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**2016 James P. While Lecture on Legal Education: Legal Education
Reconsidered**

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2016 JAMES P. WHITE LECTURE ON LEGAL EDUCATION

LEGAL EDUCATION RECONSIDERED

JUDITH AREEN*

It is an honor to be with you today as this year's James P. White Lecturer. First, I am humbled to be linked in any way with the distinguished lecturers you have invited in past years including the Right Honourable Beverley McLachlin, Chief Justice of Canada; Randall Shepard, former Chief Justice of Indiana; and E. Thomas Sullivan, President of the University of Vermont.

But even more, it is an honor to be here because I am proud to be a Hoosier. I was born in Chicago, but moved with my family when I was three to South Bend, Indiana, where I grew up and graduated from James Whitcomb Riley High School (named for the man many in this audience know as the Hoosier Poet).

I want to thank Dean Klein and the faculty and staff of Indiana University Robert H. McKinney School of Law for inviting me to be this year's lecturer. I also want to extend my personal thanks to Jim White and his wife Anna for their gracious welcome and hospitality. Jim has been an inspiration for me for many years with all that he accomplished as the Consultant for Legal Education—as he has been for so many in the legal academy—particularly now with all the challenges facing legal education.

The title of my talk, "Legal Education Reconsidered," is not meant to suggest that legal education needs to be reconsidered. On the contrary, I will explore why the many criticisms of legal education made over the past six years combined with a significant decline in the legal job market have led many people—including many college students and recent graduates—not only to reconsider legal education, but to draw the conclusion that it is no longer a worthwhile investment. Even worse, a growing number of faculty and deans have become disheartened about their chosen life's work and as a consequence have lost sight of the value of an American legal education.

Legal educators in many other countries, by contrast, continue to recognize the value of an American legal education, even while too many inside the academy are filled with self-doubt. Ten years ago, I had the privileging of representing the Association of American Law Schools (AALS) at a gathering of legal educators in China. During our informal conversations over the five-day visit, several of the most accomplished Chinese legal academics remarked that

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they were very good at teaching their students to master large quantities of law in their nearly 600 law schools, but they recognized that American law schools do something else. We educate our law graduates to be problem solvers—something they would like to be able to do. They planned to send more of their graduates to study in the United States to learn enough about the American system of legal education that they could replicate it in China. Today, at a number of American law schools, the largest group of international LLM students are from China. China, moreover, is hardly the only nation that admires our system of legal education, as demonstrated by the growing number of students who come to American LLM programs from around the world—and increasingly to American JD programs as well.¹

American skepticism about legal education no doubt has been fueled in part by the economic crisis facing so many law schools today. Over the past six years, the national applicant pool to law school has declined by more than thirty-six percent.² Let me repeat that: Over the past six years, the national applicant pool to law school has declined by more than thirty-six percent. Think what would happen to a business that lost that much of its market share.

First-year enrollment in American law schools has also dropped, though not quite as much; it is down some thirty percent.³ Because most law schools rely on tuition as their primary source of revenue, the drop in qualified applicants means that a significant number of American law schools are operating in the red—many for the first time ever. This is quite a turnaround from the days not so long ago when many law schools were viewed as cash cows by their universities because they so easily enrolled qualified students.

There are a number of different theories that have been proposed as to what has caused the dramatic decline in applicants. One obvious factor cited by many observers is the decline in jobs for law graduates. Once the Great Recession began in 2008, there was much less funding available for lawyer jobs in the

1. The Institute of International Education reports there were a record number of international students studying in the United States in 2015. See *Enrollment Trends*, INST. OF INT'L EDUC., <https://www.iie.org/Research-and-Insights/Open-Doors/Data/International-Students/Enrollment-Trends> [<https://perma.cc/352U-SJ6L>] (last visited Apr. 30, 2017). China sent the largest number of students (328, 547 out of a total of 1,043,839 in 2016). *Fast-Facts: 2016*, INST. OF INT'L EDUC., <https://www.iie.org/Research-and-Insights/Open-Doors/Fact-Sheets-and-Infographics/Fast-Facts> [<https://perma.cc/ZE9G-Y6MY>] (last visited Apr. 30, 2017). Of that group, 12,709 were enrolled in legal education. *Fields of Study: 2014-16*, INST. OF INT'L EDUC., <http://www.iie.org/Research-and-Publications/Open-Doors/Data/International-Students/Fields-of-Study/2014-16> [<https://perma.cc/6DS8-6HQS>] (last visited Apr. 30, 2017).

2. Applicants dropped from 87,900 in 2010 to 54,500 in 2015 (rounded to the nearest hundred). *Archived End-of-Year Summary: ABA (Applicants, Applications & Admissions), LSATs, Credential Assembly Service*, LAW SCH. ADMISSION COUNCIL, <http://www.lsac.org/lisacresources/data/lisac-volume-summary/archive> [<https://perma.cc/39K8-WNQ6>] (last visited Apr. 30, 2017).

3. Enrollment has dropped from approximately 52,500 in 2010 to 37,100 in 2015 (rounded to the nearest hundred). *Statistics*, AM. B. ASS'N, www.americanbar.org/groups/legal_education/resources/statistics.html [<https://perma.cc/4TAD-RG53>] (last visited Apr. 30, 2017).

public sector at the federal, state, and local levels. At the same time, many private firms were faced with diminished client demand. They had already been under pressure even before the recession began from corporate clients to reduce costs. As a result, large law firms began to offshore some of their legal work to other countries; to increase their use of technology—e-discovery for example—in lieu of lawyers; and to hire contract lawyers, a new job category of recent graduates who were not on the partnership track and were paid less than regular associates. The end result of all these changes was a major decline in the number of entry-level jobs for lawyers in both the public and private sectors.⁴

At the same time jobs for law school graduates were disappearing, law school tuitions continued to rise, particularly in public law schools because many states were cutting back on state funding for higher education in general.⁵ Indeed, in many states, public subsidies dropped considerably more for law students than for undergraduates because state legislators believed they could more easily borrow and pay back loans.

The decline in jobs for graduates and in public subsidies was accompanied by a growing chorus of criticism leveled at legal education. This toxic combination of too few jobs, reduced public subsidies and severe criticism is undoubtedly part of why many potential law students and their families no longer see legal education as a worthwhile choice. Of additional concern, the biggest drop in the applicant pool has been in students who would have achieved higher than average LSAT scores—the very students who would have the best chance to be hired even in a tight job market.⁶

I. HISTORY

The drop in interest in going to law school is a stunning turnaround for the United States, given the place law has always occupied in our national development. Thomas Paine captured law's significance during the Revolution. When asked by skeptics who would be king, he explained that “in America the law is king,” a sentiment that lives on today in the familiar observation that in the United States, no one is above the law.⁷

Two insightful foreign visitors later confirmed the importance of law and

4. Press Release, Nat'l Ass'n of Law Placement, *Class of 2010 Graduates Faced Worst Job Market Since Mid-1990s: Longstanding Employment Patterns Interrupted* (June 1, 2011), www.nalp.org/2010selectedfindingsrelease [https://perma.cc/R4ML-88DM].

5. See Section of Legal Educ. and Admissions to the Bar—ABA Required Disclosures, ABA, abarequireddisclosures.org [https://perma.cc/F3PY-VQLP] (last visited Apr. 30, 2017).

6. Jerry Organ, *Changes in the Composition of the LSAT Profiles of Matriculants and Law Schools Between 2010 and 2015*, LEGAL WHITEBOARD (Jan. 18, 2016), <http://lawprofessors.typepad.com/legalwhiteboard/2016/01/in-late-december-2014-i-posted-a-blog-analyzing-how-the-distribution-of-matriculants-across-lsat-categories-had-changed-si.html> [https://perma.cc/KQE3-JZEU].

7. 1 THOMAS PAINE, *Common Sense*, in THE WRITINGS OF THOMAS PAINE 67, 99 (1774-1779).

lawyers in the new democracy. In 1835, Frenchman Alexis de Tocqueville reported that he had found that lawyers “fill the legislative assemblies, and are at the head of the administration.”⁸ He then famously added: “[S]carcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.”⁹ He went on to report another example of law’s prominence: Because “most public men are or have been legal practitioners, they introduce the customs and technicalities of their profession into the management of public affairs.”¹⁰

A half century later, Scotsman James Bryce reaffirmed the importance of lawyers in the United States when he reported in 1888 that “in spite . . . of the democratic aversion to exclusive organizations, the lawyers in America [by early in the nineteenth century] reached a power and social consideration relatively greater than the bar has ever held on the eastern side of the Atlantic.”¹¹ Interestingly, he credited the bar’s success in part to the quality of their legal education, adding that he did “not know if there is anything in which America has advanced more beyond the mother country than in the provision she makes for legal education.”¹²

This is not the time or place to undertake a full review of the growth and development of American law schools in the nineteenth and twentieth centuries. Fortunately that task has been masterfully carried out by Robert Stevens in *Law School: Legal Education in America from the 1850s to the 1980s*.¹³ Nonetheless, I want to highlight a few of the developments most relevant to today’s inquiry.

Tocqueville, in contrast to Bryce, said nothing about legal education because when he wrote in 1825, the chief way to become an attorney was still apprenticeship.¹⁴ Jacksonian democracy fueled strong assaults on the status of the legal profession between the 1820s and the 1840s.¹⁵ There was even talk of abolishing the legal profession.¹⁶ Nonetheless, without an aristocracy, lawyers continued to be relied upon to perform a growing range of functions in the burgeoning nation.¹⁷ Soon, law schools would begin to appear.

By 1860, there were twenty-one law schools in existence.¹⁸ Law in the United States was mostly practiced with an undergraduate degree throughout the

8. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA*, 271 (Henry Reeve & Phillips Bradley eds., 1945) (1835).

9. *Id.* at 280.

10. *Id.*

11. JAMES BRYCE, *THE AMERICAN COMMONWEALTH* 2:1283 (1888).

12. *Id.*

13. *See generally* ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983).

14. *See generally* TOCQUEVILLE, *supra* note 8.

15. STEVENS, *supra* note 13, at 7.

16. *Id.* at 8.

17. *Id.* at 7.

18. *Id.* at 21.

nineteenth century as it was in England.¹⁹ Indeed, it was often easier to get into the law school of a university than its college.²⁰ Georgetown's athletic competitors complained that too many of its athletes were enrolled in the law school because it was easier to get into than the college.²¹ When Cornell first began to require four years of high school as a prerequisite to attending its law school, its entering law school class fell from 125 to sixty-two.²²

The growth of law schools came at the same time that an increasing number of major universities began to consider research to be as important a part of their mission as teaching.²³ Charles Eliot, a professor of chemistry at MIT, was named president of Harvard in 1869.²⁴ During his forty years as president, he redirected Harvard to embrace the dual mission.²⁵ Almost immediately after becoming president, Eliot reached out to a lawyer he knew named Christopher Columbus Langdell and, in 1870, made him dean of the law school.²⁶ Langdell shared Eliot's commitment to scientific research, and believed it was possible to teach law as if it were a science by studying actual court opinions much as a paleontologist might study bones.²⁷ Langdell's case method soon came to dominate legal education—but not without resistance. In 1909, Albert Kales argued that because sixty-five to ninety-five percent of the law students at the University of Illinois intended to practice law locally when they graduated, a curriculum based on legal reasoning, like the one propounded by Langdell, was not pertinent to their career goals.²⁸ They should be able to focus instead on learning the law of their local jurisdiction.

The ABA Committee on Legal Education (the precursor of today's Section on Legal Education and Admission to the Bar) initially also resisted the case method.²⁹ They set out arguments against the case method in an 1891 report, and asserted that students should instead be taught basic rules.³⁰ The faculty at Columbia Law School also opposed the case method under the leadership of Theodore W. Dwight, who was committed to lecturing in the tradition of Blackstone and Kent.³¹ Ultimately, after Dwight and some faculty resigned, the

19. *Id.* at 36.

20. *Id.* at 35.

21. *Id.* at 38.

22. *Id.* at 37.

23. *Id.* at 35.

24. HENRY JAMES, CHARLES W. ELIOT, PRESIDENT OF HARVARD, 1869-1909, at 73 (1909).

25. STEVENS, *supra* note 13, at 36.

26. Daniel R. Coquillette & Bruce A. Kimball, *The Republic of Merit: Harvard Law School, The First Century (1817-1910)*, at 7, http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/38th_conf_session9_preamble_history_of_harvard_law_school.authcheckdam.pdf [<https://perma.cc/KHR2-EGWL>] (last visited May 1, 2017).

27. STEVENS, *supra* note 13, at 41.

28. *Id.*

29. *Id.* at 58.

30. *Id.*

31. *Id.* at 23.

remaining faculty at Columbia accepted the case method, which went on to spread to most of the law schools in America.³²

As the case method flourished, the ABA was pressured by the growing number of faculty in law schools, or “academic lawyers” as they were called, to found an association for them. In response, the ABA assisted in the establishment of the Association of American Law Schools (AALS) in 1900.³³ The ABA and AALS worked in partnership to increase the quality of legal education, but both showed little care for those who were excluded by those efforts. Some academic leaders were openly anti-immigrant; in 1923, for example, Thomas Swan, the dean of Yale Law School, argued against using undergraduate grades to decide which applicants to admit because it could mean they would be forced to admit students of “foreign” rather than “Old American” parentage, thereby becoming a school with an “inferior student body ethically and socially.”³⁴

Higher education as a whole was also slow to focus on matters of access. Interestingly, just as minority men were given access to the vote before women of all colors by the Fifteenth Amendment, they were given access to higher education before women. In 1950, in *Sweatt v. Painter*,³⁵ the United States Supreme Court ruled Heman Sweatt could not be denied admission to the University of Texas Law School because of his race.³⁶ Not until 1996 did the Court, in *United States v. Virginia*, hold Virginia Military Institute could not deny admission to a public university on the basis of gender.³⁷

But access is about much more than eliminating explicit legal barriers. In 1978, in *Regents of the University of California v. Baake*, the Supreme Court held a program designed to increase the number of disadvantaged or minority students enrolled at the Medical School of the University of California at Davis unconstitutional.³⁸ Justice Powell, the swing vote, in his opinion pointed to the program at Harvard College as an exemplary alternative.³⁹ Harvard did not set quotas for underrepresented students as Davis had.⁴⁰ Instead, it aimed to enroll a diverse student body which Powell considered a constitutional choice.⁴¹ In *Grutter v. Bollinger*,⁴² one of a pair of decisions made in 2003 concerning affirmative action programs at the University of Michigan, the Court for the first time explicitly upheld a law school program designed “to achieve that diversity which has the potential to enrich everyone’s education and thus make a law

32. *Id.* at 45, 60.

33. *Id.* at 96-97.

34. *Id.* at 101.

35. 339 U.S. 629 (1950).

36. *Id.* at 636.

37. 518 U.S. 515, 557-58 (1996).

38. 438 U.S. 265, 319-20 (1978).

39. *Id.* at 316.

40. *Id.*

41. *Id.* at 316-17.

42. 539 U.S. 306 (2003).

school class stronger than the sum of its parts.”⁴³

Despite the decision in *Grutter*, affirmative action to achieve student diversity remains a contested issue. A number of states have passed laws barring the use of race as a factor in their public universities.⁴⁴ A number of universities joined in support of the affirmative action program at issue in *Grutter*, by filing amicus briefs,⁴⁵ and a number of faculty testified in lower court proceedings about the academic value of having a diverse student body. However, schools with comparable programs have not shown much success in increasing the number of low-income students, or those who are the first in their family to enter higher education. As William Bowen and his co-authors document in *Equity and Excellence in American Higher Education*, data reveals that such programs for the most part were not working for those students.⁴⁶ From the perspective of the twenty-first century, when economic inequality is increasingly recognized as a major problem in the United States, higher education, including legal education, has not been as effective an engine for increasing social mobility as it should be.

Beginning in the 1930s, more and more states required applicants to graduate from an ABA law school to be admitted to the bar—the almost universal pattern today. Once law schools became the primary path for educating future lawyers, debate increased about what should be taught in law schools, and how. One of the earliest challenges concerned the need to supplement the case method. In the 1940s, a few schools began to offer legal clinics modeled on the education of doctors.⁴⁷ It was not until the late 1960s that clinical education really took hold. Funded initially by the Council on Legal Education for Professional Responsibility, which was itself funded by the Ford Foundation, more and more law schools began to experiment with a variety of law clinics.⁴⁸ It soon became clear that clinics were a very effective form of education that could bridge the gap between theory and practice for law students.

II. THE MODERN CRITICS

As this very brief overview of the history of American legal education has shown, criticism of American legal education has been around since law schools were first founded. Despite the criticism, legal education continued to flourish throughout the twentieth century to the point that by 1983, Derek Bok, then president of Harvard, complained to the Harvard Corporation that too many of the top college graduates were going to law school at a time when the country needed

43. *Id.* at 315. The companion case is *Gratz v. Bollinger*, 539 U.S. 244 (2003).

44. See JUDITH AREEN & PETER LAKE, *HIGHER EDUCATION AND THE LAW* 720-21 (2d ed. 2014).

45. See, e.g., Brief of Howard University as Amicus Curiae in Support of Respondents, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (Nos. 02-241, 02-516).

46. See generally WILLIAM G. BOWEN ET AL., *EQUITY AND EXCELLENCE IN AMERICAN HIGHER EDUCATION* (2005).

47. STEVENS, *supra* note 13, at 216.

48. *Id.*

more scientists and engineers.⁴⁹

Things began to change in 2010 when fresh attacks on legal education were launched. The most visible opening round was an unprecedented series of five articles by reporter David Segal, all published during 2011 by the *New York Times*.⁵⁰ The paper chose to give even more prominence to the series by placing many of the articles either on the front page of the paper, or on the front page of the business section; they were also accompanied by two editorials.

The series began in January by focusing on what Professor William Henderson termed the “Enron-type accounting standards” used by law schools in reporting job statistics for their graduates.⁵¹ His criticism was valid because law schools had failed to develop meaningful standards to guide the statistics that were reported.⁵² Under the rules of the time, for example, it was permissible to report a graduate working at a fast-food restaurant as “fully employed.”⁵³

The most substantive attack in the series did not come until November in an article headlined “What They Don’t Teach Law Students: Lawyering.”⁵⁴ The article neglected to mention that there had been more than a century of debate about the extent to which law schools should offer general principles and theory as well as practical training.⁵⁵ It also failed to acknowledge the strengths of the traditional curriculum followed in most law schools.⁵⁶ Most law faculty are deeply committed to providing law students with broad knowledge of the law and skills that will serve them for a career, rather than having them memorize narrow technical rules (such as where in state government to file a merger agreement—an example used in the article) that are likely to change in a few years in any event.

49. *Too Much Law—and Too Little*, N.Y. TIMES (Apr. 23, 1983), <http://www.nytimes.com/1983/04/23/opinion/too-much-law-and-too-little.html> [<https://perma.cc/XL6G-XW47>].

50. David Segal, *Is Law School a Losing Game?*, N.Y. TIMES (Jan. 8, 2011), <http://www.nytimes.com/2011/01/09/business/09law.html> [<https://perma.cc/J55H-MW6L>] [hereinafter Segal, *Is Law School a Losing Game?*]; David Segal, *Law Students Lose the Grant Game as Schools Win*, N.Y. TIMES (Apr. 30, 2011), <http://www.nytimes.com/2011/05/01/business/law-school-grants.html> [<https://perma.cc/Y94Z-79RR>]; David Segal, *Law School Economics: Ka-Ching!*, N.Y. TIMES (July 16, 2011), <http://www.nytimes.com/2011/07/17/business/law-school-economics-job-market-weakens-tuition-rises.html> [<https://perma.cc/H2F9-3A7M>]; David Segal, *For Law Schools, a Price to Play the A.B.A.’s Way*, N.Y. TIMES (Dec. 17, 2011), <http://www.nytimes.com/2011/12/18/business/for-law-schools-a-price-to-play-the-abas-way.html> [<https://perma.cc/HT46-4NQK>]; David Segal, *New Law School Sues Bar Association*, N.Y. TIMES (Dec. 22, 2011), <https://mobile.nytimes.com/2011/12/23/business/duncan-law-school-sues-american-bar-association.html> [<https://perma.cc/JR7J-7ZZQ>].

51. Segal, *Is Law School a Losing Game?*, *supra* note 50.

52. *Id.*

53. *Id.*

54. David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES (Nov. 20, 2011), <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-belawyers.html> [<https://perma.cc/8HXZ-MTPN>].

55. *See id.*

56. *See id.*

Of more concern, the article ignored the fact that the dual mission of teaching and research is what propelled American higher education to be among the most sought after in the world, whether measured by applications from foreign students, or rankings of the best universities.⁵⁷ Research by law faculty and students make it possible to identify areas of law—and legal education—in need of reform, to study legal institutions and practices, and to propose better approaches. Without the faculty scholarship of Senator Elizabeth Warren, for example, there would be no Bureau of Consumer Financial Protection Bureau.⁵⁸ As Robin West and Danielle Citron have argued:

The value of legal scholarship can best be appreciated perhaps by imagining a world without it. . . . [Law schools] would train students, but less well Law schools' vision of law and lawyering would be stunted, and limited by current practices, uninformed by foundational understandings, and un-tempered by even a glancing acquaintance with the disciplines of the humanities

. . . .

The legal theories that have fundamentally changed our thinking about the law might not exist In [Judge Alex Kozinski's] view, "grand transformative ideas" always come from academia because legal scholars are uniquely suited to generate them and because they infuse their courses with ideas that then become second nature to a generation of students who become practicing lawyers, judges, and administrators

. . . .

. . . .

Everyone involved in the legal enterprise—law schools and their students, the practicing Bar and their clients, courts and their law clerks, lawmakers and their staffers, administrative agencies and more—would surely be worse off without [legal scholarship].⁵⁹

Instead the New York Times article featured only critics who denounced faculty for spending any time on scholarship.⁶⁰

The article also failed to recognize the unique place of law faculty—and the benefits they can bring to the larger society. As Lauren Robel, Provost of Indiana University Bloomington, explained in her 2012 AALS Presidential Address:

We are partnered with the profession, but our home is the academy.

57. *See id.*

58. Eric J. Mogilnicki & Melissa S. Malpass, *The First Year of the Consumer Financial Protection Bureau: An Overview*, 68 *BUS. LAWYER* 557, 557 (Feb. 2013).

59. Robin West & Danielle Citron, *On Legal Scholarship* 16-17, AALS (Aug. 2014), <http://aals.org/wp-content/uploads/2014/08/OnLegalScholarship-West-Citron.pdf> [<https://perma.cc/YX8X-VNLR>].

60. Segal, *supra* note 54.

Scholarly inquiry is as central to our own professional identity as fidelity to clients is to a lawyer's, or concepts of *stare decisis* to judges. It increases our understanding of the world and the profession, and challenges and expands our conception of what law can do in the service of justice.⁶¹

In 2012, the criticisms of the New York Times were expanded to book-length by an insider. Law professor Brian Tamanaha's *Failing Law Schools* recycled old critiques (e.g., why not reduce law school to two years), and mirrored the Times in claiming that attending most law schools was no longer worth the cost.⁶² Tamanaha's critique was more nuanced than that of the New York Times, however, because he at least recognized that there is strength in having a variety of types of law schools.⁶³

His solution to the weaknesses he identified in legal education, however, had serious flaws. He argued, for example, for what Robin West has termed a bifurcated legal world in which the faculty at the least expensive law schools would do no scholarship—when arguably their graduates most need to be exposed to new and more innovative approaches to the problems faced by their clients.⁶⁴ He also contended that states should allow graduates of non-ABA accredited law schools to take the bar so they could serve the poor.⁶⁵ But why should the poor have to make do with the least-well-trained lawyers? There is certainly an urgent need to provide legal services to the large numbers of Americans who cannot afford to hire a lawyer, but sending them poorly trained JDs does not seem much of a solution.

On the other hand, it is worth considering the types of changes that have been made in the way health care is delivered. Those changes suggest there may be value in disaggregating the work of JDs. Washington State, for example, now has a Limited License Legal Technician (LLLT) Program.⁶⁶ The degree is open to applicants with an Associate Degree, and is analogized by the state to being a nurse practitioner.⁶⁷ Candidates are required to take forty-five credits of either JD or paralegal training.⁶⁸ Currently the LLLTs are limited to practicing family law

61. Lauren Robel, President, Ass'n of Am. Law Sch., Presidential Address (2012).

62. See generally BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (2012).

63. See generally *id.*

64. See generally *id.*; ROBIN L. WEST, *TEACHING LAW: JUSTICE, POLITICS AND THE DEMANDS TO PROFESSIONALISM* (2014).

65. See generally BRIAN Z. TAMANAHA, *supra* note 62.

66. *Limited License Legal Technician Program*, WASH. ST. B. ASS'N, <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians> [<https://perma.cc/DZ3C-D66F>] (last visited Apr. 30, 2017).

67. *Information for Prospective LLLTs*, WASH. ST. B. ASS'N, <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians/Becoming-a-Legal-Technician> [<https://perma.cc/G876-5GKR>] (last visited Apr. 30, 2017).

68. *Id.*

and are not able to appear in court,⁶⁹ but they are at least able to serve in one of the areas of greatest need. Another possibility for increasing legal services for ordinary citizens would be to make better use of technology in delivering basic legal information and forms to clients. The market has begun to develop some offerings (e.g., Legal Zoom), but more choices are needed. This is where research by law faculty and law students could contribute to providing better access to justice.

In 2013, another critical book appeared entitled *The Lawyer Bubble: A Profession in Crisis*.⁷⁰ In contrast to Tamanaha, its author Steven J. Harper is not a true insider. Rather, he spent most of his career as a lawyer at a major law firm.⁷¹ Only recently did he become an adjunct professor at Northwestern University Pritzker School of Law.⁷² His book devoted as much space to needed changes in the legal profession as to law schools.⁷³ Nonetheless the space devoted to legal education is filled with attacks directed for the most part at law school deans.⁷⁴ He accused “deans” in general of using incomplete and misleading data and of telling prospective students what they want to hear in order to move their schools up in the U.S. News rankings.⁷⁵ Yet, Harper pointed to only two deans as evidence for his much broader claim.⁷⁶ He did at least mention that both schools were sanctioned by the ABA Section of Legal Education and the AALS.⁷⁷ Harper went on to accuse the ABA Section of Legal Education of being the victim of regulatory capture, without putting forth evidence to support the charge.⁷⁸

Harper denounced most legal scholarship and attacked academic faculty for their lack of experience practicing law.⁷⁹ He apparently would prefer a law school staffed with lawyers at the end of their careers—like Harper. But he reserves his strongest criticism for his assertion that law schools are enrolling too many students.⁸⁰ In his eyes, it’s a lawyer bubble. His proof, unfortunately, was based on data from the Bureau of Labor Statistics (BLS) despite the fact that its predictions of how many lawyer jobs there will be have varied considerably in recent years.⁸¹ The BLS also uses a narrow definition of lawyers that does not

69. *Limited License Legal Technician Program*, *supra* note 66.

70. *See generally* STEVEN J. HARPER, *THE LAWYER BUBBLE: A PROFESSION IN CRISIS* (2013).

71. Steven J. Harper, *Author Bio & Blog*, STEVEN J. HARPER, <http://www.stevenjharper.com/index.htm> [<https://perma.cc/TJ47-EY4D>] (last visited Apr. 30, 2017).

72. *Id.*

73. *See generally* HARPER, *supra* note 70.

74. *Id.* at 9-42.

75. *Id.* at xi-xii.

76. *Id.* at 19-22.

77. *Id.* at 22.

78. *Id.* at xiv.

79. *See id.* at 45-46.

80. *See id.* at 3-4.

81. *See id.* at 4, 213-14.

include jobs for which a JD is an advantage, but bar passage is not required.⁸² These jobs are a growing part of the job market for law graduates. The National Association of Law Placement reports that 14.8 percent of the class of 2015 took such jobs.⁸³

III. NEXT STEPS

Whatever weaknesses there are in the charges critics of legal education have leveled in recent years, the dramatic drop since 2010 in the national pool of applicants to law schools suggests the critics are having an impact on how people view legal education.

There are five actions that legal academy should consider taking at this time:

1. Faculty and deans should not be too disheartened, nor should they rush to radically revise their curricula or pedagogy without first identifying what is worth preserving. The decline in legal jobs since 2010 was not caused by what was being taught, or not taught, in law schools. If anything, the fact that large law firms have been able to maintain their productivity with fewer lawyers suggests that there is considerable value in what law schools have been teaching, and the way they teach it.

2. On the other hand, law schools must resist resting on their laurels. Most law schools are not scams, as some blogs have suggested, but neither are they as good as they could be. More curricular innovation is needed, particularly as the volume of law to be mastered increases. More also needs to be done to keep down costs so that law school is affordable. More access is needed in particular for students from low income families, and those who are the first in the family to have the benefit of higher education. Finally, legal educators must do our share to address the lack of access to justice for too many Americans. Yes, more public funding is needed for legal services—and law students are not an adequate substitute, although they can provide some pro bono support. But law students and graduates can, and should, be educated to the point that they can develop new ways to deliver basic legal services to those in need using innovative combinations of technology and lawyers, and by disaggregating some of the work now performed by JDs.

3. Legal education needs to do a better job of explaining that we are not the caricatures painted by critics. AALS is working to provide more accurate information about law schools to the larger world through its revamped website, and through retweeting and reposting on social media the achievements of law schools around the country. But we need the assistance of legal educators everywhere both in identifying innovative programs, and in communicating directly with local and regional media and with prospective law students around the country to counterbalance the years of unanswered criticism.

82. *Lawyers*, BUREAU OF LAB. STAT. (Dec. 17, 2015), <https://www.bls.gov/ooh/legal/lawyers.htm> [<https://perma.cc/Y2B3-R6ZZ>].

83. *Class of 2015 National Summary Report*, NAT'L ASS'N OF LAW PLACEMENT (Aug. 2016), <http://www.nalp.org/uploads/NatlSummaryClassof2015.pdf> [<https://perma.cc/JY69-PGPB>].

Langdell would not recognize most law schools today because they have moved beyond the limitations of the case method with its narrow focus on appellate opinions. Most have increased their clinical and experiential offerings, added courses on alternative forms of dispute resolution including negotiation, mediation, and arbitration, and increased the amount of pro bono work provided by law students and faculty. But schools have failed to explain these changes effectively. For too long, law faculty have described the goal of legal education as teaching students to “think like a lawyer.” But that is not a particularly attractive goal for many students today. Schools need to do a better job of communicating the breadth of skills and knowledge that students can learn in law school, e.g., that legal education can sharpen your analytic skills, strengthen your problem-solving abilities, and improve your ability to communicate and advocate both in speaking and writing. Legal education prepares students for traditional (i.e., bar-required) lawyer jobs, but also for what are now termed JD-advantaged positions, i.e., that broad range of public and private sector policy jobs. College students may better see the value of legal education if it is more accurately explained.

4. There is an urgent need to understand the reasons for the significant drop in the law applicant pool. There are many theories but, surprisingly, almost no data. One intriguing set of data comes from the Higher Education Research Institute of UCLA which has conducted a national survey annually for more than forty years. Over those years, the percentage of college freshmen reporting that they are interested in obtaining a law degree has steadily declined almost fifty percent from a high of 6.4 percent to a low of 3.3 percent.⁸⁴ The percentage of freshman at highly selective private colleges and universities interested in obtaining a law degree has been nearly double that of freshmen at all four-year institutions, but it has similarly dropped in half from 13.1 percent to a low of 5.9 percent.⁸⁵ Now college freshmen may think they know what they will do after college, but we know that many will change their minds. Still, it is interesting to speculate why freshmen interest has been dropping not for six years, but for forty.

Inspired by the work of NALP and the American Bar Foundation (ABF) in conducting the After the JD Study, which tracked the jobs a representative sample of law graduates in the class of 2000 took after law school, AALS is now organizing a Before the JD Study that will survey college students and recent graduates to understand what factors weigh most in their decision to apply—or not—to graduate or professional school in general, or to law school in particular. It will also survey and rank the sources of information relied on by potential applicants. AALS is working with NALP, ABF, ABA Section, Law School

84. See THE AMERICAN FRESHMAN: FIFTY-YEAR TRENDS, 1966-2015, HIGHER EDUC. RES. INST. 19, <https://www.heri.ucla.edu/monographs/50YearTrendsMonograph2016.pdf> [<https://perma.cc/9N8R-BEPQ>] (last visited May 1, 2017) (describing 6.4% of students aspiring to be a lawyer in 1990 and only 3.3% in 2015).

85. James Greif, Chart on Percentage of Freshmen Intending to Pursue Law Degrees derived from data from Higher Education Research Institute (November 2015) (unpublished chart, on file with the *Indiana Law Review*).

Admission Council (LSAC), and Access to choose a firm to design and conduct the survey and focus groups.

5. In addition to working together on the new Before the JD Study, the primary organizations concerned with legal education should continue to build an even stronger alliance. Although this has not always been the case, I am delighted to report that Executive Director of AALS, Barry Currier (ABA Section on Legal Education), Jim Leipold (NALP), Chris Chapman (Access) and the late Daniel Bernstine (LSAC) have been extraordinary supportive colleagues for me both personally and professionally.

Working together, deans and faculty, schools and organizations, we need not fear what will happen as others reconsider legal education. Together we should be able to regain the confidence of qualified college students and graduates that law school is a good choice for someone who wants to make a difference during their professional career both in service to others, and in addressing some of the most intractable problems that face our communities, nation, and the world.