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2017-2018 Council Chair

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From the Chair: The Future of Legal Education: To PROSPER or Not to PROSPER

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2017-2018 Council Chair

The U.S. House of Representatives Committee on Education & the Workforce recently voted to move the Promoting Real Opportunity, Success and Prosperity through Education Reform (PROSPER) Act to the House for a vote. As drafted, PROSPER signifies a dramatic re-thinking of the policy underpinnings of the Higher Education Act of 1965, originally enacted as part of President Lyndon Johnson’s “Great Society” initiative. Here, I discuss those provisions of most interest to law students and schools and the accreditation project. The bill, however, is well worth reading in full to understand the entirety of its implications for higher education and its students.

Major Impacts on Law Students and Schools
Although PROSPER includes a number of provisions relevant to legal education, two are particularly noteworthy: (i) a $28,500 annual cap on government loans for graduate study and $150,000 aggregate limit on all federal student loans; and (ii) elimination of the Public Service Loan Forgiveness (PSLF) program as it is currently operating. Given tuition and living expenses are often in annual excess of $50,000, many students rely on the government for substantially more support than $28,500 on a yearly basis. Additionally, PSLF has helped many students – and the clients they represent – by enabling them to work in public interest jobs they could not otherwise afford to accept. Under PSLF, graduates could have their debt forgiven if they spent 10 or more years working in public service (generally the government or non-profit organizations).

Why would the Committee propose changes that seem destined to put significant financial pressure on many law students and, by extension, their schools, and to decrease particularly the number of students from lower socio-economic brackets and diverse students attending law school? The short answer is – even assuming that all members are working in furtherance of an agreed-upon and appropriate national interest - it’s complicated.
Government loans have played a critical role in enabling generations of students to attend college and graduate school (indeed, I had a Stafford Loan to help pay for law school). By guaranteeing loans regardless of credit status, the government enabled those who could not borrow in the private market to take advantage of higher education. It was well understood that some borrowers would default. But it was more important to the nation to provide a pathway of upward mobility to those in lower socio-economic brackets and/or victims of discrimination, all of whom were unlikely to be served in the private loan market. And it worked well for many years by providing a pathway to the middle class and worthwhile career and professional opportunities for numerous students and their families. The government even made money!

At the same time, guaranteed government loans introduced an imperfection into the higher education market. Essentially, schools’ pricing has not been constrained in the same way it would be if only “normal” lending forces were at work. To simplify dramatically, over time, schools increased tuition exponentially - at a rate faster than inflation - and built campuses, faculties, and services that all need to be attended to. And they haven’t worried too much about how to pay for this infrastructure because tuition would flow straight from the government to the schools, and their graduates would pay the government back. The accreditation process would play a helpful role by ensuring that students received value for tuition, including opportunities for employment upon graduation.

All in all, it seemed like a system in which everyone was reasonably happy. The economics, however, may no longer work. Accreditation efforts may not have been sufficiently rigorous to ensure that students were obtaining value for the money the government was paying. And jobs with sufficient compensation to permit repayment of large loans seem more difficult to obtain, leading to fears of huge defaults from student loan debt that could cause a national financial crisis.

Against this backdrop, the desire for a cap on graduate student borrowing is understandable. Schools need to become less reliant on government funding and bring costs under control. Further, arguably, graduate school is not as imperative to upward mobility as an undergraduate degree is.

Any cap, however, must avoid the error of underestimating the value of graduate education, particularly legal education. One might also question the propriety of lumping all graduate education together without regard for default rates for specific programs. Good lawyers are critical to the maintenance of our system of government - a difficult to quantify benefit, but a substantial one nonetheless. Moreover, relegating many students to the private loan market will adversely impact those already in lower socio-economic groups, closing off upward mobility. And it will hurt diverse students who still suffer discrimination in the lending market. Might it not be better to consider a higher cap or means-testing? A higher cap would give schools time to adjust their economic models while means-testing would ensure that government loans went only to those who truly need them.

Eliminating PSLF raises additional issues. The impetus here seems to spring from concerns that PSLF is overbroad, applying to graduates who could afford to pay their loans back. Additionally, lawmakers may think PSLF uses definitions that extend its benefits to classes of employment with only a tangential relationship to public service. However, the draconian change of essentially eliminating the program seems an out-sized approach to an issue that might be better addressed by means-testing and
redrafting troublesome statutory definitions. And it suffers from completely disregarding the role of PSLF in ensuring our democratic society. Our nation is defined by its commitment to the rule of law embodied in the Constitution. If large swaths of our citizenry cannot vindicate their rights because they cannot afford an attorney, the system cannot long endure. Eliminating PSLF fails both to account for this consideration and to acknowledge the cost savings associated with helping less well-off citizens make their way efficiently and effectively through the legal system.

Changes to Accreditation
As I noted above, one could certainly question whether accreditation agencies have done their jobs. PROSPER would make a number of changes to accreditation standards, including removing a number of criteria like resources and faculty and replacing them with a single standard focused on outcomes. Perhaps more interesting to ABA members is that the bill requires the accreditor to be “separately incorporated” not merely “separate and independent” from its associated professional organization (the requirement today). The accreditation project has lived under the ABA umbrella since 1952. If Congress were to enact PROSPER, however, accreditation would have to become legally separate from the larger ABA, raising a host of issues that the Council and the ABA would have to work through.

This greatly simplified review of PROSPER highlights the importance of civic engagement as the government debates its role in fostering opportunities for higher education. An informed and upwardly mobile citizenry is a priceless intangible benefit that, by its nature, defies easy valuation. Nevertheless, when we consider wholesale changes to education financing, we should at least think about them with an appreciation for the role higher education has played in moving our society forward. I expect that each of our congressional representatives would welcome and benefit from hearing the diverse perspectives of their constituents. The U.S. Senate will likely take up its own version of reauthorization of the Higher Education Act shortly, making conveying your thoughts to your Senator a timely and hopefully useful enterprise.
From the Managing Director: Let’s Talk Data

Barry A. Currier
Managing Director of Accreditation and Legal Education

The Section has always played a (if not the) leading role in the collection and dissemination of legal education data. That role has evolved over the years; there is now a hyper attention focused on some of it. This is a good time to review our policies and practices and to consider what changes, if any, we should make to what we do and how we do it.

The basis for collecting data is to gather information that is necessary and appropriate to review whether a school is operating in compliance with the accreditation standards (see Standard 104). Previously, we collected a lot of data that was not required for that purpose. For example, we collected each year the number of schools’ living graduates and their annual giving rates. Interesting, to be sure. Helpful, one could reach to say, to analyzing the resources available to a school to operate a compliant program (see Standard 202). But that is a stretch. The Section then packaged much of this data, on a school-by-school as well as aggregate basis, and sold it to the schools. Called the “take-offs,” the data was stated to be for the confidential use of the law school dean. Most schools subscribed, and the subscription revenue was a significant revenue item for the Section.

Recently, the Council and staff have been purging questions they deem unrelated or only tangentially related to compliance with the standards. This is an ongoing project which will reduce schools’ work in responding to the questionnaires and recognizes the fact that there is no basis in the standards to ask for information unrelated to a standard. Most data we collect is now made public. We no longer charge anyone for access or use of the data. Much of the data that others organize and publish derives from the data we collect.

We have stopped reporting certain data points that are no longer part of the accreditation review of a school. An example is the student-faculty ratio. Designed to give the accreditation process (and, eventually, consumers/potential students) a meaningful way to gauge the teaching resources available at a law school, the formula provided by former Interpretation 402-1 was so politicized that it was not particularly useful in analyzing a school’s teaching resources and an improper and misleading way to communicate teaching resources to the public. So, the interpretation was deleted from the standards.
U.S. News, however, did not reach the same conclusion; it continues to ask schools to self-report a student-faculty ratio computed in accordance with that now deleted ABA interpretation. From time-to-time, we are asked how a student-faculty ratio reported by a school to U.S. News could possibly be correct, followed by a suggestion that if U.S. News is going to use the data in its rankings of law schools, then perhaps we should collect it, require the schools to attest to its accuracy, and then police what is reported to that magazine.

It is true that Standard 509 requires that “all information that a law school reports, publicizes, or distributes shall be accurate, complete, and not misleading.” That includes data given to U.S. News. The standard states that a law school that violates this standard is subject to sanction by the Council, including measures such as public censure and fines as ways to police what schools represent and report.

We have contacted schools about public statements or data reports that come to our attention that may be inaccurate, incomplete, or misleading. However, the current size and scope of our operation limits what we can do as a fact-checker (a la Politifact) for legal education. I don’t know that that is necessary, and I don’t know that the Council would think that this was an appropriate role for us to play, even if we had the resources. I do know that at least some law school administrators and some observers of legal education believe that our role should include a review of what schools report to U.S. News and other rankers and reporters.

As a person interested in legal education, I agree that more data about law schools and legal education would be useful. There has been some conversation among the staff leadership of the ABA Section, AccessLex, AALS, LSAC, and NALP about whether a national legal education database to which we all might contribute our data would make sense. It would put a lot of data in one, convenient place and organize it to be more user-friendly than it now is. AccessLex is moving us in the right direction with its Legal Education Data Deck.

What should the role of the Section be in collecting and publishing legal education data? Should we limit ourselves to data required to assure that schools are complying with the standards or is there a larger role for the Section, for both consumer and research purposes? Should all the raw data and information that a school reports to the Section be made public? Does the Section have a larger responsibility than it is currently assuming to assure the accuracy of the data that is reported to others, such as U.S. News? What is the Section’s role in the public discussion and debate about what the data means? These are some of the questions that it seems to me would be useful for the Council to consider.
Section Spotlight: 2018 Law School Development Conference, Upcoming Webinars and Section Projects

I hope everyone’s year is off to a great start! Please read below for the latest update on Section projects and programming.

2018 Law School Development Conference - Mark Your Calendars
The 2018 Law School Development Conference is set to take place at the Loews Chicago Hotel, Tuesday, May 29 – Friday, June 1. The conference, last held in San Diego in 2016, traditionally brings together law school deans and development professionals to discuss, learn and collaborate on issues surrounding the changing philanthropic landscape, new development approaches, and best practices.

Please watch for registration information to be posted on the section website. We hope you will join us this summer in the Windy City!

Complimentary Webinar on Law School Diversity Initiatives
In November, the Section presented a complimentary webinar entitled, “Best and Worst Practices in Law School Diversity Initiatives.” The webinar, moderated by Daiquiri Steele who serves as the Director of Diversity & Inclusion and Assistant Professor of Law in Residence at The University of Alabama School of Law, examined some of the best practices law schools are using to increase diversity and inclusion. Speakers included Susan Kuo, Associate Dean of Diversity & Inclusion, University of South Carolina; Troy Riddle, Assistant Dean for Diversity, Equity & Inclusion and Chief Diversity Officer, The John Marshall Law School; and Catherine Smith, Associate Dean of Institutional Diversity and Inclusiveness, University of Denver Sturm College of Law.

To view the webinar and related materials, visit the section’s program materials page.

Legal Career Central Webinar Series
The Section is collaborating with ABA Legal Career Central on its Career Choice webinar series, a free
webinar series for ABA members that highlights various practice areas. Panelists will discuss an overview of their job, career path, day in the life, and necessary skills. Please watch for information regarding upcoming Career Choice webinars focused on legal education.

If you are interested in presenting, please contact Erin Ruehrwein at Erin.Ruehrwein@americanbar.org. We are seeking presenters to cover the following positions: tenured professor, adjunct professor, dean, law librarian, associate dean, trial professor, and/or education faculty member in a law-related department.

**Best Practices Idea Bank – Call for Submissions**

The Section’s [Publications Committee](#) is developing an idea bank resource webpage designed to allow law schools the opportunity to share programs and practices that they are employing to meet the ABA Standards for Approval of Law Schools. For example, a school may share how they are measuring learning outcomes.

If you would like to submit an example to be posted on the webpage, please send your submission to Erin Ruehrwein at Erin.Ruehrwein@americanbar.org.

*Please note that examples of best practices should not include language about ABA Site Team Reports or Accreditation Committee/Council decision letters regarding a law school’s particular program. Each law school is reviewed separately. There is no guarantee that a program is universally compliant with the ABA Standards and Rules of Procedure for Approval of Law Schools.*
Summary of Actions of the Section’s Council at its Meeting November 3-4, 2017

The Section’s Council met in Boston in open session on Friday, November 3 to consider recommendations, reports, and other issues on its agenda.

The Council took these key actions:

• Rejected the proposal that had been circulated for notice and comment on Standard 503 to create a national certification process for law school admissions tests and to remove the ability of schools to develop and validate tests suitable for their school. Instead, the Council approved for notice and comment a proposal to remove the requirement of a law school admissions test from the Standards and to revise Standard 501 to move various factors related to a sound admissions policy that are outlined in Interpretation 501-2 into the black letter of the Standard 501.

The result of these changes would be that the requirement of a “valid and reliable” admissions test would be removed from the Standards, but an admissions test would be one of the factors to be considered in determining whether a law school complied with Standard 501.

• Deferred action for now on taking the proposed change related to Standard 316 (Bar Passage) again to the House of Delegates. In February 2017, the House of Delegates rejected the Council’s request to make Standard 316 more effective, in part by making it more straightforward and simple. The Council expressed no desire to modify any of the specific revisions that it had previously approved, but concluded that it should take more time and engage in more dialogue with those who expressed concerns about the revisions before deciding whether and how to move forward. The final decision on such a change rests with the Council.

• Rejected the proposal that had been circulated for notice and comment to revise Standard 403 to remove the requirement that more than half of the teaching in the law school be done by full-time faculty.

• Approved changes to the Employment Outcome Report Form to get the full form on one page while clarifying a part that was said to be confusing related to school-funded jobs that pay more than $40,000.

• Put out for notice and comment several other changes to standards, including a change to Standard 306 that would modestly increase the percentage of course work a student could take through online courses without a variance.

• Considered a request by the ABA Young Lawyers Division to require that two members of Council be “young lawyers.” The consensus of the Council was to more aggressively recruit young lawyers – defined as under 36 years old or licensed for no more than five years – to join the Council, and to get young lawyers involved in the law school site visit process, but not to change the Council’s Bylaws to require any specific number of young lawyer members.
Moved ahead with a proposal for restructuring operations, including folding the work of the two major committees (Standards Review and Accreditation) into the Council. The change would also extend to ten years from seven the scheduled law school accreditation reviews. The proposed changes will also be put out for notice and comment.

In closed session, the Council considered individual school matters. The outcomes of those matters that are not subject to the confidentiality provisions of Rules of Procedure 49-55 will be publicly reported after decisions are communicated by letter to the affected schools.
Nominating Committee Seeks Names for 2018-2019 Council Slate

The Section's Nominating Committee invites suggestions for at-large positions on the 2018-2019 Council of the Section of Legal Education and Admissions to the Bar. There are eight such positions, each for a three-year term. Three positions are currently occupied by members eligible to be re-elected to a second term. Additionally, there are two leadership positions to be filled, chair-elect and vice chair, each for a one-year term. Nominees are sought in the categories of judges, academics, practitioners, and public members.

Nominations are requested by no later than the close of business on Monday, April 2, 2018.

The slate of Section officers and Council members will be presented for election at the Section's business meeting during the ABA Annual Meeting in Chicago in August.

The deadline for nominations is April 2, 2018. All nominations must be submitted through the online Council Nominations process.

2017-2018 Nominating Committee

Chair:
The Honorable Rebecca White Berch
Justice (Retired)
Supreme Court of Arizona

Thomas C. Galligan Jr.
Dean
Louisiana State University
Paul M. Hebert Law Center

Jeffrey Lewis
Dean Emeritus & Professor
Saint Louis University School of Law

Paul G. Mahoney
Professor
University of Virginia School of Law

Cynthia Nance
Dean Emeritus & Professor
University of Arkansas School of Law

John F. O’Brien
Dean
New England Law | Boston

The Honorable Mary R. Russell
Chief Justice
Supreme Court of Missouri
Nominations are sought for the 2018 Robert J. Kutak Award. Established in 1985 by the Section and the national Kutak Rock law firm, the award honors an individual who has made significant contributions to the collaboration of the academy, the bench, and the bar. The award is in memory of Mr. Kutak, a distinguished Omaha lawyer, champion of legal reform, and advocate for legal education.

Nominations can be mailed to:

Kutak Award Committee
Attention: Carl Brambrink
Director of Operations
American Bar Association
Section of Legal Education and Admissions to the Bar
321 N. Clark Street
Chicago, IL 60654

or sent via email to carl.brambrink@americanbar.org

The deadline for submitting nominations is April 2, 2018.

The 2018 Kutak Award will be presented at a reception during the ABA Annual Meeting in Chicago. For more information about Robert J. Kutak and the list of past recipients, visit the Kutak Award page.
Access to Justice Conference Slated for Atlanta

Georgia State University College of Law will host the Access to Justice 5 Conference on April 12-14. The conference is designed for people involved in incubator or other post-graduate programs for solo, small firm, and nonprofit practitioners, as well as for those who want to know more about how these programs work and how they contribute to enhancing social justice through improved access to law.

The conference, will describe and advance the continued growth of post-graduate law programs and the new wave of affordable legal services for groups without access to legal resources. Along with the basics of creating and implementing incubator programs, non-profit and sliding scale law firms, the conference will address, among other topics:

- Training lawyers for sustainable "justice gap" practice
- Marketing and community outreach
- Assessing the impact of programs and practices on the community, individual clients, and lawyer satisfaction
- Using technology and other tools to deliver services to "justice gap" clients
- Collaboration between bench, bar and academia

The conference will include speakers, panels, workshops and hands-on technology sessions to help participants develop concrete take-aways that will have immediate impact on their work.