

Predatory Practices in Higher Education

by

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Executive Summary

The issue of predatory practices in higher education is more relevant today than ever before. Just this week, the top official tasked with addressing student loan complaints stepped down from his role at the Consumer Financial Protection Bureau, citing the extensive damage being done to student borrowers after sweeping changes at the bureau (Cowley, 2017). This is simply one sign of the growing trend of blatant disregard of regulations and the predatory practices plaguing institutions and prospective students. My doctoral research will focus on the promises institutions make to prospective students and whether the promises align with the reality of the student experience. The research conducted for this annotated bibliography focuses on predatory practices in higher education and draws a connection to my doctoral research in that the promises made regarding financial aid and career outcomes often clash with the reality of the experience. Many of the articles and cases reviewed in this bibliography center on student loans and the way for-profit institutions have consistently exploited vulnerable populations. These institutions appear to capitalize on murky regulations pertaining to marketing and recruiting practices as a way to enroll more students and take in surplus federal funding. A theme to emerge from the research is a propensity for for-profit institutions to exaggerate or withhold the truth behind the full cost of attendance, potential career outcomes, and the quality of education being offered.

While regulations meant to protect students as consumers were put into place under the Obama administration, much of that work is being undone by the current administration. Several of the articles in this bibliography address the history of these regulations and the impact on higher education. The sources used throughout this bibliography lean toward policy and the law. The cases highlighted depict a dichotomy between the regulations in place and the interpretation of

those regulations by for-profit institutions striving to remain aggressive and sometimes deceptive in their recruiting practices. The main conclusion based on the research for this bibliography is that while regulations may be in place to prevent deceptive recruiting and marketing practices, it is the consumer's responsibility to do their due diligence prior to enrolling and it is the institution's duty to provide transparent, accurate, and accessible information to the public.

Predatory Practices in Higher Education

Peer-Reviewed Articles

Cellini, S.R. & Koedel, C. (2017). The case for limiting federal student aid to for-profit colleges. *Journal of Policy Analysis & Management*, 36(4), 934-942.

This article argues for the maintenance and potential increase of federal regulations and oversight of federal student aid to students attending for-profit colleges. The authors point to a lack of accurate information as the driver behind students enrolling in for-profit colleges, with an overreliance on recruiters to provide the relevant information. The research presented indicates that students attending for-profit institutions typically come from vulnerable populations such as lower-income families or minority groups. Cellini and Koedel review recent research on labor market outcomes for graduates of for-profit institutions, highlighting that outcomes for the for-profit students fare similar or worse than those from public colleges. The authors advocate for the restriction of student aid going toward for-profit institutions and the expansion of the Gainful Employment rule based on poor labor market outcomes, higher default rates on loans, and lower satisfaction with the educational experience faced by for-profit students.

Cellini and Koedel make a compelling argument for restricting federal financial aid going toward for-profit college students. The overview of recent research on labor market outcomes will be particularly relevant to my own research as I assess the marketing to prospective students and the actual results faced by graduates of institutions. This information will help highlight the clash between for-profit advertising efforts, often touting unachievable careers, and the reality of career prospects post-graduation.

Darolia, R. (2015). Messengers of bad news or bad apples? Student debt and college accountability. *Education Finance and Policy*, 10(2), 1-23.

Darolia focuses this article on accountability of institutions and protection of students (namely pursuing education at for-profit institutions) by promoting the concept of efficiency in public funding through policy. The bulk of the article is related to federal policies that regulate institutions and promote safeguards for students pursuing higher education using federal funding. The author first offers a review of trends of growing amounts of student aid, higher percentages of students borrowing, and a rise in loan defaults; conversely, the author also promulgates that average borrowing is a strong investment and a healthy student loan market is conducive for the economy. A history of pertinent policies is presented by the author, with an emphasis on Title IV and the Gainful Employment rule. In the discussion section, time is spent debating whether federal policies regulating aid would be prohibitive for students seeking access to higher education. As a solution, the author suggests that policy makers encourage institutions to provide accurate and accessible information about costs, the labor market, and student financial aid details.

In addition to the review of policies surrounding borrowing and student debt, the real value of this article is found in the discussion section in which the author proposed solutions outside the realm of regulation. Relevant to my own research is a list of information that should be provided to prospective students related to cost, careers, and aid. While the author also advocates for policy reform, the solution-oriented focus of the discussion section proves useful in learning best practices for communicating to prospective students.

Gelbgiser, D. (2018). College for all, degrees for few: For-profit colleges and socioeconomic differences in degree attainment. *Social Forces*, 96(4), 1785-1824.

Leveraging data related to bachelor's degree attainment of a sample of recent high school graduates, Gelbgiser asserts that for-profit colleges are contributing to the perpetuation of socioeconomic disadvantage in the United States. With the expansion of educational businesses—a 400% increase in enrollment at for-profit institutions between 2000 and 2010—the question of social equality entered the debate when assessing for-profit tactics. The author refers to incentives provided at for-profit institutions that lure in students who seek better academic outcomes, but at the same time raise tuition and therefore student debt. After measuring the students' propensity toward academic success, the author analyzes progression toward degree attainment and socioeconomic status of the sample. Gelbgister found significant variance between the types of schools students from varying economic backgrounds selected to attend with the majority of students from lower socioeconomic levels attending for-profits at a higher rate compared to open-access non-profit institutions. Additionally, the research demonstrates that students attending for-profit institutions attain their bachelor's degree at a lower rate, with the attainment rates of students from low socioeconomic levels attending open-access non-profit institutions being three times than that of for-profit institutions.

The author employed an Educational Longitudinal Study, initially surveying 15,400 high school sophomores in 2002 and then three more times in 2004, 2006, and 2012 to assess their progression toward degree attainment. The author did an analysis of pre-college predictors of success including GPA, entrance exam scores, and overall commitment to higher education. The analysis of the results considered the

socioeconomic level of students, their commitment to academic achievement, and the academic outcomes.

This research would be mainly useful for my doctoral research if I choose to segment the population by socioeconomic levels. While the author discusses the incentives and some tactics used by for-profit institutions to recruit students, the primary focus of this article remains on the differences in degree attainment among socioeconomic levels. Most interesting are the predictors of academic success identified by the author, which is information that could be leveraged for marketing purposes.

Hentschke, G. & Parry, S. (2015). Innovation in times of regulatory uncertainty: Responses to the threat of 'gainful employment.' *Innovation in Higher Education*, 40(2), 97-109.

Characterizing the Gainful Employment rule as a disruptive environmental factor for for-profit institutions, the authors conduct interviews with senior executives leading for-profit colleges and universities in order to better understand how institutions are responding to the Gainful Employment rule and how they plan to be more accountable. The authors first outline the concept of the Gainful Employment rule, in which there is an assessment of graduation rates, debt repayment, and employment outcomes of students/graduates. Hentschke and Parry focus their research question on the impact regulations would have on the business model of for-profit institutions and their findings indicate that the tactics employed by the executives fell into two categories: a generalized response to regulations and a specific, strategic approach to address regulations. For those institutions that initiated a specific approach to addressing regulations, there were four categories of initiatives: pricing, admissions, programs, and staffing.

Using grounded theory and intentional sampling, the researchers interviewed 12 executives from five publicly traded and privately held institutions using open-ended questions. The interviews uncovered several initiatives that would attempt to address the impending federal regulations, including adding scholarships, limiting financial aid, reducing cost of attendance, raising admission requirements, redesigning or enhancing academic programs, and increasing staff.

This study was revealing in terms of what tactics were *not* included in addressing regulations. According to the research, changing marketing and recruiting tactics was not considered by the executives interviewed, though arguably this could be considered a key piece of accountability. This will be useful in my doctoral research to demonstrate how some institutions, in response to regulations around accountability, failed to consider adjusting marketing and recruiting approaches.

James, O. 2011. *Predatory ed: The conflict between public good and for-profit higher education. University of Miami Law School, 38, 45.*

James offers an in-depth review of the business models of for-profit institutions and how the market is targeted, along with a discussion about private business has converged with the public good to formulate the for-profit institution. A history of for-profits is provided, highlighting a turning point being the Higher Education Act of 1972 which made students attending for-profit schools eligible for federal financial aid. The article suggests that for-profit institutions operate with a standard market model in which there is competition for buyers and sellers. James narrows in on the niche target market sought out by for-profit institutions, including minority students from lower socioeconomic levels. The overarching point made by the author is that a traditional

public good—higher education—has evolved into a private commodity with the emergence of for-profit institutions, and how these institutions are failing their market leading to predatory education practices.

This article provides a valuable overview of the history of for-profit institutions within the higher education landscape. While there was potential for more discussion pertaining to the targeted markets of for-profit institutions, James is able to give a high-level overview of the types of prospective students for-profit institutions recruit and the market conditions faced. A significant portion of the article lays out the reasoning for why for-profit institutions harm students, either through student loan default or through fraud and deception. The concept of fraud is particularly intriguing for my own research, as it aligns with the idea of selling a promise that isn't being delivered. Predatory recruiting tactics are discussed and the author points to several examples of abusive business practices. James takes a strong stand against for-profit institutions and warns of the perils students—and society—face if regulations are not in place to safeguard the public.

Lindgrensavage, C. (2016). Regulatory oversight of student financial aid through accreditation of institutions of higher education. *Journal of Law & Education*, 45(3), 327-361.

This article is an examination of the history and current state of for-profit institutions as they relate to accreditation and oversight from the federal government. The author proposes additional oversight of institutional quality as a way to gate-keep federal funding. Looking at the intersection of federal funding and accreditation is a unique angle to the scholarly work related to student financial aid and predatory practices. Leveraging accreditation processes led by the Department of Education as a way to prevent abuse

from for-profit institutions is explored, with details provided about third-party regulatory programs as well. As I relate this to my own research, I could use this article to highlight the importance accreditation plays in student decision-making when it comes to selecting a college or university. An overarching theme of the article pertained to transparency, which is a key element of ethical marketing and recruiting practices.

MacDonald, M.L. (2016). Regulating the capitalists of higher education. *Higher Education Review, Special Issue 1*, 60-70.

MacDonald gives a robust review of the history of for-profit institutions and the regulations to emerge from the Higher Education Act, which include the 90-10 rule (capping the revenue a for-profit institution can receive via federal financial aid), the Gainful Employment rule, and college rankings. A comparison is made between for-profit, private non-profit, and public institutions that offer bachelor's degrees and score a 50 or below in graduate rate data from The Education Trust. Extensive statistics are offered by MacDonald concerning the higher education landscape such as graduate rates, acceptance rates, and student population. Based on data analysis, the author advocates for the application of the 90-10 rule, part of Title IV, to be applied to all types of institutions—not just for-profit institutions. He also underscores the importance of quantifying the quality of institutions rather than the individual per the Gainful Employment rule given career outcomes are primarily based on personal choices rather than institutional quality. MacDonald's final recommendation is to redesign the college ranking system to be more holistic and take into consideration the variance in institutional types.

This article is one of the first I've uncovered in my research to provide a comparison between for-profit, private non-profit, and public institutions in regards to federal regulations of predatory practices. The three main regulations connected to the Higher Education Act are explained in detail and it will be especially valuable in my doctoral research given private non-profit and public colleges and universities are assessed alongside the for-profit institutions.

Morse, S.N. (2015). For-profit schools: A history of abuse and the need for reform. *Brigham Young University Education & Law Journal*, 2015(2), 585-595.

Offering a comprehensive overview of for-profit institutions operating as businesses selling a product, Morse is adamant that these types of institutions are abusing students and need reform through legal intervention. The author begins with a succinct comparison between for-profit institutions and more traditional institutions, highlighting the way the two are funded, the demographics of the student population, and how courses are delivered. The bulk of the article pertains to legal investigations against for-profit institutions and the reforms recommended to combat the abuse alleged by the author. The way students are recruited or marketed to by for-profit institutions is a point of interest for the author, who claims recruitment is favored over quality of education. Despite a litany of examples as to why for-profit institutions are abusive, the author bizarrely concludes that they are valuable to the education market and that degrees from for-profit institutions should be viewed as equivalent to more traditional institutions that are non-profit or public.

The most valuable part of this article is the overview of legal investigations of for-profit institutions since 2010, though ultimately the author fails to make a coherent case.

While the title and bulk of the article imply that for-profit institutions are abusing their power, namely through aggressive recruiting tactics, Morse ultimately sides with for-profit institutions and states that they are necessary within the education market. This conclusion raises red flags, as there is little alignment between her thesis and conclusion. Perhaps useful only for background information about regulations and legal cases pertaining to for-profit institutional abuse, this article failed to make a congruent point.

Tomlinson, M. (2017). Student perceptions of themselves as ‘consumers’ of higher education. *British Journal of Sociology of Education*, 38(4), 450-467.

Tomlinson explores the relationship between students and their institutions in a time when the higher education landscape has shifted to be more consumer-driven and institutions operate more like business than ever before. The student-consumer culture is discussed along with student attitudes toward their institutions in response to recent policy changes pertaining to funding. Coined as the “marketization of universities,” the trend of business tactics being used to recruit students emerged in the United States and has recently shifted to the United Kingdom where this study is based. The author discusses consumer culture, values, and expectations in relation to higher education along with the shift from education being a public good to a private commodity.

The author of this qualitative study interviewed 68 undergraduate students attending universities in the United Kingdom and focused questions on the impact of increased costs to attend university, the attitudes toward higher education and the marketization of it, and their motivations to attend. A few themes emerged from the findings, including the feeling amongst students that the consumerization of higher education was inevitable given the expectations of the generation along with the cost to

attend needing to equate to a value for the money. While the majority interviewed do not consider higher education equivalent to public services, they do anticipate a consumerist approach to be taken.

This article does not completely align with the other articles reviewed as part of this annotated bibliography, but it does relate closely to my research area of interest in that it delves into the topic of consumerism and the expectations of students in how they are marketed to. The interview subjects were based in the United Kingdom, but this offers a more global perspective of the consumerist culture that has become widespread in western society. I would leverage this article in describing how business tactics are being applied in academia and how this influences students' attitudes toward higher education.

Ward, J.D. & Tierney, W.G. (2017). Regulatory enforcement as policy: Exploring factors related to state lawsuits against for-profit colleges. *American Behavioral Scientist*, 61(14), 1799-1823.

In this study by Ward and Tierney, state regulations for for-profit institutions are examined, with findings indicating that geography plays a significant role in the lawsuits being filed against for-profit colleges. Other factors that may lead to a lawsuit include the loan repayment rates per state and the market and economic factors at play within each state. The authors provide a background regarding federal regulations of higher education and then delve into the state-level laws and regulations pertaining to post-secondary institutions. The authors take into account the new administration's commitment to deregulate higher education under education secretary Betsy DeVos and indicate state regulations will become increasingly important to protect students. Ward and Tierney

advocate for state-level regulations because it creates a differentiated market related to regulations and it shows the type of impact policy can have on education.

Using political diffusion theory as their framework, the authors analyzed internal and external data to assess the factors influencing policy enforcement at the state-level. Through an event history analysis and cross-sectional data, the authors found diffusion plays a role in whether a lawsuit is filed. For example, if a neighboring state filed a lawsuit, the state is 5.09 times more likely to also file a lawsuit in the same year. The 3-year repayment rate of loans is also a factor at play in whether legal action is taken against a for-profit institution.

This article proves interesting in that it investigates the influential factors related to state-level legal cases against for-profit institutions. While other articles have assessed the federal regulations, this is the first in my own research to expose state-level policy and regulations, in addition to why legal action may be taken. The study itself is fascinating to better understand the likelihood of a state taking legal action against a for-profit institution. This could be particularly useful in my doctoral research to understand the motivation behind lawsuits pertaining to high education and what influencing factors are at play for states to bring legal action.

Legal Cases

Association of Private Sector Colleges and Universities v. Duncan, 681 F. 3d 427 (2012).

The main issue in this case pertains to career colleges engaging in predatory recruitment practices. In order to accept federal funding, institutions must meet several requirements including being authorized by a state, not engaging in incentive payments for individuals who recruit students, and avoiding misleading communication to

prospective students. In this case, the Association of Private Sector Colleges and Universities challenged these regulations under the Administrative Procedure Act and the Constitution. The holding in this case was affirmed in part, reversed in part, and remanded. The court affirmed the holding that the compensation regulations were not beyond the limits of the Higher Education Act; the court rejected the association's claim that reasoned decision-making was not undertaken; the court held that the misrepresentation regulations exceeded the limits of the Higher Education Act; the court held that the school authorization regulation was valid; and upheld the association's challenge to the distance education regulation.

This case is particularly useful for my doctoral research because it explores recruiting and compensation practices. The discussion about incentive payments for individuals is an important one in regard to recruiting and admitting students in an ethical and responsible way. The case offers a deep-dive into the regulations through the Higher Education Act and proves useful when considering recruiting new students.

Association of Private Sector Colleges and Universities v. Duncan, 70 F. Supp. 3d 446 (2014).

The association that represents more than 1500 private institutions challenges the regulations created by the Department of Education pertaining to graduation-based compensation for personnel; the association moved to remand to the Department of Education for further explanation regarding the new rules. The association's motion was granted. Two aspects of the new rule needed reasoned explanation on behalf of the Department of Education; on remand, the Department supplemented its regulation, but the association claims the regulations remain unsupported with evidence. The

plaintiff's motion is granted because while the Department of Education assumed that compensation-based pay for recruiters would encourage them to steer students toward enrollment, the Department failed to explain its wholesome ban on graduation-based compensation. The matter has been remanded to the Department of Education for further proceedings.

This case focuses on compensation-based pay for recruiters to enroll students and interestingly, the court found that the Department of Education failed to substantively defend their regulation. The case offers insight to the compensation ban and its impact on minority recruitment, which could be useful in my doctoral research if I were to focus in on marketing and recruiting practices to underrepresented groups.

Association of Proprietary College v. Duncan, 107 F. Supp. 3d 332 (2015).

This case involved a challenge against the Department of Education to proposed regulations related to the Higher Education Act and the Gainful Employment rule. The Association of Proprietary Colleges (a group of 23 institutions) challenged the Gainful Employment rule and claimed they were denied due process rights in regard to the eligibility to participate in federal financial aid. The holding from the district court denied the plaintiff's motion and Duncan's motion to dismiss the complaint was granted; the court found that the institutions lacked a due process protected right to be eligible to participate in federal financial aid programs.

The opinion provided by the court offered an ample overview of the rise of for-profit institutions and why they have become relevant in recent years. This case would prove constructive in my doctoral research as it showcases the lack of immunity of for-

profit institutions to skirt federal regulations and under the Gainful Employment rule, would need to deliver on its promises to students.

Consumer Financial Protection Bureau v. ITT Educational Services, 219 F. Supp. 3d 878 (2015).

The federal agency has brought suit against ITT Educational Services claiming the defendant violated provisions of the Consumer Financial Protection Act and the regulations related to the Truth in Lending Act. The court found that the defendants' attempt to dismiss the motion lacked merit and the court denied the motion to dismiss three of the four complaints, granting the fourth motion to dismiss pertaining to the Truth in Lending Act. The use of aggressive tactics on behalf of ITT Educational Services was reviewed by the court, namely that of misleading students about costs and career outcomes through personal conversations and advertising efforts. The Consumer Financial Protection Bureau alleges that the recruiting tactics were heavy-handed in attempting to get students to enroll.

This case demonstrates a growing trend in aggressive recruiting tactics on behalf of for-profit institutions. For my doctoral research, this case could demonstrate the precursor to the fall of ITT Educational Services, which shuttered its doors in 2016. It highlights the dire consequences of false advertising and aggressive recruiting tactics.

ECMC v. Acosta-Conniff, 2018 U.S. Dist. LEXIS 1936 (2018).

The main issue in this case pertains to whether a student loan debt was dischargeable. The court uses the three-part Brunner test to determine if a student loan debt can be discharged, and according to the district court, the appellee was unable to

demonstrate circumstances that would prevent her from repaying the student loan. The district court reversed a bankruptcy court's discharge order and the decision of the district court was remanded by the federal court. The district court remanded the case to the bankruptcy court for further fact-finding related to satisfying the three parts of the Brunner test.

This case relates to student loan debt and highlights the challenge for students to repay loans, in addition to the difficulty in claiming bankruptcy when a student loan debt is part of the debt. For my doctoral research, this case will likely not be cited, but it is an example of the burden of student loan debt on individuals.

Ferguson v. Corinthian Colleges, Inc., 733 F. 3d 928 (2013).

In this appeals case brought by a putative class of students, the group alleged breach of implied contract and good faith along with fraud and other claims against Corinthian Colleges, Inc., a group of for-profit institutions. In the original case, the district court denied in part the college's motion to seek individual arbitration. In the appealed case, the court held that the Federal Arbitration Act indicated the case could not be arbitrated; the appeals court remanded the case. In the background, examples of students who were unable to find employment were reviewed. While the case centered on the denial of a motion to compel arbitration, much information provided in the case background and discussion pertain to the employment promises made by institutions that failed to meet student expectations.

This case highlights another glaring trend among for-profit institutions to make promises related to future employment and for the reality to fall short. In my doctoral research, I hope to explore if marketing promises align with expectations and the

Ferguson v. Corinthian Colleges, Inc. case demonstrates egregious behavior on the part of recruiters and admission counselors who coerced students into programs with the promise of fruitful career outcomes.

Guzman v. Bridgepoint Education Inc., 305 F.R.D. 594 (2015).

The issue in front of the court is a motion to strike a complaint against Bridgepoint Education, Inc. and Ashford University. The complaint is a class action of those who attended Ashford University since 2005 and are alleging violations of California's consumer protection statutes and common law. The case focuses on unlawful recruiting practices and overcharging the government for federal financial aid money. The plaintiff claims to have been exposed to false advertising and inaccurate materials related to education quality, accreditation, costs and financial aid, and career outcomes of graduates. The motion to strike was granted in part. The court struck any allegations referring to claims of breach of contract and breach of good faith.

This case is especially relevant to my doctoral research because it directly relates to false advertising and how the promises did not align with the realities of the experience. The aggressive recruiting practices and the misleading communication to encourage students to enroll are at the heart of this case, which will partially move forward given only part of the motion to strike was granted by the court. I would refer to this case in the future when discussing unlawful recruiting and marketing practices and the consequences for institutions, whether they be for-profit or not.

Massachusetts Association of Private Career Schools v. Healey, 159 F. Supp. 3d 173 (2016)

In a suit against the Massachusetts Attorney General, the Massachusetts Association of Private Career Schools challenges several regulations created to prevent unfair

practices in recruiting and enrolling students in for-profit institutions. The association claims the regulations violate the First Amendment because they impose content-based restrictions, are constitutionally vague, and are preempted by federal laws regulating telemarketing. Motions are granted in part and denied in part. Summary judgment was granted to the plaintiff in part related to Count I and in favor of Healey for the remaining counts. In this case, the focus on deceptive language will be the most useful to my doctoral research if I were to focus on marketing language used.

United States of America v. Education Management Corporation, 871 F. Supp. 2d 433 (2012).

The main issue in this case is the accusation that an operator of private post-secondary institutions violated the Higher Education Act and the False Claims Acts by paying incentive compensation to recruiters who enrolled students. Complaints were waged by several states and the federal government and the defendants moved to dismiss and strike the complaint, and also moved to dismiss the District of Columbia's complaint in intervention. The district court granted the motion to dismiss in part, denied it in part, and the motion to dismiss the intervenor complaint was granted. The court held that the written compensation plan for recruiters did not violate the Higher Education Act ban on incentive compensation. The undercurrent of this case relates to recruiters personally profiting from enrolling new students; this pertains to my own research about the methods leveraged to market and recruit new students.

United States of America ex rel. Katie Brooks v. Stevens-Henager College, Inc., 2015 WL 758988 (2015).

The defendants in this case submit a motion to transfer venue to the District of Utah and for the court to dismiss the case entirely pursuant to Federal Rules of Civil

Procedure. The court granted the motion to transfer. The background of this case includes four colleges being sued based on the false claims the institutions made as a way to receive federal financial aid, thereby violating the False Claims Act. The two plaintiffs, Brooks and Wride, were admission consultants for one of the institutions and were paid bonuses for enrolling students which is a violation of the incentive-compensation ban. In considering the motion to transfer venue, the court considered several factors including the location where agreements were originally made and the plaintiff's choice of forum. The court decided that a transfer was warranted given most of the events occurred in Utah with the majority of witnesses living there. The case was moved to Utah, where the court would decide if the case is to be dismissed.

While this case involved the moving of a venue, it provides deep background on the False Claims Act and violating incentive-compensation regulations. It highlights the role of admission counselors in providing false or misleading information, and being incentivized to enroll students. This would help add to my doctoral research regarding false claims.

Law Review

Alderdice, J. (2015). The informed student-consumer: Regulating for-profit colleges by disclosure. *Civil Liberties Law Review*, 50, 215.

This article contrasts two theories in relation to commercial disclosures of for-profit colleges and universities, including the libertarian paternalism theory which advocates for disclosure-based regulation, and situationism which suggests disclosing information to the consumer will not prevent for-profit institutions from targeting vulnerable populations. Alderdice begins with a history of for-profit college abuse

starting in the mid-nineteenth century when businesses entered the realm of academia to gain a profit. The author highlights the rising demand for college education in recent years and the growth of for-profit colleges and universities, resulting in heightened advertising and marketing efforts targeting the “marginal” student. The legal responses to the aggressive and manipulative recruiting and marketing tactics undertaken by for-profit institutions are reviewed, including the Obama era regulation related to gainful employment and other laws prohibiting certain marketing practices. The topic of disclosures as a regulatory scheme is discussed, with the author concluding that disclosures can be effective but only if they are persuasive, graphic, and consider human behavior.

This article relates closely to my doctoral research about marketing in higher education as it narrows in on recruiting and marketing practices. While the article focuses primarily on the value of disclosure agreements, it offers a useful review of regulations surrounding marketing and recruiting practices.

Alexandrov, A. & Jiménez, D. (2017). Lessons from bankruptcy reform in the private student loan market. *Harvard Law & Policy Review*, 11, 175.

Focusing on the impact of the Bankruptcy Abuse Prevention and Consumer Protect Act, this article discusses how the act influences the private student loan market and offers proposals for reform. The authors assess hypothetical questions related to the act, such as the potential impact of lower loan prices on students and the possible effects of increased demand. A useful overview of student loan debt types and statistics is provided. This article is heavily focused on the economic impact of loan regulation on students with perhaps too much time dedicated to hypothetical queries and scenarios. Space is

dedicated to the messages prospective students receive about potential career and financial outcomes, which is what is most relevant to my area of study. The messages used by some institutions can be considered misleading and can have an impact on the student's borrowing decisions, the authors conclude. While too weighted in the economic impact of student loan debt, this article could serve a purpose when discussing marketing messaging in my research.

Dundon, M. (2015). The consumer always has rights: Envisioning a free marketing: Students or consumers? For-profit colleges and the practical and theoretical role of consumer protection. *Harvard Law & Policy Review*, 9, 375.

A central question drives this article: should students be considered consumers? The reasoning Dundon puts forward surrounds the student debt crisis and focuses in on the legal consequences of referring to students as consumers. When it comes to financing quality education, the author contends that federal regulations related to consumer protection should be put in place to safeguard students. Much of the article details the implications, both positive and negative, of adopting a students-as-consumers approach. A rise in consumer protection investigations in higher education and the growth of for-profit institutions prompted the author to propose consumer protection regulations as a viable solution to this mounting problem.

For my doctoral research, this idea of students as consumers is relevant considering I anticipate exploring marketing of higher education. Marketing, traditionally associated with more corporate business practices, is something done to target specific audiences. Whether those audiences are considered prospective students or customers is a key question asked by many marketing professionals in higher education. This article is

helpful in distinguishing the drawbacks and benefits of referring to students as consumers and the implications this could have on regulation.

Glater, J.D. (2018). Law and the conundrum of higher education quality. *UC Davis Law Review*, 51, 1211.

The main theme of this article is on financial outcomes and use of debt by students who graduate. Glater presents a litany of examples of how higher education is positioned in the market as a way toward financial independence and potential wealth, yet juxtaposes this with the reality of debilitating student debt. The author examines the role of law in academia and how regulations impact who is exposed and given access to higher education. Much of what Glater discusses pertains to academic quality, the cost of pursuing a degree, and whether there is a return on the educational investment given the massive debt looming over graduates. The author advocates for government intervention through use of regulations to ensure quality of education and appropriate financing.

For my doctoral research, I anticipate this article will come into play if a discussion about education quality were to arise. In marketing messages, quality is often mentioned, but rarely supported with evidence. If there were more regulations around the quality of higher education, this could shift the marketing approach by institutions. Glater offers a more futuristic view of what government intervention could look like opposed to assessing the current state of regulations for higher education, which will only be helpful to a degree in my doctoral research.

Mannapperuma, M. (2015). Protecting students, protecting consumers: A new federal regulation of the for-profit distance learning industry. *Journal of Law and Policy*, 23, 541.

Given the rise of for-profit institutions, the author proposes connecting federal Title IV funding to consumer protection efforts as a way to standardize distance learning offered through private companies. The main focus of Mannapperuma's article is consumer protection in response to for-profit distance learning risks, specifically around financial liabilities. The author provides an historic overview of regulations that relate to education, then delves into a review of the Online State Authorization Rule. As an example of a possible structure ideal for the regional level, the author offers a discussion of California's regulations.

This article offers a suitable overview of federal regulations pertaining to distance education, though focuses more on the offerings and quality of distance learning opposed to the recruiting and marketing practices I'm interested in for my doctoral research. While Mannapperuma recommends more oversight of online education, she does not cover the way students are recruited, which would be imperative to my research. This serves as an interesting solution to an issue plaguing higher education, but does not resonate for my own purposes.

Nelson, L.R. (2017). Veterans advocacy: Combating for-profit education's use of erroneous, deceptive, and misleading practices against veterans and the GI Bill. *Mitchell Law Review*, 43, 505.

Focusing his sights on the treatment of veterans by for-profit institution recruitment practices, Nelson explores the deceptive nature of marketing and recruiting of this population and the exploitation of the GI Bill. The article delves into the intricacies of the Post-9/11 GI Bill and the laws and regulations surrounding this program. The author then proposes several reforms as a way to improve transparency among for-profit

institutions in the way they communicate about the college experience, costs of attendance, and gainful employment. This article serves as a passionate plea for reform and leverages compelling stories of veterans who were misled by deceptive recruiting practices executed by for-profit institutions.

While the focus of this article is solely on the actions of for-profit institutions targeting veterans, it serves as an important part of the research regarding deceptive recruiting practices toward vulnerable populations. While many articles focused on minority or low-income students, this article is one of a few that focus in on the veteran population. This will be additive to my scope of research to ensure I discuss distinct populations and how marketing and recruiting messages can impact specific groups.

Roberts-Huckaby, A. (2013). Deceiving law students: Employment statistics and tort liability. *St. Mary's Law Journal*, 44, 671.

This article comes on the heels of several lawsuits that have come to the surface against law schools using fraudulent and misleading employment statistics related to their graduates. In an effort to be more appealing to prospective students, several law schools are accused of fabricated and inflated statistics. Roberts-Huckaby explores the liability of law schools in tort and fraud misrepresentations given the inflation of employment rates and salaries in addition to tuition increases. The author focuses on the fiduciary relationship between law schools and students with an extensive review of possible damages related to the fraud accusations.

This article focused more on the intricacies of tort law rather than the cases pertaining to law schools presenting misinformation. For my doctoral research, this article could serve as helpful background, but does not align clearly with my research

purposes around marketing and recruiting. More and more prospective students are seeking out post-graduate employment data from potential institutions, and this alleged trend among law schools is a worrisome tendency. The article itself did not explore the dangers of this trend or the communication practices of law schools, which renders it somewhat unusable for my purposes.

Salemme, C.J. (2017). Unpatriotic profit: How for-profit colleges target veterans and what the government must do to stop them. *BYU Journal of Public Law*, 32, 85.

This article centers on veterans and how they are consistently targeted by for-profit institutions, often leaving them in debt without the career advancement promised at the onset. The author provides an overview of the for-profit industry and how it has a historic penchant for recruiting veterans in deceitful ways. Salemme not only reviews the regulation efforts on behalf of the federal government, but also proposes what needs to be done moving forward to protect this veteran population from being exploited by the for-profit market. The author recognizes the limitations of future reform based on the current administration and the easing of regulation exhibited by Betsy DeVos in her role as Secretary of Education.

For my doctoral research, the most relevant part of the article was the description of how prospective students are often lied to by institutions in terms of the total cost of attending the institution, the possible career outcomes, and the financial award opportunities. These three areas are major talking points for recruiters and in marketing efforts, so it will be crucial to incorporate this into my research efforts. Focusing in on a specific population like veterans will also be an interesting dimension I could leverage in my doctoral research if I so choose.

Schade, S.A. (2014). Reining in the predatory nature of for-profit colleges. *Arizona Law Review*, 56, 317.

Addressing the abuse committed by for-profit colleges in regard to misleading marketing practices, poor education quality, and lackluster career outcomes, Schade offers state and individual solutions to combat the growing trend of for-profit predatory practices. The author begins with a scenario centered on Ashford University, where aggressive and fraudulent recruiting practices unfolded. This example highlighted the abusive approach taken by several for-profit institutions and the issues that can plague a student for life. The article discusses how for-profit institutions target (not serve) vulnerable populations and how these companies have created effective business models targeting poor and minority students. The public and private remedies to address abuse are reviewed, with references to the Gainful Employment rule, the 90/10 rule, and the Bankruptcy Code. The author concludes with federal- and state-level proposals to address the predatory nature of the for-profit realm, primarily a rebuke of the Bankruptcy Code which does not integrate student loan debt.

This article offers much value as I assess marketing tactics and promises made by institutions. Schade narrows in on the targeting of vulnerable populations using aggressive recruiting tactics, and this could be an asset when discussing how institutions pitch their products. An entire section on marketing trends is included, with the focus centered on for-profit institutions. While my doctoral research will likely not focus solely on for-profit institutions, this information is useful in assessing the broader landscape of higher education and how institutions withhold and exaggerate truth as it suits them.

Taylor, A.N. (2015). Ending the higher education sucker sale: Toward an expanded theory of tort liability for recruitment deception. *Utah Law Review*, 2015, 425.

Taylor analyzes the dichotomy that exists within the role of admissions officers: professionals who advise prospects about the college experience and career possibilities dueling the more practical (though some may deem sinister) role of salesperson who needs to reach their enrollment goals. Based on the rise in students who are enrolling in institutions as a result of more deceptive marketing and recruiting practices, the author proposes a tort-based solution focused on negligent educational recruitment. The article focuses on the claims victims of recruitment deception have previously brought forward, and then argues for a tort-based solution within the higher education context to be more accommodating to those who suffer from deceptive practices. Most of the article is dedicated to the for-profit industry, but does recognize the improprieties committed by not-for-profit institutions.

This article is one of the more relevant articles in my research as it connects directly to the marketing messages and recruiting practices deployed by institutions and the implications on students. The author's proposal to adopt a tort-based reform that is more squarely centered within the higher education category could certainly be beneficial for students who feel deceived by institutions that made false promises regarding their education, career, and costs. This article highlights the trend of fabricated promises made to prospective students as a way to grow enrollments and compete in a crowded educational market.

References

Cowley, S. (2018, August 27). Student loan watchdog quits, saying Trump administration is harming students. *The New York Times*. Retrieved from <https://www.nytimes.com/2018/08/27/business/cfpb-frotman-student-loans.html>