Final Report, Findings & Recommendations on

The Impact of Law School Debt on the Delivery of Legal Services

Adopted by the Assembly of the Illinois State Bar Association, June 22, 2013

Special Committee on the Impact of Law School Debt on the Delivery of Legal Services

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EXECUTIVE SUMMARY

I. EXCESSIVE LAW SCHOOL DEBT DECREASES THE QUANTITY AND QUALITY OF LEGAL SERVICES AVAILABLE TO THE PUBLIC

The average student graduates from law school today with over $100,000 of law school debt. After adding accrued interest, undergraduate debt, and bar study loans, the debt burden of new attorneys frequently increases to $150,000 to $200,000, levels of debt that impose a crushing burden on new lawyers. But excessive debt is a problem not only for new lawyers. Lawyer debt also poses significant challenges to the rest of the legal profession and the public that the profession serves. To explore the extent of these challenges and consider appropriate recommendations, Illinois State Bar Association President John E. Thies created the Special Committee on the Impact of Law School Debt on the Delivery of Legal Services ("Special Committee").

During the fall of 2012, the Special Committee conducted a series of statewide hearings inviting testimony from a wide-range of individuals as to their "front line" experiences with this problem. Based on this testimony and other research, the Special Committee has concluded that this law school debt crisis is having a serious and negative impact on the quality and availability of the legal services that the legal profession provides in this state. In short, the debt burden of new attorneys, combined with their lack of readiness for practice upon graduation and a difficult job market, is detrimental to the public's ability to access quality legal services. In particular, the Special Committee documented the following effects of law school debt:

- **Small Law Firms Face Challenges Hiring and Retaining Competent Attorneys**: Many small law firms are unable to pay the salaries new attorneys need to manage their debt. As a result, turnover at such firms is high, forcing those firms to spend additional time and resources training new attorneys (compounded by the problem of inadequate readiness for practice upon graduation). To make up for the inadequate salary, some small firms expect associates to take additional work as a public defender, in the state's attorney's office, or in non-legal jobs, limiting the value that small firms can derive from them.

- **Fewer Lawyers are Able to Work in Public Interest Positions:** Attorneys with excessive debt are less able to take legal aid or government jobs which, in Illinois, have starting salaries between $40,000 and $50,000 per year. Public interest offices that raise their salaries to accommodate debt and attract talented lawyers are unable to hire as many attorneys, reducing the services these offices can provide. New attorneys who do work in public interest law often leave within three to five years, depriving public interest offices of experienced mid-level attorneys and requiring them to train new hires constantly, cutting into the quality of services they provide.

- **New Attorneys Have Too Much Debt to Provide Affordable Legal Services to Poor and Middle Class Families and Individuals:** Salaries among law firms primarily serving the legal needs of middle class individuals and families are also inadequate to support the debt loads of new attorneys. Indeed, 25% of all graduates of the class of 2011 in private practice in Illinois made less than $50,000 in their first year after graduation, including most in downstate areas. Because debt makes it

difficult for attorneys to survive at that salary level, young attorneys move quickly to higher paying legal sectors if possible, and, if not, many leave the profession. That exodus has contributed to the profession's inability to meet what the Legal Services Corporation calls "an explosion in the demand for legal services" among middle class and poor Americans in recent years.

- **As Fewer Attorneys Find Sustainable Jobs in the Private Sector, More Attorneys Enter Solo Practice:** The number of new graduates entering solo practice has increased from 2.8% to 6% between 2007 and 2011. Many more enter solo practice after several years of unemployment or underemployment. Because of their debt loads, however, these attorneys are unable to adequately finance a new law practice. As a result, most struggle, and many consider leaving the law if they are unable to move on to other jobs. This group is also more likely to commit ethics violations and to be the target of malpractice suits.

- **Attorneys Report that Debt Burdened Lawyers are Less Likely to Engage in Pro Bono Work:** Financial pressures make it more difficult for attorneys to volunteer their time to provide pro bono services.

- **Debt Drives Young Attorneys Away from Rural Areas:** Already, rural areas of Illinois have significantly fewer lawyers per capita than more populated areas, because it is more difficult for lawyers to service significant debt in rural areas. This problem is likely to intensify, as 64% of lawyers in counties with fewer than 25,000 people are over 50, compared to only 45% of lawyers statewide. As lawyers age and retire in more rural environments, there will be fewer young attorneys to take their place.

- **Heavy Debt Burdens Decrease the Diversity of the Legal Profession:** Blacks and Hispanics are more likely to have law school debt, and their debt loads tend to be higher. As a result, high debt loads may drive minorities away from the profession, making it less reflective of the diversity of America and diminishing its ability to serve minority clients.

- **Threats to Professionalism:** The Special Committee heard much anecdotal evidence suggesting that attorneys with heavy debt loads may be more likely to commit ethics violations. The greatest pressures are on solo practitioners, who may take work beyond their level of competency, face financial pressures to prolong litigation, or terminate a representation inappropriately if a client has difficulty paying. Evidence from the Attorney Registration and Disciplinary Commission does not yet show an increase in ethics violations among lawyers with heavy debt loads. Nonetheless, this data may be a lagging indicator of a problem that is already developing.

II. EXISTING LOAN REPAYMENT PROGRAMS ARE INADEQUATE AND DO NOT SOLVE THE PROBLEM

Existing loan forgiveness programs, including the income-based repayment plan (IBR) that the federal government administers, provide some relief from the problems listed above. These programs are inadequate, however, for a variety of reasons. Many public interest attorneys are

unwilling to enroll in IBR because, although it lowers an attorney's monthly payment, any interest unpaid at that payment level continues to accrue. Moreover, the attorney's debt will not be forgiven until ten years of service in public interest. Funding for public interest jobs is unstable, and an attorney who does not continue in public interest law may have her accrued interest capitalized, leaving the attorney in a worse position than before. In addition, IBR does not cover private loans, the program may penalize a lawyer for the earnings of the lawyer's spouse, a lawyer's credit score may still suffer while on IBR, and many attorneys do not expect funding for IBR to continue in a time of government austerity. In addition, some graduates were not aware of the intricacies of IBR and may not be taking advantage of all the features available to them.

III. THE NEED TO REFORM LEGAL EDUCATION TO ADDRESS THE REALITIES OF THE MARKETPLACE—THE PROBLEM GOES BEYOND COST

The Special Committee concluded that, given the dynamics discussed above, the training that law students receive in law school today is increasingly not worth its high cost—essentially creating a "perfect" storm. The problems with the current legal education model go beyond the difficult economic climate. In fact, the Special Committee received testimony that the tight job market facing recent law school graduates may have—at least in part—*resulted from* the inadequate training of law students for the jobs that are available. The majority of lawyers who testified indicated that new lawyers are not adequately prepared for practice, and that hiring partners have consequently become less willing to hire new lawyers, preferring instead those with a minimum of several years of experience. The inadequate "practice ready" skills of new graduates has apparently contributed to the reality that only 55% of the law school class of 2011 had full time, permanent jobs that required a JD nine months after graduation.

The purpose of the Special Committee does not include examining particular curricula or the law school cost structure in great detail. Nonetheless, the Special Committee's research and the testimony at the hearings support a number of conclusions about the preparedness of law school graduates:

- Law schools place an inordinate focus on academic scholarship. Although they are paid more, faculty today teach less and have fewer administrative responsibilities than several decades ago, all in the name of granting more time for scholarship. Although some scholarship is valuable, 40% of law review articles are never cited, and 80% are cited fewer than ten times. At the same time, the cost of one law review article is about $100,000, a cost borne by law students and contributing to the unavailability of affordable legal services for the public.

- Law schools fail to provide adequate opportunities for law students to practice legal writing skills in the context of problems that might arise in a typical practice setting.

- Law students do not receive adequate feedback on their performance during law school.

- The faculty tenure requirements of most law schools, along with law schools' focus on academic scholarship, deemphasizes practice experience as a

qualification. As a result, many faculty lack the practice experience that would assist them in training the next generation of lawyers and judges.

Above all, law schools must focus on developing a model of legal education that can educate lawyers for practice at an affordable price. It is the Special Committee's view that the practicing bar and organized bar associations can and must play a supportive role in any reform efforts, including by identifying creative new ways to help impart practical experience to young lawyers.

IV. Recommendations

Based on the testimony at the hearings and its own research, the Special Committee has developed a series of recommendations to mitigate the law school debt crisis and transform legal education to focus on educating lawyers for practice at an affordable price. The recommendations are divided into several categories:

A. Financing Law School

Law schools must control costs by eliminating unnecessary expenditures, including by avoiding excessive payments to universities hoping to profit from their law school. One way to force law schools to economize is to ensure that their primary revenue source, federal student loans, is contingent on their success in educating lawyers. Accordingly, the federal government should:

- **Place Reasonable Limits on the Amounts Law Students Can Borrow**: Congress and the Department of Education should place reasonable limits on the amount that law students can borrow from the federal government. Student loans should also be made dischargeable in bankruptcy so private lenders have the incentive to properly screen loan applicants based on the chance that the school they attend will prepare them to be successful in the job market. That way, law schools will have an incentive to restrain costs to the level that students can borrow. If a school fails to do so, most students will not be able to afford to attend, and the school will close.

- **Impose Outcome-Based Requirements for Federal Student Loan Eligibility:** Rather than allowing all accredited law schools to enroll students receiving federal student loans, Congress should restrict federal loan eligibility to schools whose graduates meet certain employment and debt-repayment outcomes. Such a program would model the Department of Education's current standards for for-profit and vocational schools. Under this program, law schools would face additional market pressure to train attorneys for practice at an affordable price, or they would lose their federal loan eligibility and likely go out of business.

- **Reallocate the Funds Available Through Loan Forgiveness Programs:** The federal government should ensure that funds available in the IBR program are targeted to attorneys most in need. For example, the program could save money by putting a cap on IBR aid for attorneys with a salary above a certain threshold. The money saved could be used to grant loan forgiveness to public interest attorneys on a yearly basis, rather than requiring a ten-year commitment, thus removing some of the uncertainty that prevents

some lawyers from enrolling. The federal government should also extend the more generous IBR provisions for public interest attorneys to private sector attorneys willing to work in areas with unmet legal needs. Loan forgiveness for private sector attorneys could be contingent on performing a certain amount of pro bono work each year.

B. Revisions to the Accreditation Standards

Law schools must have the ability to experiment with new models of legal education to find the best ways to control costs while still delivering a quality education. The ABA Section of Legal Education and Admissions to the Bar should revise the standards for accreditation to allow appropriate flexibility. In particular, the Special Committee recommends that the Section:

- Allow adjunct faculty to play a greater role in legal education, including in the first year;
- Require that law schools provide debt counseling for all admitted students, before they commit to attend;
- Remove the requirement that all faculty engage in scholarship;
- Expand the credits a student can earn from distance education, and limit the requirements for a law school's physical plant, thus allowing law schools to experiment with alternative ways of delivering legal education;
- Allow law schools to meet the requirements for library collection through digital access; and
- Require law schools to collect additional information about the salary, debt load, and employment status of their graduates on a voluntary basis from multiple graduation years.

C. Reforms to Law School Curricula

Law schools themselves must transform their curricula to focus on educating lawyers for practice. Law schools should:

- **Focus on Practice-Oriented Courses:** Law schools should prioritize simulation courses, live-client clinics, and other courses that give students the opportunity to learn and apply legal principles in the context of real life problems. Every student should have the opportunity to benefit from such courses. At the same time, law schools should integrate practical exercises into traditional doctrinal courses so that students begin to learn to practice law from the beginning of law school.

- **Provide Fewer Exotic Courses:** Law schools should cut back on courses such as "Law and Literature" that focus exclusively on the academic study of law, with no practical application.

- **Provide More Writing Assignments and Constructive Criticism:** More law school courses should include writing assignments and opportunities for students to receive feedback on their work prior to the final exam.

- **Teach Law Office Management:** Law schools should prepare students to begin practice at graduation by teaching law office management.

- **Teach a Bar Review Course:** Law schools should provide bar review courses to students at no extra cost, removing a significant expense for most students in the summer after graduation.

- **Transform the Second and Third Years of Law School:** Law schools should use the second and third years of law school to help students transition to practice through apprenticeships in practice settings, practical courses, and teaching assistantships, rather than more traditional doctrinal courses. The Special Committee does not believe the third year of law school should be cut, as doing so would likely leave graduates even less prepared to practice than they are currently.

D. Reforms to Law School Faculty

To facilitate the above changes to curriculum, law schools should make the following reforms to their faculty and governance structures:

- **Change Tenure and Hiring Requirements to Put Less Emphasis on Scholarship:** Law schools should prioritize teaching ability and practice skills when hiring and granting tenure, rather than academic scholarship.

- **Include Practicing Judges and Lawyers on Hiring and Tenure Committees:** Experienced practitioners and judges should serve on law school faculty hiring and tenure committees to ensure that those committees consider the practice skills and ability to educate students for practice of potential faculty members.

- **Use More Properly-Trained and Supervised Adjunct Faculty:** Law schools should hire more adjunct faculty to lower their costs and provide students additional exposure to the practice of law before graduation.

- **Give Clinical and Legal Writing Faculty an Equal Say in Governance:** Clinical and legal writing faculty should have the same responsibilities with respect to law school governance as traditional faculty.

E. Reforms for the Illinois Supreme Court and Other State Supreme Courts

The Illinois Supreme Court and other state supreme courts should:

- **Consider Ways to Reduce the Cost of Becoming Licensed:** For example, supreme courts could allow qualified students to take the bar exam in February of their third year, thus avoiding the cost of studying for the bar exam after graduation, and reducing the delay before beginning work. Such a proposal should be careful not to restrict the time law students have in their third year to become practice ready. Alternatively, supreme courts should consider offering bar admission to qualified graduates of their state's law schools without a bar exam.

- **Monitor Ethics Problems:** State supreme courts should monitor potential ethics violations that may arise because of the excessive law school debt that many graduates are carrying.

- **Help Young Attorneys Gain Practice Experience:** State supreme courts should also give young attorneys and law students more opportunities to gain practical experience by broadening student practice rules and allowing practice management CLEs to count toward minimum CLE requirements. For example, in Illinois, the Supreme Court could relax Rule 711 to allow law student apprentices to gain more experience while working for a private law firm.

F. Support from the Organized Bar

Bar associations must support law schools as they seek to transform legal education. Bar associations should:

- **Facilitate Firm Apprenticeship Programs:** Bar associations should support law firms that help to train new lawyers through firm apprenticeship programs, in which lawyers receive a smaller salary in return for additional training. For example, bar associations could develop a standard set of CLE programs for law firm apprentices to ease the cost of apprenticeships for law firms. These programs could also begin during the third year of law school and provide a cheaper way for third-year law students to receive credit toward graduation.

- **Partner with Law Schools to Provide Practice Experiences to Law Students:** Bar associations should assist law schools with identifying and training lawyers and judges who can be effective adjuncts or externship supervisors for law school programs.

- **Facilitate Pro Bono Work:** Bar associations should connect young lawyers with experienced attorneys across the state to work on pro bono projects, creating another avenue for young attorneys to gain valuable experience.

- **Facilitate the Sale of Rural Law Practices to Young Lawyers**: Bar associations should create a program to assist retiring lawyers who wish to sell their practice to a law student or young lawyer after a period of apprenticeship and training.

- **Provide Debt Counseling for Lawyers and Prospective Law Students:** Bar associations should provide debt counseling to young lawyers to assist them with managing their debt load. They should also partner with college pre-law advisors to help prospective law students understand and plan for the financial challenges of attending law school.

- **Provide Resources for Solo Practitioners and Small Firm Lawyers:** Bar associations should support small firms and solo practitioners by providing free and reduced CLE, access to Fastcase or other online research tools, an ethics hotline, mentorship programs, and networking opportunities.

- **Partner with Groups to Ensure Lawyers are Placed Where They Are Needed:** Bar associations should partner with law schools, local governments, economic development groups, legal recruiters, and others to ensure that lawyers are placed in geographic areas and practice areas where they are most needed.

INTRODUCTION

The challenges facing young lawyers because of the debt burden of attending law school and the catastrophic job market are receiving significant attention.[1] The average law school graduate now faces over $100,000 of debt from law school at graduation, not including lingering undergraduate loans and money borrowed to study for the bar exam and assist with living expenses until a graduate's first job.[2] The pressures of that debt are only compounded by the austere legal job market that left almost 50% of graduates from the class of 2011 unemployed or underemployed.[3] But that may not be the whole story. After removing clerkships with state trial courts (which are often temporary and unlikely to lead to other employment), positions funded by law schools, jobs that feature nominal salaries, solo practitioners, and graduates who have opened a law office together or are engaged in "eat what you kill" arrangements with private firms (in which the graduate earns money only for work she brings in herself), one scholar estimates that as few as one-third of the class of 2011 obtained employment "that a typical prospective law student would have considered a minimally satisfactory employment outcome."[4]

The consequences for lawyers of the worst job market in many years combined with crippling debt are obvious and well-documented.[5] Young lawyers are facing unprecedented

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[1] *See, e.g.*, MASS. BAR ASS'N, REPORT OF THE TASK FORCE ON LAW, THE ECONOMY, AND UNDEREMPLOYMENT (2012).

[2] A survey by *U.S. News and World Report* in early 2012 found that the average law school graduate had $100,433 of debt upon graduation. Josh Block & Janet Lorin, *Law School Debt Exceeds $100,000 Amid Jobs Shortage*, BLOOMBERG.COM, Apr. 18, 2012, http://www.bloomberg.com/news/2012-04-18/law-school-student-debt-exceeds-100-000-amid-jobs-shortage.html. The American Bar Association Section of Legal Education and Admissions to the Bar reports that 2011 public law school graduates had an average of $75,728 of law school debt, and private law school graduates had on average $124,950 of debt. Am. Bar Ass'n, Average Amount Borrowed for Law School, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/avg_amnt_brwd.authcheckdam.pdf (last visited Jan. 28, 2013). As this report documents, many graduates leave school with significantly more debt, including many with over $200,000.

[3] Only 55% of the class of 2011 had full time, long term jobs for which a law degree was required nine months after graduation, while another 8% were in full time, long term jobs for which a law degree was preferred, and 4% were employed in professional positions for which a law degree conferred no advantage. Joe Palazzolo, *Law Grads Face Brutal Job Market*, WALL ST. J., June 25, 2012, *available at* http://online.wsj.com/article/SB10001424052702304458604577486623469958142.html (reporting that 55% of the class of 2011 had full time, long term jobs nine months after graduation). In addition, 6% of 2011 graduates working in private practice reported that they were employed as solo practitioners, likely indicating they were unable to obtain any other employment. NALP, Class of 2011 National Summary Report, http://www.nalp.org/uploads/NatlSummChart_Classof2011.pdf (last visited Jan. 28, 2013).

[4] Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177, 198-202 & n.100 (2012).

[5] *See, e.g.*, BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS (2012); Campos, *supra* note 4; Nathan Koppel, *Law School Loses Its Allure as Jobs at Firms Are Scarce*, WALL ST. J., Mar. 17, 2011, *available at* http://online.wsj.com/article/SB10001424052748704396504576204692878631986.html; David Segal, *Is Law School a Losing Game?* N.Y. TIMES, Jan. 8, 2011, at BU1; Matthew Shaer, *Law Schools Sued for Lying About Lawyering*, N.Y. MAG. (Feb. 1, 2012, 12:53 PM), *available at* http://nymag.com/daily/intel/

financial pressures that cause multiple distortions of their personal and professional lives. Many are unable to find employment that will allow them to hone their skills as attorneys during a crucial period in their career, while others are locked into jobs that they dislike merely to pay the bills. Yet others work extra jobs in non-law fields to make ends meet. Lawyers now suffer from clinical depression at a rate 3.4 times higher than the general public and are twice as likely to commit suicide.[6] According to Janet Piper Voss, the Executive Director of the Illinois Lawyers' Assistance Program, the number of law students the program counseled increased significantly a few years ago because of anxiety and depression related to financial issues and the difficulty of finding employment.

The debt burden is an inexorable force that ruins the credit scores of many young attorneys trapped in an endless cycle of forbearances, deferments, re-financings, and struggles to make even the minimum monthly payment. The financial plight of many young attorneys forces them to delay important life milestones, such as marriage, starting a family, or buying a house. In the worst cases, some young lawyers must leave the profession before their careers have even begun, either because their debt prevents them from joining the bar,[7] or because they simply cannot find a way to make their monthly debt payments without taking a job outside the law. In short, the consequences for young lawyers are devastating.

The consequences for the public of the new economic realities of the legal profession have received less attention. Lawyers are members of a publicly recognized profession, with a responsibility to exercise the privileges afforded them for the good of their clients and of the public. As always, the chief concern of the bar must be to continue to make high quality legal services available to all people, and to protect the rule of law in our society. Common sense suggests that those objectives will be influenced by the significant economic disruptions facing new lawyers, and yet neither law schools nor the organized bar have focused on this crucial piece of the problem of law school debt.

President John E. Thies of the Illinois State Bar Association created the Special Committee on the Impact of Law School Debt on the Delivery of Legal Services ("Special Committee") to address that inadequacy. The Special Committee's charge was to document the effect of the law student debt crisis on the delivery of legal services in Illinois, and to propose solutions to address this problem.

2012/02/law-schools-sued-for-lying-about-lawyering.html. Several internet blogs have contributed to the outcry about the negative outcomes of legal education for many law graduates, including *Inside the Law School Scam*, *Above the Law*, *Scott Bullock*, *Loyola 2L*, *Nando*, *JD Underground*, *The Law School Tuition Bubble*, and others.

[6] Ted David, *Can Lawyers Learn to Be Happy?*, PRAC. LAW., Aug. 2011, at 29, 29.

[7] A representative of the Illinois Board of Admissions to the Bar testified that thirteen July 2012 bar exam passers were denied a law license because of "irresponsibility in financial matters—chiefly delinquency in student loan payments. *See also* Susanna Kim, *Ohio Supreme Court Denies Law License for Grad with $170,000 in Student Loans*, ABCNEWS, Jan. 18, 2011, *available at* http://abcnews.go.com/Business/ohio-supreme-court-denies-law-license-law-grad/story?id=12632984#.UL1hhHd7uZQ.

METHODOLOGY

During Fall 2012, the Special Committee held a series of five public hearings around the state.[8] The hearings were publicized broadly through the ISBA newsletter *Illinois Lawyer Now*, local bar association, and e-mail blasts to ISBA members. In addition, a broad cross section of the legal profession in Illinois received personal invitations to testify at the hearings, including the deans of Illinois and St. Louis law schools, state's attorneys and public defenders from each Illinois county, judges, prominent attorneys, recent law school graduates, and law students known to the Special Committee.

The Special Committee requested that those testifying address the impact of law student debt on the delivery of legal services, and particularly on the following:

1. Recruitment and retention of new lawyers in small- and medium-size firms;
2. Decisions by lawyers to open practices in small communities;
3. Recruitment and retention of new lawyers working for legal aid organizations;
4. The financial ability of new lawyers to open solo practices (and possible liability and ethical consequences resulting therefrom);
5. The availability of lawyers willing to perform pro bono services; and
6. The opportunities for new lawyers to advance from entry level positions in the profession.

Ultimately, the Special Committee heard live testimony from fifty-three individuals, including, among others, private attorneys in small, medium, and large firms, government attorneys, public defenders, legal aid lawyers, law students, judges, law professors, and deans. In addition the Special Committee heard testimony from representatives of the Illinois Attorney Registration and Disciplinary Commission ("ARDC"), the Illinois Board of Admissions to the Bar, and the Lawyers' Assistance Program. The Special Committee also received written submissions from about a dozen other lawyers and law students. In addition, the Special Committee performed additional research, as documented in the footnotes throughout this report, to assist in its understanding of the law school debt crisis.

REPORT

I. Debt Load of Recent Law School Graduates

As reported above, the average law school graduate now faces over $100,000 of debt from law school at graduation.[9] Among schools training lawyers to practice in Illinois, the costs of attendance and average debt levels of graduates are as follows:

[8] The five hearings occurred in Wheaton, Peoria, Fairview Heights, Champaign, and Chicago on October 23, October 24, November 15, November 16, and December 12, 2012, respectively.
[9] *See supra* note 2.

Table 1: Law School Expenses and Average Debt of Graduates[10]

Law School	2011-2012 Tuition and Fees	2011-2012 Living Expenses	2011-2012 Total Annual Expenses	Average Debt of 2011 Graduates who incurred debt
Illinois				
University of Chicago	$47,786	$22,536	$70,322	$125,035
Chicago-Kent	$42,030	$21,098	$63,128	$109,769
DePaul	$41,690	$24,500	$66,190	$126,794
Illinois (Resident)	$38,567	$16,618	$55,185	$90,432
Illinois (Non-Resident)	$45,567	$16,618	$62,185	$90,432
John Marshall	$38,180	$23,849	$62,029	$136,486
Loyola (Chicago)	$39,496	$20,584	$60,080	$112,745
Northern Illinois (Resident)	$18,688	$17,226	$35,914	$61,530
Northern Illinois (Non-Resident)	$33,311	$17,226	$50,537	$61,530
Northwestern	$51,920	$23,500	$75,420	$139,101
Southern Illinois (Resident)	$15,994	$14,546	$30,540	$66,160
Southern Illinois (Non-Resident)	$36,154	$14,546	$50,700	$66,160
Wisconsin				
Marquette	$37,570	$19,230	$56,800	$117,094
Wisconsin (Resident)	$19,683	$18,030	$37,713	$66,987
Wisconsin (Non-Resident)	$38,811	$18,030	$56,841	$66,987
Iowa				
Drake	$34,006	$17,910	$51,916	$98,284
Iowa (Resident)	$26,348	$16,633	$42,981	$94,595
Iowa (Non-Resident)	$46,056	$16,633	$62,689	$94,595
Missouri				
Missouri - Columbia (Resident)	$17,784	$16,542	$34,326	$72,089
Missouri - Columbia (Non-Resident)	$34,000	$16,542	$50,542	$72,089
Missouri - KC (Resident)	$16,730	$18,060	$34,790	$91,338
Missouri - KC (Non-Resident)	$31,772	$18,060	$49,832	$91,338
Saint Louis University	$36,175	$23,456	$59,631	$120,000
Washington University	$46,042	$21,925	$67,967	$101,340
Indiana				
Indiana - Maurer (Resident)	$28,130	$22,882	$51,012	$90,070
Indiana - Maurer (Non-Resident)	$45,602	$22,882	$68,484	$90,070
Indiana - McKinney (Resident)	$22,323	$21,124	$43,447	Unavailable
Indiana - McKinney (Non-Resident)	$43,821	$21,124	$64,945	Unavailable
Notre Dame	$43,335	$17,650	$60,985	$94,443
Valparaiso	$38,086	$12,760	$50,846	$118,487

[10] The average debt figures come from the website of *U.S. News and World Report*, at http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/grad-debt-rankings. The debt figures listed for public schools include both resident and non-resident students. The tuition and fees and the living expenses come from the 2013 *ABA LSAC Official Guide to ABA-Approved Law Schools* (2012), available on the LSAC website at https://officialguide.lsac.org/release/OfficialGuide_Default.aspx. The reported numbers are for full-time, single students living off campus.

As staggering as those average debt levels are, it is important to remember that they are merely *averages* of *law school* debt owed at graduation. Many students graduate owing significantly more. First, the numbers do not include interest that may accrue between the loan's issuance and graduation, which may add up to an additional 15% for graduates who do not make interest payments in law school.[11] Moreover, the numbers do not include undergraduate debt, which adds up to $23,800 for the average bachelor's degree recipient who borrows at a public school,[12] and $29,900 at a private school.[13] On top of those numbers, one must add the $15,000-$20,000 that many law students borrow to pay for bar exam registration, bar study courses, preparatory materials, and living expenses during the summer after graduation.[14] The result of it all is that debt burdens of upwards of $150,000 or even $200,000 were common among the recent graduates who testified before the Special Committee. Several older lawyers confirmed that nearly all of the young attorneys they know suffer from significant debt. The managing partner of one medium-sized firm in DuPage County noted that among the ten associates in his firm, all still carried law school debt ranging from $75,000 to $150,000 As one recent graduate said of her debt, "it's the house that I can't live in."

Indeed, the cost of attending law school has increased so quickly that even students with significant resources from other sources, including scholarships, savings, family contributions, and term-time or summer jobs, graduate with imposing debt levels. One third-year law student at the University of Illinois testified that she has worked two part time jobs during law school and collected $93,000 of scholarship money, but will still graduate with approximately $100,000 of debt. A 2012 graduate of Washington University similarly reported that despite a scholarship paying two-thirds of her tuition, she graduated owing $143,000. A 2009 Loyola graduate had a scholarship paying two-thirds of her tuition and worked paying jobs during both summers of law school, but still had $75,000 of debt at graduation. A 2010 John Marshall graduate received rental income during law school from a house that he had purchased with a gift from his grandmother, but left law school $195,000 in the red. These stories indicate that even students with significant resources are often unable to negotiate three years of law school without

[11] Campos, *supra* note 4, at 205.

[12] Coll. Bd. Advocacy & Pol'y Ctr., Average Debt Levels of Public Sector Bachelor's Degree Recipients over Time, http://trends.collegeboard.org/student-aid/figures-tables/average-debt-levels-public-sector-bachelors-degree-recipients-over-time (last visited Jan. 28, 2013).

[13] Coll. Bd. Advocacy & Pol'y Ctr., Average Debt Levels of Private NonProfit Sector Bachelor's Degree Recipients over Time, http://trends.collegeboard.org/student-aid/figures-tables/average-debt-levels-private-nonprofit-sector-bachelors-degree-recipients-over-time (last visited Jan. 28, 2012).

[14] One recent graduate testified at the Urbana hearing that she had borrowed $16,000 to study for the bar, resulting in payments of $250 per month for ten years at 14% annual interest. Private lenders advertise bar study loan limits of $12,000 to $20,000. *See* Graduate Leverage, Bar Study Loans, http://www.graduateleverage.com/BarStudyLoan.aspx (last visited Jan. 28, 2012). The Dean of Northern Illinois University College of Law testified that economic uncertainty has led many students to take out larger bar study loans to bridge the gap to their first job, which may be months or even years away for students graduating with no immediate job prospects.

borrowing heavily.[15] Consequently, a remarkable 88.6% of all graduates in the class of 2008 graduated with at least some debt.[16]

Moreover, law school debt is not a short term issue for many graduates. Extended or income-based repayment plans allow borrowers to repay their debt over twenty-five years with lower monthly payments. The lower payments, however, may not cover the interest accruing on the loan, so that even a borrower making on-time payments may see his loan balance increase over time.[17] Any period spent in deferment, forbearance, or default may also cause a borrower's loan balance to increase from interest and penalties, and educational debt cannot be discharged in bankruptcy. Consequently, one graduate of Northern Illinois told the Special Committee that although he graduated in 1997 with $100,000 of debt, he now owes $160,000. A 2002 DePaul graduate was in a similar spot, after seeing her $100,000 of debt at graduation increase over the last ten years.

Similar situations in which borrowers are unable to reduce their loan balances over time are likely to proliferate among recent graduates. The average debt of $100,433 for 2011 graduates[18] on a ten year repayment plan at a 7.3% interest rate (blending the 6.8% rate for Stafford loans and the 7.9% rate for Graduate PLUS loans)[19] yields a monthly payment of $1,181.70.[20] The median starting salary for the class of 2011 was $60,000.[21] The $1,181.70 payment is about 23.6% of the median graduate's pre-tax income, an unsustainable level of debt that would likely force the median graduate into an extended or income-based payment plan. An article from the College Board, a popular source of information about student loans, advises that "[i]ndividuals with incomes near the median [of graduates with a bachelor degree, about $45,000 per year,] should not devote more than about 10 percent of their [pre-tax] incomes to education debt repayment, and the payment-to-income ratio *should never exceed* 18 to 20 percent." [22] The situation is obviously much worse for graduates below the median salary and with more than the average debt.

In sum, the debt burden of increasing numbers of young attorneys is staggering, and the financial effects linger for many years. Moreover, nearly all of the young attorneys to testify before the Special Committee reported that such large debt burdens inevitably alter their career paths.

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[15] The annual tuition cost of each of the schools mentioned in this paragraph, along with other law schools in and around Illinois, is listed in Table 1.

[16] JULIE MARGETTA MORGAN, CTR. FOR AM. PROGRESS, WHAT CAN WE LEARN FROM LAW SCHOOL? LEGAL EDUCATION REFLECTS ISSUES FOUND IN ALL OF HIGHER EDUCATION 8 (2011).

[17] U.S. Dep't of Educ, Fed. Student Aid, http://studentaid.ed.gov/repay-loans/understand/plans (last visited Jan. 28, 2013).

[18] *See supra* note 2.

[19] *See* 20 U.S.C. § 1087E(b).

[20] *See* FinAid, Student Loan Calculator, http://www.finaid.org/calculators/loanpayments.phtml (last visited Jan. 28, 2013).

[21] Press Release, NALP, Median Private Practice Starting Salaries for the Class of 2011 Plunge as Private Practice Jobs Continue to Erode (July 12, 2012).

[22] SANDY BAUM & SAUL SCHWARTZ, THE COLLEGE BOARD, HOW MUCH DEBT IS TOO MUCH? DEFINING BENCHMARKS FOR MANAGEABLE STUDENT DEBT 12 (2006).

II. The Effect of Debt on Legal Services Provided by Public Interest Attorneys

One of the most worrying consequences of the large debt burden is that fewer lawyers are willing or able to work on behalf of the public interest. There are a variety of mechanisms leading to that result. First, some attorneys feel that they are unable to take a public interest job following graduation because the salaries cannot support their debt loads without significant sacrifice. Joe McMahon, the Kane County State's Attorney, testified that lawyers in his office start at between $40,000 and $46,000 per year. Lois Wood, the director of the Land of Lincoln Legal Assistance Foundation (which provides legal aid in 65 counties in Central and Southern Illinois), indicated that new attorneys working for her make $41,500. Downstate, one Assistant State's Attorney from Madison County testified that he started in 2009 making $39,000. On the low end, a 2009 graduate of St. Louis University testified that she was offered $33,000 per year to work as a public defender in downstate Illinois, but turned down the job because it was not sufficient to make her loan payments.[23]

Unsurprisingly, several attorneys testified that those starting salaries are woefully inadequate to finance the debt payments most graduates face. Indeed, using the College Board's advice that a graduate making about $45,000 should not incur loan payments exceeding 10% of her pre-tax income, even a $50,000 per year salary would support a debt load of only about $36,000, between one-half and one-third of the average law school graduate's actual debt (to say nothing of undergraduate and bar-study loans). To look at the situation from the opposite direction, a graduate owing $125,000 and making $50,000 per year would put $1,471 per month, 44% of his take home pay, to debt repayment, leaving only $1,863 per month for other expenses.[24] Obviously any graduate with even average debt would face great challenges taking on a typical public interest salary, and many of those testifying reported that debt caused them not to do so.[25]

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[23] These numbers are slightly lower than the national medians for starting salaries for public interest attorneys, which in 2012 were $43,000 for legal aid attorneys, $50,500 for public defenders, and $50,000 for prosecutors. *See* Press Release, NALP, New Public Interest and Public Sector Salary Figures from NALP Show Little Growth Since 2004 (Oct. 18, 2012). That discrepancy is consistent with NALP's comment that salaries in rural areas are somewhat lower than those in major metropolitan areas, and that salaries in the Midwest are somewhat lower than those on the coasts. *Id.*

[24] These calculations assume a 10-year repayment plan and a 7.3% interest rate.

[25] The testimony the Committee gathered is consistent with the results of a 2002 NALP survey, in which 66% of law students reported that debt prevented them from considering a public service career. EQUAL JUSTICE WORKS, NALP & THE PARTNERSHIP FOR PUBLIC SERVICE, FROM THE PAPER CHASE TO THE MONEY CHASE: LAW SCHOOL DEBT DIVERTS ROAD TO PUBLIC SERVICE 6 (2002); *see also* ABA COMM'N ON LOAN REPAYMENT AND FORGIVENESS, LIFTING THE BURDEN: LAW SCHOOL DEBT AS A BARRIER TO PUBLIC SERVICE 10 (2003) [hereinafter LIFTING THE BURDEN]. Similarly, a longitudinal study of law school graduates from the class of 2000 shows that lawyers going into private practice were more likely than other lawyers to have considered their ability to pay down their debt in choosing their first job. GITA Z. WILDER, LAW SCHOOL DEBT AMONG NEW LAWYERS: AN AFTER THE JD MONOGRAPH 19 (2007). Subsequent studies, however, have challenged the notion that debt actually drives students away from public service careers after finding that debt is not a significant factor in predicting the

Nonetheless, some graduates with significant debt take public service jobs out of law school, often at great personal sacrifice. One 2009 graduate was able to take a job at Land of Lincoln only after selling her home, downsizing into an apartment, taking on an additional night job, and ceasing payments to her children's college education fund. Another Land of Lincoln attorney stated that her two-year old son went without health insurance because of financial troubles, even though Land of Lincoln pays half the cost of dependent health coverage for employees. Several other public interest attorneys testified that they have delayed getting married, having children, saving for retirement, or buying a home because of their salaries.

Such financial strain often forces young attorneys into higher paying jobs in the private sector after only a few years in public interest. A staff attorney at the Peoria office of Prairie State Legal Services, which provides legal aid to residents of thirty-six counties in Northern Illinois, stated that of twenty-five attorneys who had attended a training when she started and had been with Prairie State for fewer than two years, twenty-two had left five-years later. Joe McMahon, the Kane County State's Attorney, testified that young attorneys in his office frequently leave within three to four years. Most representatives of legal aid offices across the state shared a similar story.[26] As a result, they explained, the staff in most legal aid offices includes predominantly young attorneys within three or four years of bar admission, and attorneys with at least twenty years of experience who graduated before excessive debt became the norm and can afford to make a career in public interest.[27] Attorneys with five to fifteen years of experience, the workhorses of most private firms, are comparatively rare in public interest offices across the state.

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graduates who will take a job in the public sector. *See, e.g.*, Christa McGill, *Educational Debt and Law Student Failure to Enter Public Service Careers: Bringing Empirical Data to Bear*, 31 LAW & SOC. INQUIRY 677, 679 (2006). Thus, some scholars have concluded that although many law students perceive that debt is driving their career decisions, their behavior does not always support that claim. *See* Todd A. Berger, *Jimmy Carter's "Malaise" Speech, Social Desirability Bias, and the Yuppie Nuremberg Defense: The Real Reason Why Law Students Say They Want to Practice Public Interest Law, Yet So Few Actually Do*, 22 KAN. J.L. & PUB. POL'Y 139, 151 (2012) (citing Robert Granfield & Thomas Koening, *The Fate of Elite Idealism: Accommodation and Ideological Work at Harvard Law School*, 39 SOC. PROBS. 315, 315 (1992)); Carroll Seron, *The Urban Advantage: Comments on After the JD*, 36 SW. U. L. REV. 529, 534 (2007). The question may need to be revisited as debt burdens rise to levels that make living on public interest salaries increasingly challenging.

[26] National data confirms that public interest attorneys often leave their first job within a few years. Among the class of 2011, 38.7% of graduates working in public interest nine months after graduation reported that they were already seeking other employment at that time (compared to only 17.7% of new attorneys in private practice). NALP, CLASS OF 2011 JOBS & JDS: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES 112 (2012) [hereinafter JOBS & JDS].

[27] Again, those findings are consistent with the trends the ABA Commission on Loan Repayment and Forgiveness observed ten years ago. LIFTING THE BURDEN, *supra* note 25, at 10 ("Some who begin careers in public service, and who would like to remain, leave after a few years when they find their debts are too severely constraining on their hopes for making ends meet, much less raising children or saving for retirement. These lawyers leave just at the point when they have gained enough experience to provide valuable services to their employers and clients.").

These trends are inevitably detrimental for the delivery of legal services in Illinois. As debt levels increase, legal aid offices, public defenders, and governmental bodies will have increasing difficulty competing with the private sector to hire and retain qualified attorneys. Because turnover is so high among young attorneys, these offices must constantly train new lawyers, limiting the number of cases they can handle competently and efficiently. As the older generation of career public interest attorneys retires over the next fifteen to twenty years, fewer experienced attorneys will be available to take their place as the leaders of public interest organizations. No doubt some attorneys from the private sector will return to public interest after paying down their debt, but these attorneys will lack the lifetime of experience in public interest law of their older colleagues.

As one 2005 study of legal aid organizations in Illinois put it:

> [I]t is clear that there is a simmering crisis in the area of staff attorney recruitment and retention. The combination of low salaries and high debt levels is making it almost impossible for many dedicated legal aid lawyers to stay in the field. The difficulties programs face in recruiting and retaining qualified staff members has a direct impact on the quality and quantity of services provided to clients. Low salaries and high debt can make it more difficult to attract the most qualified candidates for staff attorney positions. When staff members leave they take their experience and expertise with them, which means that a source of knowledge is lost to those who follow. High turnover leads to declining efficiency, which in turn leads to fewer clients receiving legal assistance. Every time an attorney departs, the workload increases for those who remain, at least until the position is filled. Supervisors are forced to spend more time hiring and training new attorneys, and less time serving clients.[28]

The problem has only grown since that time as debt levels increase.

To make matters worse, law school debt also directly limits the number of attorneys that public interest groups are able to hire. Lois Wood, the director of Land of Lincoln, stated that her board has chosen to raise the salaries of attorneys at Land of Lincoln to help them manage their debt, rather than hire additional attorneys. No doubt the managers of other public interest offices are making similar decisions, when their budgets allow, to improve hiring and retention.

The problem is particularly acute for legal aid offices providing legal services to low-income families. According to Wood, for example, there is now one legal aid attorney for every 9,300 people qualifying for legal aid in the counties Land of Lincoln serves,[29] a number that has

[28] CHI. BAR FOUND. ET AL., THE LEGAL AID SAFETY NET: A REPORT ON THE LEGAL NEEDS OF LOW-INCOME ILLINOISANS 138 (2005) [hereinafter THE LEGAL AID SAFETY NET].

[29] The Legal Services Corporation ("LSC") reports that, as of 2007, there was one legal aid attorney for every 6,415 people eligible for legal aid in the country as a whole. LSC, DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 20 (2009) [hereinafter DOCUMENTING THE JUSTICE GAP]. By 2011, that number had increased to approximately one legal aid attorney for every 8,357 people eligible for legal aid (assuming that the proportion of legal attorneys working for LSC-funded organizations stayed approximately the same between 2007 and 2011).

increased in recent years and that she fears may increase further. The result is that low-income households in Illinois are represented by a lawyer for only one out of every six legal problems they encounter.[30]

The debt burden of law school graduates is thus one cause of the "Justice Gap" that prevents legal aid agencies from serving a significant portion of the eligible population in the United States.[31] Similarly, law school debt may contribute to the inability of cash-strapped governmental bodies and public defenders to hire a sufficient number of qualified attorneys.

In short, managers of public interest attorneys are caught between a rock and a hard place. Law school debt makes it unaffordable to work as a public interest attorney for any significant length of time, depriving public interest offices of their best young attorneys and draining their resources through the need to constantly train new hires. The more these offices raise the salaries of young attorneys to counteract these problems, however, the fewer attorneys they can hire. As a result, the provision of justice in America will suffer.

III. The Effect of Debt on Legal Services Provided by the Private Sector

A. Firms Serving the Legal Needs of Middle-Class Americans

As difficult as it is for debt-ridden young attorneys in public interest law, however, parts of the private sector are little better. Much of the public still believes that lawyers at private firms start at $160,000 per year, an ample salary to handle even the highest debt loads. But that number is misleading, as only about 14% of 2011 graduates started at a job paying $160,000.[32] The median salary of 2011 graduates who found a job at a private law firm in Illinois was $72,000, and the mean was $92,870,[33] but even those numbers may be inflated.[34] In any case, the private sector starting salaries reported to the Special Committee were significantly lower, particularly

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See LSC, 2011 ANNUAL REPORT 4 (2012) (in 2011, 64.6 million Americans were eligible for legal aid and LSC-funded organizations employed 4,097 attorneys); DOCUMENTING THE JUSTICE GAP, *supra*, at 20 (in 2007, LSC-funded organizations employed 53% of all legal aid attorneys).

[30] THE LEGAL AID SAFETY NET, *supra* note 28, at 1-2.

[31] The LSC's report DOCUMENTING THE JUSTICE GAP, *supra* note 29, provides further information about the "Justice Gap." The most striking statistic showing the inadequacy of the provision of legal services for the poor is that, in 2009, for every one client served by an LSC-funded organization in the United States, one person seeking help was turned away because of insufficient resources. *Id.* at 1.

[32] JUDITH N. COLLINS, NALP RESEARCH, SALARIES FOR NEW LAWYERS: AN UPDATE ON WHERE WE ARE AND HOW WE GOT HERE 3 (2012), *available at* http://www.nalp.org/uploads/0812Research.pdf.

[33] JOBS & JDS, *supra* note 26, at 88.

[34] Lawyers in smaller firms are less likely to report their salaries to NALP. Because lawyers in small firms have the lowest salaries, the NALP salary data is likely skewed upward. On a national level for the class of 2011, NALP reports a median salary of $85,000 and a mean of $97,825 for all starting law firm salaries. *Id.* at 33-34. To account for the fewer salaries reported at smaller firms, NALP estimates an adjusted mean of $87,241 and an adjusted median of $65,000-70,000. *Id.* at 34. For an explanation of the effect and NALP's method for calculating the adjusted numbers, see *id.* at 124-25.

from firms outside of Chicago, where starting salaries were often around $50,000.[35] NALP's data confirms that anecdotal testimony, as follows:

Table 2: Salaries Among 2011 Graduates Working in Private Practice In Selected Cities in Illinois 9 Months After Graduation[36]

City	Salary Median	Salary Mean	Number reported
Bloomington	$48,250	$46,583	6
Chicago	$100,000	$103,970	530
Peoria	$55,000	$47,850	8
Rockford	$62,500	$59,250	12
Springfield	$47,500	$49,667	6
Wheaton	$50,000	$50,625	8

Managing partners of smaller firms downstate confirmed that the economics of legal practice make it difficult to sustain paying associates more than $50,000.[37] Outside of Chicago, therefore, starting salaries are little more than starting salaries for public interest attorneys.

Moreover, the higher salaries in Chicago and around the state often go to lawyers at firms serving large corporations and wealthy individuals. Among firms serving the everyday needs of the middle class through family law, estate planning, traffic law, real estate law, and the like, starting salaries tend to be at or below the $50,000 level.[38] NALP's data on starting salaries among lawyers at smaller firms in Illinois (that is, those most likely to serve the legal needs of the middle class) again confirm that testimony:

[35] Many attorneys testified that the salaries offered to them by private law firms were comparable to or less than what they could have made before attending law school. For example, one graduate of Southern Illinois University Business School testified that he had been offered a job at Target for $46,000 per year, but could earn only $50,000 per year at a law firm after graduating from St. Louis University School of Law.

[36] JOBS & JDS, *supra* note 26, at 99.

[37] One partner in a downstate firm estimated that to make it worthwhile to pay an associate $40,000 per year, the associate must bring in $120,000 in revenue each year. To earn that revenue, the associate would have to bill 100 hours of work each month at $100 per hour. Rather than take the risk that an associate will not earn his salary, some partners have chosen to hire associates part-time for an hourly wage (around $35 per hour), while expecting them to pick up extra work as a public defender or state's attorney for the government.

[38] The Committee heard testimony from many recent graduates who were unable to obtain any jobs in the private sector or elsewhere paying more than $40,000-$45,000. That fact makes the academic debate about the effect of debt on graduates' choice between the public sector and the private sector, *see supra* note 25, somewhat misleading. There may be no significant difference in salary between the two sectors for the many graduates who are unable to obtain higher-paying jobs in the private sector. In addition, many graduates testified that jobs were so scarce that they would take any available job.

Table 3: Salaries Among 2011 Graduates Working in Private Practice in Illinois 9 Months After Graduation[39]

Firm Size	25th Percentile	Median	75th Percentile	Mean	# reported
2 to 10	$40,000	$50,000	$55,000	$49,111	230
11 to 25	$46,000	$55,000	$70,000	$59,013	78
26 to 50	$50,000	$70,000	$82,250	$73,894	52
51 to 100	$75,000	$120,000	$145,000	$110,472	57
101 to 250	$86,250	$137,500	$160,000	$123,125	64
251+	$160,000	$160,000	$160,000	$151,573	185
All in Private Practice	$50,000	$72,000	$160,000	$92,870	668

According to that data, 25% of the class of 2011 who found jobs in private practice in Illinois, or 167 lawyers, made less than $50,000 in their first year of work. In the absence of significant law school debt, those 167 attorneys could earn a comfortable, although not extravagant, living serving the legal needs of the middle class. As explained above, however, the debt burden of a typical law school graduate makes survival on less than $50,000 per year difficult, if not impossible. As a result, one hiring partner of a medium-sized firm in DuPage County reported that associate retention has become increasingly difficult, as lawyers are always seeking to "trade up" to larger, better paying law firms, to deal with their debt. The rapid turnover presents some of the same challenges facing public interest offices.

Moreover, young lawyers in small and medium firms who cannot obtain higher paying legal jobs, along with those who cannot find any position in the private sector, may leave the profession in search of higher pay. Several lawyers testified to the Special Committee that many of their classmates had left the profession, rather than take a low paying job, and others explained that they were thinking about leaving the profession themselves if their financial situation does not improve.

There is no available data establishing how often attorneys leave the profession because of an inability to service their debt in legal jobs. On a national level, one estimate based on data from the Bureau of Labor Statistics and the ABA puts the discrepancy between the number of jobs available for lawyers today and the total number of law school graduates over the last forty years as high as 600,000.[40] No doubt some of those graduates have chosen voluntarily to make a career outside of the law (and some small percentage of them leave the law because they fail to pass the bar exam), but the anecdotal evidence provided to the Special Committee suggests that

[39] JOBS & JDS, *supra* note 26, at 88-94.

[40] *See* Marc Gans, Not a New Problem: How the State of the Legal Profession Has Been Secretly in Decline for Quite Some Time 11 (June 24, 2012) (unpublished manuscript), *available at* http://ssrn.com/abstract=2173144. The estimate subtracts the number of attorney jobs reported in the Occupational Outlook Handbook, a publication of the Bureau of Labor Statistics based on surveys of employers, (about 800,000) from the total available pool of graduates of ABA-accredited law schools over the last 40 years (about 1,400,000).

many of them have been forced out of the profession because of an inability to service their debt while working as a lawyer.

Some might find that result an unsurprising adjustment to market forces, arguing that there are too many lawyers and that the number of lawyers must decrease until supply matches demand.[41] But as the Legal Services Corporation has documented, far from waning, recently "there has been an explosion in the demand for legal services" in the United States as the legal needs of millions of middle class and poor families go unmet each year.[42] Because of debt, however, many of the lawyers who might otherwise meet those legal needs are instead leaving the profession in search of higher pay. Contrary to popular belief, there are not too many lawyers in America; instead, there are too many lawyers with student debt preventing them from providing affordable legal services to the middle class.

B. Solo Practitioners

As fewer attorneys find sustainable jobs in the private sector, an increasingly popular solution for law school graduates is to attempt to hang out their own shingle. Only 2.8% of 2007 law school graduates working in private practice were solo practitioners nine months after graduation, but for 2011 graduates that number had increased to 6.0%.[43] Many more may attempt this solution after several years of unemployment or underemployment, as did several lawyers testifying to the Special Committee. Among the testifying lawyers who had attempted starting their own practice, nearly all found it impossible to service their debt while maintaining a profitable practice.

The first challenge solo practitioners face is obtaining capital to open a practice. One lawyer provided an estimate to the Special Committee that puts the capital requirements of a solo practitioner in downstate Illinois at almost $20,000 just to open a basic practice with no frills and no support staff.[44] Significant student debt makes it difficult to obtain a loan for that amount from a bank, and new lawyers often have few other sources of capital. The lawyers who testified before the Special Committee explained that they were able to open any practice at all only

[41] *See, e.g., id.* at 34 (arguing that the ABA should have stopped accrediting law schools sometime in the 1970s to bring the supply of lawyers in line with demand).

[42] LSC, REPORT OF THE PRO BONO TASK FORCE 1 (2012). A 2002 survey found that 71% of U.S. households had experienced some event in the previous year that might have caused them to hire a lawyer, but that only 45% of those households actually did hire or plan to hire a lawyer. ABA SECTION OF LIT., PUBLIC PERCEPTIONS OF LAWYERS: CONSUMER RESEARCH FINDINGS 24-26 (2002). The top reason for the decision not to hire a lawyer was the cost, cited by 28% of those who decided not to hire a lawyer. *Id.* at 27.

[43] These numbers are available from the NALP website at http://www.nalp.org/recentgraduates (last visited Jan. 28, 2012).

[44] That estimate includes sufficient funds to draw a modest salary of $1,500 for the first six months of practice, and to cover operating expenses for the first three months. Plainly a salary of $1,500 per month is inadequate to service the typical graduate's debt load, meaning that a student would have to ask for deferment or forbearance during this period. For a total breakdown of the costs of starting a solo practice, see Appendix A.

because of support from parents, a spouse, or another family member.[45] Even among lawyers who were able to acquire capital to start their own firm, most were unable to make many of the investments that older lawyers would consider essential, including office space, a legal assistant, malpractice insurance, and access to Westlaw or Lexis.

Assuming a lawyer can raise enough capital, the next challenge is earning enough to service the lawyer's student loans. One attorney estimated that the annual expenses of a downstate solo practice amount to about $34,000 per year.[46] To make $50,000 in profit each year (slightly more than the typical starting attorney in a public interest position and barely adequate to cover typical debt payments), such a solo practitioner would have to bring in $84,000 in revenue. To earn that revenue requires billing and collecting about 840 hours of work at $100 per hour.

By all accounts, achieving that level of revenue is difficult for young attorneys today. Compared to the typical billable hours of an attorney in a large firm, 840 hours sounds modest. But billing and collecting that amount is exceedingly challenging for a new attorney with limited experience and no support staff, who must spend large amounts of time finding clients, acting as a receptionist, managing the office, doing secretarial work, and performing collections (and most solo practitioners realize far less than 100% of their billings). Indeed, one solo practitioner testified that he could bill only about 20% of the time he spent working.

Accordingly, most young solo practitioners struggle. One 2009 graduate of Thomas M. Cooley Law School reported that in her fourth year of practice as a solo practitioner, she was able to net only $20,000 to $30,000 in profit, despite owing over $200,000, and that most of the young solo practitioners she knew were in a similar situation. A 2003 graduate of Penn State Dickinson School of Law who owed $150,000 was able to earn only $15,000 each year, and was forced to live off of her husband's salary. Another 2007 graduate of St. Louis University stated that she was "unable to net a single penny" after subtracting her expenses. Many lawyers who attempted to start their own practice testified that they were forced to abandon the attempt after several months or years because of the difficulty. The conclusion is inescapable: Few solo practitioners are able to sustain a successful law practice after graduating with significant debt. In addition, the ethical challenges of significant debt are particularly acute for solo practitioners.[47] Like lawyers at small and medium firms, these lawyers are likely to leave the profession, rather than remaining to provide legal services to the poor and middle class.

C. Large Firms

Although the 14% of law graduates who make starting salaries of $160,000 per year and other graduates working at large firms are generally able to service their loans, the debt burden is not without consequences for this group of lawyers. Most significantly, some lawyers report

[45] For example, one lawyer was able to rent an office only after inheriting money from her grandmother. Another explained that he lived off of his wife's salary while attempting to start a solo firm, and a third borrowed money from his parents. Several of those testifying lived with their parents while attempting to start a practice.

[46] Again, a breakdown of the costs is available in Appendix A.

[47] *See infra* notes 63-66 and accompanying text.

taking high-paying jobs at such firms out of necessity, even though they might prefer to work in a smaller setting or at a public interest job.[48]

D. Pro Bono and Civic Engagement

Finally, several lawyers testified that the debt burden of attorneys in the private sector makes it harder for private attorneys to perform pro bono work. One lawyer in charge of organizing pro bono attorneys for Land of Lincoln in Springfield, for example, testified that, compared to several years ago, there were fewer volunteers in all but one county out of the ten counties his office serves. A partner in a DuPage County firm noted that the lawyers he knew had less time for pro bono because of the financial pressures facing them.

Despite that testimony, the limited data available does not suggest that the pro bono hours provided by Illinois lawyers are decreasing. The ARDC has required Illinois lawyers to report their pro bono hours since 2007, and the number of pro bono hours reported has increased by 6.3% from 2007 to 2011.[49] Nonetheless, law school graduates already carried significant debt by 2007, so the effect of debt may already have asserted itself. Moreover, it is logical to assume that lawyers with fewer financial burdens would be more able to engage in pro bono services.

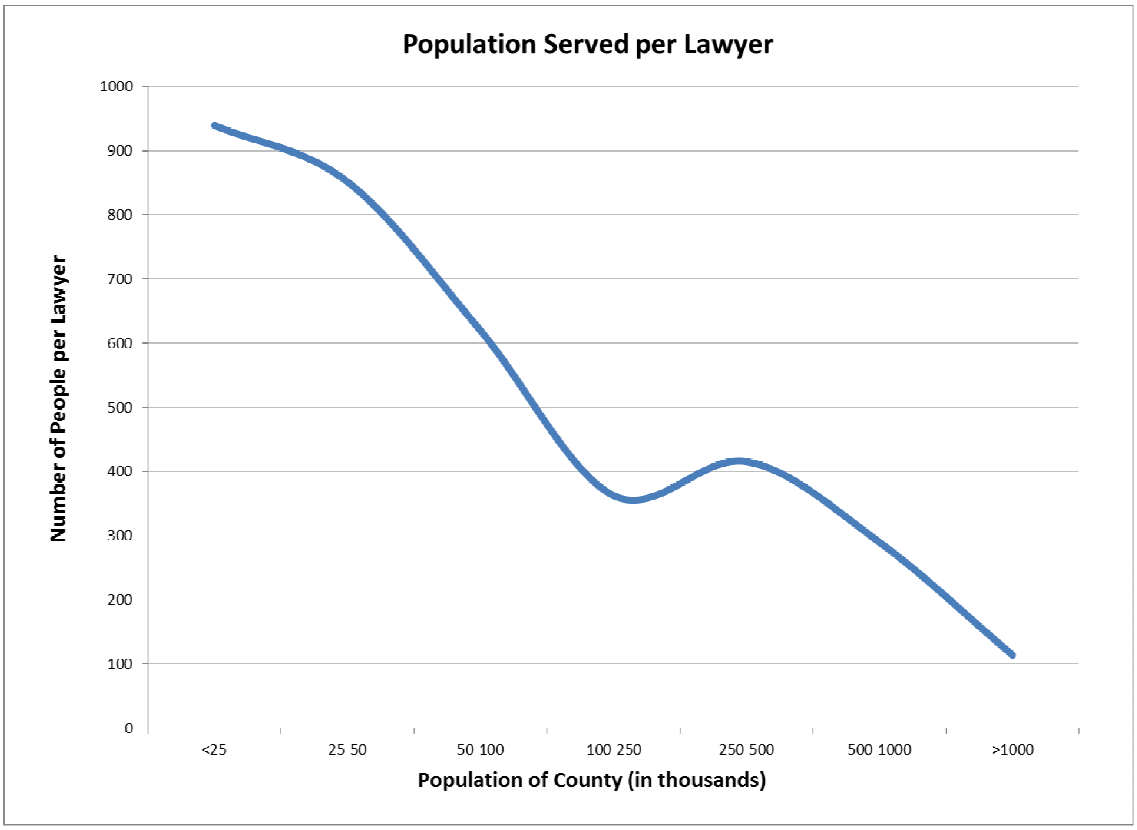
In addition, one attorney testified that she was less likely to join a bar association or other civic organization because her debt made the membership fees too expensive. Thus, law school debt is a likely contributing factor to the ongoing challenges bar associations face in attracting new members.

IV. The Effect of Debt on Legal Services in Rural Areas

Excessive law school debt is also dissuading young lawyers from taking jobs to serve the legal needs of rural areas of the state. One downstate law firm partner reported that small counties and towns in his area are slowly losing their lawyers as older practitioners retire, but younger ones fail to take their place. Several younger lawyers explained that debt is a significant factor driving people away from rural areas. One law student from Bloomington, for example, felt compelled to go to Chicago, because it was the only place he could hope to command a salary large enough to manage his debt. Other young lawyers had similar stories.

Data available from the ARDC from attorney registrations in 2012 confirm those anecdotal accounts. Consider the following graph of the number of people per lawyer in Illinois counties of various sizes:[50]

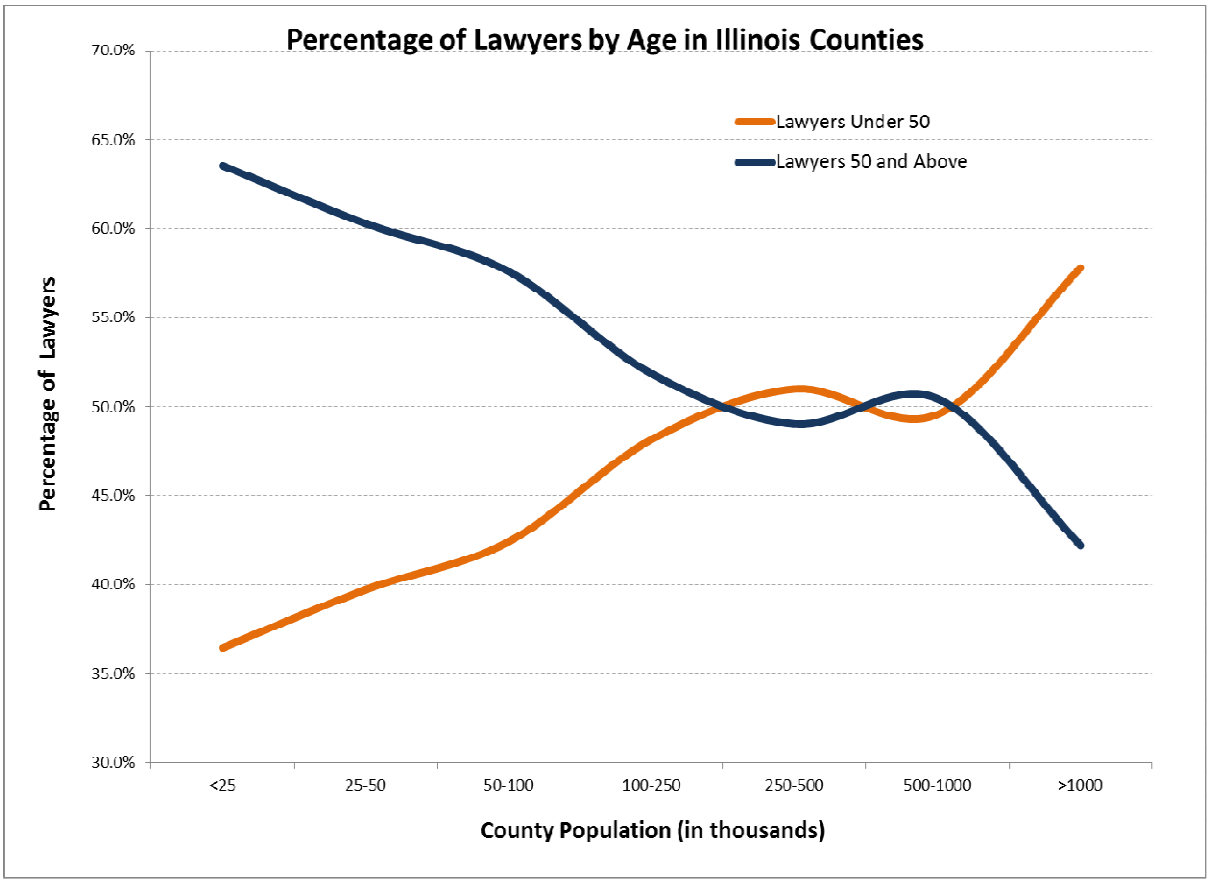
[48] *See supra* note 25.
[49] *See* ILL. ATT'Y REGISTRATION & DISCIPLINARY COMM'N, 2011 ANNUAL REPORT 13 (2012) [hereinafter ARDC 2011 ANNUAL REPORT], *available at* http://www.iardc.org/AnnualReport2011.pdf.
[50] This data includes only Illinois lawyers reporting an Illinois address.



As the graph shows, the county with more than one million residents (that is, Cook County) has one lawyer for every 114 people. Counties with 500,000 to one million people have one lawyer for every 290 people, and the number of lawyers continues to decrease as county size decreases.[51] At the bottom end of the spectrum, counties with fewer than 25,000 people have only one lawyer for every 940 people. At least compared to larger counties, therefore, smaller counties are underrepresented by lawyers.

The same ARDC data, moreover, shows that the lawyers in smaller counties are disproportionately older:

[51] There is a dip for counties with a population between 100,000 and 250,000 which prevents the graph from being linear. That dip is largely the result of Springfield in Sangamon County, which, as the seat of state government, has a disproportionately large number of lawyers.



In Cook County, only 42% of all lawyers are older than 50. In counties with fewer than 25,000 people, by contrast, 64% of lawyers are older than 50.[52] As those lawyers age and retire over the next fifteen years, there are fewer younger lawyers to replace them, so the ratio is only likely to worsen. To the extent that financial considerations drive younger lawyers to higher paying jobs in urban areas, law school debt is contributing to the dearth of lawyers serving rural Illinois.

V. The Effect of Debt on the Makeup of the Legal Profession—Law Will Become Less Diverse and More Exclusive

Another effect of excessive law school debt is to create additional barriers to entry to the legal profession for minorities. Blacks and Hispanics receive a higher percentage of support for law school from loans and a lower percentage from family resources.[53] Consequently, blacks and

[52] Statewide, 45% of lawyers are above 50.

[53] WILDER, *supra* note 25, at 7 (reporting that among graduates of the class of 2000, blacks receive 57% of their support from loans and 9% from family, Hispanics receive 66% from loans and 15% from family, and whites receive 48% from loans and 21% from family).

Hispanics are significantly more likely to leave law school with debt than whites, and their debt loads tend to be larger.[54]

The negative consequences of law student debt thus affect minority students to a greater degree than other lawyers. If this trend continues, minorities may be discouraged from applying to law school, and the legal profession may become even less representative of the diversity of all Americans.[55] If that happens, the legal profession will become increasingly homogenous, and minority clients may be less willing to place their trust in a legal profession to which they cannot relate by hiring a lawyer. Moreover, the legal profession will be less reflective of the unique experiences and insights of minority lawyers, further diminishing the quality of legal services.

VI. The Effect of Debt on the Quality of Lawyers

A. The Value Proposition of the Cost of Law School: Is It Buying the Training Lawyers Need?

A full evaluation of the consequences of law school debt (a function of law school cost) must also address the question of whether that debt is worthwhile. That is, are law schools using the tuition they collect to provide legal educations of sufficient value to allow graduates to find sustainable employment providing competent legal services to the public?

The first piece of evidence to consider is the dismal job market currently facing law graduates. As discussed above, only 55% of the class of 2011 had full time, long term jobs for which a law degree was required nine months after graduation, and perhaps as few as one-third of the class obtained minimally acceptable employment outcomes in that time.[56] For graduates of most law schools in and around Illinois, the numbers are similarly poor:

[54] *Id.* at 9, 12 (reporting that among the class of 2000, the average debt was $72,875 for blacks, $73,258 for Hispanics, and $70,993 for whites, and that 94% of blacks, 95% of Hispanics, and 81% of whites graduated with debt).

[55] Already, minorities make up a disproportionately smaller share of law school applicants (11.6% for blacks and 8.9% for Hispanics) than their share of the U.S. population (12.2% for blacks and 16.3% for Hispanics) would predict. *See* Law School Admission Counsel, Additional Gender/Ethnicity Information, http://www.lsac.org/lsacresources/data/pdfs/additional-eth-gen.pdf (last visited Jan. 28, 2013). In addition, minorities are significantly underrepresented in the legal profession as a whole, as 4.3% of the legal profession is black, and 3.4% is Hispanic. *Id.* (reporting data from 2010).

[56] Campos, *supra* note 4, at 198-202.

Table 4: Percentage of 2011 Graduates Reporting That They Obtained Full-Time, Permanent Jobs Requiring a JD 9 Months After Graduation[57]

Law School	*Percentage*
Illinois	
University of Chicago	88.70%
Chicago-Kent	53.00%
DePaul	41.40%
Illinois	52.10%
John Marshall	45.90%
Loyola (Chicago)	54.20%
Northern Illinois	54.60%
Northwestern	78.70%
Southern Illinois	62.70%
Wisconsin	
Marquette	58.70%
Wisconsin	63.80%
Iowa	
Drake	63.20%
Iowa	66.70%
Missouri	
Missouri -Columbia	69.50%
Missouri - KC	61.70%
Saint Louis University	53.30%
Washington University	64.00%
Indiana	
Indiana - Maurer	66.20%
Indiana - McKinney	54.80%

Consistent with those numbers, the Special Committee heard testimony from a variety of lawyers who reported difficulty obtaining employment. For example, a 2008 graduate of the University of Detroit Mercy School of Law was unable to obtain employment, and so enrolled in an LLM at Chicago Kent in family law in 2009. Despite the extra training, including an externship with a family law firm and with a family law court, he was still unable to obtain employment after graduating in 2010. Desperate, he opened a solo practice, but was unable to earn a significant amount of money. Recently, he found employment at a family law firm. A 2009 graduate of Cooley law school noted that after three years of looking, the highest paying job offer she received was for $20,000 per year.

[57] The percentage includes graduates reporting that they are pursuing an additional graduate degree full time. The data is drawn from the ABA Section of Legal Education's data, available at http://employmentsummary.abaquestionnaire.org/ (last visited 1/28/13).

Top graduates and leaders of the profession are not immune from the problem. One 2009 graduate of John Marshall Law School who graduated with $150,000 of debt reported that her grades put her in the top 2% of her class after her second year and that she had interned for a state trial judge and a private law firm during law school (giving her what she thought were excellent credentials for her job search as a third-year student). Nonetheless, she did not obtain a job and, since 2009 she has had only one (unsuccessful) interview for a full time legal position. Now she works as a solo practitioner (bringing in $5,000 a year) and as a part-time contract attorney, where she makes $28/hour. Similarly, one member of the ISBA Young Lawyers Division Section Council has been unable to find any full time job since graduating in 2009.

From the hiring side, hiring partners of law firms report that attorneys seeking jobs are becoming increasingly desperate. Several hiring partners reported that they now regularly receive calls from recent graduates offering to work for nothing just to obtain training. One law firm partner from Peoria noted that he now receives twice as many applications for every open position as he did five years ago.

To be sure, at least part of the difficult job market is the result of the recent recession, and some improvement may occur if the economy picks up in future years. There are reasons to believe, however, that significant difficulties will remain. First, even before the recession, about 33% of graduates failed to obtain full time positions requiring a JD.[58] Second, the Bureau of Labor Statistics estimates that, even assuming no further recession, the economy will add only 73,800 legal jobs between 2010 and 2020.[59] Accounting for older attorneys leaving the profession, and assuming that the number of graduates stays constant over the period, only about 47.6% of graduates will obtain legal employment between now and 2020.[60] The economic recession alone is thus an inadequate explanation of the JD's current lack of value in the marketplace.

Instead, it appears that law schools are inadequately preparing many of their graduates to successfully practice as lawyers in today's economy. For example, Nancy Glazer, the founder of legal placement firm Legal Launch LLC, testified that in her experience, the greatest challenge law school graduates face in obtaining employment is the mismatch between the skills of graduating students and the requirements of practice areas in which there is demand for new attorneys. In particular, she noted ERISA, regulatory compliance, and sophisticated tax planning as three areas with significant demand for new attorneys, but for which law school graduates lack the skills to obtain employment. She thus noted that although the lateral market is hot in those areas, new lawyers lack the skills and training they need to compete for the available jobs and, as a result, employers often cannot fill their positions. Overall, her opinion is that much of the problem in the legal job market is not oversupply of lawyers, but inadequate training.

The refrain that law schools fail to adequately train new lawyers for practice echoed throughout the hearings. Most hiring partners to testify noted that they are more likely to hire

[58] Campos, *supra* note 4, at 212-13.
[59] *Id.* at 213.
[60] *Id.*

lawyers with several years of experience, rather than new attorneys. One hiring partner from a medium sized firm in Peoria noted that law students often will work full time for free just to obtain experience. The Special Committee also heard from the co-chair of the DuPage County Bar Association New Lawyers Committee, who has spoken to a number of new lawyers and hiring partners in that capacity. According to her,

> When we do have our monthly networking events we do a happy hour, and attorneys come to me who are looking to hire other attorneys. When trying to pair up these hiring partners with new attorneys, I always get the comment, "Why would I hire a new lawyer for $50,000, when I can hire a two-year experienced attorney for $50,000. Give me a young attorney, not a new attorney. . . ." I thought it was interesting that even the most common entry-level position won't let you work because you don't have experience.

The inadequacies of law school training are particularly acute for young attorneys attempting to start their own practices. For example, one recent graduate who attempted to open a solo practice found the experience "totally overwhelming," noting that he was unprepared not only to handle legal matters, but also to develop a business plan, bring-in business, and collect bills.

Much commentary has similarly noted the inadequacy of legal education to prepare graduates for practice.[61] Consequently, there have been several influential calls in recent years to improve the training of lawyers with an eye to the skills they will need to be ready to practice.[62] So far, however, the high cost of law school does not seem to ensure practice-readiness.

B. The Effect of Debt on Professionalism

The Special Committee also discovered a variety of ways in which the debt load of graduates may negatively influence the professionalism of lawyers and thus the quality of legal services that the bar provides to the public. A few lawyers testified that some young attorneys (and particularly solo practitioners) may be more likely to take cases outside their areas of expertise in an effort to secure business. Another noted that solo practitioners on the other side of cases appear to be less willing to settle cases or to resolve them cheaply, but instead will prolong them to increase their fees. Another young attorney with a solo practice in criminal defense noted that she frequently has to withdraw from cases if her client falls behind in paying her fee,

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[61] *See, e.g.*, Jason M. Dolin, *Opportunity Lost: How Law School Disappoints Law Students, The Public, And The Legal Profession*, 44 CAL. W. L. REV. 219, 231-33 (2007); Jarrod T. Green, *A Play on Legal Education*, 4 PHOENIX L. REV. 331, 339 (2010); Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231 (1991); James Etienne Viator, *Legal Education's Perfect Storm: Law Students' Poor Writing and Legal Analysis Skills Collide with Dismal Employment Prospects, Creating the Urgent Need to Reconfigure the First-Year Curriculum*, 61 CATH. U. L. REV. 735 (2012).

[62] *See* WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter CARNEGIE REPORT]; ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MACCRATE REPORT].

because she cannot afford to do any work that is uncompensated. Another young solo practitioner noted that her practice environment was "cutthroat" because many young attorneys attempt to steal clients from each other.

Perhaps most troubling, at least one attorney testified that it is increasingly difficult to afford malpractice insurance, and that some small firms and solo practitioners are choosing not to purchase it because of the financial strain.[63] As debt burdens increase, more attorneys may forego malpractice insurance at great risk to themselves and their clients.

Those comments and others led the Special Committee to identify nine areas of the Illinois Rules of Professional Conduct in which debt may place additional pressure on lawyers to commit ethical violations or to act unprofessionally:

1) Rule 1.1: Competence – Lawyers may feel pressure to take cases outside their area of competence to increase income
2) Rule 1.3: Diligence – Lawyers may feel pressure to take on too many matters that prevent them from giving each the attention it deserves
3) Rule 1.5: Fees – Lawyers may charge fees that are unreasonable for the services they perform
4) Rules 1.7-1.11: Conflict of interest – Lawyers may feel pressure to take clients with whom they have a conflict of interest
5) Rule 1.15: Safekeeping Client Property – Lawyers may feel pressure to make inappropriate use of client funds or other client property in their control
6) Rule 1.16: Declining or Terminating Representation – Financial pressures may force lawyers to withdraw from a representation inappropriately
7) Rule 3.2: Expediting Litigation – Lawyers will have an incentive to delay resolution of disputes to increase their fees, rather than promoting the best interests of their clients
8) Rule 5.4: Professional Independence of a Lawyer – Lawyers will have an incentive to engage in practice configurations that will increase their profits, rather than preserving the professional independence of lawyers
9) Rule 7.2: Advertising – Lawyers will face pressure to violate advertising rules to increase their business

Despite the worries of many testifying attorneys, Jerome E. Larkin, the Administrator of the ARDC, testified that the ARDC has not noticed a significant number of debt-related complaints against attorneys in the last several years, nor has it noticed a disproportionate number of complaints against young attorneys (those with the heaviest debt loads). To the

[63] In 2011, 52.4% of attorneys registered in Illinois carried malpractice insurance. *See* ARDC 2011 ANNUAL REPORT, *supra*, note 49, at 14-15. That number is not a significant decline from previous years, however, and most of those who did not carry malpractice insurance are likely government attorneys, in-house attorneys, and attorneys not actively practicing. *See id.*

contrary, in 2011, lawyers in practice for fewer than five years made up only 3% of lawyers disciplined by the ARDC, although 15% of the lawyers in Illinois fall into that category.[64]

Nonetheless, Larkin also testified that there is usually a lag of three to four years before most grievances appear in the statistics. Accordingly, if the economic challenges of the recent recession caused an increase in potential ethical violations by lawyers with significant debt, those complaints may still be coming. Moreover, the vast majority of lawyers disciplined in Illinois for ethics violations— 120 out of 165 lawyers in 2011[65]—are solo practitioners. As the number of solo practitioners in the new job market increases,[66] the number of ethical complaints resulting from debt pressures may rise as well.

VII. The Inadequacy of Current Debt Forgiveness and Repayment Programs

Some might assert that existing debt forgiveness programs, including the Income-Based Repayment plan ("IBR") enacted as part of the College Cost Reduction and Access Act of 2007,[67] are sufficient to mitigate the problems outlined above. Borrowers have been able to take advantage of IBR since July 1, 2009. Under the program, borrowers who are experiencing "partial financial hardship" may reduce their student loan payments for their federal loans to a lower level based on income. Specifically, the IBR program caps monthly payments at 15% of a borrower's discretionary income, defined as the difference between the borrower's adjusted gross income and 150% of the federal poverty line, which is calculated according to family size.[68] For example, this report previously noted that a graduate owing $125,000 and making $50,000 per year would pay $1,471 per month for debt repayment.[69] Assuming that graduate were single and enrolled in IBR, his monthly payment would drop to $415.56.[70]

If the IBR payment does not cover a debtor's interest payments, however, interest continues to accrue on all federal unsubsidized loans.[71] Assuming that our hypothetical graduate's loans are all unsubsidized, about $344.86 in interest will accrue each month that he is enrolled in IBR. That amount is not capitalized unless the borrower leaves IBR, but it does increase the balance that he must repay.

IBR also provides loan forgiveness for some graduates after a certain period. For a graduate working full time in a public service job, any remaining debt is forgiven after ten years of on-time payments,[72] and the forgiven debt is not taxable. For all other graduates, any

[64] ARDC 2011 ANNUAL REPORT, *supra*, note 49, at 27.
[65] *Id.*
[66] *See supra* note 43 and accompanying text.
[67] Pub. L. No. 110-84, 121 Stat. 784 (2007).
[68] All information about the IBR program is drawn from FinAid, Income-Based Repayment, http://www.finaid.org/loans/ibr.phtml (last visited Jan. 28, 2013) [hereinafter FinAid IBR Website].
[69] *See supra* note 24 and accompanying text.
[70] FinAid, Income-Based Repayment Calculator (15% Version), http://www.finaid.org/calculators/ibr.phtml (last visited Jan. 28, 2013).
[71] Loans that are subsidized under the Stafford loan program (which are awarded based on need) do not accrue interest for the first three years of IBR payments. *See* FinAid IBR Website, *supra* note 68.
[72] Only payments made on or after October 1, 2007, count toward this requirement.

remaining debt is discharged after twenty-five years of repayment, but the borrower must pay income taxes on the amount forgiven. Those tax bills can run into the tens of thousands of dollars, particularly for graduates whose debt balances continue to grow because their payments do not cover the interest.

In October 2011, President Obama announced improvements to the IBR program to be implemented by executive order. Under the new program (called "IBR-A"), borrowers who began borrowing after October 1, 2007 and have at least one loan in 2012 or later, are eligible to make payments amounting to only 10%, rather than 15%, of their discretionary income.[73] In addition, those borrowers are eligible for loan forgiveness after twenty years, rather than twenty-five years. Loan forgiveness for public interest attorneys remains unchanged.

Both the IBR and the IBR-A loan repayment terms are exceptionally generous, and no doubt provide welcome relief from debt for some graduates. The attorneys speaking to the Special Committee all expressed dissatisfaction with IBR, however, and many of the public interest attorneys reported that they had opted not to enroll in IBR, despite heavy debt loads. There are a variety of reasons for the dissatisfaction with IBR in its current form. First, IBR does not cover private loans, including any bar study loans. Even among recent graduates (who have almost exclusively federal loans to cover school-year expenses),[74] that fact can create significant problems. One single mother of one was a 2011 graduate of Illinois who graduated with $100,000 of total debt, including a $16,000 bar study loan, and found a low paying job in public interest. Under IBR, she reported that her payments were only $90 per month (suggesting an adjusted gross income of $29,895). Her monthly payment for her private bar study loan, however, was $250, raising her total debt payment each month to $360, or about 18% of her take home pay.[75] She reports that she is now considering looking for another job in the private sector because that debt burden is unsustainable.

That story leads to the second problem with IBR: few graduates working in public interest expect to spend ten years in public interest, and they know that they are responsible for any interest that accrues while they are on IBR. As explained above,[76] most graduates leave public interest work after three to four years. Some, like the single mother above, find their public interest salaries too low, even with the benefit of IBR. Others fear that the funding for their positions may disappear before ten years. Funding for legal aid attorneys is notoriously

[73] Keep in mind, however, that this reduction in payments makes it possible that some graduates will continue to accrue even more interest than under the 15% plan.

[74] Since the advent of Graduate PLUS loans and the passage of the Health Care and Education Reconciliation Act of 2010, Pub L. No. 111-152, 124 Stat. 1029, which eliminated federal guarantees for all private student loans, most student lending for school-year expenses comes through direct federal loans. *See* Nick Anderson, *What would change if student lending legislation passes*, WASH. POST, Mar. 26, 2010, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2010/03/25/AR2010032503578.html. As of 2011, 90% of all student lending came through federal direct loans. Michael Simkovic, *Risk-Based Student Loans*, 70 WASH. & LEE L. REV. (forthcoming 2013) (manuscript at 19 n.63), *available at* http://ssrn.com/abstract=1941070.

[75] After taxes, this graduate would take home about $24,666, giving her monthly income of $2,056. After her debt payment, she would have only about $1,700 left to cover monthly expenses.

[76] *See supra* notes 23-31 and accompanying text.

insecure, relying on federal and state appropriations that can change with short notice. Some positions also exist only because of temporary grants, such as the one-year grants many law schools provide to employ recent graduates or the recent three-year grants from the Illinois Attorney General to allow the Illinois LSC-funded programs to hire attorneys to assist with mortgage foreclosures. There are no guarantees such grants will be renewed. Indeed, Lois Wood testified that 20% of Land of Lincoln's staff is wholly or partly funded by the foreclosure grant, and that she did not expect that grant to be renewed. Moreover, many government offices are facing budget cuts and the possibility of layoffs. In the face of these realities, some public interest attorneys choose not to sign up for IBR because they would rather continue to pay down their interest, rather than let it accrue and restrict their future career options.[77]

Third, IBR payments are calculated after considering any income from a graduate's spouse if the graduate files a joint tax return. As a result, either IBR benefits are diminished or the graduate must forego the benefits of filing a joint tax return. Fourth, many attorneys testified that they did not expect the government to honor its promise of debt forgiveness twenty-five, twenty, or even ten years from now. In an era of government austerity, many graduates expected that the program would cease to exist before they were able to take advantage of it. Finally, many attorneys worried about the hit to their credit score during the period in which they are on IBR. As one public interest attorney testified, the first ten years of one's career are the period in which one expects to get married, buy a house, and have children, all things that become significantly more difficult with a large, unsecured, growing debt that makes obtaining any loans nearly impossible.

Some graduates also benefit from law school loan repayment assistance ("LRAP") programs. By 2008, seventy-six law schools provided some form of an LRAP program, and those seventy-six schools provided over $18 million per year to assist graduates with loan repayment.[78] Most of those programs have limited resources, however, and so impose strict eligibility requirements and low benefit levels. In fact, only six of the seventy-six schools provided 70% of the funds dispersed for loan forgiveness in 2008.[79] Based on that statistic, the remaining seventy LRAP programs provided on average only $77,142 to all of their qualifying graduates combined, a negligible amount in light of the debt load facing many graduates. Moreover, law schools are likely to face significant budget pressures in future years, so LRAP programs are unlikely to expand significantly.

In addition, in 2009 Illinois passed a statewide debt forgiveness program called the Public Interest Attorney Assistance Act,[80] although it has not yet been funded.[81] Other loan forgiveness

[77] If significant interest accrues while a graduate works in public interest, that graduate could be significantly penalized if she leaves the IBR program and the accrued interest capitalizes after she takes a higher-paying private-sector job.

[78] *Philip G. Schrag & Charles W. Pruett, Coordinating Loan Repayment Assistance Programs with New Federal Legislation,* 60 J. LEGAL EDUC. 583, 588 (2011). Among Illinois law schools, Chicago, Chicago-Kent, DePaul, Illinois, Loyola, and Northwestern have LRAP programs. John Marshall, Northern Illinois, and Southern Illinois do not.

[79] *Id.* The six schools, none of which are in Illinois, are Yale, NYU, Harvard, Columbia, Stanford, and Georgetown.

[80] 110 ILCS 916/20.

programs are available, although not in sufficient quantities to alter significantly the landscape of student debt.[82]

VIII. The Response of Law Schools

Many law schools have acknowledged the challenges that law school graduates face today because of their large debt. Some are also starting to recognize the impact of this problem on the delivery of legal services.

All law school deans from Illinois and the St. Louis area were invited to testify at the Special Committees hearings, and the deans of five law schools accepted the invitation. As those five deans pointed out, law schools in Illinois have responded to the difficult job market and their graduates' lack of preparedness for practice with a variety of measures. For example Dean Jennifer Rosato of Northern Illinois highlighted the school's focus on live client clinics, externships, and internships, including its "externship pipeline" to place students with alumni in government and legal aid jobs. As a result, she noted that Northern Illinois in 2011 placed 24.4% of its students who were employed in public interest and government jobs.[83]

Dean Bruce Smith of the University of Illinois College of Law noted the school's guarantee to new students that it will not raise tuition for those students during their three years of enrollment. In addition, despite its annual resident tuition of $38,567, the school provides scholarship money to reduce the average student's bill to $26,000 per year, and every student is guaranteed to retain his scholarship if he stays in good academic standing. Dean Smith also highlighted the school's commitment to working with the organized bar to address the challenges facing the profession, including its work with the Illinois Supreme Court Commission on Professionalism to place students with experienced mentors around the state.

Dean John Corkery emphasized John Marshall Law School's efforts to provide debt counseling to its students before, during, and after law school through Inceptia, a non-profit debt counseling firm. Tuition at John Marshall runs to about $39,000 per year, Dean Corkery reported, a level comparable to its peer institutions in Chicago (Loyola, DePaul, and Kent). The Special Committee also heard about the school's efforts to bring prominent lawyers and judges to speak to every class in the law school about professionalism, thus integrating "Legal Profession" and "Ethics" courses with the curriculum.

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[81] CBF, Loan Forgiveness and Repayment Assistance Programs, http://www.chicagobarfoundation.org/legislative-and-policy/loan-repayment-assistance (last visited Jan. 28, 2013).

[82] For example, the LSC provides a "limited number" of grants providing legal aid attorneys $5,600 for three years to repay their loans. LSC, Loan Repayment Assistance Program (LRAP), http://grants.lsc.gov/apply-for-funding/other-types-funding/lrap (last visited Jan. 28, 2013). Each year for ten years beginning in 2007, the Chicago Bar Foundation ("CBF") awards five loan repayment assistance fellowships of up to $50,000 each to public interest law attorneys in Illinois. CBF, The CBF Sun-Times Public Interest Law Fellowship, http://www.chicagobarfoundation.org/sun-times-fellowship (last visited Jan. 28, 2013).

[83] *See* N. Ill. Univ. Coll. of Law, Employment Statistics, http://law.niu.edu/law/career/employment_stats.shtml (last visited Jan. 28, 2013). Nationally, 19.4% of employed graduates in the class of 2011 went into government and public interest jobs. JOBS & JDS, *supra* note 26, at 13.

Dean Cynthia Fountaine of Southern Illinois University School of Law noted the school's tuition (at $15,994 for residents the lowest in the state) and its scholarship support (13% of the school's budget), leading to an average of $66,160 of law school debt for its graduates. Dean Fountaine also testified that the school has led in the development of a "semester in practice" program that allows students to immerse themselves in a practice setting while in law school.

These initiatives are steps in the right direction. Despite those efforts, however, some of the deans explained that there is a limit to the reforms that law schools are willing and able to undertake. Dean Corkery, for example, noted that debt level is related to cost, and that law schools are engaged in an "arms race" to continue to improve. Some of that pressure comes from the *U.S. News & World Report* rankings, which credit schools for low (and expensive) faculty-student ratios, spending more money per student, and developing a strong reputation (which often depends on supporting academic scholarship, rather than teaching).[84] Now that law schools have invested significant resources in tenured faculty, Dean Corkery explained, those faculty are a fixed cost that cannot be cut without violating tenure agreements. Consequently, Dean Corkery rejected calls for more adjuncts to teach practical courses, as doing so would not decrease the cost of law school. Dean Corkery also noted that reducing law school to two years would not help, as he doubted that students could be made "practice ready" in such a short period.

Given the structural barriers to reform, one dean advocated for significant changes in the economic and regulatory environment of law schools. Dean Tom Keefe of St. Louis University School of Law explained that law schools need external incentives to reform, including restricting the availability of student loans and changes to the ABA accreditation standards.

IX. The Need for Reform

The Special Committee's task does not include providing a comprehensive review of the state of legal education. During the hearings, however, the Special Committee observed troubling signs that the current model of legal education is failing to educate lawyers who are competent and financially able to meet the legal needs of the citizens of this state. Moreover, absent significant reforms, the problem is only likely to intensify in future years.

Based on the Special Committee's research and the front-line information from the hearings, the Special Committee has come to several conclusions about the current model for educating lawyers. The root of the problem is the cost structure of the model of legal education that dominates all ABA-accredited law schools today.[85] Under that cost structure, tuition at private law schools has increased by a factor of four in real (inflation-adjusted) terms between 1971 and 2011, and resident tuition at public law schools has nearly quadrupled in real terms in only the last two decades.[86] The debt burden law students face today is a direct result of that cost structure.

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[84] *See* Robert Morse & Sam Flanigan, *Methodology: Law School Rankings*, U.S. NEWS & WORLD REP., Mar. 12, 2012, *available at* http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/03/12/methodology-law-school-rankings.

[85] *See* Campos, *supra* note 4, at 183.

[86] *Id.* at 178. Campos identifies the main contributors to the cost structure of legal education as declining student-faculty ratios, significant increases in faculty compensation, the development of clinical legal

But as argued above, law schools are not using the tuition law students pay to prepare them adequately for practice.[87] Instead, much of the tuition purchases additional academic scholarship through the employment and support of traditional tenured faculty members. The mechanisms of that support are many. First, the reputational element of the *U.S. News* rankings rewards schools for producing prolific and respected scholars. As a result, law schools require faculty to produce scholarship, and set up their responsibilities to create time and space for them to do so. Today, most law professors teach fewer than twelve credit hours each year (approximately three courses, or 1.5 courses per semester), and many teach fewer than ten.[88] In addition, most classes taught by traditional faculty members include little assessment beyond the final exam, thus sparing the professor additional grading and assessment responsibilities. Faculty members also enjoy such perks as summer research grants and sabbaticals.[89] Responsibilities that once fell on law professors, including admissions, career counseling, and financial aid, are now performed by additional support staff, further increasing costs.[90] Even as the salaries of law professors have risen, therefore, those professors have contributed less time to teaching law students.[91]

Considered by itself, of course, academic scholarship is not devoid of value. As Dean Smith of Illinois pointed out, certain prolific scholars produce valuable work that is cited by lawyers, courts, and other academics. A significant portion of academic work, however, is of questionable value. One study of 385,000 law review articles, for example, found that 40% of them were never cited in other articles and that 80% of them were cited fewer than ten times (including self-citations).[92] Moreover, strong scholarship does not necessarily equate to strong teaching ability.

Even more concerning, however, is that the scholarship law professors are producing may not be worth the price tag we are paying for it. One estimate puts the cost of a single law review article at around $100,000, the bulk of which is paid for by law school tuition.[93] The cost of academic scholarship directly increases law student debt which, as this report documents, has a detrimental effect on the legal services available to poor and middle-class American families. The costs of legal scholarship are born in significant part by the economically disadvantaged, who are least able to afford them.

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education, the expansion of administrative staffs, expensive capital construction projects, the privileging of academic research over teaching, and a relative decline in the number of adjunct faculty members. *Id.* at 183-84. To that list, Brian Tamanaha adds an increase in merit scholarships for students with high GPAs and LSAT scores to boost a school's *U.S. News & World Report* ranking, the tendency of some universities to siphon money away from law schools to support less profitable programs, and reduced taxpayer funding for public law schools. *See* TAMANAHA, *supra* note 5, at 126-27. For an extensive discussion of the cost structure of law schools, and particularly the effect of law schools' focus on academic research and publishing, see *id.* at 39-68.

[87] *See supra* notes 56-66 and accompanying text.

[88] TAMANHA, *supra* note 5, at 39-42; Campos, *supra* note 4, at 186.

[89] Campos, *supra* note 4, at 186.

[90] *Id.* at 184.

[91] TAMANAHA, *supra* note 5, at 48-51. Tamanaha reports that law professor pay increased 45% between 1998 and 2008, on top of significant increases in the 1980s and 1990s. *Id.* at 48.

[92] *Id.* at 56.

[93] *Id.*; *see also id.* at 51-53.

Moreover, the focus on academic scholarship prevents law schools from focusing on the time-intensive instruction techniques that are necessary to educate new lawyers. Many lawyers testified at the hearings that law school did not provide them adequate tools to succeed, and that they needed more instruction in the skills that are required in practice. In particular, law schools do not provide adequate opportunities for law students to practice legal writing skills in simulated or real practical settings. Many law schools teach students to write a basic research memo and an appellate brief. Few, however, provide extensive instruction in drafting contracts, legislation, client letters, press releases, discovery requests or responses, wills, or other documents lawyers are called on to produce daily. Such writing assignments require time, and law professors often are too busy with their other responsibilities to implement them. For the same reasons, law professors rarely provide feedback to law students other than through a single final examination. As a result, most law students feel that law schools fail to provide them the opportunity to gauge their progress and to evaluate areas for improvement of their legal skills.

Any reform must therefore focus on reorienting law schools toward the education of lawyers for practice and away from the production of academic scholarship. Not all law schools need to change, of course. No doubt the most elite law schools can and should continue to produce useful scholarship, and, for the most part, their graduates will be able to continue to pay for it. The majority of law schools, however, must have the freedom to experiment with new models of legal education focused on educating lawyers for practice at a reasonable cost.[94]

To be sure, many law schools have heeded calls to provide law students additional skills training and practical experience. A 2010 survey of law school curricula reveals that "[l]aw schools have increased all aspects of skills instruction, including clinical simulation, and externships," and that 85% of respondent law schools offered in-house live-client clinics.[95] In addition, 30% offered off-site, live-client clinics, nearly all provided externship opportunities, and externship placement opportunities have increased without exception since 2002.[96] But the problem is that skills training has grown alongside traditional faculty and course offerings, rather than replacing them, so that the expansion of skills training has contributed to rising tuition. As one law review article notes:

> Th[e] addition of a skills curriculum without cuts elsewhere has been one of the major drivers of tuition increases at law schools over the last several decades. For example, between 1977 and 1988, law schools' expenditures on in-house clinical education rose by 92.5 percent, while the overall increase in law school expenditures was nearly twice as much, at 173.9 percent. Far from raising funds for skills education by decreasing other expenditures, therefore, law schools continued to increase funding in other areas by an even *greater* amount. A significant chunk of this increase in funding has gone to subsidize academic research, an enhancement that does little to improve the practical abilities of students. In this way, law schools can pay lip service to skills training while

[94] *See id.* at 172-77 (advocating for "a differentiated legal education system").
[95] ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A SURVEY OF LAW SCHOOL CURRICULA: 2002-2010, at 15-16 (Catherine L. Carpenter ed., 2012).
[96] *Id.* at 16.

> maintaining a true emphasis on faculty research and writing and protecting their "prestige" score in the *U.S. News* rankings."[97]

Rather than merely adding practice-oriented courses on top of the existing cost structure, law schools must learn to integrate skills training with the traditional doctrinal curriculum.[98]

Achieving that goal presents great challenges to law schools accustomed to the habits of the academy, rather than of law practice.[99] To address that barrier, the practicing bar can and must play a prominent role in reform by engaging with law schools and legal education. In previous generations, most lawyers were trained through the apprenticeship model, in which new lawyers developed the skills, practical wisdom, and judgment necessary to legal practice by working in close proximity with experienced lawyers. On both an individual and institutional level, the practicing bar can again create and support opportunities for experiential learning. The bar need not do this exclusively outside of law schools. To the contrary, the developing infrastructure of live-client clinics, simulations, and supervised externships at many law schools creates opportunities for the bar to partner with law schools to provide apprenticeship-like programs. The practicing bar can thus play an important role in facilitating the development of a new model of legal education.

RECOMMENDATIONS

The problems identified in this report are complex, and unlikely to be easily resolved. In particular, the Special Committee acknowledges the difficult plight of recent graduates and current law students. Reforms to the structure of legal education, no matter how effective, will not assist this group, who face great challenges as they begin their legal careers.

There are, however, a variety of measures that law schools, in cooperation with other stakeholders, including the ISBA and other bar associations, can take to ameliorate the debt crisis and to preserve the quality of the legal services the bar provides to the public. These recommendations will both help current young attorneys become successful practitioners despite their heavy debt burdens, and also will help reform legal education to make it more affordable while preserving or enhancing the quality of the training it provides to new attorneys. The recommendations are grouped into several categories.

I. Financing Law School

Law schools need to focus on cutting costs to make law school more affordable. At the same time, the system of financing legal education should reward law schools that are most effective in implementing successful reforms. The Special Committee recommends the following reforms to facilitate those changes:

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[97] Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 612-13 (2010) (footnotes omitted).
[98] *Id.* at 613-14; *see also* CARNEGIE REPORT, *supra* note 62, at 191-92.
[99] Tenure-track professors hired in the last decade have a median of three years of practice experience, and at top schools new hires have median practice experience of one year. TAMANAHA, *supra* note 5, at 58.

1. Law Schools Should Not Transfer Excessive Funds to Universities

Law schools connected to universities should not be a source of funding that the university can tap to fund other programs. The existing ABA accreditation standards prohibit excessive transfers to a university.[100] Law schools should use the leverage that standard provides to ensure that they receive reasonable and direct benefits for any payments they make to a university, and that their payments are fair compared to those that other departments of the university make for comparable services.

2. Place Reasonable Limits on the Amounts that Law Students can Borrow

Although legal education is a regulated industry, the market has a significant role to play in law school reform. Already, applications to law school and law school enrollment are down significantly.[101] As a result, law schools will face market pressure to attract applicants by improving the job prospects of their graduates and decreasing the cost of attendance.

The market pressure on law schools to keep tuition affordable is significantly blunted, however, by the generous lending policies of the federal government.[102] To date, the federal government has allowed nearly any student[103] enrolled in a recognized educational program to borrow amounts limited only by the cost of attendance.[104] To remain eligible to enroll students receiving federal student loans, moreover, an institution need meet few requirements other than remaining accredited by a recognized accrediting agency.[105] As a result, the federal government will

[100] *See* ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, at std. 210(c) (2012) [hereinafter ABA STANDARDS]. (Citations to the *Standards* refer to the number of the standard or interpretation.) Standard 210(c) provides that "[t]he resources generated by a law school that is part of a university should be made available to the law school to maintain and enhance its program of legal education." *Id.*

[101] A preliminary count showed 68,000 applicants to law school for fall 2012, down from a peak of 98,700 in fall 2004. Law Student Assistance Comm'n, LSAC Volume Summary [hereinafter LSAC Volume Summary], http://www.lsac.org/lsacresources/data/lsac-volume-summary.asp (last visited Jan. 28, 2013). Early projections suggest that the number of applicants will decline 20.4% further for fall 2013. Law Student Assistance Comm'n, Current Volume: Three-Year Summary, http://www.lsac.org/lsacresources/data/three-year-volume.asp (last visited Jan. 28, 2013). If that decline occurs, there will be around 54,100 applicants to law school in 2013, significantly fewer than the number of admitted students at any point in the last decade. *See* LSAC Volume Summary, *supra*. In addition, first-year enrollment stood at 44,481 for the fall of 2012, a decline of 9% from the fall of 2011 and about 15% below the peak in the fall of 2010. Press Release, ABA Section of Legal Educ. & Admissions to the Bar, ABA Section of Legal Education Reports Preliminary Fall 2012 First-Year Enrollment Data (Nov. 28, 2012).

[102] *See generally* TAMANAHA, *supra* note 5, at 126-34, 177-81; Simkovic, *supra* note 74.

[103] The limited requirements include that the student is a U.S. citizen or on a path to citizenship, that the student remain in academic good standing, that the student not currently be in default on a federal student loan, that the student make restitution if she previously defrauded the federal student loan program, and that the student avoid drug offenses. *See* 20 U.S.C. § 1091; Simkovic, *supra* note 74, at 20-21.

[104] Law students can borrow under the federal graduate PLUS program, which allows students to borrow any amount up to "the student's estimated cost of attendance, minus . . . other financial aid" the student has obtained, including aid under other federal loan programs. 20 U.S.C. § 1078-2(b).

[105] *See* Simkovic, *supra* note 74, at 21.

fully fund the education of any person who gets into law school, independent of the employment outcomes that the law school's graduates achieve and of their ability to repay the taxpayers' money.

The federal government could easily focus the market pressure to improve the value proposition of law school by placing reasonable limits on the availability of federal funds for law schools. For example, Congress and the Department of Education could identify a maximum amount that a student could borrow from the federal government for law school. Law schools would then have a strong incentive to keep the costs of attending reasonably close to that limit, because few law students would be able or willing to enroll in programs costing far in excess of the federal limit.[106]

Obviously, private loans would still be available to students if they wanted to borrow above the federal lending limits.[107] To prevent law students from merely making up the additional cost above the federal limit in higher-cost private loans, this recommendation should be coupled with a reform to make student loans dischargeable in bankruptcy for students facing financial hardship (as that term was defined prior to the 2005 amendments to the bankruptcy code).[108] That way, private lenders will have an additional incentive to price private loans at a rate appropriate for the risk. Students attending schools that are unlikely to provide the education they need to be successful will then be priced out of the loan market. Those law schools will be forced to lower their costs and improve the education they provide, or else face closure.

3. Impose Outcome-Based Requirements for Federal Student Loan Eligibility

Another possibility is that the federal government could limit federal loan availability to schools whose graduates are unable to repay their debt.[109] Law schools failing such a standard would be unable to enroll students requiring federal loans to finance their education. Such law schools would then be forced to improve their employment outcomes, or they would close. In either case, the expensive training of unemployable law school graduates would cease, as taxpayer funds would be channeled only to effective schools.

Fortunately, the Department of Education has already developed such a standard for certain vocational and for-profit educational institutions through the "Gainful Employment" regulations promulgated in 2011.[110] Programs subject to those regulations must meet two

[106] Professor Tamanaha worries that this solution will merely cause law schools to enroll more students at a lower tuition rate, thus enabling them to make up the lost revenue. *See* TAMANAHA, *supra* note 5, at 179-80. That result seems unlikely in light of the plummeting applications to law school. *See supra* note 101. Law schools will not be able to expand their classes significantly without lowering the quality of incoming students, jeopardizing both their *U.S. News* ranking and, ultimately, their accreditation if their students are not qualified to complete law school and pass the bar examination. *See* ABA STANDARDS, *supra* note 100, at std. 501(b).

[107] *See supra* note 74.

[108] For a cogent argument in favor of this proposal, see Note, *Ending Student Loan Exceptionalism: The Case for Risk-Based Pricing and Dischargeability*, 126 HARV. L. REV. 587 (2012).

[109] For several possible versions of this proposal, see TAMANAHA, *supra* note 5, at 177-81.

[110] For a general description of the regulations, see Jean Braucher, *Mortgaging Human Capital: Federally Funded Subprime Higher Education*, 69 WASH. & LEE L. REV. 439, 465-72 (2012). The regulations can be found at 34 C.F.R. § 668.7 (2013). A court recently vacated the Gainful Employment rules for vocational and for-profit schools on the ground that the Department of Education's rationale for the

separate benchmarks in at least two out of every four years to remain eligible to receive student loans. The first benchmark requires at least 35% of a program's graduates to reduce their loan principal by at least $1 in a given period (so graduates in forbearance or deferment would not count).[111] The second benchmark requires that either the mean or the median graduate have debt payments of 12% or less of annual income or 30% or less of discretionary income.[112] If similar standards applied to law schools, many institutions would immediately feel pressure to lower the debt burden of their students, improve their training for the practice of law, or both.[113] Without a blank check from the U.S. Treasury on which to draw, inadequate law schools would soon close.

A primary objection to such a proposal is that it would limit the accessibility of law school, particularly for minority and poor students. To be sure, it is likely that overall enrollment would decline, leaving fewer law school spaces available for all.[114] There is no reason to believe that minority enrollment would decline in relative terms, however, particularly in light of the accreditation requirement that law schools pursue a diverse student body.[115] Instead, the likely outcome will be less debt and better employment outcomes for all law school graduates, including minorities.

4. Reallocate the Funds Available Through Loan Forgiveness Programs

The federal government should reallocate the funds available in loan forgiveness programs, and in particular the IBR program, to better meet the debt burdens of new attorneys. For example, the federal government should consider limiting the loan forgiveness available for attorneys above a certain income level. A lawyer with $200,000 of debt and an annual salary of $145,000 will currently qualify for IBR, even though such a lawyer would have little difficulty managing that debt burden. These lawyers should not be included in the program.

The money saved by excluding such lawyers from the IBR program would enable other possible reforms, such as allowing borrowers to consolidate private loans into the federal loan program or improving the loan forgiveness terms for public interest attorneys. As mentioned above,[116] one of the chief downfalls of the IBR program is that lawyers working in the public interest do not expect to remain in their jobs long enough to benefit from the loan forgiveness provisions. Rather than requiring ten years of service, the program could forgive a portion of a public interest lawyer's loans each year (perhaps with the amount increasing the longer the lawyer

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repayment benchmark was arbitrary and capricious. *See Ass'n of Private Colls. & Univs. v. Duncan*, 870 F. Supp. 2d 133, 154 (D.D.C. 2012). But the court also held that the regulations were promulgated pursuant to a reasonable interpretation of the agency's power, *id.* at 149, leaving open the possibility that the Department of Education could reissue the regulations.

[111] *See* Braucher, *supra* note 110, at 467-68.

[112] *Id.* at 468.

[113] Such a change would likely require congressional action, as current law does not define all graduate programs as programs that provide a "program of training to prepare students for gainful employment in a recognized occupation"—the statutory hook the Department of Education used to establish its authority to promulgate the Gainful Employment regulations. *Compare* 20 U.S.C. § 1001(a), *with* 20 U.S.C. § 1002(b)(1)(A)(i), *and* 20 U.S.C. § 1002(c)(1)(A).

[114] As the earlier part of this Report documents, however, such a change is necessary in light of the inability of many law school graduates to secure employment. *See supra* note 40 and accompanying text.

[115] *See* ABA STANDARDS, *supra* note 100, at std. 212.

[116] *See supra* notes 67-82 and accompanying text.

stays in public interest). The amount forgiven should be at least enough to cover any interest that accrues during the year. That way, public interest lawyers would no longer face the possibility that time enrolled in IBR will lead to an increased loan balance if financial concerns force them to enter the private sector. Such a program would diminish the tendency of public interest lawyers to leave for the private sector after only a few years because of financial pressures.

Finally, the federal government should extend the more generous IBR provisions for public interest lawyers to private sector lawyers willing to provide legal services in rural areas or with salaries below a certain threshold. These lawyers play a crucial role in supplying the legal needs of average Americans, and should be encouraged to work in these areas rather than fleeing to higher paying legal jobs or to jobs outside of the law. The debt forgiveness available to these private sector attorneys could be based on the amount of pro bono work the attorney performs each year, or on a commitment to work a certain number of years in an area with unmet legal needs.

II. Revisions to the Accreditation Standards

Although the ABA accreditation standards likely are not a significant driver of the cost of law school, some of the standards may stand in the way of the reform that is necessary to adequately educate lawyers for practice in an affordable way. A 2009 GAO report, for example, found that "the move to a more hands-on, resource-intensive approach to legal education and competition among schools for higher rankings appear to be the main factors driving the cost of law school, while ABA accreditation requirements appear to play a minor role."[117] But the report also concluded that "accreditation standards may limit experimentation with potentially lower-cost approaches."[118] Specifically, the report explained that certain accreditation standards may prevent schools from expanding the use of non-tenure track and adjunct faculty,[119] developing predominantly electronic libraries,[120] and delivering online or distance education.[121] To that list, one might add standards that prevent law schools from deemphasizing faculty scholarship[122] and from using a more modest, less expensive physical plant.[123]

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[117] U.S. GOV'T ACCOUNTABILITY OFF., ISSUES RELATED TO LAW SCHOOL COST AND ACCESS 2 (2009). The GAO came to this conclusion largely through interviews with law school officials. *Id.*

[118] *Id.* at 28.

[119] *See* ABA STANDARDS, *supra* note 100, at std. 403(a) (requiring that full-time faculty "teach the major portion of the law school's curriculum, including substantially all of the first one-third of each student's coursework"); *id.* at ints. 402-1 & 402-2 (imposing requirements for a law school's faculty-student ratio, but counting clinicians and legal writing instructors as .7 of a full-time traditional faculty member, and counting adjuncts as .2 of a full-time traditional faculty member); std. 405 (imposing security of position requirements for traditional faculty that exceed the requirements for clinical and legal writing faculty).

[120] *See id.* at std. 601(b) (requiring law libraries to have "sufficient financial resources to support the law school's teaching, scholarship, research, and service programs"); *id.* at int. 601-1 (explaining that Standard 601 cannot be satisfied merely by providing electronic access); *see also id.* at std. 606 (listing requirements for a law library's collection).

[121] *See id.* at 306(d) (limiting a school to granting twelve hours of credit for distance education courses).

[122] *See id.* at std. 401 (requiring that a law school's faculty, including clinical and legal writing faculty, "possess a high degree of competence, as demonstrated by its . . . scholarly research and writing"); *id.* at std. 402(a)(3) (requiring that a law school employ sufficient faculty to meet the goals of its educational program, and establishing that determining a sufficient number depends on the "opportunities for the

Beginning in 2008 and continuing until the present, the ABA Section of Legal Education and Admissions to the Bar has been undertaking a comprehensive review of the standards.[124] One of the overarching themes of the review is to amend the standards to require more outcome measures—that is, "accreditation criteria that concentrate on whether the law school has fulfilled its goals of imparting certain types of knowledge and enabling students to attain certain types of capacities, as well as achieving whatever other specific mission(s) the law school has adopted"—rather than "input measures"—that is "accreditation criteria that concentrate on whether law schools are investing the right types and amounts of resources (such as physical plant, number of faculty, and budget) to achieve the goals identified in the accreditation standards and the school's missions."[125] In theory, that approach should give law schools more flexibility to meet the accreditation requirements. Outcome measures should allow schools to use whatever means appropriate—including lower cost alternatives to the current model of legal education—so long as they achieve the specified objectives.

In some areas, that promise may be realized. For example, the current drafts under review by the Standards Review Committee propose granting equivalent security of position to traditional and clinical faculty, and the law library requirements are relaxed somewhat. Perhaps most significantly, the proposed standards no longer require a particular student-faculty ratio or assign less value to clinical faculty and adjuncts than to full time traditional faculty. In other areas, however, the current drafts maintain many of the restrictive standards listed above. For example, proposed Standard 404 still requires all faculty to "engag[e] in scholarship, as defined by each law school." Proposed Standard 403 still requires full-time faculty to teach "substantially all" of the first year and more than half of all credit hours offered. Proposed Standard 311(e) relaxes the limits on distance education only slightly, now limiting the credits that a student can earn through distance education to fifteen. The requirements for physical plant in proposed Standard 702 are just as onerous as the current standard.[126]

As the standards review process proceeds, the ABA Section of Legal Education and Admissions to the Bar should delete or amend standards restricting the innovation necessary to allow law schools to cope with the law school debt crisis. In particular, the Special Committee recommends the following revisions:

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faculty adequately to . . . conduct scholarly research"); *id.* at std. 404(a) (requiring that a law school adopt policies regarding faculty scholarship).

[123] *See id.* at std. 702 (requiring adequate seating in the library for students and faculty); *id.* at std. 703 (requiring adequate onsite study space, including space for group work).

[124] Information about the standards review process is available on the Section's website. ABA Section of Legal Educ. & Admissions to the Bar, Standards Review Committee, http://www.americanbar.org/groups/legal_education/committees/standards_review.html (last visited Jan. 28, 2013).

[125] ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT OF THE OUTCOME MEASURES COMMITTEE 3 (2008), *available at* http://apps.americanbar.org/legaled/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf.

[126] The information in this paragraph is gleaned from the minutes and agendas of the Standards Review Committee's meetings available on the Standards Review Committee website, *supra* note 124.

1. Allow adjunct faculty to play a greater role in legal education, including in the first year.
2. Require that law schools provide debt counseling for all admitted students, before they commit to attend.
3. Remove the requirement that all faculty engage in scholarship.
4. Expand the credits a student can earn from distance education, and limit the requirements for a law school's physical plant, thus allowing law schools to experiment with alternative ways of delivering legal education.
5. Allow law schools to meet the requirements for library collection through digital access.

In addition, the ABA Section of Legal Education and Admissions to the Bar should expand its collection of data about the employment and financial situation of law school graduates. Many attorneys who testified before the Special Committee complained about the availability of information about the employment outcomes of law school graduates. Some testified that they would have made different choices about attending law school if they had had more information. The availability of information about the employment outcomes of law school graduates improved substantially in 2011 when the ABA Section of Legal Education and Admissions to the Bar revised Standard 509[127] to require law schools to report additional detail about the breakdown of their employment outcomes and to post that information on the law school website.[128] Under the new rule, schools must report the number of unemployed graduates, the number of graduates pursuing further education, and the number of graduates employed in jobs that require bar passage, jobs in which a juris doctor degree is preferred, professional jobs, and nonprofessional jobs.[129] For each category, the school must report whether those graduates are in full-time or part-time jobs, and whether the jobs are permanent or temporary.[130]

There are significant holes in the new data, however, in that the ABA does not require that the law schools report salary data. One reason for that omission is concern that too few students report their salaries to make the data meaningful and not misleading.[131] In addition, law schools currently provide only a snapshot of employment outcomes at nine months after graduation. No data is available regarding employment outcomes for law school graduates at other points in their career.

The ABA Section of Legal Education and Admissions to the Bar should look for ways to encourage law schools and their graduates to report the lawyers' employment status, practice setting, salary, and outstanding educational debt. For example, the Section could require law schools to perform an annual survey of a portion of its graduates from multiple graduation years to collect this information.

As a result the public would have access to information regarding employment outcomes and salaries for lawyers throughout their career, not only for the first year. Prospective law

[127] *See* ABA STANDARDS, *supra* note 100, at std. 509.
[128] Karen Sloan, *ABA Backs Off Making Law Schools Report Graduates' Salaries*, NAT'L L.J., Mar. 19, 2012, *available at* http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202546229913.
[129] *Id.*
[130] *Id.*
[131] For an explanation of the distorting effects of this phenomenon on salary data, see *supra* note 34.

students could then get a complete picture of the employment outcomes at various schools. The data would also allow the ISBA and other entities to acquire a more accurate picture of the ways that debt is influencing the careers of attorneys and the quality of legal services that they provide to the public.[132]

III. Reforms to Law School Curricula

Law school curricula will need to change to ensure that law schools are teaching the skills, values, and dispositions that lawyers need to be successful in practice. At the same time, the debt crisis requires that law schools cut out of their curricula any courses that do not promote that goal. In particular, the Special Committee recommends the following changes:

1. Focus on Practice-Oriented Courses

Law schools should prioritize simulation courses, live-client clinics, and other courses that give students the opportunity to learn and apply legal principles in the context of real life problems. Nearly every young lawyer to testify to the Special Committee indicated that he or she would have preferred to have more of these courses in law school if they were offered. Most law schools offer these courses, but few law schools offer sufficient numbers of them. Law schools should ensure that every student has an opportunity to benefit from practice-oriented courses.

In addition, traditional doctrinal courses, including first-year courses, should also include some practice-oriented component. For example, a contracts class could include an assignment on drafting a contract, while a torts class could include an exercise involving interviewing a prospective client about a recent incident. These types of exercises need to be integrated into every course so that students begin to learn how to practice law from the beginning of their law school experience. All courses could also benefit from inviting a lawyer practicing in that area of law to speak to the class. The organized bar can be an important source of support as law schools develop these programs.

2. Provide Fewer Exotic Courses

Integrating practical training into the traditional legal education curriculum is expensive. To expand the resources available for that task, law schools should cut back on exotic courses such as "Law and Literature" and any courses exclusively involving the application of a social scientific discipline to the law without reference to legal practice. Such courses certainly have some value, but they may be more appropriate in the relevant academic department of a university, rather than in law schools. Because of the debt crisis, these courses are a luxury that law schools cannot afford.

3. Provide More Writing Assignments and Constructive Criticism

More law school courses should give students the opportunity to complete a writing assignment. Students should receive meaningful feedback on these assignments before the end of the

[132] The Special Committee considered recommending that state supreme courts require attorneys to report employment and salary information as part of their annual registration (thereby insuring a more complete data set), but determined not to pursue that recommendation at this time.

semester and the final exam. Obviously, a single professor with a large class cannot always achieve this goal (and making every class smaller is too expensive). Law schools should thus experiment with making more extensive use of either third-year students or adjunct faculty to act as teaching assistants who can help professors to provide feedback. For third-year students, serving as a teaching assistant can become a required part of a revamped curriculum in the third year that will help prepare students for practice. These students would have the opportunity to further hone their own practice skills as they work closely with a professor to critique other students' work.

4. Teach Law Office Management

More law schools should teach students how to run a law office, from managing a payroll to developing business, to setting up a business plan. These courses are a vital part of making students ready to practice at graduation, and are especially important for the increasing number of students who are entering solo practice immediately after graduation. The organized bar can be an important source of support for law schools developing such a course, providing materials and adjunct faculty members who are intimately familiar with the subject matter.

5. Teach a Bar Review Course

Law schools should teach a bar review course for credit at no extra charge to the students. This reform would cut down on the expense of studying for the bar during the summer after graduation.

6. Transform the Second and Third Years of Law School

Many lawyers and law students reported becoming disengaged during toward the end of their legal education, increasingly looking forward to practice and less interested in the courses available to them. Some have proposed eliminating the third year of law school, allowing new lawyers to practice sooner and immediately cutting the cost of law school by one-third. The Special Committee's view, however, is that cutting the third year of law school would provide less time for students become ready to practice law by graduation. That outcome will exacerbate the problem of inadequate training for new lawyers.

Instead of cutting the third year, law schools should look for new ways to use the second and third years of law school to help law students transition into practice. Rather than continuing with traditional instruction, the instructional setting could also shift away from the law school, potentially making law school much cheaper. For example, the second and third years could include time serving as an apprentice in a practice setting, such as a law firm, public defender's office, government agency, or legal aid office. To make legal services more available to the public, apprenticeships could focus on practice settings providing legal services to the poor and middle class. The second and third years of law school could also include courses on law office management and other practical skills, taught through approved CLE provided by bar associations or at the law school. Finally, the second and third years could include working as a teaching assistant for professors teaching lower-level courses.

IV. Reforms to Law School Faculty

To facilitate the above curricular reforms, the Special Committee recommends that law schools make the following changes to their faculty structure and law school governance:

1. Change Tenure and Hiring Requirements to Put Less Emphasis on Scholarship

Law schools should not require as much scholarship as a requirement for hiring and tenure. Instead, they should focus on teaching ability, lawyering skills, and accomplishment as a practitioner or judge. This reform would free faculty to spend more time teaching, interacting with students, and providing meaningful feedback to students on practice-oriented assignments. Law schools could then require faculty to teach additional courses each year, cutting down on the number of professors they need to hire.

2. Include Practicing Judges and Lawyers on Hiring and Tenure Committees

Law faculty should be accomplished practitioners to ensure that they are able to educate the next generation of practicing lawyers. One way law schools can evaluate the lawyering skills of faculty candidates is to include respected lawyers and judges from the community on hiring and tenure committees. Practicing judges and lawyers can provide unique insight into the candidate's skills as a practitioner and will ensure that the law school hires faculty who are best able to educate law students for practice.

3. Use More Properly-Trained and Supervised Adjunct Faculty

The typical adjunct faculty member receives only a few thousand dollars per course. As a result, law schools can enjoy tremendous cost savings by using practicing lawyers and judges as adjunct faculty members.[133] At the same time, adjuncts are well-suited to integrate practical training into the classroom, and to help students transition into practice. To be sure, adjuncts may not have experience as teachers, and require training and oversight from traditional faculty members. If law schools are willing to invest in adjuncts and to integrate them into the classroom with traditional faculty, however, the benefits can be tremendous.[134] Bar associations can support law schools in this endeavor by identifying adjuncts and by providing CLE programs to help train adjuncts to be better teachers.

4. Give Clinical and Legal Writing Faculty an Equal Say in Governance

Currently, legal writing instructors and clinical faculty members often do not enjoy the same power in faculty governance as traditional doctrinal faculty. These faculty members are the most involved with educating lawyers with the skills that are necessary for practice. Clinical and legal writing instructors should be fully implemented into the governance structure of the law

[133] *See* Thies, *supra* note 97, at 619 ("Adjuncts are typically paid a flat fee for each course that they teach. While these fees vary, estimates usually run between $1,500 and $5,000, depending on the experience of the teacher, the quality of the school, the length of the course, and the number of students. Even assuming the higher number, a law school could hire twenty-five adjuncts for every full professor earning salary and benefits of $125,000 a year." (footnotes omitted)).

[134] *Id.* at 621 ("Schools should also take advantage of opportunities to integrate adjuncts into the classroom with full-time faculty. For example, Harvard Law School's new Problems and Methods course for first-year students will include small groups of students working with an adjunct on a particular practice problem introduced in class by a full-time professor. Not only will the students benefit from this experience, but the adjuncts will have the advantage of observing the full-time professor at work, thus providing the school with an experienced pool of adjuncts to draw on later to teach other courses.").

school, giving them the same say as traditional faculty on hiring, curriculum, and other important topics.

V. Reforms for the Illinois Supreme Court and Other State Supreme Courts

State supreme courts play an important role in regulating legal education and the profession. The Special Committee recommends that the Illinois Supreme Court and other supreme courts take the following steps:

1. Consider Ways to Reduce the Cost of Becoming Licensed

Supreme courts should investigate ways to license new lawyers at less cost to the lawyer and with less of a delay after law school. In particular, supreme courts should carefully consider the purpose of the current procedures for licensing attorneys, including the bar exam, and should evaluate whether the current procedures achieve that purpose.

There are several potential ways to achieve this goal. For example, the Arizona Supreme Court recently adopted a proposal to allow third-year students to take the Arizona bar exam in February before they graduate.[135] The proposal requires students to have only a limited number of credits left for graduation in their last semester and limits their course load leading up to the exam to ensure that they are not distracted from their studies. Such a system would enable students to begin work more quickly after graduation, and would limit the need for expensive bar study loans. In addition, some employers make job offers contingent on bar passage, or decline to extend an offer until after a student has passed the bar. This proposal would make it easier for students to secure those jobs by graduation. The downside of this proposal is that squeezing the bar exam into the third year leaves less time for students to gain the experience they need to become practice ready before graduation. Any such reform should carefully consider this downside and include measures to limit the impact on the quality of the training law schools provide.

Supreme courts should also consider alternatives to the bar exam as a means of ensuring that new lawyers are qualified to practice. For example, Wisconsin affords the "diploma privilege" to graduates of Wisconsin law schools, allowing them to become licensed without taking the bar exam. Supreme courts should consider affording a similar privilege to graduates of their state's law schools, assuming the graduates took certain prescribed classes (including practice-oriented classes), maintained a minimum GPA, and met other requirements for bar admission (e.g., character and fitness requirements). Such graduates could be admitted to the bar at or shortly after graduation, with no additional cost.

2. Monitor Potential Ethics Problems

As described above, there is significant anecdotal evidence that young lawyers burdened with heavy debt, and especially solo practitioners, may be more likely to commit certain ethics violations. Although the current data from the ARDC do not bear out that concern, the ARDC should continue to monitor new data regarding ethics violations in Illinois, and should be ready to address the issue further should a problem develop.

[135] Zoe Tillman, *Arizona Supreme Court to allow 3Ls to sit for the bar*, NAT'L L.J., Dec. 11, 2012, *available at* http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202581129343&slreturn=20130012160534.

3. Broaden Student Practice Rules

To ensure that law students have as many opportunities as possible to develop lawyering skills, state supreme courts should expand student practice rules. In Illinois, for example, the Illinois Supreme Court should amend Supreme Court Rule 711. Currently, Rule 711 allows law students to practice law under supervision only when they are providing services through a legal aid or government organization. If the rule also allowed law students to practice in private firms as part of an apprenticeship program, law firm apprentices would be able to benefit from a broader range of experiences.

4. Allow Law Practice Management and Technology Related CLE to Count for Minimum CLE Requirements

Many lawyers lack the skills necessary to open or run their own law practice, yet those skills are vital, especially for the increasing number of attorneys opening solo practices. State supreme courts should allow CLE related to law practice management to count toward minimum CLE requirements.[136]

VI. Support from the Organized Bar

Bar associations must play an active role in assisting the necessary transformation of law schools. The Special Committee recommends that bar associations do the following:

1. Facilitate Firm Apprenticeship Programs

One way for the organized bar to contribute to legal education is through apprenticeship programs in law firms. In such programs, the new lawyer takes a pay cut and spends only a portion of her time working on billable matters (often at a lower rate). The rest of her time could be spent in an educational program including classes, supervised work on pro bono cases, and shadowing older attorneys. A few law firms have developed such programs, but they have not caught on more broadly, largely because of the significant cost to law firms.[137] In addition, the few firms that have taken such a step are almost all large corporate firms, as small firms lack the institutional resources to support such programs.

Bar associations should provide support for law firms developing apprenticeship programs. For example, bar malpractice insurance companies like ISBA Mutual could offer free or reduced malpractice insurance to cover the work of firm apprentices during their training period. Bar associations could also develop a standard set of CLE materials in a variety of practice areas that firms could use for apprenticeship programs, thus relieving the firms of the cost of developing their own. In addition, bar associations could organize panel discussions and

[136] The Special Committee also considered recommending that state supreme courts adopt a mandatory pro bono rule on a law firm basis, but allow firms to count the pro bono work of junior attorneys toward a firm's pro bono requirement, thereby encouraging law firms to hire more young attorneys and giving those attorneys a chance to get more experience. The Special Committee decided not to proceed with that recommendation at this time.

[137] *See* Karen Sloan, *Three Law Firms Claim Success With New Apprenticeship Model: With cost one concern, other law firms have not jumped on the apprenticeship bandwagon*, NAT'L L.J., June 15, 2010, *available at* http://www.lawjobs.com/newsandviews/LawArticle.jsp?id=1202462701838&slreturn=20130021154005.

networking events, allowing apprentices at small firms to gather to share ideas and resources. Bar associations would then relieve the burden on smaller firms to develop sufficient programming on their own to make an apprenticeship program worthwhile. Through such a program, young lawyers could learn the intricacies of the profession from older lawyers, just as in the traditional English Inns of Court.

If law firms and the organized bar cooperate with law schools, another possibility is that such apprenticeship programs could be integrated with the third year of law school. Law students could begin their apprenticeship placement during their third year, and could receive credit for some of the work and educational experience they receive at the law firm. During that third year, the student's tuition could be decreased (or a portion could be paid to the law firm in return for the training), and the student would benefit from any money she might earn from practicing law.[138] The apprenticeship could continue after graduation and perhaps develop into full-time employment.

2. Partner with Law Schools to Provide Practice Experiences to Law Students

Bar associations can also take a more active role in the training of new lawyers by providing resources and support to law schools attempting to integrate more practical training into their curricula. For example, bar associations could partner with law schools to provide externship placements. As part of the program, bar associations could train attorneys to provide effective externships at their firm or practice setting. Bar associations could also partner with law schools to identify and train new adjunct faculty members, thus facilitating the entrance of more practicing lawyers and judges into law schools.

3. Facilitate Pro Bono Work Among Young Attorneys and Law Students

Bar associations could also set up an online bulletin board on which lawyers could seek assistance from younger attorneys or law students for pro bono projects. Any attorney could sign up to work with the supervising lawyer (assuming no conflicts of interest), and could, even from a remote location, provide legal assistance on the project. The supervising attorney would review the work and remain responsible ultimately for the representation, but the younger lawyer would gain experience and the opportunity to learn from an older lawyer, in addition to a contact possibly leading to future employment.

4. Facilitate the Sale of Rural Law Practices to Young Lawyers

Bar associations should partner with law schools to connect law students with aging lawyers in rural areas who are looking to pass their practice on to a new generation.[139] Such a program would assist older practitioners looking to retire, young lawyers looking for work, and communities facing diminished access to legal services. The program would begin by creating a

[138] The ABA accreditation standards currently prevent students from earning money for any work for which they receive credit. *See* ABA STANDARDS, *supra* note 100, at int. 305-3. It is not clear if a student could earn money for the portion of the apprenticeship during which she serves paying clients, and also receive credit for the educational portion of the program. If the student could not draw a salary, the student could still benefit financially if law schools charged a student in an apprenticeship program less for the third year of law school.

[139] This recommendation came from Dean Bruce Smith of the University of Illinois College of Law.

clearinghouse to connect law students willing to buy a law practice with practitioners looking to retire. The students could serve as apprentices with the practitioners to gain experience and to assess whether a sale would work. The program could also facilitate access to accountants and business lawyers who could value the practice and help both sides assess the transaction, and it could also create a venture capital fund (with donations from the bar, alumni of the law school, and others) to loan money to students to buy the practice. Finally, it could allow the law students to buy the practice after graduation (and perhaps after an additional apprenticeship period) and operate it under the supervision of the prior owners, and with a commitment to continue to serve the local community.

5. Assist Pre-law Advisors to Provide Counseling for Prospective Law Students

Bar associations should provide debt and career counseling programs for prospective law students to decrease the number of lawyers who are unaware of the financial challenges of attending law school when they enroll. Jamie Thomas Ward, the director of pre-law advising at the University of Illinois, offered to work with the ISBA to develop such programs and to assist with marketing them to her students. The ISBA and other bar associations should also seek to partner with pre-law advisors at other universities. Such a program should emphasize the costs and benefits of attending law school, and should encourage prospective law students to develop a realistic plan for managing their debt before they attend law school. Through interaction with lawyers, it should also provide prospective law students a realistic picture of what the practice of law is like today.

6. Provide Debt Counseling for Young Lawyers

Bar associations should also put on debt counseling programs for law students and young lawyers. Although there are a variety of loan forgiveness programs available today, many young lawyers are unaware of their options or of how to take advantage of those programs. Law schools provide some counseling of this type, but it tends to end after graduation, leaving young lawyers unaware of the current landscape.[140] Bar associations (and particular their Young Lawyers Divisions) should continue to provide information and resources for young lawyers.

7. Provide Resources for Solo Practitioners and Small Firm Lawyers

Bar associations must also provide key resources for solo practitioners and small firm lawyers who are too financially strapped to obtain them elsewhere, For example, the ISBA provides significant resources to its member solo practitioners and small firm lawyers, including free legal research on Fastcase, 15 hours of free CLE programs each year, access to an ethics hotline, networking opportunities, mentorship programs, and much more. Other bar associations should provide similar services to support young lawyers and solo practitioners, who increasingly lack access to these resources from any other source.

8. Partner with Groups to Ensure Lawyers are Placed Where They Are Needed

The Special Committee heard testimony from several attorneys indicating that despite the difficult job market, there are certain local regions and practice areas where attorneys are in

[140] In particular, lawyers who graduated before the late 2000s tend to be largely unaware of the nuances of the IBR program, which Congress established in 2007.

demand. Bar associations should partner with law schools, economic development groups, local governments, and legal recruiters to ensure that young lawyers are placed where they are needed. Through such cooperation, law schools would also be able to obtain information about the types of courses that will be most beneficial to prepare law students for the current job market.

CONCLUSION

Many have recognized that the law school debt crisis imposes an unacceptable burden on young lawyers and law students. As this report makes plain, the burden does not stop there, but extends to the most vulnerable in our society in need of legal services. Because of excessive debt, too many poor and middle class citizens lack reliable access to affordable legal services. That reality makes the crisis more urgent than if it affected only lawyers. The high calling of public service has always galvanized the best from the bar, the bench, and the academy to promote justice, defend liberty, secure the rule of law, and ensure the highest quality legal representation to all. The law school debt crisis and the challenge of developing a new model of legal education present yet another opportunity for the legal profession to work together for the common good.

Appendix A: Costs to Start and Run a Solo Practice in Downstate Illinois[141]

Startup Costs	
Computer, Printer & Copier	$800
Phone	$250
Second-hand Desk	$200
Chairs (one executive and two client)	$400
Office Supplies	$200
$1500 monthly salary for 6 months	$9,000
Operating Expenses for 3 months	$8,520
Total	**$19,370**
Monthly Operating Expenses	
Office Space Rental	$600
Phones	$190
Internet Access	$40
Legal Research (Westlaw or Lexis)	$500
Malpractice Insurance	$300
Office Supplies	$100
Liability Insurance	$50
Medical Insurance (covering attorney and family)	$700
Practice Management Software	$60
Advertising	$300
ISBA Membership for Atty in 3d Year Admission	$6
Total Monthly Expenses	**$2,846**
Total Yearly Expenses	**$34,152**

[141] These numbers are based on the estimate of one lawyer in downstate Illinois who provided this information to the committee.