

**DRAFT REPORT AND RECOMMENDATIONS  
AMERICAN BAR ASSOCIATION  
TASK FORCE ON THE FUTURE OF LEGAL EDUCATION  
September 20, 2013**

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**NOTICE**

**This is one of a series of working documents created in the course of the Task Force's deliberations. It is neither the final report of the Task Force Report nor a document that reflects the policy of the American Bar Association.**

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**OVERVIEW**

The American legal profession, the nation's law schools, the American Bar Association, the states' Supreme Courts, and others have collaborated over several generations to create a system of legal education widely admired around the world. The system is decentralized, involves both private and public actors, and is grounded in the J.D. programs of ABA-approved law schools. At present, the system faces considerable pressure because of the price many students pay, the large amounts of student debt, consecutive years of sharply falling applications, and dramatic changes, possibly structural, in the jobs available to law graduates. These have resulted in real economic stresses on law schools, damage to career and economic prospects of many recent graduates, and diminished public confidence in the system of legal education. The predicament of so many students and recent graduates who may never procure the sort of employment they anticipated when they enrolled in their law schools has been particularly compelling.

The Task Force on the Future of Legal Education has been charged to examine current problems and conditions in American legal education and present recommendations that are workable and have a reasonable chance of broad acceptance. This draft Report and Recommendations constitutes the conclusions of the Task Force about the problems and their potential solutions.

**A. *Key Conclusions***

Some highlights of the conclusions reached in this Report and Recommendations are the following:

- *Pricing and Funding of Legal Education:* Law schools are funded through a complex system of tuition revenue and non-tuition sources such as endowment income and state subsidies. Law school pricing practices are also complex, and involve extensive discounting and reliance on loans. A currently widespread practice is for a school to announce nominal

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tuition rates, and then chase certain high LSAT/GPA students by offering substantial discounts (styled as scholarships) without regard to financial need. Other students, by contrast, receive little if any benefit from discounting and must rely extensively on borrowing to finance their education and various federal programs make such loans virtually open-ended. One result is that students whose credentials are the weakest incur large debt in order to sustain the school budget and enable higher-credentialed students to attend at little cost. Many of these less credentialed students also have lower potential return on their investment in a legal education. These practices are in need of serious re-engineering.

- *Accreditation:* The system of accreditation administered by the ABA Section of Legal Education and Admissions to the Bar has served the profession and the nation well. Today, however, it reinforces a far higher level of standardization in legal education than is necessary to turn out capable lawyers. The ABA Standards for Approval of Law Schools also impose certain requirements that increase costs without conferring commensurate benefits. The Task Force concludes that the Standards would better serve the public interest by enabling more heterogeneity in law schools and by encouraging more attention to services, outcomes, and value delivered to law students. The Task Force thus recommends that a number of the Standards be repealed or dramatically liberalized.
- *Innovation:* The ABA accreditation system should also better facilitate innovation in law schools and programs of legal education. The current procedures under which schools can seek to vary from ABA Standards in order to pursue experiments are narrow and confidential. The Task Force recommends that the Section use the variance system energetically as an avenue to foster experimentation by law schools and open the variance process and results to full public view.
- *Skills and Competencies:* The principal purpose of law school is to prepare individuals to provide law-related services. This elementary fact is often minimized. The profession's calls for more attention to skills training, experiential learning, and the development of practice-related competencies have been well taken. Many law schools have expanded such opportunities for students, yet, there is a need to do much more. The balance

between doctrinal instruction and focused preparation for the delivery of legal services needs to shift still further toward developing the competencies required by people who will deliver services to clients.

- *Broader Delivery of Law-Related Services:* The delivery of law-related services today is primarily by lawyers. These services may not be cost-effective for many who are in need of them, and some communities and constituencies lack accessible legal services. State supreme courts, state bar associations, and admitting authorities should devise new or improved frameworks for licensing providers of legal services. This should include licensing persons other than holders of a J.D. to deliver limited legal services, and authorizing bar admission for people whose preparation may be other than the traditional four-years of college plus three-years of classroom-based law school education. The current lack of access to legal advice of any kind that exists across the country requires such innovative steps.

Other conclusions are described in the body of the Report and Recommendations.

### ***B. The Nature of This Report and Recommendations***

The Task Force faced three substantial challenges in carrying out its work. *First*, this document had to be prepared and submitted quickly. The urgency of the problems, and the serious threats to public confidence, demanded rapid action. Thus, the Task Force set a goal of approximately one year to complete all its work. This necessarily constrained its ability to gather information, test hypotheses, and vet recommendations with interested parties.

*Second*, while there are many current problems relating to legal education, the most important include ones not susceptible to any quick fix. Two of the most profound are the *price* of legal education and the *culture* of law schools. Regarding price—in particular its relentless increase—there is no simple and easy solution. The dynamics of price are strongly affected by the financing of legal education, the cost structure of law schools, and the nature of the market for legal education. They are in some respects forces that challenge the larger field of higher education. These are complex and interconnected, and piecemeal solutions are ineffective. Similar limitations govern the problem of culture. The culture of law schools is at the root of many aspects of current conditions. It is a culture of customs and practices that developed when decision-making involved consideration of modest changes that could be implemented over relatively long time frames. Today's challenges require a much stronger culture of innovation. Yet culture cannot be changed through

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prescription. It can only change over time, by influencing attitudes and behaviors to create a positively reinforcing cycle.

*Third*, the Task Force had to develop a framework for presenting its findings and recommendations to ensure a reasonable chance of influencing action. This called for balancing competing goals: of articulating hard truths while building wide endorsement of them; of proposing clear, and not always popular, courses of action for various participants in the legal education system while still respecting those actors' autonomy and judgment; and of offering narrow recommendations that could be implemented immediately while laying the foundation for more comprehensive, long-term improvements.

The Task Force has resolved these challenges by structuring the draft Report and Recommendations as a field manual for people of good faith who wish to improve legal education as a public and private good. It is designed to guide the activities of these participants within the scope of their respective responsibilities and areas of influence. The heart of the field manual is Section VII, which is addressed to all parties in our system of legal education. Key themes detailed in Section VII include: the need for a systematic (rather than tactical) approach to the deficiencies of law school financing and pricing; greater heterogeneity in law schools and in programs of legal education; an increased focus on the delivery of value by law schools; a focus on the development of competencies in graduates of legal education programs; the profound importance of cultural change, particularly on the part of law faculties; the need for changes in the regulation of legal services to support key changes in legal education; and the need for institutionalization of the process of assessment and improvement in legal education, commenced in this Report and Recommendations.

Section VIII contains recommendations for specific actions by various participants in the legal education system to implement the key themes.

Other sections of the Report contain analyses that provide context for the recommendations of Sections VII and VIII, and a set of tools that persons, groups, and organizations can use in initiatives designed to bring about improvement.

The Task Force believes that if the participants in legal education continue to act in good faith on the recommendations presented here, with an appreciation of the urgency of coordinated change, significant benefits for students, society, and the system of legal education can be brought about quickly, and a foundation can be established for continuous adaptation and improvement.

## I. LAW SCHOOLS AND THE SUBJECT OF THIS REPORT AND RECOMMENDATIONS

### A. *Law and Legal Education in General*

Discussions to date of the problems in legal education have focused on ABA-approved law schools and the J.D. programs they deliver. The Task Force early recognized, however, that in order to comprehensively address the issues and make recommendations for reshaping legal education, it would have to expand its focus to legal education more broadly understood.

*Law* is the fundamental form of social ordering (including dispute resolution) in reasonably organized societies. The nature and function of law has been subject to extensive investigation and theorizing, which cannot and need not be reviewed here. For purposes of this Report and Recommendations, the functional description just given will suffice.

Given this understanding, we will refer to a *law services provider* (or *legal services provider*) as a person who is skilled in knowledge and application of law. A *legal education program* is a program of education in law or law-related fields that: (a) is designed to develop knowledge or skills in law or law-related fields; and (b) prepares individuals to be law services providers.

### B. *Law Schools and Legal Education Programs in the United States*

In the United States, a *lawyer* is the primary form of law services provider. A lawyer is a law services provider who has been admitted to practice in a state, territory, or district, through passage of a bar examination or otherwise. A lawyer is potentially a generalist, authorized to provide substantially any form of representation or legal service to a client. Ordinarily, a lawyer must have received a *Juris Doctor* (J.D.) from a law school. In some states, a person holding a foreign law degree may be admitted to practice on the basis of having received a Master of Laws (LL.M.) degree.

In the United States, a *law school* is an institution providing a legal education program that trains lawyers. An *ABA-approved law school* is a law school that has been accredited by the ABA Section of Legal Education and Admissions to the Bar under the ABA Standards for Approval of Law Schools. A graduate of an ABA-approved law school is eligible to be admitted to practice in any state.

The program leading to the Juris Doctor is the principal program of legal education at every ABA-approved law school today. Some ABA-approved law schools also offer legal education programs in addition to the Juris Doctor program.

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In the United States, some institutions of higher education other than law schools offer programs of legal or law-related education. None, however, offers an ABA-approved Juris Doctor program.

## II. THE FUNDAMENTAL TENSION

Despite the great breadth of current stresses and criticisms (detailed in Section V), the Task Force has identified a fundamental tension that underlies the current set of problems. An understanding of it must be kept firmly in mind in designing solutions.

The tension is as follows. On the one hand, *the training of lawyers is a public good*. Society has a deep interest in the competence of lawyers, in their availability to serve society and clients, and in their values. This concern reflects the centrality of lawyers in the effective functioning of ordered society. Society also has a deep interest in the system that trains lawyers. This is because the system directly affects the competence, availability, and values of lawyers. From this public-good perspective, law schools may have obligations to deliver programs with certain characteristics, irrespective of the preferences of those within the law school. For example, the requirement that law schools teach professional responsibility was long ago imposed on schools under pressure by the larger profession because of public concern with the ethics and values of lawyers. The fact that the training of lawyers is a public good is a reason there is much more concern today with problems in law schools and legal education than with problems in education in other disciplines, like business schools and business education.

But the training of lawyers is not only a public good. *The training of lawyers is also a private good*. Legal education provides those who pursue it with skills, knowledge, and credentials that will enable them to earn a livelihood. For this reason, the training of lawyers is part of our market economy and law schools are subject to market conditions and market forces in serving students and shaping programs. From this private good perspective, law schools may have to respond to consumer preferences, irrespective of the preferences of those within the law school, at least in order to ensure the continued financial sustainability of their programs.

The fact that the training of lawyers is both a public and a private good creates a constant, never fully resolvable tension regarding the character of the education of lawyers. To take an example, disagreement over the role of faculty scholarship in law schools reflects in part a difference between public good and private good perspectives.

Proponents of a substantial role for scholarship often argue that faculty scholarship promotes the public good, directly and indirectly, by developing more intellectually competent lawyers and by improving law as a system of legal ordering. (They also

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argue that the work of scholarship makes faculty members better teachers and so confers a private benefit on students by equipping them to earn a living.)

On the other hand, critics claiming that law schools devote excessive resources to faculty scholarship generally invoke considerations of private good. They argue that faculty scholarship increases costs, and thus the price, of legal education, with adverse economic consequences such as limiting access to legal education and increasing the loan repayment obligations of law school graduates.

This tension between the public and private perspectives on the training of lawyers affects a wide range of issues before this Task Force. Any credible set of recommendations must carefully calibrate public and private concerns.

### III. PRINCIPLES GUIDING TASK FORCE WORK

The Task Force has distilled from the comments and literature submitted to it six core principles to guide the development of its recommendations. These principles are not axioms: they are not bases for logical deduction of results. Rather, they are fundamental and widely shared values and goals, which are sometimes in competition with each other and which must be thoughtfully balanced in order to become pragmatic guides to action.

The six principles are the following:

- A. The System of Legal Education in the United States Should Meet Society's Need for Persons Who Have the Knowledge and Ability to Deliver Legal Services.***
- B. The System of Legal Education Should be Decentralized and Include Both Private and Governmental Parties.***
- C. The System of Legal Education Should Minimize Obstacles for Those Who Wish to Pursue a Career in Legal Services and Who Have the Ability to Do So.***
- D. Law Schools and Other Organizations that Provide Programs of Legal Education Are Accountable, in Respects Appropriate to the Program, for Delivering the Public Good of Legal Education.***
- E. Law Schools and Other Organizations that Provide Programs of Legal Education Are Accountable, in Respects Appropriate to the Program, for Delivering the Private Good of a Legal Education.***

***F. Law Schools Are Not Solely Responsible for the Public Good of Providing Legal Education to Lawyers.***

**IV. FORCES AND FACTORS PROMPTING NEED FOR ACTION AND SHAPING TASK FORCE RECOMMENDATIONS**

Recognizing the fundamental tension and the six core principles is necessary, but not sufficient, for crafting concrete recommendations. The Task Force has identified forces and factors that must be taken into account to redress problems and improve the legal education system. Not all are independent: some overlap or reinforce others.

***A. Criticism of Law Schools and Legal Education***

1. *The Impact of Criticism.* Law schools and legal education have been subject to intense criticism in national media, blogs, Congress, the courts, and by the users of legal services. This criticism is diminishing public confidence in law schools and legal education and it adversely affects attitudes of prospective law students. Yet the criticism has a positive side: it has generated strong pressure for reforms and has induced a climate of receptivity to change.

2. *Moralizing and Blame.* Some of the criticism takes the form of moralizing and blaming current problems on various actors in the legal education community. Deans are blamed for raising law school tuition or failing to stand up to certain constituencies. Faculty are blamed for supposedly self-seeking behavior and the pursuit of questionable goals for the law school. Universities are blamed for supposedly pressuring law schools to become profit centers. The legal profession is blamed for insufficiently supporting law schools and recent graduates, and steadily shifting educational responsibilities and costs to law schools.

Moralizing and blaming are not productive. What is needed instead is a dispassionate and pragmatic examination of the current situation that begins with a presumption of good faith on the part of all participants. This will enable those in the legal education system to collaboratively articulate credible goals and strategies, identify reasonably achievable short-term actions, and move legal education along a path toward continuing improvement and value for all participants.

***B. The Rise of Consumer Outlook***

1. *Consumer Attitudes toward Legal Education.* There are two broad perspectives on higher education in the United States: (a) education as a means to personal growth and development; and (b) education as a means to a job or career. The latter has greatly increased its influence in recent years. This has affected the

relationship between higher education institutions and students, causing higher education to take on more transactional and consumer attributes.

Law schools are pathways to a specific type of career, but have long positioned themselves under perspective (a), as providing an advanced general purpose (if not advanced liberal arts) education. This is reflected, for example, in the traditional view that law school substantially involves teaching students to think in a certain way. Law schools, however, now find that they have to reposition themselves at least partly under perspective (b). This requires a restructuring of curriculum, student services, and the business of legal education.

2. *The Importance of Consumer Information.* As part of the shift to a consumer relationship with students, law schools have increasingly been subject to market and regulatory demands for disclosure of accurate consumer information. The shift has also prompted the establishment of new organizations whose goal is to influence information disclosure and related consumer matters. This has led to revised ABA Standards governing information disclosure and reporting.

3. *Misleading Consumer Information.* Rankings of law schools strongly influence the behavior of applicants, law schools, and employers. Some ranking systems (in particular *U.S. News*) purport to supply objective consumer information. However, little of the information used in ranking formulas relates to educational outcomes or conventional measures of programmatic quality or value. To that extent, rankings may provide misleading information to students as consumers.

Indeed, the choice of data on which to base rankings can adversely affect the interests of students as consumers. For example, *U.S. News* rankings are based in part on calculations of law school expenditures per student. This encourages law schools to increase expenditures for purpose of affecting ranking, without reference to impact on value delivered or educational outcomes, and thus promotes continued increase in the price of law school education.

4. *Communication of Accurate Information.* Some parties who engage in communications about legal education have a responsibility to understand the current situation so that they can properly carry out their work. These parties include prelaw advisors, who counsel persons on pursuing career paths in law-related fields; media, particularly those who provide the public with information about developments in legal education; faculty members, who participate in both the delivery of educational services and in contributing to decisions about the operations of a law school; and members of the bar, who have or can have relationships with law schools, new and prospective lawyers, and other providers of legal services. It is thus important to the proper functioning of the legal education system for these parties to obtain, and know how to obtain, complete and accurate information about both conditions in legal education and progress in improving it.

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**C. *The Pricing of Legal Education***

1. *Law School Pricing in General.* Law schools price a J.D. education by reference to their cost of delivering it, less revenue from other sources (such as endowment income or state subsidies). In general, law schools do not take market price as given and seek to manage costs on the basis of that market price.

2. *Law School Cost Structure.* Several factors tend to increase the cost of delivering a J.D. education (and thus the cost-based price).

One structural factor is what economists call cost disease. This is the inability of an organization to achieve productivity gains at the rate of productivity gains in the overall economy because of: (a) the high proportion of costs attributable to services; and (b) the fact that the services in question are of a type that do not easily lend themselves to productivity improvement.

Another factor is the pressure to deliver services and engage in functions other than core instructional services. For example, law schools generally allocate significant resources to faculty scholarship and related activities..

Yet another factor is continual change in the nature of the educational services delivered. Law schools have steadily altered the package of services offered their students to include, e.g., clinical education, career services, academic support, bar preparation support, and increased writing and inter-school competitive activities. The rationale for these additions is improving the educational services delivered to students. But it also reflects the fact that law schools compete with each other on the basis of quality of service, in addition to price.

3. *Discriminatory Pricing.* J.D. program pricing is also discriminatory (in the microeconomic sense). That is to say, some students pay very little for their legal education: they are given discounts, denominated “scholarships,” in order to attract them to the school. Others pay full or substantially full posted price. This form of price discrimination reflects the importance of status competition among law schools, in particular competition for students with high LSAT scores. High LSAT students strongly affect a law school’s status by contributing directly and indirectly to higher law school rankings.

**D. *The Financing of Legal Education***

1. *Loan Repayment.* Students in J.D. programs who do not receive substantial scholarships (through price discrimination or otherwise) generally pay for their education through loans. Loan repayment requirements can be a burden, particularly in the early part of a career when earnings may be low. Although loan

forgiveness programs and income-based repayment programs have been beneficial, loan repayment obligations can still affect job or career choices and the totality of these choices can affect the distribution of legal services throughout society. For example, loan repayment obligations may decrease the ability of law school graduates to enter certain forms of lower-paying public service, or decrease the ability of graduates to enter practice in communities or geographic areas where income potential is not sufficient in light of loan obligations. A recent report by the Illinois State Bar Association has described this development in compelling terms and offered several recommendations the Task Force has embraced.

2. *Public Interest in Outstanding Student Loans.* Most law student loans are made by the federal government as part of a larger program of loans to higher education students. The amount of outstanding higher education student loans is large and has substantial effects on the economy. Law student loans are a relatively small part of the total, but the total is large. This increases the already high level of public interest in law school financing and creates a complex interplay between public and private interests. The fact that most law student debt is issued and managed by the federal government gives the federal government great control over law school financing and indirectly over programs that are financed.

#### ***E. Accreditation and Quality of J.D. Programs***

The ABA Standards for Approval of Law Schools are largely prescriptive. As such, they affect costs, although the degree to which they do so is disputed. Also disputed is how much the Standards constrain law schools from innovation and experimentation. There is reason to believe the Standards do not so much constrain law schools as reflect what law schools believe is the norm and reinforce that norm. A study by the Government Accountability Office suggests that most schools would arrange their affairs according to this model even if the ABA Standards were not in place. What is not reasonably disputable, however, is that the Standards do not encourage innovation, experimentation, and cost reduction on the part of law schools.

What the ABA Standards do encourage is a continued increase in the quality of the J.D. educational program. The pursuit of quality by law schools has unquestionably led to a strong system for training lawyers, and the ABA Standards have played a key role. But “quality of legal education” is an abstract notion as to which there is no objective metric for progress or achievement. The pursuit of this notion has tended to be one-dimensional, not linked to concrete goals, cost-benefit assessment, or market considerations. As a result, it has been a factor in rising costs and thus the price of the J.D. education.

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**F. Law-Related Services and Employment**

1. *Structural Changes in the Legal Employment Market.* The economy of law-related services and the related employment market have changed sharply over the past five years. This has affected traditional legal services, where hiring decreased, particularly for new lawyers in large firms and lawyers in government practice. The pace of structural changes that were already under way (for example, use of contract labor and increased reliance on technology to increase productivity) accelerated. These changes have had a substantial impact on employment opportunities for new and recent law school graduates.

Moreover, there are evident structural changes that reflect increasing price sensitivity by users of legal services, with resulting price competition and changes in the mode of delivery. The developments are likely to continue, with continuing impact on lawyer employment. The profession is also experiencing a shift in demand from bespoke representation of clients to the commoditization of legal services (e.g., Legal Zoom).

The American market for legal education and legal services is also increasingly affected by globalization. Others are engaged in evaluating these trends and making recommendations about them. The Task Force has elected not to reproduce those efforts, but does believe that its recommendations are generally consistent with other work under way to address these trends.

2. *Misdistribution of Legal Services.* The supply of lawyers appears to exceed demand in some sectors of the economy. Yet in other sectors demand very much exceeds supply. In some rural areas, for example, there are few lawyers and it is difficult for communities to encourage new ones to set up practice, either because of low prospective return on investment or lack of interest in small town or rural life.

Most strikingly, poor and lower income populations remain underserved because lawyers can be made available to clients like these only if the lawyers are paid or subsidized by a government or private benefactor. Funding for lawyers to serve these populations is far less than what is needed and, except as noted below, there are few alternatives to fully trained lawyers as providers of law-related services. This lack of access to affordable legal assistance is now affecting parts of the middle income population as well.

3. *Delivery of Law-Related Services by Persons Without a J.D.* The relatively high cost of the services of lawyers has facilitated the use (or proposed use) of persons who have not received a J.D. to deliver lower-cost legal services. Businesses increasingly use persons other than admitted lawyers, e.g., for compliance work and for expertise in the human resources field. For individuals

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who cannot afford lawyers, the adaptation has been slower, but the extensive use of law students with special licenses reflects one approach to broadening the availability of low cost service. Other changes are under way that would respond to both business and individual needs, for example systems of limited licenses to deliver categories of legal service by persons who are not lawyers admitted to practice.

**G. *The Nature and Purpose of Law Schools***

1. *Diverse Views As to the Purpose of Law Schools.* There is wide disagreement about the purpose of law schools. For example, a commonly stated purpose of law schools is to train lawyers, but there is no consensus about what this means. It matters, for example, whether one takes a view of lawyers as just (or at least primarily) deliverers of technical services requiring a certain skill or expertise, or as persons who are broad-based problem solvers and societal leaders. Different views about what it means to “train lawyers” yield different views about curricula; different views about faculty; and different emphases regarding services to students.

2. *Mismatch Between Curriculum and Goals.* A law school’s ostensible view about its purpose may not be reflected well in the curriculum. One reason is that certain goals have traditionally not been viewed as matters to be incorporated in the curriculum. For example, as important as jobs and career success are to graduates and, again, to the success of the law school, little space in the curriculum is typically devoted specifically to preparing students to pursue and compete for jobs. Rather, it is generally delegated to a non-academic unit of the law school.

**H. *The Business of Legal Education***

1. *Insulation of Law Schools from the Market.* The standard model of a law school has long been that of a college or school in a university; which provides a post-baccalaureate education in law; whose programs are academically oriented and taught mainly by full-time professional educators. As part of the model, law schools have understood themselves as akin to graduate programs in the university, with minimal need to be concerned about their relationship to any market. Law schools have long escaped pressure to adapt programs or practices to customer demands or to the pressures of business competition. Except during periods like the Depression and the Great Recession, curriculum, culture, and practices have developed with little relation to market considerations.

The current market forces now require more drastic changes for law schools than they have faced in the memories of current law faculties or administrators. Universities are requiring law schools to become financially self-sustaining, and competition for students and tuition revenue has come to resemble competition in

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the non-education economy. Many, if not most, law schools lack the expertise or the organizational structure to deal with these new conditions; some constituencies in law schools resist dealing with them; and in some cases universities are unwilling or unable to support law schools as they attempt to make a transition to a new market-oriented way of conducting their affairs.

*2. Lack of Integration of Business and Academic Aspects of Law Schools.*

Law schools are in the business of delivering educational services, and this service is in part a private good. There can be tension between the need to serve customers (students) well and the need to run a financially sustainable operation. Yet the tension in law schools need not be greater than in any other service business. Indeed, delivering quality service is generally viewed as the path to an organization's financial health.

In law schools, however, educational services and business considerations are widely seen as in conflict, even in irresolvable conflict. This entrenched lack of integration of business and academic aspects of a law school suggests to many that one aspect always has to be sacrificed for the sake of the other. This view hampers discourse about the current challenges to law schools and potential solutions, often leading to polarization or oversimplification of issues or solutions.

*I. Culture and Conservatism*

*1. Faculty Culture.* Culture is the cluster of beliefs and practices of a group that is passed on through social behavior. There is a large-scale law faculty culture in the United States as well as sub-cultures particular to individual schools. Law faculty are socialized by each other and new faculty absorb beliefs, practices, and expectations from more senior faculty. Cultures tend to be stable and not easily changed.

Law faculty culture today is generally marked by the following beliefs and practices, which vary somewhat in detail and emphasis from school to school:

- A professorial position should involve long-term security, and tenure means very strong and prolonged security.
- Scholarship is an essential aspect of a faculty's role.
- Faculty members are materially different from non-faculty members of the law school.
- Faculty have decision-making authority for key aspects of the law school.
- Status is important in measuring individual and institutional success.

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All of these elements of faculty culture are currently challenged by the economic and market stresses on law schools and by the calls for law schools to change their ways of conducting business.

2. *Resistance to Change.* People are generally risk-averse. Organizations, which are composed of people, tend to be conservative and to resist change. This tendency is strong in law schools (and higher education generally), where a substantial part of the organization consists of people who have sought out their positions because those posts reside largely outside market- and change-driven environments. A law school's successful embrace of solutions to the challenges, problems, and demands described in this Report and Recommendations requires a reorientation of attitudes toward change by persons within the law school.

***J. The Profession and Legal Education***

The model of legal education that took shape in the twentieth century involved a rough division of educational responsibility: law schools took on responsibility for basic, general education of lawyers, largely in an academic environment and through an academic approach; and the remainder of legal education—in particular, the more skills and business-oriented aspects—were left to be learned from those already in practice.

This rough allocation eventually began to break down. The legal profession increasingly began to assign, or try to assign, more responsibility to law schools for the practical and business aspects of the education of lawyers, mainly for economic reasons (including unwillingness of clients to subsidize the education of new lawyers). The result has been increased pressures on law school curricula. Such pressures have surely contributed to increasing costs and increasing tuition, as law schools have had to take on these additional, sometimes expensive, forms of education no longer provided elsewhere.

Some state and other bar organizations have developed programs for educating or mentoring new or less experienced lawyers. However, there are many more resources in the practicing bar, in business organizations, and elsewhere, that could contribute to the education of law students, new lawyers, and less experienced lawyers, thereby achieving the goals of improving legal education while potentially lowering or controlling the price to students.

***K. The Tangible, but Fragmented, Responses to Date***

Participants in the system of legal education have responded to the environmental and structural stresses and challenges described in this Report with good faith and increasing commitment. Self-criticism and search for solutions abound. Many

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schools have reduced expenses, changed curricula, introduced new degree programs, and experimented in a variety of areas. The Section of Legal Education has increased transparency in consumer information reporting. It has also moved to streamline accreditation standards, for example those relating to libraries. Bar associations have launched mentoring and scholarship programs and offered their support to law schools. Bar regulators have moved to modify criteria for admission to practice. The list of initiatives is extensive and impressive.

The list, however, is one of limited and fragmented responses, the efficacy of which is often difficult to measure. What is lacking is coordination, a full understanding of tools available to effect change, mechanisms for assessment of progress, and a strategy for long-term continuous improvement.

## **V. PARTIES TO WHOM TASK FORCE RECOMMENDATIONS ARE ADDRESSED**

Proposals for curing present problems and improving the legal education system are most often addressed to law schools and to the accreditor of law schools, the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association. Law schools and the Section of Legal Education are central players in any systematic approach to improvement. But the Task Force recognizes that there are many more actors with a role in the system and to whom any recommendations must also be addressed.

The Task Force has identified the following as institutions, entities, or persons who have an interest and role relating to legal education, and who can productively participate in improving the system for the benefit of students, graduates, and the public interest:

- Law schools
- Deliverers of law-related education other than law schools
- Law faculties
- Universities and other institutions of higher education
- American Bar Association
- American Bar Association Section of Legal Education and Admissions to the Bar
- Regional and other higher education accrediting bodies
- State Supreme Courts
- State and local bar associations
- Bar admission authorities
- Federal government
- State governments

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- Law firms and law offices
- Media
- Prelaw advisors

As this list reflects, the system of legal education in the United States is complex and decentralized. No one person, organization, or group can alone direct change or assume sole (or even principal) responsibility for it.

## VI. NATURE OF ACTIONS AND INITIATIVES THAT CAN BE UNDERTAKEN

Many of the suggestions for improving legal education being advanced today consist either of new directives—e.g., proposals that, “law schools must do X,”—or else elimination of existing directives—e.g., proposals that, “the ABA Standards should be amended to stop requiring Y.” Although there is a place for directives and elimination of directives in any plan, the Task Force finds that place to be more limited than generally assumed.

As explained above, there are many decision makers and actors in the system of legal education. Each has specialized knowledge; particular relationships with its members or participants, or with persons or other organizations served; and distinctive opportunities to guide or influence the actions of others. The problems in legal education will not disappear simply by telling participants what must or must not be done. Rather, the task in structuring a plan for the improvement of legal education is to: (a) encourage and facilitate appropriate action by each actor in the legal education system; and (b) to the extent possible, coordinate those actions to achieve large-scale improvement.

In order to achieve that, the Task Force has inventoried the many ways in which the actors in legal education can be addressed and can act in order to promote desired outcomes. These ways are the following:

### ***A. New or Strengthened Requirements***

The current system of legal education is based in part on requirements. The current ABA Standards are largely prescriptive. Other organizations use prescriptions as well: they are found in bar admission requirements, United States Department of Education regulations, and university and law school faculty handbooks.

Prescriptions, when well crafted, can have the benefit of marking boundaries of what is permissible or obligatory. In doing so, and in appearing to control action, they seem to provide easy solutions. Yet, they only work if they can credibly be enforced. Thus, they require enforcement mechanisms—sometimes complex ones.

These can be costly and the costs may be passed on to the regulated parties (here, law schools and ultimately students). Prescriptions, if effective, are also relatively inflexible and so have the disadvantage of requiring periodic updating to adapt to changing conditions. The Task Force generally recommends against new prescriptions as the solution to current problems in the system of legal education.

### ***B. Eliminated or Lessened Requirements***

Eliminating or relaxing an existing requirement can lower costs in an area of operation, or allow greater opportunity for innovation or experimentation. Because of the potential for such benefits, there is great insistence that current prescriptions in the ABA Standards be moderated or eliminated. Similar arguments can be (and are) made regarding other prescriptions, such as ones in bar admission rules or in rules regulating the practice of law.

The potential benefits of lessening or eliminating a requirement are likely to be realized when such change constrains an actor from doing what it would like to do absent the requirement. But as this Report and Recommendations has noted, the ABA Standards—the main subject of the demand for lessened requirements—tend to reflect prevailing beliefs and culture regarding how law schools should be structured and operated, and it is not clear that mere elimination of a prescription in the Standards would bring about desired benefits.

The Task Force has concluded that, while removing certain prescriptions in the ABA Standards and elsewhere could be beneficial as to cost and market orientation, many such changes would have to be coupled with other methods that non-coercively move law schools or other actors toward achieving the desired outcomes or benefits. In any event, price competition and effective cost-containment are bound to be more prominent factors in driving change in an industry with so much over-capacity.

### ***C. Incentives***

A common and often effective tool for promoting a desired outcome is incentives. For example, law schools typically promote faculty scholarship through a tenure system and financial incentives. If a law school wished to promote, for example, pedagogical innovation, it could use these same types of incentives (or others) to promote that goal. If another organization wished to promote pedagogical innovation in law schools, it could do so, e.g., through offering financial awards or prominent honors to encourage the desired behavior or outcomes.

An advantage of an incentive system is that it can facilitate alignment in goals and attitudes between those promoting the desired outcome and those targeted to be influenced. Incentives also can promote creativity. Potential disadvantages are that

they do not always succeed and that an incentive system can be captured by its targets, with a resulting distortion or weakening of the system.

***D. Facilitation***

Desired outcomes can be promoted through facilitation, i.e., by providing resources that will advance efforts to achieve the outcomes. The resources can be in the form of funds, expertise, facilities, logistics, management, mediation, or other services. For example, bar associations may be able to facilitate law school initiatives to control costs and improve processes, by making available members' business expertise and experience. Just as with offering incentives, facilitation can promote alignment.

***E. Coordination***

Desired outcomes can be promoted through coordination of actors working toward shared goals or outcomes. For example, coordination among law schools, or between law schools and bar organizations, can promote efficiencies, new processes, or new educational initiatives. Coordination can be through a variety of mechanisms, for example: joint ventures of the coordinating parties; facilitation of group efforts by other persons or organizations; or the creation of new associations or organizations. The consortium of law schools collaborating on innovation under the banner "Educating Tomorrow's Lawyers" is an encouraging example of such developments.

***F. Enablement or Empowerment***

Enabling or empowering an individual or group to take action is another method to promote a desired outcome. This method is used to a limited extent in the ABA Standards for Approval of Law Schools. Enablement or empowerment promotes flexible implementation of goals by encouraging solutions from persons with a high level of expertise or influence and by allowing solutions to be adapted to changing circumstances or environments. Enablement or empowerment sometimes needs to be coupled with facilitation to assist the empowered person in taking action or implementing an appropriate plan.

***G. Leadership***

A disadvantage of the highly decentralized character of the legal education system is that, ordinarily, no person or organization is in a position to alone drive rapid change. A related disadvantage is that collective action for the common good can be difficult to achieve, despite general knowledge of its benefits. For example, despite wide understanding of the benefits of collective action against law school ranking systems, a lack of leadership among law school deans has prevented it.

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Effective leadership is based on influence, not on command. In the legal education system today, there are many opportunities for persons, organizations, or groups to establish influence in a part of legal education and to promote improvements at least within that part. Opportunities for influence can arise, for example, from holding a position as head of an organization; credibility derived from experience; or (for a group or organization) having as members a large proportion of one segment of legal education.

#### *H. Pilots, Experiments, and Examples*

Desired outcomes can be promoted through examples that others can use as a source of learning. In many areas of society and the economy, the efforts of one person or one organization to try something new or achieve something innovative leads others in the field to copy it or improve it, thereby yielding broader progress.

This type of progress can be catalyzed through a pilot project that demonstrates how a desired result can be attained. Or, it can be catalyzed through a small-scale test of a new way of operation. Or, through the action by an agent that is willing to take a risk on a new or untried method. This mechanism for progress, like others, may have to be coupled with facilitation.

#### *I. Encouragement*

Desired results can be promoted through encouragement, both positive and negative. Encouragement is sometimes underestimated as a method for redressing problems in legal education, but it has significant potential in an environment of good faith. Some of the recent improvements in legal education result from articles in influential publications. Most of this writing has been critical, yet the criticism has served to encourage actors in legal education to respond. As this shows, parties at the center of legal education can be influenced by voices from outside the core. Those who have been critics can also have influence in a more positive fashion, for example by publicizing improvements and encouraging continued progress.

## **VII. THEMES ADDRESSED TO ALL PARTIES**

The Task Force has identified the following nine themes as guides for the efforts of all participants in legal education. The project of improving legal education as both a public and private good will require independent, yet coordinated, initiatives by all participants in the system. The themes can serve as a common framework and a shared set of goals for this project. They are intended to promote coordination while enabling each participant to use its best judgment about choices of initiatives to pursue.

American Bar Association  
Task Force on the Future of Legal Education**A. *The Financing of Law-Related Education Should Be Re-engineered***

The current system for financing law school education harms both students and society.

To begin, there is relatively little scholarship funding or discounting provided to students on the basis of financial need. Rather, the widespread practice is for a school to announce nominal tuition rates and then use extensive discounting to build class profiles it finds desirable. In particular, schools pursue students with high LSAT scores and high GPA's. Students who do not contribute positively to the desired class profile receive little if any benefit from discounting and must rely extensively on borrowing to finance their education. A result of such practice is that students whose credentials are the weakest incur large debt to subsidize higher-credentialed students and make the school budget whole.

The loan program for law students is part of the broader federal loan program for students in higher education. Although there is some recognition in the legislation and regulation that law students and legal education are distinctive, the recognition is limited. One positive development in federal law has been the addition of loan forgiveness opportunities for law graduates in public service work.

Still, the law does not take into account the public good in training *any* lawyer, not just those who enter what is commonly viewed as public service. Further, the current system of lending distances law schools from market considerations and it supports pricing practices that do not well serve either the public good or the private good of legal education.

The Task Force believes that the financing mechanisms for law school education and the pricing practices they facilitate must change, and that continued public confidence in the system of legal education is dependent on that change. However, it would be extraordinarily difficult for individual law schools to initiate substantial change in practices because of the entrenchment of the competitive race for credentialed students.

Although many of the specific recommendations in this Report and Recommendations, if adopted, could improve financing and pricing, the Task Force also recognizes the enormous economic and political complexity of the issues. Various observers have submitted testimony or filed comments suggesting everything from an accreditation standard requiring that half of all scholarships be need-based to a cap on the amount students could borrow under current loan programs. Some suggest that Congress treat legal education loans as requiring a different system from that governing other segments of higher education.

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The time and resources available to the Task Force have made it impractical to develop a structure of equitable and effective solutions. Accordingly, the Task Force strongly recommends that the American Bar Association undertake a prompt, but fuller examination of these issues, in order to develop comprehensive sets of recommendations to correct the deficiencies in financing and pricing legal education.

***B. There Should Be Greater Heterogeneity in Law Schools***

While it is an overstatement to say that all ABA-accredited law schools are stamped from the same cookie cutter, accredited law schools in the United States have long been highly uniform. Although the American Bar Association and the Association of American Law Schools had a substantial role in bringing about this uniformity, the current Standards for Approval of Law Schools do not so much enforce the common structure as reflect and reinforce it. The structure mirrors what those involved in legal education believe a law school must be.

Differentiation of law schools has increased somewhat in recent years as some schools have, for example, added to the basic educational framework an institutional emphasis (real or nominal) in a particular field of law. Some differentiation has been deeper, involving for example: a commitment to providing opportunity for legal education to those who might otherwise not have it, a pervasive focus on developing trial or other practice skills, or development of integrated systems through branch campuses or consortium arrangements. This trend toward differentiation and experimentation will continue and the Task Force believes the Association, the Section of Legal Education, and state authorities should energetically promote it.

It is useful to compare the system of law schools with the college and university system in the United States. The latter is marked by a modest degree of standardization (e.g., an undergraduate program generally of four years) with substantial variety beyond that. Some colleges or universities are highly focused on research; some are highly focused on undergraduate teaching. Some are schools of access; some are highly selective. Some are multi-campus; some are single campus. Some have a high level of distance instruction; some are entirely residential.

This diversity suggests it might be possible to imagine a system in which law schools with very different missions might be accommodated, say, for example, a school where relatively little time was committed to faculty research and publishing and much more time spent on practice-ready training. One can acknowledge the success of the general model brought into being by the schools, the ABA, and the wider profession and still believe that it may not be the exclusive way of preparing people to be good lawyers.

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The system of legal education would be better if there were more room for different models. Variety and a culture encouraging variety could facilitate innovation in programs and services; increase educational choices for students; lessen status competition; and aid the adaptation of schools to changing market and other external conditions.

The Task Force recommends that participants in the legal education system, but particularly law schools, universities, the Section of Legal Education, the Association of American Law Schools, and state bar admission authorities, pursue or facilitate this increased diversification of law schools as they each develop plans and initiatives to address the current challenges in legal education.

***C. There Should Be Greater Heterogeneity in Programs that Deliver Law-Related Education***

American legal education today is built around a single degree-granting program: the J.D. This is an expensive program that generally requires seven years of higher education. The J.D. program seeks to develop professional generalists, whose services can be costly.

There continues, and will continue, to be a need for professional generalists. However, there is today, and there will increasingly be in the future, a need for: (a) persons who are qualified to provide limited law-related services without the oversight of a lawyer; (b) a system for licensing of individuals competent to provide such services; and (c) educational programs that train individuals to provide those limited services. The new system of training and licensing limited practice officers developed by Washington State and now being pursued by others is an example and a positive contribution.

There is no logical necessity that law schools provide these new educational programs, but there is also no logical reason why they should not do so. The Task Force recommends that law schools and other institutions of higher education develop these educational programs.

The Task Force also recommends, correspondingly: (a) that the Section of Legal Education, in collaboration with state regulators, develop standards for accrediting these educational programs or else expressly defer to other bodies to do so; and (b) that state authorities regulating the practice of law develop licensing systems for limited law-related service, which assure quality but do not limit access or unduly raise the price of services. As part of ensuring access, state regulators should promote reciprocity in licensing. Other participants in the legal education system should support this increased heterogeneity of programs and forms of legal service as appropriate to their role in the legal education system.

***D. Delivery of Value to Students in Law Schools and in Programs of Law-Related Education Should Be Emphasized***

The traditional emphasis on legal education as a public good has led to a focus on quality of legal education as an overriding goal by law schools, the ABA Section of Legal Education, and the Association of American Law Schools. Unquestionably, pursuit of quality has helped produce a strong system for educating new lawyers in the United States. But it has also been a significant source of increasing costs. This tendency has been further encouraged by law school ranking methodologies that uncritically treat higher cost per student as a measure of higher quality.

On the other hand, the new emphasis on consumer considerations—and more broadly on legal education as a private good—has had an opposite tendency. The intense consumer focus has created pressure to drive down price. This has been beneficial but the pressure to reduce price tends to minimize the impact on student outcomes and on the long-term sustainability and success of the legal education system.

These polar perspectives each represent incomplete pictures of what law schools are and what law schools do. It is inescapable that *law schools are in the business of delivering legal education services*. And no business can succeed in the long run unless it pays close attention to the value it is promising to deliver and consistently holds itself accountable to deliver that value. Law schools' paying closer attention to value and its delivery would not only promote sustainability and accommodate the legitimate concerns of both quality and price; it could help bridge the widespread gaps between academic and business perspectives, and between faculty and administration.

The Task Force believes that each law school should make an assessment of the particular value it believes it can and should deliver, and make a commitment to communicating and delivering that value. There is substantial existing literature on which schools can draw to develop a statement of value to be delivered, such as the Carnegie Report and the statement of skills and values in the MacCrate Report.

***E. There Should be Clear Recognition that Law Schools Exist to Teach People to Provide Law-Related Services***

Law schools have a societal role: to prepare individuals to provide law-related services. Much of what the Task Force heard from recent graduates reflects a conviction that they received insufficient development of core competencies, particularly those relating to representation and service to clients, that make one an effective lawyer.

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State supreme courts and their bar admitting authorities shape legal education when they decide what to test on bar examinations. Shifting examination design toward more emphasis on assessment of skills and less tendency to add testing on substantive subjects would favorably influence legal education.

The educational programs of a law school should be designed so that graduates will have: (a) some competencies in delivering (b) some legal services. A graduate's having *some* set of competencies in the delivery of law-related services, and not just some body of knowledge, is an essential outcome for *any* program of law-related education. What particular set of competencies a school, through an educational program, should ensure is a matter for the school to determine. However, a law school's judgment in this regard should be shaped in reference to: (a) the fact that most students attend law school desiring to practice law; (b) available studies of competencies sought by employers or considered broadly valuable for long-term professional success; and (c) the mission and strengths of the particular school.

Although this theme deals with the function of law schools, delivering competencies in graduates is not and cannot be a responsibility of law schools alone. In particular, for J.D. programs, it is also a responsibility of bar associations, firms and other organizations in which legal services are delivered by lawyers, as well as members of the legal profession in general. These persons and organizations are essential to: helping identify competencies to be delivered and continuing to assess their importance, providing teaching resources, providing settings in which students can practice and develop skills and talents, and helping instill in students the culture and values that surround and shape the competences of lawyers. Affording new lawyers with opportunities for mentoring and further practical training must be fashioned keeping in mind the demands that employment and substantial debt place on so many of them.

***F. There Should Be Greater Innovation in Law Schools and in Programs That Deliver Law-Related Education***

There is need for innovation in legal education and a fair amount of it is under way. Although "innovation" is a malleable concept, at bottom what is needed, and being called for, is: (a) a greater willingness of law schools and others entities which deliver legal education services to experiment and take risks; and (b) support for the experiments and risk-taking by other participants in the legal education system.

Innovation cannot come from a directive to experiment and take risks. Nor can it come simply from the removal of real or perceived barriers to innovation. Rather, it must come from a change in attitude and outlook, and from openness to learning, particularly from other fields.

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Incentives, resources, and encouragement can be powerful supports for innovation, and these can come from many participants in the system (as well as participants outside the legal education system). The ABA Section of Legal Education can support innovation by modifying or eliminating Standards (including those governing variances) that constrain opportunities for experimentation and risk-taking. In addition, there exists a wealth of knowledge and experience on which schools can draw from other disciplines and fields, to facilitate their acting in ways that might lead to innovation. To stimulate and encourage innovation and experimentation, the Section should issue requests for variance, both as to the Standards the Task Force has identified and as to education reform more generally.

***G. There Should Be Constructive Change in Faculty Culture and Faculty Work***

Prevailing law faculty culture, and the prevailing faculty structure in a law school, reflect the model of a law school as primarily an academic enterprise, delivering a public good. This entrenched culture and structure has promoted declining classroom teaching loads and a high level of focus on traditional legal scholarship.

Some, perhaps many, law schools will continue to operate under the current model. But for law schools that choose to pursue other models, faculty culture and faculty role may have to change to support them. These changes may relate to: accountability for outcomes; scope of decision-making authority; responsibilities for teaching, internal service, external service, and scholarly work; career expectations; modes of compensation; interdependence; scope of the category “faculty” and internal classifications within that category; and a host of other factors.

The Task Force recommends that universities and law faculties move to reconfigure the faculty role and promote change in faculty culture, so as to support whatever choices law schools make to adapt to the changing environment in legal education. The Task Force further recommends that the Section of Legal Education, the Association of American Law Schools, and other organizations in the legal education system take steps to avoid impeding the ability of schools and faculties to undertake chosen adaptations.

***H. The Regulation and Licensing of Law-Related Services Should Support Mobility and Diversity of Legal Services***

Although the focus of this Report and Recommendations is the system of legal education, the Task Force finds that associated improvements are needed in the system of regulation and licensing of law-related services.

One reason is that much of legal education is directed toward preparing persons to become lawyers admitted to practice in a state and thus subject to state licensing

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and regulation. The nature of this licensing and regulation can strongly influence the character and cost of the education of lawyers. Accordingly, improvements in the regulation and licensing of lawyers can promote or enable improvements in legal education.

For example, state supreme courts, state bar associations and bar admitting authorities could create paths to full licensure with fewer hours than the Standards require by devices like: (1) accepting applicants who, like joint degree graduates, have fewer hours of law-school training than the Standards require, or (2) accepting applicants with two-years of law school credits plus a year of carefully-structured skills-based experience, inside a law school or elsewhere. Such options require careful planning and substantial partnership.

Finally, certain recommendations concerning diversification of legal education programs will have their full benefit only with corresponding diversification in legal services and legal service providers. Thus, with regard to these recommendations, law schools and other providers of legal education services must work collaboratively with regulators of legal services to develop an integrated system that will promote the public and private good. The recent report of the State Bar of California's task force on admissions regulation lays out many of the possible reforms in lawyer licensing that might help prepare practitioners to serve clients.

***I. The Process of Change and Improvement Initiated by this Task Force Should Be Institutionalized***

The recommendations made here for improving the system of legal education respond to conditions in the past few years. These recommendations have been developed under substantial time constraints because of the widely shared view that action is needed promptly to address the current problems. A risk is that these recommendations will be viewed as solutions for transient conditions and that as soon as conditions improve, the recommendations will be ignored.

The Task Force believes that many of the forces and factors that give rise to the current conditions are either permanent or recurring. Legal education must continually deal with these factors in a systematic fashion. An evolution is taking place in legal practice and legal education needs to evolve with it.

To begin, the fundamental tension between education of lawyers as a public good and education of lawyers as a private good is structural. The tension may manifest itself in different ways under different conditions, but it will always be with us and must always be managed. Other matters likely to continually give rise to stresses, challenges, and the need for managing change are: the economics of law schools; the rapid evolution in the market for legal services; the function and value of accreditation standards; the financing of legal education; the role of parties other

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than law schools in legal education; and the role of media in understanding legal education and communicating with the public.

Since these forces and factors will always be with us, it is prudent for the system of legal education to institutionalize the process of dealing with them. All parties involved in legal education should support an enterprise or program for the continual assessment of conditions affecting legal education and of the strengths and weaknesses of the then-current structures in legal education, and for fostering continual improvement in the system of legal education. The process should ensure that not only law schools, but also practicing lawyers, judges, and other interested actors in legal education have a voice and an opportunity for meaningful contribution. The decision of the ABA House of Delegates a decade ago to give up its role of approving or disapproving accreditation standards, delegating that authority to the Section of Legal Education, has made such meaningful action by the bench and organized bar more difficult.

The Task Force recommends that this process of institutionalization be accomplished through a standing committee of the Association or else through the Section of Legal Education.

## VIII. SPECIFIC RECOMMENDATIONS

The Task Force not only offers the general themes discussed above; it also makes specific recommendations to particular actors or groups in the system of legal education. These recommendations are not intended to be exclusive.

The Task Force's specific recommendations are as follows.

### A. *American Bar Association*

The American Bar Association should undertake the following:

1. *Establish A Task Force or Commission With Appropriate Expertise to Examine and Recommend Reforms Regarding Law School Pricing and Financing. Issues Within the Scope of Such a Project Should Include:*

- a. *Cost-Based Pricing by Law Schools*
- b. *Discriminatory Pricing by Law Schools*
- c. *Reliance on Loans to Finance Law School Education*
- d. *The Structure of the Current Loan Program for Financing of Law School Education*

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2. *Establish a Center or other Framework to Institutionalize the Process of Continuous Assessment and Improvement in the System of Legal Education.*

3. *Establish a Mechanism for Gathering Information About Improvements in the System of Legal Education and Disseminate that Information to the Public.*

4. *Establish Training and Continuing Education Programs for Prelaw Advisors to Improve their Understanding of the System of Legal Education and the Current Environment.*

**B. Council of the ABA Section of Legal Education and Admissions to the Bar**

The Section of Legal Education and Admissions to the Bar should undertake the following:

1. *Revise Standards, Interpretations, and Rules that Directly or Indirectly Raise the Cost of Delivering a J.D. Education Without Commensurately Contributing to the Goal of Ensuring that Law Schools Deliver a Quality Education.*

Specific Standards and Interpretations that should be eliminated or substantially liberalized on this ground include the following:

- Interpretation 304-5 (relating to credit for work prior to matriculation in law school)
- Standard 306 (relating to distance education)
- Interpretations 402-1 and 402-2 (relating to student-faculty ratios)
- Standard 403 (relating to proportion of courses taught by full-time faculty)
- Standard 405 (relating to tenure and security of position)

2. *Revise Standards, Interpretations, and Rules that Directly or Indirectly Impede Law School Innovation in Delivering a J.D. Education Without Clearly Contributing to the Goal of Ensuring that Law Schools Deliver a Quality Education.*

Specific Standards, Interpretations, and Rules that should be eliminated or substantially liberalized on this ground include the following:

- Standard 206(c) (requiring that, except in extraordinary circumstances, a dean be a faculty member with tenure)
- Standard 304 (relating to course of study and academic calendar) including:
  - Standard 304(b) (requiring as a condition of graduation 58,000 minutes of instruction time)

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- Standard 304(b) (requiring as a condition of graduation 45,000 minutes of attendance in regularly scheduled class sessions)
- Standard 304(c) (requiring that the J.D. program be completed no earlier than 24 months after commencement of law study)
- Interpretation 305(c) (prohibiting credit for field placements in which the student receives compensation)
- Standard 603 (relating to requirements for Library Directors)
- Interpretation 701-2 (relating to physical facilities)
- Rules 25 and 27 (relating to confidentiality and disclosure of information about law schools)

3. *Revise Procedures Regarding Variances (Standard 802) to Promote Innovation and Experimentation as Follows:*

- a. Variances should be regarded as opportunities for experimentation and innovation, and granted subject to sound evaluation of the experiment or innovation.
- b. The process for applying for and granting variances should be transparent and the grant or denial of a variance should be disclosed to the public.
- c. The Council of the Section of Legal Education and Admissions to the Bar should develop a procedure to request applications for variances in specific areas or with respect to specific Standards.
- d. An experiment or innovation authorized under variances, if demonstrated to be successful, should constitute an example potentially leading to a permanent exemption from a Standard or a change in a Standard.

4. *Provide Additional Consumer Information to Prospective Students as Recommended in 2007 by the Section's Accreditation Policy Task Force and in 2008 by the Section's Special Committee on Transparency.*

5. *Establish Standards for Accreditation of Programs of Legal Education Other than the J.D. Program.*

**C. State Supreme Courts, State Bars, and Regulators of Lawyers and Law Practice**

State regulators of lawyers and law practice should undertake or commit to the following:

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1. *Construct and Evaluate Proposals to Reduce the Amount of Law Study Required for Persons to be Eligible to Sit for a Bar Examination or be Admitted to Practice.*
2. *Construct and Evaluate Proposals to Reduce the Amount of Undergraduate Study Required for Persons to be Eligible to Sit for a Bar Examination or be Admitted to Practice.*
3. *Authorize Persons Other than Lawyers with J.D.'s to Provide Limited Legal Services, Whether Through Licensure Systems or Other Mechanisms Assuring Proper Education, Training, and Oversight.*
4. *Establish Uniform National Standards for Admission to Practice as a Lawyer.*
5. *Reduce the Number of Doctrinal Subjects Tested on Bar Examinations and Increase Testing of Skills.*
6. *Avoid Imposing Educational or Academic Requirements for Admission to Practice Beyond those Required Under the ABA Standards for Approval of Law Schools.*

**D. Universities and Other Institutions of Higher Education**

Universities and other institutions of higher education should undertake the following:

1. *Develop Educational Programs to Train Persons, other than Prospective Lawyers, to Provide Limited Legal Services. Such Programs May, but Need Not, Be Delivered through Law Schools that are Parts of Universities.*

**E. Law Schools**

Each law school should undertake the following:

1. *Develop and Implement a Plan for Reducing the Cost and Limiting Increases in the Cost of Delivering the J.D. Education, and Continually Assess and Improve The Plan.*
2. *Develop and Implement a Plan to Manage the Investment of Law School Resources in Faculty Scholarly Activity, and Continually Assess Success in Accomplishing the Goals in the Plan.*

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3. *Develop a Clear Statement of the Value the Law School's Program of Education and other Services Will Provide, Including Relation to Employment Opportunities, and Communicate that Statement to Students and Prospective Students.*

4. *Adopt, as an Institution-Wide Responsibility, Promoting Career Success of Graduates and Develop Plans for Meeting that Responsibility.*

5. *Develop Comprehensive Programs of Financial Counseling for Law Students, and Continually Assess the Effectiveness of Such Programs.*

**F. Law Faculty Members**

Law school faculty members should undertake the following:

1. *Become Informed About the Subjects Addressed in This Report and Recommendations, in Order to Play an Effective Role in the Improvement of Legal Education at the Faculty Member's School.*

2. *Individually and as Part of a Faculty, Reduce the Role Given to Status as a Measure of Personal and Institutional Success.*

3. *Support the Law School in Implementing the Recommendations in Subsection E.*

**G. Those Who Inform the Public About Legal Education**

Those who supply information and those who employ it should undertake the following:

1. *Law Schools, the Profession, and Others in the System of Legal Education Should Commit to Providing the Public with Information about Improvements and Innovations in Legal Education that Respond to the Criticisms Previously Raised.*

2. *News Organizations Should Strive to Develop Expertise Regarding Legal Education among Staff, and the Organized Bar Should Seek to Assist Them in Doing so.*

3. *U.S. News & World Report Should Cease Using Law School Expenditures as a Component of Its System for Ranking Law Schools.*

**IX. CONCLUSION**

Respectfully submitted by the Task Force on the Future of Legal Education  
this \_\_ day of \_\_\_\_\_, 2013.

The Honorable Randall T. Shepard, Chair

American Bar Association  
Task Force on the Future of Legal Education

### **SEPARATE STATEMENT BY NANCY ROGERS**

I write separately to seek public comments on a different approach to several of the problems that the draft report identifies.

**Pricing and Funding:** The last five years have been agonizing ones for some graduates of law and other educational programs, especially for those with the most substantial educational debt. Available positions have narrowed and salaries have fallen, such that a portion of these graduates face financial crisis. Some law schools have lowered the average net tuition costs, offered avenues to accelerate graduation or bar admission, and created post-graduate law practice fellowships. Some bar associations have helped as well, establishing solo practice incubators and implementing other creative approaches. It is important, though, to examine whether more can be done to bring average educational debt in closer accord with likely salaries.

The White House recently released a proposal that is in principle responsive to this concern. <http://www.nytimes.com/2013/08/22/education/obamas-plan-aims-to-lower-cost-of-college.html?pagewanted=all&r=0> ; <http://www.whitehouse.gov/the-press-office/2013/08/22/fact-sheet-president-s-plan-make-college-more-affordable-better-bargain->. The proposal suggests that a formula be established for distribution of federal education dollars that would pressure educational institutions to keep tuition in tune with their graduates' likely salaries, while seeking to preserve quality and access for those growing up in low-income households. People should and will debate the proposal's details in an effort to avoid unintended consequences. Still, in principle, the proposed approach offers advantages over the Task Force draft report's approach regarding financial aid (Overview.A, first bullet; IV.C; VIII.A) by directly addressing the mismatch between tuition and salaries, preserving access, and applying to all educational institutions (even law student educational debt stems from undergraduate as well as law school). In my view, the ABA should further study the President's proposal and offer guidance as whether it is or should be adapted to be a useful approach for law schools.

In addition to recommending that the ABA convene a committee to examine the White House's proposed approach, I also would prefer to make another recommendation now – not waiting for another ABA committee – that, whatever the market pressures to focus financial aid on LSAT/UGPA, all law schools follow the example of those law schools that use financial aid to preserve access to law study for those growing up in low-income households and to promote diversity.

**Other points:** I agree with the draft report's compliments to law faculty for their creative approaches in response to the new economic situation and see no need for the recommendations in VIII.F.

## **APPENDIX**

### **I. THE TASK FORCE AND ITS WORK**

The Task Force on the Future of Legal Education was commissioned by then-President of the American Bar Association Wm. T. (Bill) Robinson III in spring 2012. President Robinson appointed the Honorable Randall T. Shepard, Chief Justice Emeritus of the Indiana Supreme Court, as Chair, and appointed other Task Force members and the Reporter. The Task Force received continued support from the successor American Bar Association Presidents, Laurel G. Bellows and James R. Silkenat, throughout the term of Task Force's operation.

The Task Force was asked to submit a report within two years. Because of the urgency of the matter, the Task Force took it upon itself to accelerate the timeline and is submitting this Report and Recommendations in \_\_\_\_\_ 2013, so that it can be further refined and considered at the February 2014 Meeting of the ABA House of Delegates.

To prepare this Report and Recommendations, the Task Force: solicited written comments from interested parties throughout the period of September 2012-August 2013; held two hearings, one in Dallas at the February 2013 Midyear Meeting and one in San Francisco at the August 2013 Annual Meeting; and held a Mini-Conference in Indianapolis in April 2013, to which various knowledgeable parties were invited to share information and perspectives with the Task Force.

In addition, the Chair and the Reporter met with the leadership of the Association of American Law Schools; met twice with the Council of the ABA Section; and presented a panel at the ABA Section's meeting for deans of ABA-approved law schools; and the Chair or other members of the Task Force held forums at the Annual Meeting of the Council on Higher Education Accreditation and the Conference of Chief Justices. The Task Force gathered and reviewed literature on problems and solutions. It met, both in subcommittees and as a Task Force, both in person and by teleconference, throughout its term to develop clear statements of the issues, to review and test potential actions and solutions, and to prepare this Report and Recommendations.

## **II. TASK FORCE MEMBERS**

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Chief Justice of Indiana (retired)  
Indianapolis, IN

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#### **Hon. Ronald Castille**

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