

Task Force on Financing Legal Education

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MEMORANDUM

To: Interested Parties
From: Dennis W. Archer, Chair, ABA Task Force on Financing Legal Education
Date: June 17, 2015
Re: The Report of the Task Force

This is a critical time for legal education as schools face declining enrollments and revenues, and their students face increasing tuition and debt along with a job market that has seen only modest recovery. James Silkenat, then President of the American Bar Association (ABA), charged the ABA's Task Force on the Financing of Legal Education with addressing these timely and important issues, and its work has been encouraged and supported by his successor as ABA President -- William Hubbard. The Task Force undertook this work with an acute awareness of the significance of the legal profession to individual clients as well as to the larger society. The Report of the Task Force is complete and is being released. A copy is attached to this memorandum. We encourage everyone with an interest and a stake in legal education in the United States to consider the report and to support its conclusions and recommendations. A set of resolutions based on this report will be before the ABA House of Delegates for its consideration during the ABA Annual Meeting in Chicago in August.

The ABA has worked to promote high-quality legal representation as well as access to justice. In addition, the ABA has sought to advance access and diversity because of the critical role that the profession plays in maintaining and fostering the rule of law, a cornerstone of our democratic system. For that system to enjoy the respect and confidence of the governed, all must have a fair opportunity to pursue pathways to leadership. As U.S. Supreme Court Justice Sandra Day O'Connor wrote in her 2003 opinion in *Grutter v. Bollinger*, "Universities, and in particular law schools, represent the training ground for a large number of our Nation's leaders." As she explained, the legitimacy of our democracy "in the eyes of the citizenry" requires "that the path to leadership be visibly open" to all.

Without a robust system of legal education that is open and accessible to *all* segments of American society, the profession's ability to serve clients from a range of backgrounds as well as to advance the general good will be diminished. Cognizant of these concerns, the Task Force undertook a vigorous fact-finding process to gain a better understanding of how the financial realities of obtaining a law degree are affecting students' ability to pursue legal careers. Through its

public hearings, meetings, and research efforts, the Task Force took seriously what it had been urged to do – to gather, analyze, and bring reliable information to bear on questions of the utmost urgency and significance.

The Task Force documented declines in law school enrollments, increasing rates of tuition, and growing student debt. (In fact, many schools rely heavily on student loans for their revenue.) These increases in tuition and debt remained even after adjusting for inflation. However, the Task Force also found that tuition hikes are slowing and that tuition discounting occurs, has become widespread, and is increasing. As a result, fewer students are paying full tuition, and law schools are devoting more funds to grants and scholarships. Law schools allocate financial aid on the basis of need, merit, or a combination of both criteria, and the Task Force found evidence of a trend toward greater allocations based on merit.

Nearly all law students rely on federal loans to pay for their education. While there are a variety of repayment plans, deciphering and successfully navigating those plans is a daunting process that can undermine a student's ability to take advantage of the benefits available. Still, even with the increased borrowing and the complexities of the plans, the Task Force found that the default rate on loans for law school are very low – a two-year cohort default rate below 2%, lower than the rate for masters, doctoral, and professional students generally and lower than for bachelor degree students and below.

Importantly, the Task Force found itself working in a dynamic legal education environment in which market forces are very much at work. Many schools are looking hard at their curricula and innovations are being planned and instituted to meet increasingly important challenges like declining enrollment, increasing student debt, and limited job prospects. These schools are the incubators of new directions *and* an exacting market proving ground. Moving forward, such experiments may well be the source of possible solutions and models, allowing others to see what can be done, how, and with what success.

Recognizing the diversity of approaches being taken by law schools and the differences among schools themselves, the Task Force looked skeptically upon inflexible mandates or one-size-fits-all solutions that would constrain innovation and experimentation at a time when they are most needed. The skepticism is reinforced by the fact that law schools are deeply rooted in the larger higher education enterprise and share a number of higher education's challenges. Cost, student debt, declining state support, teaching loads, scholarly research, diversity, discounting, rankings, and value – matters on the list of challenges facing legal education – are all on the list of challenges facing colleges and universities generally. The fate of many law schools is inextricably tied to the fate of the institutions they inhabit.

In light of its findings, the Task Force made recommendations that are designed to:

1. Help students take full advantage of the current federal loan programs by mandating enhanced financial counseling and “plain English” disclosures of loan repayment programs;
2. Serve transparency, accountability, and better planning by mandating that the ABA collect detailed data for each law school on expenditures, revenue, and financial aid (including discounting information and proportions of need vs. merit-based aid) *and* make all of the data publicly available; and
3. Develop new ways of balancing responsible curricula and pedagogies, cost-effectiveness, and alternative revenue streams by strongly encouraging and supporting experimentation and innovation among law schools.

The Task Force’s extensive findings and conclusions paint a sobering picture and make clear that there are no easy answers to the challenges facing legal education and the legal profession. By promoting transparency, accountability, and innovation, the Task Force seeks to lay a foundation for thoughtful and responsible decision-making about issues of critical importance to our future.

**AMERICAN BAR ASSOCIATION
TASK FORCE ON THE FINANCING OF LEGAL EDUCATION**

REPORT

I. The Task Force and Its Charge

This is a critical time for legal education as schools face declining enrollments and revenues, and their students face increasing tuition and debt along with a job market that has seen only modest recovery. James Silkenat, then President of the American Bar Association (ABA), charged the ABA's Task Force on the Financing of Legal Education with addressing these timely and important issues, and its work has been encouraged and supported by his successor as ABA President -- William Hubbard. The Task Force undertook this work with an acute awareness of the significance of the legal profession to individual clients as well as to the larger society.¹ The Task Force on the Financing of Legal Education has now completed its work, which this report sets out. It is important to state that the views expressed in this report have not been approved by the ABA House of Delegates and, accordingly, should not be construed as representing policy of the American Bar Association.

Dennis W. Archer, a former president of the American Bar Association, chaired the Task Force on the Financing of Legal Education and was joined by fourteen distinguished members, including lawyers, deans, young lawyers, and others active in business and consulting related to financing legal education. The Task Force's roster is attached as an appendix to this report (Appendix A). Dr. Stephen Daniels, Senior Research Professor at the American Bar Foundation, served as Consultant to the Task Force. Barry Currier, Managing Director of Accreditation and Legal Education at the ABA, provided staff support.

The Task Force held four meetings and additional conference calls over the last year as it completed its work. Two of those meetings were two-day public hearings, one at the 2014 American Bar Association Annual Meeting in Boston, Massachusetts and the other at the 2015 American Bar Association Midyear Meeting in Houston, Texas. In seeking a broad array of viewpoints, the Task Force sent letters of invitation to a wide range of interested parties who might have insights and opinions on the issues the Task Force was considering. Among the invitees were the President of the United States, who had made a statement on the structure of law school programs and the expense of law school; student leaders of the American Bar Association Law Student Division, who offered testimony to the Task Force; members of the United States Supreme Court; state

¹ The Task Force was created on May 6, 2014, in the wake of the Report of American Bar Association Task Force on the Future of Legal Education. Among the earlier Task Force's recommendations was the establishment of a task force to "examine and recommend reforms concerning the price and financing of law school education," an issue not addressed in detail by that Task Force *Report and Recommendations: American Bar Association Task Force on the Future of Legal Education* (2014), 30.

Supreme Court justices; and leaders of the bar and bar organizations, including the American Bar Association.

Further, the Task Force heard from law school deans and faculty members, and received testimony from writers and commentators on the state of legal education. The Task Force expresses thanks to the many who took time to prepare written comments and to testify before it. Its work is better for their ideas, observations, and data. Additionally, since the Task Force was to conduct as much research as possible on the issues at the heart of its charge, Managing Director Currier provided to the Task Force Consultant access on a confidential basis to material not publicly available from the annual questionnaires submitted to the ABA Section of Legal Education by ABA-approved law schools. A list of those who appeared before the Task Force and/or submitted formal written material is attached as an appendix to this report (Appendix B).

The Task Force's charge included a broad range of issues and key among them were: the cost of legal education for students; the financing of and business models for law schools; student loans and educational debt; and law school practices regarding tuition discounting, merit-based grants/scholarships, and need-based grants/scholarships. Dollars and cents are the clear focus of these issues and their connections to the current criticisms of and challenges facing legal education – both those from within legal education² and those from without³ – are also clear.

Among the prominent dollars and cents concerns the Task Force heard about at its public meetings were claims about: the current availability of loans contributing to the increasing price of legal education; the heavy debt burden for students making law school inaccessible and affecting career and life choices; and tuition discounting based on merit which tends to benefit those students who are more likely to have financial resources entering law school or better economic outcomes after graduation. The Task Force also heard much about the perverse effects of law school ranking schemes, with the race for higher rankings contributing to the increasing price of legal education. The Task Force heard about certain proposals for change such as imposing caps on student loans or even eliminating the current federal student loan program altogether (as one presenter argued). These are all relevant issues for continued discussion and inquiry.

It is important to note that many of the most critical commentaries and most drastic solutions proposed came at the nadir of the recent economic downturn, when anxieties about the job market ran high and the realities showed fewer opportunities for new law school graduates and lay-offs for recent graduates.⁴ Since then there have been

² See Brian Tamanaha, *Failing Law Schools* (Chicago: University of Chicago Press, 2012)

³ David Segal wrote a series of articles in the *New York Times* in 2011-2012 on the challenges facing the legal academy, among them "Is Law School a Losing Game?" January 9, 2011, <http://www.nytimes.com/2011/01/09/business/09law.html>.

⁴ A recent study shows that the job situation still remains problematic for those who graduated at that nadir, see Deborah Merritt, "What Happened to the Class of 2010? Empirical Evidence of Structural Change in the Legal Profession," Ohio State Public Law Working Paper No. 290; HLS Center on the Legal Profession

important market corrections, many of which are still underway. As this report will later show, law school enrollments have significantly declined, the rate of increase for tuition has slowed, and the amount of tuition discounting has increased. Some even see glimpses of improvement in the job market. Noting this timing is not meant as a way to minimize the challenges facing legal education, but as a caution about against responding too reflexively.

The Task Force's charge also included deeper and even more fundamental concerns – the challenges posed by such dollars and cents issues to the unique role the legal profession plays in our political system and in maintaining and fostering the rule of law. As the preamble to the ABA's Model Rules of Professional Conduct begins, "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice."⁵ Without a robust system of legal education that is open to and accessible by *all* segments of American society, the profession withers and looks less and less like society itself. Consequently, its ability to play its unique role becomes increasingly problematic.

The opening line of Alfred Reed's now almost century-old, groundbreaking study of legal education still resonates today regarding the broader importance of legal education beyond any private gain on the part of an individual law student: "Our contemporary American system of legal education, although it contains elements of great value, is generally recognized to be defective in many ways. Efforts to improve it cannot accomplish their full purpose unless certain fundamental considerations are borne in mind."⁶ He continues:

Foremost among these determining factors is the position that lawyers occupy in the state. Whatever incidental purposes are cherished by particular law schools, the main end of legal education is to qualify students to engage in the professional practice of the law. This is a public function, in a sense that the practice of other professions ... is not. Practicing lawyers do not merely render to the community a social service, which the community is interested in having them render well. They are part of the governing mechanism of the state. Their functions are in a broad sense political ... [and spring] ... fundamentally from the fact, early discovered, that private individuals cannot secure justice without the aid of a special professional order to represent and advise them. To this end lawyers are instituted, as a body of public servants, essential to the maintenance of private rights.⁷

Research Paper No. 2015-3. Available at SSRN: <http://ssrn.com/abstract=2577272> or <http://dx.doi.org/10.2139/ssrn.2577272>

⁵ Model Rules of Professional Conduct: Preamble & Scope, http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope.html

⁶ Alfred Z. Reed, *Training for the Public Profession of the Law: Historical Development and Principal Contemporary Problems of Legal Education in the United States with Some Account of Conditions in England and Canada* (Boston: D.B. Updike, the Merrymount Press, 1921), 3.

⁷ *Id.*

This same idea of the practice of law as a public good is echoed in the report of the Task Force on the Future of Legal Education: “Society has a deep interest in the competence of lawyers, in their availability to serve society and clients, in the broad public role they can play, and in their professional values. This concern reflects the centrality of lawyers in the effective functioning of ordered society.”⁸

In light of the role played by the legal profession, Reed was also concerned with access to legal education – and especially with the basic principle that now underlies our contemporary efforts to diversify legal education and the legal profession. While perhaps a man of his times, his guiding idea is clear: “Humanitarian and political considerations unite in leading us to approve of efforts to widen the circle of those who are able to study law. The organization of educational machinery especially designed to abolish economic handicaps – intended to place the poor boy (sic), so far as possible, on equal footing with the rich – constitutes one of America’s fundamental ideals. It is particularly important that the opportunity to exercise an essentially governmental function should be open to the mass of our citizens.”⁹ Today we would say the young person (or, indeed, any person seeking a legal education) of any color or background.

Reed’s views are echoed by a contemporary statement, this one from U.S. Supreme Court Justice Sandra Day O’Connor’s opinion for the Court in *Grutter v. Bollinger*. Justice O’Connor said:

[U]niversities, and in particular law schools, represent the training ground for a large number of our Nation’s leaders. *Sweatt v. Painter*, 339 U.S. 629, 634 (1950) (describing law school as a “proving ground for learning and practice”) ... In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training. As we have recognized, law schools “cannot be effective in isolation from the individuals and institutions with which law interacts. See *Sweatt v. Painter*, *supra*, at 634. Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.”¹⁰

This statement, like Reed’s, with its pointed emphasis on the fundamental significance of access tells us why the subject of the Task Force’s work is so important.

⁸ *Report and Recommendations*, *supra* note 1 at 6.

⁹ *Id.* at 398.

¹⁰ *Grutter v. Bollinger* 539 U.S. 306, 332-333 (2003).

In addressing contemporary concerns, no matter how urgent they may seem, we cannot and should not lose sight of the fundamentals. If we do, they may be undermined in dealing with more immediate issues, even with the best of intentions. This Task Force has a special obligation to set a tone for acting and doing so responsibly. Financing legal education, like financing higher education generally, does not admit to simple definitions of a problem or to simple solutions. One law school dean when asked by a Task Force member what's *the* problem facing legal education could only answer, after thinking for a minute, "it's a nuanced question." Real change is needed and will require a concerted effort. Acting responsibly means recognizing the complexities of the legal (and higher) education enterprise and the nuance *and* then moving forward with this in mind.

The next section will summarize in outline form the Task Force's main findings. The following section will describe those findings in detail. After that will be a consideration of some matters of context shaping the issues, possible solutions, and the interpretation of the findings. The concluding section will present a summary and recommendations – short-term and longer-term.

II. Outline of the Task Force's Main Findings

This section describes the data that the Task Force gathered to inform its work, the limits of those data, and the key findings that emerged from the analyses. These findings focus on enrollments, the job market, tuition increases, increased reliance on tuition discounting, student borrowing and debt, and law school expenditures.

1. Bringing Information to Bear

Because of the importance of the issues at the heart of this Task Force's charges – and in light of the lament of the Task Force on the Future of Legal Education at not being able to conduct the kind of research needed¹¹ – the members approached those issues with the idea of bringing to bear what research they could. This was also an idea urged on the Task Force by some of those who testified before it. One long-time observer who is very concerned about the financing of legal education told the Task Force at one its meetings that so much of the debate is emotional and based on inaccurate information that even basic information is needed. Another concerned observer said that one important thing the Task Force could do is to "shed light" on the issues by gathering data and sharing it, especially mining the available data.

The Task Force invited a number of commentators to present their research findings and/or submit written materials. Among other things, the Task Force received information related to tuition increases, student debt, employment prospects, curricular innovations, and factors that may drive costs. In addition, the Task Force consultant conducted a substantial amount of research and analysis using the available materials related to the Task Force's charges. The Task Force took seriously the idea that mining

¹¹ *Report and Recommendations*, *supra* note 1 at 3.

and analyzing the available data was itself an important service that would help move the discussion forward in constructive ways as well as inform the Task Force's work.

The Task Force discovered how frustrating this effort could be. It found that systematic and reliable information needed to assess the claims and criticisms about the financing of legal education – or to just to get a good working sense of what is going on in legal education – is scarce. One Task Force member even called the situation appalling given the importance of the issues to be addressed. In light of the Task Force's timetable and resources, exploiting the best available information was the only practical course. Most (but not all) of what the Task Force utilized is from the American Bar Association's Section of Legal Education and Admissions to the Bar, which operates the ABA law school accreditation process separately and independently of the ABA itself. The primary data come from the annual surveys accredited schools are required to complete. These data, of course, are collected and managed for the purpose of operating an effective accreditation process and do not have as a primary goal the gathering of information necessary to conduct an effective institutional research program about legal education. Some of the detailed material presented to the Task Force orally or in writing relied on publicly available ABA information.

Much of this information is not in easily useable form and requires a substantial investment of time to categorize for any kind of analysis. Additionally, the material collected by the ABA has changed over time and some important material is no longer collected (such as data on school expenditures, the amount of grants/scholarship monies, and their allocation for need v. merit, among others). At best only a partial picture of the current state of affairs is possible, but given the importance of the issues this is valuable in moving forward.

2. The Outline

The outline of findings below is divided into six broad areas with more statements about key findings within each area. Some of the findings may seem obvious. Nonetheless it is important to document them as a part of the context needed to move forward on financing legal education. Again, the next section will provide the details.

A. Enrollment

Enrollments are declining. Between AY2009-10 (AY means Academic Year) and AY2014-15, 30% fewer people entered a private law school; and 18% fewer entered a public law school. With fewer people attending law school there are fewer tuition dollars to help run a school's operations.

Overall, minority enrollment (in raw numbers) has not yet declined in the face of the overall enrollment decline. There are signs that enrollment is declining for some classifications within the category. Regardless of the current numbers, people of color remain significantly under-represented in law school and in the legal profession.

B. Jobs and the Future

The near-term job market for new law school graduates appears far from robust, although some see signs of at least modest improvement. For the public law school class of 2013, 63% landed a permanent, full-time, bar passage-required job; for the private law school class of 2013 the figure was 57%.

Despite the cost, the best available evidence suggests a significant lifetime income premium for those with a law degree compared to those with a bachelor's degree.

C. Tuition

Law schools are JD tuition-dependent for their revenues, and some are heavily – if not exclusively – tuition-dependent. Looking at all law schools, the average was 69% of revenue in AY2012-13, with 25% of schools receiving at least 88% of their revenue from tuition.

Inflation-adjusted tuition has consistently increased over time. This is true whether viewed in terms of an inflation adjustment made on the basis of the cost of doing business or the price to the consumer. Using the higher education price index (referred to as HEPI) private law school tuition increased 29% between AY1999-00 and AY2014-15, and public law school in-state tuition increased 104%. Using the familiar consumer price index (referred to as CPI) the increases were 46% and 132%, respectively.¹² Importantly, one must keep in mind that the increases in public law school tuition, in all likelihood, reflected declines in state funding during this period.

D. Discounting and Net Tuition

Stated tuition price is not, however, the whole story. Tuition discounting through grants and scholarships occurs, is widespread, and is generally increasing. For private schools, the net tuition in AY1999-00 meant a discount of 16% in inflation-adjusted dollars (CPI). In AY2013-14 the discount had increased to 25%. For public schools the discount in AY1999-00 was 22% and it increased to 28%.

¹² The Commonfund Institute has created the specialized price index designed for higher education's cost of doing business – the Higher Education Price Index (HEPI). HEPI is built around the major cost drivers for higher education. Since there does not appear to be a price index specifically for legal education, the Commonfund's HEPI is the most appropriate alternative for use when looking at the cost of doing business. The CPI remains the best calculator to use in terms of the consumer buying the service. *See* <https://www.commonfund.org/CommonfundInstitute/HEPI/Pages/default.aspx>.

With increased discounting, fewer students are paying full tuition. The percentage paying full tuition in private law schools declined from 57% in AY1999-00 to 38% in AY2013-14. For public law schools the figures are 58% and 40%.

With respect to the allocation of discounts, more money goes to pure merit (i.e., solely on LSAT scores) than to pure, demonstrated financial need. While money for pure need has not disappeared, the trend is less money being deployed for this purpose and more going to pure merit and to need plus other factors. Generally speaking, compared to private schools, public law schools devote a larger percent of their grant/scholarship monies to need and need plus other factors and less to pure merit.

While the percentage of students paying full tuition has decreased and the discount rate increased, inflation-adjusted net tuition itself has not always followed suit. Full tuition prices have increased at a greater rate than discounts. In inflation-adjusted dollars (CPI) private law school students saw net tuition increase 29% from 1999-00 to 2013-14. Most of this increase, however, came between AY1999-00 and AY2009-10 – a 28% increase. Public law school students saw net tuition increase by 102% between AY1999-00 and AY2013-14. Again, the greatest increase came between AY1999-00 and AY2009-10, when net tuition increased by 84%.

E. Student Borrowing and Debt

Despite the deeper discounting and the smaller percentage of students paying full tuition, most students still borrow to help finance their legal educations – almost 90%.

Because law schools are tuition-dependent for revenue and nearly all students use student loans to pay tuition, law schools are also student loan-dependent for revenue.

The amount borrowed by students has increased substantially in recent years even after adjusting for inflation, reflecting the inflation-adjusted increase in tuition *and* the accessibility of loan funds. Using inflation-adjusted (CPI) 2014\$, the average debt for private law school students increased from \$102,000 in AY2005-06 to \$127,000 in AY2012-13; for public law school students the figures are \$66,000 and \$88,000.

The current student loan programs assist students in financing their education and provide repayment options and plans that assure broad access to legal training. True need-based programs that could enhance access because they do not require repayment are, of course, another matter.

Greater loan accessibility has come as the federal government became *the* lender for graduate school and professional school students through Grad Plus, which

offers both high approval rates due to minimal credit underwriting requirements and a variety of borrower-friendly repayment programs, some of which take income into account.

Among those federal loan repayment programs is the Public Service Loan Forgiveness program for graduates who go into lower-paying public service positions. For law graduates this program is especially important in supporting not only access to legal education but also access to justice itself.

Greater loan accessibility and variety put a premium on financial counseling. Evidence suggests that students do not always take advantage of the services law schools offer for financial counseling related to borrowing and long-term debt, and that some of the students who do take advantage of these services are not that satisfied with them.

F. Increasing Law School Expenditures as the Cost Driver

An immediate driver for tuition increases is the inflation-adjusted increase in law school expenditures per full-time equivalent (FTE) student. Three areas of expenditure stand out and together they account for one-half of the total per FTE: instructional salaries, administrative salaries, and grants/scholarships. All increased, but the greatest percentage increase came in grants/scholarships to use in discounting tuition. Between AY2004-05 and AY2012-13 the average increase for public law school grants/scholarships expenditures was 99%, while for private law schools the average increase was 44%.

III. Matters of Context Shaping the Issues, Possible Solutions, and the Interpretation of the Findings

In pursuing its work the Task Force confronted a number of broad factors that will shape and influence any efforts moving forward.

1. The Higher Education Context

Institutionally, law schools are deeply rooted in higher education and share not only a number of higher education's challenges but many of its key characteristics as well. Cost, student debt, teaching loads, scholarly research, diversity, discounting, rankings, and value – matters on the list of challenges facing legal education – are all on the list of challenges facing higher education generally.¹³ Perhaps one of the most important general challenges is one shared by all public institutions of higher learning, including law schools – the drastic cuts in state support. A 2012 report from the College Board noted, “state appropriations are a major source of revenue for public colleges and universities. Over the decade 1988-99 to 2008-09, the average share of revenues coming

¹³ See Robert Zemsky, *Checklist for Change: Making American Education a Sustainable Enterprise* (New Brunswick: Rutgers University Press, 2013), 1-17.

from state and local appropriations decreased and the average share of revenues coming from net tuition increased for all types of public institutions.”¹⁴ State colleges and universities – including their law schools – are finding it harder to remain the site of accessible higher education.

In short, many of the most important criticisms of and challenges facing law schools are not entirely unique to legal education. As one dean told the Task Force, “law schools are just the canary in the coal mine,” and this speaks to the depth of the challenges. Some challenges cannot be adequately defined and addressed by a set of assumptions based on a law-school-only perspective.

This is reinforced by the fact that most law schools (over 90%) are not independent and are instead a part of larger educational institutions. This often limits what they can do on their own. Their relationships with larger institutions are complex and varied, with some schools having little autonomy and others more. Improvements in the financing of legal education must take these relationships into account.

2. The Law School Context

Law schools in the United States are very different from each other, and, consequently, one-size-fits-all solutions may not be constructive. The most obvious difference, but not the only important one, is between public and private schools. The differences in their operating models and sources of revenues can have profound effects on tuition, discounting, student borrowing, and expenditures.

The issue of financing legal education cannot easily be separated from what law schools do, how they structure their curricula, and how curricula may be changing in the face of the shrinking market for students and changes in the legal profession itself. Curricular choices and innovation have budgetary consequences – again, the largest proportion of law school expenditures goes to instructional salaries. Ideally, these interconnected matters would be examined in an integrated fashion in an effort to find cost-effective ways to innovate. The details of curricular issues, however, were not within this Task Force’s purview, and time and resource constraints prevented the Task Force from expanding the scope of its work.

In testimony and materials reviewed by the Task Force, the issue of law school rankings arose repeatedly. Law school deans acknowledged that pressure to climb the rankings can shape decisions about student financial aid, faculty hiring, and myriad other dimensions of law schools in subtle and not-so-subtle ways. A 2010 ABA special committee reported that the *U.S. News and World Report* ranking methodology tends to increase the cost of legal education for students, to discourage the award of financial aid

¹⁴ See Jennifer Ma and Sandy Baum, “Trends in Tuition and Fees, Enrollment, and State Appropriations for Higher Education by State,” College Board Advocacy and Policy Center Analysis Brief, July 2012, <https://trends.collegeboard.org/sites/default/files/analysis-brief-trends-by-state-july-2012.pdf>.

based upon need, and to reduce incentives to enhance diversity in the legal profession.¹⁵ While acknowledging the pressure exerted by rankings, the Task Force was not presented with any realistic solution for eliminating the rankings. To the extent such rankings produce incomplete or irrelevant information, the antidote would appear to be the provision of more and better information in the marketplace for students to consider in choosing whether and where to attend law school and how to pay for it.

3. A Dynamic Environment

The Task Force addressed its charge in the midst of a dynamic environment, and this is an especially important matter of context. Schools are looking hard at their curricula and innovations are being planned and/or instituted to meet increasingly important challenges. It is also an environment in which market forces are very much at work and they are starting to exact an unpleasant toll on some schools. As noted, enrollments (and hence revenues) are down in recent years for many schools, and for some significantly so. In the wake of these declines, some schools are facing extinction.¹⁶ Two schools are merging¹⁷ and an independent school recently merged with a university.¹⁸ Another university-based law school was recently purchased outright by a different university that had long been in the market for a law school.¹⁹

At the same time, schools are trying different ways of delivering the services they provide. William Mitchell College of Law is instituting a hybrid program allowing students to take more classes online.²⁰ The University of New Hampshire School of Law has an honors program based around a two-year practicum that is designed to give students intensive, hands-on training.²¹ The University of Denver's Sturm College of Law is offering a broader program that allows any student "to spend a full year of their law school career in real or simulated legal practice" and guarantees every student

¹⁵ Report of the Special Committee on the U.S. News and World Report Rankings, Section on Legal Education and Admissions to the Bar, July 15, 2010, <http://ms-jd.org/files/f.usnewsfinal-report.pdf>.

¹⁶ See Ry Rivard, "Saving the Law School, Hurting the Town," Inside Higher Ed, April 3, 2015, <https://www.insidehighered.com/news/2015/04/03/save-itself-some-believe-virginia-law-school-may-move-it-risks-hurting-town-if-it>, on the problems confronting Appalachian School of Law.

¹⁷ Hamline and William Mitchell, see Maura Lerner, "Hamline, William Mitchell Law Schools to Merge," *Minneapolis StarTribune*, February 13, 2015, <http://www.startribune.com/local/stpaul/291856891.html>.

¹⁸ Karen Sloan, "It's the Western Michigan Cooley Law School Now," August 14, 2014, *The National Law Journal*, <http://www.nationallawjournal.com/id=1202666846937/Its-the-Western-Michigan-University-Cooley-Law-School-Now?slreturn=20150312003551>.

¹⁹ "Texas A&M University Officially Acquires Texas Wesleyan University Law School," *Bryan-College Station Eagle*, August 14, 2013, http://www.theeagle.com/news/local/texas-a-m-university-officially-acquires-texas-wesleyan-university-law/article_bde63852-3c71-5168-821c-bb1c27b7c96b.html.

²⁰ See "ABA Approves Variance Allowing William Mitchell to Offer 'Hybrid' On-campus/Online J.D. Program," <http://web.wmitchell.edu/news/2013/12/william-mitchell-to-offer-first-aba-accredited-hybrid-on-campus-online-j-d-program/>.

²¹ See the University of New Hampshire School of Law's Daniel Webster Scholar Honors Program, <https://law.unh.edu/academics/jd-degree/daniel-webster-scholars>.

“dynamic, hands-on client interactions outside of the classroom via clinics and externships.”²²

A number of schools have instituted so-called three-plus-three programs that allow qualified students to complete their undergraduate and law degrees in six years instead of seven. The program at the Sturm College of Law even includes an option allowing highly qualified high school seniors to apply for its three-plus-three program as they apply to the university for undergraduate admission.²³ In addition, a number of schools without their own law schools are entering into three-plus-three agreements with nearby law schools. LeMoyne College in Syracuse, New York, for instance, has three-plus-three agreements with law schools at Syracuse University and at Fordham University.

Schools are revising their third-year curricula to better prepare their graduates to compete in a changing employment market. One school has revised its third year to allow for a form of specialization. New York University School of Law has a series of “Faculty-designed Professional Pathways [that] guide students in a focused area of study and skill development in particular areas of law, the bulk of which they will pursue during their 3L year. Pathways are designed to help students who have developed interest in a particular career area and make them highly competitive in the job market for that field.”²⁴ And the Elon University School of Law now requires its JD students to complete full-time, course connected residencies-in-practice as part of a highly experiential curriculum that is two and one-half years long and 20% less expensive than the average cost of a private law school.²⁵ Among the best-known third-year innovations is Washington and Lee’s, which is an entirely experiential program.²⁶ Praised for its innovative nature,²⁷ the program, however, has not prevented serious enrollment and

²² See the University of Denver Sturm College of Law’s Experiential Advantage program, <https://www.law.du.edu/index.php/experiential-advantage>. The Task Force Consultant spent one year as a visiting professor at the Sturm College of Law, and subsequently assisted (on a volunteer basis) with an internal student survey related to the Experiential Advantage program.

²³ University of Denver, Sturm College of Law, Six-Year Bachelor/JD Program, <https://www.law.du.edu/index.php/admissions/learn/6-year-bachelor-jd-program>.

²⁴ NYU Law, “Professional Pathways,” <http://www.law.nyu.edu/academics/professionalpathways>.

²⁵ See “A Groundbreaking Model of Legal Education,” Elon University School of Law, <https://www.elon.edu/E/law/news/new-law-curriculum-fall-2015.html>; also see Mark Hansen, “Elon Law to Cut Total Tuition by Nearly \$14K and Offer Law Degree in 2.5 Years for All,” *ABA Journal*, October 9, 2014, http://www.abajournal.com/news/article/elon_law_announces_groundbreaking_new_legal_education_program; <https://www.elon.edu/E/law/news/new-law-curriculum-fall-2015.html>. Dean Luke Bierman of Elon University School of Law is a Task Force member.

²⁶ Washington and Lee School of Law, “Your 3L Year,” <http://law.wlu.edu/about-wandl-law/curriculum/third-year>.

²⁷ See Bill Henderson, “Washington and Lee is the Biggest Legal Education Story of 2013,” *Legal Whiteboard*, January 29, 2013, <http://lawprofessors.typepad.com/legalwhiteboard/2013/01/biggest-legal-education-story-of-2013.html#more>.

employment declines²⁸ along with budgetary deficits. To address these challenges, the law school recently announced a rescue plan – the School of Law Strategic Transition Plan²⁹ – to return it to a sound footing

Not to be overlooked are schools that have long built their curricula around what are now seen as innovations. Northeastern University School of Law has its long-standing, individualized co-op approach,³⁰ and Baylor University Law School has its even longer-standing Practice Court Program, required of all third-year students.³¹ Northwestern University School of Law has its Accelerated JD program in which students “complete the same number of credit hours as traditional three-year JD students in five semesters over the course of two calendar years.”³² And, a number of prominent individuals have called for a true two-year degree, which requires fewer credit hours. Among them are Northwestern Law School Dean Daniel Rodriguez and New York Law School Professor Samuel Estreicher³³ as well as President Barack Obama.³⁴

In addition, new schools with differing missions are still opening. For example, the new University of North Texas/Dallas College of Law seeks to provide a low-cost legal education geared to practice-related competencies, with a teaching-focused faculty, and an emphasis on diversity.³⁵ Belmont University, located in Nashville, Tennessee, has a different vision for its new law school as a part of university that “brings together the best of liberal arts and professional education in a Christian community of learning and service.”³⁶

This is not an exhaustive list, but just examples. They – and others – are important because, in many respects, they are natural experiments in which different

²⁸ See Deborah J. Merritt, “An Employment Puzzle,” *Law School Café*, June 19, 2013, on Washington and Lee’s disappointing employment figures, <http://www.lawschoolcafe.org/thread/an-employment-puzzle/>.

²⁹ Washington and Lee School of Law, “School of Law Strategic Transition Plan,” February 19, 2015, <http://www.wlu.edu/presidents-office/messages-to-the-community/message-to-the-law-school-community/strategic-transition-plan>.

³⁰ Northeastern University School of Law, “Experiential Learning/Co-op,” <https://www.northeastern.edu/law/experience/co-op/index.html>.

³¹ Baylor University Law School, “Curriculum Information: Third Year,” <http://www.baylor.edu/law/ps/index.php?id=75581>.

³² Northwestern University School of Law, “Accelerated JD,” <http://www.law.northwestern.edu/academics/degree-programs/jds/ajd/index.html>.

³³ Daniel Rodriguez and Samuel Estreicher, “Make Law Schools Earn a Third Year,” *New York Times*, January 17, 2013, http://www.nytimes.com/2013/01/18/opinion/practicing-law-should-not-mean-living-in-bankruptcy.html?_r=2&.

³⁴ Peter Lattman, “Obama Says Law School Should Be Two, Not Three, Years,” *New York Times*, August 23, 2013, <http://dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three/>.

³⁵ See Royal Fergusson and Ellen Pryor, “Making the Grade,” 77 *Texas Bar Journal* 227 (2014); also see J.K. Nickell, “New Law School Only Accepts Students Who Want To Be Lawyers For ‘Right’ Reasons,” *Huffington Post*, April 18, 2014, http://www.huffingtonpost.com/2014/04/18/new-law-school-right-reasons_n_5170124.html, referring to the University North Texas-Dallas College of Law.

³⁶ Belmont University, “Belmont Vision Statement,” <http://www.belmont.edu/oc/mission/index.html>.

kinds of schools are trying to devise ways of responding to changes in the world around them. In short, they are market-driven experiments that can include important curricular and pedagogical innovations. They must be watched closely and analyzed, since they are likely to have much to add to the discussion of financing legal education and its relationship to curriculum. They are the incubators of new directions *and* an exacting market proving ground. Moving forward such experiments may well be the source of possible solutions and models, allowing others to see what can be done, how, and with what success. They can also show what may not work, and this is equally important. Recognizing this diversity of approaches, the Task Force looked skeptically upon inflexible mandates or one-size-fits-all solutions that would constrain innovation and experimentation at a time when they are most needed.

4. The Scarcity of Data

As noted earlier, the scarcity of systematic, reliable, and detailed information needed to address the issues at hand is a particular frustration. In light of the Task Force's timetable and resources, exploiting the best available information was the only practical course. At best only a partial picture of the current state of affairs is possible, but even this – as the observer noted earlier told the Task Force – is important and valuable.

IV. Detailed Overview of Specific Findings

This section presents the details for the findings outlined above in section II and will follow the same organization. Unless otherwise noted, the information underlying the more specific findings in the next section come from ABA sources, and multiple sources were often utilized in reaching a single finding. Some of this information is publicly available from individual law school annual informational (or 509) disclosures available on the ABA website and the Law School Admission Council website's Official Guide Archives.³⁷ Most data-driven discussions of legal education also draw from these sources. Additionally, some of the information comes from ABA Takeoff Reports, which are reports derived from annual questionnaires that ABA-approved law schools are required to file as part of the ABA law school accreditation process. Much of this information is not publicly available. In recognition of the fact that not all law schools are the same, the discussion of the specific findings will regularly distinguish between private and public schools.

Because of the differences within each type – public or private – the discussion will in some instances make further distinctions among groups of schools within each. This is important because there are key differences among schools that are relevant to the issues surrounding the financing of legal education. Rather than relying on any existing scheme, we have divided schools (public and private together) into five groups based upon the average of a school's median LSAT (Law School Admission Test) score for

³⁷ See <http://www.abarequireddisclosures.org> for recent 509 disclosures and <http://www.lsac.org/lisacresources/publications/official-guide-archives> for older material.

full-time students for the years 2000 to 2010.³⁸ The groups will be designated simply as G1 through G5, with G1 schools having the lowest LSAT scores and G5 schools the highest.

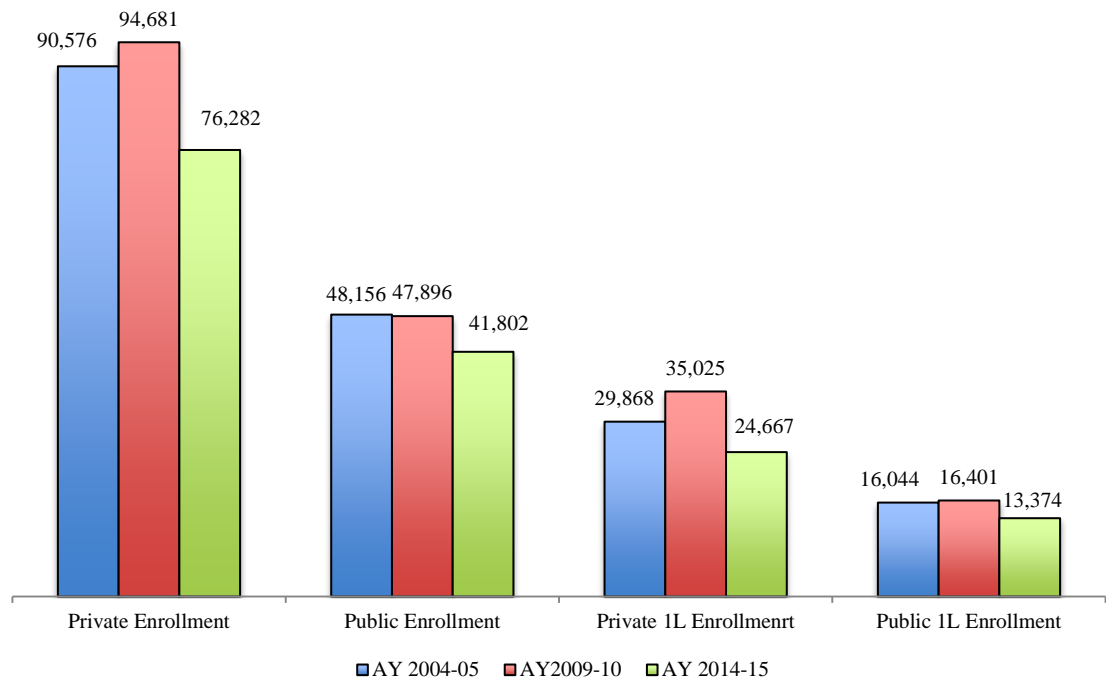
To briefly illustrate the differences among the groups, G1 schools (public or private) tend to have the lowest tuition, to admit the largest percentage of applicants, and to have lower employment rates for their graduates. In contrast, G5 schools (public or private) tend to have the highest tuition, to admit the lowest percentage of applicants, and to have the highest employment rates for their graduates. More differences among the groups will become evident as the discussion proceeds, and they are important for understanding the current state of affairs. These differences are among the kinds of information that should be more widely available to prospective law students in making a decision on whether to attend law school and, if so, which school to attend.

1. Declining Enrollments Overall

There are preliminary matters that must be noted before directly addressing the financing of legal education. The first is declining enrollment. Fewer people are attending law school generating fewer tuition dollars to run a school's operations. As Figure 1 below shows, enrollments have declined in the last few years, and especially so for private schools. As we will see later, these schools have higher tuition rates than the in-state tuition rates for public law schools. Comparing AY2014-15 to AY2009-10 (AY means academic year), the decline in Figure 1 for private schools equals a 19% difference in total enrollment. Most important is the decline in new students (designated as 1Ls in Figure 1) entering law school in those academic years – 30% fewer people were starting in a private law school in AY2014-15 compared to AY2009-10. For public schools the overall decline in enrollment between AY2009-10 and AY2014-15 was 13%, with an 18% decline in 1Ls.

³⁸ The cut-offs for the five groups are: Group 1 – <152.0; Group 2 – 152.0-154.39; Group 3 – 154.4-157.5; Group 4 – 157.6-161.5; Group 5 – >161.5. The number of schools per group changed marginally over time as new schools came on line. For 2010, the numbers – going from Group 1 to Group 5 – are: 41, 40, 39, 41, and 35. Not included are the three law schools in Puerto Rico and the Judge Advocate General's school. See Stephen Daniels, "Exploring Longitudinal Patterns in LSSSE Data," presentation at the LSSSE Symposium, St. Louis University Law School, November 6-7, 2014. The number of G5 schools was too small to include them in the analysis of the LSSSE data.

Figure 1. Declines in Law School Enrollment



Among the five different groups of public schools (G1 to G5), the greatest declines in total enrollment were for G4 and G5 schools, the schools with higher full tuition price: down 15% and down 10%, respectively. Declines were lower in the other three groups, but substantial nonetheless. In contrast, among the five private school groups, G4 and G5 schools had the lowest enrollment declines: down 15% and down 5%, respectively. Declines were higher in the other three groups. As we will see later, the private G4 and G5 schools tend to offer the most in financial aid and hence the best discounts from stated tuition among all schools. Discounting will be discussed in detail later.

The question that this Task Force could not answer, but that must be answered, is what role increasing tuition – along with other factors including financial aid, debt, and job prospects – plays in students’ decisions to attend law school, not to attend, or to attend one school rather than another. And there is the subsidiary question of what may happen to diversity and whether law school will be accessible to the socio-economically disadvantaged of any color or background. Affordability is an important, much discussed, but elusive concept when talking about the cost of any kind of professional training. Answering the question about the role of increasing tuition – in combination with those other factors – will help us understand the practical, real-world meaning of affordability and what may be done to enhance it.

One takeaway, however, is that to the extent affordability and, as discussed below, weakness in the job market present a major concern to students considering law school, demand for legal education appears to adjust in response. This, in turn, has

prompted some law schools to downsize, close, or merge with other entities, while spurring others to cut costs, reduce tuition, or innovate toward greater efficiency. The ordinary operation of market pressures should induce a measure of caution in considering any regulatory responses to problems in the financing of legal education.

Minority enrollments have not declined in the face of the overall enrollment decline – yet. Yet – because there are signs that it could. Figure 2 shows that the number of law students in public and in private schools identifying themselves as being among one of the minority categories tracked by the ABA has not declined along with the overall enrollment decline (the higher numbers for private law schools in Figure 2 simply reflect the fact that more students attend private schools than public schools).³⁹ The percentage of all students in public law schools identifying themselves as minority has increased from 21% in AY1994-05 to 27% in AY2013-14. However, the percentage increase in the number of minority students has slowed for public schools in recent years. From AY2004-05 to 2009-10 the number increased by 9%, but from 2009-10 to AY2014-15 it increased by only 3%.⁴⁰

The pattern for private law schools is similar in that the percentage of students identifying as minority has increased – from 19% in AY1994-95 to 30% in AY2014-15.⁴¹ However, unlike the situation for public law schools, the percentage increase in the number of minority law students in private law schools has not declined, but has stayed relatively stable at 11%-12% in recent years. While these trends appear relatively benign, there still is cause for concern. As one recent commentator noted, the increasing percentages in minority enrollment “is due mostly to deep declines in white law students, and black and Hispanics remain profoundly underrepresented in legal education and the profession.”⁴²

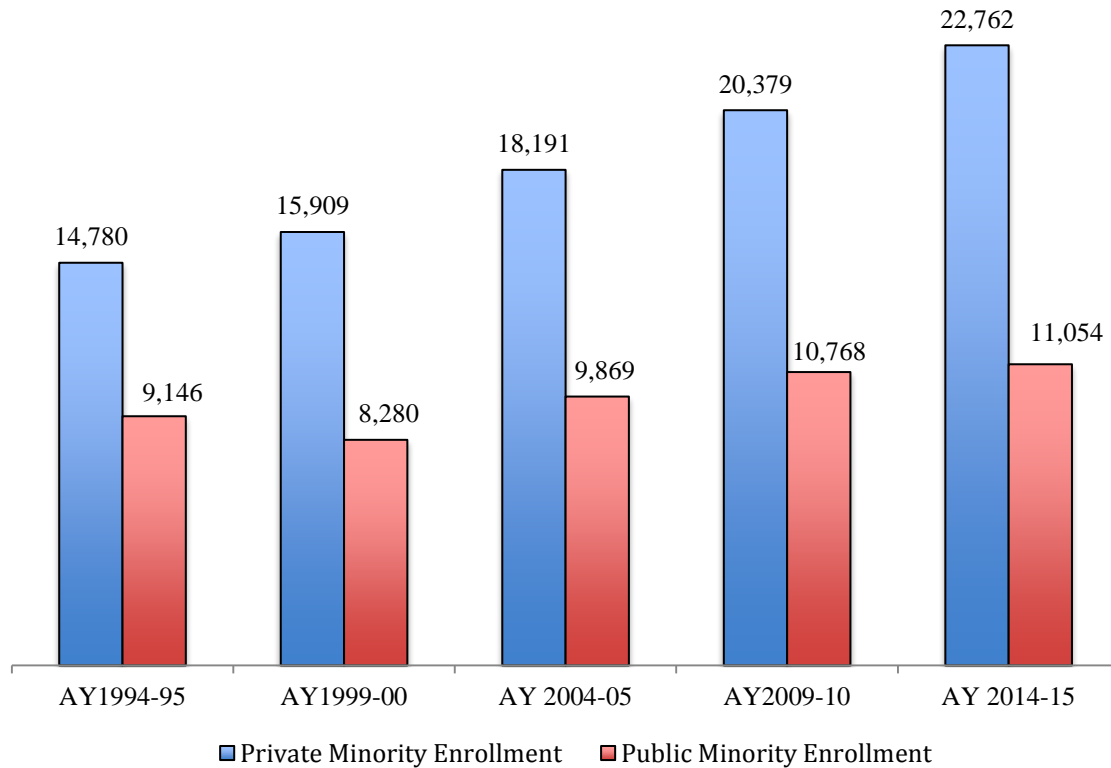
³⁹ The figures used here are for *all* minority categories tracked by the ABA and the discussion here goes beyond 2009. Evidence provided to the Task Force shows statistics essentially the same as those used here; see Michael Simkovic, “Financing a Legal Education,” presentation to the Task Force, August 9, 2014, 20.

⁴⁰ Some of this may be a result of bans on affirmative action in a number of states.

⁴¹ The latter figure may reflect, in part, declines in non-minority students as a part of the overall enrollment decline in private schools.

⁴² Aaron Taylor, “Diversity as a Law School Survival Strategy,” forthcoming *Saint Louis University Law Journal* (2015), manuscript version, 4.

Figure 2. Number of Minority Law Students Over Time



Regardless of the current picture of minority enrollment, the concern is whether the trends identified will or can lead to law school student bodies or a legal profession that more closely reflects American society at large. Both now reflect a substantial underrepresentation of people of color. ABA demographic statistics show a profession that is overwhelmingly White/non-Hispanic – well over 80%.⁴³ U.S. Census figures show the percent of the population that is White/non-Hispanic at about 63%.⁴⁴ By mid-century that percentage is projected to drop below 50%.⁴⁵ And, those same ABA demographic figures show a noticeable gender imbalance with the percentage of females in the profession being well below 50%. Again, the question of what role cost may be playing in driving law school enrollments down is one this Task Force could not answer, but answering is

⁴³ See “Lawyer Demographics,”

http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2014.authcheckdam.pdf.

⁴⁴ See U.S. Census, <http://quickfacts.census.gov/qfd/states/00000.html>.

⁴⁵ See U.S. Census, 2012 National Population Projections: Summary Tables, Table 6. Percent Distribution of the Projected Population by Race and Hispanic Origin for the United States: 2015 to 2060, <http://www.census.gov/population/projections/data/national/2012/summarytables.html>.

especially important for understanding the future of diversity in legal education and in the legal profession.

The commentator quoted above raises another level of concern regarding minority enrollment in the face of the overall enrollment challenges faced by law schools. His concern is that some schools may be using increased minority enrollment as a “survival strategy” that has potentially disturbing consequences. He found that schools with the lowest median LSAT scores were the ones increasing minority enrollment, especially African-American and Hispanic students. He sees this as a “critical component of the enrollment management calculus for [such] schools ... and could very well have saved some of these schools – at least for now.”⁴⁶ Enrollments for white and Asian students, in contrast, went down or stayed stable in these schools. At the other end of the spectrum, the percentages of white and Asian students increased at schools with higher LSAT scores, while the percentages of African-American and Hispanics students decreased. The conclusion is blunt: “Put simply, black and Hispanic students have increased their proportions among law schools considered least prestigious while essentially being shut out of the schools considered most prestigious. White and Asian students, on the other hand, have reaped the benefits of the increasingly competitive admissions climate.” Such a trend will have a potentially negative affect on career opportunities for many students of color.⁴⁷

2. The Weak Job Market

The job market for new law school graduates is far from robust, although some see signs of at least modest improvement.⁴⁸ The most recent ABA reports on employment show only a very slight increase in the already unexceptional percentage of graduates landing a permanent, full-time, bar passage-required job (the job for which every law school designs its curriculum). For the public law school class of 2013, the figure was 63%; for the class of 2012, 64%; and for the class of 2011, 62%. For the private law school class of 2013, the figure was 57%; for the class of 2012, 56%; and for the class of 2011, 55%. Unfortunately, comparable figures are not available for earlier years. The ABA instituted more detailed and stringent reporting requirements for schools in light of concerns about the clarity of some the earlier categories

⁴⁶ Taylor, *supra* note 42 at 30.

⁴⁷ For all material and quotations in this paragraph, *see id.* at 30-31. This a a somewhat different concern than one voiced in a 2009 study that looked at the prospect of black and Mexican-American students making up a *smaller* percentage of the law school population. That study reported a decline in the number of black law students from 3,432 in 1993 to 3,392 in 2008, and a decline in the number of Mexican-American law school students from 710 in 1993 to 673 in 2008. *See* Conrad Johnson, “A Disturbing Trend in Law School Diversity,” 2009, *Lawyering in the Digital Age*, Columbia Law School, <http://blogs.law.columbia.edu/salt/>.

⁴⁸ *See* Jacob Gershman, “Less Bleak Outlook for Law Grads,” *Wall Street Journal*, April 9, 2014, <http://www.wsj.com/articles/SB10001424052702303873604579492002432609422>; but also *see* Merritt, *supra* note 4.

Figures 3a and 3b show employment figures for the five private school groups and for the five public school groups, respectively. Again, the figures report on the percentage of graduates landing a permanent, full-time, bar passage-required job. The idea here is to present an added level of detail about employment rates and in doing so to illustrate the difference among groups of schools (and why such information is useful, especially for prospective law students). For the public schools and for the private schools, the highest employment rates for the years 2011, 2012, and 2013 for such jobs were for G5 schools. G1 schools – public and private – had the lowest employment rates. Noticeably, the rates for the private G1 schools actually declined from 2011 to 2013, and the rate declined for public G1 schools from 2012 to 2103.

Figure 3a. Percentage of Private Law School Graduates by Group Employed Full-Time Bar Pass Required

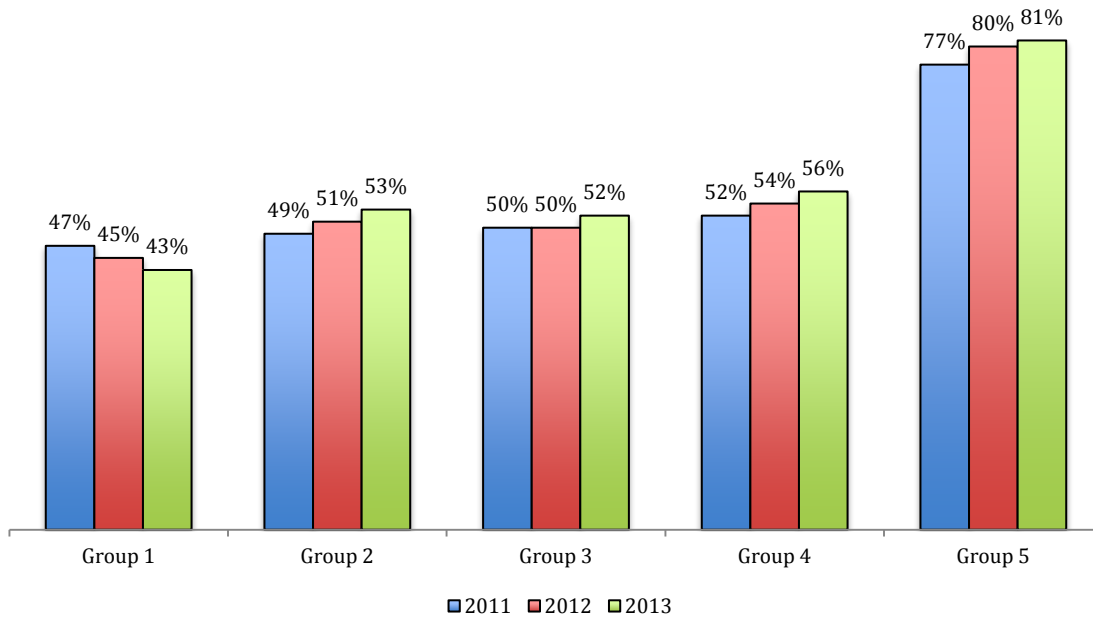
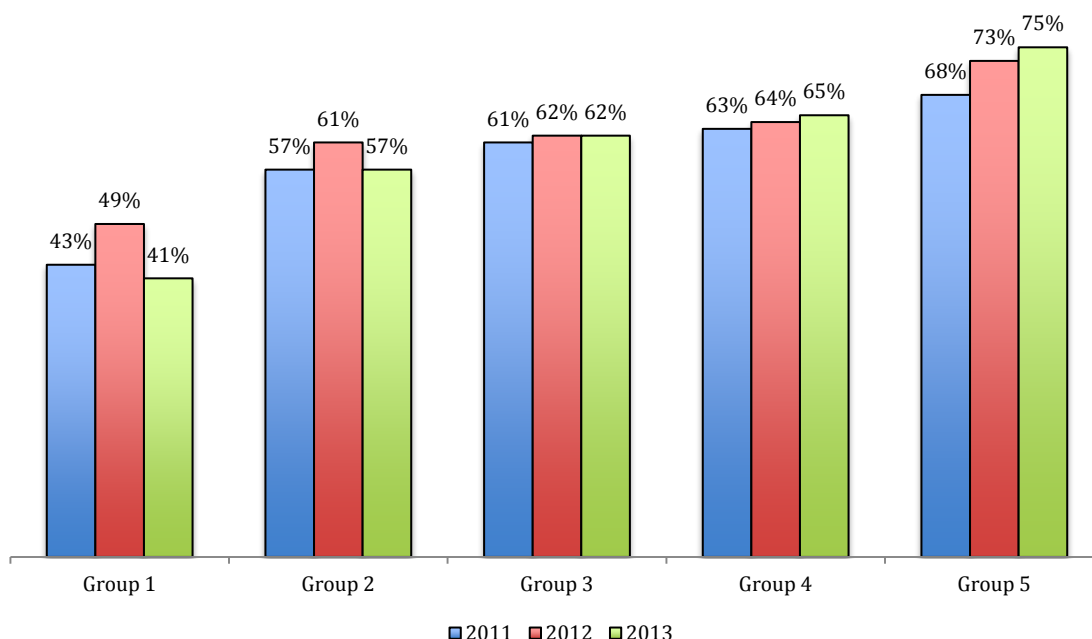


Figure 3b. Percentage of Public Law School Graduates by Group Employed Full-Time Bar Pass Required



A similar analysis can be done using figures for graduates with full-time, permanent positions classified as JD-advantage: “A position in this category is one for which the employer sought an individual with a JD, and perhaps even required a JD, or for which the JD provided a demonstrable advantage in obtaining or performing the job, but itself does not require bar passage or an active law license or involve practicing law.”⁴⁹ For private law schools, the highest percentages of graduates landing these kinds of positions increased from 2011 to 2013 for each group of schools, but the percentages were not high. In 2013, they ranged from a high of 13% for G2 schools (also the highest in 2011 – 11%) to a low of 6% for G5 schools (also the lowest in 2011 – 5%).

For public law schools the picture with respect to JD-advantage placements is essentially the same – an increase from 2011 to 2013, except for G5 schools. For them the percentage remained unchanged – 8%. For the other groups the percentage of graduates landing such positions ranged between 9% and 10% and between 11% and 13% in 2013

⁴⁹ American Bar Association Section of Legal Education and Admissions to the Bar, *2015 Employment Questionnaire (For 2014 Graduates): Definitions & Instructions*, 2; <http://employmentsummary.abaquestionnaire.org>.

Despite the cost, the best available evidence suggests a significant lifetime income premium for those with a law degree compared to those with a bachelor's degree.⁵⁰ This holds for those who graduate in a down job market and for those whose earnings place them at the 25th percentiles of the income distribution. Debt, however, can diminish the degree of premium for all law school graduates and so remains a factor to contend with. Still, even with the focus on debt by many commentators, the question is ultimately one of long-term value – and that value is significant.

3. Tuition Dependency

Law schools are tuition-dependent for their revenues, and some are heavily – if not exclusively – tuition-dependent. This is the final preliminary matter. Looking at all law schools, the average was 69% of revenue in AY2012-13 (the last year for which information is available), with 25% of schools receiving at least 88% of their revenue from tuition.

There are important differences among schools in the degree of dependence. Schools with the lower tuitions (which are those in the lower groupings for both public and private schools) are more tuition-dependent, and those with higher tuitions (which are those in the higher groupings) are less dependent. Private G1 schools are by far the most tuition-dependent (the same schools noted above for their low employment rates). In AY2012-13 the average was 95% of revenue. Clearly, anything that disrupts the flow of tuition dollars could put some schools in a very precarious position, and private G1 schools had some of the greater declines in enrollment (and these are the schools, as noted above, trying to increase minority enrollment).

Tuition is at the heart of the concern surrounding the financing of legal education, and even viewed in terms of inflation-adjusted dollars tuition has consistently increased over time. This is true whether viewed in terms of an inflation adjustment made on the basis of the cost of doing business (using the higher education price index, referred to as HEPI), or the price to the consumer (using the consumer price index, referred to as CPI).⁵¹

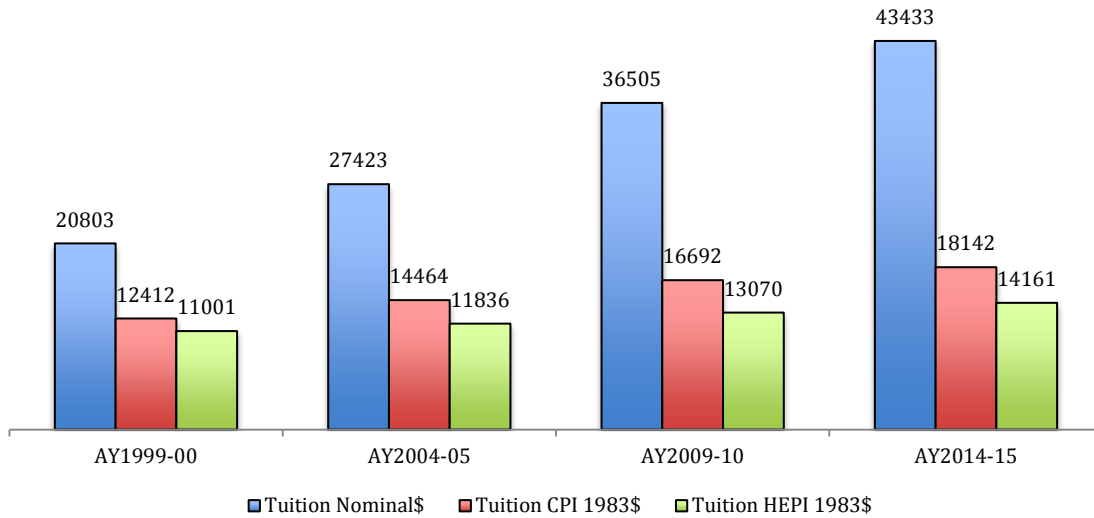
Using inflation-adjusted dollars is important because it shows how much costs have increased beyond what may be expected because of inflation alone. Using nominal dollars – not adjusting for increases due to inflation alone – gives a distorted view of changes over time that can adversely affect responses to those changes. Figures 4a and 4b show the difference the inflation adjustment can make. The two figures present material on trends in law school tuition for private schools and for public schools using three different measures. The first uses nominal dollars for both sets of schools and shows truly dramatic increases for both. For private schools, tuition increased by 109% between

⁵⁰ See Michael Simkovic and Frank McIntyre, “The Economic Value of a Law Degree,” 43 *Journal of Legal Studies* 249 (2014). Simkovic presented some of the material in this article to Task Force in his presentation, see *supra* note 39 at 3-6.

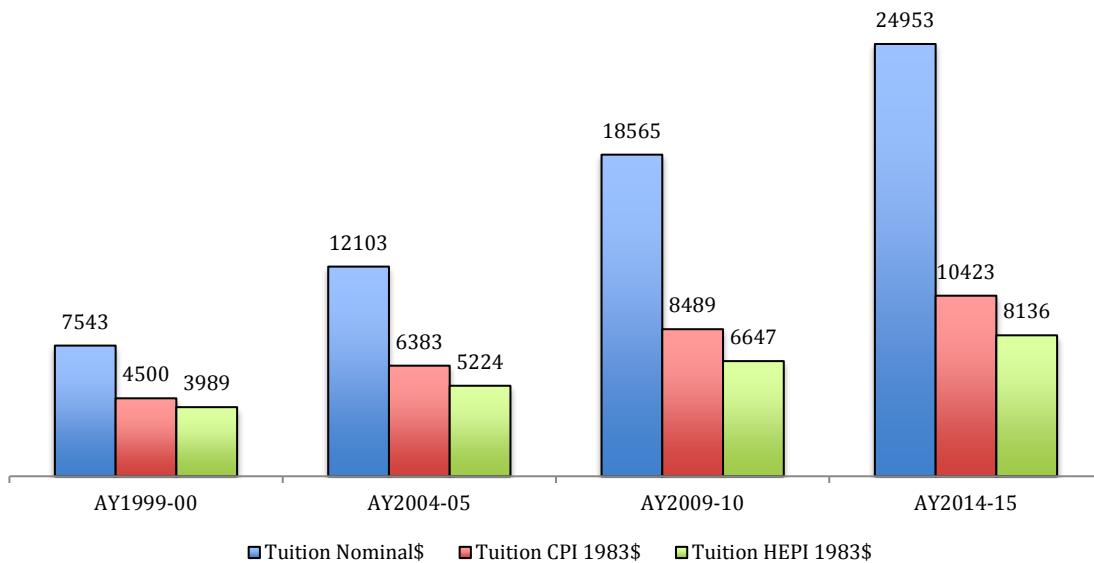
⁵¹ [See *supra* note 12 on the use of HEPI and CPI.](#)

AY1999-00 and AY2014-15, and it increased by 231% for public schools (in-state tuition).

**Figure 4a. Trends in Private School Full-Time Tuition:
Average for Nominal\$ and Inflation-Adjusted\$**



**Figure 4b. Trends in Public School Full-Time, In-State Tuition:
Average for Nominal\$ and Inflation-Adjusted\$**



The second measure – the middle bars in each figure – uses the consumer price index with 1983 dollars as its base (using an older year as a starting point works well for examining trends over an extended period of time). This measure speaks to the consumer’s cost and ability to pay for the service. If CPI tuition increases it means that the consumer’s ability to pay for the service is not keeping up and the service functionally is costing more than in the past.

What is important in Figures 4a and 4b is the amount of change over time in tuition, keeping in mind that those increases are not because of inflation. The figures show that CPI tuition did not increase as sharply as nominal tuition, but the increases are still quite substantial. CPI tuition increased 46% for private schools between AY1999-00 and AY2014-15, and 132% for public schools. Even taking consumer inflation into account, tuition has become much more expensive. By way of perspective, inflation-adjusted per capita income in the United States actually *declined* by 6% between 1999 and 2013 (with a noticeable drop between 2008 and 2009).

The third measure – the far right-hand bars in each figure – uses the higher education price index with 1983 as its base. This measure speaks to the schools’ cost of doing business and takes into consideration inflation in the key cost factors for higher education.⁵² If HEPI tuition increases it means tuition is increasing faster than inflation in those cost factors. The figures show that HEPI tuition did not increase as sharply as either nominal tuition or CPI tuition, but it still increases markedly. HEPI tuition for private schools increased by 29% between AY1999-00 and AY2014-15, and increased by 104% for public schools (again, decreases in state funding need to be kept in mind). And in light of CPI tuition and per capita income, this only reinforces the concern that law school – public or private – has become increasingly expensive.

Generally speaking and using either version of inflation-adjustment, private and public school tuition increases going from G1 schools to G5 schools. G1 schools have the lowest tuitions and G5 schools have the highest. All groups of schools have steadily increasing inflation-adjusted tuition over time, as the consumer’s ability to pay has not kept pace.

4. Discounting and Full Tuition Price

Full price tuition, however, is not the whole story. Tuition discounting occurs, is widespread, and is generally increasing for both private and public schools. A school’s net tuition is the figure that counts – it is a concise figure that allows for schools to be compared in a meaningful way with regard to the price for their service. School-level net tuition takes into consideration the typical amount of grants/scholarships (financial aid that requires no repayment) as well as the percentage of students receiving

⁵² *Id.*

grants/scholarships money and the percentage still paying full price.⁵³ Figures 5a and 5b use the same three measures in Figures 4a and 4b to show trends in net tuition and they show net tuition increasing for both private and public schools. But care must be taken in interpreting the increases. Even though net tuition (using net 1983 CPI) increased between AY1999-00 and AY2013-14 – 29% for private schools and 94% for public schools – there is something else important going on.⁵⁴

The increase itself will be addressed later. What is important here is net tuition's percentage of the stated tuition because it allows us to easily calculate a figure that demonstrates the magnitude of the discount (simply subtract from 100% the net tuition's percentage of sticker price).⁵⁵ The magnitude of discounting has been increasing, meaning that discounts have become deeper. For private schools, the net tuition in AY1990-00 meant a discount of 16% in inflation-adjusted dollars (CPI). In AY2013-14 the discount had increased to 25%. For public schools the discount in AY1999-00 was 22% and it increased to 28%. One dean testifying before the Task Force said his school's discount rate was about 10-15% when started his deanship and is now at 40%.

Generally speaking, the discounts have been greater for private schools because of their higher tuitions. For each of the five groups of private schools the trend over time has been one of deeper discounts. The deepest discount for private schools in 2013-14 was for G4 schools – a 31% discount. The smallest discount for private schools in 2013-14 was for G1 schools at 21% – again, the schools most tuition-dependent, with the lowest employment rates, and some of the greater enrollment declines. For public schools, G3 schools had the deepest discount in 2013-14 – 29%.

⁵³ The higher education literature offers a number of possibilities, but they are typically designed for undergraduate institutions and may not be transfer well to law schools. One recent approach by a long-time scholar of higher education is intended to be more straightforward and generally applicable. See Robert Zemsky and Susan Shuman, "It's Still a Market," Working Paper 9-15-2104, *The Consumer-Based Institutional Market Segmentation Project*, The Alliance for Higher Education And Democracy, University of Pennsylvania. With a very minor revision – based on the availability of data for law schools – it can be used for law schools. Its strength is including in its formula both those receiving free money and those receiving none. As used it works in three steps:

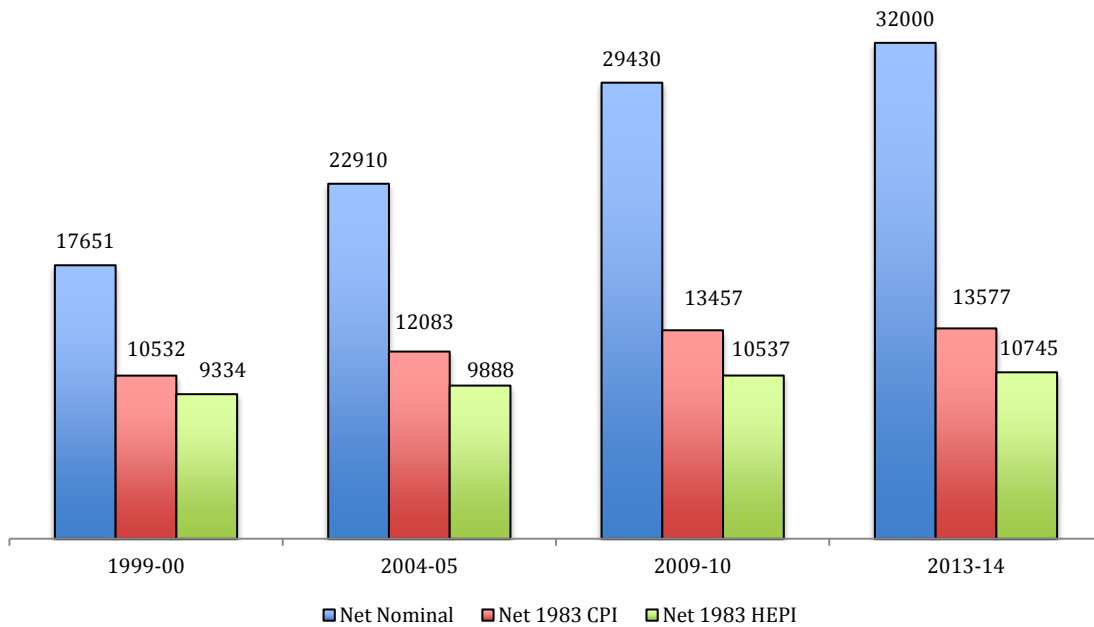
First, subtract the median award from the sticker price and multiple that figure by the percentage of full-time students receiving free money.

Second, multiply the sticker price by the percentage of students paying sticker price. Finally, to get a school's overall net price add together the figures from the first two steps.

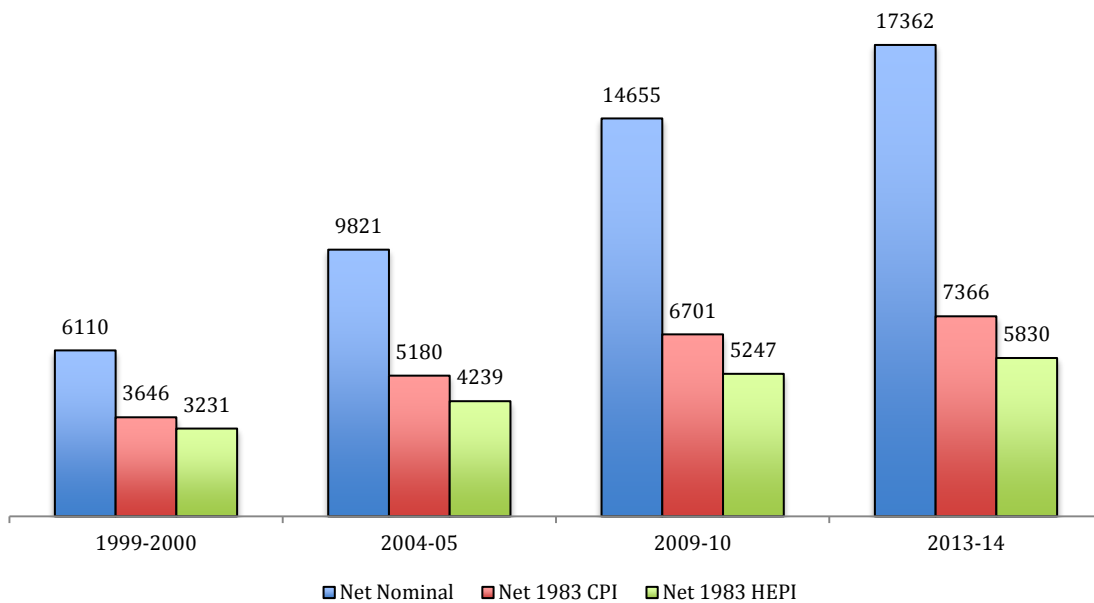
⁵⁴ It is especially important to note, again, that the increases in public in-state tuition – even net tuition – came as state governments were cutting their appropriations to institutions of higher education. See Ma and Baum, *supra* note 14. If net 1983 HEPI is used the increases are 15% and 80%, respectively.

⁵⁵ For example, take a sticker price of \$500 and a net tuition of \$350 – the net tuition is 70% of the sticker price, and subtracting 70% from 100% yields a discount of 30%; alternatively the formula can be (sticker – net)/sticker.

**Figure 5a. Trends in Private School Net Tuition:
Average for Nominal\$ and Inflation-Adjusted\$**

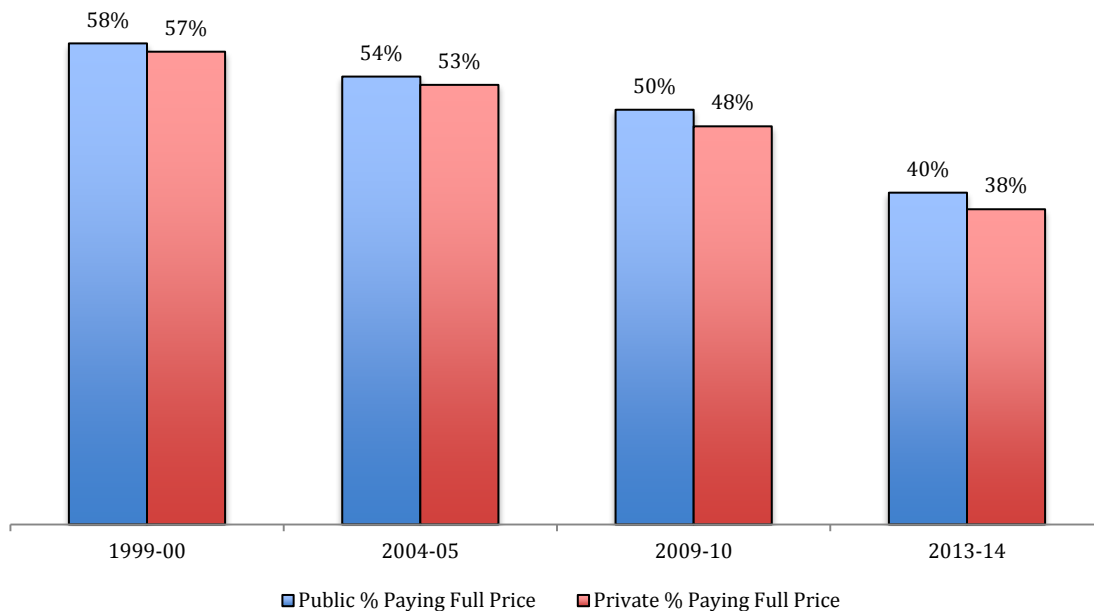


**Figure 5b. Trends in Public School In-State Net Tuition:
Average for Nominal\$ and Inflation-Adjusted\$**



With increased discounting, fewer students in both public and private schools are paying full tuition than in the recent past. As Figure 6 shows, that percentage steadily declined for private schools from 57% in AY1999-00 to 38% in AY2013-14. Looking more closely, the percentage of students paying full price declined in each of the five private school groups. Generally speaking, G4 and G5 schools – which had the highest full tuition prices – had lower percentages of student paying full price, and those in the other groups somewhat higher percentages. For public schools Figure 6 again shows a steadily declining percentage of students paying full price – 58% in AY1999-00 to 40% in AY2013-14. Again, those schools in the higher groups with the higher tuitions have lower percentages of students paying full price.

Figure 6. Trends in Percent of Students Paying Full Tuition



While the percentage of students paying full price has decreased and the discount rate increased, inflation-adjusted net tuition itself has not always followed suit. Figures 5a and 5b above presented inflation-adjusted figures for CPI net tuition and they show that the actual amount of money schools expect students to pay, in many situations, has still increased. Simply put, stated tuition prices have increased at a greater rate than discounts.

In inflation-adjusted dollars (CPI) private law school students saw their schools' net tuition increase 29% from 1999-00 to 2013-14. Most of this increase, however, came between AY1999-00 and AY2009-10 – a 28% increase. There was very little change from 2009 to 2014 (a mere 1%). Generally speaking, the patterns for net tuition follow the grouping of private law schools. G1 schools are the least expensive having the lowest inflation-adjusted net tuition at each point in time. G5 schools are the most expensive having the highest at each point in time. For G3 and G4 schools net tuition actually

declined slightly between 2009-10 and 2013-14 (-2% and -1%, respectively), and for the other three groups the increase was 4% or less. Whether this may reflect a permanent bend in the cost curve remains to be seen.

For public law schools inflation-adjusted (CPI) net tuition is lower, but it increased more dramatically than net tuition for private schools (again, importantly, this reflects the declines in state appropriations). Public law school students saw their schools' net tuition increase by 102% between AY1999-00 and AY2013-14. Again, the greatest increase came between AY1999-00 and AY2009-10, when net tuition increased by 84%. As was the case with the private schools, G1 public schools were consistently the least expensive having the lowest net tuition at each point in time. G5 public schools were the most expensive having the highest net tuition. No public law school group saw a decline in net tuition.

With respect to discounting, more money goes to pure merit (i.e., for LSAT scores and no consideration of other factors) than to pure need (i.e., need demonstrated by financial aid materials submitted by the student with no consideration of other factors). While money for pure need has not disappeared, the trend is less money being used for this purpose and more going to pure merit and to a third, mixed category of need plus other factors (such as prior public service activities or an interest in such work).

Using the only data available, Figures 7a and 7b show this pattern quite clearly in comparing AY2004-05 and AY2009-10 (the ABA stopped collecting this information in 2011). Both public and private schools devoted less to need in AY2009-10 than in AY2004-05 and more to merit, but there were important differences as well. Most obviously, the two figures show that private schools devote a much larger share of grant/scholarship money to merit. And public schools devote larger shares to need and need plus other factors.

Figure 7a. Distribution of Grant/Scholarship Monies by Private Law Schools: Need, Merit, Need-Plus

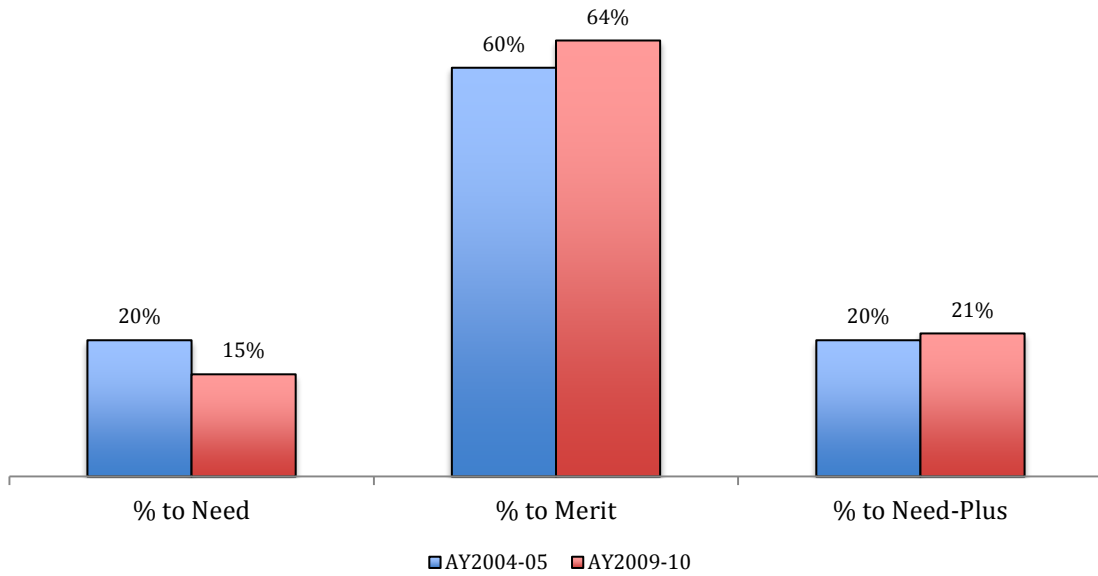
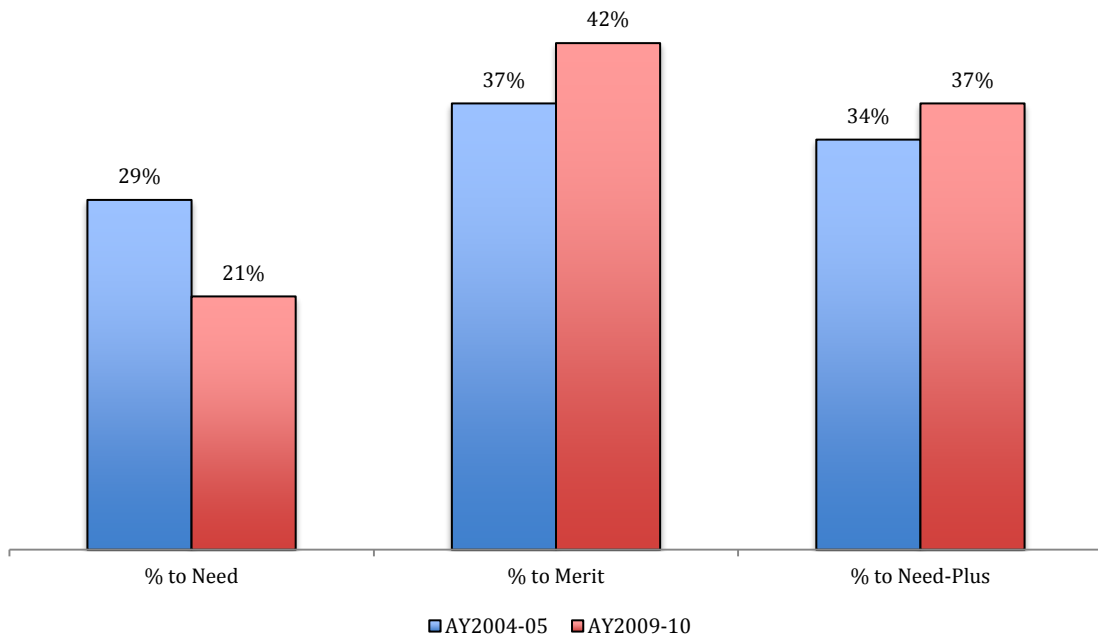


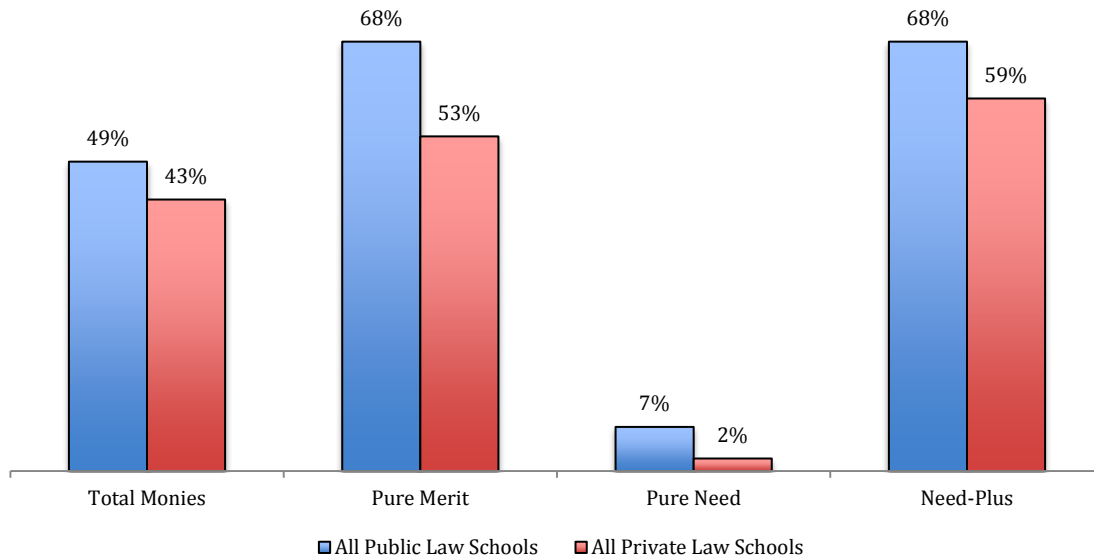
Figure 7b. Distribution of Grant/Scholarship Monies by Public Law Schools: Need, Merit, Need-Plus



Although the patterns are not always entirely clear, G5 schools – both public and private – devoted less grant/scholarship money to pure merit and more to pure need and to need-plus. Again, these are the schools with the highest tuitions. In 2009-10, private G5 schools devoted between 27% and 37% to each of the need categories. For the other private school groups pure merit was much more important, ranging from 83% of grant/scholarship money for G1 schools to 67% for G4 schools. For the public schools, the 2009-10 pattern for pure merit is quite clear – the percentage of money devoted to merit consistently declines from 75% in G1 schools to 27% in G5 schools. Need-plus consistently increases from 10% in G1 schools to 49% in G4 schools and then drops to 37% in G5 schools (G5 schools had the largest percentage devoted to pure need at 35%.)

Figure 8 looks at grant/scholarship money in a different way. Figures 7a and 7b show the percentage allocation among the three categories – merit, need, and need-plus – for the two points in time. Figure 8 shows the inflation-adjusted (CPI) percent increase from AY2004-05 to AY2009-10 in the *amount* of money devoted to each of those three categories for both types of schools. Schools are clearly investing more money in grants/scholarships. For private schools, the total amount of money devoted to grants/scholarships increased by 43%, but with a mere 2% increase in money for pure need. The substantial increases went to merit and especially to need-plus. For public schools, the total amount of money devoted to grants/scholarships also increased – by 49%. Again, pure need saw less of an increase while the other two categories saw substantial increases. The Task Force heard testimony from law school deans that is consistent with this finding. One noted that pursuing the best students in a competitive market leads his school and others to offer the most money to high-achieving students rather than those with the most need. Another spoke of a “merit scholarship arms race.”

Figure 8. Inflation-Adjusted (CPI) Percent Increase in Grants/Scholarships: Total Monies, Merit, Need, Need-Plus (AY2004-05 - AY2009-10)



5. Student Borrowing Increasing

Despite the increases in grant/scholarship money, the deeper discounting, and the smaller percentage of students paying full price, most students still borrow to help finance their legal educations. The average student debt by school in 2014 dollars is in excess of \$127,000 for private schools and in excess of \$88,000 for public schools (the ABA collects information on the average student debt by school, not the average individual student debt). In the face of these levels of debt, evidence presented to the Task Force indicates that law students rarely default on their student loans – a 2-year cohort default rate below 2%. This is lower than the rate for masters/doctoral/professional students generally and a rate lower than for bachelor degree students and below.⁵⁶ A recent survey suggests that most practicing attorneys feel their incomes have justified the cost of their legal education and that most law students see good value in their legal education even with the money borrowed.⁵⁷

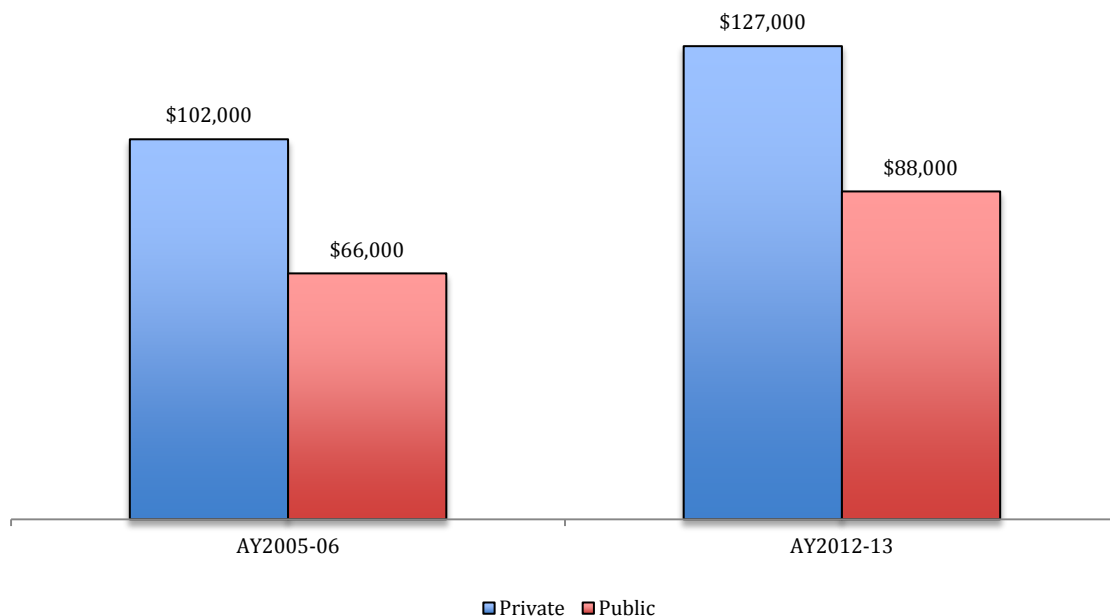
The amount borrowed in inflation-adjusted dollars has increased. That increase in student borrowing reflects the growth in tuition even adjusting for inflation *and* the

⁵⁶ See Simkovic, *supra* note 39 at 44. The 2-year cohort default rate the percentage of borrowers who enter repayment during a federal fiscal year and default prior to the end of the next one to two fiscal years; cf. a lifetime cohort default rate, which measure the lifetime default of a given cohort.

⁵⁷ See *State of the Legal Field Survey*, Barbri (2015), 8; http://www.thebarbrigroup.com/files/white-papers/220173_bar_research-summary_1502_v09.pdf.

accessibility of loan funds. As Figure 9 shows, these figures represent an increase over the amount of student debt by school in the recent past. In inflation-adjusted dollars, private school debt increased by 25% between AY2005-06 (the first year for which data are available) and AY2012-13 (the most recent year for which data are available), and public school debt increased by 34%. Periodic surveys of *individual students* by the U.S. Department of Education show that individual law student debt – adjusting for inflation – increased by 56% from 2004 to 2012. Cumulative debt – undergraduate plus law school – increased by 44%.⁵⁸ And, figures from the annual Law Student Survey of Student Engagement (LSSSE) show that few 3rd and 4th year students, perhaps less than 15%, expect to graduate with no law school debt.⁵⁹

**Figure 9. Trends in Student Debt in Inflation-Adjusted Dollars
(2014\$)**



While the amount borrowed is higher in private schools because of the higher tuitions, the inflation-adjusted amount borrowed increased more for public law schools as their tuitions increased (again, perhaps a result of tuition increases that came in the wake of reduced state support). The greatest increase for public schools came between 2009-10 and 2012-13 – a 21% increase compared to a 15% increase for all private schools. And during this time period, for both public and private schools the increases in borrowing

⁵⁸ See Jennie H. Woo and Stacy Shaw, “Trends in Graduate Student Financing: Selected Years, 1995–96 to 2011–12,” U.S. Department of Education, January 2015, <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2015026>.

⁵⁹ See Daniels, *supra* note 38, using data from a sample of 59 schools that participated consistently in LSSSE between 2005 and 2013, and all respondents within that sample of 59 schools – a total of 134,000-plus respondents.

were the greatest for students in G1 schools (22% increase for G1 private and 30% for G1 public), but these were still the schools with the lowest amount borrowed and the lowest tuitions.

With programs first instituted in 2006-07, the federal government has become *the* lender for graduate school and professional school through Grad Plus. Students can borrow the full cost of attendance – tuition plus a school’s stated living expenses. There are a variety of borrower-friendly repayment programs, some of which take income into account. The details of the various options, however, can be complex. The complexities are so great that the Young Lawyers Division presented a resolution and report to the House of Delegates at the 2015 ABA Midyear Meeting – which was adopted – calling for “comprehensive debt counseling and debt management education” on the part of law schools and bar associations.⁶⁰

Access Group⁶¹ staffs a free loan repayment assistance call center available to law students and graduates and has recently published a comprehensive guide to the various programs – *Federal Student Loans: Repayment 101* – and a copy is attached as an appendix to this report (Appendix C).⁶² The current student loan programs assist students in financing their education and provide repayment options and plans that assure broad access to legal training. True need-based programs that could enhance access because they do not require repayment are, of course, another matter.

Among those federal loan programs is the Public Service Loan Forgiveness Program for graduates who go into lower-paying public service positions. For aspiring law students and graduates this program supports not only access to legal education but also access to justice itself. This program “is intended to encourage individuals to enter and continue to work full-time in public service jobs. Under this program, borrowers may qualify for forgiveness of the remaining balance of their Direct Loans after they have made 120 [ten years worth of] qualifying payments on those loans while employed full time by certain public service employers.”⁶³

Echoing the concerns of the Young Lawyers Division, evidence suggests that students do not always take advantage of the services law schools offer for financial counseling and that some of the students who do are not satisfied with the service. This is

⁶⁰ American Bar Association Young Lawyers Division, Report to the House of Delegates, Resolution 106, 2015 Midyear Meeting, Houston, TX.

⁶¹ “Founded in 1983, Access Group is a nonprofit membership organization comprised of 197 nonprofit and State-affiliated ABA-approved law schools. Access Group works to further access, affordability and the value of legal education through research, policy advocacy, and direct member and student educational services.” <https://www.accessgroup.org/about-us>. Christopher Chapman, president and CEO of Access Group, is a member of this Task Force.

⁶² Also available at: <https://www.accessgroup.org/federal-student-loans-repayment-101>. See the Access Group’s website for other user-friendly tools explaining the federal loan programs that include calculators to estimate the cost of borrowing and payments under the various options: <https://www.accessgroup.org>.

⁶³ “What is the Public Service Loan Forgiveness Program?” Federal Student Aid, U.S. Department of Education, <https://studentaid.ed.gov/repay-loans/forgiveness-cancellation/public-service#what-is-pslf>.

particularly important in light of the potential consequences of incurring long-term debt as a means of paying for one's legal education. Annual LSSSE surveys from AY2004-05, AY2009-10, and AY2012-13 show that about one-fifth of 3rd and 4th year students in a sample of 59 schools did not even use the services available (this sample did not include any G5 schools). Of those who did use the services in those years, the surveys show that around one-third in each year said they were unsatisfied or very unsatisfied with the services.⁶⁴

Increased student borrowing can be seen in another way, one that speaks to the importance of tuition as a source of revenue for law schools and to the importance of loans to pay that tuition. While a crude measure, it still sends an important message about schools' – not just students' – reliance on loans. Looking at the most recent figures – for AY2012-13 (well after the federal loan programs were firmly established) – as a percentage of all tuition collected, loans accounted for 123% for public schools and 86% for private schools. The figure can exceed 100% because the current federal loan programs allow students to borrow for living expenses as well as tuition. The higher percentage for public schools may reflect, along with more loan accessibility, sharper tuition increases that outpaced discounting. The percentage of tuition and living expenses that is covered by student loans increases going from G1 schools to G5 schools. The pattern holds for both public and private schools, with G1 schools having the highest percentage and G5 schools the lowest. In other words, both private and public G1 schools are not only the most tuition-dependent schools, but the most loan-dependent as well.

6. Increasing Law School Expenditures as the Cost Driver

Tuition has increased more than would be expected simply because of the effects of inflation on the cost of doing business for law schools. The immediate driver for the inflation-adjusted increase is the growth in law school expenditures.

The most appropriate way to look at expenditures is to normalize them using inflation-adjusted (HEPI) expenditure per full-time equivalent (FTE) enrollment, since raw expenditures will be higher or lower due to higher or lower enrollments. Doing so shows that total inflation-adjusted expenditures per FTE have increased for both public and private schools, but more so in public schools. The greatest increase for public schools came between AY2004-05 and AY2009-10 – at 20%, with an additional 8% increase between AY2009-10 and AY2012-13. For private schools the increase was 11% for each time period (11% plus another 11%).

Figures 10a and 10b break down total expenditures and report on the three areas of expenditure that accounted for the largest proportions of the total in each of the time periods covered by the figures: instructional salaries (which would take into account

⁶⁴ See Daniels, *supra* note 38 and note 59. On the general shortcomings of the US Department of Education's counseling, see Ron Lieber, "Student Loan Facts They Wish They Had Known," *New York Times*, May 1, 2015, http://www.nytimes.com/2015/05/02/your-money/things-they-wish-theyd-known-about-student-loans.html?ref=education&_r=0.

faculty/student ratio and teaching load), administrative salaries, and grants/scholarships in each time period.⁶⁵ Since the figures for instructional salaries cannot be disaggregated (they include all instructors and not just full-time, tenure-line faculty), no conclusions can or should be drawn from them regarding full-time, tenure-line faculty salaries as a significant cause.⁶⁶ Detailed data on these professors' salaries are not available. On the other hand, student/faculty ratios have decreased, meaning more instructors per student – something generally seen as good, but that increase costs.⁶⁷

Together instructional salaries, administrative salaries, and grants/scholarships consistently made up one-half of the total inflation-adjusted expenditures for both public and private schools. Generally speaking, instructional salaries and administrative salaries each made up a larger proportion of total expenditures in public schools compared to private schools and grant/scholarship money a smaller proportion.

The percentage of total expenditures for each of these three areas did not change significantly for private law schools, as Figure 10a shows – with only a slight decrease for instructional salaries and a slight increase for grant/scholarship money. For public law schools, Figure 10b shows a somewhat greater and consistent decrease in the percentage of total expenditures going to instructional salaries and a consistent increase of total expenditures going to grant/scholarship money. With few exceptions, for both public and private schools inflation-adjusted total expenditures per FTE were highest for G4 and G5 schools (the schools with higher tuitions).

⁶⁵ Data are available for fringe benefits only for 2012-13. They make up 10% of budget for private law schools and 11% for public law schools.

⁶⁶ Although there have been anecdotal reports of high salaries for a small number of full-time, tenure-line law professors at some schools, evidence presented to the Task Force using Bureau of Labor Statistics data on salaries show that inflation-adjusted median salaries for post-secondary law instructors (a category that includes law professors as well those teaching in other venues) have not increased; see Simkovic, *supra* note 39 at 27.

⁶⁷ See Simkovic, *supra* note 39 at 24.

Figure 10a. Trends in Major Areas of Private Law School Expenditure: Inflation-Adjusted (HEPI) per FTE

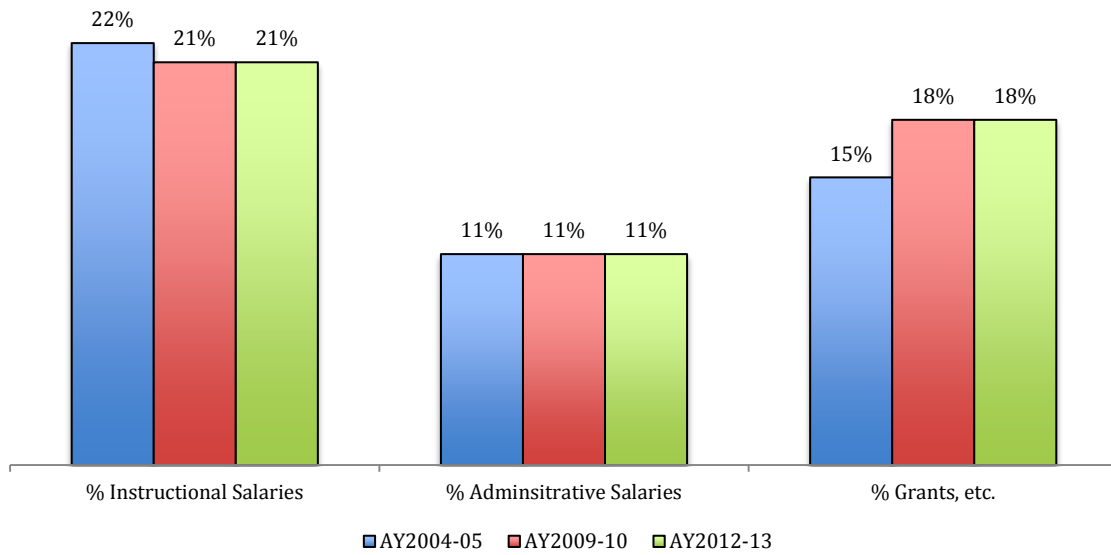
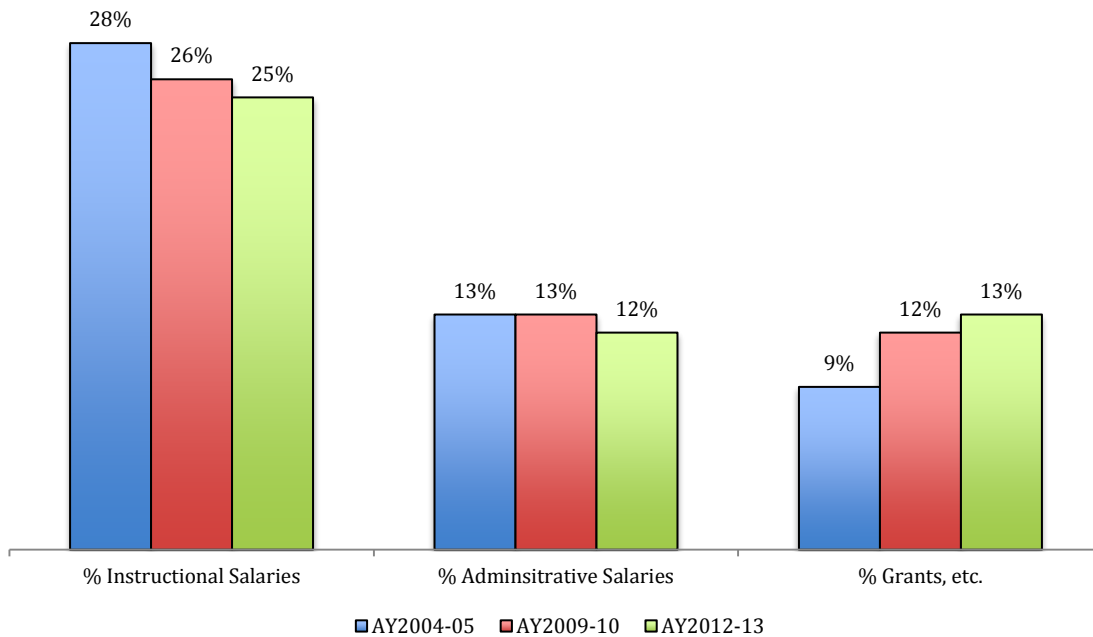
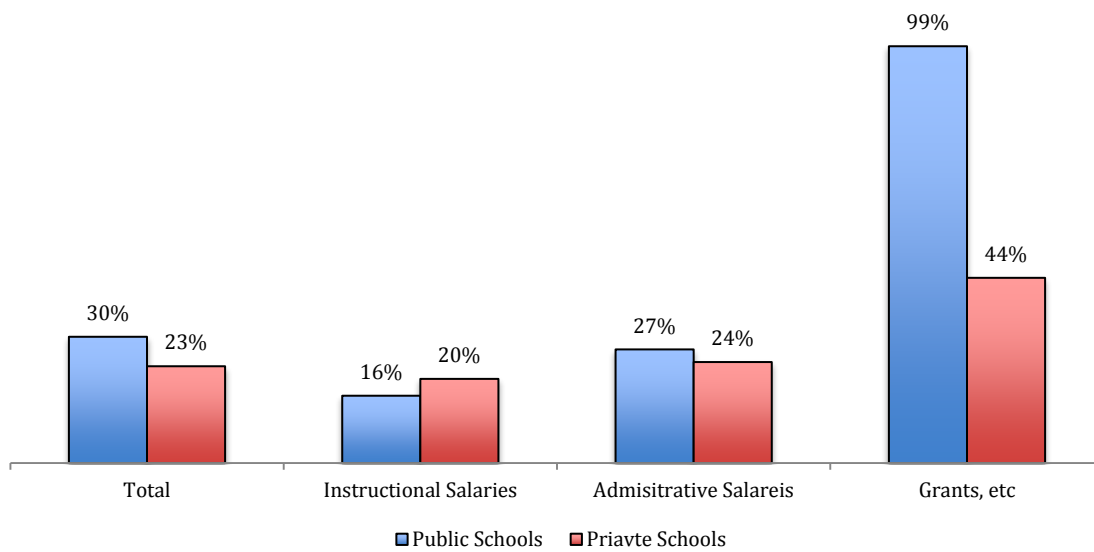


Figure 10b. Trends in Major Areas of Public Law School Expenditure: Inflation-Adjusted (HEPI) per FTE



The *amount* of inflation-adjusted expenditure per FTE has increased for both public and private schools, 30% and 23%, respectively as Figure 11 shows. The greatest increases in the amount of inflation-adjusted expenditure per FTE were for grant/scholarship money, especially for public law schools. Among public schools the smallest increase in grants/scholarships was 45% for G3 schools, the largest 77% for G4 schools. But in terms of absolute spending, G5 schools spent the most on grant/scholarship money. For private schools, G4 schools spent the most on grant/scholarship money. The next largest increase in expenditure was for administrative salaries for both public and private schools.

**Figure 11. Percent Increase in Major Areas of Expenditure:
Inflation-Adjusted (HEPI) FTE
(AY2004-05 to AY2012-13)**



The best available data on expenditures per FTE are for AY2012-13. A statistical analysis, which includes all areas of expenditure per FTE that accounted for at least 5% of total expenditures per FTE for both public and private schools, allows for at least a sense of the relative importance of each area for the total. Such an analysis (stepwise regression) shows how much of the variance in expenditures per FTE among schools is explained by any factor while controlling for the effect of other factors. In doing so, this method can tell us whether adding the effects of additional variable actually helps to explain more of the variance in total expenditure.

For public schools, the analysis shows the most important areas to be, in order, instructional salaries (again which take into account teaching load and faculty ratio), grant/scholarship money, and administrative salaries. Instructional salaries alone explain 68% of the variance among schools in total expenditures per FTE for all public schools. Adding grant/scholarship money explains a total of 86% of the variance, and adding

administrative salaries brings the amount explained to 89%. For private schools the order is different – instructional salaries alone explain 84% of the variance, adding administrative salaries explains 87%, and adding grant/scholarship money explains 89%. In short, to effect meaningful change in total expenditures it would be necessary to make changes in one or more of these three areas. Doing so would obviously involve hard, and potentially painful, choices.

V. Conclusion and Recommendations

1. Summary

As noted at the start of this report the charge of the Task Force on the Financing of Legal Education included a broad range of issues. Key among them are: the cost of legal education for students; the financing of and business model for law schools; student loans and educational debt; and law school practices regarding tuition discounting, merit-based grants/scholarships, and need-based grants/scholarships. These are important matters that cannot be ignored and that charge covers not only the examination of these issues but also, where possible, the development of constructive recommendations.

Through its hearings, meetings, and research efforts the Task Force has examined these and related issues. Its findings are clear. Tuition costs have increased beyond what would be expected from inflation, whether viewed in terms of an inflation adjustment made on the basis of the cost of doing business or the price to the consumer. (Again, for public schools we must keep in mind the decreases in state support.) Full tuition prices are not, however, the whole story. Tuition discounting may mitigate those increases. Discounting does occur, it is widespread, and it is increasing. This means fewer students are paying full tuition, with increasing monies going to students for merit rather than need.

Despite the increasing use of discounting, students are still paying more because inflation-adjusted net tuition (tuition taking the discount into account) has still been growing. Simply put, full tuition prices have increased at a greater rate than discounts. As a result, most students still borrow to help finance their legal education. And, the amount borrowed in inflation-adjusted dollars is increasing. That increase reflects the growth in inflation-adjusted net tuition *and* the accessibility of loan funds.

The current student loan programs assist students in financing their education and provide repayment options and plans that assure broad access to legal training. The federal government has become *the* lender for graduate school and professional school students through Grad Plus, which offers a variety of borrower-friendly repayment programs, some of which take income into account. Still, deciphering and successfully navigating those programs is a daunting process that can undermine a student's ability to take advantage of the benefits available.

The implications of these findings may lead people to gravitate toward some of the changes proposed to the Task Force by those who appeared before it. Among them

are capping law student loans, requiring law schools to have “skin in the game” by being responsible for loan repayment in certain situations, and even scrapping the current federal student loan program altogether (as one presenter urged). The hope with such proposals is that a kind of fiscal tough love will force schools to become more financially responsible and reduce cost. Proposals such as these deserve careful and serious analysis. But such analyses were beyond the time and resources of the Task Force, if for no other reason than the fact that these proposals involve the cost and financing of higher education more generally and not just legal education. Other proposed changes go in a different direction, like cutting the cost to the student by allowing a true two-year program with reduced credit hour requirements or by three-plus-three programs that allow students to enroll in law school after three years of college.

The implications of the Task Force’s findings strongly suggest, moving forward, the need to look beyond the usual changes proffered and to reconsider law school business models themselves in light of their relationship to the curriculum, its cost, its increasing reliance on discounting, its even heavier reliance on student loans for revenue, and the resultant student debt. In reality, there seems to be little need to impose the kind of tough love some want because the market is already doing it – in some instances brutally. Enrollments are declining and not just marginally. With those declines come the declines in the tuition dollars that fuel law school operations, and this is occurring at a time of more limited job prospects for many graduates. Some may not be surprised if schools seen as marginal by the “cognoscenti” start to teeter on the edge, but schools of all kinds are facing the challenge and many are grappling with the possible ways forward. Such a reconsideration will need to be a broad one including stakeholders in legal education, in the profession, and beyond.

A start on this reconsideration has already begun with the natural experiments already underway, and experimentation should be encouraged and fostered. As noted earlier, these are market-driven experiments that can include important curricular and pedagogical innovations. They are the incubators of new directions *and* an exacting market proving ground. Moving forward such experiments may well be the source of practical solutions and models, allowing others to see what can be done, how, and with what success. They can also show what may not work, and this is equally important.

The experiments must be watched closely and analyzed if they are to play a constructive role. Analyzing and evaluating these experiments must be done independently and outside of the ABA, and this might mean the development of one or more ongoing entities to research, share information, and regularly report on legal education. Importantly, the experiments, analyses, and evaluations must not lose track of the unique role played by the legal profession and the importance of access and diversity to that role.

2. Recommendations

From its work, the Task Force sees short-term and longer-term strategies moving forward.

A. Short-Term

Short-term strategies address more immediate issues. The first ones deal with the federal loan programs, which are the key to access to legal education.

It is obviously important that students who borrow student loans to fund their legal education be informed consumers. The United States Department of Education requires accrediting agencies it recognizes to require institutions that they accredit provide debt counseling at the outset of the program and again at graduation. The Council of the ABA Section of Legal Education and Admissions to the Bar, which is the recognized accreditor of J.D. programs, requires that counseling in its Standards (see ABA Standard 507). The Task Force understands that the counseling required is the minimum required by the rules.

In light of the complexities in the federal student loan program, the responsibilities students accept in borrowing for their education, and the amount of borrowing that students do to fund their legal educations, the Task Force recommends that the ABA encourage the Council to develop and adopt Standards requiring more of accredited law schools than the minimum debt counseling required by the U.S. Department of Education's requirements. An enhanced standard could require more of schools at the stage that students are applying for admission to law school, and ongoing efforts throughout a student's law school career.

Further, given the complexities of the loans and the various repayment programs that are in effect, the Task Force urges all actors in the student loan business, including law schools, to produce "plain English" versions of the terms and conditions of these programs in a user-friendly format.

Finally, the report has considered the importance of the Public Service Loan Forgiveness (PSLF) program as a means of encouraging and supporting students who elect to work in the public interest sector after graduation. The Task Force urges all actors—especially bar associations and educators – to continue to this program, as well. This is an important access to justice issue.

The second set of short-term recommendations deal with information related to the financing of legal education. In light of the Task Force's concern with the scarcity of data and in the interest of transparency, accountability, and better understanding the state of legal education and its challenges, the Task Force recommends that the American Bar Association Section of Legal Education and Admissions to the Bar, which collects and is the custodian of law school accreditation-related data, make that data public, and do so in an easily available spreadsheet format.

To further these purposes, the Task Force also recommends that the ABA Section of Legal Education and Admissions to the Bar return to annually collecting for each law school expenditure data – at the least for institutional salaries, administrative salaries, grants/scholarships, operational expenses like information technology and libraries, and where relevant university charges. The Task Force also recommends a return to collecting information on revenues – at the least JD tuition, non-JD tuition, gifts, endowment income, and where relevant state and/or local government contributions. The Task Force further recommends a return to collecting information on the amount and percentage of financial aid distributed by law schools based on need, merit, and a combination of both criteria.

B. Longer-Term

The longer-term strategies look to the reconsideration of law school business models and experimentation. The Task Force strongly encourages experimentation by law schools. Schools that undertake experimentation are the incubators of new directions that operate in an exacting market proving ground. The Task Force further recommends that schools seek appropriate variances from the Council and Section when needed and that the Council and Section give such requests serious and open-minded consideration.

Experimentation requires analysis and evaluation and the Task Force recommends the independent analysis and evaluation of these experiments by entities and researchers outside of the ABA. This may include the development of one or more ongoing entities to conduct research, share information, and regularly report on legal education. This research, among other things, should focus on what role increasing tuition – along with other factors including financial aid, debt, and job prospects – plays in students’ decisions to attend law school, not to attend, or to attend one school rather another. This research should also include special attention to diversity. The kind of research outlined here can provide a real-world meaning of affordability and what may be done to enhance it.

3. Outline of Recommendations

A. Proposed recommendations on debt counseling:

Encourage the Council of the ABA Section of Legal Education to mandate more than the minimum debt counseling now required by U.S. Department of Education regulation.

Encourage the development and publication of “plain English” disclosures about student loans and repayment options in a user-friendly format.

B. Proposed recommendations on data collection:

Encourage the ABA Section of Legal Education and Admissions to the Bar to make public the information on legal education it currently maintains and collects going forward (including the information below).

Encourage the ABA Section of Legal Education to return to annually collecting:

- Expenditure data for each law school;
- Revenue data for each law school; and
- Information on the amount and percentage of financial aid distributed by law schools based on need, merit, and a combination of both criteria.

C. Proposed recommendations on innovation:

The ABA Section of Legal Education and Admissions to the Bar should strongly encourage experimentation by law schools in finding new ways to balance sound curriculum, cost-effectiveness, and new revenue streams.

The ABA Section of Legal Education and Admissions to the Bar should strongly encourage schools to seek appropriate variances from the Council/Section when needed and that the Council/Section should give such requests serious and open-minded consideration.

The ABA Section of Legal Education and Admissions to the Bar should strongly encourage the independent analysis and evaluation of these experiments and this may include the development of one or more ongoing entities to research, share information, and regularly report on legal education.

If such research entities are established, they should pursue research on why students are or are not choosing to attend law school, with a special emphasis on diversity, to help assess the importance of cost, debt, tuition discounting, job prospects on those decisions, and with a special emphasis on diversity.

The Task Force's findings and conclusions paint a sobering picture and much to the Task Force's frustration offer no easy answers for the challenges facing legal education. Hopefully, the Task Force has added useful information to help focus and improve the discussion of issues at the heart of legal education's and the legal profession's future.

Appendix A

AMERICAN BAR ASSOCIATION TASK FORCE ON THE FINANCING OF LEGAL EDUCATION

Roster

DENNIS W. ARCHER, Chairman Emeritus, Dickinson Wright, Detroit MI [Task Force Chairperson]

LUKE BIERMAN, Dean and Professor of Law, Elon University School of Law, Greensboro NC

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JOSEPH K. WEST, President & CEO, Minority Corporate Counsel Association, Washington DC

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Consultant to the Task Force: Dr. Stephen Daniels, Senior Research Professor, American Bar Foundation, Chicago IL

Staff to the Task Force: Barry A. Currier, Managing Director of Legal Education and Accreditation, American Bar Association, Chicago IL

Appendix B

AMERICAN BAR ASSOCIATION TASK FORCE ON THE FINANCING OF LEGAL EDUCATION

Roster of Those Testifying or Submitting Formal Written Comments to the Task Force

NICHOLAS W. ALLARD, President and Dean, Brooklyn Law School, Brooklyn NY

HULET H. (BUCKY) ASKEW, Georgia State University College of Law [Formerly ABA Consultant on Legal Education, Atlanta GA]

PAULETTE BROWN, Locke Lord, Morristown NJ [President-Elect, American Bar Association]

OLYMPIA R. DUHART, Professor of Law, Nova Southeastern Law School, Fort Lauderdale FL [on behalf of the Society of American Law Teachers]

WILLIAM C. HUBBARD, Nelson Mullins Riley & Scarborough, Columbia SC [President, American Bar Association]

MATTHEW KERBIS, Chairperson d(2013-2014), American Bar Association Law Student Division, Chicago IL

ROBERT KEUHN, Associate Dean and Professor of Law, Washington University Law School, St. Louis MO

MATT LEICHTER, Founder and Author, Law School Tuition Bubble

JAMES MANNING, Law Student Division Member (2013-2014), American Bar Association Board of Governors, Charlottesville VA

KYLE McENTEE, Founder and Executive Director, Law School Transparency

DANIEL B. RODRIGUEZ, Dean and Harold Washington Professor of Law, Northwestern Law School [President, Association of American Law Schools, 2013-2014]

JAMES J. SANDMAN, President, Legal Services Corporation, Washington DC

ANITA C. SHAPIRO, President, Practising Law Institute, New York NY

HON. RANDALL T. SHEPARD, Chief Justice (ret.), Indiana Supreme Court [Chair, ABA Task Force on the Future of Legal Education]

MICHAEL SIMKOVIC, Associate Professor of Law, Seton Hall Law, Newark NJ

AARON SOHASKI, Chairperson (2014-2015), American Bar Association Law Student Division, Toledo OH

LEONARD P. STRICKMAN, Professor of Law and Founding Dean Emeritus, Florida International University College of Law, Miami FL

DAVID YASSKY, Dean, Pace University Law School, White Plains NY

Appendix C



FEDERAL STUDENT LOANS:

Repayment 101

How do I determine my
loan repayment strategy?

What repayment plans
are available?

What repayment tools
will help me navigate
tough financial times?

What is the best plan
for me?



Visit AccessGroup.Org for more useful information and tools.

Table of Contents

| | |
|----------|--|
| 1 | Federal Student Loan Repayment Strategy |
| 2 | Federal Repayment Plans |
| 2 | <i>Standard 10 Year</i> |
| 2 | <i>Graduated 10 Year</i> |
| 3 | <i>Extended (Fixed) 25 Year</i> |
| 3 | <i>Extended (Graduated) 25 Year</i> |
| 4 | <i>Income-Contingent Repayment (ICR)</i> |
| 4 | <i>Pay As You Earn (PAYE)</i> |
| 5 | <i>Income-Based Repayment (IBR)</i> |
| 6 | About Loan Consolidation |
| 7 | Other Repayment Options |
| 8 | Loan Repayment and Budget Calculator |

Determine Your Repayment Strategy

Selecting the repayment plan that meets your needs requires the right strategy. When determining that strategy, consider these steps:

STEP 1 Know what you borrowed, your loan servicer(s), and the current status of each loan

- Visit the National Student Loan Data System (NSLDS) for a listing of your Federal loans, and to identify the entity that services each of your loans: www.NSLDS.ed.gov.
- Check your credit report or consult your financial aid office to identify private education loans you may have outstanding. Private education loans will have different repayment terms than the Federal student loans described in this booklet.
- Confirm with your loan servicer(s) when you must begin repayment of your student loan. The length of the “grace” period – the time during which you are not required to make payments – will vary with each loan.

STEP 2 Determine your repayment objective

- Your repayment strategy may change over time. Re-evaluate your strategy periodically to ensure it meets the needs of your current circumstances and long-term goals.
- Examples of repayment strategies:
 - Minimize payments to maximize cash
 - Aggressive repayment to minimize the impact of interest capitalization and to reduce your total repayment amount, or the amount of time you spend in repayment
 - Qualify for Public Service Loan Forgiveness
 - Increase convenience by having one loan servicer

STEP 3 Select a repayment plan that best meets your objective(s)

- Visit AccessGroup.Org or StudentLoans.Gov for a loan repayment calculator that will allow you to estimate your monthly and total repayment amounts under each of the Federal loan programs.
- Do not wait till your loan is delinquent or in default to ask for help, or to select a repayment plan. Numerous options are available to help you meet your obligation responsibly.
- Remember, while loan repayment calculators are useful tools, only your loan servicer(s) can provide you the amount you will owe each month.
- Also, keep in mind that you can always switch your repayment plan if your loan repayment objective changes.
- There are no penalties for prepaying Federal student loans, but you will want to specify to your loan servicer how you would like additional payments to be applied (i.e., if you want extra payments to be applied to loan principal or to advance your monthly due date).

Learn more at AccessGroup.Org

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1

Federal Repayment Plans, Explained

Standard Repayment

Federal student loan borrowers are automatically placed into the Standard Repayment plan if a different plan is not selected.

Under the Standard Repayment plan, the term is ten years, or 120 monthly payments. The payment amount is the same each month, and must be at least \$50.

REPAYMENT TIMELINE
STANDARD 10 YEAR



Keep in mind that under the Standard Repayment plan, payments will be higher than other repayment plans, but this plan also allows you to fulfill your loan obligation the fastest, and could save you money in interest payments over time compared to other, longer repayment plans. Under the Standard Repayment plan, there is no negative amortization – a situation that occurs when payments on a loan are less than the interest that accrues.

Graduated Repayment

Borrowers utilizing Graduated Repayment also have a ten year repayment plan. However, under Graduated Repayment, monthly payments start lower and subsequently increase by designated amounts at designated intervals – typically every two years. Initial lower payments result in higher overall repayment costs when compared to Standard Repayment. Under this plan, there is no negative amortization.

REPAYMENT TIMELINE
GRADUATED 10 YEAR



In addition, no single payment can be more than three times greater than any other payment. For instance, if your interest-only loan payment is \$50, but your payment will increase to \$151 once interest and principal are included, you would not be eligible for this plan.

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Extended (Fixed) Repayment

Under the Extended Repayment plan, borrowers have a fixed or graduated option. Under the fixed option, borrowers have a repayment plan of 25 years, or 300 monthly payments. Monthly payments are the same amount each month. Borrowers considering this option should be aware that lower payments over an extended timeframe result in higher overall payment costs when compared to Standard Repayment. Under the Extended (Fixed) Repayment plan, there is no negative amortization.



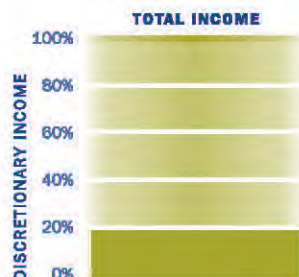
Extended (Graduated) Repayment

Under the graduated option, borrowers also have a repayment term of 25 years, or 300 monthly payments. However, payment amounts will vary throughout this period. Under the graduated option, monthly payments start lower then increase by designated amounts at designated intervals. Borrowers should be aware that lower payments over an extended timeframe result in higher overall payment costs. Under this plan, there is no negative amortization.



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**Income-Contingent
Repayment (ICR)**

Under ICR, Direct Loan borrowers pay the lesser of: 1) 20 percent of their discretionary income; OR 2) the total cost of the loan plus interest, evenly divided over a 12-year period, adjusted according to your income.

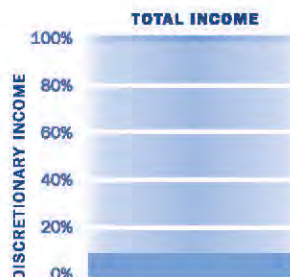
Negative amortization allowed.

REPAYMENT TIMELINE

Loans may be forgiven in at least ten years for borrowers eligible for Public Service Loan Forgiveness (PSLF) and in 25 years for all other borrowers using ICR. While loan forgiveness is not subject to Federal tax under PSLF, you may have to pay income tax on the amount that is forgiven under ICR.

Learn more at AccessGroup.Org

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INCOME-DRIVEN**Pay As You Earn (PAYE)**

Under PAYE, borrowers pay the lesser of 1) 10 percent of discretionary income; OR 2) the total cost of the loan plus interest, evenly divided over a 20-year term.

To be eligible for PAYE, you must be a new Direct Loan borrower as of October 1, 2007, and must have received a disbursement on a Direct Loan on or after October 1, 2011.

Also, you must demonstrate a partial financial hardship. Under PAYE, this means that the annual amount due on your eligible loans, as calculated under a Standard Repayment plan, exceeds 10 percent of the difference between your adjusted gross income (AGI) and 150 percent of the poverty line for your family size in the state where you live.

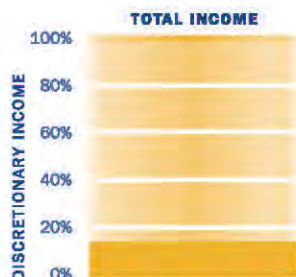
Negative amortization allowed.

REPAYMENT TIMELINE

Loans may be forgiven in at least ten years for borrowers eligible for PSLF and in 20 years for all other borrowers using PAYE. While loan forgiveness is not subject to Federal tax under PSLF, you may have to pay income tax on the amount that is forgiven under PAYE.

REPAYMENT PLANS

Income-Based Repayment (IBR)



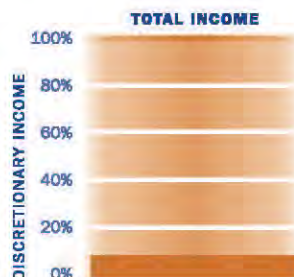
If you borrowed before July 1, 2014, your payment will be the lesser of: 1) 15 percent of discretionary income; OR 2) the total cost of the loan plus interest, evenly divided over a 10-year repayment term.

To be eligible for IBR, you must demonstrate partial financial hardship. For IBR this means that the annual amount due on your eligible loans, as calculated under a Standard Repayment Plan, exceeds 15 percent of the difference between your adjusted gross income (AGI) and 150 percent of the poverty line for your family size in the state where you live.

Negative amortization allowed.



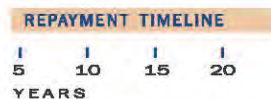
Loans may be forgiven in at least ten years for borrowers eligible for PSLF and in 25 years for those using IBR who borrowed before July 1, 2014. While loan forgiveness is not subject to Federal tax under PSLF, you may have to pay income tax on the amount forgiven under IBR.



If you are a new Direct Loan borrower on or after July 1, 2014, your payment will be the lesser of: 1) 10 percent of discretionary income; OR 2) the cost of the loan plus interest, evenly divided over a 10-year period.

To be eligible for IBR, you must demonstrate a partial financial hardship. For IBR this means that the annual amount due on your eligible loans, as calculated under a Standard Repayment Plan, exceeds 10 percent of the difference between your adjusted gross income (AGI) and 150 percent of the poverty line for your family size in the state where you live.

Negative amortization allowed.



Loans forgiven in at least ten years for borrowers eligible for PSLF and in 20 years for those using IBR who borrowed on or after July 1, 2014. While loan forgiveness is not subject to Federal tax under PSLF, you may have to pay income tax on the amount forgiven under IBR.

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About Loan Consolidation

A consolidation loan is not for everyone, but it may be useful for borrowers wishing to combine multiple Federal education loans into one new loan with single monthly payments. During consolidation, one or more Federal student loan(s) that you consolidate are paid in full and are replaced with a single new loan.

In general, newly issued Federal consolidation loans:

- Will be made through the U.S. Department of Education which serves as the lender of all new Federal consolidation loans
- Are available after you graduate, leave school, or drop below half-time enrollment
- Allow you to choose your servicer
- Allow you to prepay your loan at any time without penalty
- May not include Parent PLUS loans
- Carry an interest rate based on the weighted average of the interest rates on the loans being consolidated, rounded up to the nearest one-eighth of one percent
- Have repayment terms up to 30 years
- Are not available to borrowers in default
- Cannot consolidate private education loans into a Federal consolidation loan

While consolidation can simplify repayment and allow for lower monthly payments, it typically increases the length of time your loan(s) is in repayment – which means you will pay more in interest over the life of a consolidation loan.

As a result, carefully consider what consolidation will mean to you financially in the near- and long-term. Consider answering the following questions before consolidating:

- Will consolidation result in a higher interest rate than what I currently pay?
- Will consolidation result in the loss of a grace period?
- Will I lose any borrower benefits offered with the original loans?
- How much more will I pay over the life of a consolidation loan than had I not consolidated?
- Will I lose the subsidized status, or any loan forgiveness options, of any Perkins loan(s) that may be included in the consolidation?

Know the pros and cons of consolidation before agreeing to this loan. Also, should you decide that consolidation is in your best interest, keep detailed financial records and document the entire application process.

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Other Repayment Options

Deferment

A deferment is a period during which repayment of the principal and interest of your loan is temporarily delayed. A borrower utilizing this tool will be considered to be in “good standing” on their loan obligation (i.e., not delinquent or in default).

Deferments are not automatic, and you will likely need to submit a request to your loan servicer. If you are enrolled in school at least half-time and you would like to request an in-school deferment, contact your school’s financial aid office as well as your loan servicer.

Deferment application forms should be available on your loan servicer’s website. If you do not know which entity services your loan(s), visit the National Student Loan Data System at www.NSLDS.ed.gov to identify the entity that services your loan(s).

The Federal government may pay the interest on your loan(s) during a period of deferment if it is a Federal Perkins or subsidized loan, but it will not do so for unsubsidized or PLUS loans. You can pay the interest during a deferment or you can allow the interest to accrue (accumulate). If you decide not to pay the interest on your loan during deferment, should you be required to pay interest, it will be capitalized (added to your principal balance), and the amount you pay in the future will be higher.

Forbearance

If you are experiencing difficulty making your scheduled loan payments, but do not qualify for a deferment, your loan servicer(s) may be able to grant you a forbearance.

With a forbearance, you may be able to stop making payments or reduce your monthly payment for up to 12 months.

Receiving a loan forbearance is not automatic, however. You must apply by making a request to your loan servicer. Forbearance application forms should be available on your loan servicer’s website. In some cases, you may be required to provide documentation to support your request.

Before utilizing forbearance, be aware that interest will continue to accrue on your subsidized and unsubsidized loans (including all PLUS loans). You can pay the interest during forbearance or allow the interest to accrue (accumulate). If you choose not to pay the interest on your loan during forbearance, it may be capitalized (added to your principal balance), and the amount you pay in the future will be higher.

You MUST continue making payments on your student loan until you have been notified that your request for a deferment or forbearance has been granted. If you stop paying and your deferment or forbearance is not approved, you will become delinquent and you may default on your loan.

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Utilize Access Group's Loan Repayment and Budget Calculator

To help you assess your financial situation and pick the repayment plan you believe best meets your needs, Access Group has available a loan repayment and budget calculator.

This tool will allow you to make informed decisions about borrowing and your budget – before, during and after graduate school.

Access Loan Manager for a **Prospective Graduate Student**

[Back](#)

Start by letting us know more about the program you're interested in.

I would like to attend a

year

Law (JD, LL.M, LL.M., SJD) **program at**

Your School Name

[CONTINUE](#)

- 1. Select Repayment Plan
- 2. Calculate Repayment
- 3. Access Loan Manager
- 4. Income & Budgeting
- 5. Grants & Scholarships
- 6. Remaining Budget

Be sure to bookmark this tool, and visit it throughout your educational journey:

AccessGroup.Org/calculator#.



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Appendix D

AMERICAN BAR ASSOCIATION TASK FORCE ON FINANCING LEGAL EDUCATION

**Separate Statement by Luke Bierman
Dean
Elon University School of Law**

I agree with the import of and statements in the reports of the Task Force and its members; certainly I am in sufficient agreement to concur in them and hope they are helpful. I write separately merely to note that while contemporary concerns about financing legal education warrant the attention it receives here, there are fundamental issues that require significant attention from the profession if we are to be true to our calling as a self-governing profession with special public responsibilities for now and for the future.

Law schools can't fulfill their missions and be successful without students. And students are not going to matriculate to law school if the legal profession does not provide opportunity for a meaningful career. The academics, practitioners and judges who comprise the legal profession must recognize and embrace that we are passing through a moment in time defined by rapidly changing social, cultural and economic norms that present challenges to the continued vitality if not relevance of our profession. The pace of technological innovation alone creates legal uncertainties and controversies that we barely can distinguish let alone solve in real time. Our profession must honestly and creatively embrace the challenges attendant this transformative moment to identify and preserve values core to our role in society as the shepherds of the rule of law while concomitantly adapting to a new era. From this perspective, it may actually be a wonderful time to go to law school and join a generation that must forge new paths and new opportunities. It remains, then, for our profession to accomplish this reset in a forthright and productive manner, which will do more to help law schools than any prescriptions by any task force anywhere.

**AMERICAN BAR ASSOCIATION
TASK FORCE FOR FINANCING LEGAL EDUCATION**

**Separate Statement of Philip G. Schrag
Delaney Family Professor of Public Interest Law
Georgetown University Law Center**

The Task Force has done a remarkable job of pulling together a large amount of data in a short period of time. Its staff consultant, Stephen Daniels, deserves our deep appreciation for the enormous amount of information that he collected and the analyses that he performed.

This is not a dissent from the report, but I write separately to highlight what I think is new and particularly important in it, to emphasize the point made in the report about the limitations of currently available information, and to put the issue of the cost of legal education into the larger framework of the nation's need for legal services.

What is new

The report clarifies that although the cost of law school has been rising, it has not been rising nearly as fast as some have thought. The single largest factor in law school tuition increases has been an increase in financial aid, particularly so-called merit-based aid. Many students receive discounted tuition through scholarships and grants. Net tuition is much, much less than the advertised tuition. It is appropriate, therefore, to evaluate the rate of increase of net rather than advertised tuition. The report of the Task Force does that, finding that private law schools discount tuition, on average, by 25%, and public law schools do so, on average, by 28%. In addition, as the report notes, a comparison of rates over several years requires using inflation-adjusted numbers. Comparing inflation-adjusted net tuition rates over a period of years shows a much more modest rate of increase in law school tuition than comparing dollar amounts of advertised rates over the same period.¹

The report also confirms that there has been a drastic shift in recent years from needs-based aid to merit-based aid, as many schools use financial aid to attract the best possible students. Testimony to the Task Force disagreed as to whether this is a good thing or a bad thing, and that may depend on whether the frame of reference is the school or the nation. Some, focusing on a particular school, say that it is immoral, for it means that the most apparently able students (those with the highest LSAT scores and grade point averages) pay less than those with lower scores and grades, so those less likely to succeed in later life are subsidizing those who are more likely to succeed. Some go further and suggest that those from less privileged backgrounds are less likely to have outstanding college grades and LSAT scores, so the poor may be subsidizing

¹ Net private school tuition increased by only one percentage point on an inflation-adjusted basis from 2009-10 to 2013-14. The market seems to be responding to decreased demand for legal education.

the well off.² Others, focusing on the educational system as a whole, say that using financial aid to attract talented students is a good thing, because it means that a student who could be admitted to a highly competitive school without financial aid might well obtain a full-tuition scholarship at a less competitive school.

Additionally, the report appropriately draws attention to the importance of federal student loan programs in making it possible for the United States to have a diverse supply of lawyers to meet the legal needs of the public. Without federal loans, students would have to borrow commercially to attend law schools, or their families would have to support them. Private borrowing would tend to exclude those from lower-income families, particularly because most private lenders would require credit-worthy co-signers. Less credit-worthy borrowers would also pay higher interest rates than those who can supply collateral or recruit wealthy co-signers. Requiring families to support their law student offspring would soon produce a legal establishment limited to the wealthy or near-wealthy.

What we still don't know

Jobs

Entry level hiring by the large law firms decreased after the recession that started in 2008, at least for the short term. We do not know when or whether that market will rebound. But only about 16% of lawyers work in large firms. It is less clear that opportunities for lawyers in small firms or in solo practice have diminished substantially, or if they have, for how long. Some rural areas have such a great need for more lawyers that they are willing to subsidize the practice of lawyers willing to move there.³

Also, the baby boom generation is nearing retirement age, and it is possible that in a few years, there will be more jobs, even in urban markets, than lawyers available to fill them. We do not know whether the widely publicized reduction in the market for lawyers is overstated because of the high visibility of large corporate firms, or whether it is permanent. The Bureau of Labor Statistics, however, suggests that starting in 2016, the number of new jobs for lawyers (41,460 per year) will be greater than the number of annual law graduates.⁴

² A frequently cited study argues that the LSAT (as opposed to college grades) disadvantages racial minorities. See, e.g., William C. Kidder, Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?: A Study of Equally Achieving "Elite" College Students, 89 Calif. L. Rev. 1055 (2001). If that study is valid, strong reliance on LSAT scores in awarding scholarships would cause minority students to subsidize non-minority students.

³ Debra Cassens Weiss, South Dakota lures lawyers to rural areas with annual subsidies, ABA Journal, April 9, 2013, http://www.abajournal.com/news/article/south_dakota_lures_lawyers_to_rural_areas_with_annual_subsidies

⁴ Debra Cassens Weiss, Are 2016 law grads in luck? New stats say lawyer jobs will exceed graduates that year, ABA Journal, Nov. 19, 2014, http://www.abajournal.com/news/article/are_2016_law_grads_in_luck_new_stats_say_lawyer_jobs_will_exceed_graduates_that_year

In addition, it is worth noting that the standard measurement of law graduate employment now is the proportion of a school's new graduates who are employed on a full-time basis ten months after graduation. But given that many employers don't want even to consider a job applicant who has not yet been admitted to a bar, and that admission may not occur until eight or more months after graduation, the ten month number may not give us a good picture of longer-term employment prospects. Furthermore, some of the critics of legal education only count jobs for which a law degree is required, although many graduates prefer or are satisfied with jobs in business or government for which a law degree is helpful but not a prerequisite. The third wave of the After the JD study shows that twelve years after graduation, lawyers are earning, on average, more than \$100,000.⁵ We cannot know whether that will be true for lawyers graduating after the market readjustment of 2008.

Law school enrollment

Are law schools turning out too many lawyers right now? Possibly. But in the internet age, information about the challenging market for lawyers has disseminated at warp speed. So as the report notes, starting in 2010, law schools experienced a sharp decline in the number of those who applied or enrolled. This seems to be a problem to which the market is now responding as it would in any industry with a shrinking customer base. Nearly every law school is grappling with how to react.

Some are deciding to downsize by taking fewer students to maintain educational standards and by laying off staff or faculty to adjust to lower revenues. Others are maintaining their size by admitting students who in past years would not have met their standards. Some are trying to wait out the storm, temporarily subsidized by universities to which in previous years they made generous financial contributions. And some may have to merge or close. We do not know whether the reduction in the number of law school applicants is a long-term trend, or whether it is now bottoming out.

Drivers of increased costs of legal education

It would have been wonderful if the Task Force could have ascertained *why* the cost of law school has risen during the past ten years. To what extent has the increase been due to costs beyond the control of the schools, such as their contributions to health care premiums for their employees and students, or required contributions to support their universities? To what extent was it due to fancy new buildings, extravagant salaries paid to superstars to impress those who are surveyed by *U.S. News*, or excessive layers of administration? Unfortunately, the Task Force was unable to obtain law school budget data that could break down the specific components of the cost increase. We were able to reach conclusions only in broad terms (e.g., that the largest cost drivers were scholarships, instructional salaries, and administrative salaries). We were

bs.will.exceed.graduates/?utm_campaign=weekly_email&utm_source=maestro&job_id=141119AS&utm_medium=email

⁵ American Bar Foundation and NALP, *After the JD III, Third Results from a National Study of Legal Careers* (2014).

unable to make finer gradations, such as the contribution to the increases as a result of increased health insurance charges, student services such as career offices, or the debt service on new buildings.

It was impossible to obtain this information, and it likely will be impossible to do so in the future, for several reasons. First, every law school uses different categories for its internal accounting purposes. Second, it would be burdensome (and costly) for law schools to conform their accounting systems to some standard method and to collect and report detailed information to the American Bar Association. Third, perhaps for that reason, the American Bar Association recently stopped requiring law schools to report cost data on an annual basis.

On the other side of the economic equation, to what extent have increased costs been matched by genuine increases in the quality of the students' education, and corresponding gains to their future clients? Since 1979, faculty-student ratios have fallen from 30 to 1 to 14 to 1, making it possible for many more students to learn in seminars, to have their writing critiqued carefully by professors, to participate in clinics in which they obtain the skills so desired by employers and judges, and to obtain the specialized education that many employers and clients desire.⁶

To take but one example, it is in the public interest for many disputes to be settled by negotiation rather than by litigation. Therefore many law schools have added courses in negotiation to their curricula. But negotiation is best taught in very small groups, so that the professor can assign simulation exercises to the students and observe and provide feedback on their conduct. It is therefore more expensive to teach such a course than to teach a lecture class of 100 students. Or to take another example, because of globalization, many small business clients now have legal problems that require their lawyers to understand international law and the law of other countries, so law schools have had to add to their offerings in these areas.

In addition, expensive technological systems have improved legal education, and valued student services such as career services offices and financial aid counseling offices have multiplied. Have the increased costs been matched sufficiently by more successful professional development and better education? Are lawyers, as a result, delivering more competent or more efficient services? These questions were beyond the ability of the task force to answer.

Legal services for the nation: are J.D. degrees the only answer?

Much of the discussion of the cost of legal education has concerned whether it is affordable to the students who attend law schools. Of course the students' future well-being is important, and ever-increasing debt loads threaten that well-being. But in my view, the purpose of law schools is not simply to enable students to have satisfying careers; it is to provide highly educated

⁶ The 30:1 to 14:1 change in ratios pertains to law schools with at least 700 full-time equivalent students; the corresponding ranges are from 27:1 to 14:1 for schools with 500 to 699 students, and from 25:1 to 14:1 for schools with 300 to 499 students. Data presented by Prof. Michel Simkovic to the Task Force at its August, 2014, meeting, based on data from the ABA Section on Legal Education and Admissions to the Bar.

practitioners and policy-makers to serve the public. Not enough attention is being paid to whether the increasing cost of legal education will have adverse effects on public service.

Costs that increase modestly from year to year, as in the recent past, are unlikely to have substantial impact on large corporations or very wealthy individuals who use lawyers for many tasks. These clients will continue to be able to afford to pay high fees for the excellent legal services that they will receive.

But the legal needs of ordinary people, particularly lower-income individuals, are already largely unmet.⁷ The high cost of debt service for legal education contributes to the inability of lawyers to provide services to such persons at prices that they can afford.⁸

Some law graduates decline the opportunity to serve the highest-paying clients, preferring to work for less well-off members of the public, or for unpopular causes. Generally, they earn much less money than their counterparts in large firms. Law schools can help to alleviate the burdens on these graduates through their own loan repayment assistant programs (LRAPs). LRAPs are an efficient method of providing scholarship assistance, because unlike scholarships paid to entering students, they are targeted to those who make less money after graduation, or to those graduates who choose public service as a career.

But the legal needs of the public probably cannot be met only by graduates of three-year law schools.⁹ And they need not be. Many of those needs involve services that require specialized training, but not necessarily three years of such training. For example, tenants threatened with eviction, spouses seeking divorces where scant property and no children are involved, and individuals needing simple wills do not need to be represented by people who have had courses in federal courts or international arbitration. Their advocates do need some legal training, including specialized training in the tasks that they are to perform, but they do not need J.D. degrees.

There is, of course, no direct correspondence between the wealth or income of a client and the complexity of the problems that the client faces. Some legal problems of wealthy clients are

⁷ American Bar Association, *Legal Needs and Civil Justice: A Survey of Americans* (1994), <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/legalneedstudy.authcheckdam.pdf>; Legal Services Corp., *Documenting the Justice Gap in America* (2009), http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

⁸ At present, the burden on law graduates who borrowed for their legal education is ameliorated by income-driven repayment plans and, for those serving the poor through legal aid and public defender offices and other institutions, by the Public Service Loan Forgiveness (PSLF) Program. But in recent years, the current income-driven repayment “Pay As You Earn”) plan and PSLF have been criticized in several articles and blogs, and their future depends on their not being cut back by the United States Congress.

⁹ For a careful elaboration of this point, see Gillian Hadfield, *The Cost of Law*, 38 *Int’l J. of Law and Economics* (Supplement) 43 (2014), <http://www.sciencedirect.com/science/article/pii/S014481881300063X>.

simple and do not require the services of a person with a J.D. degree. Some legal problems of low income clients are so complex that a service provider needs not only a J.D. but a great deal of additional tutelage in order to handle them competently. Immigration problems are often of that nature, because the book-length Immigration and Nationality Act and its even longer regulations are so dauntingly complicated.

Nevertheless, it would be possible to create a state licensing system through which individuals with specialized legal training, but not a full-fledged law degree, would be permitted to provide particular types of legal services, commensurate with their training, to the public. Washington State has already taken a step in this direction with its system for Limited License Legal Technicians.¹⁰

Law schools can provide a useful service by contributing to the training of such non-lawyer experts. In fact, Washington State requires its Technicians to have taken 45 credit hours of core curriculum courses at a law school or paralegal program approved by the American Bar Association and additional course credits in the specialized areas in which they will practice.¹¹ Although Washington State does not require that Technicians receive a post-college degree, law schools could offer a one-year or eighteen month Master of Legal Studies degree to help educate and credential limited-service professionals at a fraction of the cost of a full J.D. degree. Such programs would be both beneficial to the public and very consistent with the experimentation that this Task Force recommends.

¹⁰ See Washington State Bar Association, Limited License Legal Technicians, <http://www.wsba.org/licensing-and-lawyer-conduct/limited-licenses/legal-technicians>.

Washington State also amended its Rules of Professional Conduct not only to permit limited practice by the new Technicians but also to permit them to share fees with lawyers and have minority ownership of law firms in which they work. Wash. St. R.P.C. 5.9.

¹¹ Washington State Bar Association, LLLT Education and Application Process, <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians/LLLT-Education-and-Application-Process>.