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ABSTRACT

The history of the interrelation among state approval, accreditation, and institutional eligibility is considered. It is suggested that faculty and college administrators can be either an internal or external group in relationship to the planning process. The federal government, or the state government, passes legislation that may have both indirect and unintended impacts on postsecondary education and state planning for education. The Vocational Education Act, the Buckley Amendment, and the Erwin Act are cited as examples. When federal funds became available to students or to institutions, the federal government used the accreditation process as a criteria for establishing eligibility for receipt of federal funds. The opening of federal programs to proprietary institutions and their students not only tremendously increased the numbers of institutions but also the possibilities for below standard and fraudulent operations. Around 1970, there were a number of states that did not have legislation or regulations that applied to degree-granting, nonprofit institutions or to proprietary institutions. The Education Commission of the States developed model state legislation for authorization of institutions to operate and grant degrees. The default rate for the guaranteed loan programs, the growth of the consumer movement, and the issue of educational malpractice are other areas of concern. It is suggested that major concerns are the states' role in licensing, chartering, and regulating, and the need for private accrediting groups and state agencies to work together. (SW)

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EXTERNAL INTEREST GROUP IMPINGEMENTS

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EXTERNAL INTEREST GROUP IMPINGEMENTS

Some of you have heard this story before, but I think it is particularly appropo in relation to the topic assigned which is external interest group impingements on the educational process, in particular the state planning process. Warren Hill tells me he was driving along a back road in Connecticut before he joined us in Denver, when he came up behind a truck. This truck was driving along and the driver was engaged in a most peculiar kind of an operation. He took out a baseball bat and every few minutes as he was driving along, he would reach back behind him and bang the side of the truck. This went on over the winding road through the Connecticut hills for a long way. Finally, they reached a little town and came to a stop light when Warren was able to drive up beside the truck driver. Filled with curiosity, Warren asked, "Just what are you doing? I don't understand this at all." The driver replied, "Well, I'll tell you. This is a one-ton truck and I have two tons of canaries in the back. So, I've got to keep them flying."

In some ways, my job is to talk about the canaries. I would like to talk about the general problem--what constitutes impingement and the nature of what we mean by external groups. Lou suggested that I take one issue and focus upon it. The issue I've selected is one most of you are at least periferally familiar with, but one that's becoming more and more central which illustrates some of the canaries in the woods. The issue I would like to take is rather complex; it involves the long and involved history of the interrelation between state approval, accreditation, and institutional eligibility. While it may seem very far removed, I suspect it is going to become a more and more pertinent problem on the state level all the time.

Let's look for just a minute at this matter of what we mean by "external interest group impingements." In the first place, it's an extraordinarily slippery title--and it's extraordinarily slippery for a very good reason! The reason is that what consitutes an external group will change from time to time. The same group may be an external group in relationship to one issue, and an internal group in relation to another. What we're really talking about is the "we-they" relation and this constantly shifts. To begin to identify the external groups, one must begin by identifying the "we." And I find that difficult also. I think what we're talking about as far as the "we" is concerned, and I'll use this as a frame of reference, is the planning-

coordinating process. It's possible to say that activities, groups, and agencies not within the planning process, whose activities intentionally or unintentionally impinge upon the planning process and thus, must be taken in account, constitute the external agencies. And sometimes, the unintentional factors can make an extraordinarily serious difference in the planning process. From this standpoint, one can see that almost any agency or group can directly or indirectly become an external agency in one context and an internal agency in another.

Such agencies or groups are not necessarily the opposition. To assume so could be a very serious misjudgment. What's involved may well be simply a difference in purpose, but it is a difference in purpose which may well call for adjustment of or addition to the data base, or to the planning process itself.

To take a few kinds of examples: Faculty can be an internal group in relationship to the planning process or they can be an external group. They can affect the planning process directly by intention or they can affect it indirectly and even unintentially. The question, for example, of collective bargaining may be something which the state planning agencies must take into account. The faculty may have become involved in collective bargaining as a result of something that has nothing to do with the planning process. Or they may have gotten into it under other circumstances directly as a result of the planning process. So you have to look at the question in terms of the particular purpose of the group in question how this and the nature of the kind of impingement are related, and whether the purpose was extensive in which case the group becomes part of the "we."

Institutional administrators are part of the system and, from this standpoint, would normally be considered as part of the "we." But under some circumstances, they may also constitute an interest group which may be counterproductive in relationship to the planning process itself. One of the reasons, for example, as I think you are well aware, why a number of states have gone to all lay boards instead of boards that include administrative representatives of the institutions was the discovery that under such circumstances, the interests of particular administrators are closely bound up with the issues; thus, it makes it hard to obtain objectivity and it's pretty hard also for the board to obtain objectivity. Under such circumstances, the specific interests of an institution vis-a-vis the system, when this challenges the integrity of another institution in the system, can, in fact, become an external factor.

The federal government, again, is a fascinating case in point in terms of types of impingements on the planning process which, in many cases, are direct and, in some cases, are indirect and some cases are complementary and other cases may work in the opposite direction. For example, when the federal government, as it has under some circumstances, dictates specific structures for the states, this is an external impingement and one which may or may not be in harmony with the effective purpose the federal government itself is trying to achieve. Such structures can interfere with the planning process. One of the most interesting and difficult problems we face today is in the area of vocational education which involves the development of structures within the states that are not necessarily in accordance with the best interests of the continuity and community of education within the states. We are faced, for instance, with the relationship to the new Vocational Education Act, with the significant question of what constitutes a sole state agency, whether there should be a sole state agency, and how this relates to the planning process in general. Let me just add a footnote: it's quite conceivable that the form the new Vocational Education Act takes will have more direct impact on the planning process for postsecondary education in the period immediately ahead than almost anything before Congress at the present time. I believe this is one that has to be watched; it is one which does involve another kind of internality-externality.

Other state agencies can be either part of the "we" or part of the "they" and "they" can be extraordinarily difficult to deal with. And particularly since we've moved to the so-called range of postsecondary education, the areas of mutual impact have become more acute. This again comes back to the tremendous importance of such an issue as the Vocational Education Act. The federal government can pass legislation, and this is true of state legislatures as well, in which the impact on postsecondary education may both indirect and unintended. Such legislation may not specifically or primarily be aimed at education and yet may have an overwhelming effect on the states in education and state planning for education. The Buckley Amendment is one case in point. While it was not primarily concerned with student records, it is concerned with records, in general, and it fell out heavily in the student area. The Erwin Act, in relation to privacy of information is going to have a major impact; I think. I don't know whether you're familiar with it or not, but what it does is make it mandatory on the federal level that anyone who fills out a questionnaire or any report, a statistical report, whether gathered by NCHEMS or others, must have the approval of the person who is being reported about, if this information cannot be shared except for specific purposes designated by law.

This may have some very interesting implications even in relationship to HEGIS.

The Erwin Act has already raised concerns in relation to the problems the Keppel Task Force on student assistance has been working on in coordination of state, federal, and institutional student aid. One of the things, for example, that the Keppel Task Force is urging and that the Office of Education under John Phillips and his national workshops have been urging is movement to a common application form, a form for application for student aid across the board. This would be extraordinarily helpful in terms of bringing balance into the student aid picture. Such a common form could be used for basic opportunity grants; it could also be used for the Pennsylvania Higher Education Assistance Agency operations, and for institutional aid. From this standpoint, it might bring some order out of what has been the chaos in which the states really haven't been able to know what the federal portion is going to be through Basic Educational Opportunity Grants so that state programs could build on federal programs intelligently. This possibility is threatened; at least the lawyers and officers in HEW are raising the question under the Erwin Act. Hopefully, there is a way to get around the Act, but this again is a case of an act which in its own sphere made great sense, but in terms of the spill-over effect does not necessarily do so.

The same thing can even be said in relationship to state legislatures. The Citizens Committee for State Legislatures out of Kansas City has recently completed a very interesting study of four states in which they took first the budget bill; second a bill which was directly aimed at education; and third, a bill which had a spill-over effect on education in each of these four states to show the legislative history. For bills with spill-over effect, they asked whether there was consultation by the committee of origin with the Education Committee or with the education establishment. In almost every case, there had been no consultation and there was not even any awareness of the potential spill-over effect.

These are the "we"-"they" situations, the impingement situations which all of us face.

Then you can move on into what are more frequently identified specifically as interest groups; i.e., specialized groups. You can name them and they constitute specific lobbies in some cases. They are concerned with what takes place in the planning process on the state levels. All other groups involved in the area of collective bargaining are cases in point. NEA, AAUP, and AFT are all legitimate interest groups. They must be taken in account; what they're

doing may or may not be supportive and conducive to effective planning on the state level or to effective coordination, but they can't be overlooked.

The particular segments within the postsecondary educational process also constitute various interest groups. Vocational education and the problems that arise in the interface between vocational education and the rest of postsecondary education are cases in point. In addition, one of the areas which I think not only is, but is going to be, of major importance for planning is the whole area of adult and continuing education. Here also you have orthodoxies; you have special interests; some of them very very strong. And yet, I suspect this is an area in which unless we begin to move toward some effective planning on a statewide level, we may run into the worst hornet's nest of competing nonstructured programs one can imagine. This has relevance right now; Title I is coming up for reconsideration with all the rest of education amendments of '72. If we're interested in removing some of the schizophrenia and looking more in terms of Title I as a vehicle for developing effective coordination and structure within the continuing education life-long learning spectrum, I think now is the time for action. But there are others acting too. These are the canaries again. And somehow, it seems to me, it becomes extraordinarily important to take these canaries into account.

One of the questions that Lou included in the list at the beginning was how to identify the legitimate interest groups. I don't have an answer to that except to say one can't overlook any of them, at least at the outset. From this standpoint, part of the function or the problem in planning and coordination is to recognize the multiplicity in the field and to recognize that the canary you may have overlooked is the one who could turn over the truck. That doesn't mean that all groups must be listened to equally and at all times. It doesn't mean that you must every day for three days, in order to assess the situation, entertain someone who is rather vocal and who has a particular act in the legislature that he is concerned with. I think it does mean that you're treading with real danger if you don't recognize at least the complexity; and then, in light of the situation and the problem, assess such operations in terms of the priorities.

Let me turn to the complex issue of accreditation, eligibility, and state regulatory responsibility. This is an area that has become increasingly more important. It involves the whole consumer protection movement among other things, and here again, the canaries are many. Let me go back just a little bit into some history. Up until the

late fifties, to a very large extent, the attitude on the part of most states, and there are notable exceptions, was that in the education sphere it was up to the student to beware of the institution--public, private, or proprietary.

From the very beginning, it is quite true that responsibility for the authorization for institutions to operate has rested with the states. After all, the state does provide the articles of incorporation, or does charter the institution to operate if it is a degree-granting institution, or does require registration with the secretary of state or whatever the law in a particular state may require. But to a large extent, the issue of registration was pretty much academic and it was up to the student if he chose to go to a particular place to take the consequences.

However, the problem of degree mills has been with us, as you know, for a long time. There has been both national and local concern about them. As early as 1960, there was enough concern so that the American Council on Education, in cooperation with the National Commission on Accrediting, did attempt to develop some model legislation for two purposes; one was to authorize institutions to operate. The legislature related particularly to the degree-granting institutions and proposed more effective state regulations. A second piece of model legislation related to false or fraudulent advertising. Neither of these got very far. As the decade wore along, the number of so-called diploma mills did decrease somewhat. Toward the end of the decade, Life did a fascinating article in diploma mills in the country, focusing particularly on Florida which at that point did not have regulatory legislation. This re-raised the issue and the question of how you control diploma mills or how to keep them from occurring began to be asked by a great many states across the country.

Along with the Life article went a series of interesting developments. Accreditation up until about the mid fifties was an important means of institutional evaluation by peer group judgment which helped to preserve institutional integrity by keeping at least the marginal and questionable institutions from receiving appropriate recognition. To a large extent, the accreditation movement was then really voluntary and the institution belonged, if it felt that it was important to be accredited. It was a very important club to belong to for obvious reasons. But on the whole, the accrediting agencies could rightly say they were voluntary, that accreditation was primarily concerned or ought to be primarily concerned with the preservation of standards and the development of standards for progressive improvement. But then the federal government got into the act and with the federal government's getting into the act, the picture changed. Beginning, I believe, with the National

Defense Education Act in 1958, as federal funds became available to students to go to institutions or to institutions themselves how to reorganize legitimate higher education institutions for receipt of federal funds became crucial. The federal government chose as the way to distinguish between institutions that should be eligible for receipt of federal funds and those that should not; the accreditation route.

Now this opened up another can of worms and a very interesting and very important one -- what, in affect, the federal government was saying was that we will rely upon the peer judgment in the accrediting process for determining those institutions that are reliable. As the federal funding picture increased with the Facilities Act of '63, with the Higher Education Act of '65, and coming on down to the most recent, the Act of '72, all with increased attention to accreditation to determine eligibility, accrediting became no longer quite so voluntary. It was, after all, the key condition of the receipt of federal funds. And at that point, of course, a good many people became much more interested in accrediting than had ever been interested before.

There were problems within the accrediting structure itself. For one thing, the accrediting agencies did not, at that point, and still do not wholly cover all the types of institutions to which students can legitimately go. They did up until the mid-sixties tend to exclude proprietary institutions. One of the first impacts of the federal eligibility picture was the formation of accrediting agencies in the proprietary area: ACIS (Association of Colleges and Independent Schools) which deals with the business schools, NATTS (National Association of Trade and Technical Schools) which deals with the technical schools, and Home Study Council which deals with correspondence schools. But even with these, there were still wide ranges not covered. One of these areas which was not well covered was vocational education in public postsecondary types of institutions other than community colleges. And yet, you will find that back in the mid to late sixties, a series of resolutions came out of the National Governors Conference and the National Legislative Conference urging the regional accrediting agencies to expand their scope to include a wider range of postsecondary institutions including technical and vocational schools. The regionals were slow to do this. They have done it, but it was already the early 1970's before major developments correcting the situation took place. The interesting part about it was that in these resolutions from governors and legislatures particularly the latter ones, there was the counter threat that the states would move into accreditation of these institutions if the agencies did not.

You are familiar, I think, with the Marjorie Webster case which challenged the claim of the accrediting agencies or their position in relation to non-accreditation of proprietary schools. The Middle States ultimately won that case, but this was a hollow victory for the proprietaries if there ever was one. That case today would no longer be necessary, but it did two very unfortunate things. It focused a great deal of public attention on the more rigid and least desirable aspects of accreditation and part of the end result of this was the beginning of serious question, or threat to accreditation itself as a basis for institutional eligibility. Jim Kerner reviewed the Majorie Webster case with a scathing denunciation of accreditation. You're familiar also, I am sure, with the Newman reports on accreditation and more recently, the Orlans report.

There are groups within the federal government that would like to see accreditation removed entirely as a basis for determining institutional eligibility and would like to move to a wholly federal operation. If you think, and this is a value judgment, that accrediting agencies are likely to be too rigid, I would suggest that all we need is about a year of federal determination of eligibility by itself, and the accrediting agencies will look like the most liberal agencies that we've ever run across. This is one part of the picture.

The other part of the picture, and I'll try to draw these together, goes back to the states' regulatory functions in authorizing institutions to operate and relates also, in this respect, to the other part of the federal picture which involves the movement to postsecondary in contrast to higher education. This latter in the amendments of 1972, as you are well aware, provided that guaranteed loans and student aid could be used in proprietary institutions. Now the proprietary institutions point out rightly that they've been around a long long time and they also can point out rightly that they have tended to be overlooked as important educational resources within the states. Nevertheless, opening federal programs to proprietary institutions and their students not only tremendously increased the number of institutions but also the possibilities for below standard and fraudulent operations.

But going back to the states, in about 1970, you find a very confused picture on the state level in regard to regulations and it's still confused. There were a number of states if I remember correctly, about twenty, that did have legislation or regulations that applied to degree-granting, non-profit institutions. In other words, such legislation moved in the direction of attempting to control the diploma mill situation. These varied in strength; some were reasonably good, some were not. The shining example in this

case, of course, is New York. New York has not only been an approval agency, a licensing agency, but an accrediting agency almost back to colonial times. This is not, in any sense of the word, the usual pattern. The other part of the picture, of course, is regulation of proprietary schools. Some states at that point, if I remember correctly, about twenty-seven, did have some type of regulation for proprietary institutions.

As we moved into this decade, the Education Commission of the States began to get a series of different kinds of pressures and inquiries--some from states, Maine, California with its $50,000 exclusion and a number of others, e.g., Colorado asking if we could give advice or help in terms of the development of more effective regulatory legislation. At the same time, the Federation of Regional Accreditation Agencies was running into the problem more and more in relation to diploma mills and they sent in a formal request that ECS take the lead in developing model state legislation. And interestingly enough, the Gould Commission on Non-Traditional Studies did the same thing. As a result, ECS did form a task force to develop model state legislation for authorization of institutions to operate and grant degrees.

Then several interesting things happened. First, somebody at the Land Grant Association took a look and said, "Ah, the Education Commission wants to regulate institutions." We tried to clear that one up. The task force operated for a period of about nine or ten months and came up with some model legislation which embodied two or three basic principles. One of them is that this is not just a problem of proprietary schools, nor is it just a problem of degree-granting institutions but runs across the board, and from this standpoint, the state regulatory function should be applied to all areas of postsecondary and higher education. A second principle was that the state does have regulatory responsibility and with this regulatory responsibility goes at least some policing responsibilities that it should develop. This was essentially authorization legislation which would authorize the state to set up or to designate an agency for this purpose, but also authorize it to develop regulations and impose penalties in regard to failure of institutions to act including discontinuance of an institution's operation in extreme cases.

There is another part in the picture. With the extension of the eligibility of students of the proprietary institutuions to participate in the guaranteed loan program, a series of new issues began to arise. And as you will well remember, a lot of congressmen and other people became concerned with the default rate and the concern with the default rate led to a series of investigations, some of them

more formal, some of them less, two of the most interesting ones of which were newspaper investigations. One was the Boston Globe and the other, the Washington Post; there will shortly be another one in the Chicago Tribune. What those investigations uncovered, among other things, relates not only to default rates, but extends far beyond the question of defaulting on guaranteed loans themselves. They raised a whole series of questions in relation to truth in advertising, in relation to educational malpractice, in relation to institutional closures, and in relation to some rather fancy finagling in terms of recruiting students by promising them loans of one sort or another. And while the Washington Post and Globe articles focused primarily on the proprietary institutions, it became pretty obvious that such malpractice was not solely a function of proprietary institutions.

Now, let me add one final factor. One of the unfortunate things about this particular subject is, if we really tried to cover it, we would be here until a week from next Wednesday. Unfortunately, I have to be back in Denver tonight and you have another program coming up immediately. But the other factor that has entered into this picture is the growth of the consumer movement itself. It is not at all surprising that the consumer movement would turn its interest in the direction of education. After all, education is a major business; there is no question about that and that students, whatever else they are, are consumers; they invest heavily, both in time and money, in the educational process. As a result of a number of these things, ECS held two conferences on consumer protection in postsecondary education--one in Denver in March of 1974 and one in Knoxville in November of last year.

A number of other groups including interests of government have gotten involved in consumer protection in postsecondary education. One of these is the Federal Trade Commission. I think most of you have taken a look at the proposed rule for proprietary schools of the Federal Trade Commission. This is an extraordinarily stringent rule which would require proprietary institutions to supply types of information which would probably not only cost the institutions tremendously to collect, but is of such a nature also that as uninterpreted information it could be extremely damaging and the institution would be without recourse. One of the factors behind the consumer protection conferences we held was the recognition that unless we could get the consumer protection groups, the institutions, and the state agencies together it is very likely (the FTC rule underlines it) that somebody else would accept the responsibility and impose restrictions on institutions which could be ruinous.

Now, how does all of this affect the planning process? First of all, let's go back again to the state regulatory process a moment. What's the situation today? The states have made considerable progress in developing their regulatory authority over proprietary schools, but far less in relationship to degree-granting institutions. In the proprietary area, forty-six states now have some kind of legislation. Again, some of it is not good, some of it quite good. Some progress has been made in the degree-granting area. But even in states with regulatory agencies in both areas, the proprietary schools tend to be under one board or agency, usually the department of education, and the degree-granting institutions under another, the board of higher education. The state agencies that deal with proprietary institutions now have a national group, the National Association of State Agencies for Proprietary Schools. It's a good group. Joe Clark from Indiana is the retiring chairman of it. They've done a lot in terms of studying their own operation. The interesting part about it is, with about two exceptions, all of the NASAPS group are under departments of education and yet, this is clearly a postsecondary education group.

Now, if we're to move in the direction of effective planning of postsecondary education and regulation to prevent malpractice in it, then it becomes very important, it seems to me, that each state should begin to look again at where this function should lie. This does involve your operations very directly and certainly the degree-granting parts of them.

An additional factor that enters into this is the role of the courts, which have now gotten interested in consumer protection in postsecondary education. I'd like to point out that there are two very fascinating cases you'd better watch carefully or we may well find ourselves in the same kind of malpractice insurance situation the doctors find themselves in before we get through. One is in Connecticut, the University of Bridgeport, and the other is in Washington, D. C. at George Washington University. In both cases, students have sued institutions on the basis that they did not get what they went for. They got inferior education in relationship to the course; the course was not described as it was in fact and that the time, as the Washington plaintiff said, was a complete waste for everybody. There's a fascinating footnote in the Connecticut case. This was in teacher education. The plaintiff got an A in the course and everybody else in the class got an A. She is suing for her tuition, for her expenses in connection with the course, and for damages, but she wants to keep the credit and the grade, because, in this case, it makes a difference in her pay scale.

I believe this whole area of accreditation, eligibility, and consumer protection is one of the areas in which there are a tremendous number of canaries. The problems of eligibility are not solved. It's quite clear that the old order has changed and I think we're in a situation where probably there are three factors that are going to have to be equally taken into account in the eligibility picture. And one of them rests directly with the states and the states' assumption of their responsibilities in licensing, chartering, and regulating. The second, which I hope does not disappear, is private accreditation. I think it's very important and it is critical that the accrediting groups and the state agencies work together. And the third, whether we like it or not--and here come the federal canaries--is a continued involvement of FTC and other federal agencies one way or another. And don't think I'm just dreaming this up. The Orlans report recommends that the FTC rule be applied to all higher educational institutions. Can you imagine the University of Illinois having to account for every graduate in terms of the jobs that he has held, in terms of what his salary is, and to police itself so that no publication or recruiting officer from universities will make any reference to employment whatsoever unless this information is provided. And that's not just dreaming.

Without going to this extreme I think it is quite clear that in the new postsecondary education legislation of 1975 or 1976, there will be a section on consumer protection which will require at least certain basic types of information from the institutions to students. And if you doubt me, look at HR 3741, the new O'Hara Title IV bill. There is a very interesting section, and not a wholly unreasonable section, at the end of that bill which, even though I suspect Mr. O'Hara's proposal on student aid will get rather radically changed by the time the bill comes out, I'd be willing to bet that the section on consumer protection will still be in there and I think it will affect everyone of you from the standpoints of planning, information gathering, and even regulatory oversight.

Thank you.