

立法會

Legislative Council

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Paper for the Committee on Members' Interests' meeting on 19 April 2005

An electronic mail message from a member of the public concerning the educational qualifications claimed by a Member of the Legislative Council

Purpose

This paper invites members of the Committee on Members' Interests (the Committee) to consider an electronic mail (e-mail) message (**Appendix 1**) which a member of the public sent to the Committee's clerk and which concerns the educational qualifications claimed by a Member of the Legislative Council (LegCo).

An e-mail message from a member of the public

2. On 30th October 2004, the clerk to the Committee received an electronic mail message from Mr David Webb, a member of the public, raising doubts on the academic standing of the educational qualifications claimed by Dr Hon Philip WONG Yu-hong (the Member) on the LegCo web-site (**Appendix 2**). Mr Webb alleged that the **Southland University** and the **California Coast University**, from which the Member earned his juris and engineering doctorate degrees respectively, were unaccredited "diploma mills"¹. To support his observation, Mr Webb cited the following references:

- i) an article entitled "Lawmaker's degrees from 'diploma mills'", published in The Standard on 16 October 2004, which cast doubts on the Member's doctorate degree qualifications (**Appendix 3**) (http://www.thestandard.com.hk/news_detail_frame.cfm?articleid=51514&intcatid=1);
- ii) a testimony on the investigative findings relating to degrees from diploma mills by the United States Government Accountability Office before a Subcommittee on 21st Century Competitiveness, Committee on Education and the Workforce, the House of Representatives of the United States of America

¹ The United States Government Accountability Office defines "diploma mills" as nontraditional, unaccredited, postsecondary schools that offer degrees for a relatively low flat fee, promote the award of academic credits based on life experience, and do not require any classroom instruction.

(<http://www.gao.gov/new.items/d041096t.pdf>) (**Appendix 4**), which revealed that the federal government had paid for degrees earned by its employees at the California Coast University; and

- iii) an article entitled “Diploma mills – the \$200 million a year competitor you didn’t know you had” (http://www.degree.net/html/diploma_mills.html) on the degrees.net web-site, which disclosed that the operator of the Southland University had been convicted and jailed for fraud charges (**Appendix 5**).

3. Mr Webb requested the Committee to investigate and determine whether:

- i) by assuming the title of “Dr” and claiming doctorate-level qualifications in law and engineering, the Member has misled the public and, in particular, his electorate;
- ii) the Member has misled the Council; in particular, about his claims to have a doctorate degree in law, which might give other Members the impression about his purported abilities as a lawmaker, and might influence others when he seeks positions on bills committees;
- iii) Member’s conduct in this respect has brought discredit upon the LegCo; and
- iv) the Council’s web-site should be amended to remove the Member’s title of “Dr” and the claims to the said degrees.

Members’ personal particulars furnished by Members themselves

4. At the beginning of each new LegCo term, the Social Functions Office of the LegCo Secretariat sends a performa on Member’s Biography to Members for completion. For Members who are re-elected, a summary of the personal particulars, including educational and professional qualifications, provided by them in the previous term is also attached to the performa for the Members’ updating. The updated personal particulars are then uploaded onto the LegCo web-site, printed in the LegCo Annual Report and then updated annually.

Terms of reference of the Committee and issuance of the Advisory Guidelines by the Committee

5. The terms of reference of the Committee are set out in Rule 73(1) of the Rules of Procedure. In connection with conduct of Members, the Committee’s term of reference is "to consider matters of ethics in relation to the conduct of Members in their capacity as such, and to give advice and issue guidelines on such matters". In this respect, the Committee has issued the

"Advisory Guidelines on Matters of Ethics in relation to the conduct of Members of the Legislative Council of the Hong Kong Special Administrative Region in their capacity as such" to Members for reference. Paragraph I(1) of the guidelines, which concerns Members' conduct, reads:

"(a) A Member should ensure that his conduct must not be such as to bring discredit upon the Legislative Council."

6. The said term of reference does not empower the Committee to determine whether the conduct of a Member in a particular case is appropriate or ethical. Yet it does not preclude the Committee to refer to a particular case in the process of giving advice and issuing guidelines on the general conduct of Members.

The handling of complaints about Members' specific conduct by the Committee of the previous term

7. At a meeting held on 15 July 2003 during the Second Term LegCo, the then Committee considered two complaints about some Members' specific conduct. In the first case, YUA Current Affairs Society queried, in a letter to the Chairman of the House Committee which was subsequently referred to the Committee for handling, if some LegCo Members had breached the oath that they subscribed upon taking up the office by burning copies of the National Security (Legislative Provisions) Bill (the Bill). The Society considered that it was a breach of the oath for Members to oppose the enactment of laws for Article 23 of the Basic Law and requested the Committee to consider whether the act of these Members was up to the ethical standard expected of them when they continued to scrutinise the Bill after burning copies of it. In the second case, Hon YEUNG SUM wrote to the Committee on 11 July 2003 requesting it to deliberate Hon Philip WONG Yu-hong's gesture of raising his middle finger outside the LegCo meeting.

8. After deliberation, the Committee concluded that investigating and forming views on the conduct of individual Members were outside the scope of its terms of reference. The Committee then instructed the clerk to reply to the complainants along such lines. An extract of the minutes of the meeting of the Committee is in **Appendix 6**.

Advice sought

9. Members are invited to note the information set out in paragraphs 4 to 8 of this paper and consider how Mr Webb's queries mentioned in paragraph 3 above should be dealt with.

Legislative Council Secretariat
16 November 2004

E-mail dated 30 October 2004 from Mr David M Webb

"David M Webb"

2004/10/30 PM 09:31

To: bleung@legco.gov.hk

Mrs Betty Leung, the Clerk of the Committee on Members' Interests
Hong Kong SAR Legislative Council

Subject Questions for the Committee on Members' Interests

Dear Madam,

According to the biography of "Dr" Philip Wong Yu-hong appearing on the Legislative Council web site, and according to numerous biographies of him in the accounts and prospectuses of listed companies, Mr Wong has the following doctorate-level "Education and Professional Qualifications":

J.D. (Law), Southland University, USA

Ph.D. (Engineering), California Coast University, USA

I pres his title "Dr" from either or both of these "degrees". But according to press reports, both institutions are (or were) "diploma mills" in America which lack any academic accreditation, see this story from the Hong Kong Standard, a copy of which is attached:
http://www.thestandard.com.hk/news_detail_frame.cfm?articleid=51514&intcatid=1

See his Legislative Council biography:

<http://www.legco.gov.hk/general/english/members/yr04-08/wyh.htm>

The US General Accounting Office lists California Coast University as one of the unaccredited diploma mills which have been issuing degrees to federal employees at government expense, at this link (copy attached):
<http://www.gao.gov/new.items/d041096t.pdf>

The "university" web site is here:

www.calcoast.edu

As for "Southland University, USA", this was allegedly a diploma mill run by a James Kirk (later known as Thomas McPherson), who later went to jail for mail fraud, according to this site run by a former FBI investigator:
http://www.degree.net/html/diploma_mills.html

So as a concerned member of the public, wishing to protect and repair the reputation of the Council, I hereby ask the Committee to investigate and determine:

1. by assuming the title of "Dr" and claiming doctorate-level qualifications in law and engineering, has Mr Wong misled the public and in particular his electorate?

2. has he has misled the Council? In particular, as he claimed to have a doctorate in law, what does this say about his purported abilities as a lawmaker, and did he claim this qualification when seeking positions on any bills committees?

3. whether his conduct in this respect is such as to bring discredit upon the Legislative Council.

4. whether the Council's web site should be amended to remove the title of "Dr" and the claims to the said degrees.

5. whether, given the doubt cast on his doctoral qualifications, he can prove his other degrees of BSc and "MSc (Engineering), University of California, USA".

Yours faithfully,

David M Webb

Tel:

E-mail:

<http://webb-site.com>



041015stan.pdf



GAOdiplomaMills.pdf



diploma_mills.pdf



Dr Hon Philip WONG Yu-hong, GBS

Date of Birth : 23 December 1938

Place of Birth : China

Religion : Christian

Name of Spouse : Anita LEUNG Fung-yee

Number of Children : 3

Constituency : Functional Constituency - Commercial (Second)

Education and Professional Qualifications :

- * M.Sc. (Engineering), University of California, USA
- * J.D. (Law), Southland University, USA
- * Ph.D. (Engineering), California Coast University, USA

Occupation :

- * Chairman and Chief Executive, Winco Paper Products Company Limited

Political Affiliation : /

Public Service :

- * Chairman, Public Accounts Committee, Legislative Council
- * Deputy, National People's Congress of the People's Republic of China
- * Treasurer, The Chinese General Chamber of Commerce, Hong Kong
- * Member, Hong Kong Trade Development Council

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Lawmaker's degrees from 'diploma mills'

by Colum Murphy

At least two university degrees listed by solidly pro-Beijing legislator Philip Wong on his website and in other personal histories were issued by un-accredited US institutions commonly referred to as "diploma mills".

On the official Legislative Council members' website, Wong lists his academic qualifications as a PhD in engineering from California Coast University (CCU) and a juris doctorate from Southland University (SU), then in California, that is now defunct; and a masters in science (engineering) from University of California (UC).

In a directors' report of Asia Financial Holdings (AFH), of which Wong is a director, his attainments are given as "BSc, MSc, JD and PhD degrees in 1963, 1967, 1982 and 1987 respectively". The AFH report does not list the institutions.

But an investigation by *The Standard* has uncovered evidence that suggests the quality of the degrees issued by both CCU and SU is questionable. The Legco website does not specify at which of UC's 10 campuses Wong studied for his degree, nor does it elaborate where he completed undergraduate studies.

Wong, who received the Gold Bauhinia Star award last year and is a deputy to the National People's Congress, is also vice-chairman of the Chinese General Chamber of Commerce in Hong Kong.

In September, he ran unopposed for the Commercial (Second) functional constituency seat, which represents the interests of the Chinese Chamber of Commerce.

He became infamous when he was caught on camera making an obscene middle finger gesture toward pro-democracy demonstrators outside the Legislative Council in July last year.

On Wednesday and Thursday, *The Standard* placed several calls to Wong's office and mobile phones, sent questions about the degree controversy by e-mail, fax and short message service.

On Thursday, Wong was reached by telephone twice and on both occasions the line was cut after a reporter identified himself. Also on Thursday, attempts to talk to him in person at Legco failed. Asked to comment later, his office said Wong could not be reached.

Last month, the US Government Accountability Office (GAO) - a federal watchdog - named one of Wong's alma maters, CCU, in testimony and an official report to the House of Representatives on so-called diploma mills.

The GAO defines diploma mills as "non-traditional, un-accredited, post-secondary schools that offer degrees for a relatively low flat fee, promote the award of academic credits based on life experience, and do not require any classroom instruction".

According to CCU registrar Barbara Posthuma, Wong "enrolled in a degree programme with California Coast University, leading to the degree doctor of philosophy in engineering, on August 27, 1984, and after successfully completing all of the PhD in engineering requirements, the degree was officially conferred on October 5, 1987".

When asked if CCU was a diploma mill, Paul Desaulniers of the office of special investigations of the GAO who is one of the report's authors, said: "It certainly meets the criteria defined in our report."

He conceded there are many definitions of a diploma mill, and CCU's administration has gone to pains in the past to deny the charges, saying it is a legitimate university.

As is the case with many alleged diploma mills, CCU's 2004-2005 bulletin says it "does not require formal, on-campus residence or classroom attendance". This often allows some of these universities to operate totally online and without a campus.

But calls to a Hong Kong resident of Southern California confirmed that the school does physically exist - albeit in a modest two-storey building, the size of a petrol station, on a quiet intersection in Santa Ana, a suburb of Los Angeles.

CCU also points to its 31-year history and its approval by California's Bureau for Private Post-secondary and Vocational Education (BPPVE) - an arm of the California Department of Consumer Affairs - as evidence of its legitimacy.

Yet doubts remain.

GAO's Desaulniers says approval doesn't count for much, and couldn't be considered as accreditation of any kind. Instead, he said BPPVE's approval was "more a business thing".

Meanwhile, the BPPVE itself says approval by it alone is not enough to ensure the quality of an educational institution. "It means they've met basic standards - with the emphasis on basic," information officer Pamela Mares said. "Vocational education is primarily a business," she says. "These days you can qualify as a [religious] minister for US\$30 [HK\$234]."

The GAO defines accreditation as an evaluation by an organisation that is recognised by the US Department of Education.

In June, CCU applied for accreditation by the Washington, DC-based Distance Education and Training Council (DETC), a recognised accrediting agency, but the reviewing committee deferred the application until its January meeting.

A spokeswoman said the decision was made in order "to allow time for the university [CCU] to further demonstrate and document that it is in full compliance with all DETC standards".

Even if DETC grants it approval, it would only apply to undergraduate programmes, and not to doctorates such as the one awarded to Wong.

This kind of education is certainly a big business. According to a 2000 report by John Bear, a former consultant to the Federal Bureau of Investigation (FBI) on diploma mills and fake degrees, offering unaccredited, easy-to-acquire degrees and diplomas is a US\$200 million-a-year business.

In his report, Bear said the going rate for a degree from a diploma mill ranges between US\$3,000 and US\$5,000.

One example of a university-as-business is the now defunct SU - where Wong got his juris doctorate in 1982 - which typifies the scams that lie behind a diploma mill. According to a 1995 report in *The Times-Picayune* newspaper in New Orleans, SU founder James Kirk closed the Pasadena-based university after the FBI seized the school records as part of a special team set up in the 1980s to investigate diploma scams. In a bid to avoid regulators' attention, Kirk moved the school from state to state, renaming it LaSalle - and changing his own name to Thomas McPherson - along the way.

Former FBI-consultant Bear reported that when the law finally caught up with Kirk, he was in possession of more than US\$45 million in cash and bank deposits, and was indicted on 18 counts of fraud for which he received five years in prison.

Wong's academic credentials have appeared in numerous financial reports, including a 2004 initial public offering prospectus for Qin Jia Yuan Media Services.

He was one of 20 people to be awarded the territory's penultimate annual award, the Gold Bauhinia Star, by Chief Executive Tung Chee-hwa last year.

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United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on 21st Century
Competitiveness, Committee on Education and the
Workforce, House of Representatives

For Release on Delivery
Expected at 11:00 a.m. EDT
Thursday, September 23, 2004

DIPLOMA MILLS

Diploma Mills Are Easily
Created and Some Have
Issued Bogus Degrees to
Federal Employees at
Government Expense

Statement of Robert J. Cramer
Managing Director
Office of Special Investigations



Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss work performed by GAO's Office of Special Investigations (OSI) related to degrees from "diploma mills." For purposes of this overview, we defined "diploma mills" as nontraditional, unaccredited, postsecondary schools that offer degrees for a relatively low flat fee, promote the award of academic credits based on life experience, and do not require any classroom instruction. Over the past 3 years, OSI has purchased degrees from a diploma mill through the Internet, created a diploma mill in the form of a fictitious foreign school, investigated whether the federal government has paid for degrees from diploma mills for federal employees, and determined whether high-level federal employees at certain agencies have degrees from diploma mills. My testimony today summarizes our investigative findings.

Purchasing Degrees from a Diploma Mill

In response to a request from the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, OSI purchased two degrees from a diploma mill through the Internet. After identifying "Degrees-R-Us" as a diploma mill, our investigator held numerous discussions in an undercover capacity with its owner. Posing as a prospective student, the investigator first contacted Degrees-R-Us to obtain information regarding the steps to follow in purchasing degrees. Following those instructions, we purchased a Bachelor of Science degree in Biology and a Master of Science degree in Medical Technology. The degrees were awarded by Lexington University, a nonexistent institution purportedly located in Middletown, New York. We provided Degrees-R-Us with references that were never contacted and paid a \$1,515 fee for a "premium package." The package included the two degrees with honors and a telephone verification service that could be used by potential employers verifying the award of the degrees.

Creating a Diploma Mill

OSI also created a diploma mill to test vulnerabilities in the Federal Family Education Loan Program (FFEL). We created Y'Hica Institute for the Visual Arts, a fictitious graduate-level foreign school purportedly located in London, England. We first created a bogus consulting firm that posed as Y'Hica's U.S. representative and the principal point of contact with the Department of Education (Education). In addition, we created a Web site and set up a telephone number and a post office box address for Y'Hica. Using counterfeit documents, we obtained certification from Education for

the school to participate in the FFEL program. Education has since reported that it has taken steps to guard against the vulnerabilities that were revealed by our investigation.

Investigating Whether the Federal Government Has Paid for Degrees from Diploma Mills

The Homeland Security Act amended section 4107 of title 5, U.S. Code, by allowing federal reimbursement only for degrees from accredited institutions. Specifically, section 4107 states that an agency may “pay or reimburse the costs of academic degree training ... if such training ... is *accredited* and is provided by a college or university that is *accredited* by a nationally recognized body.” (Emphasis supplied.) For purposes of this provision, a “nationally recognized body” is a regional, national, or international accrediting organization recognized by Education.¹ Because the law governs only academic degree training, it does not preclude an agency from paying for the costs of individual training courses offered by unaccredited institutions. Prior to the enactment of the Homeland Security Act, federal agencies were not authorized to pay for employee academic degree training unless the head of the agency determined that it was necessary to assist in recruitment or retention of employees in occupations in which the government had a shortage of qualified personnel.

To investigate whether the federal government has paid for degrees from diploma mills, we requested that four such schools provide information concerning (1) the number of current and former students identified in their records as federal employees and (2) the payment of fees for such employees by the federal government. In addition, posing as a prospective student who was employed by a federal agency, our investigator contacted three diploma mills to obtain information on how he might have a federal agency pay for a degree. We also requested that eight federal agencies—the Departments of Education, Energy (DOE), Health and Human Services (HHS), Homeland Security (DHS), Transportation (DOT), and Veterans Affairs (VA); the Small Business Administration (SBA), and the Office of Personnel Management (OPM)—provide us with a list of senior employees, level GS-15 (or equivalent) or higher, and the names of any postsecondary institutions from which such employees had reported receiving degrees. We compared the names of the schools on the lists provided by these agencies with those that are accredited by accrediting bodies recognized by Education. We also requested that the agencies examine their financial

¹5 C.F.R. § 410.308(b).

records to determine if they had paid for degrees from unaccredited schools.

Several factors make it extremely difficult, if not impossible, to determine the extent of unauthorized federal payments for degrees issued by diploma mills. First, the data we received from both schools and federal agencies understate the extent to which the federal government has made such payments. Additionally, the way some agencies maintain records of payments for employee education makes such information inaccessible. For example, HHS responded to our request for records of employee education payments by informing us that it could not produce them because it maintains a large volume of such records in five different accounting systems, has no way to differentiate academic degree training from other training, and does not know whether payments for training made through credit cards are captured in its training payment records.

Moreover, diploma mills and other unaccredited schools modify their billing practices so students can obtain payments for degrees by the federal government. Purporting to be a prospective student, our investigator placed telephone calls to three schools that award academic credits based on life experience and require no classroom instruction: Barrington University (Mobile, Alabama); Lacrosse University (Bay St. Louis, Mississippi); and Pacific Western University (Los Angeles, California). These schools each charge a flat fee for a degree. For example, fees for degrees for domestic students at Pacific Western University are as follows: Bachelor of Science (\$2,295); Master's Degree in Business Administration (\$2,395); and PhD (\$2,595). School representatives emphasized to our undercover investigator that they are not in the business of providing, and do not permit students to enroll for, individual courses or training. Instead, the schools market and require payment for degrees on a flat-fee basis.

However, representatives of each school told our undercover investigator that they would structure their charges in order to facilitate payment by the federal government. Each agreed to divide the degree fee by the number of courses a student was required to take, thereby creating a series of payments as if a per course fee were charged. All of the school representatives stated that students at their respective schools had secured payment for their degrees by the federal government.

Information we obtained from two unaccredited schools confirms that the federal government has paid for degrees at those schools. We asked four such schools that charge a flat fee for degrees to provide records of federal

payments for student fees: California Coast University (Santa Ana, California); Hamilton University (Evanston, Wyoming); Pacific Western University (Los Angeles, California); and Kennedy-Western University (Thousand Oaks, California).

Pacific Western University, California Coast University, and Kennedy-Western University provided data indicating that 463 of their students were federal employees. Pacific Western University reported that it could not locate any records indicating that federal payments were made, although this claim directly contradicts representations made to our undercover investigator by a school representative that federal agencies had paid for degrees obtained by Pacific Western University students. California Coast University and Kennedy-Western University provided records indicating that they had received \$150,387.80 from federal agencies for 14 California Coast University students and 50 Kennedy-Western University students. Hamilton University failed to respond to our request for information.

After identifying from school records the federal agencies that made payments to California Coast and Kennedy-Western, we requested that DOE, HHS, and DOT provide records of their education-related payments to schools for employees during the last 5 years. As previously discussed, HHS advised us that it could not provide the data. DOE and DOT provided data that identified additional payments of \$19,082.94 for expenses associated with Kennedy-Western, which Kennedy-Western had not previously identified for us. Thus, we found a total of \$169,470.74 in federal payments to these two unaccredited schools.

However, a comparison of the data received from the schools with the information provided by DOE and DOT shows that the schools and the agencies have likely understated federal payments. For example, Kennedy-Western reported total payments of \$13,505 from DOE for three students, while DOE reported total payments of \$14,532 to Kennedy-Western for three different students. Thus, DOE made payments of at least \$28,037 to Kennedy-Western. Additionally, DOT reported payments of \$4,550 to Kennedy-Western for one student, but Kennedy-Western did not report receiving any money from DOT for that student.²

²Our investigation was limited to direct federal payments to schools and did not include federal reimbursements of school fees to employees.

Determining Whether High-Level Federal Employees Have Degrees from Diploma Mills

On the basis of the information we obtained from eight agencies, we determined that some senior-level employees obtained degrees from diploma mills. Specifically, we requested that the agencies review the personnel folders of GS-15 (or equivalent) and above employees and provide us with the names of the postsecondary institutions from which such employees reported receiving academic degrees. The eight agencies were Education, DOE, HHS, DHS, DOT, VA, SBA, and OPM. The agencies informed us that their examination of personnel records revealed that 28 employees listed degrees from unaccredited schools, and 1 employee received tuition reimbursement of \$1,787.44 in connection with a degree from such a school.

We interviewed several federal employees who had reported receiving degrees from unaccredited schools. These employees included three management-level DOE employees who have emergency operations responsibilities at the National Nuclear Security Administration and security clearances. We also found one employee in the Senior Executive Service at DOT and another at DHS who received degrees from unaccredited schools for negligible work.

Moreover, we believe that the agencies are not able to accurately determine the number of their employees who have diploma mill degrees. The agencies' ability to identify degrees from unaccredited schools is limited by a number of factors. First, diploma mills frequently use names similar to those used by accredited schools, which often allows the diploma mills to be mistaken for accredited schools. For example, Hamilton University of Evanston, Wyoming, which is not accredited by an accrediting body recognized by Education, has a name similar to Hamilton College, a fully accredited school in Clinton, New York. Moreover, federal agencies told us that employee records may contain incomplete or misspelled school names without addresses. Thus, an employee's records may reflect a bachelor's degree from Hamilton, but the records do not indicate whether the degree is from Hamilton University, the unaccredited school, or Hamilton College, the accredited institution. Further, we learned that there are no uniform verification practices throughout the government whereby agencies can obtain information and conduct effective queries on schools and their accreditation status. Additionally, some agencies provided information about only the most recent degrees that employees reported receiving.

Concluding Remarks

Our investigations revealed the relative ease with which a diploma mill can be created and bogus degrees obtained. Furthermore, the records that we obtained from schools and agencies likely understate the extent to which the federal government has paid for degrees from diploma mills and other unaccredited schools. Many agencies have difficulty in providing reliable data because they do not have systems in place to properly verify academic degrees or to detect fees for degrees that are masked as fees for training courses. Additionally, the agency data we obtained likely do not reflect the true extent to which senior-level federal employees have diploma mill degrees. This is because the agencies do not sufficiently verify the degrees that employees claim to have or the schools that issued the degrees, which is necessary to avoid confusion caused by the similarity between the names of accredited schools and the names assumed by diploma mills. Finally, we found that there are no uniform verification practices throughout the government whereby agencies can obtain information and conduct effective queries on schools and their accreditation status.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions that you or Members of the Subcommittee may have.

Contacts

For further information about this testimony, please contact Robert J. Cramer at (202) 512-7227, Andrew O'Connell at (202) 512-7449, or Paul Desaulniers at (202) 512-7435.

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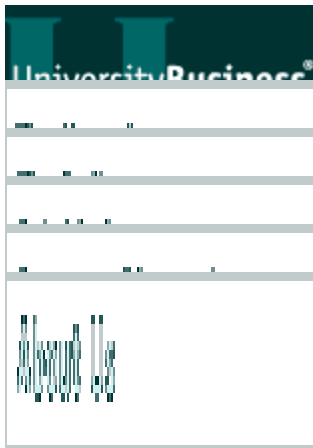
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DIPLOMA MILLS

THE \$200 MILLION A YEAR COMPETITOR YOU DIDN'T KNOW YOU HAD

by John Bear

For the sake of argument, let's say you run the company that makes Rolex watches. For many years, your company has carefully cultivated and protected its reputation for quality. One day you pick up a major business magazine and see the following advertisement: "Genuine Rolex Watches by Mail, \$50." You quickly learn that they are being made in a huge factory in another country. You are confident that your sales will be dramatically affected, and as these fakes fail to work well, your reputation will be damaged. But despite your increasingly frantic attempts, you are unable to interest law enforcement agencies in taking any action, and you can't persuade the media to stop running those ads.

It sounds like a nightmare.

It is a nightmare, and it's happening today-not in the world of wristwatches, but in the world of higher education.

Consider the following:

- There are more than 300 unaccredited universities now operating. While a few are genuine start-ups or online ventures, the great majority range from merely dreadful to out-and-out diploma mills-fake schools that will sell people any degree they want at prices from \$3,000 to \$5,000.
- It is not uncommon for a large fake school to "award" as many as 500 Ph.D.'s every month.
- The aggregate income of the bad guys is easily in excess of \$200 million a year. Data show that a single phony school can earn between \$10 million and \$20 million annually.
- With the closure of the FBI's diploma mill task force, the indifference of most state law enforcement agencies, the minimal interest of the news media, and the growing ease of using the Internet to start and run a fake university, things are rapidly growing worse.

The prognosis is bleak. This is not some jerk with a laser printer on his kitchen table cranking out a few phony diplomas, often to the mild amusement of the media (as when Florida congressman Claude Pepper bought a fake doctorate to show how easy it was and proclaimed himself

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Dr. Pepper).

Fake schools are a serious economic force in America, hitting legitimate schools in their pocketbooks in two important ways:

- A fair chunk of that \$200 million is being spent by people who really want and need a legitimate degree but don't know enough to tell the difference. It's tuition that should be going to the legitimate schools.
- Every time a phony school is exposed by the media, the whole public perception of distance learning suffers. So when the public sees your ad or press release, they are more likely to say, sneeringly, "Oh, I've heard about those kinds of programs," and you'll never hear from them.

A huge crime wave is under way, and almost no one has noticed. You can't have a crime wave without two basic ingredients: villains and victims. In this particular crime wave, there are four kinds of villains and four kinds of victims. In the course of looking at each of them, much can be learned about what is going on, and why.



The Four Villains

Who are the villains in this sad drama? There is an obvious one (the perpetrators), a less obvious one (the customers), and two very important ones: the media and law enforcement.

Villain #1: The People Who Run the Dreadful Schools

Of course there would be no such institutions without these people, and we cannot excuse their behavior. They were not sold into the diploma trade. No, they all know precisely what they are doing, and they are doing it for money and, perhaps, the prestige that comes with a business card reading "University President."

These folks typically fall into three categories: Lifelong scam artists, who might have progressed from three-card monte on the street corner to running a university; quirky academics who have decided to cross to the dark side; and businesspeople who simply find another kind of business—that of selling degrees.

An example of one such businessman is James Kirk. In addition to dabbling in film production, 3-D film distribution, and a video dating service, in the late 70s he got involved with a correspondence law school called the University of San Gabriel Valley (it no longer exists; the California Supreme Court suspended one of Kirk's lawyer-partners for three years and placed the other on probation for a year). But Kirk saw the cash potential and opened his own Southland University down the street. When Southland could no longer meet California's minimal operating requirements, he moved it. It ended up in Missouri, where he changed its name to LaSalle University and his own to Thomas McPherson. Leaving Missouri a few steps ahead of the sheriff, he found a haven in Louisiana's unregulated world of higher education. He ran ads in dozens of airline and business magazines. He took a vow of poverty, so his World Christian Church owned the university, his Porsche, and

his million-dollar home. And when the federal authorities finally came for him, they discovered bank deposits in excess of \$35 million, current cash deposits of \$10 million, and numerous other assets.

Kirk/McPherson was indicted on 18 counts of mail fraud, wire (telephone) fraud, and tax fraud, among others. Following a plea bargain, he was sentenced to five years in federal prison.

What is he up to now? Well shortly after he arrived at the federal pen in Beaumont, Texas, a new university started advertising nationally. The Edison University campus in Honolulu turned out to be a Mail Boxes Etc. box rental store. The literature was almost identical to that of LaSalle. The registrar was one Natalie Handy, James Kirk's wife. And the mail was postmarked Beaumont, Texas. Instead of "University Without Walls," we may well have a case here of "University Behind Bars."

One of the academics who has gone down this path is Dr. Mary Rodgers, founder and president of the Open University of America. She has an earned doctorate from Ohio State and had a decent career in higher education. When I visited the, um, campus, I found it to be a pleasant suburban home in Maryland.



When a young girl answered the door, I said I was looking for Open University. "She's upstairs," was the reply. When I asked Dr. Rodgers about the legitimacy of the university, she showed me photos of their graduation ceremony at the National Shrine of the Immaculate Conception in Washington D.C., featuring mostly, it seemed, foreign military officers receiving their degrees. "What more could you ask for?" she inquired. Oh, perhaps something more than grandma in the basement (I had been given a tour) filling orders.

Then there's lifelong con-man Ronald Pellar, undisputed king of the fraudulent school world, who probably has tens of millions of dollars in offshore bank accounts to prove it. Following an early career as a Las Vegas lounge hypnotist, a brief stint as Lana Turner's seventh and last husband (she threw him out and accused him of robbery), and a two-year prison stretch for hiring a hit man to kill someone, Pellar discovered the world of education and training. He also hit upon the easiest method yet of becoming a "Doctor." He called himself Doctor Dante. Doctor was presumably his first name.

After making a bundle with his fake travel-agent training school and his dangerous cosmetology school (he was convicted under federal fair trade laws in California for running the fake cosmetology school), he hit the big time with his Columbia State University. Starting in the late 1980s from a Mail Boxes Etc. store in New Orleans and featuring a Ph.D. in 27 days-no questions asked-Columbia State University grew and grew. By 1997 Pellar had several employees filling orders in an unmarked warehouse in San Clemente, California, not far from the Nixon museum. Between January 1997 and March 1998, according to the New Orleans Times-Picayune, the school deposited approximately \$16 million in its bank account. By this time, Pellar was living on his million-dollar yacht in Ensenada, Mexico, defying warrants for his arrest.

The obvious question at this point is: How could he make so much money, for so long, with such a blatantly phony (to you and me, at least)

scheme? The answer can be found by looking at the other three categories of villains.

Villain #2: The Media

No fraudulent scheme can succeed if people don't know about it. And the traditional way to make yourself known, whether you are selling Coca-Cola or doctorates, is to advertise.

Pellar's basic advertisement for Columbia State University read like this:

**University Degree in 27 Days!
Bachelor's, Master's, Doctorate
Legal, legitimate, and fully accredited.
School rings available.**

What publication on earth, with the possible exception of the supermarket tabloids, would run such an ad? Well, how about the Economist, Time, Newsweek, Forbes, Money, Business Week, Investors Business Daily, and USA Today?

But surely, the rational mind asks, no responsible publication would continue to run such ads, once they learned the nature of the advertiser.

The media I contacted reacted in one of three ways when they learned they'd been running advertisements for fraudulent schools.



A. We run them. Period. The Economist is one of the worst offenders: Every weekly issue for at least the last five years has had five to 20 ads for "schools" that range from tally phony to merely unaccredited and bad. Because of the magazine's excellent reputation, many readers assume if a school advertises in the Economist, it must be OK. When I first tugged at the magazine's sleeve, sending them clear evidence of their bogus advertisers, the response from Suzanne Hopkins in their classified ad department was loud and clear: "Although I understand your urgency of making people aware of the dealings of Columbia State University, we are of the belief that our readers are educated enough to make their [sic] own decisions." (As a conservative guess, readers lost over a million dollars to this one phony alone, before the FBI finally closed it down.)

B. We run them. Wait, no we won't. Many years ago, the Wall Street Journal was running some ads for reprehensible schools. My attempts at getting their attention either went unanswered or elicited replies like that from Hopkins. Then one day, when an especially dreadful ad appeared, I went into my "terrier" mode (relentless, get teeth in and don't let go). I finally got through to the key decision maker in New York. Robert Higgins, of their advertising standards committee said, in effect, "Of course we shouldn't be doing this," and they simply stopped. It was simple because they said what any medium could say: "If a school doesn't have recognized accreditation, we don't run their ads. Period."

C. We won't run them. Wait; yes we will. For sheer numbers, USA Today is the champ. Every morning, the flagship of the Gannett fleet

runs from five to 15 ads from questionable schools in the Education section of their classified page, although sometimes the ads migrate into the rest of the paper, notably, one full-page ad (at an estimated \$70,000) for a phony university. When I did my sleeve-tugging act at USA Today, the response was immediate and gratifying. Cynthia Ross, in the advertising office, seemed genuinely alarmed and promptly drew up a set of standards and guidelines for accepting school ads, which were as reasonable and rigorous as anything I would have done. She thanked me profusely and assured me that changes would be implemented as soon as questionnaires were sent to advertisers. The only problem is that this happened three years ago, no changes were made, and Ross no longer returns my calls.

Villain #2: The Media Again

Another failing of the media is indifference. The two-headed snake at the 4-H show will probably get more coverage than the local high school principal discovered to have a fake degree. Or the campaign literature of former senator Joseph Biden reporting a degree he didn't have. Or the president of Croatia with a worthless California doctorate. Or Arizona's "teacher of the year" with a bogus master's. Is this business as usual? The press hardly noticed. When the FBI discovered that a few scientists at NASA had fake doctorates, the news was largely ignored by the press. When the Fowler family- some of the most flamboyant degree mill operators ever-were charged with stealing millions and put on trial in North Carolina, the courthouse was full of reporters-but only because Jim and Tammy Faye Bakker and Fawn Hall were on trial in the next room. Despite the best efforts of the FBI and yours truly, not an inch of copy ever appeared.

Villain #3: The World of Law Enforcement

If I held up a 7-Eleven for 50 bucks, I'd probably be in prison before my Slurpee melted. But if I start a totally fraudulent university, selling degrees by return mail for \$3,000 each, and I obscure my path just a little, changing the name from time to time and using various mail-forwarding services, the odds are that I will go unpunished forever. And if caught, I will get little more than a slap on the wrist.

Because of the multistate and international aspect of many fakes, it's often unclear who has jurisdiction. When, as in the case of one huge fraud, a man in California rents a one-room "campus" in Utah and mails his diplomas from Hawaii, who regulates him? In the Columbia State saga, for years the attorney general of Louisiana was saying, in effect, "He may use a mail drop here, but the entire operation is run from California. It's their problem." And the California attorney general was saying, "Hey, he uses a Louisiana address and telephone in all his ads and in his catalog. It's their problem."

In this great republic of ours, each state has its own school licensing laws, and they differ mightily and change regularly. During the 1990s more new universities opened in Hawaii than in the rest of the country combined: over 100 of them, and all but two or three located at mailbox service addresses. In the 1980s it was Louisiana, a state that did not license degree-granting institutions. Recently, the state of choice for this kind of thing has been South Dakota.

It wasn't always this way. In 1980 the FBI made diploma mills a priority and established the DipScam task force, based in Charlotte, North Carolina. With the states generally uninterested in acting, time after time the FBI did the research, secured a search warrant, marched in (often with postal inspectors and the IRS in tow), collected evidence, got indictments, and ended up closing down more than 50 major frauds, including two active fake medical schools.

But in the early 1990s FBI agent Allen Ezell, scourge of the degree mills, took early retirement, and the agency removed diploma mills from its priority list. The sad news is that more fakes and near-fakes have been launched in the last 10 years than in the previous 50. They are fueled by the ease of advertising and the even greater ease of setting up an impressive-looking Internet site-even one with the hallowed .edu suffix, which many people think signifies quality, but which has been doled out to many questionable schools.

There have been a few good guys in the last few years-but not many. One assistant attorney general in Illinois guards his state like a bulldog. When a fake Loyola State University opened not far from the real Loyola University in Chicago, Assistant Attorney General Hollister Bundy got an injunction and closed them down within a few days. But Attorney General Richard Ieyoub of Louisiana yawned and looked the other way for years, until a close election battle in 1998 spurred him to action, posing for photos while shutting down a few notorious mailboxes. And California's top lawman showed zero interest while some of the biggest frauds ever thumbed their noses in the direction of Sacramento.

Even when some action is taken, there often is little or no follow-through. Since 1998 the Federal Trade Commission has had the important power to regulate the use of the word "accredited," but to my knowledge, it has never filed a case, despite blatant misuse of that word. The state of California ordered Columbia Pacific University to close three years ago, but the "university" appealed, and it remains defiantly open, continuing to advertise nationally.



Villain #4: The People Who Buy and Use Fake Degrees

The question is always asked: Do the customers of these schools know what they're doing? Are they acquiring what they are well aware is a questionable degree for the purpose of fooling others? Or have they genuinely been fooled by the purveyor of the parchment?

The only certain answer is that there are some of each, but whether it is 50-50 or any other proportion is quite unknown and much discussed. Surely, you are thinking, anyone with an IQ higher than room temperature who acquires that "Ph.D. in 27 days" must know exactly what he or she is doing. And yet. And yet, the literature and the sales pitch of the phony Columbia State is really slick. The catalog is more attractive than some real schools, replete with photos of campus scenes, happy alumni (all from stock photo companies) and two Nobel laureates listed with honorary doctorates.

Their argument is that many universities today are giving credit for experiential learning. If you've run a business for 10 years, they suggest, you know more than most M.B.A.'s (heads nod), and so we'll give you that M.B.A. If you've taught Sunday School at church, you know as much as one of those Ivy League doctors of divinity, and we'll award you the degree you've already earned through experience.

When I put a detailed exposé of Columbia State up on my [Web site](#), I received more than 500 replies from alumni. While most were of the boy-was-I-stupid sort, a significant subset were like the woman who wrote, "I can't believe I did this. I have a master's degree from Goddard [College in Vermont]. I really understand this 'life experience' thing. Those people were sooo convincing."

And, depressingly, there was another notable subset of people who said, "Well if they're as bad as you say, how come my employer (they name a Fortune 500 company) is paying for three of us to do that degree?"

My hunch is that at least half the "victims" are truly co-conspirators. They know they live in a world where employers pay higher salary for the same job if the person has a higher degree; where therapists with a Ph.D. after their name are said to get three times as many Yellow Pages responses as those with an M.A.; and where a large Ohio city told the man who had been cutting down dead trees for them for 20 years that, due to a new policy, unless he earned a degree within two years, he would be let go. So they're willing to take the risk.

Surely it would be nice to see some meaningful research about these matters. I believe that I am right when I tell people, as I have for years, that using such a degree is like putting a time bomb in their resumé. One never knows when it might go off with dire effects. In my expert-witness work, I see this all the time. A few years ago, for instance, I testified against a prison psychologist for the state of Florida who had gotten away with his fake Ph.D. for eight years. He insisted that he believed the University of England was real, in spite of their P.O. box address, the absence of a telephone, and their offer to backdate his diploma to the year of his choice. As the prosecutor said in summation, "Here is a man who probably spent more time deciding which candy to buy from the vending machine than he did in choosing his doctoral school."

The Four Victims

Victim #1: Those Buyers who Aren't Villains

And many of them aren't. Some stories introduced at diploma mill trials are heartbreaking: Old people mortgaging their homes to provide their children's tuition. People selling their cars to pay their fees. And untold numbers of people losing their jobs, even being fined, jailed, or, if holding a green card, deported, for unwitting use of fake degrees.

Victim #2: The Employers

Employers are victimized in two ways: The obvious one is ending up with untrained employees, and the more subtle but potentially devastating one is financial liability when people with fake credentials make mistakes that damage people or property. Consider the urgent meetings that must have taken place when a prominent staff pediatrician

at the University of California-Berkeley student health center was discovered to have forged his medical degree. A matter that sometimes keeps me up at night is two sleazy (but excessively litigious) universities that specialize in quick and easy home-study doctorates in nuclear engineering safety.

How can such things happen? Many employers either don't check or don't care. LaSalle University in Louisiana, shortly before their founder went to prison for mail fraud, listed hundreds of companies that they said had accepted and paid for their degrees. Skeptically, I started calling these companies, fully expecting to find the "university" had lied. But they hadn't. About half the companies had confused them with the real LaSalle University in Philadelphia. And the rest believed their accreditation claim, because they didn't realize there was such a thing as fake accreditation.



Victim #3: The Public

Many well-meaning people suffer because the person they think is a trained teacher, business consultant, or engineer may not have the degree or even the knowledge. Consider the damage potential of the sex therapist in Syracuse with his fake Ph.D., for which he paid \$100. The import-export lawyer in San Francisco who turned out to have bought his University of Michigan law degree from one of the insidious, no-questions-asked, "lost" diploma replacement services that advertise nationally. This spring, I'm scheduled to testify in California Superior Court, to help expose the phony doctorate claimed by the expert witness for the plaintiff. This man's Ph.D., his only degree, is from a well-known European "university." But for more than 20 years, this worthless credential has buttressed his scientific testimony in more than 300 court cases. If we are successful, it could lead to reopening all those other cases. And that's just one person from one "school." We are truly talking about the tiniest tip of a very large iceberg.

Victim #4: The Legitimate Schools

Just as the fake Rolex seller harms legitimate watch companies by taking money that should be theirs and by tarnishing their reputations, the fake schools take millions from the good schools' pockets, and, at least as significantly, foul the waters of nontraditional higher education.

Despite the huge surge of interest and investment in online and distance learning, everything is not rosy in the groves of virtual academe. Extremely well funded efforts such as California Virtual University just couldn't attract enough students and faded away. How many potential students were on the verge of sending for a catalog or writing a check to a good school when they saw one of the fake school exposés on 20/20, 60 Minutes, or Inside Edition, and decided not to take the risk of dealing with "one of those" schools.

What can legitimate schools do?

If there were an Olympic gold medal for hand-wringing, the foes of

diploma mills would have won one years ago. But, with the lone exception of the FBI's decade-long effort, results have been sporadic, generally ineffective, and woefully short-lived. In 1982 the American Council on Education announced an impending, hard-hitting, and uncompromising book (I hoped) on fake schools. But by the time *Diploma Mills: Degrees of Fraud* finally emerged in 1988, the lawyers had marched in, and the book was, at best, soft-hitting and compromised. The authors apologized for lack of specificity (not a single currently operating fake was named) because of "the present litigious era."

Yes, schools do sue. When *Lingua Franca*, the sister publication of *University Business*, ran an article about Mellon University Press and Mellon University (which they judged to be a diploma mill), they were sued by the owner. They ultimately prevailed in court, but it was a long, expensive process. I've been sued eight times by schools, including once, for \$500 million, by the University of North America. Only one ever got to court, and that was thrown out by the judge, as frivolous, in minutes. But there is a cost in both dollars and, my wife will confirm, despondency.

How to fight the bad guys

So shining the light of publicity on these schools can certainly do no harm, but I'm afraid that books and even articles like this may do little more than accelerate the hand-wringing.

Wouldn't it be fine if there were a consortium of legitimate universities and companies in the business of education that worked to eradicate the problem? They could do it through a combination of individual action, group action (especially media notification and advertising boycotts), and working for the passage of meaningful legislation and the



enforcement of existing laws. Like the computer industry's software piracy efforts, organizations that might be fiercely competitive most of the time work together in this arena for their common good.

- Individual school action. I believe that the bigger and better schools can be a force for change-if only they would. A few years ago, a completely fake Stanford University began operating from Arkansas, even selling medical degrees by mail. I couldn't interest anyone at the real Stanford in this matter, and the fake carried on for more than a year. If the president of the real Stanford had telephoned the governor of Arkansas and the editor of *USA Today* and said, "Stop this!" might something have happened much sooner?
- Advertising boycotts (or threats thereof). Recently, on the same page in the *Economist*, there were large ads for Harvard University (quite real) and Monticello University (which the state of Kansas has accused of being fake). What if Harvard (or a group of major schools) got together and said they no longer wish to be on the same pages with the fakes?
- Build a fire under the FTC. In 1998 the Federal Trade

Commission published a rule that would regulate the use of the word "accredited," limiting it to schools with recognized accreditation. The FTC has successfully dealt with the misuse of other words, from "organic" to "low-tar." Enforcing this rule would be a major blow to the fakes, who count on being able to call themselves accredited.

- The "graffiti" approach. Cities have begun winning the war on graffiti by taking immediate and decisive action: monitoring trouble spots, working with community organizations, and painting over it before the sun rises the next morning. It would not be impossibly labor-intensive to monitor ads in major publications, Web sites, and well-meaning lists compiled by people who have been fooled. The very moment a bad guy appears, instant action is taken. Action in the form of a phone call followed up with a professional and comprehensive information packet to the editor, publisher, or Internet site provider from a respectable consortium of schools would do it. Perhaps another warning letter or packet to the relevant federal, state, and local authorities as well.

As it happens, the advance scouts are already out there beating the bushes searching for the bad guys, and they are doing it without pay, just for the satisfaction of the chase. Point your browser to an Internet newsgroup called alt.education.distance, and you'll find a hundred or more postings a day. There are at least 50 zealots, from Australia to Switzerland, whose antennae vibrate when some questionable institution arises. They (well, actually, we) collect information, visit nearby locations to see what's there, write reports and then, well, wring our hands a lot. Of course, the group does not speak with a common voice, but I know of no other place where there is so much useful information for someone (please) to take and run with.

- Educating the public. Legitimate schools could do this through articles, brochures, books, and public relations pieces. They could even devote a percentage of advertising, marketing, and PR budgets to this purpose, possibly through pooled efforts.
- Law enforcement. For my doctoral dissertation (in communication, earned at the legitimate Michigan State University) I studied complaining and how politicians and the media deal with complaints. I learned that the personal approach is the one that usually works, especially on an issue where the politician has little personally invested. A million letters won't change a vote on abortion or gun control, but one good letter, especially from a power-possessing individual, can get a traffic light installed, the almond import quota changed, or, quite possibly, the fake schools dealt with.

The media can be significant here, too, especially in the process of getting legislators to act. In 1983 Arizona was the haven for many fake schools. Then the Arizona Republic did a splendid four-day, page-one series, the first article running with the headline Diploma Mills: a festering sore on Arizona Education. Within months the state got and enforced some tough laws, and one by one, every phony in the state moved on to Louisiana, Hawaii, South Dakota, and other places.

If the good guys turn the power of their own credibility, credentials, contacts, and connections on the fake degree sellers, and if they do it the very instant the bad guys' ads and their Web sites appear, there is a

fighting chance to recapture all of the playing field.

[John Bear](#) is an author based in El Cerrito, California. For 12 years he was the FBI's principal consultant and expert witness on diploma mills and fake degrees. His books include *Bear's Guide to Earning Degrees Nontraditionally* and *College Degrees by Mail and Internet*.

Photos by **David Prince Photography**.

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**Extract of the Minutes of the ninth meeting
of the Committee on Members' Interests
held on Tuesday 15 July 2003 at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members present** : Dr Hon David CHU Yu-lin, JP (Chairman)
Hon SIN Chung-kai (Deputy Chairman)
Hon Cyd HO Sau-lan
Hon NG Leung-sing, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon YEUNG Yiu-chung, BBS
- Non-Committee
Members attending** : Hon Margaret NG
Dr Hon LO Wing-lok, JP
Hon Audrey EU Yuet-mee, SC, JP
- Member absent** : Hon Bernard CHAN, JP
- Clerk in attendance** : Mrs Betty LEUNG
Chief Assistant Secretary (3)1
- Staff in attendance** : Mr Ray CHAN
Assistant Secretary General 3
- Mr LEE Yu-sung
Senior Assistant Legal Adviser 1
- Mr Watson CHAN
Head, Research and Library Services Division
- Mr CHAU Pak-kwan
Research Officer 5
- Mr Arthur LEUNG
Senior Assistant Secretary (3)1
-

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I. Matters of ethics in relation to the conduct of Legislative Council Members in their capacity as such

(LC Papers No. CMI/15/02-03, CMI/20/02-03 and LS147/02-03)

The Chairman stated that the YUA Current Affairs Society had written to the Chairman of the House Committee on 29 May 2003 enquiring whether some Members' conduct outside the Legislative Council (LegCo) meeting had breached the LegCo Oath they had taken when assuming office or was up to the ethical standard in their capacity as such. The Chairman of the House Committee had referred the letter to the Committee on Members' Interests (CMI) for consideration. Besides, Mr YEUNG Sum had also written to the CMI on 11 July 2003 requesting it to discuss Hon Philip WONG Yu-hong's conduct outside the LegCo meeting. Senior Assistant Legal Adviser 1 (SALA1) had prepared a paper on the subject (LC Paper No. LS147/02-03 issued vide LC Paper No. CMI/22/02-03) for members' reference. The Chairman invited SALA1 to brief members on the paper.

2. SALA1 briefed members on the salient points of the paper as follows:

- One of the functions of the CMI is "to consider matters of ethics in relation to the conduct of Members in their capacity as such, and to give advice and issue guidelines on such matters". According to this provision, the CMI has not been given the function or power to determine whether the conduct of a particular Member is appropriate or up to the ethical standard. This viewpoint was also supported by the incidents in which motions on empowering the then Committee on Members Interests to initiate investigations into complaints against Members' misconduct had twice been rejected by the former Legislative Council in 1995 and 1996 respectively.
- Under Article 79(7) of the Basic Law, when a Member is censured for misbehaviour or breach of oath by a vote of two-thirds of the Members present, the President of the Council shall declare that the Member is no longer qualified for the office. Rules 49B and 73A of the Rules of Procedure set out the procedure for implementing the Article. Where a Member considers that the conduct of a fellow Member is a misbehaviour or has breached the oath, he may move a motion of censure under Rule 49B. The matter stated in the motion shall be referred to an investigation committee unless the Council orders otherwise. The constitution and procedure of an investigation committee are provided in Rule 73A. An investigation committee is responsible for establishing the facts stated in the motion of censure, and giving its views on whether the facts as established constitute grounds for the censure. It is required to report to the LegCo. Under Rule 49B(3), the passage of such a motion requires a two-thirds majority of the Members present.

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3. Mr YEUNG Yiu-chung said that based on the explanation of SALA1, the CMI should not specifically handle the complaints contained in the above two letters. He enquired whether there was any mechanism to prevent Members' abusing such procedure, which could lead to the disqualification of a Member from office, by moving of motions of censure indiscriminately. In response, SALA1 advised that Rule 49B(2A) of the Rules of Procedure stipulates that upon the moving of a motion under Rule 49B(1A), the debate shall be adjourned and the matter stated in the motion shall be referred to an investigation committee. However, the Council could, by a motion which may be moved without notice by any Member, order otherwise.

4. Mr NG Leung-sing pointed out that as Rule 49B(1A) of the Rules of Procedure neither provides for the definition of "misbehaviour" or "breach of oath" nor specifies the person to determine whether a particular Member's conduct is an instance of such, if the decision rested solely with the Member(s) who moved the motion of censure, abuses mentioned by Mr LEUNG Yiu-chung might occur. He further pointed out that regardless of the conclusion of the investigation committee, the investigation process would definitely have unfavourable effects on the Member being accused. In response, SALA1 said that the existing mechanism provided for in the Rules of Procedure could be regarded as a safeguard for the Member concerned. In the first place, it required a Member who considered the conduct of a fellow Member to be an act of misconduct or a breach of the oath, and decided to move a motion of censure. Upon the moving of such motion, if a motion on ordering such motion otherwise was moved, the Council could determine at this stage whether it would further follow up on the conduct concerned. No investigation committee would be formed if the Council ordered otherwise by passage of such a motion. On the other hand, even if an investigation committee was established, its function was confined to forming views on the facts of the conduct. Whether the conduct was an act of misconduct or had breached the oath would ultimately be decided by the Council by voting.

5. Ms Cyd HO enquired whether the definitions of "misconduct" and "breach of oath" had been discussed when Rule 49B of the Rules of Procedure was provided. In response, ASG3 said that Subrules (1) and (1A) of Rule 49B of the Rules of Procedure set out the procedure for implementing Articles 79(6) (Member convicted of a criminal offence) and 79(7) (misbehaviour/breach of oath) of the Basic Law respectively. Under normal circumstances, a motion of censure moved under Subrule (1A) would be referred to an investigation committee responsible for establishing the facts stated in such motion, and giving its views on whether the facts as established constituted grounds for the censure. Nevertheless, there is a provision under Subrule (2A) which allows, upon the passage of a motion for the Council to order otherwise, an investigation committee not to be established. With the permission of the Chairman, Ms Margaret NG provided members with the relevant background information. She advised that she was a member of the Committee on Rules of Procedure when Rule 49B was drafted, and she could relate to members the Committee's

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considerations in drafting the Rule. As a Member's conviction of a criminal offence was a straightforward fact which did not require investigation, the motion to relieve such Member of his duties as a Member could be moved directly under Subrule (1) and put to vote by the Council. On the other hand, after discussion, the Committee on Rules of Procedure considered that definitions for "misbehaviour" and "breach of oath" should not be prescribed as any definition might arouse controversy; and Members' views on whether the gravity of the misbehaviour called for the relieve of such Member of his duties as a Member would most likely be affected by the prevailing social values. The function of an investigation committee was to establish the facts of the conduct concerned and give views on its gravity to enable LegCo Members to form an informed view on the matter. However, the Committee on Rules of Procedure noted that if "misbehaviour" and "breach of oath" were not defined, various trivial acts could be regarded as a breach of the rule, giving rise to possible abuse of the procedure by political parties in an attempt to strike blows at Members of other political parties. On the other hand, as certain acts are in fact uncontroversial, there is a provision under Rule (2A) which allows the Council to decide not to establish an investigation committee, so that the motion of censure can be put to vote by the Council directly without being referred to an investigation committee. The Committee on Rules of Procedure had also considered whether "misbehaviour" and "breach of oath" should be defined by the CMI, but as the CMI had its own functions, it was ultimately decided that the investigation committee should investigate into and form views on the particular incident. ASG3 supplemented that under the Rules of Procedure, the CMI is presently not given the power to investigate whether a Member's conduct is an act of misconduct or has breached the oath.

6. Ms Cyd HO pointed out that the LegCo should be very cautious in exercising its power of relieving a Member of his duties as a Member, especially when the majority of the incumbent Members were elected by a small electorate base, so as to avoid a scenario in which the decision of Members elected through small circle elections to oust a Member overrode the decision of electors which returned him as a LegCo Member. She believed that if all Members were elected by universal suffrage, cases of Members making rude gestures would rarely happen. Besides, the requirement under the Basic Law that a motion of censure requires a two-thirds majority vote of the Members present was also closely related to the composition of the first term of the LegCo in which only one-third of the Members were elected by universal suffrage.

7. The Deputy Chairman said that while he recognized that the CMI was not empowered to investigate into the conduct of individual Members, he opined that the approaches adopted by the LegCo in handling Members' misbehaviour were in two extremes. In one extreme, the matter would not be handled, and in another extreme, the Member would be relieved of his duties as a Member. He suggested that a study should be conducted on the approaches adopted by advanced countries in Europe and America in handling cases regarding Members' misbehaviour, so that the CMI could consider subsequently whether

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such approaches could be applied to Hong Kong. Members present agreed to the suggestion.

8. The Chairman suggested that the CMI should send replies to the complainants who wrote the above two letters informing them that investigating into and forming views on the conduct of individual Members were outside its terms of reference. They should also be informed of the mechanism of the LegCo in handling cases regarding Members' misbehaviour/breach of oath. The Deputy Chairman suggested that replies should also be given to other letters and e-mails of complaint recently received by the Secretariat in relation to the second incident mentioned above. Members agreed to these suggestions. Ms Cyd HO was of the view that even though Members were free to express their views in different manners, they should not adopt manners which would directly offend the others. She opined that Members should be advised to note that such practice was inappropriate.

Clerk

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