

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal white bars.

NEW YORK
CITY BAR

Developing Legal Careers and Delivering Justice in the 21st Century

**A Report by
The New York City Bar Association Task Force on
New Lawyers in a Changing Profession**

FALL 2013

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INTRODUCTION AND ACKNOWLEDGMENTS

The New York City Bar Association Task Force on New Lawyers in a Changing Profession is pleased to present this Report. The Task Force was appointed by New York City Bar President Carey Dunne in the fall of 2012 to address changes in the legal profession, with a focus on the “plight of new lawyers.” Our mandate was to examine whether new lawyers are being given relevant development opportunities in law school and in their early careers so that they are employable, able to realize their aspirations in a reasonable time frame, and ready to serve clients effectively.

The Task Force is broadly representative of the profession in New York City and nationally. Members include the Deans and other leaders of nine law schools; the Chairs and managers of law firms ranging from some of the world’s largest to solo practitioners; General Counsels of Fortune 100 corporations; as well as the New York and Kings County District Attorneys; the New York City Corporation Counsel and leaders from New York’s The Legal Aid Society and Legal Services NYC.

For more than a year, Task Force members and staff conducted extensive research and vigorously debated the issues discussed below at meetings of the full Task Force, in subcommittee discussions, and in individual conversations. While members of the Task Force approached this work from different backgrounds and with different perspectives (such that this Report should be viewed as a group statement and not the individual views of any member), a consensus emerged on each of the central issues and there was a strong majority supporting the significant findings and recommendations set out below.

We wish to thank the staff of law students and practicing lawyers who contributed heavily to the research and drafting of this Report; Inspire, Inc., the non-profit consulting firm that has provided and continues to provide invaluable analytical support; Merrill Corporation for its generous donation of the use of a datasite to assist us in tracking and accessing information centrally; and the staff at

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“If you do not change direction, you may end up where you are heading.”

~ Lao Tzu

EXECUTIVE SUMMARY

Introduction

The legal profession in America is undergoing fundamental change. The nature and impact of the change varies among different sectors of the industry, in different geographies, and at different levels of seniority among professionals. But no group is affected as much as new lawyers, who are likely to spend their careers in a working environment that would have been unrecognizable just a few years ago.

Even within this new lawyer group, prospects vary greatly depending on practice area, geography, law school attended, and other factors. For top graduates of top schools seeking work in the major financial centers, globalization, new financial regulation, and other trends seem certain to continue to propel the careers of those who succeed in this sector of the legal market. Even these graduates will confront new kinds of challenges driven by ever-increasing cost pressures, competition, new ways of doing business, and career paths different from those that traditionally have been available. But many more of the nation's tens of thousands of annual law graduates are finding themselves facing diminished job prospects, unprecedented debt, and limited opportunities to achieve the experience and training necessary for a professionally rewarding and financially sustainable career.

Which is not to say that everything is bleak. In addition to globalization, changes in regulation, technology, and population demographics are creating new demands for legal services in practice areas such as compliance, climate change, health care, energy, alternative dispute resolution, and others. These trends can provide opportunities for new lawyers, but only if the new lawyers are properly trained and educated to take advantage of them. Perhaps most importantly, there is a huge unmet demand for legal services across America among middle-class households of moderate means: an irony given the common lament about the "oversupply" of lawyers.

In this Report, we look across this complex landscape, and, with a view to the trends we think will shape the profession, we call for further innovation in law school curricula and in new lawyer training; we identify new initiatives to help law school graduates find jobs and jumpstart their careers; and we announce an experiment to match a supply of affordable qualified lawyers with the unmet needs of people of moderate means. More particularly, in addition to our findings and recommendations set out below, we announce the following four pilot programs:

1. **The City Bar New Lawyer Institute.** A City Bar-run New Lawyer Institute to introduce all new lawyers beginning their careers in New York City to the broader legal community and to provide new lawyers access to high-quality training and career support in the early years of practice.
2. **Job Programs.** New and expanded “bridge-to-practice” partnerships with major government and private sector employers to provide training and employment opportunities for law students and new lawyers.
3. **Reviewing the Bar Exam.** A City Bar working group to report within a year on potential changes to the way New York State tests the qualifications of those seeking to be licensed to practice law in the state.
4. **A New Law Firm for Persons of Moderate Means.** A new entity that will develop and pilot a commercially sustainable business model to enable new lawyers to address the unmet civil legal needs of people of moderate means while developing their own sustainable professional practices.

Our overall Findings and Recommendations, which are explained in greater detail below, can be distilled as follows:

- The profession and the models for delivering legal services are undergoing fundamental changes. The changes are unlikely to abate soon and will affect the careers and professional development opportunities of new lawyers for the foreseeable future.
- New lawyer preparation must provide the skills and experiences needed for success in this changed landscape. Promising innovations are taking

place in some parts of the legal academy. We strongly endorse this trend and would like it to accelerate.

- New lawyer preparation should focus on providing students with substantive expertise in emerging areas of law and other opportunities to develop hard skills and gain practical experience.
- No uniform method of instruction can provide the needed skills and experiences to the wide array of new lawyers who graduate every year since they will have different employers, different career paths, and different clients with different needs. Accordingly, we urge a focused period of continuing and additional experimentation in which law schools consider differing curricula and projects suited to training their particular target students, with these students' future opportunities, employers, and likely clients in mind. Other sectors of the profession, including established practitioners and the ABA accreditation authorities, should support law schools in their ongoing efforts to experiment and innovate. Among other important values, experimentation should help inform needed changes to the ABA accreditation requirements.
- The need for additional training and expertise requires time, particularly to help new lawyers develop important values and a contextual frame of reference. Therefore the calls to shorten law school—primarily as a way to reduce its cost—are misguided. At the same time, the third year at some law schools is not used optimally. It should focus on skills training, practical experience, and the development of important ethical values.
- The high cost of a legal education is a serious problem for new lawyers, but one without any easy or uniform solutions. Some believe that controlling the cost of law school should be a high priority for law schools. Others would weigh cost against other factors, including their interest in implementing resource-rich programs that may even drive up the expense base. Ultimately, the extent to which law schools weigh cost as a priority is likely to vary depending on schools' differing priorities, the internal and

external resources available to them to support new programs and financial aid, and the composition and goals of their student bodies. Nevertheless, as law schools experiment with methods for instruction, they also should consider experimenting with ways to control costs. Even as some schools implement new resource-intensive programs, others may wish to experiment with programs that use fewer resources and prioritize a reduced-cost approach.

The profession's response to our call for experienced practitioners to contribute volunteer resources to problem-solving and practice-oriented courses, clinical, work experience, and mentoring programs will be critical to law schools' cost control efforts. Some contributed resources may come from committed individuals (including the increasing population of senior lawyers). Law firms and other institutions may contribute group resources. In-kind and monetary resources contributed by employers participating in externship and bridge-to-work programs may also have a beneficial impact.

- New lawyer preparation does not end on graduation day. Curriculum-based continuing legal education (“CLE”) programs and mentoring are essential to help new lawyers transition successfully to practice.
- Even in this period of change, diversity remains of critical importance to the profession, and great care should be taken to ensure that the experimentation called for above continues to foster that goal.
- Innovation in new lawyer preparation and practice is inhibited by a number of structural impediments that must be removed, through:
 - Diminished focus on *U.S. News & World Report* rankings;
 - Reform of ABA law school standards, immediately to enable the experimentation period and pilot programs we advocate and, over time, more extensively to allow greater flexibility in curriculum design

and additional focus on the fundamental attributes and experiences of new lawyer preparation identified in this Report;

- Reform of bar exams to permit greater mobility and to focus on the skills needed for success, rather than rote memorization of legal concepts; and
- Re-examination of restrictions on outside investment in law firms.
- Despite the difficult job environment, there is a large unmet demand for legal services, especially among moderate-income households. New structures and technologies may make serving these needs economically viable in ways that were not previously possible. But there also must be a cultural shift in the focus of the profession away from the limited number of “BigLaw” opportunities and towards a wider range of sustainable career opportunities.

Overview of Discussion

What follows is a synopsis of the discussion and analysis that is developed in the body of this Report.

A. Our Changing Profession

The legal profession is changing. After increasing substantially at the beginning of the financial crisis, law school applications have fallen in each of the past three years. Law school applications for 2013 fell by more than 38% as compared to 2010 and by almost 50% as compared to 2004.¹ Across New York’s 15 law schools, 1L class sizes are down nearly 20% from 2008.² Notwithstanding the smaller number of applicants and enrollment, the percentage of new lawyers for the classes of 2011 and 2012 unable to find full-time jobs requiring bar passage has

¹ Ethan Bronner, *Law Schools’ Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES, Jan. 30, 2013, at A1.

² Tania Karas, *Facing Drop in Applications, Law Schools Cut Costs*, N.Y. L.J., Oct. 2, 2013, http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202621710322&Facing_Drop_in_Applications_Law_Schools_Cut_Costs.

increased to just under 50%. Hiring by the nation's largest law firms has dropped dramatically (from 25% of graduates employed at law firms for the class of 2008 to 16.2% in 2011 and 19.1% in 2012), and, much more than before, this hiring is largely drawn from a relatively small number of highly ranked law schools (whose job placement records are not very different from what they were before the financial crisis). Law firms are increasingly restructuring their operations in response to perceived changes in short- and long-term demand for their services through reductions of both non-lawyers and lawyers at all levels of seniority. Increasing numbers of new lawyers are finding only part-time work, including work that does not require legal training, or time-limited opportunities created or supported by their law schools (roughly 5% of all new lawyer jobs). In addition, the number of new lawyers practicing in very small firms or as solo practitioners has doubled since 2007, which has had a dramatic impact on the salary statistics for recent graduates.

The national median salary for new lawyers entering private practice also dropped by a dramatic 35% from 2009 to 2011 (although at some schools the median salary has not changed). At the same time, new lawyers are graduating with unprecedented levels of debt that may be unsustainable even for those who achieve employment at median salary levels. In 2011, the average student loan debt for graduates of private law schools was \$125,000, while the national median salary for first-year lawyers who were able to find employment was around \$60,000. While these changes

New Lawyer Story #1

Over a year has passed since my 2012 graduation. I earn \$100 a week as compensation for a part-time job with a small law firm. In an effort to bolster my experience and enhance my appeal to employers, I volunteer thirty hours a week with the courts and a non-profit legal service. This makes my compensation roughly \$1.67 an hour for my collective post law school efforts, almost 85% less than what I made before accepting my offer to attend a "respected" New York law school. Despite mounting bills, a growing pile of rejection notices, and remarkable levels of frustration, a fellow alum and more recent graduate of my law school called me "lucky".

I decided to attend law school in 2009, after the economic downturn. My intentions were to go to a great law school, get great grades, and eventually get a great legal job. Even if I did not score a BigLaw position, I believed my J.D. would be attractive in almost every sector, legal or otherwise. Upon graduating and passing two bar exams, I realized that my original belief was misguided. With the exception of the top of the top 10 percent, BigLaw penetration is almost impossible from my school.

Nor is it easy to find a position outside BigLaw. I have applied to every available legal employment opportunity regardless of the size, practice areas, or demographical composition of the firm. I have also applied to in-house positions, non-attorney legal positions, and government positions including coveted and competitive non-compensated attorney positions with the Attorney General's office. All of these positions require more experience than I actually possess or logically could acquire without getting an initial opportunity out of law school.

I did not expect to leave law school debt-free, but I did expect to have options. At the very least, I expected opportunities to improve my employability. And unfortunately, my expectations were not fulfilled.

have, as noted above, affected some law students and law schools more than others, the broad trends are undeniable.

There have been dramatic changes as well in the way law is practiced in the private sector, even in the largest firms. Rising fees and internal cost pressures have led corporate clients to reexamine the ways in which they obtain legal services. Technology has allowed clients, who increasingly are willing to pay high fees only for high-level advice, to disaggregate and unbundle legal work, distributing many lower-order tasks to alternative service providers through outsourcing, insourcing, or other arrangements. Non-traditional fee arrangements increasingly are supplanting the hourly rate, and competition is no longer local (or even national) as firms now operate in a global marketplace for legal services. As a result, opportunities for new lawyers to gain hands-on experience in the early years of practice have become more limited as clients send fewer small matters to the firms that hire new lawyers, are less willing to entrust significant matters to new lawyers, and are less willing to pay for the time of recent graduates.

These changes have received significant media attention. While some of the changes may be a cyclical response to the financial downturn, others are likely to be permanent, and at this point definitive judgments about the balance between what is cyclical and what is permanent are, obviously, quite difficult. We believe that, even as the national economy recovers, job opportunities are unlikely to return to pre-recession levels. In ways both good and bad, legal careers in the future are likely to look significantly different than in the past, as many sectors witness fundamental shifts in staffing and hiring methods. Law schools and legal employers are grappling with these changes, seeking to adapt in ways large and small in this time of ferment. The net effect of these changes will have particularly important implications for new lawyers, whose careers will unfold in this evolving landscape.

B. New Lawyer Training and Impediments to Innovation

Given these new realities, new lawyers need new types of training to compete in the changing professional environment. A number of trends and innovations have emerged in the legal academy and many schools are

supplementing traditional casebook courses with a range of new initiatives. While we recognize the value of traditional casebook courses in providing an intellectual foundation and developing skills that remain quite relevant today, we encourage law schools to continue to innovate and commit resources and energy to new curricular initiatives. In this Report, we identify a series of fundamental attributes and experiences that we believe should form the core of new lawyer preparation in the modern age. Tomorrow's lawyers need more practical experience, skill development, and problem-solving practice, in addition to analytical skills honed by more traditional methods of instruction. To this end, we see value in infusing some of the remaining traditional Socratic-style law school pedagogy with courses taught by, or supplemented by, practitioners, while providing students with increased writing and other collaborative problem-solving opportunities.

To facilitate development of these concepts, the Task Force calls for a defined period of continuing and additional experimentation in new training models, in which the profession as a whole supports law schools in additional curricular innovation, with a goal of broadly disseminating successful changes. In calling for significant change, the Task Force recognizes that students come to law schools with a range of ambitions, such that certain initiatives will be more appropriate for some than others and that priorities and approaches will vary. We also recognize that some of the initiatives we recommend will require significant additional resources that may not be available to all schools or students,

New Lawyer Story #2

I am a recent graduate of a New York City law school, currently working at a large financial institution as a Compliance Analyst. I did not expect to find myself doing Compliance when I went to law school. While I did not know exactly what I wanted to do, I expected to end up as a "real lawyer" with a job involving litigation, suits, and courthouses. Indeed, I did not even know what Compliance was, only learning about it during a white-collar crime seminar.

During law school, I took on a broad range of internships and activities to develop my skills and interests. I worked at a large advocacy organization, participated in moot court, and worked for the New York City Law Department. In the summer of my second year at law school, I worked at a district attorney's office. Though I found the work enjoyable and stimulating, it unfortunately did not lead to an offer for permanent employment. In my last year of law school, I interned at a foreign exchange firm and rotated between its Litigation and Compliance departments. I found that I preferred Compliance. I graduated without a job, but kept up the job search through traditional means and online.

After graduation, a headhunter found me on LinkedIn while searching for people to fill a Compliance position. I learned that my internship experiences, and particularly my exposure to Compliance had made me a good candidate for the position she was filling. Shortly after being contacted, I had a phone interview and was hired.

Although many of my colleagues are not lawyers, I believe that my law school education puts me at an advantage. The skill sets I learned in law school—concise and precise writing, analytical thinking, and understanding the legal context for the issues we see—have been invaluable to my work. These skills allow me to effectively pursue the goals of the organization that I work for, that is, to balance the legal duties imposed by various laws and regulations while maximizing profits. My legal background has allowed me to effectively implement and shape the policy of the financial institution in an exciting and fulfilling way.

while in other circumstances, law schools may be able to form partnerships with legal employers or other professionals that lessen the use of law school resources, and help reduce the overall cost of legal education.

The Task Force also identifies and calls for the removal of a number of impediments to innovation that currently preclude a full range of experimental models from going forward. These include law schools' (and students' and alumni) emphasis on the *U.S. News & World Report* rankings, the rigidity of the ABA Standards and Rules of Procedure for Approval of Law Schools, the content and skills historically tested by the bar exam, and restrictions on outside investment and ownership of law firms. Law schools will need temporary waivers or other short-term relief from the ABA accreditation requirements to implement some of the experiments contemplated here.

We recognize that many question the need for a third year of law school. In our view, this critique is more powerful when the third year is filled with traditional casebook courses or unconnected seminars and, correspondingly, much less persuasive when the third year enables students to develop practical skills experience, or other types of knowledge and expertise needed in today's legal marketplace. A third year obviously also adds to the cost of a legal education, which is a significant issue as well. Nevertheless, we do not believe that it is the right time to curtail law school training. Instead, law schools should be encouraged to focus on the distinctive value that a thoughtfully constructed third-year curriculum can add to an enhanced curriculum in the first two years. Ultimately, we believe that the need for better trained lawyers counsels against spending less time in law school. New lawyers need time and examples to develop a contextual frame of reference and to consider the values needed for successful practice. The changing needs of the profession may require more training in a different format, with formal training extending from the undergraduate years into the early years of legal practice.

C. A Renewed Focus on the Early Years of Practice and Ongoing Professional Development

As set forth in the landmark 1992 MacCrate Report,³ the profession long has recognized that, even in the best of possible worlds, fundamental lawyering skills develop on a continuum over a lawyer's career and that there is a need for new lawyers to gain practical experience in the years following law school graduation. Many states, including New York, have developed CLE requirements and some, like New York, created special transitional CLE requirements for lawyers in the early years of practice. We believe that today's challenges for the continuing professional and career development of new lawyers, as well as lessons learned from years of experience with CLE, require a fresh look at professional development and other career support for new lawyers. New lawyers practicing in large government legal offices, legal aid and legal services organizations, and larger firms typically benefit from initial training and ongoing education programs tailored to the practice of these institutions. Lawyers in these settings also generally have access to career advice and professional support. However, lawyers practicing in smaller and less structured settings, and, of course, lawyers who do not find employment out of law school, do not have access to the organized training and support available in larger organizations.

We believe that all new lawyers should have access to a curriculum-based program of ongoing education in the early years of practice. While there are abundant CLE opportunities for those not practicing in institutional settings, in most cases courses are not organized as a curriculum with a clear focus on the development of early practice skills and fields of specialization. While trainees

³ The MacCrate Report is the commonly used name for the 1992 Report by the ABA's Task Force on Law Schools and the Profession, which comprehensively examined legal education in the United States. Among its central insights was that legal education does not end at graduation from law school, but extends along a continuum throughout a lawyer's career. The MacCrate Report also called for greater emphasis on practice-oriented training. AM. BAR ASS'N, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP; LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992) [hereinafter MACCRATE REPORT].

theoretically could compile a curriculum from the menu of available courses, many new lawyers lack the experience and knowledge to assemble the right mix.

There is a need as well to make structured and objective career advice available to all new lawyers. At a time when at least several job changes are typical over the course of a legal career, even lawyers practicing initially in larger institutional settings will benefit from more professional and objective guidance than may be available through their first employer.

To address these issues, we announce the formation of a pilot New Lawyer Institute based at the City Bar. Beginning with the law school class of 2014, the Institute will provide an introduction to the New York legal community for all new lawyers beginning their careers in the City, including those who later will have access to formal training programs with their employers. The program will continue by offering a one-year curriculum-based training program tailored to the needs of those new lawyers who are in search of a job, beginning their own practices, or who otherwise are unable to access such a program through their employers. The Institute will also pilot mentoring services with a view to testing different models and expanding the availability of mentoring over time.

D. Matching the Supply of Lawyers with Unmet Legal Needs

There is a need to reconcile the perceived oversupply of new lawyers with the persistent unmet legal needs of large portions of the U.S. population. We believe that many new lawyers could develop sustainable legal practices serving Americans of moderate means who have legal needs and who can afford to pay something,⁴ but who do not now obtain legal advice because of competing priorities for limited resources, a lack of confidence in the value of being represented by counsel, and the difficulty of finding the right lawyer at an affordable price.

⁴ There is also, of course, a large unmet demand for legal services by individuals and families who are unable afford to pay anything for legal advice. The Task Force supports the efforts by New York State Chief Judge Jonathan Lippman to increase access to justice. See *generally Overview, TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y.*, <http://www.nycourts.gov/ip/access-civil-legal-services/index.shtml> (last visited Nov. 4, 2013).

In many ways, this is not a new problem. Indeed, a 1947 report characterized the need to provide these types of legal services as “one of the greatest post war problems confronting the organized bar,” noting also the “economic plight” of many young lawyers who could not find jobs or worked for “the barest pittance.”⁵

In recent decades, commercial models to provide mass market civil legal services have had varying degrees of success. We believe that newer business models, technologies, and innovative practices can provide better opportunities to meet these needs while providing satisfying and remunerative long-term career opportunities for new lawyers.

To this end, City Bar plans to form a new pilot entity—a law project for households of moderate means—designed to test a potentially scalable business model intended to deliver high-quality civil legal services to persons who can afford to pay some amount for representation, but who have been unable to access affordable legal services in the past or may be unaware of the benefits of legal representation. The goal of the pilot will be to demonstrate a sustainable commercial, but mission-driven, model to address these historically unmet needs while providing solid career opportunities for properly trained and supervised new lawyers. We believe this is the first such program that is not tethered to the

New Lawyer Story #3

It was 2008. Lehman had just crashed and there were no jobs. I took every graduate school test I could—the LSAT, the GMAT, the GRE. I got into one law school. I didn't love it, so I transferred and made law review.

The traditional route didn't work for me. I went through on-campus interviewing, but none of the firms took me on for the summer. Instead, I worked at a small firm that gave me too much responsibility and not enough training. I later had two internships with judges, but at graduation, I didn't have a job.

I decided to leverage the skills I had developed as an undergraduate. I went into my college's alumni directory and emailed around 40 attorneys. Of those, five or six responded, and two or three agreed to help me in my search. I asked each person for additional contacts. One successful woman in my target field suggested I try to get the internship that she had done in law school. I got the internship and commuted two and a half hours each way for a summer. I worked hard to get the attorneys there to trust me, and I built some great relationships. I had strong computer skills and I gave mini-classes to the other lawyers. There was no funding for a job, but I persisted in explaining how I added value to the company. Ultimately, they found me a spot.

Today, I am as close as I could possibly get to my dream job. I want to be in business. I'm doing transactional work—the negotiating, commenting and drafting purchase agreements, with some compliance work mixed in. My supervisors tell me that in ten years I could be looking for general counsel positions. I got here through persistent diligence, good relationships and luck. It helped that I had other skills that made me marketable. In this market, you need a skill set other than law.

⁵ Reginald Heber Smith, *Legal Services Offices for Persons of Moderate Means*, 31 AM. JUDICATURE SOC'Y 37 (1947), 1949 WIS. L. REV. 416, 416, 425.

economics or platform of a particular law school, which is important to ensuring a fully objective test.

We also believe that there are additional, existing opportunities for new lawyers who have flexible career goals and realistic economic expectations. In recent decades, many law schools, law students, prospective law students and the press have been unduly focused on “BigLaw” jobs and their high starting salaries. While the market these days contains more information about employment rates and the (limited) availability of BigLaw jobs than previously existed, law schools still need to do more to help their students set realistic expectations and not to overlook other opportunities that can employ their skills while providing training, professional development, and a financially sustainable career. There are, for example, many areas of New York State outside New York City and its suburbs that have few attorneys in residence, yet populations with legal needs. There are opportunities in other states. Also, growing areas of practice such as compliance, corporate governance, healthcare, alternative dispute resolution, and energy law can provide opportunities for new lawyers to use their legal skills. There should be more attention as well to the many careers where a J.D. degree may not be required, but where having one may offer an advantage in obtaining a job, as well as succeeding and advancing in the field.

E. Engaging the Profession

Although not all sectors of the profession represented on the Task Force are impacted equally by recent changes in the professional landscape—and indeed, some sectors may benefit from the state of the hiring market—our Task Force members believe that we have a collective responsibility as a profession to support those who are adversely impacted, and to ensure that clients are well served in the future by lawyers who are optimally trained and have gained hands-on experience with the issues relevant to their clients’ legal needs.

Significant practitioner involvement will be required to provide new lawyers with the requisite level of problem-solving skills and hands-on training. We call for broad volunteer efforts by practitioners to teach, or co-teach with full-time faculty,

courses on deal-making, litigation, and other practice skills. We also call for new and expanded training and employment partnerships between law students and new lawyers on the one hand, and private sector, government and legal services employers on the other, and we announce several examples of these new “bridge-to-practice” partnerships that are being established in New York City. These programs will provide opportunities to develop experience and professional judgment that can be learned only by working on real world client matters and observing practitioners. The programs also will help new and aspiring lawyers begin to build their own professional networks, sometimes functioning as on-ramps to first jobs and ongoing employment.

F. The New York Bar Exam

The bar exam in New York (and other states) has been a source of controversy for decades. While the courts and the New York State Bar Examiners have been open to innovation (and there have been some important changes), there is a continuing debate as to whether the bar exam is testing the right competencies in the right way. We believe that at this time of rapid change in the profession, it is time for a new dialogue about the bar exam among key stakeholders, including the courts who ultimately are responsible for the standards of practice and admission of attorneys, the New York State Board of Law Examiners, law schools, and the profession. To this end, the City Bar will convene a new working group that will formulate a set of recommendations over the next twelve months.

G. Ongoing Review of the Profession

We recognize that this Report will not be the last word on the subjects we address; indeed, some of our own recommendations call for a period of continuing and additional experimentation and innovation, followed by an assessment of the results and the potential broad-based adoption of new standards and models. To evaluate these changes, we announce the creation of the City Bar Council on the Profession to continue monitoring our recommendations, their success, and broader changes in the profession.

H. The Structure of this Report

Our Report proceeds in six parts. Section I describes the changing professional environment and the way those changes affect new lawyers. Changes in the way legal services are being consumed are highly relevant to the way new lawyers should be trained and how their careers will develop.

The next three Sections explain the Task Force's views regarding new lawyer preparation. Section II (and Appendix C) summarizes the ways in which some law schools have responded to the changed professional landscape, and identifies additional steps that the Task Force believes should be taken to ensure new lawyers are optimally prepared to practice in the modern legal environment. It describes what the Task Force believes to be the fundamental attributes and experiences of new lawyer preparation, observes that a number of law schools are experimenting in different ways, calls for a period of continuing and additional experimentation, and urges law schools to invest further in this process. It also announces several new partnerships between law schools and employers in both the public and private sectors.

Section III reaffirms the MacCrate Report's conclusion that new lawyer preparation must continue in the early years of practice and describes the Task Force's views about how ongoing professional development should be organized in the profession as it now exists. Section IV identifies some specific impediments to innovation in the profession which the Task Force believes must be addressed in the near term. We also announce The City Bar's New Lawyer Institute to model our recommendations.

Shifting away from new lawyer preparation, Section V describes the demand for legal services among moderate-income households. Despite the perceived "crisis" in new lawyer employment, there is a significant unmet demand for legal advice among individuals and families who can afford to pay a lawyer. We urge a cultural shift away from the current focus on BigLaw, and announce City Bar's plan to start a pilot project to test the business case for delivering legal advice at a reasonable cost to people of moderate means.

Finally, Section VI is a call to our profession to help address some of the issues identified in this Report by contributing time and other resources. We also announce the creation of a Council on the Profession at the City Bar to help foster continuing dialogue on these issues.

I.

NEW LAWYERS ARE ENTERING A CHANGING PROFESSIONAL ENVIRONMENT

A. Setting the Stage: Employment, Salary, and Debt Statistics Demonstrate that Change Is Under Way

Since the onset of the financial crisis, many new lawyers have had an increasingly difficult time finding full-time legal work. While at some schools opportunities remain largely comparable to what they were before the recession, the overall picture is sobering. According to the ABA, only about 56% of 2011 and 2012 law graduates were employed full time in jobs requiring bar passage nine months after graduation.⁶ The overall employment rate for the class of 2012 was the lowest since 1994, with only 84.7% of graduates for whom employment status was known holding any kind of job. A similar study conducted by the National Association for Law Placement (“NALP”) found that only 64.4% of 2012 law graduates had full-time or part-time jobs requiring bar passage, down from 76.9% in 2007.⁷ Moreover, nine months after graduation, 27.7% of 2012 graduates were designated by the ABA as “underemployed,” meaning they were unemployed or held part-time, short-term or non-professional positions.⁸

⁶ Mark Hansen, *Barely Half of All 2012 Law Grads Have Long-Term, Full-time Legal Jobs, Data Shows*, A.B.A. J. (Mar. 29, 2013, 11:50 AM), http://www.abajournal.com/news/article/barely_half_of_all_2012_law_grads_have_long-term_full_time_legal_jobs_data/.

⁷ Press Release, Nat’l Ass’n for Law Placement, *Law School Class of 2012 Finds More Jobs, Starting Salaries Rise — But Large Class Size Hurts Overall Employment Rate* (June 20, 2013), available at http://www.nalp.org/uploads/PressReleases/Classof2012SelectedFindingsPressRelease_June2013.pdf.

⁸ Jordan Weissmann, *The Jobs Crisis at Our Best Law Schools Is Much, Much Worse Than You Think*, ATLANTIC (Apr. 11, 2013, 9:45 AM), <http://www.theatlantic.com/business/archive/2013/04/the-jobs-crisis-at-our-best-law-schools-is-much-much-worse-than-you-think/274795/>. Some have suggested that these figures from the ABA, which gauge employment levels nine months after graduation, do not paint a full picture of employment for recent graduates. See Debra Cassens Weiss, *Is the Legal Job Market Really that Lousy? Conventional Wisdom Ignores the Long Term*, *Law Prof Says*, A.B.A. J. (May 2, 2013, 5:34 AM), http://www.abajournal.com/news/article/is_the_legal_job_market_really_that_lousy_convention_wisdom_ignores_the_lon (discussing research by D. Benjamin Barros, an Associate Dean and Professor at Widener Law School, who found that the percentage of graduates in positions requiring bar passage increased measurably when Widener graduates were surveyed two to three years following graduation).

At many schools, the types of jobs available to law graduates are changing as the employment rate decreases. According to NALP, almost exactly half of employed 2012 graduates worked in private practice, a 5% decline from 2009, and a significant decrease given that this percentage only varied between 55%–58% from 1993 to 2010.⁹ Strikingly, far fewer graduates are working in firms larger than 500 lawyers (19.1% of law firm jobs in 2012 versus 43.2% in 2008) and more are working in small firms of 2–10 lawyers (43% of law firm jobs in 2012 versus 31.6% in 2008). The percentage of 2012 graduates becoming solo practitioners is high compared to 2007, and now accounts for 5% of all law firm jobs.

By contrast, the number of graduates in public service and public interest jobs has remained relatively constant. Approximately 28.2% of employed 2012 graduates had public service jobs, a percentage that has remained between 26%–29% for three decades. These include military and other government jobs, judicial clerkships, and other public interest positions. That said, the number of positions available at some government and public interest organizations is decreasing, and budget constraints have forced many government agencies to freeze hiring.

While the median salary has not changed at some schools, overall those who get jobs are paid less. According to NALP, the median starting salary of the class of 2011 was \$61,245.¹⁰ The national mean salary for the class of 2012 was \$80,798, remaining below those of 2008–2010. While starting salaries for new lawyers at the largest firms in major cities remained over \$150,000, the median starting private practice salary was approximately \$90,000, a 30.8% decrease from 2009.

Average salary decreases have not stopped law school tuition from rising. In real terms, private law school tuition increased 400% between 1971 and 2011 and resident tuition at public law schools nearly quadrupled in the last two decades.

⁹ See Nat'l Ass'n for Law Placement, *supra* note 7.

¹⁰ Press Release, Nat'l Ass'n for Law Placement, Median Private Practice Starting Salaries for the Class of 2011 Plunge as Private Practice Jobs Continue to Erode (July 12, 2012), *available at* http://www.nalp.org/classof2011_salpressrel. This figure is likely overstated as it only includes full-time employees who have reported their salary.

The trend shows no sign of stopping. Average tuition and fees for the 2012–2013 academic year were 4% higher at private law schools and 6% higher for in-state resident students at public law schools than the year before.¹¹ The numbers, which do not include fees and expenses, are, respectively, over double and quadruple the 1.5% rate of inflation.

What is clear is that since approximately 80% of law school students fund their education primarily through loans, spiraling tuition has created substantial personal debt burdens for many new lawyers. Private law school students graduate with an average of nearly \$125,000 in educational debt, while public law school graduates have an average debt load of more than \$75,000.¹² This debt burden has grown substantially over the years, from an average of \$47,000 in 1999 to \$98,500 in 2010.¹³ These debt loads impact the career choices of law graduates. Studies show that most law students need to earn around \$65,000 a year—more

¹¹ Analysis based on a recent ABA study supports this point, although it results in slightly different statistics. The average annual tuition at private law schools rose to \$39,184 in 2011 from \$7,526 in 1985. The state of affairs is no better in public law schools, with average annual tuition for residents at public law schools rose to \$22,116 in 2011 from \$2,006 in 1985. See AM. BAR ASS'N, *Law School Tuition 1985–2012* (2012), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/lstuition.authcheckdam.pdf; AM. BAR ASS'N, *Average Amount Borrowed, 2001 – 2012* [hereinafter *Average Amount Borrowed*], available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/avg_amnt_brwd.authcheckdam.pdf. In contrast, undergraduate tuition rose by 71% during a similar period. Costs continue to increase with tuition and fees ranging as high as \$50,279.00 (\$59,530.00 for non-residents) for the 2012–13 academic year. See, e.g., *Financial Aid: Cost of Attendance*, U. CAL. DAVIS SCH. OF LAW, <http://www.law.ucdavis.edu/current/financial-aid/cost-of-attendance.html> (last visited Nov. 4, 2013).

¹² *Average Amount Borrowed*, *supra* note 11. Some argue that these debt loads result from the system of federally guaranteed graduate school loans, which permit a system of legal education with continuously increasing costs. See, e.g., Brent E. Newton, *The Ninety-Five Theses: Systemic Reforms of American Legal Education and Licensure*, 64 S.C. L. REV. 55, 67-68 (2012); see also William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble: How Long Will It Last if Law Grads Can't Pay Bills?*, A.B.A. J., Jan. 2012, at 31-32; available at http://www.abajournal.com/magazine/article/the_law_school_bubble_how_long_will_it_last_if_law_grads_cant_pay_bills/ (“In 2010, 85 percent of law graduates from ABA-accredited schools boasted an average debt load of \$98,500, according to data collected from law schools by *U.S. News & World Report*. At 29 schools, that amount exceeded \$120,000. . . . Yet, even as the legal market contracts, more than 87,900 potential candidates vied for 60,000 seats at 200 ABA-approved law schools in 2011, according to the Law School Admission Council. More than 78,900 have applied for 2012 spots, according to preliminary LSAC counts in November.”).

¹³ William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 477 (2013), available at <http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=2127&context=plr>.

than the median starting salary for 2011 graduates—to service their debt while maintaining even a modest standard of living.¹⁴ Loan assistance repayment programs make some public service and government jobs economically feasible for new graduates, but they are not practically available for many graduates—especially those whose schools do not offer the limited loan repayment assistance programs that are available at some schools. Recent legislative changes have attempted to expand this relief,¹⁵ though they do not seem to be widely used at this time.¹⁶ There is also some evidence that many new lawyers are opening solo practices in order to attempt to pay off or reduce their loans, often without an appropriate understanding of how to do so.

Increasing tuition and uncertain job prospects have decreased the appeal of a legal career. For the third year in a row there was a double-digit drop in the

¹⁴ David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at BU1, available at <http://query.nytimes.com/gst/fullpage.html?res=9C02E6DE143DF93AA35752C0A9679D8B63>. These numbers likely understate the average debt load. Interest will have accrued on a large proportion of a student's loans since all but the first \$8,500 of the federal Stafford Loan are taken out each year. The interest rate on the first \$20,500 disbursed annually, which are typically federal Stafford loans, is 6.8%. To cover annual costs beyond this threshold, a large proportion of students take out federal Direct PLUS loans, which have an interest rate of 7.9% and a 4% one-time charge at the time of disbursement. The blended interest rate is therefore roughly 7.5% for the average law student. These amounts are in addition to any undergraduate debt a law student has. See Henderson & Zahorsky, *supra* note 12.

¹⁵ In his 2010 State of the Union address, President Obama called on Congress to pass a bill that would require graduating students “to pay only 10 percent of their income on student loans,” with debt forgiveness after 20 years, or 10 years for public service careers. President Barack Obama, Remarks by the President in State of the Union Address (Jan. 27, 2010), available at <http://www.whitehouse.gov/the-press-office/remarks-president-state-union-address>. Congress responded with an income-based repayment plan, which allowed student loan borrowers to cap their monthly payments at 15% of their discretionary income, and in October 2011, the Obama Administration put forth a “Pay As You Earn” proposal to lower the discretionary cap for student loan borrowers starting in 2012. *Fact Sheet: Help Americans Manage Student Loan Debt*, WHITE HOUSE (Oct. 25, 2011), <http://www.whitehouse.gov/the-press-office/2011/10/25/fact-sheet-help-americans-manage-student-loan-debt>. Once a borrower qualifies for Pay As You Earn repayment, the monthly payments are capped at 10% of the borrower's “discretionary income”. Payments are adjusted every year and any remaining balance will be forgiven after 20 years of qualifying repayment. Employees of public service organizations who make 120 on-time, full monthly payments under Pay As You Earn may be eligible for forgiveness after 10 years.

¹⁶ Tamar Lewin, *U.S. to Contact Borrowers with New Options for Repaying Student Loans*, N.Y. TIMES, Sept. 25, 2013, at A20.

percentage of law school applicants in 2013.¹⁷ Only about 55,760 people applied to ABA-approved law schools for the 2013–2014 academic year, a 13.4% annual drop.¹⁸ Only 48,700 people entered their first year of law school in fall 2011, a 7% decline from the previous year and the first “significant drop” in a decade.¹⁹ In New York, overall law school enrollment has dropped 4% from 2008 to 15,872 students, with six schools showing declines of more than 11%.²⁰

While a decreased application rate may be an understandable and appropriate market response to the challenges experienced by new law graduates, a decreasing number of applicants and enrollees naturally puts pressure on law school budgets by reducing tuition revenues. In response, some law schools are being forced to take cost-cutting measures, which can make it more difficult to pioneer valuable curricular innovations that are so important in training the next generation of the bar.

B. Major Changes in the Practice of Law Impact New Lawyers’ Opportunities for Development at Larger Law Firms

Aside from changing job prospects, structural shifts in the way commercial legal advice is supplied are changing the career development opportunities for new lawyers at large law firms. Clients—including corporate clients—are increasingly cost-conscious. This focus on costs,²¹ along with technological developments that

¹⁷ Staci Zaretsky, *Law School Applicants Are Down, Again, and We’re Shocked*, ABOVE THE LAW (June 3, 2013, 4:41 PM), <http://abovethelaw.com/2013/06/law-school-applicants-are-down-again-and-were-shocked-plus-whats-going-on-at-georgetown/>.

¹⁸ Catherine Ho, *Law School Applications Continue to Slide*, WASH. POST, June 2, 2013, available at http://articles.washingtonpost.com/2013-06-02/business/39697850_1_american-bar-association-accredited-law-school-legal-job-market.

¹⁹ *Id.*

²⁰ Karas, *supra* note 2.

²¹ Some call it a focus on value and have linked it to alternative fee arrangements, a practice which began before the recession, but has been accelerated by it. The search for better “value” in legal expenditures has been spearheaded by the Association of Corporate Counsel’s “Value Challenge.” ACC *Value Challenge*, ASS’N OF CORP. COUNS., <http://www.acc.com/valuechallenge/about/index.cfm> (last visited Nov. 4, 2013); see also COMM. ON MANDATORY CONTINUING LEGAL EDUC., N.Y. STATE BAR ASS’N, REPORT ON MANDATORY CONTINUING LEGAL EDUCATION IN NEW YORK 4, 18 (2008) [hereinafter NYSBA REPORT] (discussing an Association of Corporate Counsel survey

have replaced some tasks previously reserved for lawyers, has changed the way legal services are delivered. Large law firms still offer substantial training and professional development programs for their associates, and many new lawyers develop important skills in the country's largest firms, but firms must contend with some clients who resist paying for "on-the-job training" for young lawyers²² and economics that result in large law firms handling fewer small and medium-sized matters. The result is clients using law firms primarily for high-value matters, and primarily for the judgment and experience of the most senior lawyers. Legal tasks that used to provide new lawyers with training and skills development often are now performed by lower-cost providers, or in lower-cost areas of the country, overseas,

showing that 77% of in-house legal departments surveyed were interested in alternative fee arrangements); Churchill Club, *Innovation & Change: A "New Normal" for the Legal Industry?*, YOUTUBE (Apr. 30, 2010), available at <http://www.youtube.com/watch?v=ga5Krw9rGBs> (discussion with two prominent in house lawyers about alternative fee arrangements).

²² Ashby Jones & Joseph Palazzolo, *What's a First-Year Lawyer Worth?* WALL ST. J., Oct. 17, 2011.

Client focus on costs and value are not universally detrimental for new lawyers, and may actually enhance the development opportunities for some new lawyers. The emphasis on "value" and alternative fee arrangements has led to "convergence," and the "phenomenon of large companies significantly shrinking the number of outside law firms" to which they direct their legal expenditures. John C. Coates et al., *Hiring Teams, Firms, and Lawyers: Evidence of the Evolving Relationships in the Corporate Legal Market*, 36 LAW & SOC. INQUIRY 999, 1009 (2001). Clients generate a small list of firms that they use for legal needs, often instituting alternative fee arrangements. A number of in-house lawyers interviewed in an academic study of convergence explained that "the only way for a law firm—even a top-tier nationally recognized firm—to 'get on the list' [of a company's outside counsel] was by agreeing to some discount or blended rate." *Id.* at 1011. One prominent example of this is the Pfizer Legal Alliance. The Pfizer Legal Alliance established a long-term, collaborative partnership between Pfizer and 19 law firms. The firms work on a flat-fee basis established each calendar year and are encouraged to collaborate to increase efficiency. See Jennifer J. Salopek, *Innovative Partnership Transforms the Practice of Law*, ASS'N OF CORP. COUNS., http://www.acc.com/valuechallenge/valuechamps/2012champ_profile97.cfm (last visited Nov. 4, 2013).

Arrangements of this sort can have benefits for new lawyer development. The law firms "on the list" have a steady stream of work that they can allocate to experienced and new lawyers, providing opportunities for new lawyers to shadow and learn from more experienced ones without increasing the client's costs. The firm-client relationships may also provide direct opportunities for skill development. For example, the Pfizer Legal Alliance is commendably sensitive to the development needs of new lawyers. The Pfizer Legal Alliance Associate Roundtable brings together star associates from each member firm; self-governed, the group has become a strong social network in which the associates can cross-refer matters. Many other clients, however, are understandably concerned only with current legal costs.

or by the client in-house.²³ Indeed, a 2012 survey concluded that “[m]ore than 80% of firms plan[ne]d to maintain or increase their number of contract lawyers and paralegals in 2012, who in many cases will do work that associates used to do.”²⁴ In short, clients are using law firms less and, as a result, the opportunities for formative experiences for junior lawyers at many firms are decreasing.

Clients have reduced their reliance on traditional law firms through a number of practices. Clients “disaggregate” their legal work and distribute it to lower-cost providers outside the traditional firm setting. A client “disaggregates” legal services by dividing whole matters into discrete tasks. The tasks are then assigned to the most efficient and cost-effective provider, which in many instances is not a new lawyer working in a traditional law firm setting.²⁵ Clients are increasingly, though by no means exclusively, turning to large law firms as the provider-of-choice only for the high-value, judgment-laden aspects of large matters and, even then, clients are imposing stringent cost controls.

The alternative providers clients seek out frequently are “offshore” legal process outsourcers (“LPOs”) that provide legal work at low rates. LPOs often handle large due diligence and document review tasks, meaning that LPOs often perform work that traditionally was performed by entry-level associates at large U.S. law firms. In one prominent example of offshoring, mining giant Rio Tinto announced an agreement with the LPO CPA Global, a decision that was anticipated to save Rio Tinto approximately \$20 million per year.²⁶ In addition to the use of

²³ Robert W. Denney, *Leverage: Out with the Old, In with the New*, LAW PRAC. (Sept./Oct. 2011), http://www.americanbar.org/publications/law_practice_magazine/2011/september_october/leverage_out_with_the_old_in_with_the_new.html.

²⁴ Thomas S. Clay & Eric A. Seeger, ALTMAN WEIL, *2012 Law Firms in Transition* (2012), available at http://www.altmanweil.com/dir_docs/resource/1667e5c8-b99e-4557-93ac-73174118ea29_document.pdf.

²⁵ HILDEBRANDT CONSULTING LLC, 2013 CLIENT ADVISORY 4 (2013), available at http://hildebrandtconsult.com/uploads/Citi_Hildebrandt_2013_Client_Advisory.pdf. (“[F]irms with commodity-type practices are finding themselves competing with alternative providers of legal services like Axiom Legal, Paragon Legal, and VLP Law Group.”).

²⁶ See RICHARD SUSSKIND, *THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES* xxxi-xxxv (2010) (detailing Rio Tinto’s use of legal process outsourcers); Alex Aldridge,

LPOs, some corporations have experimented with “captive centers,” hiring non-U.S. lawyers in low-cost countries or U.S. lawyers in lower-cost domestic locations to support in-house corporate legal departments.²⁷

Not all clients look outside their office walls to find cost savings. Some clients “insource” legal work that traditionally had been done by junior associates (or more recently temporary staff lawyers) at law firms. This insourcing takes two forms—the more widespread approach is to develop internal expertise for repetitive, labor-intensive activities, such as e-discovery.²⁸ Using streamlined processes and simple forms, the client can accomplish repetitive tasks without using an outside law firm, sometimes even using non-lawyer staff to perform some of the work.

Less frequently, clients hire new lawyers directly from law school to perform more complex tasks. These companies believe that they are better equipped than their outside counsel to train new lawyers in their business culture and in the skills relevant to their businesses, and also that doing so is more cost effective. Pfizer and Hewlett Packard (“HP”) provide two promising but limited examples of this approach.²⁹ Some law schools have also had success in identifying general

From Rio to Delhi, LEGAL WK. (June 25, 2009 9:42 AM) <http://www.legalweek.com/legal-week/interview/1405852/from-rio-delhi> (detailing anticipated cost savings of Rio Tinto LPO relationship).

²⁷ See Cassandra Burke Robertson, *A Collaborative Model of Offshore Legal Outsourcing*, 43 ARIZ. ST. L.J. 125, 136 (2011). While the potential cost savings associated with legal process outsourcings are significant, the use of non-U.S.-based attorneys to perform legal work raises significant professional responsibility issues that the legal profession is still in the process of addressing. See AM. BAR ASS’N Resolution 105C, *available at* http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/2012_hod_annual_meeting_105c_filed_may_2012.auth_checkdam.pdf (amending comments to ABA Model Rules of Professional Conduct 1.1., 5.3, and 5.5 to address concerns regarding legal process outsourcing).

²⁸ Melissa Maleske, *Insourcing e-discovery*, INSIDE COUNS. (July 1, 2011), <http://www.insidecounsel.com/2011/07/01/insourcing-e-discovery>.

²⁹ Pfizer hired three lawyers directly from law school in 2011 as part of the Pfizer Legal Alliance Junior Associate Program. In addition to receiving ongoing training at Pfizer, the new lawyers work at “partner” law firms for two six-month rotations, receiving training in selected areas of practice relevant to Pfizer’s work. At the end of the two-year period, the junior associate can choose whether to continue at Pfizer or join the firm with which she was placed.

In a similar effort, HP hired four lawyers directly from law school and immersed them in a rigorous two-year training program designed to develop the substantive skills needed to become a

counselors who wish to hire entry-level lawyers and in placing recent graduates with those companies.

Moreover, the structure of law firms is changing. Firms no longer divide neatly into partners and associates, but increasingly are stratified into equity partners, non-equity partners, counsel, associates, staff attorneys, and contract attorneys with different development and career opportunities.³⁰ The prospects for joining a firm's partnership have become more remote and the time it takes to do so has grown.³¹

Finally, the trend of partners moving among firms in the lateral market in search of greater compensation³² also may have an impact on new lawyer development. Partners with less institutional loyalty to their firms have less of an incentive to invest time training, mentoring, and ensuring the professional

successful in-house lawyer at HP. Debra Cassens Weiss, *HP Decides to Hire New Law Grads Rather than Law Firm Associates*, A.B.A. J. (June, 21, 2010, 5:29 AM), http://www.abajournal.com/news/article/hp_opts_for_training_its_own_in-house_lawyers_hires_four_law_grads/. The new HP lawyers received training in core subjects like corporate securities and intellectual property, as well as soft skills such as negotiations, contract drafting, oral presentations, and business acumen. See Gabriel Brigas, *Value Practice: Hewlett Packard Company: Value Staffing Practices—Law School Hires & Business Training*, ASS'N OF CORP. COUNS. (Nov. 2010), <http://www.acc.com/advocacy/valuechallenge/toolkit/loader.cfm?csModule=security/getfile&pageid=1201490&page=/legalresources/resource.cfm&qstring=show=1201490&title=Hewlett%2DPackard%20Company%3A%20Value%20Staffing%20Practices%2D%20Law%20School%20Hires%20%26%20Business%20Training>.

³⁰ Joyce S. Sterling & Nancy Reichman, *So, You Want to Be A Lawyer? The Quest for Professional Status in a Changing Legal World*, 78 *FORDHAM L. REV.* 2289, 2295 (2010); see also NYSBA REPORT, *supra* note 21, at 22 (“[F]irms have begun to create a variety of temporary and permanent positions for nonpartner lawyers, called various names such as nonequity partners, permanent associates, staff attorneys, contract lawyers, and of counsel.”).

³¹ Bernard A. Burk & David McGowan, *Big But Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 2011 *COLUM. BUS. L. REV.* 1, 18 (citing MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIGLAW FIRM* 62-63 (1991) (noting, based on somewhat equivocal evidence, that partnership tracks in the 1960s were 5.5 to 7.5 years and had lengthened to eight to nine years, with New York firms requiring longer periods)).

³² See, e.g., Peter Lattman, *Culture Keeps Firms Together in Trying Times*, N.Y. TIMES, Sept. 25, 2012, at F9 (linking lateral partner market to decline of Dewey & LeBoeuf, where “the ratio between the highest- and lowest-paid partners ballooned to more than 25 to 1,” with one marquee partner guaranteed \$8 million per year).

development of the firm's associates, who may not work for them in the future.³³ Even if partners have an incentive to develop favored associates whom they plan to bring along in any move, the associates' careers potentially are impacted by changed firms, locations, and cultures.

C. The Changing Environment Also Affects Smaller Law Firms and Solo Practitioners

Solo practitioners and smaller law firms also face a changing landscape. The majority of private sector legal jobs are with small firms, mid-size firms, and solo practitioners, and the percentage of 2012 graduates taking positions in firms of 10 or fewer attorneys (43.0%) is the highest since 1982.³⁴ Moreover, the percentage of graduates opening their own practice has more than doubled over the last decade to 6% of all law firm jobs for the class of 2011 from 2.8% in 2001. This trend affects the New York law schools in different ways. At some, solo practice remains quite rare for graduates, while at others it is increasingly common. Overall, nearly 20% of 2010 graduates from law schools in New York State were employed

³³ These challenges may reverberate beyond the immediate problems of firms and new lawyers. For example, the increased emphasis on finding better "value" through disaggregation, outsourcing, offshoring, and insourcing, and the unwillingness of some clients to pay for junior associates' work, means that mid-level and senior associates may have less relevant experience than they have had in the past. Junior lawyers at firms are also the largest source of lateral hires at in-house legal departments. If large law firms cannot or do not train these lawyers as they have in the past, new systems will be needed to do so. If clients no longer want to bear the cost of training young law firm lawyers, in the long run, it may reduce the availability of highly skilled lawyers available to advise the client. See William D. Henderson, *The Profession Three Generations of U.S. Lawyers: Generalists, Specialists, Project Managers*, 70 MD. L. REV. 373, 387 (2011).

³⁴ Compare NAT'L ASS'N FOR LAW PLACEMENT, *Class of 2011 National Summary Report* (2013), (showing employment data for class of 2012), available at <http://www.nalp.org/uploads/NationalSummaryChart2012.pdf>, with NAT'L ASS'N FOR LAW PLACEMENT, *Trends in Graduate Employment (1985-2008)*, NALP BULL. (July 2009), available at <http://www.nalp.org/july09trendsgradempl> (showing employment data for 1982 to 2008 graduating classes), and NAT'L ASS'N FOR LAW PLACEMENT, *Class of 2009 National Summary Report* (2010), available at <http://www.nalp.org/uploads/NatlSummaryChartClassof09.pdf> (showing employment data for class of 2009); see also NAT'L ASS'N FOR LAW PLACEMENT, *Class of 2010 National Summary Report* (2011) available at <http://www.nalp.org/uploads/NationalSummaryChartforSchools2010.pdf> (showing employment data from class of 2010). These percentages are still well below historical norms.

by firms of 50 or fewer employees, about the same percentage as those hired by firms of 501 or more employees.³⁵

New graduates opening their own practices or joining small law firms face unique challenges. In most instances, nothing in their background or training has provided the knowledge or experience needed to run a small business, let alone represent clients competently or navigate other practice basics such as purchasing insurance or establishing escrow accounts. This may be especially true for those graduates who, facing large student loan obligations, have opened their own practices as a matter of necessity after failing to secure other legal work.³⁶ While there are some resources available to guide these new graduates,³⁷ they are likely to confront considerable obstacles as they begin their legal careers.

Despite these difficulties, some trends are favorable for solo practitioners and small firm practices. First, technology has helped to diminish the advantages of scale and enables small and mid-size firms and solo practitioners to take on matters that previously were beyond their capacity and to compete with larger firms by providing more individualized attention at a lower cost.³⁸ As with disaggregation at larger firms, technology allows small firms and solo practitioners to send data and information to low-cost providers, and hire resources on an as-needed, contract basis, allowing the firm or solo practitioner to expand to meet the needs of larger

³⁵ Laura Haring, *One in Five N.Y. Law School Grads Find Jobs at Small Firms*, ABA Reports, N.Y. L.J., Apr. 24, 2012, available at <http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202549699890>. Schools like Touro (42%), Albany (35%), the University of Buffalo (34%), Hofstra (34%), New York Law School (26%), and St. John's (28%) send substantial portions of their graduating classes to firms with 50 or fewer lawyers. *Id.* The slow economy's effect on larger law firms may be a partial cause of these increases, as larger firms downsize and limit new hires. See COMM. ON SMALL LAW FIRMS, N.Y.C. BAR ASS'N, BEST PRACTICES FOR SOLOS AND SMALL FIRMS IN THE CURRENT ECONOMY 3 (2011) [hereinafter BEST PRACTICES FOR SOLOS]; BD. OF GOVERNORS' CHALLENGES TO THE PROFESSION COMM., STATE BAR OF WIS., THE NEW NORMAL: THE CHALLENGES FACING THE LEGAL PROFESSION 3, 23 (2011), available at <http://www.reinhartlaw.com/services/buslaw/corpgovern/documents/art11111%20TE.pdf>.

³⁶ BEST PRACTICES FOR SOLOS, *supra* note 35, at 3.

³⁷ See generally *id.*

³⁸ Mike Moore, *The Changing Definition of the "Small Law Firm"*, LEGAL PRODUCTIVITY (Feb. 15, 2011), <http://legalproductivity.com/practice-management/the-changing-definition-of-the-small-law-firm/>.

matters without the overhead or permanent cost of a large support staff. It also enables small firms and solo practitioners to “team up” with other lawyers to create “ad hoc law firms” that, together, can bid on and handle work usually reserved for larger firms.³⁹

Technology resources also allow an attorney to interact with his or her client, or with other lawyers, in a secure online environment without the need to meet in person or maintain a substantial physical presence. Facilities such as conference rooms can be rented as-needed. Timekeeping, billing, and other administrative tasks now can be automated at a very low cost, sometimes even using smartphone apps. Because they do not need to invest in office space, physical storage, meeting rooms, or staff, lawyers practicing primarily in a “virtual” law office can provide legal advice at a lower cost than traditional practitioners. Providing legal advice in this manner is often convenient for clients too, especially for individuals and small business owners who would need to take time off from work to travel to their lawyer’s office in a more traditional arrangement.⁴⁰

³⁹ Roy Strom, *Technology Transforming Pockets of the Legal World*, CHI. LAWYER (Apr. 1, 2012), <http://chicagolawyer magazine.com/Archives/2012/04/Legal-Technology.aspx>.

⁴⁰ Amber Nimocks, *Get Used to Unbundling, Because It's Coming: Virtual Law Expert Stephanie Kimbro Discusses How Technology Is Fundamentally Changing the Practice of Law*, N.C. LAW. WKLY., Jul. 20, 2012.

Many virtual law offices are platforms for solo practitioners or small law firms. But the practice of working remotely on shared systems is scalable, with at least one medium-sized firm in the U.K.—Keystone Law—creating a virtual law office for 130 solicitors. *Keystone Law*, LEGAL 500, <http://www.legal500.com/firms/2949-keystone-law/offices/4278-london/profile> (last visited Nov. 4, 2013). Keystone’s lawyers can access the firm’s systems from any location with Internet access. They share indemnity insurance and a small centralized office that coordinates administrative duties and meeting facilities. The lawyers can work on their own or in teams with other Keystone Lawyers and share fees based on the work they bring in. *Id.*

Similarly, in the United States, 99% of the attorneys at Washington, D.C.-based Clearspire work through a proprietary online platform called “Coral,” though Clearspire maintains physical offices as well. See Rachael King, *Designing Offices with Mobile Employees in Mind*, WALL ST. J. CIO J. (Jan. 9, 2013, 8:05 PM), <http://blogs.wsj.com/cio/2013/01/09/designing-offices-with-mobile-employees-in-mind/>; Rachel Zahorsky, *Virtual Law Firm Plans to Multiply Like Magic*, A.B.A. J. (Apr. 1, 2013, 1:00 AM), http://www.abajournal.com/magazine/article/virtual_law_firm_plans_to_multiply_like_magic/. The interface, developed for the firm at a cost of \$8 million, includes both client-accessible and internal interfaces and permits attorneys to collaborate through the creation of “virtual hallways.” Steve Rosenbush, *How Clearspire Used IT to Reinvent the Law Firm*, WALL ST. J. CIO J. (Apr. 9, 2012, 4:56 PM), <http://blogs.wsj.com/cio/2012/04/09/how-clearspire-used-it-to->

Limited scope representation, or the “unbundling” of legal services, can also provide opportunities for solo practitioners and small law firms. They may be the direct beneficiaries of client decisions to refer only high-value aspects of a matter to a large firm and reserve other parts of the matter for lower-cost providers. Clients potentially benefit from “increased flexibility, self-determination and empowerment” at reasonable costs.⁴¹ Small law firms and solo practitioners gain the opportunity to provide legal advice with respect to some issues where they previously would not have been able to address the entire matter.

While these trends are favorable to established small firms and solo practitioners, in general, they may not provide much comfort to new lawyers beginning their careers. According to Stephanie Kimbro, author of a book on virtual legal practice and unbundling, “[I]n order to unbundle you have to really know the entire process of how it would work in a traditional setting. . . . If you’re a new lawyer and you don’t know what [the] endgame is, you can’t effectively unbundle for [a client].”⁴²

D. Government and Legal Service Providers, More than Private Sector Employers, Have Experience Dealing with the Constrained Resources that Characterize the New Professional Environment

Government and legal services employers long have operated in a resource-constrained environment and have developed successful methods for training relatively inexperienced lawyers with the skills necessary to succeed in their practices. Accordingly, the recent changes in the professional environment appear

reinvent-the-law-firm/; Strom, *supra* note 39. Clearspire was founded in 2010 and, two years later, numbered 35 attorneys. *Id.* To comply with legal restrictions on fee-sharing, Clearspire is actually two entities: a law firm with salaried attorneys, and a company that provides support services and solicits business. *Bargain Briefs*, *ECONOMIST*, Aug. 13, 2011, available at <http://www.economist.com/node/21525907>.

⁴¹ Nimocks, *supra* note 40. Unbundling has generated some controversy in legal ethics circles, particularly with respect to the practice known as “ghostwriting” in litigation. While ethics opinions initially appeared reluctant to condone unbundling, recent opinions permit it, largely as a result of revised ABA Model Rule 1.2, which permits lawyers to limit the scope of the representation if the limit is reasonable under the circumstances. The ABA and 42 state bar associations now support unbundling.

⁴² *Id.*

not to have had as large or, seemingly, as transformative an impact on the way government lawyers and legal service providers for the indigent give advice or represent their clients, or the professional development opportunities for new lawyers serving in those capacities. However, government policies and the economic cycle have had a significant impact on these organizations and their clients.

State and federal prosecutors have faced budgetary constraints in recent years that have led to layoffs, hiring freezes, and increased caseloads for government lawyers.⁴³ The Legal Aid Society has experienced increasing demand for civil legal services in the economic downturn, but the Civil Program, which is mostly dependent on private funding, has been able to help only one out of nine low-income New Yorkers who seek civil legal aid, because of budget shortfalls.⁴⁴ Similarly, Legal Services NYC, which annually provides legal services to 46,000 low-income New Yorkers, has faced dramatic budget cuts in the wake of the recession.⁴⁵

⁴³ OFFICE OF THE BRONX COUNTY DIST. ATTORNEY, ANNUAL REPORT 2011, at 2 (2011), available at http://bronxda.nyc.gov/docs/AR2011_bxda.pdf; OFFICE OF THE BRONX COUNTY DIST. ATTORNEY, ANNUAL REPORT 2010, at 2 (2010), available at <http://bronxda.nyc.gov/docs/AR2010bxda.pdf>; Preet Bharara, U.S. Attorney for the S. Dist. of N.Y., Prepared Remarks at the American College of Trial Lawyers Downstate New York Fellows Dinner (Mar. 28, 2012), available at <http://www.justice.gov/usao/nys/pressspeeches/2012/actldinner.html> (“We are still in the midst of a hiring freeze—I didn’t swear in an AUSA for 12 ½ months. There were no new AUSAs between February 14, 2011 and February 27, 2012. And so every time two or three of my best Assistants are on trial for two months, their investigations are likely to languish.”); John Eligon, *District Attorney Cuts jobs; Law Firms’ Earnings Rise*, N.Y. TIMES CITY ROOM BLOG (Apr. 29, 2011, 9:35 AM), <http://cityroom.blogs.nytimes.com/2011/04/29/district-attorney-cuts-jobs-law-firms-earnings-rise/> (“The office’s current budget is expected to come in at about \$88 million, a roughly 6 percent reduction from the previous fiscal year. Mr. Vance testified before the City Council in March that his office was expecting a nearly 8 percent cut for fiscal year 2012, which begins on July 1.”).

The employment challenges facing new lawyers have also presented some opportunities for public sector law offices. For example, the New York City Law Department has developed initiatives allowing unemployed recent law graduates to develop experience working on Law Department matters at no cost to the City. On average, the Law Department has hosted 22 such lawyers for each of the last three years.

⁴⁴ The LEGAL AID SOCIETY, ANNUAL REPORT 2012, at 7 (2012), available at http://www.legal-aid.org/media/165456/2012_annual_report.pdf.

⁴⁵ LEGAL SERVS. NYC, 2011 ANNUAL REPORT, at 3 (2011), available at <http://www.legalservicesnyc.org/storage/lsny/PDFs/2011%20annual%20report.pdf>.

There have been important changes as well in the professional profile of lawyers working in government and legal services offices. Increasingly, positions in these offices are seen as highly desirable by both new lawyers and those with a few years of experience and they are viewed much less as stepping stones to other opportunities. As a result, attrition at public sector employers has fallen dramatically over the past five years, bolstered by the financial benefits of loan forgiveness programs, resulting in more experienced practitioners.⁴⁶ For example, at the New York City Law Department, attrition among the junior classes has fallen 50%. While lower turnover is favorable to the institutions, that trend, combined with stringent budgets, also has the impact of reducing opportunities for new lawyers to join the organizations.

As in the past, government and legal services employers tend to provide more intensive and structured training programs than other legal employers. For example, new lawyers in the offices of the City's District Attorneys receive substantial training on the substantive and procedural law relevant to criminal practice. ADAs learn relevant caselaw, receive practical training on case assessment, drafting complaints, interviewing witnesses, and ethics. They also undergo extensive simulated courtroom advocacy sessions, eventually progressing to learn courtroom practice.

New attorneys in The Legal Aid Society's Civil Practice unit similarly receive intensive skills and subject matter training. The skills training includes interviewing, handling negotiations, managing a case load, and doing specialized research. The subject matter training focuses on The Legal Aid Society's core services (housing,

⁴⁶ During the height of the economic downturn, these offices "hired" associates deferred from large law firms to assist in their matters and provide relevant experience to the new lawyers. These associates worked at public interest organizations, but had their salaries paid by the law firms from which their start dates had been deferred. While the deferred associates provided additional personnel, some organizations found it difficult to supervise the inexperienced attorneys or integrate them into the organizations' culture. See, e.g., Nate Raymond, *Deferred Associates Evaluate Their Experience in Public Interest Jobs*, N.Y. L.J., Mar. 8, 2010, <http://www.law.com/jsp/tx/PubArticleTX.jsp?id=1202445955969>; CITY BAR JUSTICE CENTER REPORT ON THE DEFERRED ASSOCIATE LAW EXTERN SUPPORT PROJECT (Mar. 10, 2010), available at <http://www.nylj.com/nylawyer/adgifs/decisions/030810report.pdf>.

benefits, family law, and immigration). Ongoing training is integrated into civil attorneys' task forces or working groups, and the Civil Practice unit offers regular training to all staff on various topics. The Civil Practice unit has a specialized Trial Advocacy Program for Housing Practitioners, in which participants prepare a case under the supervision of experienced attorneys and conduct mock trials in front of experienced practitioners.⁴⁷ New attorneys in The Legal Aid Society's Juvenile Rights Practice receive an intensive three-week training course. This core program is complemented by a series of training modules as well as a twice-yearly comprehensive training program in juvenile delinquency representation.⁴⁸ Legal Services NYC similarly provides comprehensive training through its Learning Center, which delivers CLE accredited poverty law training to its staff and the entire civil legal services community in a wide variety of practice skill and substantive law areas.⁴⁹

The Legal Aid Society's Criminal Practice unit offers intensive six-week training to new attorneys. The training focuses on client representation, substantive law, procedural issues, investigation, litigation skills, and exposure to former clients. New attorneys also participate in a three-day suppression hearing program and a five-day trial advocacy program with a mock trial in a real courtroom. Both initial and ongoing training include an exhaustive focus on collateral consequences of criminal convictions. New attorneys spend time in Housing, Immigration, and Family Courts, and receive separate training sessions on immigration, parole and probation, housing, employment, health, disability, Family Court, sex offender registration and civil commitment, and record sealing.⁵⁰

⁴⁷ *Training in the Civil Practice*, THE LEGAL AID SOCIETY, <http://www.legal-aid.org/> (last visited Nov. 4, 2013).

⁴⁸ *Training in the Juvenile Rights Practice*, THE LEGAL AID SOCIETY, <http://www.legal-aid.org/en/las/diversityandcareers/trainingjuvenile.aspx> (last visited Nov. 4, 2013).

⁴⁹ *The Learning Center*, LEGAL SERVS. NYC, <https://www.learningcenter.legalservicesnyc.org/> (last visited Nov. 4, 2013).

⁵⁰ *Training in the Criminal Practice*, THE LEGAL AID SOCIETY, <http://www.legal-aid.org/en/las/diversityandcareers/trainingcriminal.aspx> (last visited Nov. 4, 2013).

Similarly, the New York City Law Department trains an entry class of about 50 paid graduating law students each year, with another 20 to 30 law-school-funded, post-graduate volunteers joining the class to handle active matters and participate fully in the Department's training programs. Because of the training and experience they receive, most of the volunteers will find paid employment by the end of their fellowships either with the Law Department or with other employers. The Law Department also hosts, at any given moment, 45 to 50 law student interns year-round.

E. Changes in the Profession Have Had Special Impacts on Women and Underrepresented Groups

While the challenges facing new lawyers are in many ways universal, women and underrepresented groups entering the profession have experienced a disparate impact as a result of the recent difficult legal job market. Although these groups had made pre-recession gains, diversity statistics have stagnated in the past several years. Moreover, certain structural impediments continue to disadvantage women and underrepresented groups as they pursue their legal careers, though the issues are not the same for all groups.

Diversification of the legal profession has been a major focus of bar associations, law firms, and other legal constituencies for several decades. For example, the New York City Bar Association established a diversity program in 1990, first headed by former City Bar President and Secretary of State Cyrus Vance. The Association's Statement of Diversity Principles has been signed by 109 law firms and 19 corporations, and most of these signatories participate in the Association's periodic Benchmarking Survey, tracking the progress of firms in several diversity categories. In addition, the ABA has long had a Center for Racial and Ethnic Diversity, a group that utilizes ABA resources to promote diversity across the profession. Diversity itself has become more complex with the focus now extending in addition to gender and race to sexual orientation, national origin, and other factors. The impetus for increasing the percentage of women and minorities in the profession is driven by a number of factors. As is the case in many settings, an increase in diversity produces better lawyers and better client

services.⁵¹ Indeed, increasing diversity may be essential to a firm's bottom line, as many corporate clients demand diverse attorney teams.⁵² Diversity also improves access to justice as some data indicates that law graduates from underrepresented backgrounds are more likely than their peers to return to their communities in a public service role. On a macro level, the recognition that lawyers often play important roles in society has fostered the notion that increasing diversity in the profession will have a corresponding impact on public and private life.⁵³

In some respects, the profession has made considerable strides over the years in advancing gender and racial diversity. For instance, a survey of private law firms conducted by the U.S. Equal Employment Opportunity Commission showed that the percentage of women in law firms increased from 13.8% in 1975 to 29.2% in 2002. The same study found that the percentage of underrepresented groups increased from 3.5% in 1975 to 13.0% in 2002. Now, approximately half of new attorneys entering the profession are women, while between a quarter to one-third are underrepresented groups. Though often seen incrementally, these cumulative gains are substantial, reaching historic highs prior to the financial crisis in 2008.

But, following the recession, there have been a number of indicators suggesting that the stalled legal job market has negatively affected diversity. In 2010, NALP—which conducts a yearly survey of law firm diversity—reported that the percentages of women and underrepresented groups in law firms fell for the first time since NALP began conducting diversity surveys in 1993.⁵⁴ The percentage

⁵¹ See Zoe Tillman, *Law Firm Diversity Panel Highlights Role of Corporate Legal Departments*, THE BLT: BLOG OF LEGALTIMES (Mar. 26, 2013), <http://legaltimes.typepad.com/blt/2013/03/law-firm-diversity-panel-highlights-role-of-corporate-legal-departments.html>.

⁵² See, e.g., Peter Lattman, *Clients Demand Diversity at Law Firms*, WALL ST. J. L. BLOG (Dec. 28, 2006, 12:44 PM), <http://blogs.wsj.com/law/2006/12/28/clients-demand-diversity-at-law-firms/>; Molly McDonough, *Demanding Diversity: Corporate Pressure Is Changing the Racial Mix at Some Law Firms*, A.B.A. J. (Mar. 28, 2005, 6:04 AM), http://www.abajournal.com/magazine/article/demanding_diversity/.

⁵³ U.S. EQUAL EMP'T OPPORTUNITY COMM'N, DIVERSITY IN LAW FIRMS 3 (2003).

⁵⁴ See Press Release, Nat'l Ass'n for Law Placement, *Law Firm Diversity Among Associates Erodes in 2010* (Nov. 4, 2010), available at <http://www.nalp.org/uploads/PressReleases/10NALPWomenMinorities PressRel.pdf>.

changes were slight: women made up 32.69% of firm attorneys in 2010 versus 32.97% in 2009 and minorities made up 12.40% of lawyers at law firms in 2009, a slight drop from 12.59% in 2009.⁵⁵ By 2012, minority diversity rebounded to 12.91%, but the percentage of female attorneys continued to fall to 32.67%. A 2009 survey of 260 law firms conducted by Vault similarly showed post-recession declines in the hiring of underrepresented groups and women at the associate level.⁵⁶ At the very least, these statistics show that the diversity levels, which had increased in previous years, have remained stagnant.

These trends have also been observed at the local level. In 2011, the New York City Bar Association's Benchmarking Survey of large law firms in New York City identified a number of areas in which diversity gains had receded from pre-crisis levels.⁵⁷ While the percentage of women in the partnership ranks increased from 2009 to 2011, the percentage of women associates declined from 45.2% to 44.5% over that time period. With respect to new attorneys, the percentage of women in the new hire class of 2011 was 43.1%, down from the 2006 high of 47.3%. The percentage of underrepresented groups in the 2011 new hire class was 25.6%, compared to the 2008 high of 28.4%.⁵⁸

The apparent interruption in the trajectory of increasing diversity in the legal profession is a matter of great concern to the Task Force. The concern is not merely one regarding private firms. Women outnumber men almost two to one in

⁵⁵ *Id.*

⁵⁶ Karen Sloan, *Survey Shows Law Firms' Minority Hiring Is Stagnating*, NAT'L L. J., (Oct. 1, 2010), <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1202472768660>; Nathan Koppel, *Law Firm Diversity Slowed by Economy*, WALL ST. J. L. BLOG (Oct. 1, 2010, 1:58 PM), <http://blogs.wsj.com/law/2010/10/01/law-firm-diversity-slowed-by-economy/>.

⁵⁷ See, e.g., *Despite Some Advances, City Bar Diversity Benchmarking Report Shows Diversity Remains a Challenge for NYC Law Firms*, N.Y. CITY B. ASS'N (Nov. 14, 2012), <http://www.nycbar.org/44th-street-blog/2012/11/14/despite-some-advances-city-bar-diversity-benchmarking-report-shows-diversity-remains-a-challenge-for-nyc-law-firms/>; see also LISA D'ANNOLFO LEVEY & AMY MCPHERSON, 2011 DIVERSITY BENCHMARKING STUDY: A REPORT TO SIGNATORY LAW FIRMS (2012), available at http://www.nycbar.org/images/stories/pdfs/diversity/2011_law_firm_diversity_benchmarking_report.pdf.

⁵⁸ LEVEY & MCPHERSON, *supra* note 57, at 5.

public interest law positions.⁵⁹ As public interest jobs are eliminated due to falling government budgets and reduced private philanthropy, this likely will have a significant detrimental impact on women attorneys. To continue monitoring this trend, the next City Bar Diversity Benchmarking survey will specifically measure how changes in the professional environment may be adversely impacting diversity.

* * *

In short, today's generation of new lawyers is entering the profession at a time of profound challenge and change. This creates a heavier burden on law schools to prepare them for these important new challenges. The next Section of this Report identifies what the Task Force believes are the fundamental attributes and experiences central to the preparation of new lawyers in law schools.

⁵⁹ Katie Dilks, *Why Is Nobody Talking About Gender Diversity in Public Interest Law?*, NALP BULL. (June 2010), available at http://www.nalp.org/uploads/0610_Gender_Diversity_in_Public_Interest_Law.pdf.

II. MANY LAW SCHOOLS ARE RESPONDING TO CHANGES IN THE PROFESSION AND THIS TREND SHOULD BE ENCOURAGED AND ACCELERATED

It is important for law schools to respond wisely and vigorously to these fundamental changes in the profession. While traditional casebook courses still have a role to play, a broad range of other approaches should be (and are being) developed. This section of the Report begins by describing the traditional casebook model of legal education in the United States. It then catalogues some of the criticisms of the model, contrasts it to other modes of professional education, and offers examples of innovative approaches being developed by a number of law schools. It concludes with the Task Force’s findings and recommendations about what we consider to be the most promising strategies for further innovation.

A. The Traditional Casebook Method of Legal Education

Until the mid-nineteenth century, most aspiring lawyers were required to train as apprentices to practitioners.⁶⁰ For example, in 1767, New York required five years of apprenticeship for admission (three years if the individual had a college degree). This apprenticeship model remained the most common form of legal training in the United States until the second half of the nineteenth century,⁶¹ and during that period the “vast majority of the legal profession”—including well-known lawyers like Abraham Lincoln—“still experienced only on-the-job legal education.”⁶²

Over time, the apprenticeship model increasingly was viewed as flawed. By the mid-1850s, twenty-one law schools existed in the U.S., many of which had been formed at least in part to address the perceived deficiencies of learning law by

⁶⁰ Mark Warren Bailey, *Early Legal Education in the United States: Natural Law Theory and Law as a Moral Science*, 48 J. LEGAL EDUC. 311, 312 (1998); Larry E. Ribstein, *The Future of Legal Education: Practicing Theory: Legal Education for the Twenty-First Century*, 96 IOWA L. REV. 1649, 1652 (2011); Davison M. Douglas, *The Jeffersonian Vision of Legal Education* 1,5 (2001), available at <http://law2.wm.edu/faculty/documents/douglas-1-6475.pdf?svr=law>.

⁶¹ Douglas, *supra* note 60, at 5.

⁶² *Id.* at 24.

“studying [it] in an office.”⁶³ New York University, for example, criticized the apprenticeship model, where students

generally pursue their studies unaided by any real instruction, or examination, or explanation. They imbibe error and truth, principles which are still in force with principles which have become obsolete; and when admitted to practice, they find, often at the cost of their unfortunate clients, that their course of study has not made them sound lawyers or correct practitioners.⁶⁴

Professor Christopher Langdell’s casebook model of legal education, first introduced at Harvard Law School in the late nineteenth century, was a contrast to the apprenticeship model of supervised legal practice. Under Langdell’s case method, students read and analyze leading cases before class in an effort to distill the fundamental principles of law.⁶⁵ Students then engage in a Socratic discussion in a classroom, in which university professors question the students closely about the facts of the case, the points at issue, the judicial reasoning underlying the doctrines and principles, and comparisons with other cases.⁶⁶

Since Langdell’s time, formal, university-based legal education has been the norm in the U.S.⁶⁷ Nonetheless, five states—California, Vermont, Virginia, Washington, and West Virginia—still permit an individual to sit for the bar exam

⁶³ ROBERT B. STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, at 11-12 (1983).

⁶⁴ *Id.* at 22.

⁶⁵ Benjamin H. Barton, *A Tale of Two Case Methods*, 75 TENN. L. REV. 233, 234 (2008).

⁶⁶ David A. Garvin, *Making the Case: Professional Education for the World of Practice*, 106 HARV. MAG., Sept.-Oct. 2003, at 56, available at <http://harvardmag.com/pdf/2003/09-pdfs/090356.pdf>.

⁶⁷ Around this same period, in 1882, the American Bar Association’s Standing Committee on Legal Education called on law schools to establish “a method of study directed to the development of basic lawyer skills. Students should ‘learn the abstract framework first, then learn how the courts apply it.’ The Committee said that a change was needed because students were learning ‘a mass of rules but not how to use them.’ In furtherance of this goal, it recommended that law schools encourage apprenticeships in law offices.” SUSAN K. BOYD, *THE ABA’S FIRST SECTION: ASSURING A QUALIFIED BAR* 6, 60-61 (1993).

without completing a formal legal education after sufficient law office study.⁶⁸ In 2011, the latest year for which data is available, fifty-six individuals sat for the bar exam utilizing this method across the country. Twelve passed.

To varying degrees, traditional casebook classes are still widely used at law schools. The casebook model has many strengths, as it introduces students to a rigorously analytical style of thinking, as well as to the crucial skill of applying law to facts. It teaches students what questions to ask, and to realize not only what they know, but also what they do not know, and what they need to know in order to make a sophisticated judgment. Socratic casebook courses also train students to present their views orally—something that many new law students are not well trained to do.⁶⁹

Over the years, although the subject matter and some of the cases have remained largely the same, the style of instruction in some casebook courses has changed significantly. For example, some casebook courses are vastly more interdisciplinary than they used to be. For example, a Contracts student today is likely to be exposed to far more economics than was customary years ago, and a Constitutional Law student is likely to learn substantially more political science.

⁶⁸ Jeremy Paul & Alan M. Klinger, *The Role of Strategic Thinking in Legal Training*, N.Y. L.J., Apr. 22, 2013, available at <http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202596403088%26slreturn=20130324144024>.

⁶⁹ WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND FOR THE ADVANCEMENT OF TEACHING, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 75 (2007); Joseph A. Dickinson, *Understanding the Socratic Method in Law School Teaching After the Carnegie Foundation's Educating Lawyers*, 31 W. NEW ENG. L. REV. 97, 104 (2009); David B. Wilkins, *Keep the Method, Not the Focus*, N.Y. TIMES, Dec. 15, 2011, available at <http://www.nytimes.com/roomfordebate/2011/12/15/rethinking-how-the-law-is-taught/keep-the-socratic-teaching-method-but-change-the-focus>. Langdell believed that the study of law ought to be a scientific study of the principles and theories underlying the laws. See Barton, *supra* note 65, at 234. He was influenced by the popularization of inductive empiricism and believed that lawyers, like scientists, operated best when they had a deep understanding of core principles or theories and that such an understanding was best developed by inductive examination. See Garvin, *supra* note 66, at 58. Langdell believed that the best source for such induction was appellate court decisions because at the time these principles took their most tangible form in these opinions. *Id.*

B. Criticisms of the Traditional Casebook Method

Although the traditional casebook model of legal education has trained successful lawyers for over 100 years, it has many critics. The primary criticism is that it addresses only some of the key competencies needed to be an effective lawyer, as catalogued in the landmark MacCrate Commission report, providing excellent training on legal principles and legal theory but insufficient training in the practical skills necessary for practice success with clients. In other words, the traditional casebook model can excel at teaching critical thinking, reading comprehension, and logical reasoning, but provides less experience with solving real world problems, which frequently demonstrate more complexities than the distilled issues addressed in appellate court decisions.

Another criticism of traditional legal education focuses on the manner in which law students are often assessed. Many class grades are assigned based on a single exam at the end of the semester, requiring an understanding of the black letter law underlying the studied cases. Critics have called for assessments to be made by instructors throughout the semester and for an increased use of writing assignments to measure the development of the critical thinking and problem-solving skills lawyers need to effectively represent clients.

A third criticism is that the traditional curriculum often is litigation-heavy and provides insufficient opportunities to concentrate in one or more substantive practice areas.⁷⁰ A traditional first-year casebook curriculum focuses mainly on common law subjects and procedural rules applicable to litigation practice.⁷¹ But litigators make up less and less of the bar, as a large percentage of practicing

⁷⁰ Some critics posit that law schools continue to focus on litigation-related classes because many, if not most, law professors clerked for a judge before becoming a law professor, a setting where the various fields of law are encountered solely through the prism of litigation. Newton, *supra* note 12.

⁷¹ For example, although contract law obviously can be taught with an intensive transactional focus, too often it is not.

attorneys performs corporate, transactional, or regulatory work.⁷² Likewise, first-year writing assignments and oral advocacy training have traditionally focused on appellate briefing and argument, not the initial stages of the representation.

After the first year, the traditional second- and third-year curriculum was often not coordinated, with students taking a series of disconnected electives on a variety of legal topics.⁷³ In an age of increasing specialization, many critics now suggest that students should take interrelated upper level courses—somewhat akin to an undergraduate major—that would foster development of the substantive expertise and practice-area skills needed to succeed as a young attorney.⁷⁴

Finally, in what may be the most sweeping criticism of the traditional law school model, some—including the President of the United States⁷⁵—have recently questioned whether three years of law school are necessary at all. In a recent paper that has garnered significant attention,⁷⁶ New York University School of Law Professor Samuel Estreicher proposed allowing law students to sit for the New York bar exam after two years of legal education.⁷⁷ Professor Estreicher observes that the third year of law school is a relatively recent development and suggests that the length should be reconsidered, particularly because making the third year voluntary

⁷² *Id.* at 84-85 & n.159 (“For every lawyer in the litigation department of a large corporate firm there are often 5-10 lawyers in other practice areas. They are real estate lawyers, corporate lawyers, trusts and estates lawyers, tax lawyers, municipal finance lawyers, environmental lawyers, they almost never set foot inside a courtroom” (quoting David Randall, *Vanishing Trials, A FOOLISH CONSISTENCY* (Nov. 29, 2006), <http://trudalane.net/2006/11/29/vanishing-trials/>)).

⁷³ BEST PRACTICES FOR SOLOS, *supra* note 35, at 24.

⁷⁴ Newton, *supra* note 12, at 87-88.

⁷⁵ President Barack Obama, Remarks at a Town Hall at Binghamton University (Aug. 23, 2013), *available at* <http://www.whitehouse.gov/the-press-office/2013/08/23/remarks-president-town-hall-binghamton-university> (“I believe, for example, that law schools would probably be wise to think about being two years instead of three years -because by the third year -in the first two years young people are learning in the classroom. The third year they’d be better off clerking or practicing in a firm, even if they weren’t getting paid that much. But that step alone would reduce the cost for the student.”).

⁷⁶ Samuel Estreicher, *The Roosevelt-Cardozo Way: The Case for Bar Eligibility After Two Years of Law School*, 15 N.Y.U. J. LEGIS. & PUB. POL’Y 599 (2012).

⁷⁷ *Id.* at 599.

presumably would reduce the costs of a legal education by a third, and allow students to enter the workforce a year earlier, enabling more students to accept lower-paying public service opportunities while remaining financially stable.⁷⁸ Estreicher notes that student attendance and preparation drop precipitously after the second year and that upper-level courses often are not particularly relevant to modern practice.⁷⁹ He concludes that the lawyering skills of graduates after two years are unlikely to be significantly different than those who stay for three. Estreicher does not argue that the third year should be eliminated entirely,⁸⁰ only that some lawyers should be able to practice after two years. He believes that his proposal will incentivize schools to revise their third-year experiences to be more practice-oriented and appealing to students interested in further developing their practical skills.⁸¹ Unsurprisingly, others in the academy strongly disagree and argue that “[t]he third year is not an expensive frill but a crucial resource in training lawyers for 21st-century challenges.”⁸²

C. U.S. Legal Education Differs from Legal Training Overseas and Other Professional Education in the United States

Many of these criticisms are highlighted by their contrast with legal training in the United Kingdom and by other forms of professional education in the United States, which tend to focus more on practical experience and skill development than U.S. law schools historically have.

⁷⁸ *Id.* at 599, 607.

⁷⁹ *Id.* at 608.

⁸⁰ A common argument against elimination of a third year of law is that reducing the barrier to entry may incentivize more people to obtain law degrees, and therefore add to the oversupply of lawyers that currently plagues the legal market. Estreicher notes that this does not necessarily justify a third year of law school, and instead might be an argument for increasing the difficulty of the bar exam.

⁸¹ *Id.* at 609-10.

⁸² Bruce Ackerman, *Why Legal Education Should Last for Three Years*, WASH. POST, Sept. 6, 2013, available at http://articles.washingtonpost.com/2013-09-06/opinions/41831762_1_corporate-law-legal-education-law-school.

In the United Kingdom, undergraduate academic study of the law (which consists primarily of large lecture classes) is followed not by law school, but by practical skills training, either as a barrister, representing clients in court, or as a solicitor, providing other legal advice.⁸³ To become a barrister, law graduates take the Bar Professional Training Course (BPTC) and obtain a one-year “pupillage,” which has two parts. During the first six months, prospective barristers shadow their supervisor, conducting legal research, drafting opinions and other documents, reviewing work product and observing their supervisor in conferences and court.⁸⁴ During the “second six,” pupils perform their own work under supervision.⁸⁵ Each pupillage also contains an Advocacy Training Course and a Practice Management Course. Pupillages are advertised only on a central website and the process of obtaining pupillage is highly competitive.⁸⁶ Overall, there are insufficient pupillage slots and limits on the length of time one can apply. The result is a growing cadre of law graduates who never attain their barrister credentials and are relegated to low-paying support roles.

Practical training is also required to qualify as a solicitor. Satisfactory completion of a Legal Practice Course (“LPC”), a post-graduate diploma in legal practice designed to prepare students with a general foundation in core practice areas, is an essential requirement.⁸⁷ The LPC is a one-year, full-time (or two-year, part-time) vocational course generally undertaken after attainment of a law degree, and is intended to bridge the gap in skills between academic study and legal practice. Upon completion of the LPC, further training occurs during a “training contract.” The training contract provides trainees with supervised experience in

⁸³ *What Kind of Lawyer Do You Want To Be?*, CHAMBERS STUDENT, <http://www.chambersstudent.co.uk/Articles/197> (last visited Nov. 4, 2013).

⁸⁴ THE BAR COUNCIL, <http://www.barcouncil.org.uk> (last visited Nov. 4, 2013).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Legal Practice Course*, SOLICITORS REG. AUTH., <http://www.sra.org.uk/students/lpc.page> (last visited Nov. 4, 2013).

legal practice and professional skills. Trainee solicitors may gain this experience in environments relevant to their ultimate practice goals such as a firm, local government, or an in-house legal department. The training contracts are regulated by the Solicitors Regulation Authority (“SRA”), which sets standards and authorizes training programs.⁸⁸ The typical training contract lasts two years and is a full-time job.⁸⁹

Medical training in the United States also has a significant practical component. It takes four years to obtain an M.D. degree, but only the first two years typically involve primarily classroom training. In many medical schools, there is a significant clinical component as early as the first year and the last two years consist almost entirely of clinical rotations, in which medical students interact with patients and perform basic medical procedures under supervision of more experienced doctors. After four years in school, newly minted M.D.s train as residents for three to seven years, with a focus on the doctor’s chosen specialty. Throughout this process, aspiring doctors must take a series of tests evaluating their skills.

Like U.S. law schools, business schools also employ a case method, but the focus is different from how the case method has been used in at least some law

⁸⁸ The SRA requires that trainees: (i) be paid a minimum prescribed salary; (ii) gain practical experience in at least three separate areas of English law, including contentious and non-contentious work; (iii) be given opportunities to develop skills they will use in practice; (iv) maintain a training record; (v) be supervised by qualified solicitors or others with qualified English law experience; (vi) receive regular feedback with a minimum of at least three formal appraisals; and (vii) be allowed paid study-leave to participate in courses prescribed by the SRA. *Training Trainee Solicitors: Guidance to the SRA Regulations on Training Contracts*, SOLICITORS REG. AUTH. (Apr. 10, 2013), <http://www.sra.org.uk/documents/students/training-contract/requirements.pdf>.

⁸⁹ Critics of the UK system point out that the number of places offered by LPC Providers annually far exceeds the number of available places for training contracts. The 2012 Law Society Annual Statistical Report published figures indicating that there were 5,411 new training contracts registrations and just over 8,000 students admitted to the LPC in 2011. THE LAW SOC., *Trends in the Solicitors’ Profession; Annual Statistical Report 2012* (2013), available at [http://www.lawsociety.org.uk/representation/research-trends/annual-statistical-report/documents/annual-statistical-report-2012---executive-summary-\(pdf-295kb\)/](http://www.lawsociety.org.uk/representation/research-trends/annual-statistical-report/documents/annual-statistical-report-2012---executive-summary-(pdf-295kb)/). The LPC is criticized as creating enormous debt for many students without resulting in employment opportunities. See *Trends Affecting the Recruitment Market*, CHAMBERS STUDENT, <http://www.chambersstudent.co.uk/Articles/199> (last visited Nov. 4, 2013).

schools: the case studies are used to discuss practical strategies and tactics for solving problems in the future, with students typically working collaboratively in small groups to answer questions and plan strategy. Students develop skills through simulations, business games, and lectures. Although initially inspired by the law school case method, this business school case method has diverged in ways that are instructive for the legal profession. First, in addition to critical thinking, the business school case method aims to teach decision-making, often in the face of considerable uncertainty.⁹⁰ Second, business school cases focus on pragmatism. Business school cases describe real world problems in need of resolution.⁹¹ Assignment questions guide class preparation and discussion, which become increasingly detailed over time. Students come to class with a recommended decision and implementation plan and also with extensive supporting analysis.⁹² Case files are then discussed and dissected during class. The primary goal is to encourage student-to-student dialogue, and to that end, professors ask open-ended questions, seeking student insights based on the students' respective backgrounds. At most business schools, unlike law schools, class participation accounts for roughly 50% of a student's grade.⁹³

D. New Models of Legal Education are Being Developed

Many law schools have been engaged in a broad range of curricular experimentation and innovation, altering their curricula to address changes in the profession. Although law schools are innovating in different ways, some common trends are discernible, and we briefly survey some of these changes here.

⁹⁰ See Garvin, *supra* note 66, at 60.

⁹¹ *Id.*

⁹² *Id.*

⁹³ See Barton, *supra* note 65, at 236 (listing schools with alternative participation grading schemes, but pointing out that business schools almost uniformly incorporate a participation factor in grades). There is also an effort to grade students on the quality of the work itself as much as on their understanding of any underlying theories. See MICHAEL MASONER, AN AUDIT OF THE CASE STUDY METHOD 1-8 (1988).

One notable and longstanding effort has been additional experiential learning opportunities through clinics, externships, and simulations to produce “practice-ready professionals.”⁹⁴ As described more fully in Appendix C, these initiatives—many of which began decades ago—often represent dramatic shifts away from the traditional casebook method described above.⁹⁵

Many law schools have also invested more in increased practical training by expanding opportunities for developing professional skills, problem-solving strategies, and other practice-oriented techniques. These programs include skill-specific courses such as workshops, as well as the introduction of practical training into traditional subject-matter courses. A number of schools have added practical training to the first-year curriculum, which has historically focused almost exclusively on subject-matter instruction. Several schools have revised the third-year curriculum to emphasize practice-based training in an effort to better prepare students for post-graduate employment.

Some schools are also focusing in a more concerted way on training students for a transactional practice. Courses co-taught by full-time and adjunct faculty can contribute to this effort, as can various curricular partnerships with business schools. As with other types of innovation, these initiatives have required new resources, although the resource needs vary. While partnerships with business schools are resource-intensive, for instance, the recruitment of expert practitioners as adjuncts does not necessarily involve significant expense.

In addition to expanding in-class opportunities for practical development, many schools are increasing the ways in which students can gain practical training through off-campus experiences. Schools have expanded externship opportunities with judges, government offices, and law firms. Some schools have recently

⁹⁴ AM. BAR ASS'N, A SURVEY OF LAW SCHOOL CURRICULA: 2002-2010 (Catherine L. Carpenter ed., 2012) [hereinafter LAW SCHOOL CURRICULA SURVEY].

⁹⁵ It is worth observing that clinics and simulation experiences are significantly more resource-intensive than traditional casebook courses, and thus pose tradeoffs with other values that are also important, such as cost control.

developed “bridge-to-practice” programs, which provide students with practical training during law school and can serve as a link between law school and post-graduate employers.

Law schools have made additional changes in response to changes in the professional landscape. Some schools now offer students the opportunity to concentrate their coursework on a specific area of law. Others have made their curricula more global, recruiting more international students and faculty, and forging partnerships with overseas institutions. Others have begun to offer accelerated J.D. programs, allowing students to compress a three-year curriculum into two years. In most cases, the need to take all of the classes required to meet ABA accreditation requirements results in these programs costing the same as a three-year program. While only a few schools have adopted such programs, these recent shifts suggest that law schools will continue to make substantive and structural changes to their curricula in response to critiques of the traditional model.⁹⁶

* * *

Findings and Recommendations

In light of the changing professional environment, we believe it is imperative for law schools to offer a broad range of curricular initiatives in addition to traditional casebook offerings. We recommend increased focus at some schools on practical skills like client interaction, factual investigation, or practice management.⁹⁷ We recognize that a number of American law schools, including several in New York, have engaged in significant and impressive innovation in recent years. We strongly endorse these innovations, and encourage the process to continue in a robust and creative way, because we believe that these initiatives are a necessary complement to casebook instruction. We agree that sound scholarship must remain a

⁹⁶ As we discuss in Section IV below, law schools face a number of external impediments that continue to limit or foreclose further expansion of these innovative developments.

⁹⁷ Traditional casebook classes do not always offer experience in writing, although some (such as small first-year sections at some schools) do focus on writing. Professional responsibility is another important issue that is not always a focus in casebook classes, although it should be noted that some professional responsibility courses do use casebooks.

fundamental building block of law school education, and that the Socratic method has its place. But we feel strongly that newer approaches should continue to be integrated into the law school curriculum.

We also believe that “new lawyer preparation” should be viewed through a prism that extends from education before law school, including potentially through incorporation of relevant coursework into the undergraduate curriculum, through the law school years and beyond, including the early years of practice, and should focus much more directly on developing the skills and substantive knowledge needed to provide the complex problem-solving advice clients value most from their legal advisers.

In the modern legal environment, the “practice-ready” lawyer must have experience identifying and solving problems, navigating the legal system, and exercising professional judgment under conditions of uncertainty. We also believe that writing and professional responsibility remain under-taught and insufficiently integrated into the curriculum, although these topics have received substantial attention from reformers in recent years.

The “practice-ready” lawyer may also require significantly more subject-specific expertise at graduation than in the past, and may have needed more experiential opportunities in law school, through which to develop and exercise his or her professional judgment.

Fundamental Attributes of New Lawyer Training

Because different clients need different lawyers with different training to identify their different problems and solutions, law school training must be flexible. Common training on the fundamental aspects of the U.S. legal system is, of course, necessary for all lawyers. But the needs of clients are diverse, and students with different interests and ambitions will gravitate to different parts of the profession. As a result, law schools should have significant flexibility to train their students for the jobs they will seek, and to allocate resources in ways that allow them to lower costs. Over time, this flexibility may include shorter courses of study leading to different types of degrees, obtained at lower cost than the traditional J.D.

Recognizing these differences, and that context matters for law students and their schools, at least at this time of rapid change in the profession, we think it is premature to mandate specific initiatives for all schools that must be adopted. Instead, we identify here a series of fundamental attributes and experiences that we believe should form the core of new lawyer training in the modern legal environment. We also call for a limited period of continuing and additional experimentation in which the profession will support law schools' efforts to tailor their instruction to the needs of their students and their likely future clients and, where possible, control the overall cost of educating lawyers. We specifically call upon the ABA and state licensing authorities as necessary to provide the rule changes or temporary waivers necessary to enable these experiments. As the results of this experimentation become available, we hope that the successful innovations will be broadly disseminated and replicated as appropriate and ultimately incorporated into new accreditation requirements that themselves will have flexibility to further evolve over time.

We believe the following attributes and experiences should form the core of new lawyer education in the modern professional environment:

- *A detailed understanding of the U.S. legal system, its constitutional underpinnings, and its procedural requirements.*
- *Sound academic instruction and scholarship in legal reasoning, writing, and analysis (sometimes called “how to think like a lawyer”).*
- *Command of several substantive areas of law, with an opportunity to take advanced courses in selected subject areas and potentially an opportunity to be certified as having specialized knowledge through a law school “major” or a competency certificate.*
- *Substantial training and experience in complex problem-solving exercises, project management, working in teams and exercising professional judgment, in litigation and transactional settings.*

- *Exposure to and participation in negotiation, alternative dispute resolution processes, client and witness interviewing, counseling, and oral advocacy.*
- *Participation in hands-on clinical or other experiential training—at least one such experience during the law school years for every law student and, optimally, more than one experience or a defined period of working full time in a highly supervised training environment.*
- *Exposure to well-structured teaching by experienced practitioners, provided in coordination with academics.*
- *Instruction in the profession's ethics and commitment to providing community and public service, including the promotion of access to justice through the provision of assistance to indigent clients.*
- *Exposure to international and comparative expertise, and the cross-cultural and cross-border aspects of sophisticated lawyering.*
- *Highly supervised training, feedback, and career mentoring in the initial years of practice.*

The Task Force encourages innovations that pursue these goals, and that are also tailored to the needs of a particular school's students, while ensuring that the experiments are available to all and do not adversely impact women and underrepresented groups. *Recognizing that not every law school will be able to test each idea, and that not every idea will be appropriate for all career paths, students, or schools, we believe that at least the following should be broadly tested:*

- *Implementation of at least one simulated complex problem-solving course with a low student/supervisor ratio and/or one clinical program for every law student, with an opportunity for more than one such experience for those who choose to pursue it. (As a practical matter, volunteer practitioner teaching may be necessary for implementation of this recommendation to be feasible, given the resource demands associated*

with it. The Task Force calls on experienced attorneys to aid new lawyers in their development in Section VI of the Report.)

- *Specialization and curricular offerings that build on each other in areas of high marketplace demand, and possibly also including majors or certificate programs.*
- *Partnering with legal employers to develop practical programs that train law students and recent graduates.*
- *A post-graduation, highly supervised training period for new lawyers, similar in some respects to medical residencies or teaching hospitals in the U.S. and “pupillage” or legal training contracts in the UK and Canada, at least for new lawyers who are not receiving equivalent supervision and training with their first employer.*
- *A change in the typical law school assessment system to better evaluate skill development, problem-solving, and the exercise of judgment.*
- *Tracking the experience and success of law students who have taken certain foundational courses as undergraduates. Some law schools may wish to explore the feasibility of granting law school credit for specific undergraduate courses if appropriate waivers can be obtained from the ABA’s accreditation requirements.*

We recognize that our call for continuing and additional experimentation in law school curricula faces practical obstacles. One is that law schools are reviewed for compliance with the ABA’s accreditation requirements on a seven-year cycle and administrators and faculty need certainty about the standards by which their school will be evaluated. Similarly, tenured faculty in some schools may have strongly held views about how new lawyers should be trained, and curricular reforms within law schools require the support of faculty.

We address the need to reform the ABA accreditation standards to permit greater flexibility in law school curriculum design in greater detail below. But in this context, we specifically note and endorse the recent draft recommendation by the

ABA Task Force on the Future of Legal Education to use variances from the ABA Standards under ABA Standard 802 to “[p]romote [i]nnovation and [e]xperimentation.”⁹⁸ We urge law schools to use the variance process and urge the ABA to streamline the process by which they are granted. We also urge tenured faculty to work with their deans and administrators in light of the changed needs of law students, clients, and employers to increase the pace of curriculum reform in light of the fundamental attributes and experiences described above.

The Third Year of Law School

The approaches we recommend can be integrated into the entire law school curriculum, including the first year. But there is little doubt that it will take time for students to receive training that includes these fundamental attributes and experiences. Against this background, the Task Force has considered the calls to eliminate the third year of law school, which are motivated primarily by a desire to reduce cost. With due respect, we think the proposal is too simple a solution to a complex problem. While we agree that controlling the cost of legal education is an important goal, we fundamentally believe that, at least at this time, eliminating the third year is not the right instrument to accomplish it. Indeed, the need for better-prepared lawyers suggests the need for more training, not less.

That said, as noted above, the current third-year curriculum should not be used solely for traditional casebook courses or preparing subjects tested on the bar exam but little used thereafter. It should continue to be the subject of creative and energetic innovation in order to help new lawyers graduate with the skills and experiences needed to be “practice-ready” in the modern legal environment. Thus, we encourage law schools to use the third year of law school to innovate,⁹⁹ providing students with substantive expertise and practical experiences that will

⁹⁸ AM. BAR ASS'N, TASK FORCE ON THE FUTURE OF LEGAL EDUC., DRAFT REPORT AND RECOMMENDATION 30 (Sept. 20, 2013), *available at* http://www.americanbar.org/content/dam/aba/images/news/PDF/draft_report_of_aba_task_force_september_2013.pdf.

⁹⁹ See Peter Lattman, *N.Y.U. Law Plans Overhaul of Students' Third Year*, N.Y. TIMES DEALBOOK (Oct. 16, 2012, 6:58 PM), <http://dealbook.nytimes.com/2012/10/16/n-y-u-law-plans-overhaul-of-students-third-year/>.

better prepare them for modern practice. In our view, if the third year is used in this way, it would be quite worthwhile.

This is not to say that cost control is not an important value. The high cost of law school and the rate at which it has increased (especially as compared to the rate of inflation) is of significant concern to the Task Force and has significant impact on new lawyers. While ensuring law school graduates are properly trained to succeed in the modern legal economy is of paramount importance, the Task Force wholeheartedly supports efforts to control the cost of law school.

Given the wide range of factors affecting law school pricing, a comprehensive examination of the issue and prescription for solutions is beyond the scope of this Report.¹⁰⁰ We note, however, that law schools need not have similar costs and that the experimentation and curricular innovations recommended above may cause different law schools to take different approaches to pricing. Some may

¹⁰⁰ The following are some potential ways to reduce costs that have been advanced recently in the public debate. The Task Force has not studied or analyzed them and our goal here is not to analyze them comprehensively or to recommend any of them. We record them simply as illustrative examples of ideas that have been advanced for law schools to consider as potential cost control strategies.

- Programs such as bridge-to-employment in the third year of law school, which may offset the expense with employer-sponsored scholarships or earnings from employment or internships;
- Reducing the expense base of law schools that results from current ABA accreditation requirements, which some would argue are not relevant to the quality of education at least for some law schools. Examples include potential changes in the required ratio of tenured faculty, increased sharing of library and other resources among law schools, and greater permission to use distance learning;
- Development of alternative training structures and licenses for careers short of a full “general practitioner” law school education;
- Increases in student loan forgiveness programs for public service careers (although we realize that this will place demands on the budgets of schools overall);
- Changes to federal bankruptcy law to permit the discharge of law school loans under some circumstances (recognizing that this might have the effect of increasing interest rates and thus the costs of indebtedness for others);
- More transparency about the impact of merit scholarships and law-school-supported (or -created) jobs on tuition costs and an examination by individual law schools of the benefits of these programs weighed against the costs; and
- Granting law school credit for some courses taken at the undergraduate level.

find curricular changes lower the overall educational cost. Others may find that changes to their program of instruction, particularly if focused on specialized training and intensive clinical experience, actually increase the cost of school. Ultimately, the experimentation and flexibility we discuss throughout this Report may identify ways to control the cost of a legal education and/or lead to cost differentiation for law schools. We encourage law schools to consider educational cost as part of their broader curriculum reform efforts.

Experiential Learning Is Critical

As part of this continuing and additional experimentation, the Task Force also encourages public and private sector employers to partner with law schools to provide experiential learning opportunities and bridge-to-practice programs for law students and new lawyers. We emphasize that hands-on experience is not alone sufficient to meet the goal. Ideally, the practical experience should be preceded by academic training so that it is experienced in the context of knowledge of the legal system and processes and some substantive law. It must be accompanied by meaningful supervision and feedback, as well as structured opportunities to reflect on and analyze the experience from a more academic viewpoint. With these objectives in mind, some schools might provide two years of more traditional instruction and then provide placements with government, legal services, and public interest employers spanning a semester or year during the third year of law school, which may then lead to further opportunities during the first year of practice. We believe that the profession should support a significant expansion of these programs, by increasing the number of participating offices in all sectors and by providing financial and in-kind support, while taking care to consider and address the issues identified above and in Appendix C in their design and implementation.

As with so many ideas and programs the Task Force has identified, and especially in light of some concerns about bridge-to-practice programs identified in Appendix C below, long-term bridge-to-practice programs may be more successful for certain law schools, law students, and employer-partners than others. The programs may take different forms, provide different experiences, and, to meet the

needs of students with different anticipated career paths, have different levels of integration into the overall law school curriculum. In short, one size does not fit all.

Nonetheless, we believe that long-term bridge-to-practice programs can play an important role in helping new lawyers learn the skills and gain the experiences needed for success in today's legal environment, and that the identified issues can be resolved through specific program design. The Task Force urges law schools and employers to consider these programs as part of the experimentation identified elsewhere in this Report. Brooklyn Law School has launched such a program with 12 governmental and not-for-profit organizations, which is described in Appendix C.

These bridge-to-practice programs would best be served if there were greater clarity and uniformity in the rules that govern the ability of law students to represent clients under appropriate supervision. To this end, we urge the New York Appellate Departments, the courts that promulgate such rules in New York State, to adopt a more consistent set of rules that would permit law students participating in law school clinics, as well as those participating in externship or bridge-to-practice programs with legal services, government, or other public interest organizations, to represent clients under the supervision of admitted attorneys from those organizations.

To further the goal of experimentation, the Task Force announces partnerships on its bridge-to-practice initiatives with several leading employers. BNY Mellon, Con Edison, Credit Suisse, and Morgan Stanley have agreed to work with the City Bar Association to develop pilot programs and, subject to working out details, to implement pilot programs.¹⁰¹

¹⁰¹ Launched in 2011, Credit Suisse's GC (General Counsel) Academy is an innovative work-study program combining extensive formal classroom instruction with on-the-job training in legal and compliance. The program sources students still attending local colleges/universities, including New York Law School. Following the successful launch of the program in Europe and Asia, the GC Academy in New York was established in 2012. It is already implementing some of the concepts described in the "bridge-to-practice" initiative including the training and mentorship of students by legal and compliance professionals.

The City Bar also will work with area law schools on program design and work to facilitate any waivers of ABA accreditation rules that may be required to launch the pilots. The pilots will include outcome studies to ensure that the best aspects of the programs are carried forward into an implementation phase.

III. CHANGES IN THE PROFESSION HIGHLIGHT THE NEED FOR CONTINUED TRAINING, EDUCATION, AND MENTORING AFTER LAW SCHOOL

Lawyers in the United States are permitted to practice immediately after being admitted to the bar. But, as the MacCrate Report concluded, fundamental lawyering skills are developed on a continuum over a lawyer's career.¹⁰² The MacCrate Report recognized that the transition period for new attorneys was especially challenging and posed "special problems," which law schools, the bar, and licensing organizations needed to address.¹⁰³ It noted the limits on law schools' ability to imbue their students with practical skills and that, as a result, newly graduated lawyers were only "partially-prepared" to practice.¹⁰⁴ As a consequence, the Report emphasized the importance of strong transition education for new law school graduates and inexperienced attorneys,¹⁰⁵ and further recommended that law schools, licensing authorities, the organized bar, and new lawyers themselves engage in a variety of techniques to enable new attorneys to gain the practical experience in skills and values to spur their continuum of professional development.¹⁰⁶ In light of the pace of change in both the profession and the law, the MacCrate Report's emphasis on continued development and skills training is more relevant than ever.

Some law schools are developing structures to support post-graduate development. Continuing legal education and mentoring also foster those skills,

¹⁰² MACCRATE REPORT, *supra* note 3, at xi. The "Fundamental Lawyering Skills" identified in the MacCrate Report, still highly relevant today, are (1) problem-solving, (2) legal analysis and reasoning, (3) legal research, (4) factual investigation, (5) communication, (6) counseling, (7) negotiation, (8) litigation and alternative dispute-resolution procedures, (9) organization and management of legal work, and (10) recognizing and resolving ethical dilemmas. *Id.* at 135.

¹⁰³ *Id.* at 334.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 285.

¹⁰⁶ *Id.*

especially in the years immediately after law school.¹⁰⁷ This Section of the Report describes some of these efforts and the Task Force's views about continued development after law school. It also announces a new program to implement those views.

A. Post-Graduate Law School Development Programs

A handful of law schools have set up programs to provide continued support and development to their students after graduation. These “incubator” programs train recent graduates in the skills necessary to practice law as a solo practitioner.¹⁰⁸ The first was the Incubator for Justice at CUNY. The CUNY Incubator supports CUNY alumni “as they set up and run solo or small-group practices devoted to serving low-income communities that lack access to legal representation.”¹⁰⁹ Over eighteen months, the eight incubator participants receive training in practice-management basics like billing, record keeping, technology, bookkeeping, and taxes. They also gain subject matter expertise by providing “low bono” representation in underserved communities related to issues like immigration law, labor and employment, and other issues.¹¹⁰

Participants represent actual clients with actual legal problems supported by the Incubator's infrastructure and alumni network. After the incubator period comes to a close, program graduates use the skills and contacts they have developed to

¹⁰⁷ NYSBA REPORT, *supra* note 21, at 3. In California, a task force of the State Bar Board of Trustees recently proposed mandating that incoming California lawyers complete practical skills training, pro bono service, and CLE prior to gaining admission to the bar. See Joyce E. Cutler, *California Proposal Would Mandate Pro Bono, Practical Skills Requirements for Admission*, BLOOMBERG BNA (Feb. 27, 2013), <http://www.bna.com/california-proposal-mandate-n17179872597/>. The proposal, which is still pending, was made in direct response to concerns we have echoed regarding the preparedness of law school graduates for work as attorneys.

¹⁰⁸ Ethan Bronner, *To Place Graduates, Law Schools Are Opening Firms*, N.Y. TIMES, Mar. 8, 2013, at A14, *available at* <http://www.nytimes.com/2013/03/08/education/law-schools-look-to-medical-education-model.html?pagewanted=all>.

¹⁰⁹ Press Release, CUNY Sch. of Law, CUNY Law Incubator Model Adopted in New Access to Law Initiative (Aug. 2, 2012), *available at* <http://www1.cuny.edu/mu/law/2012/08/02/cuny-law-incubator-model-adopted-in-new-access-to-law-initiative/>.

¹¹⁰ *Id.*

establish an economically viable practice. Since the Incubator began in 2007, several law schools have initiated similar programs, including Pace University Law School, the University of Missouri-Kansas City School of Law, Arizona State University,¹¹¹ the Thomas Jefferson School of Law,¹¹² and University of California Hastings College of the Law.¹¹³ These programs are in their early stages. While early signs are encouraging and participants generally have had positive experiences, it may be too early to judge their ultimate success. Perhaps more importantly, their scalability may be limited because they are highly resource intensive and, as a result, can only offer benefits and support to a limited number of new lawyers. New kinds of post-law school education and mentoring programs may have the potential to provide some of the advantages of the incubator model with significantly lower resource requirements.

B. Continuing Legal Education

Traditional continuing legal education programs provide ongoing instruction on substantive legal topics, legal skills, practice management, and ethics. In 1986, the ABA House of Delegates passed resolutions supporting CLE requirements for all practicing lawyers, and urged states to strongly consider creating them.¹¹⁴ Minnesota was the first state to adopt a mandatory CLE program,¹¹⁵ and others, including New York, followed in response to the MacCrate Report.¹¹⁶ Today, all but

¹¹¹ Tania Karas, *Pace Graduates Sign Up For 'Low Bono' Counseling Model*, N.Y. L.J., Apr. 9, 2013, available at http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202595267004&Pace_Graduates_Sign_Up_for_Low_Bono_Counseling_Model&slreturn=20130409224448.

¹¹² *The Center for Solo Practitioners—A Lawyer Incubator Program*, THOMAS JEFFERSON SCH. OF LAW, <http://www.tjssl.edu/tjssl-alumni/incubator-program> (last visited Nov. 4, 2013).

¹¹³ Bronner, *supra* note 108.

¹¹⁴ MODEL RULE FOR CONTINUING LEGAL EDUC. (2004), available at http://www.americanbar.org/content/dam/aba/migrated/2011_build/cle/mcle/aba_model_rule_cle.authcheckdam.pdf.

¹¹⁵ NYSBA REPORT, *supra* note 21, at 4.

¹¹⁶ *Id.* at 3.

five states require admitted lawyers to participate in CLE training,¹¹⁷ and the requirements vary by state.¹¹⁸

New York State has a two-tiered CLE structure. One set of rules applies to newly admitted lawyers in their first two years of practice, and a different set of rules applies to lawyers with three or more years of experience.¹¹⁹ The heightened requirements for newly admitted attorneys are intended to help lawyers transition from law school to practice by building practical skills that may not have been addressed in law school.¹²⁰ The requirements for experienced lawyers are intended to help active attorneys maintain their professional competence in the face of new legal developments.¹²¹

C. Mentoring

In addition to CLE, mentoring programs can play an important role in new attorneys' training and development. Some states, such as Utah and Georgia, have established mandatory mentorship programs for new lawyers.¹²² Other states, like

¹¹⁷ *MCLE Information by State*, AM. BAR ASS'N, http://www.americanbar.org/publications_cle/mandatory_cle/mcle_states.html (last visited Nov. 4, 2013) (Connecticut, Maryland, Massachusetts, Michigan, and South Dakota, as well as the District of Columbia, do not currently have CLE requirements).

¹¹⁸ *See generally Mandatory CLE*, AM. BAR ASS'N, http://www.americanbar.org/publications_cle/mandatory_cle.html (last visited Nov. 4, 2013) (providing an overview of each state's CLE requirements).

¹¹⁹ NYSBA REPORT, *supra* note 21, at 7.

¹²⁰ N.Y. Comp. Codes R. & Regs., tit. 22, §1500 (2007), *available at* <http://www.nycourts.gov/attorneys/cle/programrules.pdf>.

¹²¹ N.Y. Comp. Codes R. & Regs., tit. 22, § 1500.21 (2007), *available at* <http://www.nycourts.gov/attorneys/cle/programrules.pdf>.

¹²² Jared Lamb, *The Path of the Law School: Three Implementable Law School Reforms*, 3 FAULKNER L. REV. 343, 371-377 (2012). Georgia started its mentoring program after "enough leaders of Georgia's bench and bar got mad about a growing lack of professionalism and civility," viewing the program "as a way to protect the public and the profession from incompetence and lack of civility by instilling the values of professionalism at the beginning of a lawyer's practice." Terrence O'Donnell, *Federal Court Practitioners Serve as Mentors to Newly Admitted Attorneys: The Supreme Court of Ohio's Lawyer to Lawyer Mentoring Program*, FED. LAW., Aug. 2010, at 28, 31. Similarly, Utah started its mentoring program in July 2009 in response to the downturn in the legal market, which resulted in "new lawyers need[ing] mentors to show them how things should be done, how to build civility and pride in the profession, or how to manage a practice." Steven W. Owens, *Keeping Our Core Values (and Sanity) in the Internet Age*, UTAH B.J., July/Aug. 2010, at 8, 9.

Ohio, have implemented voluntary programs.¹²³ Such programs are increasingly important since the economic downturn, as limited employment options available to newly graduated attorneys force many into solo practice.¹²⁴

Some of these programs replace or supplement traditional CLE programs with one-on-one mentoring hours.¹²⁵ Each mentor/mentee follows a mentoring plan over the course of a year with the goal of “enhanc[ing] the new lawyer’s professional skills and values.”¹²⁶ As new lawyers in larger law offices and government agencies have more opportunities to find a mentor through their employers or informal networks, outside mentors available through bar associations¹²⁷ may be most valuable for new lawyers in small or solo practice.

Overall, the mentoring programs give new lawyers the opportunity to explore legal areas of interest, but what the mentor/mentee pairs do as part of the program often is flexible, based on loose guidelines. The guidelines often emphasize practical skills development. For example, in Georgia, the mentors and the new lawyers together devise “Advocacy Experiences,” such as “an actual or simulated deposition, jury trial, non-jury trial or evidentiary hearing, appellate argument, or mediation.”¹²⁸ Ohio’s program requires the mentor and the new lawyer to discuss certain defined topics aimed at developing lawyering skills.¹²⁹ Such programs are

¹²³ See O’Donnell, *supra* note 122.

¹²⁴ Tom D. Womack, *Lawyer-2-Lawyer*, ARK. LAW., Spring 2012, at 5.

¹²⁵ James Backman, *Externships & New Lawyer Mentoring: The Practicing Lawyer’s Role in Educating New Lawyers*, 24 BYU J. PUB. L. 65, 77-82 (2009); see also *Lawyer to Lawyer Mentoring Program*, SUP. CT. OF OHIO & THE OHIO JUD. SYS., <http://www.supremecourt.ohio.gov/AttySvcs/mentoring/default.asp> (last visited Nov. 4, 2013) [hereinafter *Ohio Mentoring Website*].

¹²⁶ Backman, *supra* note 125, at 78.

¹²⁷ *Id.*; see also *Ohio Mentoring Website*, *supra* note 125.

¹²⁸ Backman, *supra* note 125, at 80.

¹²⁹ *Id.*

thought to offer new lawyers many potential benefits and appear to have been generally well received.¹³⁰

Of course, such programs are not without costs. There is both the monetary cost for administration of such a program on a statewide—or nationwide—basis, and the cost to individuals in the program. While evidence suggests that the experience is positive for both participants,¹³¹ the success of a particular mentoring relationship is dependent on the commitment of both the mentors and the new lawyer mentees.¹³² Such commitment may be difficult to find if matches between mentors and mentees are not made appropriately or when either party is pressed for time. Additionally, mentoring programs that are mandatory for new attorneys can only function if enough seasoned attorneys volunteer to be mentors, posing the obstacle of adequately motivating enough attorneys to participate.¹³³

* * *

Findings and Recommendations

We believe that new lawyer preparation does not end on graduation day and that continuing legal education, support, and mentoring play an important role in new lawyer development. Even those new lawyers who have had practical experiences in law school need continuous training, mentoring, and skill development.

¹³⁰ According to the Georgia program director, when evaluating the program, more than 90% of the beginning lawyers and their mentors recommended continuing the program, stating that “it prepares newly admitted lawyers to become competent attorneys.” Marie Mischel, *Balancing the Scales*, UTAH BUS., Nov. 1, 2009, available at http://dev.utahbusiness.com/articles/view/balancing_the_scales. A newly admitted Georgia lawyer said that the program offered “a safe place to ask a stupid question,” and mentors “have attested that their experiences ‘reaffirmed their faith in the profession.’” O’Donnell, *supra* note 122, at 31.

¹³¹ See Mischel, *supra* note 130; see also Paul H. Burton, *What Money Can’t Buy*, PRECEDENT, Spring 2007, at 20, available at <http://www.mobar.org/uploadedFiles/Home/Publications/Precedent/2007/spring07.pdf>.

¹³² Womack, *supra* note 124, at 5.

¹³³ See Nathan D. Alder, *The Bar is Looking for a Few Good Mentors; Actually, We Need Hundreds of You to Step Forward*, UTAH B.J., Nov. 2008, at 8.

There are, of course, many CLE classes available, including some targeted specifically to “bridge-the-gap” between law school and practice. But more often than not, new lawyers treat CLE programs as classes to be taken out of necessity, not for their intrinsic value or ability to help develop a career. These classes typically are lecture-style, of uneven quality, involve little interaction, and have no substantive follow-up to assess the students’ retention of information. Moreover, many new lawyers take a series of unrelated classes, simply because they fulfill requirements necessary to maintain an active license and fit into the lawyers’ schedule.

As discussed throughout this Report, we believe that certain experiences and expertise are necessary for new lawyers to have successful careers in the modern and continually changing legal environment. We also believe that a curriculum-based suite of post-graduate CLE classes aimed at cultivating these skills would be both well-received by new lawyers and useful to their overall development. We also believe that completion of such a program could serve a useful signaling function to potential clients, helping new lawyers to develop their practices.

Classes, however, are not enough. We believe that new lawyers must also receive formal and informal mentoring by experienced attorneys who can provide guidance about how best to handle specific legal issues and about overall career development and planning. We therefore also recommend the development of formal mentorship programs for new lawyers and encourage new lawyers to seek out informal mentors to assist them. Recognizing that effective mentorship requires a significant investment of time and resources by both mentor and mentee, we urge seasoned members of the bar to serve as volunteer mentors, providing guidance on specific cases and matters and broader advice on professional development, and to encourage new lawyers to seek out these resources.¹³⁴

¹³⁴ We stop short of calling for mandatory mentorship programs such as those adopted in Utah and Georgia. But given the benefits to new lawyers and the profession as a whole, these ideas warrant further consideration.

While all lawyers can benefit from a focused curriculum of CLE classes and mentoring arrangements, not all lawyers are similarly situated. New lawyers at large law firms and in public sector and public service jobs are likely to receive substantial training directly from their employers. They also have more access to mentoring relationships, although some may benefit from objective advice outside the context of their first employer. By contrast, new solo and small firm practitioners often lack comprehensive training and mentoring opportunities. Similarly, new unemployed lawyers often lack access to experienced professionals from whom they can receive much needed practical training and with whom they can build mentoring relationships and seek career advice. Accordingly, we believe that greater attention should be paid, at least initially, to the needs of new lawyers in small firms or in solo practice and those who have not yet found their first position.

The precise contours of such a program will vary, of course, by jurisdiction and provider and the differing career objectives of their participants, but we believe at least the following components should be included:

- *A year-long curriculum focused on the needs of new small firm and solo practitioners to transition from student to practitioner, covering:*
 - *Substantive advice from experts in areas relevant to the clients of practices such as family law, wills and estates, and immigration;*
 - *Practical advice from practitioners regarding the skills needed for successful practice, including simulations and feedback; and*
 - *Training in practice management, including “nuts and bolts” classes on establishing an office, a filing system, and other technical requirements.*
- *Coordination with law school career services offices.*
- *Mentoring and career development advice, including specific efforts targeted at women and underrepresented groups.*
- *A certification of completion for graduates to signal increased skills to potential employers and clients.*

To advance these recommendations, the Task Force announces the creation of the City Bar New Lawyer Institute. The New Lawyer Institute will offer a year-long continuing legal education curriculum designed to teach new lawyers the practical skills and substantive knowledge necessary for success as a practitioner in New York City, including training and advice targeted to potential small firm and solo practitioners. The Institute also will provide advice and experience in professional networking and job interview training. Finally, New Lawyer Institute participants will have access to a series of mentorship opportunities so that they can receive advice on both substantive legal issues and career development. Each of these components will help new lawyers develop not only their skills, but also the professional context necessary for successful practice.

In addition to the continuing education and mentoring components targeted at new lawyers in small firms and solo practice, the New Lawyer Institute will also sponsor programs designed to introduce all new lawyers in New York City to the broader community of professionals, encourage new lawyers to leave their “silos” and engage with other aspects of the profession, and gain an understanding of the values and responsibilities of lawyers. To this end, the Institute will sponsor a series of speakers and other events at times convenient for new lawyers involving leaders of the profession and addressing issues relevant to all lawyers in New York City.

Additional details about the New Lawyer Institute can be found in Appendix B.

IV. IMPEDIMENTS TO INNOVATION PRECLUDE MANY CREATIVE RESPONSES TO THE CHANGING PROFESSIONAL ENVIRONMENT

Although many agree that reform of new lawyer preparation is necessary in response to the changing legal environment, a number of external forces impede the profession's ability to innovate. Four are particularly noteworthy: (1) the *U.S. News & World Report* Law School Rankings and their impact on law schools, (2) the ABA Law School Accreditation Standards, (3) the bar exam, and (4) restrictions on non-lawyer ownership of law firms.

A. U.S. News & World Report Law School Rankings

Since 1990, the *U.S. News & World Report* ("USN")¹³⁵ has annually ranked the ABA-accredited law schools. The top three-quarters are ranked in numerical order and the remaining institutions are categorized as third- or fourth-tier and listed alphabetically.¹³⁶ The rankings have played a significant role in both the administration of law schools and the choices of prospective law students.¹³⁷ They are no doubt influential: a recent survey conducted by Kaplan Test Prep showed

¹³⁵ Michael Sauder & Wendy Espeland, *Fear of Falling: The Effects of U.S. News & World Report Rankings on U.S. Law Schools* (Law Sch. Admissions Council, Research Report Series, Oct. 2007), available at [http://www.lsac.org/docs/default-source/research-\(lsac-resources\)/gr-07-02.pdf?sfvrsn=2](http://www.lsac.org/docs/default-source/research-(lsac-resources)/gr-07-02.pdf?sfvrsn=2). The Law School Admissions Council ("LSAC") is a non-profit corporation whose members include every ABA-accredited law school in the United States, as well as law schools in Canada and Australia. This report was conducted primarily through 140 "in-depth, open-ended interviews with law school administrators, faculty, and staff." *Id.* at 2.

¹³⁶ Sam Flanigan & Robert Morse, *Methodology: Best Law Schools Rankings*, U.S. NEWS & WORLD REP., Mar. 11, 2013, <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2013/03/11/methodology-best-law-schools-rankings?page=2>.

¹³⁷ Sauder & Espeland, *supra* note 135, at 2. Russell Schaffer & Carina Wong, *Despite an Uncertain Employment Landscape, Law School Applicants Still Consider School Rankings Far More Important than Job Placement Rates When Deciding Where to Apply*, KAPLAN TEST PREP (June 19, 2012) <http://press.kaptest.com/press-releases/kaplan-test-prep-survey-despite-an-uncertain-employment-landscape-law-school-applicants-still-consider-school-rankings-far-more-important-than-job-placement-rates-when-deciding-where-to-apply>. Nevertheless, not everyone puts enormous emphasis on USN rankings. Supreme Court Justice Clarence Thomas criticized the rankings, comparing the bias "against lower-tiered schools to discrimination against women and minorities." Sam Favate, *Justice Thomas Says Law School Rankings Lead to Discrimination*, WALL ST. J. L. BLOG (Sept. 24, 2012, 1:05 PM), <http://blogs.wsj.com/law/2012/09/24/justice-thomas-says-law-school-rankings-lead-to-discrimination/>. He continued, "I think the obsession [with rankings] is somewhat perverse. I never look at those rankings . . . I thought [USN] was out of business." *Id.*

that 32% of prospective students considered the law school's USN ranking to be the most important factor in picking the schools to which to apply. Only 8% said job placement was the most important factor.¹³⁸ Despite their influence, the USN rankings are often criticized.

Criticism of the *U.S. News* law school rankings can be divided into two broad categories. First, there is criticism of the underlying methodology. Second, there is a broader criticism of the way rankings affect law school decision-making, resulting in an unhealthy law school "arms race" in which schools divert resources from educational uses and toward activities that will increase their status on the USN ranking list.

1. Criticism of the Methodology

The USN rankings are based on twelve criteria, which can be grouped into four categories: (1) "Quality assessment"—reviews by peers, judges, and lawyers—determines 40% of a school's overall score, (2) selectivity of the law school (25% of score), (3) post-graduation job placement success (20% of score), and (4) faculty resources (15% of score).¹³⁹ Criticisms of this methodology come in two forms.

First, the criteria used to determine the rankings measure the wrong things. In each of the last ten years, more than 170 law school deans have signed a letter "publicly condemning the rankings"¹⁴⁰ for failing to measure many characteristics that define a law school's worth.¹⁴¹ For example, there is no direct assessment of the caliber of a law school's faculty or the specific educational benefits that might come from attending a particular school.¹⁴² Additionally, the rankings do not focus

¹³⁸ Schaffer & Wong, *supra* note 137.

¹³⁹ See Flanigan & Morse, *supra* note 136, at 1; Sauder & Espeland, *supra* note 135, at 4.

¹⁴⁰ Sauder & Espeland, *supra* note 135, at 7.

¹⁴¹ *Id.* at 7.

¹⁴² See Stephen P. Klein & Laura Hamilton, *The Validity of the U.S. News and World Report Ranking of ABA Law Schools*, ASS'N OF AM. L. SCHS. (Feb. 18, 1998), available at <http://www.aals.org/reports/validity.html>.

on student assessment of school quality—a factor that would seem highly relevant to a student using the ranking to make application decisions.¹⁴³ Other factors ignored by the USN rankings include student body diversity, clinics and curriculum design, and summer employment opportunities.¹⁴⁴

Second, the metrics used are not reliable and can be manipulated by law schools. For example:

- The quality assessment factor, which accounts for 40% of the school's total score,¹⁴⁵ is nothing more than consensus from respondents without particularized knowledge about the schools they assess and which are influenced by the rankings themselves.¹⁴⁶ Furthermore, response rates in some sectors of those surveyed are quite low, so the survey may not be representative of actual views.¹⁴⁷
- Undergraduate GPA, which accounts for 10% of the law school's rank,¹⁴⁸ is not a standardized measure applied uniformly across all undergraduate institutions,¹⁴⁹ and “a given UGPA from one college may indicate a very different level of proficiency than that same UGPA from another institution.”¹⁵⁰

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Flanigan & Morse, *supra* note 136, at 1.

¹⁴⁶ Sauder & Espeland, *supra* note 135, at 8 (quoting one LSAC study respondent as saying, “The data on the reputational survey are so bad There is clear consensus of the 10 or 12 schools that should get a [top score]. How is there any difference between Chicago and Yale based on reputation?”).

¹⁴⁷ *Id.*; BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 70-84 (2012).

¹⁴⁸ Flanigan & Morse, *supra* note 136, at 1.

¹⁴⁹ See Klein & Hamilton, *supra* note 142.

¹⁵⁰ *Id.*

- The school's acceptance rate counts for 2.5% of its total score and covers the acceptance rates at both the full-time and part-time programs.¹⁵¹ However, a law school's acceptance rate can be easily manipulated by encouraging applications from as many students as possible, even if they have absolutely no chance of being accepted.¹⁵²
- The faculty resources component counts for 15% of the school's total score and is comprised of three separate statistics: expenditures per student, student-faculty ratio, and total number of volumes in the law library.¹⁵³ The *U.S. News* ranking's focus on faculty resources and expenditures per student creates an environment in which law schools are rewarded for spending more money to achieve a particular goal, even if the substantive aims could be achieved for a fraction of the cost.¹⁵⁴

Thus, while the USN rankings are highly influential, they may not actually measure accurately which law schools best prepare students for practice in the modern legal environment.

2. The "Arms Race"

Measurement problems alone would be sufficient reason to criticize the USN rankings. For want of better metrics, prospective law students are unduly focused on the USN ratings and sometimes make high-stakes choices that are not based on meaningful merits-based distinctions. But the rankings' influence has had a more pernicious effect, as law schools have felt the need to redistribute scarce law school resources away from education and towards other efforts that will maintain or improve their schools' rank.¹⁵⁵ But because all law schools know certain expenditures can affect their rankings, they all engage in the same practices,

¹⁵¹ Flanigan & Morse, *supra* note 136, at 1.

¹⁵² Klein & Hamilton, *supra* note 142.

¹⁵³ Flanigan & Morse, *supra* note 136, at 2.

¹⁵⁴ See Klein & Hamilton, *supra* note 142.

¹⁵⁵ Sauder & Espeland, *supra* note 135, at 14.

leading to an “arms race” where all law schools expend resources just to keep up.¹⁵⁶ The two most drastic examples of this “arms race” affect both ends of the law school process: merit scholarships to attract students with high LSAT and GPA scores, and law-school-funded jobs for graduates.¹⁵⁷

Merit Scholarships: There are a variety of reasons why schools might use merit scholarships, many of them perfectly legitimate from an educational perspective. One possible reason, however, is to attract students with high LSAT scores and GPAs, solely because higher scores can lead to a higher USN rank.¹⁵⁸ Thus, because the LSAT and GPA scores of a law school’s incoming class are the largest factor in the USN rankings that schools can directly control, schools may be willing to spend substantial amounts of money on merit scholarships to essentially buy higher GPAs and LSAT scores.¹⁵⁹ Since 1987, when the first USN rankings were published, merit scholarships have exploded and by 2009 more than 1 in 4 law students received some form of merit scholarship.¹⁶⁰

While merit scholarships can serve useful ends, they also have negative implications when used simply as a strategic tool to affect rankings. Most significantly, the use of precious scholarship money to attract students with high LSAT scores and GPAs may diminish the pool of money available for other uses, including resource-intensive educational programs and providing need-based

¹⁵⁶ See Daniel J. H. Greenwood, *Market Irrationality in the Law School ‘Arms Race’*, HUFFINGTON POST (May 6, 2011 5:57 PM), http://www.huffingtonpost.com/daniel-j-h-greenwood/market-irrationality-in-t_b_856400.html. The end result is that “schools feel coerced to spend ever greater sums on whatever [U.S. News] measures just to stay in the same place.” *Id.*

¹⁵⁷ Sauder & Espeland, *supra* note 135, at 10.

¹⁵⁸ *Id.* at 11 (citing Klein & Hamilton, *supra* note 142). The Klein and Hamilton report found that variation in LSAT scores actually accounts for 90% of rank variation, despite the fact that median LSAT scores only comprise 12.5% of USN’s criteria. *Id.*

¹⁵⁹ See David Segal, *Law Students Lose the Grant Game as Schools Win*, N.Y. TIMES, May 1, 2011, at BU1, available at http://www.nytimes.com/2011/05/01/business/law-school-grants.html?_r=0.

¹⁶⁰ *Id.*

scholarships to qualified but financially disadvantaged individuals.¹⁶¹ Indeed, although the trend is not uniformly present at every school, as an overall nationwide matter, the number of need-based scholarships has decreased substantially in the last five years while at the same time the number of merit-based scholarships has increased significantly.¹⁶²

In addition, some law schools have been less than transparent about the conditions attached to their merit scholarships, which can lead to confusion and frustration from students who receive a generous scholarship package their first year only to find the scholarship eliminated when they fail to satisfy a certain GPA threshold.¹⁶³ According to a recent report, the average retention rate for scholarships among the 140 ABA-accredited law schools was 69%, while eight law schools had retention rates of less than 40%.¹⁶⁴

Post-Graduate Hiring: The second example of law schools redistributing resources in response to the USN rankings is the hiring of recent graduates into temporary positions for the purpose of boosting graduate employment statistics.¹⁶⁵ As with merit scholarships, there is nothing categorically wrong with schools helping their graduates pursue post-graduation work they might not otherwise be able to pursue. Some of the positions funded by law school support commendably enable new graduates to develop significant skills and can lead to full-time paid employment in the longer run. But other positions are less substantive and less

¹⁶¹ See Jeffrey Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 IND. L.J. 229, 240-41 (2006).

¹⁶² See Segal, *supra* note 159.

¹⁶³ *Id.*

¹⁶⁴ Debra Cassens Weiss, *Which Law Schools Were Most Likely to Yank Merit-Based Scholarships?* A.B.A. J. (July 8, 2013, 4:45 AM), http://www.abajournal.com/news/article/which_law_schools_were_most_likely_to_yank_merit-based_scholarships (citing Jerome M. Organ, *Better Understanding the Scope of Conditional Scholarship Programs Among American Law Schools* (Soc. Sci. Research Network, June 23, 2013), <http://ssrn.com/abstract=2288915>).

¹⁶⁵ See Stake, *supra* note 161, at 241.

likely to yield long-term employment.¹⁶⁶ Although law schools typically describe such hiring practices as designed to smooth a graduate's transition into the working world, these positions also provide a significant benefit to the law school by potentially boosting the school's USN ranking.¹⁶⁷

Critics are concerned that such hiring tactics are misleading to prospective law students because they artificially boost overall employment figures and create the impression that the school's job prospects are stronger than they really are.¹⁶⁸ More fundamentally, law schools that hire their graduates to improve their USN rankings might well not be addressing adequately the fundamental problems in training and experience needed for graduates to have successful careers in today's legal market.¹⁶⁹ At a minimum, using existing law school resources to fund these types of jobs can divert those funds from being used to address more fundamental issues, impeding the innovations discussed elsewhere in this Report.

B. ABA Accreditation Requirements

A second impediment to innovation is the ABA's Law School Accreditation Standards as they are presently constituted. The Standards set forth the requirements a law school must meet to obtain ABA approval and are meant to be "minimum requirements designed, developed, and implemented for the purpose of advancing the basic goal of providing a sound program of legal education."¹⁷⁰ The Standards are comprehensive, addressing nearly all elements of law school, including its organization and administration, academic programs, faculty size and qualifications, admissions and student services, facilities, and information

¹⁶⁶ See Lincoln Caplan, *An Existential Crisis for Law Schools*, N.Y. TIMES, July 15, 2012, at SR10, available at <http://www.nytimes.com/2012/07/15/opinion/sunday/an-existential-crisis-for-law-schools.html>.

¹⁶⁷ Weissmann, *supra* note 8.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ AM. BAR ASS'N, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, 2013-2014 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, at ix (2013) [hereinafter ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS].

resources.¹⁷¹ The Standards are very granular. For example, students must successfully complete 58,000 minutes of instruction time, at least 45,000 of which must be in the classroom.¹⁷² Schools must have a sufficient number of full-time faculty, determined by considering the student-to-faculty ratio, the nature of the academic program, and other opportunities, such as scholarly research.¹⁷³ Law school libraries also must meet certain standards of resources, access, and centrality.¹⁷⁴

The Standards' principal function is to ensure law schools provide a minimum level of education to their students.¹⁷⁵ In addition, the ABA Standards promote important values in legal education, including reductions in student-to-faculty ratios and an expansion of clinical opportunities. Law school diversity also has undoubtedly benefited from the ABA's affirmative action plan and disability discrimination prohibitions, and an expansion of clinical opportunities.¹⁷⁶

But because they impose rigid requirements largely on law school "inputs"—requiring particular types of teachers to teach particular types of classes in particular settings covering particular subjects while maintaining particular types of facilities¹⁷⁷—the Standards also serve as a barrier to innovation, particularly in a time of rapid and fundamental change. The requirements are "one size fits all," and

¹⁷¹ *Id.*

¹⁷² *Id.* at 24. Students may obtain 13,000 minutes of instruction time through, for example, credited internships or independent studies. *Id.*

¹⁷³ *Id.* at 31-32. Each school may determine how many full-time faculty are required by the Standards by adhering to the strict Interpretations set forth in Interpretation 402-1. *See id.* at 32.

¹⁷⁴ *Id.* at 45.

¹⁷⁵ Nicola A. Boothe-Perry, *Standard Lawyer Behavior? Professionalism as an Essential Standard for ABA Accreditation*, 42 N.M. L. REV. 33, 48 (2012).

¹⁷⁶ *Id.*

¹⁷⁷ ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: 43-44 (2007).

as one commentator has noted, they “all but prohibit[] the law-school equivalent of the Honda Civic—a low-cost model that delivers.”¹⁷⁸

Many have criticized the substance of the Standards, and a full cataloguing of these issues is beyond the scope of this Report.¹⁷⁹ Perhaps the most important criticism for our purposes is that the Standards do not require sufficient skills training and inhibit curriculum innovation and experimentation. Standard 302(a)(3) requires only “one rigorous writing experience in the first year and . . . one additional rigorous writing experience after the first year.”¹⁸⁰ Given the importance of effective writing and research skills in a lawyer’s career, some suggest encouraging more writing throughout the law school curriculum, including, potentially, in the core first-year courses, would better prepare law students for legal practice.¹⁸¹ Similarly, Standard 302(a)(4), which governs “other professional skills generally regarded as necessary for effective and responsible participation in the legal profession,”¹⁸² has been interpreted to require one credit hour of skills training. Many commenters believe that the Standards should mandate a much higher level of practical skills training.¹⁸³ The Standards also impede external learning opportunities by

¹⁷⁸ David Segal, *For Law Schools, a Price to Play the A.B.A.’s Way*, N.Y. TIMES, Dec. 18, 2011, at BU1; see also David Barnhizer, *Redesigning the American Law School*, 2010 MICH. ST. L. REV. 249, 270 (calling for “experimentation with a variety of educational strategies and institutional forms” in law schools); Newton, *supra* note 12, at 71-72; Nancy B. Rapoport, *Eating Our Cake and Having It Too: Why Real Change Is So Difficult in Law Schools*, 81 IND. L.J. 359, 365-66 (2006); Larry E. Ribstein, *Practicing Theory: Legal Education for the Twenty-First Century*, 96 IOWA L. REV. 1649, 1674-75 (2011); Peter J. Kalis, *No Lawyer Left Behind*, AM. LAW., July/Aug. 2012, at 45.

¹⁷⁹ By way of example only, some criticize Standards 404(a)(1) and (2), which require full-time law professors to engage in “research and scholarship” in addition to teaching activities, for contributing to the high cost of law school. The Standards also have the adverse effect of precluding law schools from hiring full-time professors who are interested in skills training. See Newton, *supra* note 11, at 128. Standard 601, which mandates each law school have a physical library, is often criticized as out of date and for contributing to the cost of law school.

¹⁸⁰ ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, *supra* note 170, at 21 (Standard 302(a)(3)).

¹⁸¹ See e.g., Newton, *supra* note 11, at 99.

¹⁸² ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, *supra* note 170, at 21 (Standard 302(a)(4)).

¹⁸³ In a recent example of this effort, the Clinical Legal Education Association has proposed that Standard 302(a)(4) be amended to require students to complete 15 semester credit hours in

precluding law students from working for compensation and credit,¹⁸⁴ and limiting full-time students to 20 hours of work per week.¹⁸⁵

In response to these and other criticisms, the ABA formed the Standards Review Committee (the “SRC”) to review and propose amendments to the accreditation standards. In July 2013, the SRC outlined proposed revisions to the ABA Standards in a Memorandum to the ABA Council of the Section of Legal Education and Admissions to the Bar.¹⁸⁶ The proposed revisions would appear to increase the flexibility of law schools, and include:

- Amending Chapter 3, “Program of Legal Education,” to provide law schools some more flexibility in identifying outcomes consistent with their respective missions, while avoiding unnecessary costs.
- Requiring six credits of experiential coursework as a requirement for the J.D. degree.
- Permitting the number of credit hours of distance courses students can take to rise to 15 from 12 and eliminating the four-credit limitation on the number of distance credits a student can take in one semester.

practice-based, experiential courses such as clinics and skills simulation courses. Mark Hansen, *Clinical Law Profs Solicit ABA Legal Ed Council to Require 15 Credit Hours in Practice-Based Courses*, A.B.A. J. (July 2, 2013, 3:56 PM) http://www.abajournal.com/news/article/CLEA_15_credit_hours_accreditation_aba_section/ (citing CLINICAL LEGAL EDUC. ASS’N., *Comment on Draft Standard 303(a) (3) & Proposal for Amendment to Existing Standard 302(a) (4) to Require 15 Credits in Experiential Courses* (July 1, 2013), available at <http://cleaweb.org/Resources/Documents/2013-01-07%20CLEA%2015%20credits.pdf>).

¹⁸⁴ See ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, *supra* note 170, at 27 (Interpretation 305-3).

¹⁸⁵ See *id.* at 24 (Standard 304(f)) (“A student may not be employed more than 20 hours per week in any week in which the student is enrolled in more than twelve class hours.”). These standards also prevent students from taking it upon themselves to cut the long-term cost of attending law school by earning money to pay part of their living expenses rather than borrowing to do so.

¹⁸⁶ Memorandum from Jeffrey E. Lewis, Standards Review Comm. Chair, to Council of the Section of Legal Education and Admissions to the Bar to (July 24, 2013), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/august_2013_open_session/2013_src_memo%20to_council_re_ch%201_%203_%204_and%20s203_b_and_s603_d.authcheckdam.pdf.

- Proposing two alternatives to the requirement for tenure, or comparable security, for all full-time faculty members who are not clinical professors or legal writing instructors. One alternative would require a “form of job security short of tenure” for full-time faculty.¹⁸⁷ The second would not require any job security so long as “schools attract and retain full-time faculty and protect ‘academic freedom.’”¹⁸⁸
- Removing limitations on a faculty member’s outside professional interests, and replacing an emphasis on “scholarly research and writing” with “scholarship.”¹⁸⁹

The Council approved for notice the SRC’s proposals at its meeting held on August 8-9, 2013.¹⁹⁰ Even if the ABA’s House of Delegates formally adopts the report early next year, the final decision regarding changes rests with the ABA’s Council of the Section of Legal Education and Admissions to the Bar, which has authority over accreditation and is independent of the rest of the ABA due to U.S. Department of Education rules.

C. The Bar Exam

The requirement that lawyers pass a state-specific bar examination testing a broad range of state and federal law also has operated as an impediment to innovation in legal education and the career development of new lawyers.

¹⁸⁷ Catherine Ho, *An End To Tenure at Law Schools?*, WASH. POST, Aug. 18, 2013, available at http://articles.washingtonpost.com/2013-08-18/business/41423544_1_law-schools-law-professors-faculty.

¹⁸⁸ *Id.*

¹⁸⁹ Lewis, *supra* note 186, at 56.

¹⁹⁰ See Memorandum from Solomon Oliver, Jr., Chairperson & Barry A. Currier, Managing Dir. of Accreditation & Legal Educ., Am. Bar Ass’n, Section of Legal Education & Admissions to the Bar to Interested Persons and Entities (Sept. 6, 2013), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20130906_notice_comment_chs_1_3_4_s203b_s603d.authcheckdam.pdf.

All states except Wisconsin require prospective lawyers to pass a bar examination prior to practicing.¹⁹¹ The bar exam is generally a two-day endeavor, with one day dedicated to a standardized national exam written by the National Conference of Bar Examiners (NCBE) and a second day dedicated to state-specific laws.¹⁹²

Each state's bar exam is slightly different. Some states, such as New York, test knowledge on numerous state-specific topics.¹⁹³ Other states, such as Missouri, have eliminated state-specific examinations and only require passage of the national exams.¹⁹⁴ Maryland, meanwhile, has an open-book essay examination for lawyers seeking reciprocity in the state.¹⁹⁵ A bar exam serves some potentially important purposes. Perhaps the most widely recognized justification for a bar exam is consumer protection. Ideally, it weeds out those who are not minimally competent to serve clients.¹⁹⁶

¹⁹¹ *Bar Admissions Basic Overview*, AM. BAR. ASS'N, http://www.americanbar.org/groups/legal_education/resources/bar_admissions/basic_overview.html (last visited Nov. 4, 2013). Wisconsin has a "diploma privilege" that allows students who attend law school in Wisconsin to be admitted to practice without taking a bar examination. Students are still required to pass a character and fitness application. See, e.g., *Requirements for Graduation & Bar Admission*, U. WIS. L. SCH., <http://www.law.wisc.edu/current/rtf/04.0.html> (last visited Nov. 4, 2013).

¹⁹² *Id.*

¹⁹³ *The New York State Bar Examination, New York Local Section*, N.Y. ST. BD. OF L. EXAMINERS, <http://www.nybarexam.org/TheBar/TheBar.htm#descrip> (last visited Nov. 4, 2013).

¹⁹⁴ *About the Bar Exam*, MO. BD. OF LAW EXAMINERS, <https://www.mble.org/appinfo.action?id=1> (last visited Nov. 4, 2013).

¹⁹⁵ Sara Kelley, *Developments in Legal Education: The End of the Traditional Bar Exam?*, ALL-SIS NEWSLETTER, Spring 2005, at 9, available at <http://www.aallnet.org/sections/all/resources/Newsletter/archives/24-2.pdf>.

¹⁹⁶ Daniel R. Hansen, *Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 CASE W. RES. L. REV. 1191, 1205 (1995). At the beginning of the twenty-first century, president of the NCBE Erica Moeser supported proposals to raise bar passage standards in light of declining competition to enter law school: "We now have people spilling out of law schools who may not have made the bottom rung several years ago. . . . The hard work of the board of law examiners is drawing the line on what a candidate should know before you give them this powerful tool of a law license." William C. Kidder, *The Bar Examination and the Dream Deferred: A Critical Analysis of the MBE, Social Closure, and Racial and Ethnic Stratification*, 29 LAW & SOC. INQUIRY 547, 551 (2004).

A bar exam also requires applicants to learn the breadth of state and federal law.¹⁹⁷ The knowledge garnered from studying for the bar is then evaluated by a neutral third party, an opportunity not usually available to students during their law school experience.¹⁹⁸

But bar exams are also subject to significant criticism. In particular, critics argue that they are antiquated and fail to test the relevant skills needed to be a lawyer in the twenty-first century. First, the exams ask questions that can easily be answered through legal research. Second, the exams test an applicant's memory about information that will quickly be forgotten after the exam. Third, most lawyers specialize in their practices, rendering the majority of the information learned for a bar exam irrelevant. (Criminal lawyers have little use for the intricacies of state commercial paper law; corporate deal makers do not need to know state-specific civil procedure.) Finally, and perhaps most importantly in an age requiring graduates to be practice ready, bar exams test few lawyering skills.¹⁹⁹

Moreover, state-by-state bar examination and admission requirements significantly limit lawyer mobility at a time when the practice of law is increasingly national and global.²⁰⁰ One scholar comments that state-by-state bar exams are "a serious impediment to the growing, national legal market and the ability of lawyers to move freely and fairly within that market."²⁰¹ Erica Moeser, president of the NCBE, explained that those using legal services would benefit by employing

¹⁹⁷ Hansen, *supra* note 196, at 1212.

¹⁹⁸ See Denise Riebe, *A Bar Review for Law Schools: Getting Students on Board to Pass Their Bar Exams*, 45 BRANDEIS L.J. 269, 274 (2007).

¹⁹⁹ See generally COMM. ON LEGAL EDUC. & ADMISSION TO THE BAR, N.Y.C. BAR ASS'N, REPORT ON ADMISSION TO THE BAR IN NEW YORK IN THE TWENTY FIRST CENTURY—A BLUEPRINT FOR REFORM (1992).

²⁰⁰ See, e.g., Rachel M. Zahorsky, *Several States Move Closer to National Bar Exam*, A.B.A. J. (Nov. 23, 2009, 1:49 PM), http://www.abajournal.com/news/article/several_states_move_closer_to_national_bar_exam. Recognizing the negative impact of geographical limits on law practice, the Bar of Montreal is moving toward permitting interprovincial mobility of lawyers.

²⁰¹ Michael J. Thomas, *The American Lawyer's Next Hurdle: The State-Based Bar Examination Systems*, 24 J. LEGAL PROF. 235, 240-41 (2000).

attorneys who could practice in multiple states.²⁰² While states may have an interest in testing competencies in some core areas unique to their jurisdictions, such as the organization of their court system, many core competencies could be tested on a less state-specific basis than at present.

The New York State Board of Law Examiners is considering changes to the content, format, and delivery of the bar exam in response to these and other concerns. They are evaluating methods for testing lawyering skills in a multiple-choice format, written communication, and legal writing in the context of particular subject matter. They are updating the subjects covered by the bar exam to reflect the needs of the profession, dropping UCC Article 3 (Negotiable Instruments) in July 2014 and adding Administrative Law in February 2015. They have also posted online a Content Outline, which focuses on the legal concepts aspiring lawyers need to know and identifies the ways in which New York law differs from common law principles or the prevailing view.

There are other important innovations in bar examination techniques which New York has not yet adopted. Some appear to have significant potential to rectify some of the shortcomings identified above. For instance, consideration has been given to testing new skills not covered by the bar exam currently, such as skills related to legal research, interviewing, and legal writing in a subject matter context. In addition, thirteen jurisdictions have now adopted the Uniform Bar Exam (“UBE”), which is comprised of the Multistate Bar Exam, Multistate Performance Test and Multistate Essay Exam portions. The score of the UBE is portable and may be used by the applicant to gain admission to practice in a state different from the test-taking state, provided the score achieved satisfies the passing standard of the importing jurisdiction.

²⁰² Maureen Milford, *Uniform Bar Exam for Lawyers Gains Support*, USA TODAY, Nov. 22, 2009, available at http://usatoday30.usatoday.com/news/nation/2009-11-22-bar-exam_N.htm.

D. Limits on Outside Investment

A fourth impediment to innovation in the delivery of legal services—particularly to the middle class at affordable prices—is the limit on non-lawyer investment in law firms. The ethics rules of all 50 states preclude non-lawyers from investing in law firms.²⁰³ The precise formulation of the rule varies among jurisdictions.²⁰⁴ The underlying value sought to be protected is the preservation of the professional independence of lawyers from the demands of outside investors, although some have criticized the rules' protectionist effects.²⁰⁵

Despite the ubiquity of prohibitions on fee-sharing and non-lawyer partnership throughout the United States, there are a number of common law jurisdictions that take a different approach. Within the United States, the District of Columbia permits the practice of law in an “organization in which a financial interest is held or managerial authority is exercised by an individual non-lawyer who performs professional services which assist the organization in providing legal services to clients.”²⁰⁶ However, these entities are subject to a number of

²⁰³ Steven Benathen, *Non-Lawyers Owning Law Firms*, ILL. BUS. L.J. (Oct. 21 2012, 7:47 PM), <http://www.law.illinois.edu/bljournal/post/2012/10/21/Non-Lawyers-Owning-Law-Firms.aspx>. Specifically, under Model Rule 5.4(a), “a lawyer or law firm shall not share legal fees with a non-lawyer,” subject to closely circumscribed exceptions that include payments to the estate of a deceased lawyer, retirement plan payments with a profit-sharing component, and the sharing of legal fees with a non-profit organization that facilitated the retention of the lawyer in that matter. Model Rule 5.4(b) goes on to specifically prohibit the formation of a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law, and 5.4(c) and (d) further reinforce the Rule’s core policy that financial contributions from non-lawyers shall not permit that non-lawyer to direct or control a lawyer’s professional judgment. MODEL RULES OF PROF’L CONDUCT R. 5.4 (1983), available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_4_professional_independence_of_a_lawyer.html.

²⁰⁴ See, e.g., California Rules of Professional Conduct Rule 1-320(C), which specifically prohibits gifts to the press in return for publicity; New York Rules of Professional Conduct Rule 5.4(a), which contains a list of exceptions to the fee-sharing prohibition that is substantially the same as that under Model Rule 5.4(a) but omits an exception for the sharing of fees with a non-profit organization.

²⁰⁵ Robert C. Weber, *Law Firms Should Spurn Outside Investments*, BLOOMBERG BUS. WK. MGMT., Sept. 20, 2011.

²⁰⁶ D.C. RULES OF PROF’L CONDUCT R. 5.4(b) (2007), available at http://www.dcbar.org/for_lawyers/ethics/legal_ethics/rules_of_professional_conduct/amended_rules/rule_five/rule05_04.cf m.

qualifications designed to “impose traditional ethical requirements.”²⁰⁷ Most notably, the sole purpose of the organization must be the provision of legal services, and non-lawyer investors or managers are bound by the Rules of Professional Conduct applicable to lawyers.²⁰⁸ These added restrictions effectively impose the same restrictions as jurisdictions that prohibit non-lawyer investment and fee-sharing.

The United Kingdom recently passed legislation that liberalizes the practice of law in an effort to expand access to legal services. Lifting centuries-old restrictions on the management, ownership, and financing of law firms,²⁰⁹ the Legal Services Act of 2007 authorized alternative business structures (“ABSs”), in which lawyers can work in mixed-practice organizations that have non-lawyers in professional, management, or ownership roles.²¹⁰ Nicknamed the “Tesco Law” (after a large U.K. chain of supermarkets) because “it is meant to make buying legal services as easy as buying a tin of beans,” the Legal Services Act allows companies to provide legal services²¹¹ alongside businesses such as supermarkets and banks.²¹² The Legal Services Act also allows non-lawyers to invest in and own legal businesses, and allows law firms to access capital markets through stock markets and other investments.²¹³ The first of the new ABSs “will be conveyancer-

²⁰⁷ *Id.* at R. 5.4, Cmt 4.

²⁰⁸ *Id.* at R. 5.4(b)(1), (2).

²⁰⁹ *Supermarket “Law Shops” to Sell Legal Services*, BBC NEWS (Oct. 6, 2011), <http://www.bbc.co.uk/news/uk-15187154>.

²¹⁰ Up to 25% of the managers at ABSs can be non-lawyers. E. Leigh Dance, *The U.K. Legal Services Act: What Impacts Loom for Global Law Firm Competition?*, 34 LAW PRAC. 35 (2008), available at http://www.americanbar.org/publications/law_practice_home/law_practice_archive/lpm_magazine_articles_v34_is5_pg35.html.

²¹¹ Caroline Binham & Jane Croft, *Law Society Present ‘Tesco Law,’* FIN. TIMES, Aug. 4, 2011, available at <http://www.ft.com/intl/cms/s/0/8b9f0932-bebc-11e0-a36b-00144feabdc0.html#axzz2Uu45Vau1>.

²¹² *‘Tesco Law’ Allows Legal Services in Supermarkets*, BBC NEWS (Mar. 28, 2012), <http://www.bbc.co.uk/news/uk-17538006>.

²¹³ Neil Rose, *‘Tesco Law’—Not the Big Bang, but It Will Change the Face of Legal Services*, GUARDIAN, Mar. 25, 2011, available at <http://www.guardian.co.uk/law/2011/mar/25/tesco-law-alternative-business-structures>; see also Binham & Croft, *supra* note 211.

led, covering services such as property law and probate.”²¹⁴ The first ABS licenses were issued in March 2012.²¹⁵ As of June 2013, there were 152 ABSs licensed to provide legal services in England and Wales.²¹⁶ Since the innovation is recent, little information is available as to whether the Act is meeting the objective of expanding access to legal services.

* * *

Findings and Recommendations

As described above, there are significant impediments to innovation in new lawyer preparation and implementation of the new lawyer preparation protocols we have recommended in this Report. The Task Force urges that steps be taken to address these impediments with a goal of improving flexibility in new lawyer training, in the following ways.

Rankings

The Task Force recognizes that the *U.S. News & World Report* rankings are unlikely to disappear or change significantly in the immediate future. Ratings and peer reviews are popular in our culture and they are a very successful commercial venture. Nonetheless, recognizing the complexities of the issue, the Task Force believes it is critical for law schools, their deans, and law school trustees to evaluate the effects of their emphasis and focus which they place on USN rankings and to reexamine their responses to the incentives the rankings generate.

²¹⁴ Supermarket “Law Shops” To Sell Legal Services, *supra* note 209.

²¹⁵ Neil Rose, *Wait for ABSs Is Over: Tesco Law is Here*, GUARDIAN, Apr. 2, 2012, available at <http://www.guardian.co.uk/law/2012/apr/02/abs-tesco-law-here>.

²¹⁶ Tim Gavell, *Blackhurst Budd Status Switch*, GAZETTE (BLACKPOOL), June 25, 2013, <http://www.blackpoolgazette.co.uk/news/business/local-business/blackhurst-budd-status-switch-1-5796242>.

While the focus in the U.K. has been on the ABS structure and the potential for retail mass market legal services, in Australia at least one large commercial firm has listed its shares on a stock exchange. Slater & Gordon, an Australian firm, issued shares in an IPO in 2007, and then deployed the capital raised in the equity offering to make six strategic acquisitions over the course of a year. *Legal Advice: Should You Buy Shares in a Law Firm?*, ECONOMIST, Aug. 21, 2008, available at <http://www.economist.com/node/11967043>.

In particular, while there may be good reasons to provide merit scholarships to qualifying students, law schools that do so primarily to increase their USN ranking do themselves and their students a disservice. There is little evidence that the programs bring worthy candidates into the applicant pool or even change the applicants' ultimate decision on which law school to attend. There has been too little focus on the costs imposed on current and future students by this practice as the merit scholarships are supported primarily through tuition charges, which have increased at levels far outstripping inflation in recent years. Moreover, to the extent that law schools continue to extend merit scholarships, they should be even more transparent about the strings attached. Merit scholarships often are conditional, and law students attracted to certain schools by a low first-year cost often find themselves losing their scholarship after the 1L curve affects their GPA.

The Task Force also urges continued weighing of the costs and benefits of tuition-supported post-graduate jobs. Some of these supported positions are a commendable way to facilitate the launch of a career in a difficult economy, such as fellowships that support public interest opportunities or in post-graduate incubator programs that teach skills valuable and necessary for future practice. Funding and resources for positions of this type should be expanded both to help law students begin their careers and to begin to address the "justice gap." But other law-school-supported positions, particularly post-graduate "research assistant" jobs which have a limited term tracking the reporting period for the USN graduate employment statistics appear to do little except increase overall costs. The Task Force urges law schools to weigh the impact of these costs on tuition for all students against the benefits of the programs.

Finally, there should be more attention to the development of alternative, more meaningful metrics to inform the choices of prospective law students. The exact alternative structure is beyond the scope of our work, but we urge law schools and others to consider new ideas.

ABA Law School Standards

As described above, the Task Force believes that the traditional casebook method of law school instruction standing alone is insufficiently geared toward meeting the needs of new lawyer preparation. The ABA Standards, with their focus on law school inputs, not on the outcomes generated by the instruction, are among the causes of this inflexible system. As noted above, we have called for a period of continuing and additional experimentation, allowing law schools to test different structures and innovative ideas for addressing the different needs of their students and their students' potential future clients. The experimentation cannot occur without a general relaxation of the Standards governing many aspects of the law school experience, or at least a program of temporary variances to permit the experiments.

The Task Force also acknowledges recent efforts by the ABA Council of the Section of Legal Education and Admissions to the Bar to relax the requirements. Significant process remains within the ABA before the reforms proposed can be enacted. We endorse those changes that are consistent with our recommendations and urge the ABA to more expeditiously bring them to enactment. Ultimately, we believe that the ABA Standards should be reformed to permit law schools to have flexibility in designing their programs of instruction to provide the fundamental attributes and experiences identified in Section III above and, importantly, to be flexible enough to encourage ongoing innovation.

The Bar Exam

The Task Force also believes that the New York State Board of Law Examiners and the New York Court of Appeals, in cooperation with the larger legal community, should consider a number of specific proposals to reform the bar examination and new-lawyer accreditation process. These include:

- Significant efforts to reduce the prolonged period between an applicant taking the New York bar examination and, if successful, gaining admission to the bar. Members of the legal community have identified this gap as a serious obstacle for new lawyers who graduate from law

school without securing post-graduation employment, because many smaller and some institutional employer firms will not hire new lawyers until they are admitted to practice in New York. The Task Force notes that this prolonged delay also appears aberrational when compared to many other states, which frontload the character and fitness portion of the accreditation process.

- Revisions to the New York-specific component of the bar examination to test both substantive law and legal practice skills such as complex problem-solving, project management, and exercising professional judgment. As the 1992 NYSBA Report observed, it may be beneficial to “eliminate and replace[], at least in part,” certain areas of the MBE and MPRE in favor of more innovative practice-oriented testing.
- Expanded public access to bar examination preparation materials, including past examination questions, essays, and model answers, to decrease the cost of bar preparation. We note in particular concerns that the current bar examination is an impediment to innovation in legal education, because students who cannot afford (and do not have an employer to pay for) a bar preparation course may be less likely to take practice-oriented courses in law school in order to focus on courses geared toward bar examination preparation.
- Further reduction in the number of substantive areas of law tested on the New York law sections of the bar examination. Testing applicants on breadth of knowledge of New York law rather than depth does not reflect the practical realities of legal practice. In particular, the bar examination’s focus on rote memorization does not benefit any identifiable constituency. Alternative approaches, such as essays on New York law where applicants receive and must interpret the relevant statutes or testing where applicants can choose to focus on specific areas of law, with limited licenses, should be considered.

The City Bar will convene a working group to evaluate these and other potential changes to the way New York State tests the qualifications of those seeking to be licensed to practice law in the state.

Limits on Outside Investment

Rules limiting non-lawyer investment in law firms are an impediment to innovation in the provision of legal services, and to the creation of positions and experiences for new lawyers. In particular, access to outside capital could be a game-changing development in providing legal advice to the moderate- and low-income individuals who currently have unmet legal needs. Accordingly, the Task Force recommends that the restrictions on outside investment in law practices be reexamined, with due regard to the underlying values of lawyer independence that gave rise to the restrictions.²¹⁷

Particular attention should be given to the developments in the U.K. Although the U.K. Legal Services Act has the potential to vastly expand the availability of legal services, it is too early to determine its effects. In 2012, the U.K. Legal Services Board “admitted that the [Legal Services Act] had not resulted in the expected sweeping changes to the profession,”²¹⁸ that “levels of access to legal

²¹⁷ Given the increasing importance of specialization in the profession, there also is a need to reexamine the ethical rules limiting a lawyer’s ability to hold him or herself out as a specialist. New York’s rule, for example, prohibits a lawyer or law firm from stating that he or she “is a specialist or specialized in a particular field of law” unless the lawyer has been certified as a “specialist” by certain organizations and accompanies the statement with certain cautionary language explicitly conveying that the certification “does not necessarily indicate greater competence than other attorneys experienced in this field of law.” N.Y. RULES OF PROF’L CONDUCT 7.4. Rules like this, which have the important function of protecting consumers in the absence of specialization standards, may inhibit the dissemination of truthful information regarding bona fide specialization by lawyers at a time when finding a lawyer with knowledge of a particular field is increasingly important to clients. The Task Force urges these rules to be reconsidered in light of the increasing specialization in legal training and the importance of the ability of lawyers to market their expertise, while also maintaining the consumer-protection values underlying the current rule.

²¹⁸ Lucy Burton, *LSA Prompts Strategy Rethink at Quarter of Firms, Says Survey*, THE LAWYER, (May 31, 2013), <http://www.thelawyer.com/news-and-analysis/the-lawyer-management/abs-news-and-analysis/lsa-prompts-strategy-rethink-at-quarter-of-firms-says-survey/3005360.article>.

services has at best remained constant” since 2006,²¹⁹ and that it was too early to assess the impact of the Legal Services Act on investors.²²⁰ Should access to outside capital in the U.K. unlock these hoped-for economies of scale and support the development of enabling the delivery of quality legal services for relatively routine matters at prices and in locations accessible to ordinary consumers, serious consideration should be given to implementing similar reforms in the United States while maintaining controls sufficient to ensure that lawyers preserve their ability to provide independent, professional advice.

²¹⁹ LEGAL SERVS. BD., MARKET IMPACTS OF THE LEGAL SERVICES ACT 2007-BASELINE REPORT (FINAL) ¶ 1.22 (2012), *available at* <https://research.legalservicesboard.org.uk/wp-content/media/Impacts-of-the-LSA-2012-Final-baseline-report.pdf>.

²²⁰ *Id.* ¶ 1.32.

V.
**DESPITE THE CHALLENGES FACED BY NEW LAWYERS, THERE REMAINS A
COMPELLING UNMET NEED FOR LEGAL REPRESENTATION IN AMERICA,
ESPECIALLY AMONG PEOPLE OF MODERATE MEANS**

The changes affecting the legal profession have not diminished the fundamental need for legal advice. Indeed, the Task Force believes the perceived oversupply of lawyers is largely illusory.

Past studies have shown that Americans have significant legal needs for which they fail to obtain legal advice. While these studies show that both moderate-income and low-income families have unmet legal needs, the groups are underserved for different reasons. Individuals of moderate means typically must pay for legal assistance, but often do not do so because of limited resources, questions about value and quality, fear of runaway costs, and search difficulties. On the other hand, private market legal services are simply not affordable for the poor. This community is reliant on public sources or private philanthropy when seeking legal advice. When funding for civil legal services diminishes, poor Americans too often are left without counsel even when confronted with very high-impact legal issues.²²¹

This Section of the Report begins by describing the unmet legal needs of persons of moderate means and the significant opportunity that this market could provide for the supposed oversupply of lawyers within our society. It then discusses prior attempts to address this market and concludes by announcing a City Bar-sponsored pilot program that will seek to develop a sustainable commercial business model to provide competent legal services to such individuals at affordable rates.

²²¹ While our focus in this Report is on the unmet legal needs of persons of moderate means, the Task Force acknowledges the unfortunate continued existence of this “justice gap” for low-income individuals, particularly in these difficult economic times, and calls on all members of the profession to take steps—financially and in-kind—to address it. The Task Force strongly supports New York Chief Judge Lippman’s focus on this important issue and his attempts to close the gap.

A. The Legal Needs of Persons of Moderate Means

The most comprehensive study of the legal needs of persons of moderate means is the 1994 *ABA Consortium on Legal Services and the Public, Legal Needs and Civil Justice: A Survey of Americans: Major Findings from the Comprehensive Legal Needs Study* (the “ABA Survey”).²²² The ABA Survey found that 52% of moderate-income households²²³ faced at least one legal need.²²⁴ These households had legal needs with respect to personal finances, consumer issues, housing and property matters, community issues, and employment, among others.²²⁵ Our research confirms that the need for legal services for persons of moderate means, if anything, has increased since the 1994 survey. Further, we found that persons in the middle class have developed meaningful legal needs in certain new areas since 1994, including immigration, privacy, and healthcare.

Even though middle-class households have legal needs, they usually do not seek a lawyer’s assistance in addressing them. According to the ABA Survey, nearly two-thirds of households with legal needs did not turn to the legal system. Middle-income households most frequently responded through self-help, with 42% of households reporting that they had handled legal matters on their own.²²⁶ A substantial number of respondents (about 25%) took no action at all or turned to non-legal advisors for assistance.

²²² AM. BAR. ASS’N, CONSORTIUM ON LEGAL SERVS. & THE PUBLIC, LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS: MAJOR FINDINGS FROM THE COMPREHENSIVE LEGAL NEEDS STUDY 1 (1994) [hereinafter ABA Survey], available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/legalneedstudy.authcheckdam.pdf>.

²²³ For purposes of the study, “moderate income households” were defined to include households with a combined annual income above 125% of the poverty threshold but below \$60,000.

²²⁴ The study found 27% of households with one legal need, 13% of households with two legal needs, 5% of households with three legal needs, 3% of households dealing with four legal needs, and 4% of households dealing with five or more legal needs. The proportion of households reporting more than one legal need did not vary significantly by region of the country or by whether the households were located in urban or rural areas.

²²⁵ ABA SURVEY, *supra* note 222, at 11.

²²⁶ *Id.*

Other surveys have reached similar conclusions. In a 2000 study, the Oregon State Bar found that low- and moderate-income respondents obtained legal representation for less than 20% of their legal needs.²²⁷ Similarly, in 1996, the Maryland State Bar Association's Moderate Income Access to Justice Advisory Task Force found that only 28% of Maryland's middle-class citizens contacted a lawyer when facing a legal problem.²²⁸

In the ABA Survey, middle-class households gave several reasons for not seeking legal assistance. The principal reasons were that the households did not identify their problem as a legal issue, thought a lawyer was unnecessary to resolve it, or did not believe a lawyer would be useful.²²⁹ Among respondents who recognized that they had an issue and thought a lawyer would help them resolve it, cost was the most common response for failing to engage an attorney.²³⁰

These results suggest significant opportunities for lawyers to serve the middle class. But middle-class households must first identify that their problems are

²²⁷ D. Michael Dale, *THE STATE OF ACCESS TO JUSTICE IN OREGON*, 29 (2000) [hereinafter OREGON REPORT].

²²⁸ Janet Stidman Eveleth, *Is Middle Class America Denied Access to Justice?*, 29 MD. B.J. 44, 45 (1996). Middle-class households were more likely to turn to a lawyer for some issues than others. According to the ABA Survey, middle-class households were most likely to seek lawyer involvement for family and domestic problems, will and estate issues, and housing matters. ABA SURVEY, *supra* note 222. Other surveys have corroborated those results. The Commission on Providing Access to Legal Services for Middle Income Consumers of the New York State Bar surveyed 600 New Yorkers with annual incomes between \$25,000 and \$95,000 and found that more than one-half of those who turned to the legal system did so for a will, inheritance or probate matter, or to buy or sell real estate. George C. Harris & Derek F. Foran, *The Ethics of Middle-Class Access to Legal Services and What We Can Learn from the Medical Profession's Shift to a Corporate Paradigm*, 70 FORDHAM L. REV. 775, 794 (2001) (citing N.Y. BAR ASS'N, *THE REPORT OF THE NEW YORK STATE BAR ASSOCIATION COMMISSION ON PROVIDING ACCESS TO LEGAL SERVICES FOR MIDDLE INCOME CONSUMERS* (1996)). Moderate-income individuals most frequently handle finances and consumer needs on their own and report taking no action at all on community and regional, or employment-related matters. ABA SURVEY, *supra* note 222 at 19-20.

²²⁹ ABA SURVEY, *supra* note 222, at 20-21.

²³⁰ *Id.* The Oregon State Bar survey reported similar results. 17% of respondents reported not seeking a lawyer because nothing could be done, 12% did not identify the issue as a legal problem, did not know where to get help, or thought obtaining advice would be too much hassle. 11% of respondents were worried about cost. OREGON REPORT, *supra* note 227, at 34.

legal ones and conclude that a lawyer would be useful in resolving them.²³¹ Then, the legal services must be readily accessible and available at an appropriate cost.²³²

B. Previous Attempts to Address Middle-Class Legal Needs

Many attempts have been made to create structures to respond to middle-class legal needs. These measures have included promoting access to legal information and professionals via the Internet, establishing group and pre-paid legal plans and efforts to eliminate systemic impediments to innovation in the delivery of affordable legal services. While some attempts—like online services, subscription legal plans, referral services, and franchise law firms—have been successful in limited circumstances, none has been entirely successful in providing a broad menu of services on a sustained basis.

1. Online Legal Information and Services

The middle class's most common response to a legal need is self-help. For example, a stunning 99% of tenants in the New York City Housing Court are unrepresented by counsel.²³³ In recent years, online resources have been made available to assist the unrepresented and help manage the process. For example, New York City and some other states have provided online access to court-related documents and guides that help non-lawyers navigate the legal process.²³⁴

²³¹ See Ann Juergens, *Valuing Small Firm and Solo Law Practice: Models for Expanding Service to Middle-Income Clients*, 39 WM. MITCHELL L. REV. 80 (2012); Nancy J. Moore, *Foreword to Symposium: Lawyering for the Middle Class*, 70 FORDHAM L. REV. 623, 627 (2001).

²³² See Gillian K. Hadfield, *The Cost of Law: Promoting Access to Justice Through the Corporate Practice of Law* (Univ. of S. Cal. Law, 2012), available at <http://works.bepress.com/cgi/viewcontent.cgi?article=1057&context=ghadfield>.

²³³ JONATHAN LIPPMAN ET AL., NEW YORK STATE COURTS ACCESS TO JUSTICE PROGRAM 2 (2010) available at http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2010report.pdf.

²³⁴ For example, New York's CourtHelp website, <http://www.nycourts.gov/courthelp>, provides information on the court system and the law, links to lawyer referral services, and do-it-yourself guides for filling out court forms. This service is particularly robust for family and housing law, areas in which large numbers of middle-income individuals proceed without counsel.

In addition, a number of Internet businesses, like LegalZoom, Rocket Lawyer, and Nolo Press, have emerged that provide inexpensive access to legal forms and step-by-step instructions that enable consumers to carry out work traditionally performed by an attorney.²³⁵ They offer templates for document preparation that enable consumers to draft documents such as wills or simple company incorporation forms. Because the templates are filled out by the consumer, not a lawyer, companies are able to charge inexpensive flat rates. Although the services have been subject to some criticism for lacking the nuance and individualized service that lawyers provide to clients, they have indisputably been useful to those who have no alternative.²³⁶

2. Subscription Legal Plans

Subscription legal plans (also called pre-paid legal insurance plans) are another approach to meeting middle-class legal needs that have gained some favor in recent years. In 2003, more than 4 million Americans were covered by individually pre-paid insurance plans.²³⁷ An additional 2.4 million purchased similar coverage through payroll deductions.

Some programs are similar to health insurance preferred provider plans in that members typically receive subsidized access to a network of lawyers for a monthly fee, with access to attorneys when a legal need arises, usually at no additional cost.²³⁸ Many plans limit benefits to advice and consultation by

²³⁵ See Jennifer Smith, *Rivalry Grows Among No-Frill Legal Services*, WALL ST. J., Dec. 3, 2012, <http://online.wsj.com/article/SB10001424127887323717004578155413493106962.html>; Carol J. Williams, *Another Sign of Tough Times*, L.A. TIMES, Mar. 10, 2009.

²³⁶ See, e.g., Tara Siegel Bernard, *In Using Software to Write a Will, a Lawyer Is Still Helpful*, N.Y. TIMES, Sept. 11, 2010, at B1.

²³⁷ Wayne Moore, *The Impact of Group and Prepaid Legal Services: Plans to Meet the Needs of Middle Income People* (Int'l Legal Aid Grp. Conference Paper, 2003), available at http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/Harvard_2003/Conference_Papers/The_Impact_of_Group_and_Prepaid_Legal_Services_part1.pdf.

²³⁸ See Judith L. Maute, *Pre-paid and Group Legal Services: Thirty Years After the Storm*, 70 FORDHAM L. REV. 915 (2001); Smith, *supra* note 235; Susan B. Garland, *The H.M.O. Approach to Choosing a Lawyer*, N.Y. TIMES, Jan. 11, 2004.

telephone, brief in-office consultations, and the preparation of simple documents, which can be sufficient to address simple problems or prevent a situation from reaching a legal crisis,²³⁹ often with any additional services available at a discounted rate.²⁴⁰ Plans are available from various companies,²⁴¹ and offer “some efficiencies to middle income consumers who do not otherwise have legal representation, by reducing the high costs of searching for a competent attorney willing to provide services at specified rates.”²⁴²

The plans are not without criticism. First, there are differences in quality among plans and providers. Second, some attorneys that have participated as providers question the utility of participation from the provider’s perspective, believing that insurance plans did not prove to be cost-effective ways for them to obtain new clients.²⁴³ Third, customers do not necessarily see legal advice as an ordinary monthly expense. Many subscribers drop their plans after one year of membership, suggesting that they did not find that the plan saved money or that they only utilized the plan to satisfy sporadic needs.²⁴⁴

Some unions provide group legal plans to their members as part of their benefits package. Some of these programs are well established and very effective. For example, the DC 37 Municipal Employees Legal Services plan provides its

²³⁹ AM. BAR ASS’N, COMM’N ON NONLAWYER PRACTICE, NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS: A REPORT WITH RECOMMENDATIONS (1995), *available at* http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/Non_Lawyer_Activity.authcheckdam.pdf.

²⁴⁰ N.Y. STATE BAR ASS’N, SPECIAL COMM. ON THE LAW GOVERNING FIRM STRUCTURE AND OPERATION, PRESERVING THE CORE VALUES OF THE AMERICAN LEGAL PROFESSION: THE PLACE OF MULTIDISCIPLINARY PRACTICE IN THE LAW GOVERNING LAWYERS § 3B (2000), *available at* <http://www.law.cornell.edu/ethics/mdp.htm>.

²⁴¹ A list of some companies offering prepaid plans is provided by the American Prepaid Legal Services Institute at http://www.aplsi.org/legal/legal_service_new.cfm.

²⁴² See Maute, *supra* note 238, at 917; Moore, *supra* note 231, at 627.

²⁴³ JERRY VAN HOY, FRANCHISE LAW FIRMS AND THE TRANSFORMATION OF PERSONAL LEGAL SERVICES 12 (1997).

²⁴⁴ Aaron Larson, *Prepaid Legal Services Plans*, EXPERTLAW (Jan. 2011), http://www.expertlaw.com/library/consumer/prepaid_legal.html; Moore, *supra* note 237, at 5. However, the drop rate was lower for plans sold directly by the plan provider, and higher for plans marketed using potentially controversial multi-level sales models.

members with free legal advice on a defined but broad menu of civil legal matters, including landlord-tenant disputes, consumer matters, matrimonial cases, family court issues, wills, property sales, and immigration issues. The plan, which employs 65 full-time lawyers in New York City, provides referrals for matters that fall outside the menu of covered services.

3. Legal Referral Services

In addition to subscription legal plans, people of moderate means can use legal referral services to find competent legal representation at affordable prices.²⁴⁵ For example, the New York City Bar Association Legal Referral Service provides the public with a free hotline staffed by attorneys and paralegals to provide referrals to a carefully vetted and prescreened list of local lawyers with expertise in particular areas of law. Attorneys receiving referrals must meet a minimum level of expertise before they are added to the referral list.²⁴⁶ The service receives more than 75,000 calls per year.

When a member of the public calls the Legal Referral Service hotline, a staff member conducts an initial screening interview to determine the precise legal issue and the type of attorney who will provide the most effective assistance.²⁴⁷ If the staff member determines that a lawyer is not necessary, or a referral is otherwise not appropriate, the staff member will offer other options to help resolve the caller's problem.

If the staff member determines that a referral is appropriate, he or she then provides the caller with contact information for a lawyer and the caller contacts the

²⁴⁵ To underscore that the Legal Referral Service is used primarily for matters of the sort faced by persons of moderate income, during the past 20 years over 80% of matters referred to lawyers generated a legal fee of \$2,000 or less.

²⁴⁶ *Legal Referral Service: Lawyers Who Would Like to Apply*, N.Y. CITY BAR ASSOC., <http://www.nycbar.org/get-legal-help/legal-referral-service/lawyers-who-would-like-to-apply> (last visited Nov. 4, 2013).

²⁴⁷ *Legal Referral Service: FAQ*, N.Y. CITY BAR ASSOC., <http://www.nycbar.org/get-legal-help/legal-referral-service/faq> (last visited Nov. 4, 2013).

lawyer to set up an appointment.²⁴⁸ For legal issues involving personal injuries, physician negligence, workers' compensation, or social security, the initial half-hour consultation is free. For all other legal issues, that half-hour meeting costs \$35.²⁴⁹ For many legal issues, this initial visit is sufficient to resolve the problem—if additional consultation is needed, the caller can choose whether or not to retain the attorney.²⁵⁰ Other bar associations in the New York City area and nationally provide similar legal referral services.

The website Law99, launched in October 2012, is an example of a recent commercial attempt to use the Internet to deliver low-cost referrals for legal services independent of any bar association.²⁵¹ The service offers consumers a means of soliciting attorney referrals at rates of \$99 per hour or less. The site promotes itself as a service for both consumers and attorneys, providing middle-income consumers with low-cost legal services and providing attorneys with a method of expanding their practices in a difficult legal marketplace.

4. Law Firm Franchise Models

Another attempt to address middle-class legal needs has been through “franchise law firms.” Franchise law firms are “network[s] of law offices that are conveniently located, often in storefronts, strip malls, and shopping centers.”²⁵² Emerging in the 1970s, these firms have focused on providing a limited set of standardized legal services to a high volume of clients. Franchise law firms, including Jacoby & Meyers, Arthur & Nelson and Beck & Daniels, grew in number and size until the recession in the early 1990s, after which many of these firms either stopped growing and/or began closing branch offices. High costs plus an

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ LAW99, www.law99.com (last visited Nov. 4, 2013).

²⁵² See Jerry Van Hoy, *Selling and Processing Law: Legal Work at Franchise Law Firms*, 29 LAW & SOC'Y REV. 703, 707 (1995).

inability to obtain outside investment affected the viability of the franchise model.²⁵³ A more complete description of the history of franchise law firms in the United States can be found in Appendix A.

Newer technology may help overcome some of the hurdles faced by franchise law firms. Recent advances have reduced the need for physical infrastructure, including offices and libraries, support staff such as secretarial, word processing, and billing support personnel, in addition to providing new, less costly, and easier ways to communicate both with other practitioners and also with clients.²⁵⁴ It remains to be seen whether such developments could support a new model of economically viable franchise law firms.

Finally, as discussed above, there is a significant experiment underway in the U.K. as a result of that country's recent elimination of the prohibitions on outside investment in legal ventures, which should enable law firms to access capital more cheaply and develop the infrastructure and standardized processes necessary to provide legal advice at a more reasonable cost. While it is too early to tell if the U.K. Legal Services Act's liberalization of traditional restrictions on non-lawyer investment will expand access in the way supporters envision, this important initiative should be closely monitored and, if successful in balancing the need for professional independence with outside investment, similar reforms should be seriously considered in the United States.

* * *

Findings and Recommendations

The Task Force notes the irony that, at a time of widespread hand-wringing about the supposed "oversupply" of lawyers in our profession, and at a time when law-graduate unemployment is at an all-time high, tens of millions of Americans in all areas of the country have important unmet legal needs. This includes not only

²⁵³ See Section IV.D above for a general discussion of how prohibitions on outside investment impede innovation in the delivery of legal services.

²⁵⁴ See Van Hoy, *supra* note 252, at 707.

the poor, for whom legal aid, legal services, and other chronically underfunded services are available, but also, as discussed above, people of moderate means. These middle-class Americans face significant legal problems that very often go unattended (and even undiagnosed) because they do not have counsel. This sector of our society is, by definition, not wealthy, but its members can pay something for legal advice, and we believe they would in the right circumstances.

The obvious question posed by this apparent mismatch of supply and demand is why market forces to date have not solved the problem. Why have large numbers of underemployed law graduates not been driven to address this unmet need in their attempts to build sustainable careers?

The answer, of course, is complex. It may well be that the economics do not work and that the amounts that the middle class is willing to pay for legal services cannot support an economically viable legal practice, and/or that the geographics involved impose structural barriers preventing new graduates from addressing areas of need. (Rural areas, for example, are rife with underserved legal needs.) The history, too, of prior efforts to provide mass market legal services in the United States (described above and in Appendix A) suggests that there may be fundamental obstacles to the provision of such services on an economically sustainable basis.

On the other hand, some of the impediments to success may not be market-driven, but profession-specific. As discussed above, prohibitions on outside investment in law firms prevent access to capital in ways that make the provision of cost-effective legal advice (in the manner of cost-effective tax advice or cost-effective financial advice) economically difficult, which is why the experiments underway in the United Kingdom deserve significant attention in the United States. Similarly, changes in technology and in the delivery of legal services discussed herein suggest that there may now be economies of scale and ways of reducing overhead that were unheard of in past years.

In addition, there may be a cultural impediment to the resolution of this apparent dilemma. In recent decades, the overwhelming focus of the legal media,

and to some extent law schools and law students, has been on “BigLaw” and the outsized salaries that can be earned by the relatively few who are able to win spots at Wall Street law firms every year.²⁵⁵ This distorted focus on this small segment of the profession, along with the high price of law school and resulting student debt levels, understandably creates hopes and expectations among students that these positions are within reach, regardless of the students’ or law school’s standing. But what would the profession look like, and what could be achieved for law graduates, law schools, and—most importantly—people with unmet legal needs, if the paradigm were to shift: if schools and students were encouraged to recognize the value and professional rewards of pursuing a private viable legal practice aimed at delivering affordable services to people of moderate means and to adjust their career support services and career expectations accordingly?

To begin to address this question, the Task Force plans to start a pilot program to design and test a mission-driven, commercial business model to deliver a defined set of legal services to people who can afford to pay something, but who do not have practical access at the present time to such services at an affordable rate. The new model will employ primarily new lawyers who will receive training and supervision appropriate to enable them to provide a suite of core services that are important to the target client group. The pilot will focus on the development of a sustainable and scalable business model to provide these services by employing properly trained and supervised new lawyers who will earn a reasonable living and have opportunities for professional advancement.

We recognize that this is an ambitious undertaking, implementation of which will depend on the success in attracting significant start-up funding from both within and outside the legal profession, but we believe that the fundamental changes affecting the legal community should cause us to re-evaluate the expectations of our profession and affirmatively seek out ways to re-define success in a new

²⁵⁵ One career counselor told the Task Force that 90% of her incoming students routinely believed that they would be in the top 10% of the class to which such positions might be available at the school.

professional landscape. We also believe that the profession has an obligation to be supportive of new lawyers, yet realistic about career paths in the new legal landscape, and that law schools should continue to adjust their career services and support functions to encourage new lawyers to meet these needs.

We also recognize that in certain circumstances, non-lawyers can provide an important service to individuals who need help and assistance resolving law-related issues. Picking up on a recommendation by the New York State Chief Judge's Task Force to Expand Access to Civil Legal Services in New York, the New York City Bar Association Committee on Professional Responsibility recently considered the potential for using non-lawyers to address the civil justice gap.²⁵⁶ The Committee's Report found that "some of the tasks involved in assisting low-income individuals are relatively simple and, in appropriate circumstances, could be performed effectively by non-lawyers with some degree of training, or even by untrained but intelligent laypersons."²⁵⁷ It noted that non-lawyers already provide legal services in limited circumstances in New York, including in landlord-tenant disputes, foreclosure actions, consumer credit cases, family court, tribal courts, and administrative proceedings regarding social security benefits, immigration, unemployment insurance, and workers compensation, with better outcomes for the clients.²⁵⁸ It also described the efforts taken overseas and in other states to expand these programs.²⁵⁹

The Task Force applauds these initiatives, specifically encouraging additional study to find roles for non-lawyer practitioners in areas where the market will not bear the costs of a full lawyer. Recognizing that over-regulation could erode the cost-effectiveness of these non-lawyer practitioners, the Task Force calls for further

²⁵⁶ N.Y.C. BAR ASS'N, COMM. ON PROF'L RESPONSIBILITY, NARROWING THE "JUSTICE GAP": ROLES FOR NONLAWYER PRACTITIONERS (2013), available at <http://www2.nycbar.org/pdf/report/uploads/20072450-RolesforNonlawyerPractitioners.pdf>.

²⁵⁷ *Id.* at 11.

²⁵⁸ *Id.* at 12-21.

²⁵⁹ *Id.* at 22-26.

study of training and licensing regimes that will ensure potential clients are served by adequately prepared and informed representatives.

VI. ENGAGING THE PROFESSION AND ONGOING MONITORING

A. Engaging the Profession

The Task Force recognizes that our recommendations regarding training new lawyers and facilitating their ongoing professional development are resource intensive and by their very nature are dependent on input from current practitioners and retired attorneys. As a practical matter, some law schools may be unable to continue experimenting and innovating in the short term without either significantly increasing costs (a highly undesirable outcome) or securing support from more experienced members of the profession.

We believe that experienced practitioners must respond to the challenges facing new lawyers by volunteering to provide instruction in problem-solving and practice-oriented courses in law school, supervising clinical and work experience programs, and providing objective development and career advice to new lawyers. Efforts by experienced lawyers who are well established in successful careers will be particularly important in providing new lawyers with exposure to problem-solving, practical experience, and examples of the exercise of professional judgment.

We call on the profession to assist new lawyers in this time of need, as our profession has responded at other moments of crisis. We recommend that established practitioners significantly expand their efforts to assist in the training and professional development of new lawyers and that law schools strive to utilize these volunteers where they can best help provide students with the fundamental attributes and experiences outlined above. These efforts should be carried out primarily on a volunteer basis or for minimal compensation. Some practitioners could be suited to teaching as an adjunct or co-teaching with an academic professor for the purpose of bringing a practitioner perspective to the subject matter of a course, which will be particularly critical as law schools launch more complex problem-solving courses. They may be well-suited to working with law schools' clinical or internship programs, supervising students, or supplying the classroom component necessary to fulfill pedagogical goals or to meet accreditation

requirements in connection with such programs. They should also participate as CLE instructors in the new curriculum-based programs identified above, adding personal experience and practical advice to the lessons. Others may be best suited to providing objective career or networking advice or fulfilling the urgent need for mentors in programs like the New Lawyer Institute that cater to new lawyers without built-in networks.

B. Council on the Profession

We believe that the changes we have identified above are significant and the need for such changes is unlikely to abate soon. After an extensive period of research, study, discussion, and debate, the Task Force has identified in this Report a number of proposals that it believes will assist new lawyers in preparing for the modern legal market, integrating into the profession, and establishing successful careers.

But we know that reform takes time, that our proposals may have varying degrees of success, and that further changes or course corrections may be needed in this period of rapid transformation in our profession. Recognizing the limits of our ability to prescribe remedies to the fundamental changes affecting all aspects of the legal profession, and recognizing further that different law students, attending different law schools, in different parts of the country, with the hope of serving different clients, have different needs, we have called for a limited period of vigorous continuing and additional experimentation so that best practices can be identified, brought to the surface, disseminated and, if successful, adopted more broadly. Experimentation of this sort, and evaluation of our pilot programs, requires ongoing monitoring, dialogue, and coordination.

To that end, we conclude our Report by announcing a City Bar Council on the Profession charged with the implementation of the Task Force's proposals, including continued management of the design and operation of our pilot programs, and with ongoing monitoring of and participation in the public debate about trends in the profession. The City Bar will launch a series of roundtables to engage the resources of bar leaders and the organized bar in New York City to facilitate

ongoing discussion of the issues addressed in this Report, and to monitor the successful implementation of our recommendations. We contemplate both public and private moderated discussions designed to secure the continuing engagement of the profession in these issues.

APPENDICES

APPENDIX A—THE HISTORY OF FRANCHISE LAW FIRMS

Franchise law firms emerged in the 1970s and 1980s with a business model aimed at providing legal services to a large volume of middle-class clients, utilizing standardized services, centralized administrative processes, and mass advertising. The firms expanded through the late 1980s; however, by the early 1990s the firms were facing economic difficulties and began to close their offices. Many of these firms still exist, but operate with very different business models. This is the case for two of the most prominent franchise firms, Jacoby & Myers and Hyatt Legal Services. The former now focuses largely on personal injury cases, while the latter was acquired by MetLife and has become a provider of pre-paid legal insurance. This appendix describes the evolution of their business models.

Prior to the late 1960s, most legal providers working with middle-class clients in the United States were traditional solo practitioners and small firms, which provided relatively personalized services. Beginning at that time, the newly emerging “legal clinic” model sought to fill a gap in providing those services to the middle class²⁶⁰ by cutting costs through standardization, enabling them to charge below-market, often fixed rates.²⁶¹ The emergence of these clinics, still mostly solo practitioners and small firms, was followed by the establishment of “franchise” law firms that aimed to scale up the clinic model. These firms expanded rapidly, especially after the Supreme Court struck down limitations regarding lawyer advertising and press interviews.²⁶² At one point, Hyatt was taking on 15,000 new clients per month,²⁶³ and by the late 1980s, the firm had almost 200 offices in 22

²⁶⁰ Nora Freeman Engstrom, *Attorney Fee Advertising and the Contingency Fee Paradox*, 65 STAN. L. REV. 633, 647-48 (2013). Legal clinics were prominent and formed their own nationwide association. *Id.* at 658.

²⁶¹ William Hornsby, *Challenging the Academy to a Dual (Perspective): The Need to Embrace Lawyering for Personal Legal Services*, 70 MD. L. REV. 420, 423 (2011).

²⁶² *Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977); Hornsby, *supra* note 261, at 425; Engstrom, *supra* note 260, at 649.

²⁶³ Engstrom, *supra* note 260, at 652.

states.²⁶⁴ Jacoby & Meyers reached a peak of 150 offices in six states (in the Northeast, California, and Arizona).²⁶⁵ This rapid expansion resulted in a dramatic decline in the costs clients paid for standardized legal services, such as uncontested divorces, due to the low flat rates offered by the franchises.²⁶⁶

The operational strategy was to provide standardized services at a flat rate, in locations convenient to clients, while centralizing administrative tasks such as advertising and the creation of legal documents.²⁶⁷ Franchise law firms initially ran entirely centralized operations, with the central office owning all branches.²⁶⁸ Their centrally implemented advertising campaigns focused on television and targeted price-conscious clients who would otherwise not seek out an attorney. This strategy eliminated the need for attorneys in the franchises' branch offices to devote time to client development and enabled them to focus on sales.²⁶⁹ A branch office typically included, at minimum, a managing attorney and a secretary; some franchise firms required staff attorneys, whereas others gave more discretion to the managing attorney.

Managing attorneys' incentives to hire staff attorneys were mixed, though often the central office controlled hiring, creating tension. In comparison to solo practitioners or small-firm attorneys, the attorneys at franchise firms overall had many more open cases, spent more time selling the firm's services to clients, and

²⁶⁴ David S. Clark, *Legal Professions and Law Firms*, in *COMPARATIVE LAW AND SOCIETY* 387 (David S. Clark ed., 2012).

²⁶⁵ Randy Kennedy, *Groundbreaking Law Firm Shifts Its Focus to Personal-Injury Cases*, *N.Y. TIMES*, May 12, 1995, available at <http://www.nytimes.com/1995/05/12/us/groundbreaking-law-firm-shifts-its-focus-to-personal-injury-cases.html>.

²⁶⁶ Engstrom, *supra* note 260, at 653.

²⁶⁷ VAN HOY, *supra* note 243, at 19-20.

²⁶⁸ See generally *id.* Van Hoy describes the operations of two franchise firms, which he refers to as "Arthur & Nelson" and "Beck & Daniels." Professor Gillian Hadfield believes the two firms Van Hoy described were likely Jacoby & Meyers and Hyatt Legal Services. See Hadfield, *supra* note 232, at 48.

²⁶⁹ VAN HOY, *supra* note 243, at 21, 41, 52-53.

devoted less time to writing or appearing in court.²⁷⁰ The firmwide standardization of services, documents, and procedures enabled the delegation of substantial responsibility to secretaries.²⁷¹ At one firm, the secretaries controlled a computer system that kept the branch offices in contact with the home office, tracked clients, and produced documents.²⁷² Secretaries also played key roles in maintaining telephone and written contact with clients and in creating the legal documents themselves.²⁷³

Potential clients would speak first to a secretary over the phone, who would try to convince them to schedule an office consultation.²⁷⁴ When the client arrived at the office, the secretary would ascertain the potential client's problem, using a consultation form.²⁷⁵ The potential client would then meet with an attorney, who had a standardized worksheet meant to streamline the interview process and avoid digressions.²⁷⁶ Attorneys emphasized the most basic services, which involved the least work and were consequently the most profitable.²⁷⁷ The consultations were often rushed and attorneys tended to be forceful in selling; however, many attorneys felt that clients became skeptical of the attorney's expertise and would not purchase services if the attorney did not strongly recommend a particular course of action.²⁷⁸ Clients whose responses did not fit into the worksheet's categories had to be told the firm could not help them, but most clients had routine needs, and attorneys were

²⁷⁰ *Id.* at 79-82.

²⁷¹ *Id.* at 19-21; Hornsby, *supra* note 261, at 424.

²⁷² VAN HOY, *supra* note 243, at 39.

²⁷³ *Id.* The managing attorneys interviewed by Van Hoy reported spending only 26% of their time on document preparation, and they conceded that some of that time was actually attributable to their secretaries. *Id.* at 71.

²⁷⁴ *Id.* at 54-56.

²⁷⁵ *Id.* at 57.

²⁷⁶ *Id.* at 60 (the goal was to prevent clients from "telling their whole life stories").

²⁷⁷ *Id.* at 60.

²⁷⁸ *Id.* at 62-63, 74.

usually able to sell clients the standardized product in any event.²⁷⁹ While clients with more detailed problems, or who wanted to be highly involved in making decisions, might not have been well served, those with relatively simple problems saw a substantial decline in prices as well as an emphasis on quick service.²⁸⁰

Branch office revenue, which determined attorney compensation, was volume-dependent; the central office would typically take a cut of gross income off the top.²⁸¹ Franchise firms took advantage of a highly competitive job market to drive down salaries, as attorneys in their offices generally acknowledged.²⁸² Staff attorneys typically made comparable salaries to small-firm and solo practitioners, while managing attorneys made more, in amounts that varied substantially depending on the volume of business in a particular branch.²⁸³ Staff attorney compensation could negatively impact managing attorney compensation, and managing attorneys would sometimes assign staff attorneys to a greater share of non-revenue-generating activities.²⁸⁴

The franchise model persisted for two decades, but by the economic downturn of the early 1990s, the large franchise firms were stagnating and starting to close many branch offices.²⁸⁵ Other solo practitioners and small firms had adopted their standardized set of services, but did not have to pay the overhead

²⁷⁹ *Id.* at 66-67. Van Hoy concluded that “[a]ttorneys at franchise law firms do not sell their legal expertise to clients. Rather, they use a generalized claim of legal expertise (which is largely assumed by clients) to sell prepackaged legal services.” *Id.* at 72.

²⁸⁰ *Id.* at 62.

²⁸¹ *Id.* at 31.

²⁸² *Id.* at 37 (giving an average contemporary figure of \$29,000 at one firm and \$23,000 at another). Managing attorneys were compensated by a percentage of revenues, though formulas varied by firm. *Id.* at 29-31. Secretaries, who were crucial to office operations, had compensation similar to that of staff attorneys but were salaried and could receive bonuses. *Id.* at 38-40.

²⁸³ *Id.* at 8, 29-37. From the 1970s to the 1980s, average salaries of small-firm practitioners had declined by 10% and those of solo practitioners by 30%; underemployment and unemployment were common in both groups. *Id.* at 7-8. This likely gave the franchise firms even more market leverage in setting compensation.

²⁸⁴ *Id.* at 34-35.

²⁸⁵ *Id.* at 41; Kennedy, *supra* note 265.

costs of centralized administration.²⁸⁶ The firms responded with strategies that either imposed additional costs on the branch offices or increased the revenues flowing to the center. One approach was to sell off local offices to their managing attorneys, or to have those attorneys buy an equity share in their respective offices.²⁸⁷ The firm still took revenues off the top, but local offices were made responsible for overhead. Advertising and document production remained centralized.²⁸⁸ Another strategy was to assign certain matters, such as personal injury claims, to special units and to use the branch offices as conduits for the initial client intake.²⁸⁹

The strategies enacted during the firms' decline increased revenue flowing to their managing partners, but undermined attorney compensation at the branch office level.²⁹⁰ Ultimately, these changes were unsustainable, and these firms shuttered completely in their "clinic" form.²⁹¹ Jacoby & Meyers repackaged itself as a personal injury-focused firm, an emphasis that it retains today.²⁹² Hyatt Legal Services eventually spun off Hyatt Legal Plans (HLP), which was purchased by MetLife; by 2011, HLP was the country's leading provider of group legal plans.²⁹³ Other franchise firms underwent similar transitions.²⁹⁴ Though the firms themselves

²⁸⁶ Hornsby, *supra* note 261, at 425.

²⁸⁷ VAN HOY, *supra* note 243; see also *Jacoby & Meyers Shedding Its Southern California Offices*, L.A. TIMES, Apr. 1, 1994, available at http://articles.latimes.com/print/1994-04-01/business/fi-41117_1_len-jacoby.

²⁸⁸ VAN HOY, *supra* note 243, at 41.

²⁸⁹ *Id.* at 42-45.

²⁹⁰ *Id.* at 44, 47-48.

²⁹¹ Many of the smaller clinics did so as well. *Id.* at 20.

²⁹² Kennedy, *supra* note 265. In 2012, Jacoby & Meyers merged with Macey Bankruptcy Law in an effort to expand its consumer bankruptcy practice. See Debra Cassens Weiss, *Jacoby to Merge with Bankruptcy Firm in Combo Dubbed Most Significant in Consumer Law History*, A.B.A. J. (July 11, 2012, 5:59 AM), http://www.abajournal.com/news/article/jacoby_to_merge_with_bankruptcy_firm_in_combo_dubbed_most_significant_in_co/.

²⁹³ Clark, *supra* note 264, at 387.

²⁹⁴ Engstrom, *supra* note 260, at 658-59.

may still exist, they are more specialized, and largely promote themselves with claims of quality rather than emphasizing low prices.²⁹⁵

²⁹⁵ *Id.* at 684.

APPENDIX B—THE NEW LAWYER INSTITUTE

The New York City Bar Association will establish a New Lawyer Institute (“NLI”), to serve law school graduates, starting with the law school graduating class of 2014. The programming will begin in late summer of 2014 and run through the academic year, from August through May. The purpose of the NLI is to prepare law school graduates to be successful in the legal profession in New York. While the ongoing course component most likely will attract primarily graduates who do not have jobs and hope participation in the Institute will help them secure positions, the NLI also will be available to aid the career prospects of those who have employment, or who obtain employment during the course of the Institute year.

The NLI will have four main components:

1. Introductory Event and Orientation
2. Professional Development Curriculum
3. Career Development Programming
4. Professional Networking and Speaker Series

A certificate will be offered to those who complete the program, as measured by the number of courses and programs they attend. The CLE course requirement will assure each participant that he or she will complete at least 16 credits, half of the amount required for the first two years, and participants will have the opportunity to earn all 32 of the first two years’ credits.

The following are descriptions of each of the components.

Introductory Event and Orientation

All new lawyers beginning their legal careers in New York City will be invited to an introductory program that will provide an introduction to the New York legal community and to the NLI. The event will feature one or more prominent speakers from government, the judiciary, the legal profession, and the New York City business community. NLI will work with major New York City legal employers to encourage all new lawyers to attend this session. The event will provide an overview of the profession, the speakers’ unique perspectives on the role of law and

lawyers in our society, and an understanding of the values and responsibilities of lawyers.

In addition to the public-facing introductory event, the NLI will host a two-day, mandatory event for NLI participants. This orientation session will cover, among other things:

- the structure and organization of the profession, including its size and demographics, plus a discussion of the State's court and disciplinary systems;
- an overview of job search techniques, including resume writing and interviewing;
- communications skills;
- interacting with clients (including review of the Statement of Clients Rights); and
- networking, with opportunities to practice networking skills.

Professional Development Curriculum

The NLI's professional development curriculum will include both substantive and practical skills training. The training will be provided primarily through a curriculum-based CLE offering, at times convenient for new lawyers beginning their careers.

Courses will be provided throughout the year. NLI coursework will be differentiated from traditional CLE (though it may draw on available CLE offerings) by implementing a curriculum-based program targeted to the initial professional development needs of new lawyers. NLI will encourage individual participants to select a mix of courses that help develop practice skills in areas of interest to the participant as well as the practical skills important to success in the profession. The practical courses could include Persuasive Legal Writing, Fundamental Concepts in Drafting Contracts, Public Speaking, Negotiation Techniques, Basics of Alternative Dispute Resolution, Research Strategies, Understanding & Using Financial

Statements, and Understanding Attorney Escrow Accounts. Substantive courses could include Divorce Law 101, Handling Cases in Family Court, Estate Planning Basics, New York Civil Practice, Introduction to Land Use and Zoning in NY, Basics Residential Real Estate Closing, and Everything You Wanted to Know About Landlord/Tenant. NLI participants will be required to take a set number of credits in both practical skills and substantive law areas.

Career Development Programming

The career development programming aspect of the NLI will cover job search counseling, law practice management, and mentoring.

A wide range of programs will be offered addressing aspects of job search counseling, career development, and assistance. Participants will receive:

- resume pointers and strategies, followed by breakout sessions designed to address specific individual concerns in smaller groups;
- advice about preparing for interviews, opportunities to practice interviewing skills, and a mock interview and assessment;
- guidance on creating specific search objectives and how to network to achieve these objectives;
- advice on running an effective job search, including information about current trends in the legal market, what skills are in demand, and how to target participants' preparation and approach to those realities; and
- a skills assessment, along with advice about which practice area or non-practice area may be right for him or her.

Similarly, the NLI will also address issues in connection with setting up and participating in a solo or small law firm practice. Topics to be covered include:

- how to establish a law office, including business forms, developing a filing system, obtaining insurance, etc.;
- technical needs and the benefits and cautions of cloud computing;

- marketing;
- client management and services; and
- basic business operating tips, including time management.

In addition, NLI participants may be able to obtain a free one-on-one counseling session on how to establish a solo practice, which will be provided by the Small Law Firm Center.

NLI participants will have the opportunity to participate in mentoring, with the opportunities available to be shaped by the number of volunteers. These mentoring opportunities may include:

- **Mentoring Circles** – We will establish mentoring circles that consist of both NLI participants and experienced lawyers, with most of the slots to be filled by the NLI participants.
- **One-on-One Mentoring** – We will explore providing one-on-one mentoring matches. If we proceed with this, mentors will be recruited to participate in one-on-one mentoring with NLI participants, and matches will be made by NLI staff between prospective mentors and mentees. We will provide a briefing to mentors and a mandatory orientation session for NLI mentors and mentees.
- **Drop-by/Email Mentoring** – On a periodic basis, a volunteer will spend two hours at a time at the City Bar, where NLI participants can come by and talk about career issues they are facing. These meetings can be set up as individual or group sessions, depending on demand. Any individual sessions will be limited to 30 minutes. In addition, we will seek volunteers to make themselves available, again for a limited period of time and on a periodic basis, to respond to email questions from NLI participants.

Efforts will be made to provide more directed assistance to NLI participants seeking employment. This assistance includes:

- **Career Counseling Referral Program (CCRP)** – NLI participants will be able to arrange for up to two hours at a discounted rate with an experienced career counselor in our CCRP. Participants would be able to arrange further sessions with the counselors, at a rate to be set by the counselor. The NLI also will explore having these counselors available to take calls from participants who have a quick question.
- **Job Board** – The NLI will aggressively seek to add job postings for new lawyers to its current Job Board, which is on the Association’s website, which features a bimonthly Job Flash sent to Association members. Employers will be notified that NLI participants will be looking at and receiving announcements of these available positions.
- **Coordination with Area Law Schools** – Association staff will introduce the NLI to representatives of local law school Career Planning Offices as part of the staff’s annual dialogue with these offices, and discussing how the NLI and the schools can work together to assist NLI participants will be part of the annual meeting plus additional contacts throughout the year. NLI will also outreach to law school alumni offices to discuss coordinating efforts.

Professional Networking

The NLI will also provide participants with opportunities to develop and use professional networking skills. Throughout the year there will be a series of programs featuring noted lawyers, who will discuss their experiences in the profession, give advice to the NLI participants regarding career paths, and respond to questions during and after the program. Attempts will be made to find speakers whose backgrounds and/or career path will resonate with NLI participants. We expect each of these programs to be followed by a networking event of some kind.

All NLI participants will be invited to the bimonthly First Thursdays events, which the Membership and Marketing Department present for new lawyers. These events are socializing/networking opportunities. In addition, a Speed Networking

program will be arranged for NLI participants, to make several contacts with experienced lawyers in a structured setting.

APPENDIX C—LAW SCHOOL INNOVATIONS

Innovation in the curricula of some law schools has been underway for some time. Without attempting to list every specific innovation, we catalogue here some of the trends and some specific examples that have come to the attention of the Task Force.

Law Schools are Expanding Simulated Practice Opportunities and Problem-Solving Workshops for First-Year Students

A number of law schools now offer mandatory simulation courses for first-year students. Simulations provide students with the chance to develop important practice skills without exposing clients to inexperienced attorneys and without requiring the resources of live-client clinical programs.

New York University's Lawyering Program provides students with a hands-on, interactive introduction to the practice of law.²⁹⁶ The Lawyering Program, which has been a part of N.Y.U.'s mandatory first-year curriculum since 1986, is made up of a series of exercises, each of which includes an opportunity to experiment with acting as a lawyer, followed by a critique and self-reflection period. The fall semester of the Lawyering Program begins with a unit on case interpretation. Students learn how to analyze and brief a case and then write a legal brief based on a closed universe of cases. Next, students interview a client and draft an affidavit based on the interview. The semester ends with a client-counseling exercise, in which students interview a client, draft a memo about the relevant legal issues, and counsel the client based on their research.²⁹⁷

The spring semester builds on what was learned in the fall. Students begin with negotiating and advocacy skills exercises,²⁹⁸ draft a legal memo,²⁹⁹ and then

²⁹⁶ *Lawyering Program: Curriculum*, N.Y.U. L. (2013), <http://www.law.nyu.edu/academics/lawyeringprogram/curriculum/index.htm> (last visited Nov. 4, 2013).

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

engage in oral argument with another student in a simulated courtroom setting.³⁰⁰ As part of N.Y.U.'s recent overhaul of its curriculum—which mostly focused on the third year—the Lawyering Program will include a module in business and financial literacy starting in the 2013–14 school year.³⁰¹

CUNY Law School's Lawyering Program, which has been in place since the school's founding in 1983, spans all three years of law school. The school has developed a sequenced curriculum in which the practical lawyering skills taught each year build upon those learned in prior years. This sequence culminates in a mandatory live-client clinical experience in the third year. In the first year, students take two semesters of lawyering seminars, in which they learn legal reasoning, professional responsibility, legal writing, and other lawyering skills. Using simulation exercises and hypothetical cases, students role-play as lawyers, clients, judges, or legislators confronted by legal issues arising from material in their other first-year courses.³⁰²

The second year features a lawyering seminar in a specific substantive area. It builds on the skills learned in the first year, refining critical skills such as legal writing, analytic skills, active listening, problem-solving, decision-making, and ethical reasoning in the context of particular substantive areas such as criminal defense, international human rights, labor arbitration, or micro-enterprise.³⁰³ In the third year, all students are required to take 12- to 16-credit clinical courses in which they apply their lawyering skills in a real-world practical context, either through an intensive field placement with a clinical component for critical reflection or through in-house clinical work, where students represent clients in cases before administrative agencies, in trial and appellate courts, and in non-litigation settings. Students are

³⁰⁰ *Id.*

³⁰¹ Victor Fleischer, *The Shift Towards Law School Specialization*, N.Y. TIMES DEALBOOK, Oct. 25, 2012, <http://dealbook.nytimes.com/2012/10/25/the-shift-toward-law-school-specialization/>.

³⁰² *The Lawyering Curriculum*, CUNY SCH. OF L., <http://www.law.cuny.edu/academics/courses/curriculum.html> (last visited Nov. 4, 2013).

³⁰³ *Id.*

also introduced to the fundamentals of law office management in their mandatory clinical courses.³⁰⁴

In addition to these year-long courses, some schools have introduced specific, shorter classes aimed at practical problem-solving skills. For example, Harvard Law School has recently implemented a mandatory three-week “Problem-solving Workshop” that “emphasizes practical skills, creative thinking and exercising judgment” through, among other things, mock client interviews and interactions with practicing attorneys.³⁰⁵ Students in the workshop take “the position of real-life attorneys,” addressing the client from the moment he or she approaches the firm, gathering facts and presenting options.³⁰⁶ Unlike traditional law school classes, students work collaboratively and submit group work product as is often the case in practice.

Law Schools are Introducing Experiential and Practical Lessons into Traditional Subject-Matter Classes

In addition to providing simulated opportunities for first-year students, law schools have begun to infuse traditional Langdellian theory courses with advice from practitioners and simulated exercises. For example, in order to ensure that students understand “how M&As work in the real world,” one Harvard Law School professor co-teaches his Mergers and Acquisitions course with Leo E. Strine, Jr., the chancellor of the Delaware Court of Chancery.³⁰⁷ A quarter of the classes each semester include guest speakers, providing insights from their experiences with real-world transactions. Another class at Harvard is open to both law and business students, and gives students opportunities to “simulate the roles they will play as

³⁰⁴ *Id.*

³⁰⁵ Elaine McArdle, *Beyond the Case Method*, HARV. L. BULL., Summer 2010, at 4, available at <http://www.law.harvard.edu/news/bulletin/2010/summer/classroom.php>.

³⁰⁶ *Id.*

³⁰⁷ Elaine McArdle, *Bridging Theory and Practice in Corporate Law*, HARV. L. BULL., Winter 2012, at 32, available at <http://www.law.harvard.edu/news/bulletin/2012/winter/>.

corporate lawyers and executives” instead of “focusing solely on appellate cases.”³⁰⁸

Columbia Law School has developed a new set of intensive courses and seminars that combine legal doctrine with close study of the surrounding business, regulatory, institutional, political, or social settings within which law develops, along with exposure to “real-world” documents, transactions, legal, business, or policy actors, and field research. For the past four years, Columbia Law Professor Jack Coffee has taught with Delaware Supreme Court Justice Jack B. Jacobs in a course entitled “Corporations in Court.” Each week the seminar focuses on one important court case, bringing in the participants, lawyers and judges to discuss how it played out and what it meant.

Also offered at Columbia, Deals workshops explore the lawyer’s role in structuring and implementing business deals to create value, manage risks, and promote client interests in a complex business, legal, and regulatory environment. They aim to fill the gap between academic theory and law firm transactional practice by introducing students to basic deal-making techniques. First offered in spring 2002, the workshops are taught principally by expert practitioners who serve as adjunct professors. In addition to covering concepts addressed in the Deals course, students are asked to apply those concepts to case studies and simulated problems. Students also complete a series of client memoranda and simulated negotiation and drafting problems related to various agreements and other documentation. Tactics and ethics are also taught.

Law Schools Are Repurposing the Third Year to Focus on Development of Skills and Specialized Expertise

Some law schools have redesigned their curriculum for the third year to allow students to focus almost exclusively on skills training or specialized study. Programs introduced at Washington & Lee University School of Law, Northeastern University School of Law, New York Law School, New York University School of

³⁰⁸ *Id.* at 33.

Law, CUNY, and Columbia Law School are designed to impart students with the skills necessary to practice, thereby enhancing their opportunities for post-graduate employment.

- Washington and Lee altered its third-year curriculum to focus on practice-based simulations, real client experiences, and explorations into legal ethics and professionalism. The new curriculum simulates a law firm, in which students are “associates” and professors are “partners.” Students are required to exercise professional judgment in simulations to solve client problems, and professors provide guidance with respect to substantive legal issues and professional ethics. The program consists of four components focused on needed legal skills. Students complete (i) a two week long skills immersion at the beginning of each semester, one focusing on litigation and conflict resolution, the other on transactional practice; (ii) four elective courses, one real-client experience (either a clinic, an externship, or a transnational human rights program) and three additional electives taught in a problems-based, practicum style; (iii) at least 40 hours of law-related service; and (iv) a semester-long professionalism program.
- Northeastern’s Cooperative Legal Education Program, while not limited to the third year, integrates four quarters of full-time employment into the legal curriculum. By coordinating with more than 900 co-op employers (including law firms, judges, public defender and legal service organizations, government agencies, corporations, unions, and advocacy groups) in more than 40 states and a number of foreign countries, Northeastern provides students with the opportunity to hone their legal skills in real legal settings. The broad range of available co-op opportunities allows students to focus on their individual professional interests while providing employers with a year-round pool of student practitioners to provide cost-effective legal assistance. After completing the traditional first-year curriculum, students alternate quarters as full-time

students with quarters as full-time legal professionals during their second and third years. The employers determine student compensation with salaries ranging from volunteer positions to more than \$2,500 per week for large law firms. Each year, \$850,000 in co-op stipends are distributed to students participating in the program. Each co-op employer designates an attorney-supervisor to meet regularly with the co-op law student, to provide feedback on his or her work product, and to complete a co-op performance evaluation at the end of the work placement.³⁰⁹

- New York Law School will launch its “clinical year” in fall 2013 for third-year students. Participating students will rotate through three clinics during their third year, spending 10-week sequences in each setting and gain experience in litigation and non-litigation matters and various areas of substantive law. Students will work full time and also take part in a seminar taught by an adjunct faculty member supervising that clinic. The program aims to enhance the employment prospects of the school’s students by facilitating relationships with participating employers and enhancing the students’ attractiveness to other legal employers who are looking for graduates with real world experience.
- New York University’s recently announced revisions to its third-year curriculum³¹⁰ increase its professional relevance. The new program enables students to focus on international opportunities that include language training³¹¹ and provides the opportunity to study in Washington, D.C. for a semester in a government law clinic.³¹² It also encourages specialization through eight “professional pathways,” faculty-designed

³⁰⁹ *The Incomparable Co-Op: Four Full-time Work Experiences. Countless Opportunities.* NE. U. SCH. OF L., <http://www.northeastern.edu/law/experience/co-op/index.html> (last visited Nov. 4, 2013).

³¹⁰ Lattman, *supra* note 99.

³¹¹ *Id.*

³¹² *Id.*

areas of concentration in subjects like intellectual property, criminal practice, and environmental law.³¹³ N.Y.U. hopes that completing these areas of focused study will make students more competitive in the job markets in their field of focus.³¹⁴ Students completing these pathways will take classes and participate in a related clinic.

- CUNY requires all third-year law students to participate in a 12- to 16-credit clinical course or concentration. The clinics provide direct service in-house, supervised live-client representation, and the concentrations are highly supervised external placements with in-house classroom components where students discuss the legal and ethical issues arising in their client work. While the subject matter areas vary, CUNY's clinical offerings include Community & Economic Development, Criminal Defense, Economic Justice, Elder Law, Immigrant & Non-Citizen Rights, International Woman's Human Rights, and Mediation, Equality, Family Law, and Health Law.³¹⁵
- Columbia Law School's curricular innovation in the past decade has been focused on the upper year in an effort to produce a broad range of initiatives and offerings that focus on connections to practice, interdisciplinary skills, and international and comparative expertise. Covering a wide variety of subjects—since students come to law school with a broad range of ambitions and interests—these offerings enable students to see firsthand the many different roles lawyers can play, while also sharpening different analytical, theoretical, and practical skills. Examples include: the Roger Hertog Program on Law and National Security, which offers more than a dozen advanced offerings and draws on the deep expertise of a number of faculty members who have worked

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Clinics and Concentrations*, CUNY SCH. OF L., <http://www.law.cuny.edu/academics/clinics.html> (last visited Nov. 4, 2013).

in senior national security positions in the White House, the State Department, and the Defense Department; the Center for Climate Change Law, in which students partner with scientists and economists and Columbia's Earth Institute to work on behalf of nations such as the Marshall Islands, which are at risk of being submerged in the coming decades, as well as U.S. federal and state agencies to help plan for future climate change related events; the Charles Evans Gerber Transactional Studies Program covers many advanced business law offerings, and provides an opportunity for students to become familiar with business concepts; the Richard Paul Richman Center for Business, Law and Public Policy, a research and teaching partnership with Columbia Business School; the Center for Public Research and Leadership, which works with Teachers College and Columbia Business School to train education professionals; as well as joint initiatives with the University of Oxford, Paris I, Sciences Po, and the University of Amsterdam to provide a coordinated third-year curriculum in a range of fields.

As the discussion suggests, law schools around the country are experimenting in a range of ways. Notwithstanding the differences among the various programs, they share the common goal of providing students with meaningful practical experience while in law school to ensure that they are well equipped to compete in the job market, and ultimately, to succeed in practice after graduation.

Law Schools Are Expanding Clinical Opportunities

In addition to increasing simulations and recalibrating the third year, law schools have been expanding clinic offerings, which provide students with opportunities to gain experience with real clients under close supervision of faculty. Clinics, however, are extremely expensive for law schools as compared to traditional lecture courses.³¹⁶ This is principally because the teaching model is

³¹⁶ At least one school has addressed this issue by monetizing its clinical program. Chicago Kent's clinic generates fees, which are used to determine the in-house clinical professors' salaries.

more professor/student intensive.³¹⁷ As one author noted, “[a] single law professor can easily teach 70 students in one contracts law class, but a clinical professor is limited to [6] to 10 people a class.”³¹⁸

Further, clinics may also jeopardize the school’s funding, should the clinic tread onto a sensitive issue. In Maryland, for example, students from the University of Maryland School of Law filed suit against Perdue, one of the state’s largest employers, alleging environmental violations.³¹⁹ Following the suit, the legislature debated whether or not to cut the clinic’s funding if the clinic did not provide details about its clients, finances, and cases.³²⁰ Special-interest focused clinics, like abortion or death-penalty clinics, especially those that are state-funded, have also raised the attention of critics.³²¹ Thus, for an educational tool that already is resource-intensive, schools have incentives to tread carefully to ensure that these costly clinics do not cause cuts to their budgets.

Law Schools Are Expanding External Practice and “Bridge-to-Practice” Opportunities

Law schools almost uniformly offer externships, including apprenticeships and shadowing opportunities, outside of school to give students additional opportunities to gain practical experience and to learn to address complex legal

Linking the clinical professor’s salary to fees enables successful clinical professors to receive much higher salaries than are usually earned by clinical professors. An additional benefit of the program is that it more closely approximates private practice for students, providing useful practice-management experience. See *About the Fee-Generating Model in Clinical Legal Education*, IIT CHI.-KENT C. OF L., <http://www.kentlaw.iit.edu/seeking-legal-help/fees/fee-generating-model> (last visited Nov. 4, 2013).

³¹⁷ See James Vescovi, *Why Does Law School Cost So Much?*, COLUM. L. SCH., http://www.law.columbia.edu/law_school/communications/reports/summer06/lawschoolcost (last visited Nov. 4, 2013) (detailing the component costs of a law school education at Columbia).

³¹⁸ Steven Davidoff, *The Economics of Law School*, N.Y. TIMES DEALBOOK, Sept. 24, 2012, <http://dealbook.nytimes.com/2012/09/24/the-economics-of-law-school/> (discussing the cost of a law school education).

³¹⁹ See Ian Urbina, *School Law Clinics Face a Backlash*, N.Y. TIMES, Apr. 4, 2010, at A12 (describing how the work clinics may affect the school’s funding).

³²⁰ See *id.*

³²¹ See *id.*

issues under the supervision of practicing professionals.³²² In recent years, the number of externship opportunities available to students at each school has increased according to the ABA Study, and most schools offer externships with a wide variety of practitioners and employers, including judges, corporate counsel, law firms, legal aid offices, and government offices.³²³ Nearly all respondents to the 2010 ABA Law School Curricula study reported at least one externship opportunity, with 85% of respondent-law schools offering access to clients at the school and 30% offering programs off-site.³²⁴

In recent years, law schools, including many in the New York area, have developed innovative partnerships with various legal employers to train law students and recent graduates by providing limited-term and highly supervised employment opportunities. These programs include externships during law school, post-graduate fellowships, and limited-term employment opportunities intended to bridge the gap between law school and more permanent legal employment. These programs hold great promise to expand participants' job opportunities in the short term. More importantly, they also satisfy the need to provide new lawyers with hands-on practical experience and role models for the exercise of professional judgment necessary for entering the profession with the skills and experience needed to handle clients' needs. These programs also promise to help law students and new lawyers to build meaningful professional networks. Some programs are short-term and typically occur during the school year or over the summer. Others are longer-term arrangements between law schools and employers and extend beyond graduation.

Short-Term Bridge-to-Practice Programs

Many prominent government and legal services offices have run very successful programs like this for several years. For example, the District Attorney's

³²² LAW SCHOOL CURRICULA SURVEY, *supra* note 94, at 77.

³²³ *Id.*

³²⁴ *Id.* at 16.

Offices for New York and Kings Counties partner with several law schools in the New York City area to administer externships and clinics. Each year at the Kings County District Attorney's Office, approximately 150 law students work part-time at the office for a semester and attend classes taught by law school faculty or Assistant District Attorneys acting as adjuncts.

Columbia Law School offers a semester-long externship in which law students work part-time at the New York City Law Department and attend a weekly seminar at the law school that is taught by Law Department attorneys. In 2010, Columbia also launched a semester-long federal government externship in Washington, D.C., which combines an intensive externship placement with a substantial writing project supervised by a Columbia faculty member, and a weekly seminar in Washington overseen by an adjunct faculty member. Externship placements are available in a broad range of offices across many federal departments and agencies and include placements at the U.S. Department of Justice, the State Department, the Environmental Protection Agency, and the Federal Trade Commission.

In Fall 2013, NYU launched a 14-credit clinic in Washington, D.C. entitled the "Legislative and Regulatory Process Clinic," which places third-year students in federal agencies and congressional offices where they acquire practical experience in how lawyers support the development and implementation of public policy. An accompanying seminar, taught by NYU faculty, provides an understanding of how political institutions work, as well as the roles played by lawyers in the processes of legislation and regulation. The clinic, which is geared toward students bound for any type of career and not just government service, is expressly designed to break down the dichotomy that law schools have traditionally drawn between public law and private law. The clinic provides students with a sophisticated understanding of government regulation, including how it impacts the incentives, decisions, and actions of regulated entities.

The Legal Aid Society and Legal Services NYC also operate clinics, externships, and third-year pilot programs with various area law schools. Such

models have already proven successful at introducing students to the skills, issues, and challenges of practicing law and representing real clients, and because they involved practitioners as adjunct faculty, are a cost-effective way for law schools to promote experiential learning outside of the classroom.

Long-Term Bridge-to-Practice Programs

Long-term bridge-to-practice programs are a more recent development. They provide recent law school graduates with an opportunity to develop and enhance their practical legal skills as they transition into the practice of law, generally by combining work at a legal employer and class experience during the third year of law school with a job after graduation. Bridge-to-practice programs are generally funded in whole or in part by a law school, university, or related organization, not the organization for which the work is performed (e.g., public interest organization, government agency, member of the judiciary, or private employer).³²⁵ Nonetheless, by reducing reliance on law school resources, they may enable law schools to lower the overall cost of providing a legal education.

To better understand these programs, the Task Force surveyed a wide cross-section of legal employers to identify the programs they have in place to train law students and new lawyers, and to understand opportunities for expanding or developing such programs in the future. The Task Force surveyed government agencies ranging in size from 25 to 700 attorneys, legal services providers, large and medium-sized firms, and an in-house counsel's office. The Task Force's research indicates that large public service legal offices—including District Attorneys, City Attorney Offices, the State Attorney General, large City and State agencies, and The Legal Aid Society—are most able to accommodate numerous post-graduates. The Task Force also found three basic models for these long-term bridge-to-practice programs to be of particular interest.

³²⁵ NAT'L ASS'N FOR LAW PLACEMENT, BRIDGE TO PRACTICE SURVEY REPORT (Nov. 2012), available at http://www.nalp.org/bridge_to_practice_report.

In the first model, started at the University of California Hastings College of the Law, a not-for-profit organization, Lawyers for America, provides a two-year fellowship program beginning with the 3L year. During the third year of law school, fellows receive academic credit, but no monetary compensation, work full time at a public service partner office,³²⁶ are supervised by law school faculty and attorneys at the partner office, and attend a classroom component at Hastings. After sitting for the bar exam, the fellows return to their fellowship placement for another year and are paid a salary approximating half the fully allocated cost of a first-year attorney. Lawyers for America also notes that their program “fits comfortably with ABA law school accreditation requirements concerning minimum classroom training.”³²⁷ Brooklyn Law School has announced a similar program—the Public Interest/Public Service Fellowships (“PipS”)—beginning in the fall of 2014. PipS fellows will work with one of twelve partner organizations, including the American Society for the Prevention of Cruelty to Animals (ASPCA), Brooklyn Bar Association Volunteer Lawyers Project, Brooklyn Defender Services, Catholic Charities, Community Service Society, The Legal Aid Society, NYC Law Department, NY Legal Assistance Group (NYLAG), Public Health Solutions, Safe Horizon, NYC Transportation Authority Law Department, and Youth Represent. PipS fellows will commit to working full time for the employer for two years. During the first nine months, they will work and take evening classes. Following graduation and time to prepare for the bar exam, they will return for another full year of work, with salaries provided by the partner organizations.

The second model relies on a stand-alone, non-profit “teaching firm,” called the Arizona State University Law Group, modeled on the concept of a teaching hospital. Beginning in 2013, the Law Group will hire recent graduates of ASU’s law school, who will be supervised by experienced attorneys and deliver legal services

³²⁶ In the inaugural year, students will be placed at either the Contra Costa County District Attorney’s or Contra Costa County Public Defender’s Offices.

³²⁷ *About Lawyers for America*, U.C. HASTINGS C. OF L., available at <http://www.uchastings.edu/academics/clinical-programs/lawyers-for-america/index.php> (last visited Nov. 4, 2013).

to those who cannot afford to pay current market rates. The Law Group will hire about ten ASU law graduates per year for a total of 30 associates at any one time.

The third model, introduced by Cardozo Law School and based on the medical residency model, involves direct placement of law students with different private sector employers. Under the Resident Associate Mentor Program, small and medium sized law firms as well as corporate legal departments have agreed to hire Cardozo Class of 2013 graduates for one year post-graduation with salaries similar to a fellowship—up to \$43,000. The 17 employers, which practice commercial litigation, intellectual property, bankruptcy, personal injury, real estate, and trust and estates, have committed to train and mentor 20 “Resident Associates” for one year, enabling students to gain much-needed practical and substantive experience early in their careers. The law school will provide support in the form of formal professional development through a new Center for Professional Development.³²⁸

These programs are important developments with the potential to expand opportunities for new lawyer training and development. They provide students with opportunities to gain real-world practical skills under the supervision of experienced practitioners and develop role models and mentors. They benefit the organizations with which the law schools partner by engaging student-practitioners for two years at a lower cost than hiring new entry-level lawyers. When implemented properly, the work experience would be fully integrated into the law school curriculum, providing the necessary educational support and pedagogy for new lawyer development. In some circumstances, bridge-to-practice programs may even be able to decrease the overall cost of law school by utilizing practitioners and the resources of the law office partners instead of the law school to complete the students’ education. Finally, the bridge-to-practice programs are likely to help participants begin their careers successfully. Participants will have received

³²⁸ *Cardozo Announces New Resident Associate Mentor Program*, CARDOZO L. (Aug. 19, 2013), available at <http://www.cardozo.yu.edu/news/cardozo-announces-new-resident-associate-mentor-program-ramp>.

relevant work experience, developed their skill sets and judgment, and made important professional contacts. For some, the bridge-to-work program will provide an on-ramp to their first permanent job, whether with the partner organization or elsewhere.

Despite these benefits, there are some concerns about bridge-to-practice programs, though the concerns can likely be addressed through program design and appropriate selection of partner organizations.

First, bridge-to-practice programs raise certain pedagogical concerns. Bridge-to-practice programs are not clinics. In contrast to the slow, deliberate, and reflective clinical setting, bridge-to-practice programs embed students in real workplaces, and there is a risk that they may not always provide students the intensive supervision, time for self-critique, or detailed examination of ethical issues. Bridge-to-practice programs also are generally taught by adjuncts, who generally are not schooled in clinical pedagogy, even as students pay a full year of tuition. Unless the program is properly designed to address these concerns, there is a risk that bridge-to-practice program participants may not develop the same transferable skills, including the ability to surface and analyze ethical issues, that clinics foster.

Second, legal services and public sector employers have made significant strides in recent years in recruiting lawyers who view their jobs as long term professionally rewarding career opportunities and not as temporary assignments or stepping-stones to higher paying jobs in the private sector. These employers have a strong interest in maintaining a professional staff committed to that model, which enhances client services by developing a workforce with the expertise and experience necessary to handle the complex legal matters that are often presented.³²⁹

³²⁹ The Legal Aid Society, Legal Services NYC, and several smaller legal services providers are unionized programs and cannot operate such bridge-to-practice initiatives unless they are implemented in a manner that is consistent with the requirements of their collective bargaining agreements. Currently, for example, The Legal Aid Society and Legal Services NYC operate various fellowship programs in which employed fellows are paid and given tenure consistent with their respective collective bargaining agreements.

Third, there also are legitimate concerns that the basic economic model that essentially spreads one year of compensation over two years of employment may tend to devalue the services provided, and that asking new lawyers to work for half of already low public sector and legal services salaries may operate as a practical bar to new lawyers from modest backgrounds, often underrepresented groups, many of whom will have incurred heavy debt to get through law school.

Outside of these concerns, at a practical level, practice rules may inhibit some bridge-to-practice programs. For example, New York Court of Appeals rules³³⁰ specify that 64 of the 83 credit hours required for graduation from an approved law school³³¹ must be earned in the classroom.³³² A maximum of 30 hours may be earned in a clinical, field placement or externship setting.³³³ If, however, the practical learning experience has a classroom component, that element may count toward the 64-hour requirement.³³⁴ Court rules similarly limit the tasks law students may perform. A law student may appear in a S.D.N.Y. civil case if he or she is participating in an approved clinic or working in the United States Attorney's Office. In the E.D.N.Y., only students working in approved clinics are eligible.³³⁵ The rules for student practice in New York State courts are less clear. Neither the First nor Second Departments of the Supreme Court Appellate Division has a specific set of recorded student practice rules. When qualifying students act under the supervision of legal aid organizations, the organization may apply for an

³³⁰ See N.Y. CT. APP. R. 520 (defining the rules for admission to New York state courts).

³³¹ An approved law school is defined as one that (1) is approved by the ABA, (2) is located in the United States, and (3) meets the required course of study. *Id.* R. 520.3(b).

³³² See *id.* R. 520.3(c)(1).

³³³ See *id.* R. 520.3(c)(4).

³³⁴ See *id.* R. 520.3(c)(3).

³³⁵ See *Plan for Student Practice in Civil Actions*, U.S. DIST. CT., S. DIST. OF N.Y., http://www.nysd.uscourts.gov/forms/intern/intern_plan.php (last visited Nov. 4, 2013); *Law Student Intern Appearance Form*, U.S. DIST. CT., E. DIST. OF N.Y., available at <https://www.nyed.uscourts.gov/sites/default/files/forms/LawStudentInternApperanceForm.pdf> (last visited Nov. 4, 2013).

order allowing student practice. To the extent needed, these practical impediments should be addressed to permit the expansion of bridge-to-practice programs.

Law Schools Are Developing Curricula that Encourage Specialization and Expertise

To address the increasing specialization of legal practice, law schools have begun to offer an array of opportunities for students to concentrate on and engage in advanced studies in a specific area of law. Students participating in these opportunities may receive a certificate or other indication of expertise, which may be important signals to potential future employers. While the number of schools that offer specialization and certificate programs has remained relatively stable, those schools that do offer concentrations or other specialty programs are expanding the number of programs that they offer significantly.³³⁶ The most popular “specialized” programs are in International Law, Business Law, Intellectual Property, and Litigation.³³⁷ Examples of specialization programs include:

- Cardozo Law’s Certificate in Dispute Resolution. To receive the certificate, students must earn 15 credits in dispute resolution related course work, and satisfy knowledge and skills competency requirements related to Dispute Resolution Process, Interviewing and Counseling, Negotiation, Mediation, and Arbitration. In addition, students must participate in a clinical or externship program related to conflict resolution, including at least 60 hours of work “in which the student mediates, participates in arbitrations, makes presentations or conducts training sessions about dispute resolution, helps administer a dispute resolution program or conducts research and consultation on dispute resolution,” and writes a paper or note on conflict resolution.³³⁸

³³⁶ LAW SCHOOL CURRICULA SURVEY, *supra* note 94, at 68-70.

³³⁷ *Id.*

³³⁸ *Certificate in Dispute Resolution*, CARDOZO L., <http://www.cardozo.yu.edu/programs-centers/kukin-program-conflict-resolution/certificate-dispute-resolution> (last visited Nov. 4, 2013).

- Pitt Law's Health Law Certificate Program. The Health Law Certificate Program requires students to take Health Law-related courses and includes relevant clinical experience. The program also allows students to attend the Pennsylvania Bar Institute's Health Law Institute and the student Health Law Conference.

Law Schools Are Shortening Their Curricula and Continue to Provide Joint Degrees

Some law schools have condensed their curricula, enabling students to graduate in two years or obtain multiple degrees in a shortened timeframe.

Northwestern Law School has allowed certain students to skip the third year entirely with its Accelerated J.D. program. Students in the Accelerated J.D. program complete the same number of credit hours as students in the traditional three-year program, but do so over two calendar years beginning in May of their first year. The program hosts 20 to 40 students per year.³³⁹ The program is designed for highly motivated students who enter law school with prior work experience and a strong sense of what they want to do with a law degree. The program (i) benefits students financially from the reduced opportunity costs associated with entering the workforce a year earlier, (ii) allows students to accelerate their post-law school career by graduating with a J.D. in two years, and (iii) attracts students who already have many of the core skills legal employers want (i.e., project management, teamwork, strategic understanding, communications, negotiation, cross-cultural work, basic quantitative skills, and leadership) and uses innovative programs to further develop these skills. Brooklyn Law School plans to begin offering a similar two-year J.D. program in 2014.³⁴⁰ Like Northwestern's accelerated program, the Brooklyn program will require completion of the same number of courses as the typical three-year J.D. curriculum and will operate on a 12-month academic year.

³³⁹ *Accelerated J.D.*, NW. L. SCH., <http://www.law.northwestern.edu/academics/ajd/> (last visited Nov. 4, 2013).

³⁴⁰ Tania Karas, *Brooklyn Law to Offer Two-Year J.D.*, N.Y. L.J., May 10, 2013, <http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202599497550>.

The vast majority of law schools—87%, according to the ABA Study—now offer at least one joint-degree program, with the J.D./MBA combination being the most common. Some schools provide students with the option to take certain courses from another professional school without committing to a full joint degree in order to allow students to engage in a broader scope of studies. For example, Harvard allows students to take business courses even if they do not pursue a full joint J.D./MBA.

Columbia Law School has partnered with Columbia Business School to create a J.D./MBA program that offers both degrees in three years. The program includes a number of courses co-taught by business and law faculty members. Students spend the first year at the Law School, the second year at the Business School, and the third year taking a combination of law and business courses, some of which will count toward both degree requirements. Under this program, students still have flexibility to take four or five law courses in other disciplinary areas outside of business law. The program also enables students to take Business School electives in areas unrelated to business law. The program also draws on the resources of a joint research center founded by both schools, the Richard Paul Richman Center for Business, Law, and Public Policy.