WORKING PAPER
AMERICAN BAR ASSOCIATION
TASK FORCE ON THE FUTURE OF LEGAL EDUCATION

NOTICE

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

OVERVIEW

The American legal profession, the nation's law schools, and the American Bar Association have collaborated over several generations to create a system of legal education that is widely envied around the world. At present, the system faces considerable pressure prompted by rising tuition, large amounts of student debt, falling applications, and limited availability of jobs for law graduates.

The Task Force has been charged to examine these problems that are widely believed to threaten the effectiveness of the system of legal education and damage public confidence in it. We were further charged to present recommendations for addressing these problems, which are workable and have a reasonable chance of acceptance.

This draft reflects the present views of the Task Force about what should happen in the future.

Some highlights of our conclusions are:

- Law school education is funded through a complex system of tuition, discounting, and loans. Schools announce standard tuition rates, and then chase students with high LSAT scores by offering substantial discounts without much regard to financial need. Other students receive little if any benefit from discounting and must rely mainly on borrowing to finance their education. The net result is that students whose credentials (and likely job prospects) are the weakest incur large debt to sustain the school budget and enable higher-credentialed students to attend at little cost. These practices drive up both tuition and debt, and they are in need of serious re-engineering.

- The system of accreditation administered by the ABA Section of Legal Education has served the profession and the nation well. But it has come to sustain a far higher level of standardization in legal education than may be necessary to turn out capable lawyers. The ABA Standards for Approval of Law Schools also impose requirements that add expense without conferring commensurate benefits. We conclude that the section would serve the public interest by enabling more heterogeneity among law schools. The Task Force recommends that a number of the Standards be dramatically revised or repealed.

- The ABA's accreditation system should facilitate substantial innovations in law school programs better than it does today. The current procedures under which schools can seek to vary from ABA Standards in order to pursue experiments are completely confidential and fairly narrow in practice. The Task Force recommends that the ABA Section open its variance processes to full public view and use the variance system energetically as an avenue to foster experimentation by law schools.

- The profession's calls for more attention to skills training and experiential learning have been well-taken, and law schools have done much to expand such opportunities for students. There is need to do more. The balance between doctrinal instruction and hands-on training needs to shift still further toward the core competencies needed by people who will deliver legal services to clients.

- State supreme courts, state bar associations, and admitting authorities should devise additional frameworks for licensing providers of legal services, such as licensing limited practitioners or authorizing bar admission for people whose preparation is not in the traditional three-year classroom mold.

The Task Force has spent the last year examining these issues, through deliberation, consultation, and examination of proposals from persons interested in improving legal education.

The Task Force faced three substantial challenges in 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

accelerated its schedule and set a goal of approximately one year to complete all work. This necessarily constrained its ability to gather information, test hypotheses, and vet recommendations with interested parties.

Second, there are many current problems relating to legal education, but the most important include the most intractable, ones not susceptible to 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, which are all complex and interconnected and make piecemeal solutions ineffective. Similar limitations govern the problem of culture. Law schools' culture is at the root of an enormous number of current conditions and changing it is key to many solutions. Yet culture cannot be changed through prescription. It can only change over an extended period, primarily 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 required 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 Working Paper 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 responsibility and influence. The heart of the field manual is Section VII, which is addressed to all parties in the system of legal education. Key themes detailed in Section VII are 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 competences in graduates of legal education programs; the profound importance of cultural change, particularly on the part of law faculty; 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 Working Paper.

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

Other sections of this Working Paper 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, and with an appreciation of the urgency of coordinated change, on the recommendations presented here, 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 WORKING PAPER

A. Law and Legal Education in General

The subject of this Working Paper is legal education and law schools in the United States. In particular, the subject is:

- Threats, challenges, and stresses affecting law schools and legal education; and

- Concrete steps that can be taken by persons, organization, groups, and others involved in legal education to strengthen law schools, legal education programs, and the system for delivery of legal education.

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

Law is the fundamental form of social ordering and 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 Working Paper, the functional description just given will suffice.

Given this understanding of law, 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

This description of law and legal education just given is quite general and applicable to a large range of modern ordered societies. However, we are concerned in this Working Paper with legal education 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, 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, an individual 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 that provides a legal education program which 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 offer legal education programs other than the Juris Doctor program.

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

As we explain in Section V of this Working Paper, law schools are currently subject to a wide range of stresses and criticisms for which this Task Force is charged with proposing remedies. Despite the great breadth of the stresses and criticisms, the Task Force has identified a fundamental tension that underlies the current set of problems. An understanding of this tension 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 deep 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 lawyer competence, availability, and values. From this public-good

perspective, law schools may have obligations to deliver programs with certain characteristics or elements, 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 from the outside 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 public concern today with problems in law schools and legal education than with problems in, for example, 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 (or arguably should be) 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 the public good and private good perspectives. Proponents of a substantial role for scholarship argue that faculty scholarship promotes the public good, directly and indirectly, by developing more intellectually competent lawyers, and by serving the public good of improving law as a system of legal ordering. 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 necessarily 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.

These differing views about the public and private benefits of legal education contrast with the American approach to medical education, which is mostly seen as a public good. Medical education is thus massively subsidized by federal and state governments. There is little likelihood of such substantial subsidy for legal education.

This tension between the public and private perspective 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 identified six core principles to guide the development of its recommendations and which should guide the work of others to improve legal education. The Task Force has distilled these six principles from the comments submitted to it, orally and in writing, and from its review of the current literature proposing solutions.

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. Three relate to the system of legal education as a whole; three relate to enterprises or groups that deliver legal education services.

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 Required 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 for framing general goals to improve the system of legal education, but not sufficient for crafting concrete recommendations. The latter also requires an understanding of the specific problems to be remedied and the environmental conditions that influence solutions. To that end, the Task Force has identified forces and factors that must be taken into account by participants as they act to cure 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 and unprecedented criticism in national media, blogs, Congress, the courts, and elsewhere. The criticism is diminishing public confidence in law schools and legal education. It adversely affects attitudes of prospective law students and those upon whom prospective law students rely for guidance. Yet the criticism has a positive side: it has generated strong pressure for reforms that would redress the bases for the criticism, and has induced a climate of receptivity to solutions and reforms.

2. Communication of Accurate Information. Although the criticism of legal education has been beneficial, some has been erroneous or misleading. This may result in part from the complexity of both legal education and the current problems, and the difficulty in conveying accurate and meaningful information in short articles, blog posts, or like communications. It may also reflect the fact that both lawyers and professors have always been targets for criticism, and that some people are willing to believe the worst about them.

The continuing power of rankings by U.S. News & World Report drives all sorts of decisions by applicants, schools, and employers. These rankings supply deceptively simple forms of information and prompt multiple actors to change their plans based on that simplicity. Some parties engaged in communications about legal education have responsibilities to understand the current situation in order to 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.

3. Moralizing and Blame. Some criticism of law schools and legal education takes the form of moralizing. This leads to 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. The list goes on.

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 implementable short-term actions, and move legal education down a path toward continuing improvement and value for all participants.

B. The Rise of Consumer Outlook

1. Consumer Attitudes toward Legal Education. There have long been two 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 recently become dominant. This has affected the relationship between higher education institutions and students, causing it 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 emphasis on teaching students to think like a lawyer. Law schools, however, now find that they have to reposition themselves under perspective *(b)*. This requires a rethinking 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. These demands have led to revised ABA Standards governing information disclosure and reporting. They have also prompted the establishment of new organizations whose goal is to influence information disclosure and related consumer matters.

3. Long-Term Return on Investment

Also as part of the shift toward a consumer perspective, return on investment in legal education has become important to both prospective students and the public. A significant line of criticism of law schools is that the three years of tuition and other expenses, plus attendant deferral of income, do not justify the incremental return over a working life (or other appropriate period) from the investment in education.

Discussion of return on investment in a legal education has been contentious and complicated, in part because ROI is difficult to measure. The difficulties result from: (a) disagreement over what should be included in the notion of return; (b) competing methodologies for calculating ROI; and (c) individualized factors, most notably school attended, net total cost to the student, and career path pursued or likely to be pursued.

C. The Pricing of Legal Education

1. Law School Pricing in General. Pricing of J.D. programs is generally cost-based. Law schools price a J.D. education by reference to the cost of delivering it, less revenue from other sources (such as endowment income or state subsidies). This method is very different from market-based pricing, where a firm takes market price as given and manages costs so as to deliver the service at a profit. Market-based pricing creates strong incentives to lower costs; cost-based pricing involves little such incentive. Indeed, as explained below, there are strong incentives for the cost of a J.D. education to increase, thereby increasing price to students.

2. 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. Price discrimination is a conventional business practice. However, in the law school context, it is controversial because students who pay the most tend to be ones whose income potential (and thus prospective ROI) may be the lowest. 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 status by contributing directly and indirectly to higher law school rankings.

3. 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. This, like price discrimination, results in part from status competition among schools. It also results from the prevailing faculty culture, which takes scholarship as a defining characteristic of a law professor and as central to professional identity.

Yet another factor is continual change in the nature of educational services delivered. Law schools have steadily altered the package of services offered to include, e.g., clinical education (generally more expensive than classroom 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, rather than on price.

D. The Financing of Legal Education

1. Loan Repayment. Students in J.D. programs who do not receive substantial scholarships pay for their education through loans. Graduates must repay these loans and loan repayment requirements can be a burden, particularly in the early part of a career when earnings may be low. These loan repayment obligations can 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, and 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 reflect the canonical model of a law school and a J.D. program. Because the Standards are prescriptive, they affect costs, although the degree to which they do 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. 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 continued increase in the quality of the J.D. educational program. The Preamble to the Standards exhorts law schools to "continually seek to exceed these minimum requirements in order to improve the quality of legal education."

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.

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 (because of reduced revenues) 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. It seems probable that this change in employment for lawyers is not just a passing phenomenon caused by the Great Recession and must be addressed systematically. The profession is also experiencing a shift in demand from bespoke representation of clients to something that looks more like the commoditization of legal services (i.e., Legal Zoom).

The American market for legal education and legal services is also increasingly affected by forces of globalization. Multiple entities in the ABA and the profession 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 may exceed 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 there, either because of low prospective return on investment or lack of interest in small town or rural life.

In addition, poor and lower income populations remain underserved because lawyers can be made available to these clients 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.

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, many of whom 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 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.

To take other examples, there are different views about whether law schools should provide programs of education only for prospective lawyers through a J.D. program (and perhaps already admitted lawyers through LL.M. programs), or offer programs for other populations as well; whether law schools should have a role, or even responsibility, to contribute to the advancement of knowledge or progress of the legal system, and if so how and to what extent; and whether law schools should be avenues of access for underrepresented populations. Each different view potentially yields a different kind of law school, or at least a school with different character or emphasis.

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 might be that the view is not clearly articulated or widely endorsed. Another might be that the curriculum is developed in response to demands and considerations that extend beyond law school purpose. A curriculum can be affected by the desire of faculty members to teach courses in areas of interest to them; by desires of alumni or local practitioners to teach, or teach particular subjects; by decisions of state authorities regarding subjects to be tested on the bar examination; by tradition and cultural norms in law schools; and by desires of schools to differentiate themselves for competitive purposes.

Mismatch of curriculum and goals can also result from the fact that certain goals have traditionally not been viewed as ones to be incorporated in the curriculum. For example, as important as bar passage is to the success of graduates and thus the success of a school, curricular elements devoted specifically to bar passage are only recent additions, and they still generally remain limited.

Similarly, 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 Market. Since the early 20th century, the standard model of a law school has been that of a college or school in a university; which provides a post-baccalaureate education in law; whose program is 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 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. As a result,

curriculum, culture, and practices have developed with little relation to market considerations.

This lack of orientation toward the market, and lack of experience in the market, has now created significant problems. Universities are requiring law schools to become financially self-sustaining, and competition for students and tuition revenue has come to resemble competition in 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 widely viewed as the path to financial health.

In law schools, however, educational services and business considerations are widely seen as in conflict, even in irresolvable conflict. Part of this results from the historical insulation of law schools from market considerations. Part of it results from the traditional structure of law schools, which separates authority over the academic program from authority over business affairs, and vests the former in faculty members, who generally have little training or interest in business matters. Part of it results from the fact that the education of lawyers is a public, as well as a private, good, and as consequence is subject to demands not directly linked to a school's business or economic interests.

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 indefinite security.
- Scholarship is an essential aspect of faculty 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.

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 of a desire to avoid a market- and change-driven environment. A law school's successful embrace of solutions to the challenges, problems, and demands described in this Working Paper requires a reorientation of attitudes toward change by persons within the law school. Yet this kind of broad based change in attitude is not one that can be achieved easily or quickly.

J. The Profession and Legal Education

The model of legal education that took shape in the early 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 practical and business-oriented aspects—were left to be learned from those already in practice.

Beginning in the second half of the twentieth century, this rough allocation 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. Arguably, it has 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 Good Faith, but Fragmented, Responses to Date

For the past five years, participants in the system of legal education have responded to the environmental and structural stresses and challenges with good faith and increasing commitment. Self-criticism and search for solutions abound. Law 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 and moved to streamline accreditation standards. Bar associations have launched mentoring 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.

The list, however, is one of limited and fragmented responses whose efficacy 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 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 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:

- 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
- Other organizations involved in law-related education
- Regional and other higher education accrediting bodies
- State Supreme Courts
- Bar admission authorities
- Bar associations
- Federal government
- State governments
- Law firms and law offices
- Media
- Prelaw advisors

As this list reflects, the system of legal education in the United States is complex. It is also decentralized. No one person, organization, or group can alone direct change or assume sole (or even principal) responsibility for it. Each member of the system has responsibility for a limited part of legal education, and each will have to take the initiative to improve the part over which it has influence. All of these initiatives, though, should be part of a larger and hopefully coordinated project to improve the system as a whole. Accordingly, this Working Paper speaks to all participants, particularly in Section VII, which sets out common goals to guide each, mainly in its respective area of responsibility or influence.

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 of the form, "law schools must do X,"—or else elimination of existing directives—e.g., proposals of the form, "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, legal education in the United States is a complex and decentralized system and there are many decision makers and actors. 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 or 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. Some Standards take other forms but the current Standards Review process appears to be moving toward an increase in the proportion (even with a reduction of the absolute number) of Standards that direct schools or others what to do. 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. Enforcement mechanisms 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.

B. Eliminated or Lessened Requirements

Eliminating or relaxing an existing requirement can have a benefit, e.g., lowering costs in an area of operation, or allowing greater opportunity for innovation or experimentation. It is because of the potential for such benefits that 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 the requirement constrains an actor from doing what it would like to do absent the requirement. But as this Working Paper 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.

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 collaboration 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 in the ABA Standards for Approval of Law Schools. For example, deans are required to be tenured as faculty members in order to empower them to advance the goals of the law school and the Standards, if necessary, against competing claims by the university or faculty members. Enablement or empowerment promotes flexible implementation of goals by allowing solutions to be adapted to changing circumstances or environments, and by encouraging solutions from persons with a high level of expertise or influence. 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, the lack of leadership among law school deans has prevented it.

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) constituting or 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, one person's or one organization's trying something new or achieving something new 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. Encouragement can be positive or negative. 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 legal education system. The themes set out below 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.

A. The Financing of Law-Related Education Should Be Re-engineered

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

Law school education is funded through a complex system of tuition, discounting, and loans. Schools announce standard tuition rates and then extensively use discounting to build class profiles they find desirable. The most common tactic is to chase students with high LSAT scores by offering substantial discounts without much regard to financial need. Admitted students who do not contribute positively to the desired class profile receive little if any benefit from discounting and must rely mainly on borrowing to finance their education. The net result of such practices is that students whose credentials (and likely job prospects) are the weakest incur large debt to make the school budget whole and enable higher-credentialed students to attend at little cost.

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. For example, 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.

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 pricing practices common for law schools promote unfettered pursuit of status and unanalyzed notions of quality; contribute to steadily increasing prices; promote charging more to those who may have less opportunity to realize long-term return; and promote misdistribution in the delivery of legal services. The current economic shocks to law schools will likely induce changes in pricing practices. But the nature, extent, and efficacy of such changes are not predictable at the time of preparation of this Working Paper.

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 competitive race for the best students and faculty. Although many of the specific recommendations in this Working Paper, if adopted, could improve financing and pricing, the Task Force also recognizes the enormous economic and political complexity of the issues relating to financing and pricing, and their interrelationship. Various observers have submitted testimony or filed comments suggesting everything from an accreditation standard requiring half of all scholarships be need-based to a cap on the amount students could borrow in the loan program. A few suggest that Congress treat legal education assistance as requiring arrangements different from those governing other segments of higher education.

The time and resources available to the Task Force have made it impractical to develop a structure of equitable and effective solutions. The Task Force is also sensitive to the limited time and resources it has available for developing solutions. Accordingly, the Task Force strongly recommends that the American Bar Association undertake a prompt, but fuller examination of these issues than the Task Force is able to make, 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

Although 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. The basic structure has been that of a college in a university, which provides a single degree, the J.D., and which has a full-time faculty marked by the cultural characteristics described above. The curricula, in particular the first-year curricula, have been very similar from one school to another.

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 it. The structure mirrors what those involved in legal education believe a law school must be. In essence, structure today reflects culture.

Differentiation of law schools has increased somewhat in recent years. Much of it, though, has been at the surface level, such as adding to the basic framework an institutional emphasis (real or nominal) in a particular field of law. Some 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 it should be fostered.

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. 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. We think legal education would be improved if there were more room for trying different models.

The potential benefits of greater variety among law schools are considerable. 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 certification of an individual's competence to provide such services; and (c) educational programs that train individuals to provide those limited services. There is no logical necessity that law schools provide these 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 develop standards for accrediting these educational programs or else expressly defer to other accrediting bodies to do so; and (b) that state authorities regulating the practice of law develop certification systems for limited law-related service, which assure quality but do not limit access or unduly raise the price of services. 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. Pursuit of quality unquestionably has helped produce a strong system for educating new lawyers in the United States. But it has also been a significant cause of the steadily increasing price of the J.D. education.

On the other hand, the recent 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 and thus the cost of delivering educational services. Although this has been beneficial, the pressure to reduce costs simpliciter has tended to minimize the impact of reductions on

educational outcomes and the long-term sustainability and success of the legal education system.

These polar perspectives each constitute 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 generally do not pay attention to questions of value. But they need to. Paying close 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 does not take a position on the specific nature of the value any law school should promise or deliver. Consistent with the recommended goal of greater heterogeneity in schools and programs, the Task Force encourages each law school (and or other entity that delivers programs of legal education) to make its own assessment of the particular value it believes it can and should deliver, and to make a commitment to communicating and delivering that value.

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

Most of what the Task Force has heard from recent graduates reflects a conviction that they received sufficient instruction in doctrine but insufficient exposure to other core competencies that make one an effective lawyer.

Law schools are instrumental. They have a societal role: to prepare individuals to provide law-related services. This elementary fact is often overlooked.

Fulfilling the role means that the educational programs of a law school should be designed so that graduates will have: (a) some competences in delivering (b) some legal services.

In light of the key themes of heterogeneity in schools and programs, the Task Force does not take the position that there is a universal core or minimum set of core competences that every graduate of every law school must have. But it does take the position that a graduate's having *some* set of competences 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 competences a school, through an educational program, should ensure is a matter for the school to determine. Among other things, that program should be better shaped with reference to the job market for law-trained people than it often is today.

Although this theme deals with the function of law schools, delivering competences in graduates is not and cannot be a responsibility of law schools alone. For example, in programs to prepare generalist lawyers, such as a traditional J.D., it is also a responsibility of bar associations, firms and other organizations in which legal services are delivered by lawyers, and members of the legal profession in general. These persons and organizations are essential to helping identify competences 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.

The Task Force further notes that by designing programs to develop competences in the delivery of legal services, law schools can contribute to the public good in ways beyond producing skilled graduates who provide legal services. An effective means to develop many types of competence is to have students provide supervised services to clients. Increased attention to developing competences will increase the proportion of a legal education program that involves students delivering legal services. In this way, more legal services can be made available to persons in need of them, but who many not need (or who may be unable to pay for) the services of a fully trained lawyer.

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

There is clamor for innovation in legal education, and there is a fair amount of it under way. Although "innovation" is a malleable concept, at bottom what is being called for is: (a) a greater willingness of law schools and others who can 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. The legal education system today is conservative and risk-averse, and innovation is too often confined to tinkering with established practices and models. The shocks law schools are experiencing today may push them toward the needed changes. But more than this push is needed.

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. As

noted above, experiments or successful risk-taking by one participant can influence others to go down a similar path. In addition, there exists a wealth of knowledge schools can draw, from organization theory and elsewhere, to facilitate their acting in ways that might lead to innovation.

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

Prevailing law faculty culture, and the prevailing structure for faculty role 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 led, inter alia, to declining classroom teaching loads and a high level of focus on publishing and research.

Some, perhaps many, law schools will continue to operate under the current model. For law schools that choose to pursue other models, faculty culture and faculty role must necessarily change to support those new models. These changes may relate to accountability for outcomes; scope of decisionmaking 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 faculty role and promote change in faculty culture, so as to support whatever choices they 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 Working Paper is the system of legal education in the United States, 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 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.

Such improvements are also important because certain recommendations concerning diversification of legal education programs will have their full benefit only with corresponding diversification in legal services and legal services 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 that have prevailed for 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 permanent. Legal education must continually deal with these factors in a systematic fashion.

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 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. 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 collective action by the profession more difficult.

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.

VIII. SPECIFIC RECOMMENDATIONS

The Task Force not only seeks to offer its insights under the general themes discussed above; it also makes specific recommendations to particular groups or actors in the system of legal education. Those 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*

2. Establish a Center or other Framework to Institutionalize the Process of Continuous Assessment of 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.

B. 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 Contributing Commensurately to the Goal of Ensuring that Law Schools Deliver a Quality Education.

Specific Standards and Interpretations that are potentially modifiable (or in some cases eliminable) 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 are potentially modifiable (or in some cases eliminable) 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)
  - 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 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 of 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. Establish Standards for Accreditation or Certification of Programs of Legal Education Other than the J.D. Program.

C. State Supreme Courts and Regulators of Lawyers and Law Practice

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

1. Seriously Consider 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. Authorize Persons Other than Lawyers with J.D.'s to Provide Limited Legal Services and Create Certifications for Such Persons.

3. Create Among Themselves, or else Agree to, Uniform National Standards for Admission to Practice as a Lawyer.

4. Reduce the Number of Subjects Tested on Bar Examinations.

5. Avoid Imposition of 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 Prepare 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 Plans for Limiting or Reducing the Cost of Delivering the J.D. Education and Continually Assess and Improve Those Plans.

2. Develop Goals and a Plan to Manage the Investment of Law School Resources in Faculty Scholarly Activity, and Assess Institutional Success in Accomplishing the Goals.

3. Develop a Clear Statement of the Value the Law School Education and Experience Will Provide, Including its 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 Working Paper, 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.

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.

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