

STATEMENT TO STANDARDS REVIEW COMMITTEE

November 11, 2011

I am here today on behalf of Law School Transparency to emphasize the need for the Section to assert its role in reforming legal education while keeping in mind the two consumers of legal education: students and employers.

Since its founding in 2009, Law School Transparency has lent a consumer-oriented voice to reforming law schools. LST has investigated how law schools portray the job stats of their graduates, how the Section of Legal Education regulates this law school behavior, and why miscues in resolving these problems may indicate that continued, outside pressure for consumer-oriented reforms will be necessary.

Much of LST's time is spent advocating not just for measures that require schools to stop misleading prospective law students, but for measures that can enable prospectives to make informed decisions about whether and where to attend law school. The proposal by Dean Yellen's subcommittee is a step in the right direction. It is critical that the committee approve their proposal. And it's vital that schools post comparable, up-to-date information on their websites. Publishing information in the Official Guide is not enough.

This committee must also recognize that the 509 subcommittee's work will not be finished if and when the Council finally approves the new Standard 509. While the changes will do much to stop schools from actively misleading prospectives, it will not help them understand which schools best meet their individual career objectives. This committee can and should be doing more than just making information available for public consumption, particularly if it wishes to minimize the impact of third parties like U.S. News. Without helping on this front, prospective students will continue disproportionately relying on the U.S. News rankings as their go-to for sorting different programs. Besides this very useful goal of reducing the impact of the rankings, even if only a little, law schools and the Section have a special obligation as educators. This is not just about doing the bare minimum; it is about improving students' educational experiences, as well as the experience of those who use their services after law school.

These obligations extend to the committee's review of all accreditation standards.

Consumers have limited knowledge about what a sound legal education consists of. This is why we need consumer protection in the first place. Relatedly, it's the educators who do know the ins and outs of legal education. You engage every day with students, and have the opportunity to learn about education in a way that those who simply go through it do not. Those of you who volunteer to work within the Section of Legal Education have an even better understanding of how things work, and an even stronger interest in protecting students.

It has become apparent that legal education has gotten away from legal educators in some respects. There are almost 200 schools vying to be Harvard-like think tanks. Tuition prices are tied to a distorted market rate loosely based on a school's U.S. News ranking and geographic location. Does anyone expect that this pricing model, which relies on student loans and dwindling credibility, will survive public scrutiny? Congressional scrutiny?

Many member schools have taken advantage of a lenient Standard 509 in maintaining their race to imitate those at the top. It has become imperative for each school's admissions office to dress up the employment prospects in order to compete in recruiting top students. But is the Harvard deluxe model for everyone? At some point, as more and more graduates question their own ability to practice law upon graduation and more clients refuse to pay for their services, we must question the current model. This means inquiring as to whether the accreditation standards can be changed to allow other models to emerge.

A chief concern must be how to ensure that the cost of obtaining a legal education can be reduced. It is wrong for schools to ask what students are willing to pay when setting prices. Consider the tuition and graduate debt from the school you teach at or graduated from, and how quickly those numbers grew over the last 25 years. It should be clear that for too long, cost considerations have been absent from reform discussions. The cost of a legal education in the United States is obscene, and its effects are felt well beyond the individuals who choose to debt-finance their education.

The law school cost structure will receive continued attention in the coming days, weeks, and months. The buzz among faculty and administrators will be about what subtle changes can be made to reduce costs. Reducing costs to any great extent will seem insurmountable. That's because subtle changes are not the answer.

The profession needs radical change to the law school cost structure. We must be asking how to get ourselves out of this mess. If the answers do not come quickly from legal educators, the result will be that educators end up forfeiting their right to control the changes. And if the answers have to come from elsewhere, unbreaking the broken law school model will be as painful as it is necessary.

A few specific areas need to be addressed immediately. First, Dean Lewis should create a subcommittee to review regulatory barriers preventing law schools from adapting low-cost models. It is problematic—and there are people here today who agree—that organizations like AALS are fighting so hard, as the cost of educating new lawyers lurches skyward, to require tenure for ABA-approval. Some schools are finding ways to increase value and better prepare graduates by relying on more adjuncts and fewer tenured professors; such adaptive models should be encouraged by the standards, not restricted. Other standards and interpretations also serve to make cost reductions more difficult. When the time comes, LST and I'm sure others will be happy to point out the standards that create the toughest barriers.

Finally, the Section must do a better job at policing its members if it wants to stay relevant in the discussion. This means having standards in place that are tough enough to permit sanctions and embolden the accreditation committee to be more assertive. When ABA-approved law schools start getting sued for alleged fraud and violations of state consumer protection laws, the value of “ABA-approved” has less meaning. If schools are not investigated and properly sanctioned by the Section of Legal Education, then the bad apples will make all member schools look worse by association. As of now only a handful of schools are facing class actions, but many more will come in the coming months. The more often ABA-approved schools get slapped with lawsuits, the less it means anything to actually be ABA-approved. It is a promise of quality, and the Section must be taking greater steps to protect consumers, which necessarily means being tougher on how its members recruit those consumers.

Above all, it is important not to compromise the values of the Section of Legal Education in the name of appeasing stakeholders who argue on behalf of themselves, rather than their consumers. When setting policy and creating new standards, we hope committee members distance themselves as much as possible from the dual roles many of them play as deans, professors, or counsel to institutions of higher education. Part of this means seeking members of the profession who can assist the committee in redefining what a ‘quality legal education’ entails. Ultimately if the current Section committee members are not up for the challenge, the responsibilities of shaping legal education will need to be placed somewhere else.

In closing, we hope you will take LST’s comments to heart, and that you will ask yourselves the questions we have posed before you this afternoon. Thank you.