpeded.

2. This is the estimate of Allen Ezell, who, for ten years, ran the FBI's "Dipscam" task force, whose goal was to prosecute diploma mills. It is imprecise, but reasonable, and is based on information from an informant employed by the University Degree Program (the largest of all diploma mills), the frequency of appearance of various diploma mills in Monster.Com resumes, data from 1985 congressional hearings chaired by Rep. Claude Pepper, and Department of Justice material concerning the St. Regis University diploma mill buyer's list. Private communication from Allen Ezell to George Gollin (2005) (on file with authors). Other information we have seen is consistent with this astonishingly large figure.

3. See CLAUDE PEPPER, FRAUDULENT CREDENTIALS: FEDERAL EMPLOYEES, H.R. REP. NO. 99-551, at 6 (1986). See generally Philip M. Boffey, *Falsified Degrees Growing Problem*, N.Y. TIMES, Dec. 12, 1985, at A21 (providing a description of earlier congressional hearings on the same topic).

4. United States' Sentencing Memorandum, *supra* note , at 8; Private communication from Allen Ezell to George Gollin (2005) (on file with authors).

5. *Fraudulent Credentials: Joint Hearing Before the Subcomm. on Health and Long-Term Care and the Subcomm. on Housing and Consumer Interests of the H. Select Comm. on Aging*, 99th Cong. (1985); United States' Sentencing Memorandum, *supra* note ; Bill Morlin & Jim Camden, *List Identifies Buyers of Fake College Degrees*, SPOKESMAN-REV., July 29, 2008, at A1; Valarie Honeycutt Spears, *With Medical Credentials, It's Patient Beware: In Kentucky, No Agency Oversees Online Schools' Authenticity and Graduates*, LEXINGTON HERALD-LEADER, Oct. 1, 2006, at A1.

6. See United States' Sentencing Memorandum, *supra* note , at 4-5.

There is a natural federal interest in helping the states suppress the illegal sale of academic degrees. But the only organized federal response to the problem of diploma mills was discontinued by the FBI in 1991, some years before the Internet-driven boom in the degree mill business began.⁷ Though it sued the “University Degree Program” in 2003, the Federal Trade Commission did so as a secondary action to accompany its complaint regarding fake international drivers’ licenses that the organization had been selling.⁸ The few criminal cases that have been brought in recent years have relied on mail and wire fraud statutes.⁹ But degree mill customers generally understand the true nature of the product they purchase.¹⁰ In the recent prosecution of the St. Regis University diploma mill, the defense argued that there was no fraud, since willing customers bought these diplomas knowing they were not legitimate degrees.¹¹

There have been signs of renewed federal interest in the suppression of diploma mills. The Senate Committee on Governmental Affairs conducted two days of hearings on the problem in 2004, though the committee never proposed any legislation.¹² The House version of the 2008 Higher Education Opportunity Act held over a dozen pages concerning diploma mills.¹³ But much of the bill’s diploma mill content was deleted by the conference committee that wrote the final version—even so, the bill’s definition of the term “diploma mill” remained, and has now become law.¹⁴ Congressional interest in additional legislation appears to be present.¹⁵

7. ALLEN EZELL & JOHN BEAR, *DEGREE MILLS: THE BILLION-DOLLAR INDUSTRY THAT HAS SOLD OVER A MILLION FAKE DIPLOMAS* 16 (2005). Ezell ran the FBI’s “Dipscam” task force until his retirement from the Bureau.

8. Second Amended Complaint for Injunctive and Equitable Relief at 6-13, Fed. Trade Comm’n v. Mountain View Sys., Ltd., No. 03-CV-0021-RMC (D.D.C. May 1, 2003), available at <http://www.ftc.gov/os/caselist/mountainview/031125amendedcompmountainview.pdf>.

9. See, e.g., First Superseding Indictment at 3-8, United States v. Hamadneh, No. CR-20445-LPZ-MKM (E.D. Mich. 2009); Superseding Information at 4-10, United States v. Randock, No. CR-05-0180-LRS (E.D. Wash. 2008), 2006 WL 5234943.

10. EZELL & Bear, *supra* note , at 99-100. After James Kirk, owner of the Lasalle University diploma mill, went to prison, Lasalle customers were notified by the U.S. Department of Justice that they would be eligible for a substantial refund if they would surrender their Lasalle documents. The majority refused to part with their purchased credentials. *Id.* at 51-53.

11. See Transcript of Hearing on Sentencings at 52-54, Randock, No. CR-05-0180-LRS.

12. *Bogus Degrees and Unmet Expectations: Are Taxpayer Dollars Subsidizing Diploma Mills?: Hearing Before the S. Comm. on Governmental Affairs*, 108th Cong. (2004).

13. See H.R. 4137, 110th Cong. (2008).

14. Compare H.R. 4137, 110th Cong. § 103(a)(1)(20) (2008), with 20 U.S.C. § 1003(5) (2006).

15. *Breach of Trust Investigation: Congressman Vows to Take Action: U.S. Army Launches Educational Campaign Regarding Diploma Mills* (WHNT-19 CBS television

During informal meetings the authors have had with Federal Trade Commission and Department of Justice staff attorneys, all have recommended the creation of a federal statute that directly, clearly, and unambiguously classifies diploma mills and accreditation mills as criminal enterprises.¹⁶ In this Article, we discuss the federal-state partnership and the possible shape of a federal law that would criminalize the operation of a diploma mill. To better understand what would make effective federal legislation, we will first look at an example of a recent successful prosecution of a diploma mill, St. Regis University. We will then look at the current state of the field, to see where state and federal efforts to suppress diploma mills have been successful and where they have come up wanting. With this history in mind, we will explore a possible federal solution, focusing on clear definitions of the terms associated with diploma mills and the criteria upon which an organization would be found a diploma mill.

It will be helpful to describe what we are actually trying to eradicate. We begin with St. Regis University, the most sophisticated of diploma mills uncovered so far.

I. THE NINE-YEAR ARC AND RAPID IMPLOSION OF THE ST. REGIS UNIVERSITY DIPLOMA MILL

Dixie and Steve Randock, the owners of the St. Regis diploma mill, ran their business from Spokane, Washington. But the personnel, mail drops, and affiliated “campuses” of St. Regis eventually spanned at least eighteen states and twenty-two countries. The Randocks bribed Liberian officials to obtain university credentials, claiming that their non-existent schools were properly accredited universities based in Monrovia. They ultimately came to exert significant control over portions of the Liberian government as that country emerged from a catastrophic civil war.¹⁷

In 1999, the Randocks began selling academic credentials inscribed with names like “Holy Acclaim University” and “Audentes Technical Academy.”¹⁸

broadcast May 21, 2009), available at <http://www.whnt.com/news/takingaction/whnt-breach-trust-congressman,0,2167847.story> (“[U.S. Congressman Tim] Bishop said, ‘I think that this diploma mill problem has grown more pronounced as a result of emerging technology. And, now it is the responsibility of government to deal with a much more pronounced problem than had once been the case . . . I can commit to you that I will re-submit the legislation that Congresswoman McCollum and I offered now about a year and a half ago, and I will work as hard as I possibly can to see to it that it becomes law.’”).

16. Interview by George Gollin and Emily Lawrence with Fed. Trade Comm’n staff attorneys, in Wash. D.C. (Sept. 2008); interview by George Gollin with U.S. Dep’t of Justice staff attorneys, in Spokane, Wash. (July 2008).

17. See Declaration of Brian Breen in Support of Objections to Presentence Report at 3, *United States v. Randock*, No. CR-05-0180-LRS (E.D. Wash. 2008); *United States’ Sentencing Memorandum*, *supra* note , at 3; Superseding Information, *supra* note , at 7-11.

18. Indictment, *supra* note , at 3-4. For examples of institution names, see Accelerated

They identified their organization as the “Advanced Education Institute Trust,” describing its degree-granting entities not as schools, but as “Academic Peer Advisory Programs [that] are privately held Peer Evaluation and Endorsement Advisory Trusts, which are not bound to rigid curriculums [sic] or standards typically required by universities that are attended for the accumulation of ‘credits’ or ‘units.’”¹⁹ To clarify their use of the words “college” and “university” in the names of their non-schools, they explained “[i]t must be stressed that the Academic Peer Advisories use words including ‘college,’ ‘university,’ ‘academy,’ etc., not as nouns, but as the lexis in their descriptive titles. The names are titles of Academic Peer Advisories, NOT schools.”²⁰

In 2001, the Randocks invented St. Regis University. In 2002, they sent Richard Novak, the “Chief Academic Officer,” to Washington, D.C. in search of ministerial recognition for St. Regis.²¹ A former car salesman, Novak boldly knocked on the door of the Liberian embassy, explained the reason for his visit, and was introduced to Abdulah Dunbar, the embassy’s deputy chief of mission. Novak successfully negotiated the price of Liberian university accreditation down to \$2,250 from Dunbar’s original asking price of \$4,000, and returned home with the same set of credentials that would have been issued to a legitimate Liberian university.

The Randocks began asserting that St. Regis had been chartered by Liberia in 1984, even though the earliest versions of the St. Regis web pages (dating from 2001 or 2002) had claimed the “school” was on the Caribbean island of Dominica. Lawrence Bestman, Executive Director of Liberia’s National Commission for Higher Education, sent a copy of the St. Regis “charter” to Alan Contreras (one of the authors of this article) in response to his article in *International Higher Education* expressing skepticism about the legitimacy of St. Regis.²² The charter was purportedly “issued this 25th day of March A.D. 1984,” but the document stated “[t]he University offers distance-learning programs through post, Internet, and Fax for the courses and degrees mentioned

Peer Graduate Degree Programs, <http://web.archive.org/web/20000901085445/http://www.advancedu.org/> (last visited Jan. 24, 2010) (containing an archived version of the defunct site).

19. Private communication from a reliable source close to the investigation and prosecution in *Randock* to author (July 6, 2001) (on file with authors).

20. *Id.*

21. Memorandum of Interview with Richard Novak, *United States v. Randock*, No. CR-05-0180-LRS (E.D. Wash. 2008) (providing a description of events summarized in the rest of this paragraph).

22. Letter from Lawrence Bestman, Executive Dir. of Liber.’s Nat’l Comm’n for Higher Educ. to Alan Contreras, Adm’r of the Or. Office of Degree Authorization (Sept. 11, 2003) [hereinafter Bestman Letter] (on file with authors); Alan L. Contreras, *A Case Study in Foreign Degree (Dis)approval*, 32 INT’L HIGHER EDUC. 7, 7-8 (“The NBOE [an accreditation mill run by the Randocks and sanctioned by Liberia] offers accreditation for a fee, with no apparent evaluation process other than a nominal application The NBOE looks to the ODA [Oregon Office of Degree Authorization] like a degree-laundering operation sheltering under the flag of Liberia”).

in Section 1.”²³ The Internet was nothing more than a research project in 1984. It was only after the 1993 introduction of *NCSA Mosaic*, the first modern web browser, that public exploitation of the Internet became possible. Therefore, by purporting to be unmodified since 1984, the St. Regis charter is undoubtedly false.

Over time, Novak and the Randocks arranged payments to about a dozen Liberian officials. The Randocks were able to effect a restaffing of the Liberian embassy in order to remove an uncooperative *chargé d'affaires* so that Dunbar could run the embassy and vouch for St. Regis.²⁴ They came to control the content of the embassy's website, posting Liberia's only public list of “recognized” universities there.²⁵ Many were diploma mills.²⁶ The Randocks created the “National Board of Education,” which sold Liberian university accreditation to other diploma mills. They put Liberia's Minister of Justice (now an Associate Supreme Court Justice) to the task of negotiating a degree-laundering arrangement with the University of Liberia.²⁷ A handful of senior Ministry of Education officials were in the pay of St. Regis, effectively granting the Randocks control of the Ministry's higher education functions.²⁸ Andrew Kronyanh, the deputy chief of mission of the Liberian embassy in Ghana, was paid to vouch for St. Regis. Caston Bob Harris, an official stationed in Paris, was hired to persuade the International Association of Universities (IAU), an affiliate of the United Nations Educational, Scientific,

23. Bestman Letter, *supra* note 22.

24. United States' Response in Opposition to Defendants' Motion for an Order Directing the Taking of Foreign Depositions of Five Witnesses and Preserve Testimony at Government Exhibit 13, *Randock*, No. CR-05-0180-LRS (E.D. Wash. 2008) (showing an email from Dixie Randock to be sent to Abdullah Dunbar); Brian R. Breen's Affidavit in Support of Motion for Depositions at 8, *Randock*, No. CR-05-0180-LRS (E.D. Wash. 2008).

25. Private communication from a reliable source close to the investigation and prosecution in *Randock* to author (Sept. 30, 2005) (on file with authors).

26. The Liberian Embassy, Recognized Higher Education Institutions, <http://web.archive.org/web/20040610160455/www.liberianembassy.com/education.html> (last visited Jan. 24, 2010) (containing an archived version of the defunct site). The list includes St. Regis University, Adam Smith University, Robertstown University, Virtual University, and James Monroe University, among other unrecognized entities.

27. He was unsuccessful. Private communication from a reliable source close to the investigation and prosecution in *Randock* to author (Sept. 30, 2005) (on file with authors); *see also* Declaration of Brian Breen in Support of Objections to Presentence Report, *supra* note , at 3 (“[Defense investigator Brian Breen] interviewed several former high ranking Liberian government officials with whom these defendants transacted business. Those persons were Associate Justice of the Liberian Supreme Court Kabineh Ja'neh [who had previously served as Minister of Justice], former ambassador Prince Porte, former Ambassador-in-Charge Abdullah Dunbar, and former Minister of Education Isaac Roland. All were confronted with allegations made [by] Richard Novak that he bribed them and that are repeated without qualification in the PSR [Presentencing Report]. All four of these men emphatically denied that they received bribes. All four readily acknowledged that they had accepted money from these defendants. However, all four explained clearly that these funds represented payments for services rendered.”).

28. *See* Superseding Information, *supra* note , at 7-11.

and Cultural Organization (UNESCO), to include St. Regis in IAU's reference volume, the *International Handbook of Universities*. IAU refused.²⁹ Dixie Randock chose the name "Thomas Carper" for the fictitious president of St. Regis University, sending correspondence through Carper's signature. Perhaps the Randocks did not realize that Thomas Carper was also the name of one of Delaware's United States Senators.

The Randocks presented St. Regis University to the world through a sophisticated website that featured a roster of international faculty with bogus credentials.³⁰ John Dovelos ran the "St. Regis School of Behavioral Sciences" from Athens, Greece; he spent \$2236 for a pair of St. Regis PhD degrees.³¹ Steve Ho Kwok-Cheong administered the degree-granting "St. Regis School of Martial Arts" from Hong Kong after he purchased a PhD in "Management." Daichi Tottori managed the "St. Regis School of Business Law" from Japan after purchasing a PhD in "Taxation" for \$536. Abul Kalaam Azad, the "Director of St. Regis University India" in Bangalore, came to his position after submitting a 1900-word doctoral thesis about a hypothetical refrigerator that could automatically order bananas. Adino Bryson Guevara, Saint Regis University's "Vice Chancellor Latin America," joined the faculty after spending over \$7000 for a number of degrees. Richard J. Hoyer, a diploma mill entrepreneur from the state of New York, served as a professor and "Chief Provost" on the strength of his PhD, PsyD, EdD, DBA, and MD degrees from several suspect providers.³²

In 2003 George Gollin (one of the authors of this article) was offered a pair of degrees by the St. Regis organization after taking an online multiple-choice test and submitting wrong answers for all but 21% of the questions. The questions were trivially easy—the first asked the name of the building in which the President of the United States resides, while the rest were of similar difficulty—and random guessing would yield a score at least as high as 21% for three-fourths of the exams taken in that fashion. These credentials nicely complemented the PhD in "aerospace engineering" he had been offered by "American Coastline University" (ACU).³³ The next day Gollin posted the

29. Private communication from a reliable source close to the investigation and prosecution in *Randock* to authors (Sept. 30, 2005) (on file with authors); private communication from officials at the IAU to authors (Apr. 22, 2004) (on file with authors).

30. St. Regis University Website, <http://web.archive.org/web/20031125000036/http://www.saintregis.ac> (last visited Jan. 24, 2010) (containing an archived version of the defunct site).

31. Spokesman-Review.com, Diploma Mill Degree Recipients, <http://www.spokesmanreview.com/data/diploma-mill/by-orgs/?org=edu> (last visited Jan. 24, 2010); Washington Office of the Attorney General, Operation Gold Seal Database (on file with authors) (containing information obtained from Public Records Request PRR-2008-00458 identifying all recipients of degrees from St. Regis University).

32. St. Regis University Website, *supra* note 30.

33. In June 2002, Hawaii's Office of Consumer Protection wrote to Louisiana's and New York's Boards of Regents to inform them that St. Regis "Professor and Chief Provost"

good news to a university web page he maintained devoted to issues concerning unrecognized degree providers.

In response, Dixie Randock and Richard Hoyer emailed threats of legal action to the University of Illinois administration.³⁴ In her message, Randock identified herself as the individual sending email from the Liberian embassy in Washington, D.C. But the Internet header in her message showed that it had passed through a Spokane Internet service provider and that the message's provenance was the same as that of messages posted by Randock to advertise her services as a real estate broker. Hoyer used the alias "Daniel Taylor, MD, PhD, President American Coastline University" and claimed to be sending from the St. Petersburg, Russia headquarters of ACU. However, Taylor's message came through a Rochester, New York, Internet service provider and displayed the same hardware address as another message Hoyer had sent over his real name to the University of Illinois.

The ensuing fight lasted five years, and triggered a joint federal-state-local criminal investigation of the Randocks and their employees. "Operation Gold Seal" went public when investigators executed search warrants against the St. Regis group in August 2005, seizing documents, computers, business records, and degree-making paraphernalia at seven locations in three states.³⁵ Criminal charges were filed against the Randocks, Novak, and five of their coworkers in October 2005. All eight defendants eventually pleaded guilty to a variety of felonies including mail and wire fraud and bribery of foreign officials.

Analysis of captured material, including the defendants' e-mail archives, has provided the investigation with an extraordinarily detailed picture of the Randocks' operation, including insight into their business partnerships with other degree mills and their plans for future expansion.

The prosecution developed a statistical analysis of the St. Regis University diploma mill that described in detail the kinds of degrees sold and the nationalities of customers.³⁶ By the time St. Regis imploded in 2005, the Randocks had sold over \$7.3 million worth of degrees during three-and-a-half years of strong sales. They had sold over 10,000 degrees in engineering, health care, business, education, and other fields to customers in 131 countries. They had printed diplomas and transcripts using the names of at least sixty-six real and 121 imaginary universities. One-third of the degrees were at the postgraduate level, and one-third at the high school level. The Randocks sold at least two Doctor of Medicine degrees, twenty healthcare "professorships," and

Richard Hoyer was the apparent owner of "American Coastline University." Letter from Haw.'s Office of Consumer Prot. to La.'s Bd. of Regents (June 20, 2002) (on file with authors); Letter from Haw.'s Office of Consumer Prot. to N.Y.'s Bd. of Regents (June 20, 2002) (on file with authors).

34. E-mails from Dixie Randock and Richard Hoyer to the administration of Univ. of Ill. at Urbana-Champaign (Aug. 31, 2003 through Sept. 3, 2003) (on file with authors).

35. One of the authors, George Gollin, served on the Gold Seal task force.

36. United States' Sentencing Memorandum, *supra* note , at Government Exhibit A.

numerous degrees in oncology, radiology, psychiatry, nursing, dentistry, and pediatrics. They sold hundreds of degrees in mechanical, electrical, chemical, and nuclear engineering, and hundreds more in education.

The Randocks were considering establishing a Liberian consulate in Spokane from which they would sell degrees.³⁷ They had begun working to transplant their web servers from Spokane to the Liberian embassy in Ghana. If they had been successful, they might have reduced their domestic presence sufficiently to escape prosecution by United States authorities.

If the St. Regis defendants had chosen to stand trial, it is likely that their defense would have included assertions, grounded in the accreditation issued by Liberia, that St. Regis was a Liberian university with legal authority to issue degrees.³⁸ Surely, though, the Republic of Liberia cannot grant operating rights to an American diploma mill run by U.S. citizens from inside the United States.³⁹ Further, that a school holds legal authority to issue degrees does not guarantee its programs to be legitimate or its degrees academically meaningful.

II. LEGAL AUTHORITY TO GRANT POSTSECONDARY DEGREES

One key question faced by anyone trying to stop the use of degree mill paper is this: what makes a real degree genuine and a bogus degree false? In order to understand why certain credentials are not valid college degrees, and why some degree-granters are called degree mills or diploma mills, it is necessary to know what constitutes a *valid* degree.⁴⁰ What this really means is that we need to know how a degree-granter obtains the authority to give someone a degree.

There are three ways that an entity can obtain authority to issue college degrees in or from the United States: it can obtain that authority from Congress, a state government, or a sovereign Indian tribe. The three-source theory derives primarily from the Tenth Amendment, which recognizes that Congress has certain powers but acknowledges that other unstated powers belong to the states and the people.⁴¹ The federal government and Indian tribes are very

37. Private communication from a reliable source close to the investigation and prosecution in *Randock* to author (Sept. 30, 2005) (on file with authors).

38. Transcript of Hearing on Sentencings, *supra* note , at 66-67; *see also* Alan Contreras & George Gollin, *The Real and the Fake: Degree and Diploma Mills*, 41 CHANGE: MAG. HIGHER LEARNING 36, 40 (2009).

39. United States' Response in Opposition to Defendant's Motion for an Order Directing the Taking of Foreign Depositions of Five Witnesses and Preserve Testimony, *supra* note , at 8.

40. The terms "diploma mill" and "degree mill" are often used interchangeably, but experts consider them to have different meanings. A diploma mill provides a fake educational document, sometimes from a real college. A degree mill provides a "real" degree with documentation, issued by a fake college. The term diploma mill is more commonly used and will be used in this Article to refer to both.

41. U.S. CONST. amend. X.

minor players in the arena of degree authority. Over ninety-eight percent of U.S. degree-granting institutions, amounting to well over 4000 colleges as of 2009, operate under the legal authority given them by state governments.⁴² State authorization is the normal method through which degree-granting colleges are established.

State-conferred degree authorization appears in three basic forms:⁴³ public institutions actually owned or operated by the state or one of its subdivisions (such as a community college district), nonpublic institutions that have some kind of formal authorization to offer degrees, and schools formally exempt from state authorization requirements on religious grounds.⁴⁴

Most of the issues surrounding degree mills and dubious degrees are related to state authorization of secular nonpublic degree providers, though some cases involve religious providers. A number of cases have established that degree-granting authority conferred by a state must be given expressly and in writing to be valid; mere corporate existence as an educational entity (as incorrectly claimed by the California Secretary of Education)⁴⁵ is not sufficient.⁴⁶ Degree granting, as such, even by religious colleges, is a secular activity that is under government control.⁴⁷

42. About 4200 accredited U.S. colleges are listed in the 2009 HIGHER EDUCATION DIRECTORY. 2009 HIGHER EDUCATION DIRECTORY (Jeanne M. Burke, Mary Pat Rodenhouse & Constance Healey Torregrosa eds., 2009).

43. See generally Bruce Chaloux, State Oversight of the Private and Proprietary Sector (Apr. 19, 1985) (unpublished manuscript, presented at a Joint Session of the National Association of Trade and Technical Schools and the Association of Independent Colleges and Schools in Miami, Fla.), available at http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/2f/45/ed.pdf.

44. Religious exemption raises a variety of legal and policy issues and is permitted in fewer than half of the states.

45. Letter from Glen Thomas, Cal. Sec'y of Educ., to the Oregon Office of Degree Authorization (March 24, 2009) (on file with authors) (indicating that state authorization is not necessary to establish degree-granting powers in California). This is not correct: written state authorization is always necessary to establish degree-granting authority. Alan L. Contreras, The Legal Basis for Degree-Granting Authority in the United States 12-13 (2009) (unpublished manuscript, on file with State Higher Education Executive Officers), available at <http://www.sheeo.org/govern/Contreras2009-10-LegalDegreeGranting.pdf>.

46. Nat'l Ass'n of Certified Pub. Accountants v. United States, 292 F. 668, 670-71 (D.C. Cir. 1923); Regents of the Univ. of Md. v. Williams, 9 G. & J. 365 (Md. 1838); Kerr v. Shurtleff, 105 N.E. 871 (Mass. 1914); *In re* The Med. Coll. of Phila., 3 Whart. 445 (Pa. 1838); *In re* Duquesne Coll., 2 Pa. D. 555 (Ct. Comm. Pl. 1891); Townshend v. Gray, 19 A. 635, 636 (Vt. 1890). Attorney General Packel of the Commonwealth of Pennsylvania made clear that degree-granting authority had to be explicit in law, and he also embarked on a short, informative history of the meaning of the words "diploma" and "degree" and how they had diverged in the past hundred years. Corporation-Conferred Diplomas, 80 Op. Pa. Att'y Gen. 436 (1973).

47. N.J. State Bd. of Higher Educ. v. Bd. of Dirs. of Shelton Coll., 448 A.2d 988, 993 (N.J. 1982); State Bd. of Sch. & Coll. Registration v. Ohio St. Matthew Univ. of St. Matthew Church of God, No. 72AP-130 (Ohio Ct. App. Sept. 26, 1972); Tennessee *ex rel.* McLemore v. Clarksville Sch. of Theology, 636 S.W.2d 706, 711 (Tenn. 1982). The Attorneys General of Arkansas, Kentucky, Nevada, and Texas have expressed similar views. Op. Ark. Att'y

It is fairly common for people not familiar with U.S. higher education to assume that accrediting bodies are the sources of a college's legal authority to issue degrees. That is untrue. Accreditors are private membership associations that many governments rely on to perform certain qualitative or evaluative functions, but they do not have, and have never had, power to *authorize* the existence of a college or a degree program. The state authorization requirement is in 34 C.F.R. § 600.4(a)(1), (3).⁴⁸ These in turn are rooted in 20 U.S.C. § 1001(a)(2), which says that an educational institution must be "legally authorized within each state to provide a program of education beyond secondary education."⁴⁹ Also, the case law listed in earlier footnotes makes clear that states have sole authority in the absence of congressional action.⁵⁰ There are a few state laws that define what powers accreditors have within the state, but in general their powers are more notable by lack of formal establishment than by definition.⁵¹ The FTC does define accreditors for its purposes.⁵² This distinction causes more confusion than it should in state legislatures, and even within higher education.

The question of how best to deal with degree mill credentials in the labor market has been handled with admirable thoroughness by Dr. Creola Johnson in two recent law review articles.⁵³ However, that set of issues relates primarily to civil controls in the private sector. Given that states are the principal authorizers of legitimate colleges, it would not be unreasonable to expect that they would take significant steps to protect the validity of degrees issued by such colleges against fake or nonstandard credentials called "degrees" issued by other entities that do not have legal authorization to issue degrees.

In general, they have failed to do so. As of May 2009, only a dozen states

Gen. 2001-163 (2001), available at <http://ag.arkansas.gov/opinions/docs/2001-163.html>; Op. Ky. Att'y Gen. OAG 91-14 (1991); Op. Tex. Att'y Gen. JC-0200 (2000); Re: Exemption from Licensing of Church Related Schools, Op. Nev. Att'y Gen. (Sept. 7, 1973) (unpublished opinion, on file with authors). The only significant outlier is the Texas opinion, discussed in *HEB Ministries Inc. v. Tex. Higher Educ. Coordinating Bd.*, 235 S.W.3d 627, 661 (Tex. 2007). In that case, a plurality of the Texas Supreme Court erroneously concluded that awards using terms such as "bachelor level," "master," and "doctor of philosophy" were not degrees, and therefore a church school could issue them. *Id.* at 639, 643-44. However, the court also said that the question of degree-granting authority was not before the court. *See id.* at 630. The decision is not a useful precedent for *any* point of view.

48. 34 C.F.R. § 600.4(a)(1), (3) (2010).

49. 20 U.S.C. § 1001(a)(2) (2006).

50. *See supra* note .

51. *See, e.g.*, CAL. EDUC. CODE §§ 94813, 94814, 94874.1(a), 94890(a) (West 2010); OR. REV. STAT. ANN. § 348.603(1)(f) (West 2010); WYO. STAT. ANN. § 21-2-402(b) (2010).

52. 16 C.F.R. § 254.1 (2010).

53. 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 (2006); Creola Johnson, *Degrees of Deception: Are Consumers and Employers Being Duped by Online Diploma Mills and Universities?*, 32 J.C. & U.L. 411 (2006).

have laws that criminalize the use of unaccredited or invalid degrees.⁵⁴ Even this is a significant improvement—in 2000, only New Jersey and Oregon restricted degree use. Although there is slow, steady progress toward a goal of all states prohibiting the use of diploma-mill degrees, the plodding nature of this process allows the continued use of invalid credentials—those issued by entities lacking proper authorization to issue degrees—in most states. This must change. In addition, the use of fake degrees allows people with no knowledge to feign skills and experience and devalues real degrees.

There has been much better progress in the arena of state oversight of degree providers. The states of Alabama, Idaho, Missouri, and Wyoming, long filled with degree mills operating under lax state laws, have recently made major changes that have had the effect of driving out most of the bogus operators based there.⁵⁵ It is noteworthy that only in Wyoming was a major new law needed;⁵⁶ in the other three states, willingness to enforce existing laws produced significant results.

Today, the only state where degree mills can operate with impunity is California, though the degrees they issue can be declared invalid because they do not have formal state authorization as degree-granters. The same can be said of the many so-called educational corporations registered in Delaware.

54. Illinois, Indiana, Maine, Missouri, Nevada, New Jersey, North Dakota, Oregon, South Dakota, Texas, Virginia, and Washington have laws that prohibit or severely restrict the use of unaccredited degrees as credentials for any purpose. Of these, Illinois allows use of degrees issued by state-authorized schools, whether or not they are accredited. *See* 720 ILL. COMP. STAT. ANN. 5/17-2.5 (West 2010). Oregon allows the use of unaccredited state-authorized degrees with a disclaimer of accreditation. *See* OR. REV. STAT. ANN. § 348.609 (West 2010). New Jersey allows the use of unaccredited degrees only if the issuing school can prove that it is making progress toward accreditation. *See* N.J. STAT. ANN. § 18A:3-15.3 (West 2010). Indiana only restricts certain doctorates. *See* IND. CODE ANN. § 24-5-0.5-12 (West 2010). The others do not allow use of any unaccredited degrees. *See* ME. REV. STAT. ANN. tit. 20-A, § 10802 (2010); MO. ANN. STAT. § 173.754 (West 2010); NEV. REV. STAT. ANN. § 394.700 (West 2010); N.D. CENT. CODE §§ 15-20.4-15 to -18 (2010); S.D. CODIFIED LAWS § 13-1-52 (2010); TEX. PENAL CODE ANN. § 32.52 (Vernon 2010); VA. CODE ANN. §§ 23-276.1 to -276.12 (West 2010); WASH. REV. CODE ANN. § 9A.60.070 (West 2010).

55. *See* Thomas Bartlett, *A Mysterious Silence Emanates from Warren National U.*, CHRON. HIGHER EDUC., Aug. 25, 2008, available at <http://chronicle.com/article/A-Mysterious-Silence-Emanates/41527>; Press Release, Bradley Byrne, Chancellor, Dep't Postsecondary Educ., Ala. Cmty. Coll. Sys., No More Diploma Mills: Chancellor Bradley Byrne Announces New Initiatives to Shut Down Sham Schools, Better Regulate Other For-Profits (July 14, 2008), available at <http://www.accs.cc/PDFs/News%20Release-ValleyOpelika%20Workforce%20-%20042209.pdf>; Keith Eldridge, *Nine Troopers Under Probe for Using Phony Degrees*, KOMO NEWS (Seattle), Oct. 20, 2008, <http://www.komonews.com/news/31308239.html>; Kavita Kumar, *Using Fake Degrees Now a Misdemeanor in Missouri*, ST. LOUIS POST-DISPATCH, July 9, 2009, <http://www.stltoday.com/blogzone/the-grade/higher-education/2009/07/using-fake-degrees-now-a-misdemeanor-in-missouri/>.

⁵⁶ WYO. STAT. ANN. §§ 21-2-401 to 21-2-407 (2010).

III. STATE EFFORTS AT DIPLOMA MILL SUPPRESSION

Diploma mills sell thousands of degrees to government workers who receive undeserved raises paid for at public expense.⁵⁷ They sell medical degrees to untrained individuals who put their unsuspecting patients at risk.⁵⁸ They sell engineering degrees to customers who then land jobs running nuclear power plants.⁵⁹ The costs to society of tolerance of this foul industry are significant, and raise financial, public safety, and national security concerns.

The strength of existing legal proscriptions regarding diploma mills varies considerably from state to state. Even in states whose statutes clearly render the sale of degrees illegal, enforcement is inconsistent or entirely absent. Canyon College operated illegally in Idaho for ten years, in full view and awareness of the Idaho authorities. A recent reexamination by Idaho of its policies was sufficiently alarming to Canyon College that it fled to California, where the higher education oversight statute had expired and the replacement statute was vetoed by Governor Schwarzenegger.⁶⁰ The penalties for purchase of diploma mill degrees in New Jersey, clearly described in the New Jersey Statutes,⁶¹ were never applied to public school superintendents that had purchased bogus degrees at public expense in order to obtain pay raises.⁶²

Civil enforcement actions by individual states have often had less than satisfactory outcomes. Sometimes there are jurisdictional issues. Sometimes there is simply a lack of will to prosecute a diploma mill operator who ignores the orders of the court. In July 2005 the Pennsylvania Attorney General sued Dennis Globosky, the owner of the “University of Berkley” diploma mill, alleging that “[the] defendants’ diploma mill does little more than sell worthless, fraudulent sheets of paper purporting to be genuine diplomas, transcripts, and other records of authentic, formally-accredited academic

57. See United States’ Sentencing Memorandum, *supra* note , at 7-8 (noting diploma mills sold degrees to healthcare workers and other potential government workers); Gov’t Ex. A: Analysis of the Operation Gold Seal “Buyers List” at 1, 17-19, United States v. Randock, No. CR-05-0180-LRS (E.D. Wash. 2008) (showing diploma mills sold degrees to healthcare workers and other potential government workers).

58. See, e.g., *Government Finally Closes St. Luke*, INQUIRER (Monrovia, Liber.), July 19, 2005, available at <http://allafrica.com/stories/200507200430.html> (“The Government of Liberia has ordered the immediate closure of the St. Luke School of Medicine for illegally operating in the country. . . . All medical degrees issued by St. Luke School of Medicine are nullified and the school pronounced non-existent in Liberia”); Spears, *supra* note .

59. Posting of Jonathan Kaminsky to City Pages: The Blotter Blog, http://blogs.citypages.com/blotter/2008/07/minnesta_power.php (July 30, 2008, 14:12 CDT).

60. Elizabeth Redden, *From Idaho to California*, INSIDE HIGHER ED, Aug. 12, 2008, <http://www.insidehighered.com/news/2008/08/19/california>.

61. N.J. ADMIN. CODE § 9A:1-8.1 (2010) (regarding fraudulent academic degrees and protected degree designations for earned degrees); N.J. STAT. ANN. §§ 18A:3-15.1 to -15.3, -15.5 (West 2010) (regulating academic degrees).

62. Editorial, *Shameful Diploma Scam*, STAR LEDGER (Newark, N.J.), Aug. 25, 2008, at 18.

degrees.”⁶³ But a month later an Erie County judge dissolved “a temporary restraining order . . . placed on the University of Berkley” and directed prosecutors “to return assets and materials they had seized from the school’s owner The judge further said Globosky could no longer do business in Pennsylvania and had to place a disclaimer on his Website.”⁶⁴ Three and a half years later, the University of Berkley continues to sell degrees through its website, which includes the disclaimer: “The owners/operators of this site may not conduct business with residents of the Commonwealth of Pennsylvania, USA.”⁶⁵

Hawaii’s Office of Consumer Protection sued Hassan Safavi, owner of the unaccredited “American University of Hawaii,” for a violation of the Hawaii Revised Statutes.⁶⁶ The Court fined Safavi \$500,000, and “ordered [Safavi] to be incarcerated until such time as he terminates the website using the name American University of Hawaii, [and] agrees to and notifies each student as required by this Court’s prior orders.”⁶⁷ Hawaii enjoined Safavi from “a. Providing any post-secondary instructional programs or courses leading to a degree; b. Acting as or holding himself out as a ‘college, academy, institute, institution, university’ or anything similar thereto.”⁶⁸ “[S]afavi told [the] Court that [he did] not intend to pay the civil penalty”⁶⁹ but did close his website, avoiding imprisonment. Note that the court had ordered Safavi to stop issuing degrees without explicit reference to the limits of its jurisdiction.⁷⁰ Even so, it is unlikely that the court would have expected its order to apply to Safavi if he were to operate a school in a different state.⁷¹ Hawaii was able to do little more than drive Safavi’s operation back to the continental United States.

63. Complaint ¶ 24, *Commonwealth v. Globosky*, No. 12450 (Pa. Ct. Com. Pl. June 2005), available at http://www.attorneygeneral.gov/uploadedFiles/Press/Globosky_Final.pdf.

64. Lisa Thompson, *Pennsylvania to Appeal Online School Ruling*, ERIE TIMES-NEWS, July 20, 2005, at 2.

65. University of Berkley Home Page, <http://www.berkley-u.edu/> (last visited Feb. 15, 2010); see also Martin D. Snyder, *State of the Profession: Tarnishing the Image*, 91 ACADEME Sept.-Oct. 2005, at 71, available at <http://www.aaup.org/AAUP/pubsres/academe/2005/SO/Col/sotp.htm>.

66. Findings of Fact and Conclusions of Law at 2, *Hawaii vs. Am. Univ. Haw., Inc.*, No. 03-1-0458(2) (Haw. Cir. Ct. May 17, 2006), available at http://hawaii.gov/dcca/areas/ocp/udgi/lawsuits/AUH/american_u_hawaii_exhibit-a.pdf.

67. *Id.* at 20.

68. Permanent Injunction and Final Judgment Against Defendant Hassan H. Safavi at 2, *Am. Univ. Haw., Inc.*, No. 03-1-0458(2) (June 13, 2006), available at http://hawaii.gov/dcca/areas/ocp/udgi/lawsuits/AUH/american_u_hawaii_hhs.pdf.

69. Findings of Fact and Conclusions of Law at 14, *Am. Univ. Haw., Inc.*, No. 03-1-0458(2) (May 17, 2006).

70. Permanent Injunction and Final Judgment Against Defendant Hassan H. Safavi, *supra* note .

71. Private communication from Jeffrey E. Brunton, Attorney, Haw. Office of Consumer Prot., to George Gollin (June 26, 2009) (on file with authors).

Other states' civil actions against diploma mills have also ended this way. Almeda College & University, run by a Florida resident, was ordered by the Florida Department of Education to cease operations in 2003,⁷² but the owner ignored the order. Almeda currently informs its customers that "[A]lmeda University degrees are not legal for academic or business use in the following states: FL, IL, OR, NJ, ND, WA, and ID. . . [T]herefore residents of these states should consider the Almeda degree a novelty item only."⁷³

The St. Luke School of Medicine is run by Americans residing in California, Texas, and Kentucky, and pretends to conduct classes in Liberia and Ghana.⁷⁴ Liberian officials declared St. Luke to be operating illegally.⁷⁵ Information on the St. Luke website makes it clear that St. Luke is actually run from the United States.⁷⁶ At least three of its American customers have been sentenced to prison after being convicted of activities related to the use of their St. Luke medical degrees.⁷⁷ Even so, efforts by Kentucky authorities to investigate Steven Arnett, the Kentucky partner in St. Luke, have been ineffective.⁷⁸ Neither California nor Texas has acted against the school's principals residing there. St. Luke continues its operations unimpeded.

It is a simple matter for a diploma mill to "relocate" when challenged. Breyer State University, operated by Dominick Flarey and a handful of other individuals in northeastern Ohio, maintained a mailbox "campus" on the Nez Perce reservation in Idaho in 2003.⁷⁹

Idaho had ordered Breyer not to sell degrees to Idaho residents, but would

72. Ron Matus, *Suspect Degrees Found in High Places*, ST. PETERSBURG TIMES, Dec. 6, 2007, at 1B.

73. Almeda University, Policies and Procedures, <https://almedauniversity.org/application-policy-procedure.html> (last visited Feb. 15, 2010).

74. The Embassy Medical Officer of the U.S. Embassy in Monrovia, Liberia described his 2005 visit to the St. Luke School of Medicine to the U.S. State Department. His report made it clear that it was not a venue in which instruction could possibly occur. Other information from State Department sources in Ghana show that the Ghana operation is a fantasy, and (if it were to exist) would operate in violation of Ghanaian regulations. Private communications from reliable sources to George Gollin (2005) (on file with authors).

75. *Liberia: MOE Issues Disclaimer of Regis University*, ALLAFRICA.COM, Oct. 11, 2004, <http://allafrica.com/stories/200410111169.html> (discussing Liberia's disclaimer regarding both St. Regis University and St. Luke Medical College).

76. St. Luke School of Medicine, SLSOM Online Agreement, http://www.stluke.edu/Online_Agreement_A.html (last visited Dec. 30, 2009).

77. See Valarie Honeycutt Spears, *Doctored Diplomas*, LEXINGTON HERALD-LEADER, Oct. 1, 2006, at A1.

78. Editorial, *Phony Physicians: Increase Scrutiny, Punishment*, LEXINGTON HERALD-LEADER, Oct. 9, 2006, at D1.

79. Alabama Department of Postsecondary Education, Breyer State's Application for License to Operate a Private Postsecondary School in Alabama (Mar. 5, 2008) (unpublished document on file with authors). Besides Flarey, who is listed as President, the application lists "David M. Kolenich, Ph.D., Principal & CEO," "Catherine Moran, Vice President & Secretary," and "Rosemary Kolenich, Treasurer." *Id.*

allow it to sell its product to customers in other states.⁸⁰ In March 2005, Breyer State “moved” from Idaho to Alabama, purchasing a private school license from Alabama and renting office services in Birmingham. Alabama was known at the time for its minimal oversight of degree providers. A few months before Breyer State acquired an Alabama license, Flarey’s Central States Consortium of Colleges and Schools (CSCCS) accreditation mill issued “accreditation” to the “University of Science Arts and Technology Medical College of London” and the “Lady Malina Memorial Medical College.”⁸¹ These medical diploma mills⁸² are run by Americans with ties to the St. Luke School of Medicine.⁸³ Breyer State announced a “premed” program through which its own customers were guaranteed admission to these medical diploma mills.⁸⁴

The well-known existence of a Breyer-St. Regis partnership became increasingly embarrassing to Alabama officials⁸⁵; the state was frequently criticized in the higher education press for its lax standards.⁸⁶ In 2008, Alabama changed its policy and began refusing to renew the licenses of diploma mills.⁸⁷

80. Anna Rau, *Online School Based in Idaho Raises Concern*, KTVB NEWS, Apr. 24, 2003, <http://www.valuemd.com/relaxing-lounge/19262-online-school-based-idaho-raises-concern.html>.

81. Central States Consortium Colleges and Schools, Accreditation, <http://web.archive.org/web/20040925041107/http://www.aihcp.org/accredited+schools.htm> (last visited Feb. 15, 2010) (containing an archived version of the defunct website). In December 2004 the CSCCS website listed only four degree-providers holding CSCCS “accreditation”: Canyon College, Breyer State, “University of Science, Art & Technology Medical College of London,” and “Lady Melana [sometimes spelled ‘Malina’] Memorial Medical College.” Canyon is run by Michael Storrs, who lists Flarey on the Canyon website as a “professor.” USAT/MCL and Lady Malina are both run by Orien Tulp, a retired professor of nutrition who holds a legitimate PhD in that field. However, Tulp also claims an MD degree, apparently issued by the “International University of Fundamental Studies” diploma mill. INTERNATIONAL UNIVERSITY OF FUNDAMENTAL STUDIES, FULL ACCREDITED AND REGISTERED POST GRADUATION DEGREE/HONOUR HOLDERS IN 2007 (2007), <http://www.mufo.ru/downloads/Bulletin-No3.pdf>.

82. One of Gollin’s colleagues visited the address listed on the USAT/MCL site in London. There was no “Medical College of London” there. She took photographs to document its absence. Archives of the Lady Malina and USAT/MCL websites show nearly identical rosters of senior administrators. Documentation of this investigation is on file with the author.

83. See, e.g., Spears, *supra* note . There is considerably more confirming material available online and in various archives.

84. Breyer State University, Pre-Medical Degree Program, <http://web.archive.org/web/20050404192740/www.breyerstate.com/pre-med.htm> (last visited Oct. 30, 2009) (containing an archived version of the defunct site).

85. For a time Breyer State customers would receive degrees from both Breyer and St. Regis. See, e.g., BREYER STATE UNIVERSITY, COURSE CATALOG SPRING 2003 (2003), <http://web.archive.org/web/20030915161523/breyerstate.com/bsu-spring2003-catalog.pdf> (containing an archived version of the defunct site).

86. See, e.g., Alan Contreras, *Giving Credit Where Credit Is Due*, CHRON. HIGHER EDUC., Oct. 14, 2005, at B12.

87. See, e.g., Adam Jones, *Diploma Mill Crackdown Drives Some From State*, TUSCALOOSA NEWS, Oct. 10, 2008, available at <http://www.tuscaloosanews.com/>

After its license expired in March 2008, Breyer operated illegally until pressure from the state caused it to flee. Breyer returned to Idaho, but Idaho, previously known as a haven for diploma mills, began its own investigation.⁸⁸ After only a few weeks Breyer moved again, landing in California. Events in Alabama alerted New Jersey authorities that the Breyer State degrees purchased with public funds by several of the state's public school administrators were bogus. Use of Breyer's degrees was a clear violation of the state's "Statutes & Regulations Regarding Academic Degrees."⁸⁹

Breyer State had found itself confronted by hostile authorities in Alabama, Idaho, and New Jersey. In spite of this, it continues to operate, now from a jurisdiction without the legal power to disturb it.

IV. THE FEDERAL ROLE, THE FEDERAL TRADE COMMISSION, AND THE DEPARTMENT OF JUSTICE

Diploma mills spread their infrastructure widely and sell their degrees across state borders. They engage in deceptive commercial practices and abet the commission of fraud. Though legal authority to award degrees is granted by the individual states, the federal government can create and enforce laws controlling interstate commerce and cross-border criminal fraud; therefore, it appears natural for the federal government to play a role in suppressing diploma mills.⁹⁰

Care is necessary when proposed federal policy might restrict the operation of postsecondary institutions that hold state-issued degree-granting authority. This consideration played a significant role in the development of diploma mill language in the version of the Higher Education Opportunity Act enacted by the U.S. House of Representatives in 2008.⁹¹ Future legislation will need to be drafted with this in mind.

In its 2003 suit against the University Degree Program diploma mill, the Federal Trade Commission described the organization as providing "the means and instrumentalities" for the deceptive commercial practices of the diploma mill's customers.⁹² This is the civil code analog of the "aiding and abetting"

article/20081010/NEWS/810090238/1007/NEWS02?Title=Diploma_mill_crackdown_drive_s_some_from_state.

88. Private communications from the Idaho official who ran the investigation of Breyer State after it moved back to Idaho to George Gollin (Aug. 2008) (on file with authors). For the Idaho statutes relevant to the state's investigation, see IDAHO CODE ANN. §§ 33-2402, -2405, -2409 (2010).

89. *See, e.g.*, N.J. ADMIN. CODE § 9A:1-8.1 (2010); N.J. STAT. ANN. §§ 18A:3-15.1, -15.2-15.3, -15.5 (West 2010).

90. U.S. CONST. art. I, § 8, cl. 3 ("The Congress shall have power . . . to regulate commerce with foreign nations, and among the several states . . .")

91. All three authors participated in drafting the bill's diploma mill language.

92. Second Amended Complaint for Injunctive and Equitable Relief, *supra* note , at 14.

criminal statute,⁹³ rendering the provider liable for the customer's misuse of the diploma mill's product.

In September 2008 George Gollin and Emily Lawrence (authors of this article) met informally with FTC attorneys to ask about possible future actions against other diploma mills. The FTC attorneys believed that most diploma mill customers understand they are purchasing an academically meaningless product. As a result, the sale of degrees would probably not exceed the harm-to-purchaser threshold necessary to trigger an FTC response. The FTC would not have sued the University Degree Program in 2003 solely on the basis of the diploma mill infraction⁹⁴: this was a secondary action to accompany its complaint regarding the sale of bogus international drivers' licenses. The attorneys felt that criminal action against a diploma mill was a more appropriate remedy than a civil suit brought by the FTC.

Though the FTC was unwilling to address the problem of diploma mills during our 2008 discussions, it is clear that the Commission is knowledgeable about the issue. The Commission's 1998 *Guides for Private Vocational and Distance Education Schools* presents a clear, well-conceived set of definitions and descriptions of the deceptive commercial practices of diploma and accreditation mills.⁹⁵ The document illustrates the FTC's depth and clarity of thinking about the matter.

Fifty years ago the FTC did not hesitate to act against diploma mills. In 1956 the FTC took action against Joseph Jayko and his "Cramwell Institute" and "Cramwell Research Institute."⁹⁶ The FTC found that "the real qualification [to receive a Cramwell degree] is the applicant's ability to pay the initial fee for the 'test' and later to pay whatever balance is required." The FTC wrote that "institute" and "university" were protected words and misuse of them was actionable. The Commission also indicated that false claims of degree-granting authority were deceptive, as were claims of the equivalence of the diploma mill's degrees to legitimate university degrees. Further, the FTC commented that it had acted against hundreds of diploma mills during the previous twenty years. The FTC described Jayko's diploma mill as "a pollution of the whole stream of American educational standards," and noted that it was irrelevant that many of Jayko's customers might have understood they were buying academically meaningless credentials.⁹⁷ Times (and enforcement priorities) have changed.

93. This renders the mill's owners culpable under the same fraud statute that the customer had violated based on 18 U.S.C. § 2(a).

94. However, false claims of accreditation, or future employability, could be actionable. *See, e.g.*, 16 C.F.R. § 254.1 (2010).

95. *Id.*

96. Joseph Jayko Trading as Cramwell Institute, Etc., 55 F.T.C. 242 (1958), available at [http://www.ftc.gov/os/decisions/docs/Vol%2055/ftcd-vol55\(JULYJUNE1959\)PAGES201-299.pdf](http://www.ftc.gov/os/decisions/docs/Vol%2055/ftcd-vol55(JULYJUNE1959)PAGES201-299.pdf) (describing all of the facts related to the case discussed in this Subpart).

97. *Id.*

The Department of Justice has sometimes prosecuted diploma mill owners, most frequently through criminal investigations by the FBI. In 1981 the FBI created the Dipscam task force under the direction of Special Agent Allen Ezell. Dipscam would buy degrees using the mail or telephone so that orders crossed state lines. Ezell's group "executed sixteen federal search warrants, obtained nineteen federal grand jury indictments, and twenty-one convictions, and dismantled forty 'schools' with total sales into the many tens of millions of dollars."⁹⁸ By the time he retired in 1991, Ezell felt that "the degree mill problem was in major decline."⁹⁹ But the FBI disbanded Dipscam after Ezell retired, a few years before the emergence of the Internet.

On rare occasions the FBI will still investigate a diploma mill. In August 2008 Nazeer Hamadneh, Abbas Obeid, Roni Aoub, and Majed Mamo were indicted for a mix of offenses that included mail fraud, visa fraud, and witness tampering.¹⁰⁰ The prosecution alleged that the four had been operating the American University Center, which produced fraudulent university transcripts for customers seeking admission to graduate and medical schools. All four defendants pleaded guilty, three received prison terms, and one was placed on probation.

Successful suppression of illegal degree providers is best effected through criminal prosecutions done in partnership by state and federal enforcement agencies. The multi-agency investigation of the Randocks' diploma mill involved attorneys and investigators from the offices of the U.S. Attorney for the Eastern District of Washington, United States Secret Service, U.S. Immigration and Customs Enforcement Bureau, U.S. Postal Inspection Service, U.S. Internal Revenue Service, U.S. Federal Protective Agency, State of Washington Attorney General, and Spokane Police Department.¹⁰¹ The broad jurisdiction of the investigators was important since St. Regis used mail drops in Montana, Washington D.C., Delaware, and Tennessee, and relocated its printing facility from Washington State to Idaho.¹⁰²

The investigation and prosecution proceeded smoothly, in spite of the inexperience of many of the investigators with a case built on such a large volume of electronic and paper evidence. The U.S. Attorney came to feel that this was the most complex case his office had ever taken on.¹⁰³ The Randocks

98. Ezell and Bear, *supra* note .

99. *Id.*

100. First Superseding Indictment, *supra* note 9.

101. George Gollin served (pro bono) as an expert consultant with the Office of the Washington State Attorney General during Operation Gold Seal. He worked directly with investigators from most of the named agencies.

102. Private communication from a reliable source close to the investigation and prosecution in *United States v. Randock* to author (March 15, 2005) (on file with authors); see also George D. Gollin, *When Criminals Control the Ministry of Education*, 53 INT'L HIGHER EDUC. (Boston C. Center for Int'l Higher Educ.), Fall 2008, at 5, available at http://www.bc.edu/bc_org/avp/soe/cihe/newsletter/Number53/p5_Gollin.htm.

103. Private communication from James McDevitt to author (Jul. 3, 2008) (on file with

were convicted of conspiracy to commit mail fraud and wire fraud.¹⁰⁴ Richard Novak also pleaded guilty to violation of the Foreign Corrupt Practices Act.¹⁰⁵

V. HISTORY OF LEGISLATIVE EFFORTS

Diploma mills pose threats to public safety,¹⁰⁶ harm legitimate institutions of higher education,¹⁰⁷ waste tax dollars, and offer unwarranted advantages in employment and immigration. Even so, Congress has not enacted effective legislation to suppress this harmful industry. There have been a few attempts to focus attention on the issue over the last twenty-five years, primarily in the form of Congressional hearings, but few significant, lasting outcomes at the federal level.

Congressman Claude Pepper, Chair of the House Subcommittee on Health and Long-Term Care, held congressional hearings in December 1985 to address the issue of fraudulent academic credentials in the workplace. Pepper's subcommittee put substantial emphasis on the alarming number of practicing physicians with fake credentials.¹⁰⁸ Its findings revealed the problem to be widespread, but no new legislation resulted.

Senator Susan Collins, chair of the Senate Committee on Governmental Affairs (now the Committee on Homeland Security and Governmental Affairs), held hearings on diploma mills in 2004.¹⁰⁹ Testimony showed that the problem of diploma mills had worsened, in part due to the enabling power of the Internet.¹¹⁰ No new legislation was proposed or enacted.

authors).

104. Sentencing Memorandum for Randock et al., *United States v. Randock et al.*, No. CR-05-0180-LRS (E.D. Wash. 2008).

105. Plea Agreement for Richard John Novak, *Randock*, No. CR-05-0180-LRS.

106. John Curran, who obtained an unearned MD degree from the degree mill St. Luke School of Medicine, is serving a 150-month prison sentence after his 2006 conviction on criminal charges, stemming from the fact that one of Curran's patients had died while in his care. *See Spears, supra* note .

107. The regionally accredited Regis University sued the St. Regis University diploma mill in 2004 for trademark infringement. In an August 9, 2005 letter to George Gollin, Regis President Michael J. Sheeran wrote that "we had prospective students refuse to enroll, graduates whose employers questioned the validity of our degree because they confused it with St. Regis, and many people warn us about the damage it could do to our reputation and urge us to take action." Letter from Michael Sheeran, President, Regis Univ., to George Gollin (Aug. 2005) (on file with authors).

108. *Fraudulent Credentials: J. Hearing Before the Subcomm. on Health and Long-Term Care and the Subcomm. on Housing and Consumer Interests of the H. Select Comm. on Aging*, 99th Cong. (1985).

109. *Bogus Degrees and Unmet Expectations: Are Taxpayer Dollars Subsidizing Diploma Mills?: Hearing Before the S. Comm. on Governmental Affairs*, 108th Cong. (2004).

110. *Bogus Degrees and Unmet Expectations: Are Taxpayer Dollars Subsidizing Diploma Mills?: Hearing Before the S. Comm. on Governmental Affairs*, 108th Cong., (2004) (statements of Alan Contreras, Robert J. Cramer, Laurie Gerald, Lt. Cmdr. Claudia

After learning that diploma mill degrees might allow foreign nationals to obtain U.S. entry visas, Congresswoman Betty McCollum submitted House Resolution 6008, the “Diploma Integrity Protection Act of 2006,” in 2006.¹¹¹ The bill stalled in committee. Ms. McCollum resubmitted the bill as House Resolution 773 the following year.¹¹² Most of the bill’s text was incorporated into the House version of the Higher Education Opportunity Act, House Resolution 4137.¹¹³ House Resolution 4137 passed the House by a wide margin in 2008. Although the House-Senate conference committee expressed no public opposition to House Resolution 4137’s diploma mill provisions, the committee eliminated nearly all of them, except for a definition of the term “diploma mill.”

The difficulty in passing comprehensive federal legislation addressing diploma mills, despite wide support and virtually no overt opposition, comes from several procedural hurdles. Some are jurisdictional: a proper bill would impose obligations on the Department of Education, the Federal Trade Commission, and the Department of Justice. This brings at least three separate congressional committees into the process of writing a new law. In addition, though the higher education community expresses support for diploma mill legislation, the support is shallow.¹¹⁴ The higher education presidential associations were willing to cosign a 2007 letter written by the Council for Higher Education Accreditation (CHEA) in support of House Resolution 773.¹¹⁵ However, from our experience working directly on this issue, only CHEA worked actively as an advocate for the legislation. And though the costs of enforcement of a diploma mill law are expected to be small, the Higher Education Opportunity Act was written with its fiscal focus on the funding of student aid programs. Generating an appropriation for a diploma mill task force was thought to be difficult, given the nature of the bill.

There are indications that diploma mill legislation has not just been ignored, but actively suppressed. This phenomenon is particularly apparent in

Gelzer, and Andrew Coulombe).

111. H.R. 6008, 109th Cong. (2006), *available at* <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR06008:@@X>.

112. H.R. 773, 110th Cong. (2007), *available at* <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR00773:@@X>.

113. H.R. 4137, 110th Cong. (2007), *available at* <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR04137:@@X>.

114. The authors of this Article participate regularly in a wide range of higher education policy conferences and discussions. This is our sense of things from what we see and hear.

115. Letter from Judith Eaton, President, Council for Higher Educ., to Betty McCollum, Congresswoman (July 11, 2007) (on file with authors) (containing signatures by the American Council on Education, the Association of American Universities, the American Association of State Colleges and Universities, the American Association of Community Colleges, the National Association of Independent Colleges and Universities, the National Association of State Universities and Land Grant Colleges, the Association of Jesuit Colleges and Universities, and the Association of Community College Trustees).

Wyoming, where at least one diploma mill has obtained access to legislators through sponsorship of foreign junkets. In 2004 the owner of “Preston University” flew a number of state officials (including a pair of state senators) to visit Preston’s operations in Pakistan, Britain, and the United Arab Emirates. “Pakistan’s Higher Education Commission [had recently] classified all 15 Preston campuses in that country as ‘seriously deficient’ or ‘illegally operating.’”¹¹⁶ Even so, the Wyoming visitors declared that “Preston campuses in Ajman, Islamabad and London were mostly in compliance with Wyoming law.”¹¹⁷ Further, “[Senator Kathryn Sessions] came back and, with the backing of Preston Chancellor Jerry Haenisch, submitted a bill that could have helped the school. The bill sought to remove several specific laws for private-school licensing from statute [sic] in favor of new rules overseen by the state Board of Education.”¹¹⁸

In 2005 the American Association of Collegiate Registrars and Admissions Officers (AACRAO) arranged for Allen Ezell and George Gollin to brief Senate staffers of the Health, Education, Labor, and Pensions Committee on the problem of diploma mills. At the time Wyoming Senator Mike Enzi was committee chair. AACRAO was explicitly warned by Senator Enzi’s office that Ezell and Gollin would not be permitted to discuss the large “Kennedy-Western University” organization, even though Kennedy-Western had been identified as a diploma mill by Senator Collins during the previous year’s Governmental Affairs Committee hearings.¹¹⁹ Kennedy-Western was based in Senator Enzi’s home state.

Hawaii’s state legislature has also sheltered the operators of unrecognized schools. Hassan Safavi’s 2006 trial for illegally operating the “American University of Hawaii” (AUH) revealed that he was paying former Hawaii State Senator Joe Tanaka. Safavi’s records describe the “several thousands of dollars” given to Tanaka in 2002 as “salary or contract labor.”¹²⁰ Under oath Tanaka first denied receiving any money, then admitted he had been paid “to store some desks and files.”¹²¹ Senator Tanaka, who described himself as a friend of Safavi,¹²² had sponsored a 1997 Hawaii Senate resolution that issued a certificate “recognizing and commending the American University of Hawaii . . . for its leadership in the field of multimedia global post-secondary

116. Mead Gruver, *Law on Inspection Leads to Overseas Visits*, BILLINGS GAZETTE, May 19, 2005, available at http://www.billingsgazette.com/news/state-and-regional/wyoming/article_877c5e22-fc5e-5110-8b94-c225a7318376.html.

117. *Id.*

118. *Id.*

119. Private communication from the American Association of Collegiate Registrars and Admissions Officers to George Gollin (May 1, 2005).

120. Transcript of Court Proceedings Re: Plaintiff’s Motion for Order Declaring Defendant Hassan Safavi in Contempt of Court Before Honorable Shackley Raffetto at 13-14, *Hawaii vs. Am. Univ. Haw., Inc.*, No. 03-1-0458(2) (Haw. Cir. Ct. June 13, 2006).

121. *Id.*

122. *Id.*

education.”¹²³ Tanaka’s endorsement did nothing to legitimize the American University of Hawaii’s MD degrees (touted on the AUH website in 1999)¹²⁴ or its “Spring Semester 2005” course catalog that was largely identical to University of Arizona catalogs.¹²⁵

The enormous market for post-secondary education—certainly running into the hundreds of billions of dollars worldwide—is hugely attractive to the operators of diploma mills. It is not surprising that legislative efforts to suppress academic credential fraud have encountered obscure, but effective, opposition.

There has been more progress in the states than at the federal level, though the primary effect of toughened state laws is to drive diploma mills into states with weaker statutes. Currently, state laws reflect a broad spectrum of legislative approaches.

Some states classify illegal operation of a degree-provider as a felony and use of an unrecognized degree as a misdemeanor. North Dakota’s law is one of the toughest: “All postsecondary educational institutions must be accredited by national or regional accrediting agencies recognized by the United States department of education [sic].”¹²⁶ The terms “university,” “institute,” and “college” are legally protected.¹²⁷ Further, “It is unlawful for a person to knowingly advertise to sell, issue, or manufacture a false academic degree. A person that violates this subsection is guilty of a class C felony.” Use of a false academic degree in connection with business, or for purposes of employment, promotion, or admission to an academic program, is a class A misdemeanor. Operation of an accreditation mill is also a felony.¹²⁸

123. S. Res. 864, 19th Leg., Reg. Sess. (Haw. 1997)

124. Press Release, Office of the Dean for Medical Education, American University of Hawaii (Feb. 17, 1998), *available at* http://web.archive.org/web/19991012171913/http://www.auh.edu/colleges/college_of_medical_education.htm (“The American University of Hawaii is proud to announce that through an Agreement of Articulation with the Yerevan State Medical University it will be offering a number of degree programs in Medical Sciences, including Doctorate of Medicine. The programs offered will be based on the curriculum offered by the best medical schools in the United States of America, and will run in parallel with the programs offered by YSMU, a very reputable institution at world level. All degrees issued will be that of AUH, and will be ratified by the Ministry of Education and Science, and Ministry of Health of the Republic of Armenia.”).

125. *Compare* AM. UNIV. OF HAW., TBILISI COLL. CAMPUS, STUDENT INFORMATION HANDBOOK (2006), *available at* <http://web.archive.org/web/20050923031026/http://www.auhtc.net/tblisi-pdf/tblisi-liberal-arts.pdf>, *with* UNIV. OF ARIZ., DESERT LYNX, ONLINE CATALOG (1997), *available at* <http://catalog.arizona.edu/catalog1997/>, *and* UNIV. OF ARIZ., 2001-02 GENERAL CATALOG, (2001), *available at* <http://catalog.arizona.edu/2001-02/>, *and* UNIV. OF ARIZ., 2002-03 GENERAL CATALOG (2002), *available at* <http://catalog.arizona.edu/2002-03/>, *and* UNIV. OF ARIZ., 2006-07 GENERAL CATALOG (2001), *available at* <http://catalog.arizona.edu/2006-07/>.

126. N.D. CENT. CODE § 15-20.4-04 (2010). Naturally, the law specifies procedures for provisional operation of a school in the process of seeking accreditation.

127. *Id.* § 15-20.4-05.

128. *Id.* § 15-20.4-15.

Some states threaten diploma mill operators and customers with fines, but no criminal liability. New Jersey declares that “[a] person shall not with the intent to deceive buy, sell, make or alter, give, issue, obtain or attempt to obtain any diploma or other document purporting to confer any academic degree, or which certifies the completion in whole or in part of any course of study in any institution of higher education.”¹²⁹ In addition, “Any person who violates any provision of this act is liable to a civil penalty of \$1,000.00 for each offense.”¹³⁰ But New Jersey’s enforcement is lax. Freehold Superintendent of Schools James Wasser and two other Freehold administrators used public funds to obtain doctoral degrees from Breyer State University.¹³¹ Though she could reasonably be thought to be familiar with her state’s higher education regulations, “State Education Commissioner Lucille Davy said she is powerless to prevent local school boards from handing out tax money to administrators who boost their pay by obtaining degrees with little or no academic value.”¹³² Ms. Davy appears to believe she is unable to block school boards from participating in violations of the state’s laws. This is curious given her role as the State Education Commissioner.

A different strategy in Kentucky has been to consider legislation that would classify academic documents produced by a diploma mill as instances of forgery,¹³³ a class D felony.¹³⁴ This is an interesting tactic to consider, though a collision with a right to freedom of expression (which might include the creation of “novelty degrees”) could present a problem. However, attorneys familiar with the *St. Regis* case have told us that criminalizing the *manufacture* of academic documents, not just the sale of them, would be a sensible strategy. The bill has tended to encounter opposition in the legislature, and is not yet part of state law.

VI. DEFINITIONS OF “DIPLOMA MILL” AND “ACCREDITATION MILL” IN FEDERAL AND STATE LAW

Why might legislation banning the activities of degree-selling businesses

129. N.J. STAT. ANN. § 18A:3-15.1 (West 2010).

130. *Id.*

131. Editorial, *A Shameful Diploma Scam*, N.J. STAR LEDGER, Aug. 25, 2008, at 18.

132. Alan Guenther, *N.J. Educators Free to Use Diploma Mills*, ASBURY PARK PRESS, Aug. 17, 2008, at C.

133. The bill has been submitted several times, with Representative Susan Westrom as one of its sponsors. *See, e.g.*, H.B. 175, 2007 Leg., Reg. Sess. (Ky. 2007), available at <http://www.lrc.ky.gov/record/07rs/HB175.htm>.

134. Kentucky Legislative Ethics Commission, Penalties, <http://klec.ky.gov/code/agentsemployers/penalties.htm> (last visited Feb. 17, 2010) (“Class D felony 1-5 years imprisonment; fines of \$1,000 to \$10,000, or double the gain from the commission of the offense and up to \$20,000 for corporations.”) (citing KY. REV. STAT. ANN. §§ 532.020, 532.030, 532.060, 532.090, 534.040, 534.050 (West 2010)).

need to hold a definition of the term “diploma mill?” Might it be sufficient to describe the business practices that are proscribed without offering a definition? Clarity and efficiency argue for inclusion of a definition in the law. In the case of criminal legislation, the definition would provide a compact, initial test in the determination of which degree providers are operating illegally. The owners of these degree businesses are to be considered candidates for investigation and subsequent indictment. The definition could incorporate an attribute that explicitly generates a federal stake in the suppression of the degree provider, such as inclusion of interstate trafficking in academic documents. This would help establish the federal interest and jurisdiction, smoothing the enforcement process.

All states have statutes that define the authorization process for a postsecondary institution and forbid the provision of academic degrees without this authorization.¹³⁵ However, most states do not define (or use) the expression “diploma mill” in their laws.¹³⁶

The Oregon statutes *do* include a definition but do not include a measure of the academic merits of the degree provider in the definition:

(1)(a) “Diploma mill” means:

(A) A school against which a court or public body, as defined in the Oregon Revised Statutes 174.109, has issued a ruling or finding, after due process procedures, that the school has engaged in dishonest, fraudulent or deceptive practices related to the award of degrees, academic standards or student learning requirements; or

(B) An entity without legal authority as a school to issue degrees valid as credentials in the jurisdiction that authorizes issuance of degrees.¹³⁷

The Maine Revised Statutes also contain definitions of “diploma mill” and “degree mill.”¹³⁸ Unlike Oregon, Maine includes a test of the academic quality of a program: a degree provider is only a diploma mill if it both operates without state authority *and* grants either fraudulent or worthless diplomas.

The first definition of “diploma mill” to appear in federal law was carried by the Higher Education Opportunity Act (HEOA), passed in 2008.¹³⁹ It is somewhat muddled:

(20) DIPLOMA MILL.—The term ‘diploma mill’ means an entity that—

(A)(i) offers, for a fee, degrees, diplomas, or certificates, that may be used to represent to the general public that the individual possessing such a degree, diploma, or certificate has completed a program of postsecondary education or

135. See, e.g., OR. REV. STAT. §§ 348.594—615 (2010); WASH. REV. CODE §§ 28B.85.010—.906 (West 2010); WYO. STAT. ANN. §§ 21-2-401 to -407 (2010).

136. Telephone Interview with Alan Contreras, Adm’r, Or. Office of Degree Authorization (Mar. 15, 2009).

137. OR. REV. STAT. § 348.594 (2010).

138. ME. REV. STAT. ANN. tit. 20-A, § 10801 (2010).

139. Higher Education Opportunity Act of 2008, Pub. L. No. 110-315, 122 Stat. 3078.

training; and

(ii) requires such individual to complete little or no education or coursework to obtain such degree, diploma, or certificate; and

(B) lacks accreditation by an accrediting agency or association that is recognized as an accrediting agency or association of institutions of higher education (as such term is defined in section 102) by—

(i) the Secretary pursuant to subpart 2 of part H of title IV; or

(ii) a Federal agency, State government, or other organization or association that recognizes accrediting agencies or associations.

Note the clause “(B) lacks accreditation by an accrediting agency or association that is recognized [by]. . . a Federal agency, State government, or other organization or association that recognizes accrediting agencies or associations.” The presence of “other organization or association that recognizes accrediting agencies” creates a sizable loophole. Diploma mill operators already create accreditation mills as part of their infrastructure. It would be a simple matter to fabricate an additional organization that recognizes accreditation mills. The diploma mill definition in the HEOA would seem to fail when applied to a mill with accreditation recognized by an entity of this sort.

In fact, Concordia College and University (CC&U), a Mississippi-licensed, Belgian-managed diploma mill, does just this.¹⁴⁰ The CC&U website quotes HEOA and states “This [sic] U.S. Department of Education’s legal definition of ‘diploma mills’ clearly excludes legitimate degree granting institutions such as Concordia.” The reasons include the “recognition” of the bogus National Academic Higher Education Agency that “accredits” CC&U.¹⁴¹

The definition in the version of HEOA passed by the House (before the creation of the House-Senate conference bill) did not contain this loophole. It is unfortunate that the conference committee reworded the definition.

Degree mills will sometimes create a web of supporting infrastructure intended to mimic the legitimate accrediting, licensing, and evaluation organizations found in genuine systems of higher education. Breyer State and St. Regis both did this, inventing sham accrediting bodies intended to give the appearance of independent, external oversight monitoring their programs. A sensible plan to disrupt the diploma mill industry should include attention to controls that might be placed on the granting of accreditation.

The authority to issue accreditation flows from the Department of Education or the Council for Higher Education Accreditation to the nongovernmental accrediting bodies. There is no collision between state and

140. Certificate, Office of the Sec’y of State, Miss., Business Certificate No. 10562922-1, Oct. 27, 2008, *available at* http://2.bp.blogspot.com/_est2mROu_UE/SgOeWmZysUI/AAAAAAAAA8/ri_-25YKRtM/s1600-h/510_goodstanding-ms.jpg.

141. Concordia College and University, Accreditation, Affiliation, References, <http://www.concordia-college.net/avoiddiplomamills.html> (last visited Feb. 19, 2010).

federal authority concerning the recognition of accreditors. It is straightforward to write a simple definition of “accreditation mill.” A few states have done this; these definitions acknowledge the federal government’s authority to recognize accreditors.

The North Dakota legislature classifies operation of an accreditation mill as a class C felony using this definition: “‘Accreditation mill’ means an accrediting entity that is not recognized by the United States department of education or the state board for career and technical education.”¹⁴² The Maine Revised Statutes also contain a definition of “accreditation mill.”¹⁴³

VII. THE POSSIBLE SHAPE OF A CRIMINAL STATUTE

A persistent concern that ran through Gold Seal during the entire operation was the problematic nature of mail and wire fraud charges in a diploma mill prosecution. St. Regis customers were likely to have been aware of the nature of the degrees they chose to purchase, providing a natural path for a narrow defense of the Randocks.¹⁴⁴ In fact, during the sentencing phase of *United States v. Randock*, defense attorneys argued that “the consumers that dealt with the Defendants knew what they were getting into. They knew that there were no classes and that degrees would be based upon life experiences.”¹⁴⁵

It is clumsy to use the mail and wire fraud statutes to prosecute the owners of diploma mills. In spite of this, most of Dipscam’s defendants were charged with mail and wire fraud. But only one of the dozens of Dipscam actions actually went to trial—in all the other cases the defendants pleaded guilty—so Dipscam had little opportunity to test the robustness of a mail fraud prosecution in a courtroom brawl with an aggressive defense attorney.¹⁴⁶

The matter of well-informed, willing customers might suggest an alternative approach to prosecution in which the mill’s owners are charged with aiding and abetting the commission of fraud by the mill’s customers.¹⁴⁷ But this must certainly open additional lines of defense, especially if the diploma mill’s material carries a disclaimer, as is the case for Almeda College & University.¹⁴⁸

Attorneys familiar with the problem in both the Federal Trade Commission and the Department of Justice believe that a criminal statute aimed squarely at diploma mills is necessary.¹⁴⁹ During our discussions with them, two themes

142. N.D. CENT. CODE § 15-20.4-18 (2010).

143. ME. REV. STAT. ANN. tit. 20-A, § 10801 (2010).

144. *See, e.g.*, Objections and Corrections to the Presentence Report at 4, *United States v. Randock*, No. CR-05-0180-LRS (E.D. Wash. 2008).

145. *Id.*

146. Private communication from Allen Ezell to author (2005) (on file with authors).

147. This renders the mill’s owners culpable under the same fraud statute that the customer had violated, thanks to 18 U.S.C. § 2(a), which punishes accomplices as principals.

148. Almeda University, *supra* note .

149. Interview with DOJ attorneys (July 3, 2008); Interview by George Gollin & Emily

emerged: a criminal indictment (rather than a civil suit) is the appropriate legal avenue, and criminal legislation explicitly and clearly proscribing the production or use of diploma mill degrees is needed.¹⁵⁰

At the present time there are no federal statutes that directly classify as illegal the operation of a diploma mill or its supporting infrastructure, or the use of a diploma mill degree. This is an appropriate matter for consideration by the Judiciary Committees of the United States Senate and House of Representatives.

In attempting to define “diploma mill,” it is important to consider what the definition needs to do. The definition would provide the initial measure of whether or not a degree provider was operating outside the law. The definition is *not* intended as a metric of whether or not an academic program is of sufficient rigor to serve as a proper qualification for (federal) employment. In testimony to the Senate Committee on Governmental Affairs in 2004, Associate Director Steve Benowitz of the U.S. Office of Personnel Management (OPM) spoke on the subject.¹⁵¹ In its subsequent press release, OPM pointed out that “[i]n June 2003, [OPM Director Kay Cole] James wrote to agency heads reminding them that a provision in the Homeland Security Act prohibits agencies from reimbursing employees for course work that is not provided by an accredited school.”¹⁵² The definition of “diploma mill” would lay the groundwork for a possible prosecution, while the different measure of academic rigor is meant to determine employability. Note that a number of unaccredited, but academically legitimate, schools operate legally in the U.S. These schools are not to be captured by a definition of the term “diploma mill.”

It is necessary to avoid a determination of academic legitimacy in a federal definition in order to prevent a conflict between the states’ power to authorize schools and the federal government’s interest in eliminating diploma mills. Further, the definition should speak to the matter of jurisdiction so that the federal interest and prosecutorial authority are unambiguous. The definition should allow U.S. authorities to seize the domestic infrastructure and assets of degree mills controlled by foreign nationals based abroad. Finally, the definition should incorporate an attribute that explicitly generates a federal stake in the suppression of the degree provider. These attributes will aid the enforceability of a statute, thereby reducing the chance that ambiguities might

Lawrence with FTC attorneys (Sept. 23, 2008).

150. Interview with DOJ attorneys, *supra* note ; Interview by George Gollin & Emily Lawrence with FTC attorneys, *supra* note .

151. *Bogus Degrees and Unmet Expectations: Are Taxpayer Dollars Subsidizing Diploma Mills?: Hearing Before the S. Comm. on Governmental Affairs*, 108th Cong. 60-72 (2004) (statement of Stephen C. Benowitz).

152. Press Release, U.S. Office of Pers. Mgmt., OPM Associate Director Tells Senate Committee that Diploma Mill Degrees Have No Place in Federal Government Decisions on Hiring, Promoting (May 13, 2004), *available at* <http://www.opm.gov/news/opm-associate-director-tells-senate-committee-that-diploma-mill-degrees-have-no-place-in-federal-government-decisions-on-hiring-promoting>, 295.aspx.

arise in the required shape of a federal action against a diploma mill.

We offer the following definitions for the reader's consideration, believing these definitions to avoid conflicts between federal and state powers, to avoid the issue of identifying an authority to evaluate academic quality, and to incorporate an interstate criterion establishing the federal interest in the to-be-proscribed activities:

- (a) The term "diploma mill" means
 - (1) an entity without legal authority from the jurisdiction in which it operates to issue academic degrees valid as credentials in that jurisdiction; and
 - (2) which issues, sells, advertises, or otherwise provides or publicizes its degrees or degree programs to individuals residing in states outside the state in which the entity operates, or issues, sells, advertises, or otherwise provides or publicizes its degrees or degree programs to individuals residing in countries outside the country in which the entity operates; and
 - (3) does not hold institutional accreditation from an accrediting body recognized by the Department of Education or the Council for Higher Education Accreditation.
- (b) The term "accreditation mill" means an entity that issues postsecondary institutional accreditation but is recognized by neither the United States Department of Education nor the Council for Higher Education Accreditation as an accreditor.
- (c) The term "in which it operates" includes any of the following: use of an address, telephone number, facsimile number, or other contact point; performance of administrative or business functions.

A degree-selling business and its customers engage in a number of distinct activities that should be classified as criminal violations. New legislation should proscribe the following activities:

- Producing and selling bogus postsecondary academic diplomas and transcripts
- Conferring postsecondary institutional accreditation without the conferrer having been recognized by the Department of Education or the Council for Higher Education Accreditation
- Claiming to possess accreditation from an unrecognized accreditor
- Misrepresenting the degree-granting authority, accreditation status, or academic legitimacy of a degree provider in evaluations of a student's academic credentials
- Using a diploma mill degree to obtain employment, promotion, or enrollment in a postsecondary academic or training program, or to

mislead prospective customers or business partners of the degree holder's level of academic accomplishment

A criminal statute should also include an assignment of penalty level to the offense of running a diploma mill. Past history and existing state legislation can provide guidance for the appropriate penalty level in these cases. The defendants convicted by Dipscam, who were the principals of their diploma mills, generally received prison terms of five years or more.¹⁵³ North Dakota's Century Code penalizes the operation of a degree mill or an accreditation mill at a maximum of five years in prison and/or a \$5,000 fine, and the use of a fake degree at a maximum of one year in prison and/or a \$2,000 fine.¹⁵⁴

The Randocks were each sentenced to prison for three years and an additional three years of probation after an exhausting three-year courtroom battle that pitted eight defense lawyers against one talented Assistant U.S. Attorney. It is likely that the addition of a second attorney to the prosecution team would have convinced the defendants to plead guilty sooner and would have resulted in longer sentences for the defendants.¹⁵⁵ According to the prosecution, the sentencing guidelines used in federal criminal cases produced a "sentencing range of imprisonment . . . [of] 168-210 months" before the guidelines' "maximum penalty of five years imprisonment" was asserted in the case of Steve Randock.¹⁵⁶ Their offenses were serious and warranted serious penalties.

It would be appropriate for the penalty calculation to take into account the number of degrees sold. In addition, surrender of ill-gotten assets through civil or criminal forfeiture should be an outcome of a successful prosecution.

To date there is no meaningful regulation or oversight of the hundreds of academic credential evaluation services that can be found selling their wares over the Internet. A proper discussion of the appropriate penalties for the knowing production of misleading credential evaluations should include industry representatives from the Washington-based American Association of Collegiate Registrars and Admissions Officers and other higher education professional organizations. These organizations are highly knowledgeable of the world of degree mills and accreditation mills, and can contribute expert analyses to the consequences of tolerating misleading credential evaluators.

There are a number of sections of the federal criminal code that could serve as rough templates for a law banning diploma mills. Examples suggested by

153. See private communication from Allen Ezell to George Gollin (2005) (on file with authors).

154. N.D. CENT. CODE §§ 15-20.4-18, 15-20.4-20, 12.1-32-01 (2010).

155. Private communications from numerous law enforcement and legal officials familiar with *United States v. Randock* to George Gollin (2008-2009) (on file with authors).

156. United States' Sentencing Memorandum, *supra* note , at 1.

our law enforcement colleagues include the following:¹⁵⁷

- 18 U.S.C. § 1028, “Fraud and related activity in connection with identification documents, authentication features, and information”¹⁵⁸
- 18 U.S.C. § 1028A, “Aggravated identity theft”¹⁵⁹
- 18 U.S.C. § 1029, “Fraud and related activity in connection with access devices”¹⁶⁰

It will be important that a new statute be enforceable and that the appropriate amount of resources necessary for enforcement be made available. The Internet and electronic technology used by diploma mills change the skill set required of an investigation team in comparison to that of the Dipscam agents. In Allen Ezell’s time, before 1993, much of the evidence used in prosecutions came in the form of paper documents seized in the business offices of the diploma mills. In the St. Regis case, some sales records came as paper documents, but many more were seized as electronic data, and were taken from the computers and disks of the defendants. Consequently, a modern investigative unit will need to possess considerable expertise in forensic data and network analysis. Based on the experiences of the FBI’s Dipscam task force, run by Allen Ezell until his retirement, we feel that a standing investigative team of four or five agents, with appropriate support staffing, would be sufficient.

The best source of guidance concerning a diploma mill investigative unit must certainly be the group of investigators and attorneys who ran Gold Seal—they have become experts in the issues associated with the prosecution of a modern diploma mill. The most productive approach to defining the composition of an anti-diploma mill task force would be to request that the Spokane-based members of Gold Seal be allowed to participate in a planning exercise for such a task force.

CONCLUSION

The problem of diploma mills is international in scope and demands our attention. Recall that St. Regis, though based in the United States, established infrastructure in a number of foreign countries. Effective suppression of diploma mills will necessarily include cross-border cooperation. We feel it is entirely feasible for national authorities to collaborate aggressively to eliminate this global criminal pestilence. The solution requires us to do the following:

157. The suggestions are from personnel involved with the St. Regis investigation and prosecution.

158. 18 U.S.C. § 1028 (2006).

159. 18 U.S.C. § 1028A (2006).

160. 18 U.S.C. § 1029 (2006).

- Create and maintain an exhaustive international white list of legitimate universities holding government-authorized degree granting authority.
- Deploy document security tools so that (electronic) academic transcripts and diplomas are self-authenticating and automatically identifiable as uncorrupted, and of legitimate provenance.
- Clarify existing laws and draft new legislation to classify operation of diploma mills and related infrastructure as criminal violations, while appropriating the small, but necessary resources to enforce these laws.
- Increase the peril to diploma mill customers through public exposure and legal action so as to reduce the demand for diploma mill degrees.

There are good starts on some of these fronts. For example, UNESCO and the Council for Higher Education Accreditation formed an international diploma mills working group in 2008, which issued a best-practices document titled *Toward Effective Practice: Discouraging Degree Mills in Higher Education*.¹⁶¹ The 2009 UNESCO World Conference on Higher Education listed suppression of diploma mills as an action item in its end-of-conference draft document, calling on member states “[t]o combat degree mills through a multi-pronged attack at national and international levels.”¹⁶²

In this Article we have discussed the legislative aspects of the problem. We believe that the legal and enforcement components of the solution lag behind, and are deserving of greater attention from federal authorities in the United States.

161. COUNCIL FOR HIGHER EDUC. ACCREDITATION & UNITED NATIONS EDUC., SCIENTIFIC AND CULTURAL ORG., *TOWARD EFFECTIVE PRACTICE: DISCOURAGING DEGREE MILLS IN HIGHER EDUCATION* (2009), available at http://www.chea.org/pdf/degree_mills_effective_practice.pdf. Alan Contreras and George Gollin were two of the U.S. participants in the working group contributing to the report.

162. 2009 World Conference on Higher Education, Paris, July 5-8, 2009, *Draft Communiqué: The New Dynamics of Higher Education and Research for Societal Change and Development*, U.N. Doc. ED.2009/CONF.402/2 (June 26, 2009), available at http://portal.unesco.org/education/en/files/59301/12462631875WCHE_Communique_1stDRAFT_260609.pdf/WCHE_Communique_1stDRAFT_260609.pdf.