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What Can We Learn from Law School?

Legal Education Reflects Issues Found in All of Higher Education

Julie Margetta Morgan December 2011

Center for American Progress



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Introduction and summary

Lawyers play a relatively small role in the American workforce, but they seem to play a big role in the American imagination. Television shows such as *The Good Wife* and *Suits* portray a luxurious and exciting lifestyle at “Big Law” and boutique law firms, while *Law and Order* depicts district attorneys working relentlessly in the pursuit of justice. And mainstream media follows the developments in legal education with a level of interest that seems out of proportion with its relevance to their readership.¹

As they continue to read articles about the legal education crisis in *The New York Times* or *The Wall Street Journal*, many people may wonder: Why do we care so much about law school? For higher education policymakers, though, it may be more worthwhile to consider: Why *should* we care about legal education?

As a matter of scale, it seems silly to spend much time thinking about law school. Last year only about 155,000 students were enrolled at law schools accredited by the American Bar Association, or ABA, whereas almost 6 million students were enrolled in degree programs at community colleges that same year.² But the small scale of the legal education sector is exactly why it may be worth some attention.

A recent *New York Times* article on the economics of law school described legal education as “a singular creature of American capitalism, one that is so durable that it seems utterly impervious to change.”³ But to those who work in higher education policy, the story of impossibly high demand even in the face of climbing tuition and low success rates seems all too familiar.

It’s certainly the story of for-profit colleges that tend to charge extremely high rates to students who will make modest salaries, if they graduate at all. And in many ways, it’s the story of all American colleges—most of which continue to raise their prices without ever having to account for whether they deliver a service of value.

The reason to focus on law school is not, as *The New York Times* claims, that it is a peculiar form of education. It's that legal education suffers from many of the same doubts and problems that plague all of higher education. But with only 198 fully ABA-approved law schools in operation, legal education is the bite-sized version of the phenomena that are forcing change in all of our colleges.⁴ And, like for-profit colleges, law schools primarily prepare students for a well-defined career area, making it easier to assess how well they serve their students.

Of course, there are some key differences between law schools and, say, community colleges. Law students have already graduated from some kind of undergraduate program, proving that they have the skills and resources to carry them through a postsecondary program, making completion rates less of a concern. Because law schools have a selective admissions process, their students probably will not need any kind of remedial education—a huge part of the services community colleges provide their students. And law students tend to be more informed consumers of information about their education than other students. But these differences actually help narrow our focus to the issues that bridge across legal education and undergraduate programs, including questions of cost, quality, and preparedness for employment.

This report explores the field of legal education with the hope that putting a magnifying glass to this small part of higher education will help us better understand the problems that face all colleges. (see sidebar) It details the steady rise in law school enrollment, despite high tuition rates and a heavy reliance on student loan debt. And it describes the unpleasant surprise that awaits law students upon graduation: Though a few lucky grads will make more than \$130,000 per year, most new lawyers can expect annual salaries of around \$63,000. With monthly loan payments near \$1,000, graduates are finding that membership in the legal profession is not the golden ticket they thought it would be.

The problems facing higher education

For many years the primary policy issue in higher education was equality of access. Policymakers and researchers focused on whether under-represented groups like low-income students or students of color had the educational and financial resources necessary to get into college. Now many have turned to a new problem: Not enough students are graduating from college with the skills they need to compete in the workforce.

Labor economists have shown that there is a growing demand for workers with postsecondary education and training in the United States. In fact, Anthony Carnevale of the Georgetown Center for Education and the Workforce argues that two-thirds of the jobs created by 2018 will require workers that have some postsecondary education.⁵ But based on current college attendance and completion rates, we will not have enough qualified workers to fill those jobs.

In 2008 only 42 percent of Americans aged 25 to 34 had an associate's degree or higher.⁶ Colleges must find ways to get more students into—and through—college. But it's not enough to simply produce more college graduates. Those students must also be prepared for the occupational areas that are likely to grow over the next few decades.

Although business is the most popular college major these days, many of the jobs of the future will be in health care or in the science, technology, engineering, and math fields.⁷ If we do not find a way to get students into fields that are likely to grow, the mismatch between workers' skills and workforce needs will continue.

There are a few key obstacles that keep colleges from fulfilling the needs of students and of the workforce:

- **Preparation.** Many students who arrive on college campuses are simply not prepared to do college-level coursework. The Depart-

ment of Education reports that 34 percent of entering-college students require at least one remedial education course.⁸

- **Price.** A key issue in getting students through college is affordability. The price of a college degree at a four-year private college has risen 75 percent over the last 20 years.⁹ Financial aid has not kept pace—the Pell Grant grew only 39 percent in that same time period.¹⁰ Many students decide not to attend college or drop out without a degree due to concerns over cost. Others are taking on an increasingly large debt burden—the average debt for students who borrow to complete a bachelor's degree is \$24,000.
- **Quality.** Many colleges simply are not offering the quality of education that students need to prepare for a successful career. Researchers Richard Arum and Josipa Roksa found that of 2,300 students at four-year universities, 45 percent did not have any significant learning gains in the first two years, and 36 percent did not have any significant learning gains over all four years.¹¹ Low academic standards are a persistent issue in for-profit education. A recent Government Accountability Office, or GAO, report demonstrated through a secret-shopper investigation that some for-profit institutions gave students passing grades despite grossly substandard performance.¹²
- **Information.** Access to information can mitigate the problems of preparation, price, and quality described above, helping students choose colleges that fit their career goals, academic preparedness, and budget. But prospective college students do not have access to reliable, comparable information. Though the federal government and nonprofit organizations make information available, most students do not access these resources.¹³ And many colleges make it nearly impossible for students to find any information about their prices, financial aid options, and employment outcomes.

These observations show that in legal education—as in the rest of higher education—forces such as rising tuition and limited availability of jobs are changing the value proposition of earning a degree. Schools, students, and policymakers, however, are slow to respond.

Schools assume that since students absorbed previous tuition hikes with student loans, they will continue to do so, and that today's stagnant methods of delivering legal education will always be the best choice. Students assume that the big payoff to legal education will always be the same, encouraging them to take on debt that they can only pay if they earn top salaries. And policymakers assumed by passing off quality-control functions to accreditors, they could rest assured that the federal investment in student loans was secure.

Accrediting agencies—voluntary membership organizations comprised of colleges and universities—purport to certify the quality of postsecondary institutions. But recent scrutiny of the accreditation process shows that their focus on the inputs of a college program rather than its outputs results in a system that lets in subpar traditional institutions and often keeps out innovative nontraditional programs.

The crisis in higher education these days is not that college is no longer “worth it.” It's that the value proposition for a college degree—in this case, a law degree—is changing, but schools, students, and policymakers have not changed with it. As the value of a college degree fluctuates, students must adjust their plans regarding attendance and financing accordingly. And colleges must strive for innovations in educational delivery that both improve education and contain costs. Finally, policymakers must make sure that accreditors not only ensure quality but also encourage their members to provide a high-value education to students.

To facilitate more flexibility on the part of students, schools, and policymakers, the following policy changes should be implemented:

- The Bureau of Labor Statistics should collect and publish average employment and salary data for recent entrants into an occupation.
- Accreditors in all sectors of higher education should create standard definitions for employment and salary statistics, and require member schools to make such information readily available to students. Accreditors should audit member schools' adherence with these standards from time to time.
- The National Advisory Committee on Institutional Quality and Integrity should conduct a review and submit a report to Congress and the Department of Education on accrediting standards that stifle innovation or drive up tuition costs in higher education.

- Congress should provide funds to colleges through the Fund for Innovation in Postsecondary Education for projects that use technology or other innovative solutions to drive down tuition costs while maintaining or improving educational quality.

A brief primer on legal education

Today's law school education model has its roots in the 1870s, when Harvard Law School Dean Christopher Columbus Langdell instituted the case method, a model of education that is still used today in most law school courses.¹⁴ According to Langdell, the best way to teach law students was to read and discuss court opinions, drawing out principles of law from these texts.¹⁵ This method is typically combined with the Socratic method, in which professors pose a series of questions to a student to draw out the finer points of a particular case or legal principle.

Though Langdell's peers initially objected to the case method, it quickly became the most widely used method of teaching the law.¹⁶ There's just one problem with the case method: It does not teach students how to practice law. The original American models of legal education relied heavily on apprenticeships, but that practice no longer predominates. Now law schools try to bring practical skills to the classroom through coursework like legal writing, research, client counseling, and clinical experiences. But these courses are not necessarily a substitute for actual legal experience. A recent article in *The New York Times* illustrates the problem:

Here is what students will rarely encounter in Contracts: actual contracts, the sort that lawyers need to draft and file. Likewise,

Criminal Law class is normally filled with case studies about common law crimes—like murder and theft—but hardly mentions plea bargaining, even though a vast majority of criminal cases are resolved by that method.¹⁷

As the legal workforce gets more competitive, law schools seem to be embracing the idea that practical knowledge might give students an edge in the marketplace. Some law schools are substituting case-simulation courses in for the Socratic method and even making clinical experiences a requirement of graduation.¹⁸ Still, these efforts are likely to remain only a small part of legal education.¹⁹

With all the diversity of educational models in undergraduate education, including online, hybrid online-physical programs, apprenticeships, and experiential learning programs, it is striking to observe the homogeneity of legal education. There are still a few schools, however, that offer alternative models of legal education. Concord School of Law, a for-profit, online law school owned by Kaplan University, offers students the opportunity to study law from home. Alternative schools like Kaplan tend to not be accredited by the American Bar Association, however, and Concord's pass rate on the California bar examination is extremely low, at 36 percent for first-time takers.²⁰

High cost, high demand

Law school enrollment has been on a general upward trend over the past decade. The first-year class starting in 2009-10 had 51,646 students, for a total of 154,549 law students that year.²¹ Though there are occasional flattenings or even decreases, first-year enrollment in law school increased by almost 150 percent from the early 1960s. (see Figure 1)

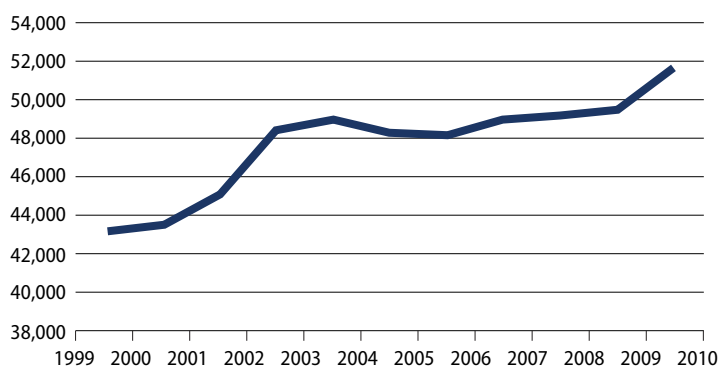
Early reports for the class entering law school in the fall of 2011 show that the trend may be flattening out again. The Law School Admissions Council reports that applications are down almost 10 percent from 2010. Admissions officials speculate that students are being more cautious about the decision to take on debt for legal education, considering reports that a law degree may no longer be worth the risk.²²

Of course, the number of applications may not necessarily translate into fewer enrollments. With nearly 79,000 applicants for about 60,000 seats, law schools may maintain some selectivity while filling their first-year classes.²³ And it's important to remember that enrollment reflects both student demand and law schools' strategic choices about how many students they will admit. This year some law schools have already announced plans to admit smaller classes—a move that may be aimed at increasing selectivity or shrinking unemployment statistics.²⁴

The total law degrees awarded over the past several years reflect a similar trend as enrollments: a general increase in interest in legal education, with some flattening in recent years. (see Figure 2)

FIGURE 1
Law school enrollment on the rise

First-year enrollment in ABA-accredited law schools, 1999–2009



Source: American Bar Association, First Year Enrollment Statistics, 2010

The high demand for legal education is somewhat surprising given its hefty price tag. The average tuition and fees at private, nonprofit law schools in 2010 was \$34,656 per year.²⁵ At public universities, in-state students paid \$19,912 yearly on average in tuition and fees, and out-of-state students paid \$32,247 per year. And unlike enrollments or degree completions, law school tuition is on a steady upward path. (see Figure 3)

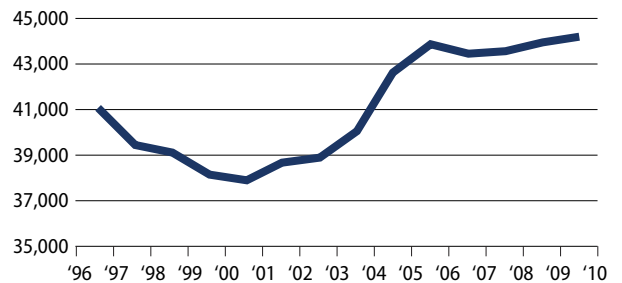
It's difficult to locate the cause of this steep rise in tuition. Though some have claimed that stringent accreditation requirements drive price, a 2009 GAO study showed that this assumption is incorrect. That report identified a few drivers of tuition based on interviews with law school officials, including a more hands-on approach to legal education that includes pricey clinical experiences and smaller class sizes.²⁶

Other changes to the legal education model may also drive tuition, including greater diversity of course offerings and increased academic support and career services for students, as well as higher faculty salaries, competition for higher rankings, and state disinvestment at public law schools. And of course, many of these changes are driven by increased competition among law schools, which in itself can be considered a driver of tuition.²⁷

The law school model would be a well-oiled machine if only its applicants could afford to pay these ever-increasing tuition rates. But most students cannot pay for their education out of pocket. Rather, they turn to the federal government for assistance.

FIGURE 2
Number of law degrees also on the rise

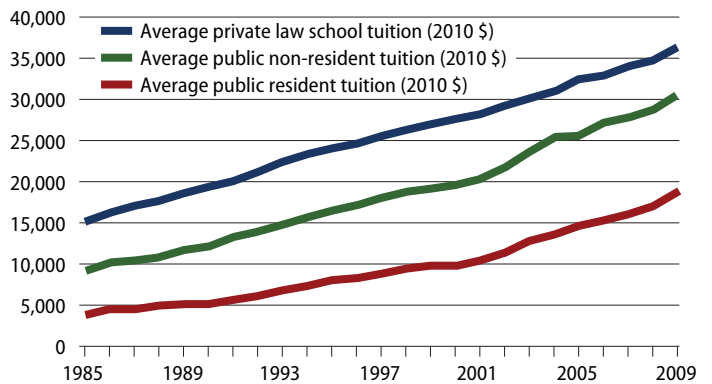
Total law degrees awarded, 1996–2009



Source: American Bar Association, Enrollment and Degrees Awarded, 1963-2010

FIGURE 3
The rising cost of legal education

Private and public law school tuition, 1985–2009



Source: lawchooltuitionbubble.wordpress.com, using ABA and BLS data

High debt, but low default

Each year, law school graduates begin their careers with an enormous amount of debt. Results from the National Postsecondary Student Aid Survey show that graduates in the class of 2008 accumulated on average \$80,000 of debt from their legal education. When combined with undergraduate debt, these students owed on average close to \$93,000. Assuming an interest rate of 6.8 percent and a standard 10-year repayment plan, that debt would yield a monthly payment of more than \$1,000.²⁸

The chart below shows how law school debt measures up to debt for other graduate degree programs. Law students have more debt on average than almost all other graduate students, excepting only medical students. And more law students borrow to pay for their education than all other graduate students. In fact, 88.6 percent of all law students borrow to finance their legal educations. (see Table 1)

Borrowing too much

Law students have more debt than most graduate students

All Students Graduate & Professional Degree Programs	Graduate Education Debt		All Education Debt (Grad & Undergrad)	
	Percent Borrowing	Cumulative Debt	Percent Borrowing	Cumulative Debt
Total	56.40%	\$40,297	69.60%	\$47,503
Master's Degree	55.20%	\$31,031	69.40%	\$40,208
Doctoral Degree	45.80%	\$57,860	56.30%	\$58,967
Professional Degree	86.20%	\$87,308	87.90%	\$98,711
Master of Business Administration (MBA)	55.50%	\$31,927	68.90%	\$41,676
Master of Social Work (MSW)	72.30%	\$35,516	77.70%	\$49,017
Master of Science (MS)	49.80%	\$30,684	63.50%	\$40,362
Master of Arts (MA)	60.80%	\$29,975	73.70%	\$40,500
Master of Education or Teaching	55.90%	\$26,487	74.50%	\$35,946
PhD	35.40%	\$44,995	48.00%	\$45,455
EdD	65.10%	\$43,812	73.30%	\$44,880
Law (LLB or JD)	88.60%	\$80,081	88.60%	\$92,937
Medicine or Osteopathic Medicine	81.90%	\$119,424	83.20%	\$127,272
Pharmacy (PharmD)	82.20%	\$63,412	85.00%	\$81,838

Source: FinAid.org analysis of National Postsecondary Student Aid Survey, 2008.

ABA data shows a slightly higher figure: For 2008 law school graduates, the average debt figure was \$91,506 for private law school graduates, and \$59,324 for public law school graduates who took out at least one professional school loan.²⁹

With student loan debt exceeding \$1 trillion, policymakers are understandably concerned about the risk of graduates defaulting on their obligations.³⁰ In the for-profit sector, students default on their loans at a rate of 15 percent.³¹ But it seems law students pose less of a threat.

It's difficult to get a complete picture of defaults at law schools, as the Department of Education collects and publishes default rates for institutions as a whole rather than by division or professional school. But since some law schools operate as standalone institutions, we can get some idea of how law grads fare. Of these standalone institutions, the average default rate is only 2.6 percent.³²

On the whole, this low default rate does not seem like a big deal. But for the individuals who fall into the default category, it can have devastating effects. Federal student loans are not dischargeable through bankruptcy. Defaulted loans may be turned over to a collection agency, and the borrower is liable for the costs associated with collecting the loan. In addition, the government may recoup its money by garnishing wages (up to 15 percent of the borrower's pay), intercepting federal and state tax refunds, or withholding other government benefits.³³

Defaulting on student loans also results in ruined credit. With a poor credit score, it is difficult or impossible for defaulters to obtain loans, mortgages, or credit cards. And the defaulted loans remain on one's credit history for up to seven years after the debt is paid.

Elie Mystal of the legal blog "Above the Law" knows firsthand the effects of student loan default. Mystal graduated from Harvard Law School with almost \$150,000 in student loans. Though he began his career at a large law firm, he chose to leave and as a result was unable to pay his debt. His student loan defaults mean constant calls from debt collection agencies and an extremely low credit rating:

Living with no credit actually means you have to become much better in terms of making a budget. You cannot screw up because you don't really have a margin for error. Emergency purchases ... can totally throw you without a credit card. And forget doing things like renting cars.

Or owning them, unless you can walk into the dealership and pay straight cash, homey. If you are trying to rent an apartment, be prepared to be rejected out of hand by most places, and only have a shot at a few units if you have two, three, maybe even six months of rent up front, in cash, that you can drop on the landlord or management company. You will not have a doorman.³⁴

But default rates do not tell the whole story. Graduates may become delinquent on their student loans but not default, or they may be forced to postpone their loan payments through a deferment or forbearance.³⁵ Though these paths do not have the same devastating consequences as default, they can be a major setback to young graduates who hoped that postsecondary education would help improve their finances, not make them worse.

Some young lawyers find themselves teetering on the edge of default as a result of their high student loan debt. In a particularly egregious case dug up by *The New York Times*, a young law school graduate struggled with \$250,000 in debt while working temporary legal jobs to stay afloat.³⁶ But most will pay the debt, slowly. On the way, though, they will likely sacrifice their goals to work in public-service careers, opting instead for higher-paying private practice.³⁷

The high enrollment, high tuition, high debt phenomenon presented in law school mirrors the rest of higher education. The annual real growth in undergraduate tuition has been more than 3 percent per year for the past three decades—far less than the rate of increase in law school tuition, but still significant. During that same time period, median family income for Americans with children grew just 10 percent.³⁸ As a result, students who borrow for a bachelor's degree take on an average of \$24,000 in debt. And an increasing number of them default on these obligations—the overall default rate for the cohort of students who began repaying in 2009 was 8.8 percent, up from 7 percent for the 2008 cohort.³⁹

For students in the rest of higher education, concern about tuition and debt levels is seen as both a consumer issue—protecting students from unnecessarily burying themselves in debt—and a problem of protecting the federal government's interest in the student loan program.

In legal education, it seems that we need not worry as much about the federal government, as most law students pay back their loans. But the consumer issue looms large, as the high debt levels that graduates assume have the potential to disrupt their lives if their earnings cannot accommodate significant monthly

loan payments. And legal education adds a new aspect to concerns about cost and debt: Students who take on too many loans will not be able to participate in public-service occupations. The shortages of public defenders across the country—caused by the fact that states cannot pay public defenders enough to support themselves—are a significant public policy concern, as defendants are forced to take pleas or spend extra time in jail until their cases can be taken up.⁴⁰

A changing workforce

In popular media, lawyers are portrayed as either high-rolling corporate lawyers or hard-working, underpaid public defenders and district attorneys. In reality, there are many jobs in between. Attorneys work at firms ranging in size from thousands of lawyers to just one. They also work in-house at corporations, at public interest organizations, and outside the legal profession entirely. And some are unemployed.

The face of the legal profession in the United States is changing dramatically, particularly for new lawyers. There's always been variation in pay within the field—a first-year associate at a small firm makes on average \$73,000 annually, whereas at a large law firm, associates typically start at \$130,000 per year.⁴¹ But the economic pressure of the recession forced law firms to make changes to their compensation and employment practices. In some cases, firms are even beginning to rethink the monolithic partner-track system that is the basis of the traditional law firm structure.

The economic recession put pressure on law firms in two ways. First, there was simply less work available at most firms, resulting in downsizing and layoffs.⁴² Second, clients began to demand lower prices for the services they received, challenging billing practices and poring over summaries of attorneys' hourly billing.⁴³ Many firms took the opportunity to create savings through efficiencies in practices, outsourcing support staff, reining in internal costs such as high-price meals and holiday parties, and doing more work with fewer attorneys.⁴⁴

These changes were felt most dearly by young attorneys and support staff like administrative assistants and paralegals.⁴⁵ Hiring slowed across all sectors of the legal profession, and large law firms began to rely more heavily on lower-paid contract attorneys for routine tasks such as document review. And many associates lost their jobs, though their losses pale in comparison to those of law firm staff.

From January 2008 to November 2010, 5,280 attorneys and 9,120 staff members lost their jobs at major law firms, according to a website that tracks layoffs.⁴⁶

Now recent graduates find that they are more likely to be working part-time or in a job that does not require a legal background than in a partner-track position at a giant law firm.⁴⁷

Though the return on investment in law school has been in question for young graduates since at least 2008 and possibly even earlier, this news was not widely reported until recently. This may be due, in part, to the fact that statistics about the legal profession as a whole mask the circumstances that young lawyers face.

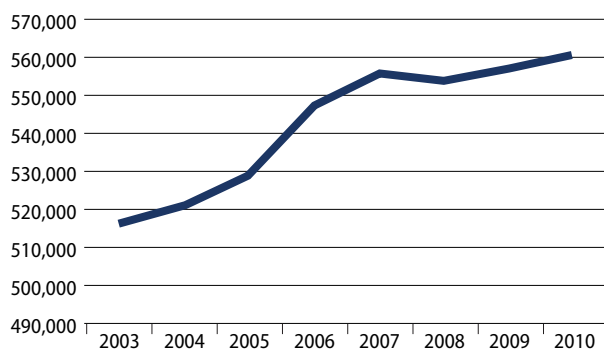
Bureau of Labor Statistics data on the legal profession show that the growth in law jobs slowed over the past several years. But the numbers do not begin to reflect the difficulties new law grads face in the job market. A study by the National Association for Legal Professionals revealed that as of February 2011, 87.6 percent of the class of 2010 had found employment. This rate is the lowest it has been since 1996, and it looks worse when you consider where these recent grads found employment.

The 87.6 percent employment rate reflects law school graduates employed in any type of job, not just legal jobs. Every year there are some law students who decide to pursue careers outside of the law, but the 2010 NALP survey seems to reflect a growing population of lawyers who work outside of the law out of necessity, not choice. Only 68 percent of the employed members of the class of 2010 were in occupations that required bar passage. That's the lowest percentage that NALP has ever measured. And more young lawyers are taking part-time jobs than in past years—the rate of part-time employment stood at 11 percent, compared to about 5 percent in 2008.

Just as overall employment statistics obscure the troubles that young lawyers face, national average salary data would likely make a young grad overly optimistic about his or her compensation prospects. The Bureau of Labor Statistics reports a median salary of \$129,440

FIGURE 4
Growth in legal employment is slowing down

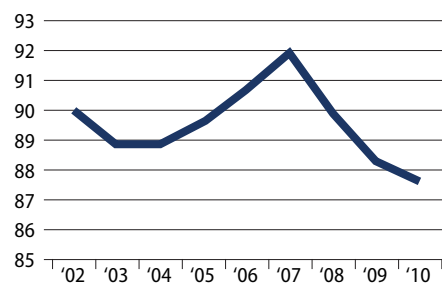
Overall legal employment as reported by the Bureau of Labor Statistics, 2003–2010



Source: Bureau of Labor Statistics

FIGURE 5
Fewer law school graduates are finding work

Employment rate among recent law school graduates, 2002–2010



Source: NALP Recent Graduates

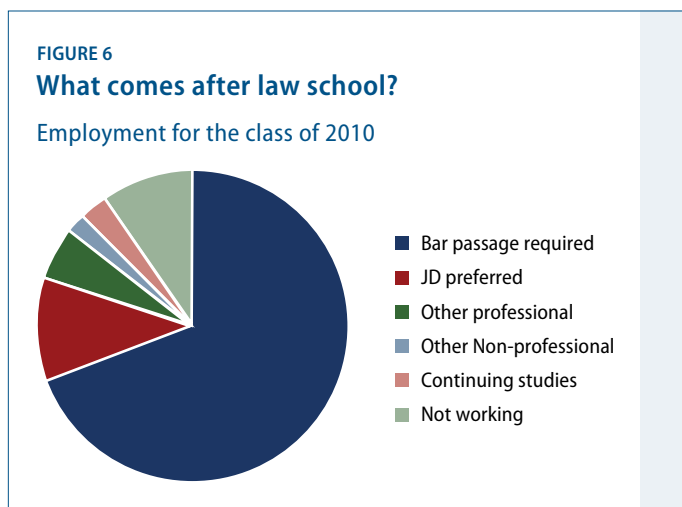
for attorneys in 2010. But the National Association of Legal Professionals' recent graduate survey found a median salary of \$63,000 for the class of 2010.

The low salary figure for young grads reflects the fact that barely half of the class of 2010 was employed in private practice. These jobs averaged around \$105,000 annually, whereas the other half of the class of 2010 worked in lower-paying public service, clerkship, government, or academic positions.⁴⁸

The more accurate picture presented by data on recent graduates should be enough to make would-be law students think more cautiously about investing their time and money in a legal education. At the very least, it should make them rethink the amount of debt they undertake to pay for law school. After all, the average debt load for recent graduates is simply too high when one considers their likely salaries. The debt-to-income ratio for graduates in the class of 2009 who borrowed the average amount at a private law school (\$106,249) and made the median salary (\$72,000) would be almost 16 percent.⁴⁹ That's 4 percentage points higher than the upper threshold for debt levels in career education programs under the Department of Education's new gainful employment rule.⁵⁰

One might be tempted to think that these changes in the legal profession are temporary reactions to a down economy. But there is reason to believe that trends such as lower salaries, temporary employment, and employment outside the legal field will persist for subsequent classes of law students. William Henderson, director of the Center on the Global Legal Profession and professor at Indiana University, argues that trends like globalization and increasing reliance on technology began changing law firms long before the recession.⁵¹ And Matt Leichter of The Law School Tuition Bubble uses data from the Census Bureau and the Bureau of Economic Analysis to show that, as a share of the overall economy, legal services have been falling for some time.⁵²

Given that the poor jobs outlook for recent law school graduates has been brewing for some time, why haven't law schools responded by admitting fewer students, lowering tuition, or changing their educational model? And why has it taken students so long to respond by choosing not to attend law school, or not to pay so much for legal education?



Source: NALP

There are a few answers. As Dean Richard Matasar said of New York Law School, “We exist in a market. When there is demand for education, we, like other law schools, respond.”⁵³ In other words, law schools are able to admit large classes, maintain the same educational model, and continue to push tuition higher because students still turn out in droves for a chance to be in their entering classes.

But why do students still want to go to law school? One possibility is that they simply do not know that the payoff to a legal education has declined. Another is that, even though they see the recent decline in salaries and the high debt of graduates, they assume that these are factors of the economic downturn that will correct—conveniently—within the three years that it takes to get a law degree.

For whatever reason, students, law schools, and policymakers have all been slow to respond to clear trends in debt, education, job openings, and salaries. But over the past year, some groups have picked up the pace, spurred along by a barrage of newspaper items and blog posts about the legal education crisis. The following sections describe their progress toward changing legal education for the better.

Quality and information: The role of the American Bar Association

With so much talk about the cost of legal education and its outcomes, it's striking that there are very few complaints about the quality of legal education. In other areas of higher education—particularly for-profit colleges, but also four-year universities—the past year brought serious concerns about how much students are actually learning in college.

One reason why quality is not in question may be that there are measures of how much law school graduates have learned. Bar examinations are administered by state agencies as part of the licensing process for individuals who wish to practice law within the state. Although there is no standard format across states, most bar exams consist of a series of essay questions that touch upon major areas of the law such as property, evidence, or contracts, and a multistate standardized component that consists of multiple-choice questions. Some states also include a component that simulates a real-life task by providing test takers with a “file” of documents and asking the respondent to write a memorandum or affidavit based upon the materials.⁵⁴

State bar examinations provide a somewhat standard way of gauging whether law school graduates are learning what they need in order to be admitted to practice law within a jurisdiction. Of course, pass rates may mean more about the caliber of incoming students than the quality of the teaching at a given law school. Indeed, many law students graduate without exposure to the subjects tested on the bar exam, counting on post-graduation prep courses like BarBri to teach the basics.⁵⁵ Still, though bar examinations are not a precise measure of quality, they tell us whether a school gives a student the minimum of what it promises—a chance to practice law in the state of his or her choice.

Exam results show that students at some law schools have a significantly better chance of being admitted to the bar than those at others. In Massachusetts, for example, all 70 of the Harvard Law students who took the state's bar in 2011 passed on the first try. But only 71 percent of the first-time test takers from Massachusetts School of Law passed in that same year.⁵⁶ And in California—a state with a notori-

ously difficult bar examination—98 percent of first-time takers from Stanford Law passed, but schools such as Golden Gate University, Whittier School of Law, and University of La Verne College of Law had pass rates of less than 60 percent.⁵⁷

Although highly ranked law schools tend to boast high bar pass rates, rank does not always correspond with bar passage. In Florida this year, Florida International University—ranked 132 on the *U.S. News* rankings overall, and fifth out of the Florida law schools—had the highest bar passage rate of the state’s law schools, at 89.6 percent.⁵⁸

Beyond test scores, though, students may rely upon another measure of law school quality. American Bar Association, or ABA, accreditation is the gold standard for U.S. law schools, signifying legitimacy to students and the public, and guaranteeing graduates the ability to sit for the state bar of his or her choice.

Accreditation is a simple concept but it is slightly complicated by the involvement of the federal government. Accreditors are private organizations, typically including experts in the field of higher education or some specialized area of higher education, who review and approve of the quality of postsecondary institutions through a process of self-study and peer evaluation.⁵⁹ The Department of Education uses accreditation as a means of quality control for colleges that wish to participate in federal financial aid programs such as Pell Grants or student loans.

There are technically two different types of accreditation: program and institutional. Institutional accreditation vouches for the overall quality of a college or university, whereas program-level accreditation is a seal of approval for a particular educational program, like nursing or law. To qualify for federal aid, a university must acquire institutional accreditation, unless it is a freestanding professional school, in which case it needs only program-level accreditation. Though only institutional accreditation is federally required, most specialized programs pursue program-level accreditation because it is either strongly preferred by employers or required by states in order to sit for state licensing examinations.

In the case of law school, employers often prefer attendance at an ABA-accredited school. It is also a prerequisite for taking state bar examinations in many instances. But attending an unaccredited law school is not necessarily a kiss of death. These institutions may be significantly less expensive than their ABA-accredited counterparts, and students still may be able to sit for the bar examination in some states.⁶⁰

The past year brought significant questions about the ABA's ability to oversee American law schools. One catalyst for this scrutiny was the revelation that some law schools—including Villanova and the University of Illinois—had been reporting inaccurate information to the ABA on such measures as grades and LSAT scores.⁶¹ The fury over these transgressions was compounded by reports that most law schools misrepresent the job outcomes of graduates by failing to distinguish between jobs that require a legal degree and those that do not, or between part-time and full-time employment.⁶²

The federal committee charged with approving accreditors for federal financial aid purposes at its June meeting expressed discontent with the ABA, citing the fact that the accreditor had 17 violations of Department of Education requirements. Among these violations, the committee found that the ABA fails to consider student loan default rates when assessing programs, and that it does not have adequate standards for job placement data.⁶³

In addition to pressure from the committee, the ABA faces scrutiny from a handful of U.S. senators. In March Sen. Barbara Boxer (D-CA) sent the first in a series of letters to the ABA asking it to improve its practices related to job placement data.⁶⁴ Sen. Charles Grassley (R-IA) voiced similar concerns, adding that the ABA should investigate law schools that give out merit aid in the first year that they do not plan to renew.⁶⁵ And Sen. Tom Coburn (R-OK) joined Sen. Boxer in requesting that the Department of Education begin to assess the accuracy of the data law schools report.⁶⁶

Since these concerns began to surface, the ABA has been assuring the federal government and the public that it intends to take action. To date, however, the ABA standards have not changed. A November 2011 article in the *ABA Journal* states that the ABA Standards Review Committee hopes to enact proposed changes to the standards for law school disclosure of employment information.⁶⁷ The proposal would require schools to distinguish between part-time and full-time employment as well as the type of employment. The committee is also considering requiring schools to disclose graduate salary information, and information about the conditionality of merit scholarships.

These recent concerns about the ABA accreditation process have very little to do with the quality of the educational services provided by U.S. law schools. Rather, policymakers are primarily interested in how the ABA governs law schools' disclosure of consumer information. Similarly, previous complaints about ABA

accreditation had little to do with whether accredited law schools were educating students to an adequate level.

Professors and law school administrators throughout the past two decades voiced their dissatisfaction with the ABA accreditation standards for their over-emphasis on the inputs to legal education.⁶⁸ In 1994 the deans of 14 law schools circulated an open letter that criticized the ABA accreditation process, stating, “We find the current process overly intrusive, inflexible, concerned with details not relevant to school quality (perhaps even at odds with maintaining quality), and terribly costly in administrative time as well as actual dollar costs to schools.”⁶⁹

These policymakers and professors are urging the ABA to think about its role in legal education in a more circumspect way than they have to date. Accreditors are more than just rubber-stampers of quality. They are gatekeepers to careers, determining how big or small educational programs can be. The requirements they dictate can significantly affect college affordability, either driving up tuition with elaborate requirements or lowering it by encouraging innovative, cost-effective models. And accreditors can greatly increase transparency in higher education by requiring their member schools to provide accurate, reliable data to prospective students.

Demanding more information

As mentioned in the previous section, the lack of accurate, dependable information about law schools is a serious obstacle for prospective students. It seems that even in the past few years, students relied upon the nearly mythical promise of a high-salary, “Big Law” job when deciding to apply and to take on excessive debt to finance their legal educations.⁷⁰ Though many may have presumed a bright future without doing their due diligence, research likely would not have shown the problems in the legal job market.

Until recently, many law schools happily lumped all jobs together into an overall employment rate, glossing over the crucial differences between part-time and full-time employment, temporary and long-term, or J.D.-required and non-law jobs. And median earnings statistics could look much higher than reality when schools fail to mention how low the response rate is to salary questions.⁷¹

Unlike undergraduate students, law students have been very vocal in requesting greater transparency from their schools. Many law students and former students take to the Internet to express their displeasure with the state of legal education. “Exposing the Law School Scam” is a blog “dedicated to exposing the ‘law school scam’” by writing about the oversupply of lawyers and the inaccurate or misleading employment data that law schools use to market themselves to students.⁷² Similarly, “Subprime JD” also publishes columns and links to news articles that show the rise in law school tuition and how little would-be law students know about their future employment prospects.⁷³ Still other blogs single out individual law schools and try to show the “scams” these institutions are perpetrating.⁷⁴

In May a group of law school student body presidents, led by Nate Burriss of Boston College Law School, called for new federal legislation that would require the Department of Education to ensure students receive accurate information about law schools.⁷⁵ And Law School Transparency, a nonprofit run by recent law school graduate Kyle McEntee, is working with legislators like Sens. Coburn and Boxer to investigate law school employment and salary data and to expose more information about how law schools make and spend money.⁷⁶

Conclusion and policy recommendations

A 1950s description of the typical law firm partner depicted him as someone who could “save money in substantial amounts, build country homes and gardens for [himself] like [his] fathers and grandfathers did, and plan extensive European holidays.”⁷⁷ That image is laughable now, but it’s a bitter kind of humor for the recent law school graduates who believed the myth that simply obtaining a law degree is the key to “making it” in the world, and who took out substantial student loans to pay for their mistakes.

Between the good old days and the present, much has changed in the legal field. Yet little has changed in legal education, from students’ expectations to the way law schools teach. To ensure students get the best value from their legal educations, both students and schools must become more flexible and more attuned to the ebbs and flows of the legal workforce. In addition, policymakers must ensure their quality-assurance methods do not stand in the way of changes that would increase the value of the law school degree.

To ensure students, colleges, and policymakers react to the forces that are changing the value of college degrees, the following policy changes should be implemented:

- The Bureau of Labor Statistics, or BLS, should collect and publish average employment and salary data for recent entrants into an occupation.
- The BLS should work in conjunction with the Department of Education to make this information available to prospective students.
- Accreditors in all sectors of higher education should create standard definitions for employment and salary statistics, and require member schools to make such information readily available to students. Accreditors should audit member schools’ adherence with these standards from time to time.

- Congress should require that the ABA develop such standards as a condition of retaining its status as an approved accreditor.
- The National Advisory Committee on Institutional Quality and Integrity should conduct a review and submit a report to Congress and the Department of Education on accrediting standards that stifle innovation or drive up tuition costs in higher education.
- Congress should provide funds to colleges through the Fund for Innovation in Postsecondary Education for projects that use technology or other innovative solutions to drive down tuition costs while maintaining or improving educational quality.

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