

Comments for the ABA Task Force on the Future of Legal Education

February 2013

Submitted by Law School Transparency

Kyle McEntee, Executive Director

Established in 2009, Law School Transparency is a nonprofit legal education policy organization. Our mission is to improve consumer information and to reform the traditional law school model.

Law schools have become the butt of a new series of lawyer jokes. No longer is it a secret that law schools enroll too many students, fail to adequately prepare people for law practice, and cost too much. Prospective law students—especially the brightest among them—have sprinted away from law school, which in the long run jeopardizes the profession’s ability to serve its important role in society. Failure to fix this crisis quickly risks serious, long-term effects on the credibility of the everyday, important work done by lawyers. In our opinion, that’s something our country cannot afford.

In this comment, Law School Transparency (LST) suggests two action items for the Task Force that will help strengthen the gateway to our profession.

- **Identify the accreditation standards that are necessary to a sound legal education.**
- **Take a strong, public position advocating for drastic changes to the student loan program as applied to law schools.**

Together, these action items can help bring sanity to the law school market while sparking and facilitating innovation at law schools. Our goal is a system that provides fair and effective entry into the legal industry, ensures the future quality of service to clients, and maintains the legal profession’s important role in society, keeping in mind that each of these ends is impacted by the cost of legal education. The challenges are numerous, but long-term solutions justify short-term pain. Ultimately, we hope to see law schools and the legal profession come out from this crisis stronger than ever.

Identify the accreditation standards that are necessary to a sound legal education.

When looking at the accreditation standards and law school prices, a common question is whether to blame the accreditation standards for the tuition growth over the last 30 years. The answer is probably no. The standards may have contributed to keeping novel law school models at bay, but whether these hypothetical schools would have competed is speculative at best. Rather, escalating costs have been caused by competition between schools, the unchecked expansion of federal loan programs, a widely exploited information asymmetry about graduate employment outcomes, and a lack of financial discipline masquerading as innovation.

Parsing blame, while an interesting academic exercise for some and a conscience-clearing exercise for others, misses the point. Law schools cost too much right now. Law schools need to evolve, innovate, and reduce prices right now. Can they?

There are many kinds of barriers to creating change in legal education, from requisite attitudinal shifts to long-term contracts. The ABA Standards should not be a barrier for reforms that are in the interest of the legal profession. Are they?

The Task Force should adopt an operating principle for analyzing whether the current accreditation standards make sense. The principle we suggest is that the accreditation standards should contain only those rules necessary for ensuring a sound legal education. This principle is not foreign: the preamble to the ABA Standards indicates that the standards are “minimum requirements designed, developed, and implemented for the purpose of advancing the basic goal of providing a sound program of legal education.” However, as the Standards currently exist, they do not guarantee a minimum quality of education, but instead promulgate a model law school. While there are merits to this model, it should not be mandated through the accrediting standards.

By slashing through the standards with this operating principle in mind, and then convincing the Section of Legal Education to adopt total reform, schools (new and old) will be able to innovate to

better deliver legal education at a more affordable price. For example, is a student-faculty ratio that weights teaching resources by the employment status of professors (Standard 402) necessary, as opposed to calculating the ratio with credits taught? Or is utilizing any student-faculty ratio for accreditation purposes necessary at all? The same questions must also be asked about the 24-month minimum course of study, 58,000 minutes of instruction minimum, physical library requirements, and full-time faculty scholarly expectations.

Of course, analyzing whether something is necessary for a sound legal education requires defining “sound legal education.” Interestingly, the ABA Standards do not define this term or even signal what it means. A prerequisite for innovation and cost reform is the Task Force clearly identifying the outcomes law schools need to produce, and developing rules necessary for reaching those goals.

Take a strong, public position advocating for drastic changes to the student loan program as applied to law schools.

The federal government lends as much money to students as schools say it costs to attend. With this power, law schools have exercised little fiscal restraint and increased tuition well above the rate of inflation.¹ After all, the money has been there to lend and the students were in tow to borrow. Now, law schools face decreased demand due to better insight into job prospects and still-increasing sticker prices—prospective law students appear to be collectively more price sensitive than ever before.

At some schools, the average amount paid by students has decreased, at least in the short term, but not nearly enough. Even at these schools, the students who are least likely to succeed after graduation are subsidizing the students who are most likely to succeed using student loans they are unlikely to fully service. The sticker tuition price point exploits both students and lending structures, which has a sad consequence of encouraging unethical behavior among debt-laden professionals.

The current model of unlimited lending to law students will not hold up. In 2013, the Higher Education Act of 1965 is up for reauthorization and Congress will decide whether this policy of unchecked lending makes sense in light of higher education economics. Limiting lending to students and increasing the financial accountability of educational institutions are important steps towards affordable legal education.

The Task Force must take a strong, public position on the availability of student loans to law students. It should articulate that law schools have failed to exercise fiscal restraint and that law schools do not deserve blank checks from the federal government without regard to the student’s ability to repay the debt. The high debt loads of recent graduates are an ethical issue, both in terms of the relationships between schools and their students, and in terms of how that debt can undermine the ethical provision of services to clients. Moreover, the Task Force should articulate that the cost of legal education is unlikely to be affordable if the current lending system remains in place. Recognizing and affirming the need to change the lending system is an important first step, and we expect this issue to move quickly.

¹ From 1985 to 2011, private school tuition grew about 2.5 times the inflation rate and public school resident tuition grew 5.27 times the inflation rate. While the federal aid program has changed a number of times over this period, there was little downward pressure on tuition increases.

Conclusion

We believe that reforming the accreditation standards to allow for innovative law school models and putting an end to the unrestrained flow of debt-financed tuition dollars to law schools will work in tandem to allow and cause schools to provide an education where both quality and the costs of that quality are given appropriate consideration.

Thank you for the opportunity to submit these comments. The crisis in confidence that law schools face poses a serious problem for the legal profession. We are pleased that the ABA Center for Professional Responsibility has endeavored to address this problem. Law School Transparency is available to discuss these action items and help in any other way we can.

Sincerely,

Kyle McEntee
Executive Director
kyle@lawschooltransparency.com