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THE CRISIS IN LEGAL EDUCATION: DABBLING IN DISASTER PLANNING

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The legal education crisis has already struck for many recent law school graduates, signaling potential disaster for law schools already struggling with their own economic challenges. Law schools have high fixed costs caused by competition between schools, the unchecked expansion of federal loan programs, a widely exploited information asymmetry about graduate employment outcomes, and a lack of financial discipline masquerading as innovation. As a result, tuition is up, jobs are down, and skepticism of the value of a J.D. has never been higher. If these trends do not reverse course, droves of students will continue to graduate with debt that greatly reduces their ability to fulfill the law school graduate's traditional and important role in American society. The point at which the law school crisis becomes a disaster for legal education is debatable, but the importance of preparing for and forestalling this disaster is not.

This Article serves two forward-looking purposes that stem from the premise that American legal education requires structural change to reduce the cost of obtaining a legal education. First, we set a framework for thinking about reforms to the method of delivering legal education. Second, we examine three blueprints for structural reform: one that has already been implemented and is ineffective, and two that set the discussion on the right track. These blueprints reject mere tinkering in favor of refocusing the attention of legal education stakeholders on the drastic structural changes needed to provide quality, affordable legal education.

While we provide only a starting point for considering how the two new models could work in principle, they serve as an intellectual blueprint that can pave the way for new and better ideas about legal education. It is clear that cost reform is necessary, and it is likely that substantial reform is coming. The shape of this reform depends on who gets involved, who we hope include actors beyond those who have set legal education on a path toward disaster.

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INTRODUCTION

While the American legal academy and others discuss the looming "crisis" of legal education, for many law school graduates, the crisis is here. In recent years, tens of thousands of graduates have struggled to enter the legal marketplace and find professional jobs with salaries that permit servicing student loan debt. High interest rates exacerbate enormous debt loads, with all non-payment risk falling to American taxpayers due to federal loan and hardship programs. Meanwhile, young and highly educated professionals contemplate whether marriage, children, and home purchases will ever be possible or responsible choices.

The personal disasters faced by recent graduates may be precursors to an industry-wide institutional disaster for legal education, as law schools struggle with their own economic challenges. Law schools have high fixed costs brought about by school-on-school competition, unchecked federal loan money, a widely exploited information asymmetry about graduate employment outcomes, and a lack of fiscal discipline masked by assertions of innovation.[1] Tuition continues to rise at alarming rates, while both the number of legal jobs available and the salaries for those jobs decline.[2] Skepticism about the value of a J.D. has also never been higher; law schools have already begun to see a drop in applications and enrollment.[3]

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1. For an extensive discussion of this information asymmetry, see Kyle P. McEntee & Patrick J. Lynch, *A Way Forward: Improving Transparency at American Law Schools*, 32 PACE L. REV. 1, 5 (2012), *available at* http://ssrn.com/abstract=1528862.

2. Legal employment is at twenty-three-year low according to the National Association for Legal Career Professionals (NALP). NAT'L ASS'N FOR LEGAL CAREER PROF'LS, CLASS OF 2011 LAW SCHOOL GRADS FACE WORST JOB MARKET YET—LESS THAN HALF FIND JOBS IN PRIVATE PRACTICE 1 (2012), *available at* http://www.nalp.org/uploads/Classof2011SelectedFindings.pdf. A July 12, 2012 NALP press release reported that, across the board, median salaries for law school graduates declined 17 percent from 2009 levels, and over the same period, salaries for jobs at law firms had declined by 35 percent. *Median Private Practice Starting Salaries for the Class of 2011 Plunge as Private Practice Jobs Continue to Erode*, NAT'L ASS'N FOR LEGAL CAREER PROF'LS (July 12, 2012), http://www.nalp.org/classof2011_salpressrel.

3. In January 2012, LSAC reported a decline of 16.7 percent in applicants to ABA-approved law schools. Debra Cassens Weiss, *Law School Applications for Fall 2012 Drop More than 15%*, A.B.A. J., Jan. 20, 2012, http://www.abajournal.com/news/article/law_school_applications_for_fall_2012_drop_more_than_15_percent/. A number of schools have responded by cutting their class sizes, a move that is likely designed to maintain admissions standards and a suitable *U.S. News* ranking, as well as shore up the perceived value of the degree for students who eventually graduate. *See also Admissions Data*, LAW SCH. TRANSPARENCY, http://www.lawschooltransparency.com/clearinghouse/?show=compare&sub=enrollment (last visited Aug. 29, 2012). At least some enrollment cuts are partially motivated by ethical charges. *See* Karen Sloan, *Hastings College Cutbacks a Response to Legal Education's 'Crisis'*, NAT'L L.J., Apr. 30, 2012, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202550750392.

If these trends do not reverse course, droves of students will continue to graduate with unsustainable student loan debt that greatly reduces their ability to fulfill traditional, important roles in American society. Programs unable to fall back on large endowments, fundraising, non-traditional sources of revenue, and other budgetary maneuvering may face a very rapid collapse. The exact point at which the law school crisis turns into a disaster for legal education is debatable, but the importance of preparation for it is not.

Small but necessary responses like trimming enrollment are band-aids. Fewer students may mean that a higher percentage of graduates obtain jobs, but it does not mean that legal education will be affordable. Even if law schools so significantly reduced enrollment such that only twenty-five thousand attorneys would graduate in 2016—matching the rate of growth projected by the Bureau of Labor Statistics—these graduates will still possess on average double or triple the amount of debt that their expected salary can handle without causing financial hardship or ruin.[4] Without structural changes to the programs providing legal education, costs cannot be significantly reduced.

Cost reform is the legal education battle for which legal education leaders in the early twenty-first century will be remembered. Each legal education stakeholder ought to ask whether he or she is willing to demand change rather than letting two common, powerful platitudes—access to education and access to justice[5]—continue to serve as convenient rhetorical tools for those seeking to maintain a seriously broken model of delivering legal education. As the world of American legal education stands now, it takes conscious

4. *See* BRIAN TAMANAHA, FAILING LAW SCHOOLS 139 (2012). Note that the projections are for all new lawyer jobs, not just entry-level positions.

5. We are not suggesting that these principles are not valuable to the profession at large. In the legal education context, one professor used "access to justice" to justify outrageous tuition levels—and he is not alone in his belief. At Harvard Law School's Global Legal Education forum, Professor William Alford suggested that the current tuition model improves access to justice. *See* Dick Dahl, *HLS Forum Examines the Impact of Globalization on Legal Education*, HARVARD LAW SCH. (Apr. 4, 2012), http://www.law.harvard.edu/news/spotlight/ils/global-legal-education-forum-2012.html (comments in embedded video). He pointed out that Harvard Law School is at least the second largest supplier of legal services to indigents. *See id.* He suggests that many law schools can step in to fill the void left by the state and/or market because tuition revenue subsidizes their efforts. *See id.* Based on conversations with congressional staff members, we expect the theme of "access to education" to intensify throughout the debate about federal loan reform. Congress will consider the reauthorization of the Higher Education Act in 2013. *See* David Moltz, *Looking Ahead to 2013*, INSIDE HIGHER ED (Dec. 3, 2010, 3:00 A.M.), http://www.insidehighered.com/news/2010/12/03/naciqi. The meaning of providing equal opportunity for education will likely be central to debate on this bill. *See id.*

deceit or willful ignorance to argue that ABA-approved law schools adequately serve either goal.

This Article serves two purposes, both of which focus on the future rather than on past or present legal education crises. First, we propose a framework for approaching structural reforms to the method of delivering legal education. This framework describes our guiding principles for analyzing the role of legal education in the twenty-first century. Second, we examine three blueprints for structural reform: one that has already been implemented and which is ineffective, and two that set the discussion on the right track. The purpose is to take mere tinkering off the table in talk about reforms, and refocus stakeholder attention on the drastic structural changes needed to transform legal education. The profession owes duties to itself, the people it serves, and society to manage itself accordingly. We must be prepared for disaster, whether the disaster comes at the hands of the market, the federal government, or some combination thereof.

I. CONCEIVING NEW MODELS

Law schools are businesses with millions in annual revenue and expenses. Creating or modifying a legal education model of this size thus requires considering a wide array of issues. Legal education issues are especially complex given the regulatory environment and the role of the legal profession. National accreditation guidelines and state-established rules for qualifying to sit for the bar exam both may present hurdles to reform, and careful attention must be given to the legal profession's role as an integral part of the justice system and political framework.

In order to develop some suggested reforms, we group together a series of questions to be considered. Each group derives from common criticisms of law schools, regular recommendations for improving areas of legal education, and the basic building blocks of an education program. We then evaluate each of the three blueprints in terms of these groups. Both of the new blueprints we offer as responses to the law school disaster directly address the points raised by these groups of issues, though some may go without mention when the model does not differ significantly from the traditional law school model on a given point. The groups of questions are as follows:

- *Finances*: Are prices reasonable and do they allow for adequate access to education? Are debt loads manageable? Can the school afford the program?
- *Structure*: What does a student's schedule look like? Are there one-credit classes? Six-credit classes? Large lectures or seminars? Are classes geared toward academic instruction, black letter law, skills training, or something else?
- *Delivery*: Who teaches these classes? What compensation is offered?
- *Students*: Who would enroll in this program? What academic interests or professional goals would this program serve?
- *Employment*: Will employers hire the school's graduates?
- *Critical Mass*: Can a single organization implement the model or is broader implementation required? Can a model run concurrently with a traditional program?
- *Barriers*: What legal and regulatory barriers exist, such as contractual obligations and accreditation standards? What other practical hurdles are there?
- *External Consequences*: How does a given legal education model affect people other than students, professors, and the practicing bar? Are there implications for other areas of higher education? Does a given model create any concerns from the perspective of clients and access to justice?

We consider the effective delivery of legal education in light of three primary principles. First, the model must appropriately balance quality and cost. Legal education must prepare new lawyers for a legal career while avoiding becoming cost-prohibitive from a consumer protection perspective. Second, the model must satisfy the demands of the legal profession of the future, particularly as it undergoes significant structural change due to globalization, technological development, and other factors. Third, the model must primarily benefit clients and students (i.e., those who receive legal services and those who deliver them). A successful educational model should satisfy each of these standards.

In the next three parts, we discuss three different responses to the law school disaster. We intend these blueprints to provide a starting point for discussing contrasting ways of delivering legal education. The first model we discuss is the "3+3 Model," which shortens the duration of a legal education from seven years to six. A

handful of law schools already do this.[6] The second model we discuss is the "Modular Law School," which features an adjunct-heavy faculty. This model preserves the traditional law school on the outside, but is vastly different internally to ease various pressures created by its faculty composition. The third model we discuss is the "Lawyer Academy." This model combines all higher education and credentialing for lawyers into an academy focused on producing lawyers who are ready to practice law immediately after graduation. This model represents the furthest departure from what would be considered a traditional legal education.

II. RESPONSE #1: ACCELERATED HIGHER EDUCATION—THE 3+3 MODEL

The most structurally innovative program to be proposed by law schools is the 3+3 Model, wherein students receive a bachelor's degree and a J.D. over a six-year period. Of the thirteen law school programs we looked at that follow the 3+3 Model,[7] twelve were substantially the same. Only Columbia's program differed in a meaningful way.[8]

Generally speaking, students begin their studies in a 3+3 Model program with three years of undergraduate coursework. During this

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6. *See infra* note 7.

7. *See 3/3 Program*, CREIGHTON UNIV. COLL. OF BUS., http://business.creighton.edu/undergraduate/undergraduate-majors/3-3-law (last visited Aug. 15, 2012); *Dual-Degree Programs (B.S./J.D.)*, FORDHAM UNIV., http://69.7.74.46/section16/section253/section259/index.html (last visited Aug. 15, 2012); *Georgia State University Dual BA/JD Program*, GA. STATE UNIV., http://www.gsu.edu/enrollment/images/Honors/BA-JD_Program.pdf (last visited Aug. 15, 2012); *3/3 Program*, FL. COASTAL SCH. OF LAW, http://www.fcsl.edu/33program (last visited Aug. 15, 2012); *Legal Education Accelerated Program (LEAP)*, HOFSTRA UNIV., http://www.hofstra.edu/Admission/adm_leap.html (last visited Aug. 15, 2012); *B.A./J.D. Dual Degree Program*, RUTGERS, THE STATE UNIV. OF N.J., http://fas.camden.rutgers.edu/academics/majors-minors/ba-jd/ (last visited Aug. 15, 2012); *Accelerated B.A./J.D. Program with Albany Law School*, THE SAGES COLLS., http://www.sage.edu/academics/linked/accelerated-law/ (last visited Aug. 15, 2012); *B.S./J.D. (3+3 Program) with Albert Dorman Honors College of New Jersey Institute of Technology (NJIT)*, SETON HALL UNIV. SCH. OF LAW, http://law.shu.edu/Students/academics/requirements/HealthIP/BS-JD.cfm (last visited Aug. 15, 2012); *B.A. to J.D. Program*, SHIMER COLL., http://www.shimer.edu/academicprograms/ba-to-jd-program.cfm (program for Chicago-Kent College of Law) (last visited Aug. 15, 2012); *Three + Three B.A./J.D. Program*, ST. THOMAS UNIV. SCH. OF LAW, http://www.stu.edu/Academics/Programs/ThreeThreeBAJD/tabid/866/Default.aspx (last visited Aug. 15, 2012); *Affiliation with Cal State Dominguez Hills Yields Two New Degree Programs*, SW. LAW SCH., http://www.swlaw.edu/news/overview/newsr.7gBPoZd5b0/ (last visited Aug. 15, 2012); *Joint Degree Programs*, WILLAMETTE UNIV., http://www.willamette.edu/cla/catalog/overview/programs/combined/index.php (last visited Aug. 15, 2012).

8. *See Special Programs*, COLUMBIA COLL., http://www.college.columbia.edu/bulletin/special_prog (last visited Aug. 15, 2012).

time, they complete general requirements, electives, and their major. Students spend the next three years in a traditional law school program. To accelerate the education process, schools eliminate most undergraduate electives. The fourth year of education doubles as both the first year of law school (1L) and the remaining undergraduate elective credits.[9] 3+3 programs are able to reduce the total cost of education by eliminating one year of undergraduate tuition, living expenses, accrued interest, and opportunity costs.

The 3+3 Model is underwhelming and is not a worthwhile or innovative solution for structural reform. 3+3 programs simply reduce costs by trimming undergraduate programs, with students receiving three-fourths of an undergraduate education. While this will save students some money, none of the savings come from reforming legal education. As a solution to the hardship caused by current tuition prices, these programs only serve as further evidence that law schools, if left to themselves, may choose reforms that are most convenient to them—namely, reforms that require no change whatsoever.

In a similar move to condense the bachelor's and J.D. degree programs into a shorter time frame, some schools have created an accelerated J.D. program. At least four schools allow students to complete law school in five semesters over two years.[10] As with the 3+3 model, there is little real change in legal education. Like the 3+3 plan, the accelerated J.D. offers no true reform of legal education. It does not reduce tuition costs, since students take the same classes as every other student, just on a different schedule. Furthermore, savings from the program come from reduced cost of living, accumulated interest, and opportunity costs. No savings come from reforming the delivery of legal education itself.[11]

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9. *See e.g.*, *Three + Three B.A./J.D. Program*, ST. THOMAS UNIV. SCH. OF LAW, http://www.stu.edu/Academics/Programs/ThreeThreeBAJD/tabid/866/Default.aspx (last visited Aug. 15, 2012); *Joint Degree Programs*, WILLAMETTE UNIV., http://www.willamette.edu/cla/catalog/overview/programs/combined/index.php (last visited Aug. 15, 2012). Columbia's program differs by requiring students to take twelve graduate level classes from the School of Arts and Sciences during their second and third (2L and 3L) years. *Special Programs*, COLUMBIA COLL., http://www.college.columbia.edu/bulletin/special_prog (last visited Aug. 15, 2012).

10. *See e.g.*, *Accelerated J.D.*, NW. UNIV. SCH. OF LAW, http://www.law.northwestern.edu/academics/ajd/ (last visited Aug. 15, 2012); *SCALE—Two-Year J.D. Program*, SW. LAW SCH., http://www.swlaw.edu/academics/jd/scale (last visited Aug. 15, 2012); *Complete Your J.D. in Two Years*, UNIV. OF DAYTON SCH. OF LAW, http://www.udayton.edu/law/academics/jd_program/two_year_program.php (last visited Aug. 16, 2012); *Fast Track Accelerated Option Leads to Graduation in Two Years*, WASHBURN UNIV. SCH. OF LAW, http://washburnlaw.edu/admissions/fasttrack/index.php (last visited Aug. 16, 2012).

11. Northwestern's program charges an additional 20 percent per semester, so the total tuition of the accelerated program is the same as a normal J.D. program. *Tuition & Financial*

III. RESPONSE #2: ADJUNCT-FOCUSED STRUCTURE—THE MODULAR LAW SCHOOL

A. Background

Over the past few decades, full-time faculty compensation has increased, the number of full-time faculty has increased, and full-time faculty teaching loads have decreased.[12] More people teaching less for more money—due to schools competing on who can offer the lowest teaching loads and best compensation packages[13]—is a recipe for explosive tuition growth and precarious fixed costs. Calls for law schools that rely more heavily on inexpensive, more practice-connected adjuncts are common, but these calls have not yet been fleshed out in great detail. The model developed in this part uses a very high proportion of adjunct faculty.

We begin by explaining the general components of the "Modular Law School" (MLS) that make it an affordable model for legal education. We then provide a detailed example of how a law school would look and feel using this model. While both the MLS generally and our specific example avoid the expensive pitfalls endemic to the present, traditional, and broken ABA-approved law school model, execution of the MLS model could differ in many ways.

B. Critical Components

The Modular Law School is a spin on the traditional law school model. While it preserves the appearance of the law school as an eminent institution, it uses significantly more adjunct teachers than is now the norm and frees course offerings from the confines of the typical semester-based schedule. The MLS will result in substantially lower tuition, flexibility in the form of a self-guided curriculum, and a closer connection between legal education and the bench and bar.

The key feature of the MLS is relatively short classes lasting weeks, not months. These "modules" encourage exploration of topics that would otherwise be considered too narrow in a semester-

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Aid, NW. LAW SCH., http://www.law.northwestern.edu/academics/ajd/tuition_financialaid.html (last visited Aug. 15, 2012). Southwestern's SCALE program has a similar tuition increase. *Tuition*, SW. LAW SCH., http://www.swlaw.edu/studentservices/finaid/tuition (last visited Aug. 15, 2012).

12. TAMANAHA, *supra* note 4, at 39–53.

13. *Id.*

long curriculum structure, allowing for experimentation, innovation, and niche creation. Students still complete the same total credits as with traditional ABA-approved law schools, but end up taking more classes, since each module is generally worth fewer credits. The variety in both scope and subject matter encourages students to develop competencies in key areas of the law without having to sacrifice the liberal arts aspect of legal education, allowing them to gain a broad understanding of many topics and skills usually only taught in on-the-job training and CLEs.

It might be tempting to read the MLS description and think, my alma mater or employer does some of these substantive course innovations already.[14] Though features of the MLS may resemble those of existing innovations insofar as they improve the connection of legal education to the bench and bar, these benefits are not the MLS's core purpose. The modular structure is primarily designed to enable a more affordable legal education by facilitating greater participation of inexpensive yet desirable adjunct instructors in shaping the next generation of lawyers.

1. Staff

The MLS requires four types of workers to function. First, the MLS relies on a core full-time faculty. This team has heavier teaching loads compared to the traditional model, as well as increased administrative responsibilities. It provides a stable presence at a school in constant flux. Second, the MLS uses adjunct faculty.[15] These independent contractors are experienced experts in their fields and about the topics their courses cover. A school will pay

14. Many law schools have responded to this and similar criticisms by adding mountains of courses in diverse topics. *See generally* CATHERINE L. CARPENTER, A SURVEY OF LAW SCHOOL CURRICULA: 2002–2010, *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2012_survey_of_law_school_curricula_2002_2010_executive_summary.authcheckdam.pdf (last visited Sept. 26, 2012). Schools provide hundreds of course offerings in their catalogs and advertise them to prospective law students. *Id.* at 16. Based on our conversations with deans and professors across the country, we have concluded that expanding catalogs has been used to justify steady tuition increases. *See also* Dahl, *supra* note 5 (remarks of Bryant Garth and Lauren Robel in embedded video). Unfortunately, the expansion has never been done in concert with a redesign of the course format, so that students could actually take advantage of such wide diversity. The freedom to select courses from the catalog remains restricted. This has significantly reduced the value of a legal education to the student but is improved by the modular system.

15. Note that "adjunct" combines a variety of concepts, from the part-time teacher to contract teacher. These adjuncts are paid by the credit hour taught and have few if any responsibilities at the law school besides teaching and direct student engagement.

adjuncts for each credit hour taught and avoid long-term commitments, significantly decreasing fixed costs and the average class size. Third, the MLS has management—the dean and middle managers—that keeps the day-to-day operations of the law school running smoothly. Fourth, the MLS has support staff, including assistants for the faculty and staff members for the school's various departments. While these four categories do not differ from those present in traditional ABA law schools, the composition of each category differs greatly.

2. More on the Module

The switch to a modular system is both beneficial and permitted under the ABA's regulatory standards.[16] One significant advantage is flexibility in how instructors choose their optimal delivery format. Greater flexibility permits instructors to tailor coursework accordingly. For example, professors can struggle under the traditional model to fit material into a semester and must trim the syllabus as finals near. When this happens in the MLS setting, topics that were trimmed can be spun into additional modules—or a class could even be extended. This flexibility also applies to new legal developments, with much shorter delays in covering emerging issues than what a more rigid curricular structure allows. Imagine the immediate appeal of "Implications of the Citizen's United Decision" for students interested in political fundraising, or "Domestic Implications of a Proposed Intellectual Property Treaty" for students planning to practice IP. Modules like these are advantageous, in that they can show how a practicing lawyer or scholar understands and responds to emerging legal developments in real time.

Compared with the traditional model, the MLS minimizes the opportunity cost of taking a class, because students can better diversify their portfolio of courses. Traditional 2L and 3L semesters include three to five classes, each lasting fourteen weeks. A typical upper-level MLS semester might include between eight and eleven classes. Dropping and adding classes becomes much less disruptive in the MLS, since there are plenty of modules to take. Furthermore, course variety and length encourage schools to develop substantive

16. The ABA Standards, specifically Standard 304, allow for all sorts of experimentation with classes. Schools recognize the benefits of some diversity of time spans, though no school does what we envision. *See* AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 304 (2011–2012), *available at* http://www.lawschooltransparency.com/documents/ABA_Standards/2011-2012/2011_2012_Standards-and_Rules-of-Procedure.pdf.

education niches while also facilitating student ownership of the direction and scope of their educations. A student who enjoys a subject may take related modules or lobby the administration to expand course offerings before the student's graduation. Students can more efficiently determine what they want in a career and specialize once they've determined their preferred practice area.

Increasing student and employer input through formal or informal channels enhances the utility of a legal education.[17] The MLS's increased curricular flexibility serves to connect practitioners with the school in a way that will benefit students. After a summer job, a student might propose that a supervising partner teach a class on new legal developments. Or, the partner may propose a class after observing a common deficiency in summer employees. Breaking down the barriers between law school and law office could enrich a host of student-attorney relationships.

3. Adjuncts

Flexibility is paramount for the MLS to work; however, flexibility for students is a happy consequence, rather than the primary purpose, of using the modular structure. More importantly, the model's use of a higher proportion of adjuncts lowers the cost of entering the legal profession. Thus, the primary purpose of the modular structure is to help those experienced or engaged in the practice of law or other professional activities to find time to teach. Potential adjuncts currently face significant barriers, including high opportunity costs and unforgiving schedules. The challenge of committing to semester-long courses cannot be overstated; it is simply not a luxury many adjuncts can choose to afford. By using modules and an active managerial staff, the MLS can minimize these challenges and stop losing out on practitioners who could offer immense value to legal education.

Such an adjunct-focused faculty comes with a few major challenges. Quality assurance is important at any educational institution and can be particularly challenging when using significantly more teachers than a traditional school. The sheer number of adjuncts may accentuate the problem of finding, scheduling, evaluating, and

17. While many law schools may be receptive to the demands of their students and welcome their input—particularly input from student bar association leaders—the structure of the traditional law school discourages quick course development. Because courses are taught by semester and course offerings are typically published well in advance, classes cannot be added within a short period following student input. Consequently, changes tend not to take effect until the next semester at the earliest.

filtering competent teachers. The MLS faculty must be actively managed in a way that ABA-approved law schools are not presently doing. In no uncertain terms, the importance on management is new and a matter of necessity. A module coordination staff, focused on the challenges distinctive to the modular structure, will play an all-important role in ensuring a sound and affordable legal education.

Perhaps the most common defense of full-time faculty over part-time faculty is that heavy reliance on adjuncts produces a lower-quality education. For example, Erwin Chemerinksy, dean of the University of California at Irvine School of Law, recently warned that an adjunct-heavy law school would compromise the quality of legal education.[18] According to his experience with student evaluations, adjuncts make worse teachers on average than full-time faculty.[19] He noted that teaching skill improves with experience—a fact favoring full-time faculty—and that part-time faculty are inherently less available to students outside of the classroom, where substantial learning occurs.[20]

It is risky to characterize the teaching skills of full-time and part-time faculty too broadly. Nevertheless, the debate has been and will continue to be framed with these two groups at odds. The key to a lucid debate, however, is recognizing the complex balance of factors required to determine faculty composition. Cost must be a factor in this equation. With this in mind, faculty composition should be the optimal balance of cost and teaching quality, as analyzed in terms of legal education's purposes. Scholarship is important, but

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18. *See* Erwin Chemerinksy, *You Get What You Pay For in Legal Education*, NAT'L L.J., July 23, 2012, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202564055135. Chemerinsky asserts:

> [Washington University School of Law professor Brian] Tamanaha's assumption is that relying on practitioners rather than professors to teach more classes won't compromise the quality of the education students receive. Here I think he is just wrong. There are certainly some spectacular adjunct professors at every law school, and they play a vital role. But as I see each year when I read the student evaluations at my school, overall the evaluations for the full-time faculty are substantially better than they are for the adjuncts. It is easy to understand why. Teaching is a skill, and most people get better the more they do it. Moreover, full-time faculty generally have more time to prepare than adjunct professors who usually have busy practices.
>
> Adjunct faculty are available far less for students than full-time faculty. Tamanaha gives no weight to the substantial learning that occurs outside of the classroom. I think he tremendously underestimates the amount that most faculty are around the school and available to students.

Id.

19. *Id.*

20. *Id.*

given the staggering burdens law school tuition imposes, it must be subservient to learning outcomes.

Chemerinsky's first point is that, based on student evaluations, part-time teachers are generally worse than full-time faculty.[21] Given that evaluations are conducted right before exams and before students are able to fully utilize the knowledge acquired during a course, Chemerinsky's argument and evidence seem dubious. What students do know is which professors were engaging, entertaining, charismatic, and already held in high esteem.[22] Chemerinksy is right that teaching as a skill is developed through experience. But the marginal role that a professor's teaching ability plays in hiring and tenure decisions means teaching outcomes are often a matter of luck.[23]

Furthermore, the criticism that practitioners are not regularly engaged in teaching ignores the very nature of legal work: junior associates explain the product of their research to their superiors, senior attorneys teach the basics to rookies, attorneys at all levels explain the law to clients, and some attorneys teach formal CLEs either to colleagues in-house or to peers at other venues. Granted, teaching in a classroom is different than these other forms of instruction, but it is wrong to presume that practitioners have little or no meaningful experience in teaching. Rather, the difficulties adjuncts experience in teaching at law schools may lie in the format of the semester-long class, where adjuncts attempt to mimic the delivery of instruction provided by full-time faculty rather than tailoring course instruction and evaluation to the information and skills they determine would be most valuable for legal practice. The MLS plays

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21. *Id.*

22. *See* Deborah J. Merrit, *Bias, the Brain, and Student Evaluations of Teaching*, 82 ST. JOHN'S L. REV. 235, 238–40 (2008), *available at* http://www.stjohns.edu/media/3/15809021162c4c7abc99c9b0134c8049.pdf (discussing student evaluations of teachers in depth).

23. *See FAR Advice*, AALS: THE ASSOCIATION OF AMERICAN LAW SCHOOLS, http://www.aals.org/frs/jle.html ("What do we look for? What lines are crucial? Although they disclaim uniformity, recruiters tend to follow patterns. A sweep of law school, class rank, honors, and law review seems to be a dominant pattern. Publications may be an equally important 'make or break' for a number of recruiters. The reading often ends there if the baseline expectations are not met. The next categories of significance are law employment, judicial clerkship, teaching interests, and prior law school teaching—depending on the school's or recruiter's biases. One or more of these factors may also end the scanning process with a decision against the applicant."); Brian Leiter, *Why Do Almost All American Law Schools Weigh Research/Scholarly Potential So Heavily in Hiring Faculty?*, BRIAN LEITER'S L. SCH. REPORTS (Oct. 25, 2011), http://leiterlawschool.typepad.com/leiter/2011/10/why-do-all-american-law-schools-weigh-researchscholarly-potential-so-heavily-in-hiring-faculty.html ("Over the last generation, U.S. law schools have, by contrast, become completely homogenous in their faculty hiring: just about every law school now looks for evidence of 'scholarly potential' in making its hiring decisions, and this often crowds out all other considerations (though, of course, every schools gives some weight to teaching competence).").

to the strengths of the adjunct workforce in this regard. Many adjuncts are active practitioners and can provide a useful foundation in a particular area of law without diminishing (and perhaps even enhancing) the contributions that full-time faculty can make in the classroom.

Chemerinsky's second point assumes that part-time faculty in an adjunct-heavy program would behave exactly as they do in the traditional model. But it is not hard to imagine ways in which a new model law school could address these issues. Besides any number of initiatives that schools could undertake to better cultivate adjunct teaching, a modular structure can narrow the topics they teach, reduce their time commitment, and alter their expectations about how they can go about teaching their classes.

C. An Example: The MLT School of Law

The previous section describes critical components of the MLS. In this section we explore how a school could follow this structure in a realistic cost and decision-making scenario. While we will discuss how an existing law school can evolve into a modular school in Part III.D, the "MLT School of Law"[24] is a new program seeking to break the mold of how legal education is traditionally conducted. Here we provide a blueprint for a modular school that drastically lowers costs and allows students immense flexibility, while preserving basic law school functions that supply legal education and legal scholarship.

1. The Basic Educational Program

The MLT School of Law distinguishes itself from the very beginning of a student's legal education. At traditional law schools, first-year classes typically span two semesters, lasting from mid-August through early May, with some time off between semesters. With fourteen weeks of class each semester, first-year students (1Ls) average 12.5 classroom hours per week. This contrasts with requirements for other professional students, such as dental students, who

24. As of publication, the authors have yet to identify an attorney or academic interested in purchasing the naming rights to this as-of-yet nonexistent law school. As a placeholder, then, we boldly announce the hypothetical creation of the McEntee, Lynch, and Tokaz School of Law (MLT for short).

average more than thirty hours per week in the classroom over an approximate period of forty weeks per year.[25]

The MLT School of Law compresses the entry-level curriculum by increasing the number of hours spent in class each week (compared to traditional 1L instruction) and staggering courses from June through December.[26] Once the entry-level curriculum concludes, students complete their studies at their own pace. If an upper-level student maintains the same pace—a reasonable average of fifteen classroom hours per week[27]—she could complete law school in twenty months. This accelerated timeframe includes all coursework required by the ABA (thirty-nine weeks), a summer job (twelve weeks), and an externship (eight weeks). A student who decides to forge straight through, rather than working while completing upper-level studies part-time, would save significant opportunity costs compared to the traditional law school model. Importantly, the student would be eligible to take the bar two Februarys after enrolling in law school—eighteen months sooner than a traditional law student.[28]

2. Entry-Level Coursework

The MLT School of Law's entry-level curriculum uses full-time faculty to teach seven core subjects. These courses—each worth three credits—serve as the primary vessels for teaching law students to think like lawyers. Through these courses, teachers instill the theoretical underpinnings of a sound legal education. The entry-level

25. *See* AM. DENTAL ASS'N, 2008–09 SURVEY OF DENTAL EDUCATION CURRICULUM, VOL. 4 10–11 (May 2010), *available at* http://www.ada.org/sections/professionalResources/pdfs/survey_ed_vol4.pdf. Note, however, that dental students spend more time in clinical instruction than the traditional law school, and that these labs double as study time because they reinforce the material learned in lecture. Writing labs and the time spent writing outside of class would likely have the same effect, though arguably not to the same extent

26. To see what this looks like, see Appendix A.

27. This hypothetical runs from the first week of June through the third week of December, and includes three one-week breaks. Each week ranges from five to 22.5 hours of instruction. Weeks with an exam require the least class time, and would be back-loaded with the exam early in the week. If students could be convinced not to revolt, another month could be chopped off, and the average instruction time would be 16.7 hours per week.

28. There are a few ways to make this a reality: (1) study for the bar exam while taking classes similar to traditional part-time students and even some judicial clerks and big-firm associates; (2) take fewer than average upper-level modules, or none at all, when studying for the bar (to finish all requirements by the bar, the average must be fourteen hours of class per week, and the distribution does not matter over the thirteen week period); (3) convince the state bar to allow a student to sit for the bar once sufficient credits toward a J.D. have been completed. Then, while awaiting bar exam results, the student could obtain any remaining credits.

curriculum also includes nine modules. Two modules, each worth one credit, occur during the first two weeks of school: "Professional Responsibility" and "Introduction to U.S. Law." These courses lay the foundation for studying law, including how to get the most out of a legal education.[29] The remaining seven modules are companion writing labs taught by adjuncts, and each accompanies a core course. For example, the Civil Procedure writing module could teach students how to write and submit a complaint, an answer, and a reply. By connecting writing labs to a core subject, the peculiar circumstance where a former public defender teaches civil motion practice or contract drafting is avoided. Although legal writing faculty may be competent to teach outside of their areas of expertise, it is certainly better to learn from an expert practitioner.[30]

3. Upper-Level Coursework

At the upper level, introducing the concept of the module requires a greater attitudinal shift about how schools deliver education. Unlike the supplemental modules at the entry level, the modules are the dominant format for upper-level coursework. The MLT School of Law replaces the semester-long courses of the 2L and 3L years with a series of modular classes taken at a pace chosen by the student. These modules have varying lengths, both in terms of class weight (e.g., one-half, one, or two or more credits) and class span (e.g., over one, two, or more weeks). Due to the varying class weights and short spans, modules can be freely arranged, added, and removed depending on student and faculty demand. In this sense, these courses are much like short courses.[31] But we envision

29. An example of a valuable introductory module is the one-credit "Life of the Law" taught by Professor Tracey George and Professor Suzanna Sherry to 1Ls during orientation at Vanderbilt. *See The Life of the Law*, 37 VAND. LAW., no. 2, 2008, *available at* http://law.vanderbilt.edu/alumni/lawyer-vol37num2/index.html. The value of the class cannot be overstated. For Professional Responsibility, we envision a tremendous amount of self-study and a final exam remarkably similar to the Multistate Professional Responsibility Exam, on the Saturday following a full week of the two modules.

30. An alternative program could consist first of a generalized introduction to legal writing, which would cover library and online research, the Bluebook, and standard legal writing conventions. After this class, students would then have a series of writing labs. The assignments for labs would remain essentially the same as in a traditional legal writing class, but each assignment (or set of related assignments) would be taught by an adjunct who practices in the relevant field. Although the nature of the MLS makes these programs more intuitive and easier to implement, this is actually a change that could be made by any existing school or any of a number of possible reform models.

31. *E.g.*, *Trademarks Short Course*, VANDERBILT UNIV. LAW SCH., http://law.vanderbilt.edu/academics/curriculum/elective-courses/trademarks/index.aspx (last visited Aug. 8, 2012)

that modules would function more like workshops on discrete topics, as opposed to the folly of compressing a traditional course into a few hours over a short time span.[32] In that sense, these courses are more like CLEs featuring considerable engagement. Finally, each MLT School of Law student would complete an eight-week externship for six credits.[33]

A few brief examples demonstrate how these modules differ substantially from typical upper-level courses beyond credits and span. While Evidence might be offered once a semester in the traditional model, under the modular structure, the school could separate its many parts into separate courses. "How to Write a Motion in Limine," "Character Evidence," and "Privilege" could be one credit or one-half credit modules. And "Evidence: Trial Techniques" might be a four-credit module taught over the course of a few months. Alternatively, a module could also tread lightly in a subject, providing a forty-thousand-foot overview for students who only want a general framework.[34] Any upper-level module could also have a companion writing module, *e.g.*, a two-credit "Discovery" module with a one-credit companion writing module focused on writing interrogatories.[35] There would likely still be some need for traditional semester- and year-long classes (maybe even as required upper-level classes), as well as modules with prerequisites or arranged as series that need to be taken sequentially. But the ability for teachers to take chances and innovate would increase, because the risk of a single class wasting substantial time and resources would decrease.

(providing a one-credit overview of trademark law in place of the traditional two- to three-credit course).

32. We took a significant number of short courses during law school. While some were wonderful, others had very poor learning outcomes because the adjuncts were trying to cover a semester of reading in a one-credit, week-long short course. This concern goes more to execution than structure, however; the onus would be on the school administration to help adjuncts not make this critical mistake.

33. Unlike traditional law schools, the MLT School of Law does not demand unreasonable tuition in exchange for externship credit. Typically, "[s]tudent costs [for externships] are part of the normal tuition they pay for law school courses." *See* James Backman, *Externships and New Lawyer Mentoring: The Practicing Lawyer's Role in Educating New Lawyers*, 24 B.Y.U. J. PUB. L. 65, 99 (2009), *available at* http://www.law2.byu.edu/jpl/papers/v24n1_James_Backman.pdf. Instead, it charges a $500 externship fee to pay for the externship coordinator staff.

34. For example, a module on issues facing small nonprofit organizations might cover their challenges at a very broad level. Half the battle for directors of nonprofits is spotting legal issues to look out for during the usual course of business. Of course, nothing would or should stop a school from offering this class now.

35. Indeed, this is like the writing component of a seminar that some schools offer. For instance, for the 2012–2013 school year at N.Y.U., seventy classes (mostly seminars) had an optional single-credit writing companion. *See Search Course Descriptions*, N.Y.U. LAW, https://its.law.nyu.edu/courses/index.cfm? (last visited Sept. 26, 2012) (course list generated by clicking on "search" without populating fields).

4. Student Services and Other Administrative Departments

Student services have been a significant area of growth at law schools over the past few decades.[36] These services, occasionally called the "bells and whistles" of a legal education, include libraries, technology services, student affairs, and career services.[37] While potentially useful in a world where costs are not a consideration, these services are less desirable when working with limited financial resources. The reasons for the rise in student services costs are irrelevant. Whether students have demanded these services or schools have declined to show fiscal restraint, the result is the same: law schools have become increasingly more expensive and continue to produce heavily indebted graduates.[38] The MLT School of Law greatly reduces expenditures on services that are not necessary to receive a sound legal education. It does not have a physical library, relying instead upon electronic access and strategic partnerships with nearby universities and law firms. Nor does the school rely on a large career services department to proffer advice and motivation for students in search of a job.

The MLT School of Law can avoid spending more on full-time career advising because it is tightly integrated into the local and regional market vis-a-vis the large adjunct workforce. This is not to say a career services department or other student services lack value or are wholly absent. Rather, the full-time faculty appoint one of their own to serve as dean of career services. Jobs do not just appear out of thin air, but every dollar of revenue must be jealously guarded against waste. Under the supervision of the career services dean, adjuncts would be charged with dispensing career advice, offering first-hand accounts of their work, and providing a direct line to potential employers, mentors, and references. From the dean of communications and the dean of students, to the dean of admissions and dean of faculty, each takes on an administrative role in exchange for a lighter teaching load.[39]

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36. ACCOUNTABILITY OFFICE, ISSUES RELATED TO LAW SCHOOL COST AND ACCESS 24 (2009), *available at* http://www.gao.gov/new.items/d1020.pdf.

37. *See id.* at 24–25.

38. *See id.* at 7 (discussing law school affordability). This report places significant blame on *U.S. News* for escalating costs over the past few decades. *Id.* at 21. In particular, the "expenditures per student" component of the rankings rewards schools that have little fiscal restraint. *Id.* Law schools have allowed U.S. News to dictate significant administrative decisions. *Id.*

39. According to the financial model we used to calculate expected tuition at the MLT School of Law, doubling teaching loads has a negligible effect on total expenditures, so it makes sense to assign administrative duties to full-time faculty. *See MLS Financial Model Oct. 2012*, L. SCH. TRANSPARENCY, http://www.lawschooltransparency.com/documents/MLS_

5. Approximate Tuition

Because the primary driver of the modular model is cost reduction for students, measuring success depends on cost outcomes. This section discusses the financial model of the MLT School of Law and provides some guidance on where the model could go. This discussion is intended to be fluid and to encourage people with first- or second-hand knowledge of running a law school to critique the assumptions and hypothetical decisions below. We may be over- or underestimating probable expenses.

First, the size of the student body greatly affects the expense of running the school. For the MLT School of Law, we assume an average entering class of two hundred, zero net attrition in subsequent years, and a norm of twenty-four months to complete the J.D. (We use the normal rate of completion to calculate a student's share of overhead.) Note that the actual size of the class is a function of the pool of adjuncts, demand from prospective students, and demand from potential employers and clients.

The program is in a metropolitan area with an average cost of living, which affects annual compensation (including benefits). Full-time faculty make an average of $150,000, the law school dean makes $200,000, and faculty assistants make an average of $48,000. The module coordination staff makes an aggregate of $250,000, and the externship coordinator makes $100,000, based on a $500 per graduating student fee in lieu of tuition for the externship credits. Adjuncts average $2,500 per credit hour taught and do not impose a need to finance payroll taxes (unlike the employees previously mentioned).[40] Finally, we have built in additional overhead of $3,000,000 to cover other expenses like a building lease or mortgage, electronic library access, technology services, janitorial services, office supplies, additional staffers, recruiting students and faculty, and academic support.[41]

Financial_Model_Oct_2012.xlsx (last visited Nov. 9, 2012). As we discuss below, full-time faculty teach twelve credits per year. Six are entry-level core classes; six are upper level modules.

40. We arrived at $2,500 per credit after an informal survey of a handful of law school deans and adjunct faculty. If we double this number to $5,000, the hourly tuition rate increases 25.4 percent from $343 to $430. We explain the calculation of $343 in a few paragraphs. *See infra* text accompanying notes 42–45.

41. In determining the figure of $3 million for overhead, we examined a variety of Form 990s on GuideStar.org. *See, e.g.*, *Nashville School of Law*, GUIDESTAR, http://www.guidestar.org/PartnerReport.aspx?ein=62-0550981&Partner=Amex (last visited Sept. 8, 2012). If we double this to $6 million, the hourly tuition rate increases 26.5 percent to $434. We arrive at a cost of $343 per credit in a few paragraphs. *See infra* text accompanying notes 42–45.

To determine how many full-time faculty and adjunct faculty to use, it is important to consider the curriculum structure, some average class statistics, and faculty expectations. We have no expectations about how many credits each adjunct will teach, nor does it matter for our approximation. Each full-time faculty will teach two core classes worth a total of six credits, and six credits as modules. Because the two core classes are taught only from June to December, a substantial part of this period and the rest of the year can be dedicated to scholarly projects and other activities, so long as the full-time faculty member remains in residence, carries out administrative duties, and teaches at least six other credits at his or her convenience.

As previously noted, the ABA Standards require that a student completes fifty-eight thousand minutes of instruction.[42] Sticking with the conventional seven hundred minutes per credit, a student needs eighty-three credits to graduate. Twenty-one credits are entry-level core classes, along with nine one-credit modules to round out the entry level. Each core class averages fifty students per class, while each entry-level module averages seventeen students. With the six required externship credits, this leaves a minimum of forty-seven upper-level credits for each student to graduate. We assume an average module of two credits and seventeen students per upper-level class. The product of these averages means the MLT School of Law must provide twenty-eight entry-level core classes, 106 entry-level modules, and 277 upper-level modules. This course load would require fourteen full-time faculty and 341 adjuncts.[43] With $3,000,000 in overhead, payroll taxes for all employees, and non-teaching salaries, the MLT School of Law has roughly $7,900,000 in annual expenses. As a new school, the MLT School of Law may need a line of credit or other loan arrangement, or rely on generous donations to float its early expenses. Notwithstanding that wrinkle, the school's revenue would come exclusively from student tuition, unless the school is able to fundraise for an endowment or generate other revenue.

Given all of the assumptions above, if the school charges students $343 per credit, the school can cover its expenses without public or private subsidies. The average *total* tuition paid for a J.D. is $28,503,

42. *See* AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHS. § 304 (2011–2012), *available at* http://www.lawschooltransparency.com/documents/ABA_Standards/2011-2012/2011_2012_Standards-and_Rules-of-Procedure.pdf.

43. To get to the total number of adjuncts, we count a teacher every time she teaches a module. The total of entry-level and upper-level modules does not equal the total number of adjuncts, because full-time faculty teach an average of three modules.

less than every single ABA-approved law school in the country.[44] Now assume the student borrowed from the federal government under current lending rules and a cost of living set at 1.5 times the poverty line for a single-person household. With this two-year program, a single person borrows $16,755 per year (rather than nine months) for living expenses.[45] Together with tuition, the student will leave school after having taken out $62,013 in debt while adding one extra year to lifetime earnings and one fewer year of interest and borrowed living expenses.

This debt figure is not directly comparable to the debt of a typical law student starting at an ABA-approved law school in 2012. $62,013 is the maximum amount the typical MLT School of Law student can borrow over the course of a J.D. program. The maximum amount a traditional student may borrow—assuming that the cost of living is $16,755 and that tuition stays steady for three years at the average 2012–2013 projected private school rate of $41,000[46]—is $123,000 in tuition and over $50,000 in living expenses. The maximum amount a student may borrow is almost triple the sticker price of the MLT School of Law—a difference made starker when savings in opportunity costs and avoided interest are also considered.[47]

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44. It is not cheaper in tuition dollars than some unaccredited schools, such as the Nashville School of Law. The Nashville School of Law cost $441 per credit hour for the 2011–2012 academic year. NASHVILLE SCH. OF L., NASHVILLE SCHOOL OF LAW COOPER TERM 2012–2013 7, *available at* http://nashvilleschooloflaw.net/wp-content/themes/nsl2/cooper2012.pdf (last visited Sept. 7, 2012). However, the school requires only forty-eight credits, instead of eighty-three and thus costs less. *Id.* at 9. The MLT School of Law would be cheaper than every ABA-approved law school. AM. BAR ASS'N, *Law School Tuition 1985–2011*, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_tuition.authcheckdam.pdf (last visited Sept. 7, 2012).

45. *2012 HHS Poverty Guidelines*, U.S. DEP'T OF HEALTH AND HUMAN SERVS., http://aspe.hhs.gov/poverty/12poverty.shtml/ (last visited Aug. 15, 2012).

46. We arrive at this figure using the average private ABA-approved school tuition for 2011–2012 and using an increase of less than 5 percent, which shows unprecedented fiscal restraint compared to the last twenty-five years or more of law school spending. See AM. BAR ASS'N, LAW SCHOOL TUITION 1985–2011 3, *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_tuition.authcheckdam.pdf. Additionally, many schools require more credits than the eighty-three used to calculate the MLT School of Law's tuition. However, if the MLT School of Law instead required ninety credits to graduate, the impact is an increase of just $1,150.

47. To be fair, fewer and fewer students have paid sticker price each year because of tuition discounts that total $1 billion from all ABA-approved law schools in 2010–2011. ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, INTERNAL GRANTS AND SCHOLARSHIPS TOTAL DOLLAR AMOUNT AWARDED 1991–2010, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/internal_grants_scholarships_awarded.authcheckdam.pdf (last visited Aug. 15, 2012).

Thus, the best way to compare the MLT School of Law's debt outcomes to the current debt outcomes is to adjust the maximum amounts borrowable for an apples-to-apples comparison. Consider the difference in tuition ($95,000), then add one fewer year of borrowed living expenses ($16,755), and then estimate how a student's annual monetary contribution affects the total cost of attendance. Assuming the average tuition discount (including those with no tuition discount) is $5,000 per year at the traditional schools, the average tuition difference is $80,000. As such, subtracting $80,000 and $16,755 from an estimated $130,000 of average debt for a student starting school in 2012 produces a decent estimate. This leaves a graduate of the MLT School of Law borrowing roughly $33,000 to attend, all at the lower Stafford interest rate.[48] On this metric, the MLT School of Law is roughly a quarter the cost of an average private law school.

There are, of course, additional opportunities to lower tuition and loan amounts, including options that go beyond simply lowering salaries or increasing the average class size. For example, donors may endow faculty chairs or scholarships. Adjuncts may forego payment and offer instruction pro bono as a service to the legal community. A school may allow event or classroom sponsorships, rent unused space during less busy times, sell module recordings as continuing legal education (CLE) credits, or even trade naming rights to a wealthy donor looking to influence the future of legal education. Eventually, an endowment worth about $150,000,000, returning 5 percent each year, could cover the budget without depleting the principal investment. This would allow every student to attend tuition-free every year. If 125 schools with similar endowments and enrollment levels were created around the country, these new schools would produce twenty-five thousand new graduates per year.[49] From a purely cost-benefit standpoint, it would be more cost-effective if Congress decided to create a law school endowment with law school loan money instead of loaning directly to students. It would take only five years to allow twenty-five thousand law students to attend for free each year for the foreseeable future.

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48. Stafford loans have an interest rate of 6.8 percent, and law students may borrow up to $20,500 per year. *Graduate Stafford Loans*, STAFFORDLOAN.COM, http://www.staffordloan.com/stafford-loan-info/graduate-stafford-loan.php (last visited Sept. 7, 2012). Additional loans from the federal government will be Graduate PLUS loans at 7.9 percent. *Graduate PLUS Loans*, GRADLOANS.COM, http://www.gradloans.com/graduate-plus-loan/ (last visited Sept. 7, 2012).

49. This number happens to be the number of projected new lawyer jobs per year. *Jobs Tracker*, L. SCH. TRANSPARENCY, http://www.lawschooltransparency.com/reform/projects/Jobs-Tracker/ (last visited Nov. 12, 2012).

We are not saying legal education should be free; we are merely pointing out how absurd student loan lending has become.

Again, this analysis is incomplete. Its purpose is not to provide a complete blueprint for a school on the near horizon, but rather to facilitate a level of discourse beyond basic propositions such as, "Modules are a decent idea, and more adjuncts should be used to lower cost." We expect and seek criticisms of our financial modeling. As we note in the conclusion, one key obstacle to reform is that law school financial data are (for now) generally unavailable to the public.

D. Barriers

There are a variety of barriers to creating the MLS. Some barriers apply to the model generally, while others apply only if a traditional school tries to emulate it. We start with the general barriers, move on to additional barriers for the MLT School of Law, and end with barriers for schools that want or need to evolve from costly behemoths into affordable options.

As presently written and construed, the ABA Standards and Rules of Procedure for Approval of Law Schools, which include binding Interpretations of these standards (together, "ABA Standards"), present the largest impediment to adopting the MLS. The proposed number of adjunct faculty members is the clearest obstacle. Notably, Standard 402(a) requires schools to "have a sufficient number of full-time faculty to fulfill the requirements of the Standards and meet the goals of [the school's] educational program."[50] While innocuous on the surface, Interpretations (Ints.) 402-1 and 402-3 all but require that the "sufficient number" be larger than necessary.[51] Interpretation (Int.) 402-2[52] uses a weighted student/faculty ratio, as calculated by Int. 402-1, to determine whether a school presumptively meets Standard 402(a).[53]

Each tenure-track scholar counts as one faculty member.[54] Non-tenure-track faculty members, including adjuncts, legal writing instructors, clinicians, and tenure-track faculty members with administrative duties, count as a fraction of one, but may only account for

50. AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHS. § 402(a) (2011–2012), *available at* http://www.lawschooltransparency.com/documents/ABA_Standards/2011-2012/2011_2012_Standards-and_Rules-of-Procedure.pdf.

51. *See id.* at §§ 402-1 to -2.

52. *See id.*

53. *See id.*

54. *See id.* at § 402-1.

20 percent of the teachers included in the ratio computation.[55] Under Standard 403(a), the full-time faculty who make up the other 80 percent of the computation must teach a major portion of the curriculum and "substantially all" of the entry-level curriculum.[56] The result is that a school without a stable of full-time, tenure-track faculty spending time researching and writing will have trouble satisfying the presumption under Int. 402-2.

This implicit negative judgment of non-tenure-track scholars may pose additional problems under Standard 401, Standard 301(b), Int. 301-4, and Int. 302-8 for the MLS. The ABA Standards rightfully require that ABA-approved schools instruct students competently with teachers qualified to prepare students for their careers. But if the ABA Section of Legal Education feels even mild discomfort with a school not having a faculty centered around scholarly production, Standard 401 helps its case for denying accreditation by including "scholarly research and writing" as part of the faculty's qualifications.[57] Moreover, Int. 301-4 explains that Standard 301(b)—which relates to educational benefits—requires regular interaction with full-time faculty, which is arguably more difficult when the school employs fewer faculty than the traditional school.[58] Combine these provisions with the presumption in Int. 402-2 against adjuncts' ability to provide a quality education, and the MLS is almost sure to fail under the ABA Standards, because the MLS makes such heavy use of affordable, experienced professionals as adjunct faculty.

Our specific implementation of the MLS has additional difficulties under the ABA Standards. First, the dean of the school is probably not teaching a full course load, and instead focuses on running the school. Standard 206(c) advises that this can only happen in extraordinary circumstances.[59] Second, the normal rate of completion of twenty-four months is fine under Standard 304(c), which requires that every student spend between twenty-four and eighty-

55. *Id.*

56. *Id.* at § 403(a).

57. *Id.* at § 401.

58. *Id.* at § 301-4. Specifically, the concern is that the professional demands of an adjunct's priorities prevent dedicating sufficient time to instruction, holding enough office hours, and spending enough time grading. *See, e.g.*, Chemerinsky, *supra* note 18.

59. *Id.* at § 206(c). Until August 8, 2012, we had not seen documentation of this ever happening at an ABA-approved law school. However, the president of Saint Louis University appointed a trial lawyer to be the interim dean of the law school on that date. *See* Letter from Lawrence Biondi, Saint Louis University President, to Saint Louis University Faculty and Staff (Aug. 8, 2012), *available at* http://cdn.abovethelaw.com/uploads/2012/08/Special-Message-from-the-President-8-8-12.pdf.

four months in the J.D. program.[60] But the MLT School of Law allows students to complete the J.D. program at the pace that best fits their needs and desires. Third, full-time faculty do not teach "substantially all" of the entry-level curriculum, contrary to Standard 403(a).[61] This is because adjuncts teach the legal writing modules, which constitute seven of the thirty entry-level credits, compared to four of thirty at traditional schools. Finally, the MLT School of Law does not have a traditional library, relying instead on electronic resources and strategic partnerships with local libraries. Chapter 6 of the ABA Standards disallows this model.[62]

The MLS would exhibit a natural expansiveness given its structure, posing additional concerns under the ABA Standards. A school may find it useful, cheaper, or both to teach courses at local law firms, bar headquarters, or courts. Standard 701 may imply that going off-campus for many scheduled classes could call into question the adequacy of the physical facilities, while Standard 304(b) seems to put a hard limit on the instruction time "in regularly scheduled class sessions at the law school."[63] Whether this latter provision is of concern depends on how the term "law school" is defined.

So far, we have only discussed how the MLS might look if it were created from scratch. If an already-approved ABA school considers changing its structure, it will have additional challenges, both regulatory and political. Standard 105 and Int. 105-1 require that the Section of Legal Education's Council or Accreditation Committee approve any major change to the J.D. program or organizational structure of the law school.[64] But if an MLS created from an already-approved school survives all of the aforementioned snags, whether through changes to the ABA Standards or adapting the school's structure, it *should* have no problem with Standard 105. It will, however, almost assuredly have trouble evolving because of high fixed costs like long-term contracts with faculty. A school looking to make this move will need to establish financial exigency,[65] wait for sufficient natural attrition from the school, or force attrition. Adopting

60. AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHS. § 304(c) (2011–12), *available at* http://www.lawschooltransparency.com/documents/ABA_Standards/2011-2012/2011_2012_Standards-and_Rules-of-Procedure.pdf.

61. *Id.* at § 403(a).

62. *Id.* at §§ 601–606.

63. *Id.* at §§ 701, 304(b).

64. *Id.* at §§ 105, 105-1.

65. *Cf. Financial Exigency, Academic Governance, and Related Matters (2004)*, AM. ASS'N OF UNIV. PROFESSORS, http://www.aaup.org/AAUP/comm/rep/finexg.htm (last visited Aug. 8, 2012) (discussing the effects on faculty contracts of a financial exigency).

this model may cause a school to lose its membership in the American Association of Law Schools (AALS), which has a number of bylaws in place that dictate everything from faculty composition to physical library requirements.[66]

Additional barriers include the impact of the modular structure on a school's *U.S. News* ranking. *U.S. News* uses the ABA's formula for calculating student/faculty ratios.[67] Though the student/faculty ratio counts for only 3 percent of the total score, law school administrations are extremely protective of their rankings, and losing even 3 percent could be sufficient discouragement.[68] Further, the amount a school spends on "instruction, library, and supporting services" counts for 9.75 percent of a school's *U.S. News* ranking.[69] Since the MLS significantly reduces a school's expenses, this could account for a significant drop in rank.

Increasing the number of faculty members at a school also multiplies the potential for personnel problems. There will be more opportunities for clashes among faculty members as more personalities and points of view are brought together, especially if drawing from the practicing bar means hiring instructors who are regularly opponents in litigation. More importantly, finding an adequate number of quality adjuncts in anywhere but the country's largest cities may prove extremely difficult.

The MLT School of Law, as described, requires 682 adjunct credit hours. This is about eight thousand hours of class time and perhaps an equal number of hours training, prepping, and grading over one and one-half years. If the average adjunct teaches four credits per year, the MLT School of Law needs 115 or so adjuncts, and each would put in about ninety hours per year. Although adjuncts are paid, this might be too much to expect of many working professionals. Depending on demands, a modular school may need to hire full-time faculty without administrative duties who only

66. The key AALS bylaws that would prove problematic for the MLS are 6-1(b)(i) (faculty composition), 6-4 (faculty qualifications), 6-6 (faculty development, library requirements, and research focus), and 6-8 (library requirements). *See AALS Bylaws*, THE ASS'N OF AM. LAW SCHS. (Jan. 2008), http://www.aals.org/about_handbook_bylaws.php. The key AALS regulations that would cause the MLS trouble are 6-4.1 (teaching requirements), 6-4.2 (limits on outside professional activities), and 6-8.1 to -8.6 (library requirements). *See AALS Handbook*, THE ASS'N OF AM. LAW SCHS. (May 2005), http://www.aals.org/about_handbook_regulations.php (last visited Aug. 8, 2012).

67. Robert Morse, *Methodology: Law School Rankings*, U.S. NEWS & WORLD REP. (Mar. 12, 2012), www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/03/12/methodology-law-school-rankings.

68. *Id.*

69. *Id.*

teach. At thirty credits per year for roughly $75,000 using the adjunct rate,[70] these jobs may prove to be attractive to an older professional looking to retire and stay active in the legal community.[71] With about seven hundred hours of work per year, there would still be plenty of time to play golf.

Perhaps the biggest barrier to the MLS is the attitudinal shift it requires by the pool of potential full- or part-time teachers, employers, state bars, and prospective MLS students. It is not an insignificant distinction that people not fully engaged at the MLS execute much of the school's educational program and mission. Though the pedagogy does not need to change, this structural difference fundamentally alters the atmosphere. Although we do not oppose the intellectual atmosphere created by traditional law school faculty nor doubt the importance of building and sharing knowledge, the traditional model and its unaffordable education must change.[72] If the rest of the legal profession tires of waiting for law schools to enact reforms such that schools exists for the students, one alternative is professional legal training programs.

V. RESPONSE #3: PROFESSIONAL LEGAL TRAINING PROGRAMS—THE LAWYER ACADEMY

A. Background

Though the vast majority of attorneys earn bachelor's and J.D. degrees before sitting for the bar exam, this seven-year educational road is not the only path to practicing law. People once learned the

70. Unfortunately, there are additional costs resulting from converting adjunct hours to full-time faculty hours. First, converting an independent contractor to an employee costs about 8 percent of the total salary for payroll taxes, and a bit more for unemployment insurance and other benefits. For an overview of the payroll tax, see *Payroll Basics*, ABOUT.COM, http://taxes.about.com/od/payroll/qt/payroll_basics.htm (last visited Sept. 7, 2012). Second, our model provides more assistants and office space to full-time faculty than adjunct faculty. In sum, we estimate a 33 percent premium on using full-time teaching faculty in lieu of a proportional number of adjuncts. Ultimately, even using no true adjuncts has negligible impact on tuition. Replacing all true adjuncts produces $2,500 more tuition over two years. The obvious downside would be that it disengages the bench and bar, so the proportion should be as strongly in favor of true adjuncts as practicable.

71. An additional concern is whether a teaching full-time faculty member could be expected to have a sufficiently varied expertise to cover thirty credit hours of teaching. Two interchangeable solutions would be sharing full-time faculty that teach among schools or using these faculty for popular courses requiring many sections.

72. It is not unreasonable to expect that tuition money be specifically earmarked for direct educational benefits if a school is to continue employing scholars in residence, with the think-tank portions financed by other means.

law in the United States not by schooling but through a combination of apprenticeship and guided self-study.[73] Multiple states still offer routes to practice that do not mandate higher education, having failed or refused to extinguish traditional entry points into the profession.[74]

In an effort to reimagine legal education, local legal communities could reassert their historical role in legal training. For example, state bar associations and court systems (together, "bar regulators")[75] could blend apprenticeship methods with effective, low-cost processes for recruiting, training, and evaluating future professional colleagues. Our proposal—the "Lawyer Academy"—does just that, replacing both undergraduate and J.D. studies with a

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73. This unsupervised "learning by doing" has been disastrous for many clients, since new attorneys "overcame inexperience at the expense of their unknowing, unsophisticated clients." William D. Henderson & Rachel M. Zahorsky, *The Pedigree Problem: Are Law School Ties Choking the Profession?*, A.B.A. J., July 2, 2012, http://www.abajournal.com/magazine/article/the_pedigree_problem_are_law_school_ties_choking_the_profession/.

74. Currently, only sixteen jurisdictions require earning a J.D. from an ABA-approved law school. NAT'L CONFERENCE OF BAR EXAMINERS & AM. BAR ASS'N SECTION OF LEGAL ADMISSION AND ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2012 8 (2012), *available at* http://www.ncbex.org/assets/media_files/Comp-Guide/CompGuide.pdf. Of the other thirty-five jurisdictions, fifteen do not require earning a J.D. in certain circumstances and eight more will grant reciprocity to attorneys who did not earn a J.D. so long as they were admitted in another jurisdiction and have met certain requirements. *Id.* at 8–13. Of these, California, Vermont, Virginia, and Washington recognize guided self-study or apprenticeships under the supervision of an attorney or judge. *Id.* Maine, New York, and Wyoming require applicants engaged in guided self-study to also complete a portion of a traditional J.D. program. *Id.* Minnesota, New Mexico, Oregon, and the District of Columbia permit correspondence or online study in place of a traditional J.D. program. *Id.* Illinois, Ohio, and Louisiana permit foreign attorneys to practice law without earning a J.D. *Id.* Furthermore, attorneys from other countries can sit for the bar in many states upon completion of a one-year LL.M. program. *Id.* at 14–19. Given that in many countries legal education starts at the undergraduate level, foreign-educated attorneys can progress from beginning their legal education to practicing law in less than seven years, and in as few as five. For example, New York permits foreign attorneys from common law jurisdictions to sit for the bar exam in certain situations without having to complete an additional course of legal education (such as a one-year LL.M. degree) in the U.S. *Id.* Under this rule, Australians can sit for the New York Bar Exam after completing a four-year LL.B. program at the undergraduate level. For foreign attorneys in civil law systems and those from common law systems who do not meet certain requirements, a one-year LL.M. degree in the U.S. is enough to make them bar-eligible. *See* 22 N.Y.C.R.R. § 520.6(b), *available at* http://www.nybarexam.org/foreign/foreignlegaleducation.htm.

75. States are divided over whether bar association membership is mandatory (or "unified"), with thirty-two state jurisdictions and the District of Columbia mandating association, and eighteen states offering voluntary associations. *See generally State and Local Bar Resources*, AM. BAR ASS'N, http://www.americanbar.org/groups/bar_services/resources/state_local_bar_associations.html (last visited Sept. 26, 2012). Unified bars are part of the court systems in their state and can therefore be granted authority to regulate attorneys. *See generally id.* The state judiciary is typically the entity charged with regulating attorney conduct, sometimes delegating such authority to a mandatory bar association. *See generally id.* The Lawyer Academy is designed to be implemented by whichever entity is charged with regulation in each state.

new educational program for lawyers. Through a redesign and expansion of existing CLE and mentorship programs, along with key college and university partnerships, bar regulators can forge a high quality and affordable path to legal practice.[76]

In this Part, we provide a blueprint for one response to the law school disaster by explaining the critical components of the Lawyer Academy. Its core aim is to reduce the opportunity costs of becoming a lawyer by attending, within a flexible framework, to the needs of candidates, the profession, and those who desire legal services. Like the Modular Law School, it aims to remove expenditures not necessary to a sound legal education. Unlike the MLS, however, the Lawyer Academy does not rely on using the law school as the primary institution. The Lawyer Academy is what American legal education might look like if law schools were no longer in the driver's seat.

B. Critical Components

The Lawyer Academy's route to practice is quite different from a traditional J.D. program and requires deep involvement from the applicable bar regulator. It is a professional school with a comprehensive vision of the profession. Designed with the success of elite American military academies such as West Point in mind, candidates receive a core liberal arts education with a focus on preparation for law practice. While Academy candidates may be admitted at any time after high school graduation, latecomers are not restricted from candidacy. Like West Point, a series of interviews to gauge a person's readiness and maturity serve as an important guide for determining whether a person should be admitted or the decision on admission should be deferred. The role of the Lawyer Academy is, in part, to screen prospective candidates for entry not only into the Academy, but also into the profession.

The educational program consists of four levels, each overseen by a committee of working professionals. Advancing from level to level depends on course completion (measured by credits) and the candidate's ability to achieve a variety of competencies. Any given

76. To be clear, such a model would likely only appeal to a certain subset of interested applicants in its early years: people who are only looking to practice in the specific legal community running the Lawyer Academy. For candidates who seek geographical flexibility, the Lawyer Academy will not draw much interest until reciprocity agreements are reached and the model is developed in enough states to enable greater flexibility. Likewise, some employers may not be interested in recruiting from these academies until their reputations have been firmly established.

level requires character and fitness review and a competency examination to assess whether the candidate meets or exceeds expectations. The Lawyer Academy thus assumes the traditional role of bar examiners. Candidates will graduate and enter the practice only after demonstrating a readiness to serve the community—whether through the public or private interest—as competent and ethical attorneys.

1. Level-Based Curriculum

If a bar regulator decides that the Lawyer Academy would work well in its jurisdiction, they will need significantly more than this proposal to formulate a suitable curriculum. Generally speaking, because the Lawyer Academy is an option for high school graduates, the curriculum cannot be exclusively legal. In normative terms, it should begin by providing a non-law foundation in writing, business, and liberal arts before venturing too far into the law curriculum and field training. By using a level-based curriculum, progressing from candidate to lawyer reflects paced and measured growth.

With a normal pace of completion at roughly one level per year for the first three years, and roughly two years for the final level, legal education at the Lawyer Academy actually takes more time than the traditional three-year law school model. Rather, significant time and opportunity cost savings come from not requiring an undergraduate degree and from providing a curriculum that facilitates candidates finding paid work during school. If a candidate enters the Academy right after high school, the candidate may successfully advance through all four levels and receive a license to practice in five years, at the age of twenty-two or twenty-three.[77] A

77. While this is rather young for an attorney in the U.S., the age is common in a number of common and civil law jurisdictions around the world. For example, in countries following the English common law system—including the United Kingdom, Australia, and Canada—graduates of an undergraduate program in law can be eligible to practice either directly following graduation or after a one-year "articling period." *See, e.g.*, Andrew Boon & Julian Webb, *Legal Education and Training in England and Wales: Back to the Future?* 59 J. LEGAL ED. 79, 81–84 (2008). Many civil law systems have also adopted a modified undergraduate program, extending the program by one year. This still results in a license to practice up to two years earlier than a similarly situated person following the bachelor's-plus-J.D. formula. For example, Spain recently revised the requirements (which previously only required a four-year university degree) to require completion of a mixed masters and apprenticeship program following graduation from university, which can be done together with the university degree and completed in five years and three months. *Novedades para los Licenciados en Derecho*, EL COMERCIO.ES (June 11, 2012), http://blogs.elcomercio.es/cuervoalfageme/2012/06/11/novedades-para-los-licenciados-en-derecho/. In South America, the MERCOSUR

candidate wishing to start later—perhaps after some undergraduate work—may count applicable coursework or choose a different path for legal education.

The Law Academy curriculum follows the same pattern as traditional legal education. Students learn basic legal theory through a core set of courses on civil procedure, torts, contracts, and the like, and then progress to advanced coursework. Though the upper levels embrace significant in-class learning, including advanced business and advanced law courses, the Academy accomplishes upper-level training through apprenticeships in a variety of field placements. This encourages candidates to first watch and then practice. Local community support—where the community sees the benefits from these apprenticeship goals and thus views the Academy as a worthwhile institution—is integral to the Lawyer Academy concept.

2. Management and Faculty

Bar regulators maintain programs intended to benefit both members and the general public.[78] The difference between a jurisdiction that has a Lawyer Academy and one that does not would be that the latter has yet to decide whether the program would be desirable, feasible, and worth the cost. Once created, a bar regulator would manage the new program like any other program it administers on behalf of the public and its members. The main difference is the breadth and depth of the program's structure.

CLE programs, which are sustained through programming revenue (e.g., tuition or fees), are most analogous to the Lawyer Academy. But instead of outsourcing educational content to members of the bar and for-profit CLE companies, program administrators and faculty at the Lawyer Academy create and manage most of the content. Attentive management of a Lawyer Academy requires significantly more resources than a CLE program, because the curriculum approval process ought to be more rigorous than the standard CLE approval process, and the bar regulator now has a school to run.

Lawyer Academy costs need not pass through to members of the bar as with other programs. Instead, the Academy holds prices

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countries (which include Argentina, Brazil, Paraguay, Uruguay, and Venezuela) permit people to apply for bar membership and a license to practice upon completing a university program, which takes between five and six years, including the application process. Interview with Ariel García Bordon, attorney, Sept. 12, 2012 (notes on file with authors).

78. *E.g.*, *History of the Bar*, STATE BAR OF GA., http://www.gabar.org/aboutthebar/history ofthebar.cfm (last visited Aug. 13, 2012) ("The State Bar of Georgia is able to maintain programs that mutually benefit its members and the general public.").

down through explicit rules for revenue use. Rather than defining scholarship as part of the school's mission, the Lawyer Academy divorces scholarship from training, declining to use tuition revenue to fund the production of legal scholarship. This creates a closed loop where tuition dollars are used for programs designed to educate, train, and prepare tuition payers for their eventual careers as lawyers and advocates. Not surprisingly, this significantly reduces the possibility of high faculty compensation. At the Lawyer Academy, compensation depends only on hours spent teaching or administering the field training programs. Faculty may find time for scholarship and can even hire Academy candidates to do legal research and writing as paid research assistants. But these educational benefits are peripheral. At the same time, the Lawyer Academy is distinguishable from a trade school where theoretical considerations are not at play in the training program. The Lawyer Academy is no more a trade school than a military academy; the law curriculum requires mastery of the theoretical before progressing to the practical.[79]

The Lawyer Academy's faculty consists of a diverse mix of instructors trained in a variety of legal, business, and liberal arts settings (see Figure 1). "Faculty" includes anybody who instructs candidates in an academy-sanctioned fashion. Some faculty will come to the Academy to teach part-time, others will teach full-time. In some cases, candidates will travel to faculty at other educational institutions, such as business schools or more traditional law schools, or at field placements. The result is a fluid structure, where candidates progress through the curriculum by keeping one foot in the Academy and the other in the real-life practice of law.

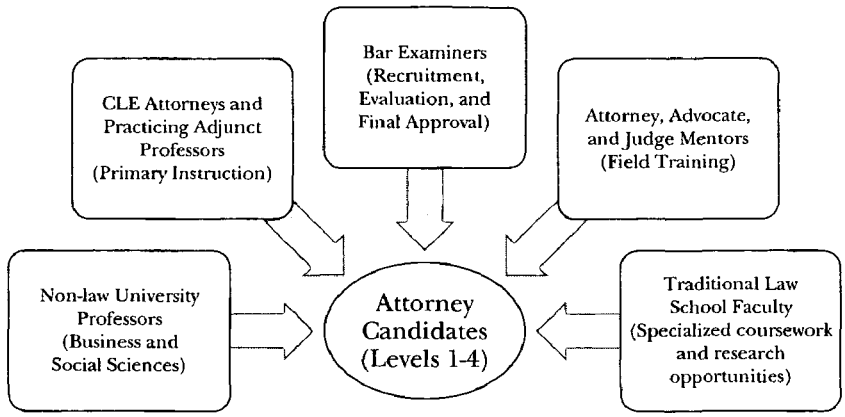
Introducing non-law courses into a school run by a bar regulator poses interesting questions about how candidates would learn the non-law curriculum. It is one thing to have the legal community take ownership of legal education, but quite another to have it take ownership of a liberal arts education too. The Lawyer Academy would need to partner with local colleges and universities, or other entities, to outsource much of its liberal arts curriculum.[80] These

79. The Lawyer Academy contemplates a nearly complete split between the law-school-as-think-tank and law-school-as-training-school, which need not be the case. It may be enough to rebuild legal education by recognizing these two roles as separate and distinct, and by inviting bar regulators to play a larger part in determining how recruitment, training, and evaluation should be done.

80. The Academy's oversight committee, consisting exclusively of lawyers, would naturally be in charge of selecting partner institutions in the jurisdiction. This more or less creates a framework where portions of the liberal arts curriculum are awarded through subcontracts to different institutions. The Academy remains in charge of defining the parameters of the education and making sure the subcontracting institutions get the job done.

relationships add flexibility to what would otherwise only be a set of rigid requirements.

Figure 1: Instruction at the Lawyer Academy



3. Approximate Tuition

This blueprint is too early in the process of development to approximate tuition. Projecting tuition costs with any reasonable specificity requires a better understanding of faculty compensation, required administrative costs, student services offered, library offerings, the number of students in the academy at any given time, and sources of revenue that could fairly offset tuition outlays from candidates. In this section, we point to the new features of this legal education model that make it more affordable than the traditional law school model, and to which costly features of the traditional model are avoided.

Among the opportunities for making education affordable is the chance to redesign both faculty composition and the faculty compensation structure. The Lawyer Academy compensates faculty for their time spent teaching and, when applicable, administrative duties. The goal is to attract greater involvement by members of the bench and bar who favorably view the Academy's goal of recruiting and training ethical attorneys. Whether through teaching pro bono or at a level of compensation less than their normal billable rate,

faculty might find that meaningful contribution to the legal community is worth the discount. This would produce higher proportions of skilled labor interested in teaching.[81] The same cannot be expected of the non-law university professors—perhaps certain exchanges can be made for legal work by J.D. candidates, the law faculty, or both to reduce expenditures. A similar exchange may work between J.D. candidates and law faculty. The Academy could pay candidates at inexpensive rates for on-the-job training at law firms or businesses that provide adjunct faculty.

Integrating an affiliated law firm into the Academy is another attractive option. Arizona State University's (ASU's) Sandra Day O'Connor College of Law recently announced that a teaching law firm will supplement its legal education for graduates who do not obtain a job right after graduation.[82] Graduates of ASU will receive a salary and benefits, paid for through fees collected by the law firm for the affordable legal work it provides.[83] Rather than waiting until after formal legal education has been completed, the Lawyer Academy could run the same program with a reduced salary for J.D. candidates.

The reduced opportunity costs of attending the Lawyer Academy provide another chance to make legal education more affordable. Presently, the normal rate of completion for a legal education is four years of undergraduate and three years of law school, often with a year or two in between. Candidates at the Lawyer Academy spend two fewer years in school and two additional years working full-time, not to mention that time in school also consists of gaining paid experience in a professional capacity. And by streamlining the law licensing process, new lawyers emanating from Academies can begin their careers more quickly, without the additional expenses of bar preparation courses or the need to wait at least six months until licensure in some jurisdictions.[84]

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81. In some cases, compensation rates could be increased for the faculty simultaneously with a tuition rate decrease if the Lawyer Academy merges candidate schooling with CLEs.

82. Karen Sloan, *Think of It As Residency for Lawyers*, NAT'L L.J. (June 4, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202556661573.

83. *Id.*

84. In New York, for example, results of the July bar exam are often not announced until November, while the earliest dates for being sworn in take place the following January. *See Frequently Asked Questions*, THE N.Y. STATE BD. OF LAW EXAM'RS, http://www.nybarexam.org/faq/faq.htm#release (last visited Sept. 12, 2012) (stating, *inter alia*, that "historically results from the July examination are released by mid-November"). Once an applicant has passed the bar, she takes the oath and can be officially licensed to practice law the following year. *See New York State Supreme Court Committee on Character and Fitness*, N.Y. ST. SUPREME CT., http://www.nycourts.gov/courts/ad1/committees&programs/cfc/index.shtml (last visited Sept. 12, 2012).

Of course, the Lawyer Academy introduces new financial hurdles for a bar regulator trying to cultivate a high-quality educational program while keeping it affordable. There are difficult questions about the requisite level of support needed to administer an effective apprenticeship and mentoring program, to successfully match candidates to useful training opportunities, and to manage the ongoing character and fitness review, level-based curriculum exams, and great variety of instructors. We posit these costs will amount to significantly less than the cost of administering a traditional law school. This hypothesis, however, needs to be proven empirically before the feasibility of establishing a Lawyer Academy can be determined.

C. Barriers

A variety of barriers could stand in the Lawyer Academy's way. Some barriers apply quite broadly, starting with the threshold problem of convincing necessary parties that the Lawyer Academy is even worth consideration. Other barriers relate to determining whether the Academy is a plausible way for the legal profession to reassert its role in recruiting and training new attorneys.

The Lawyer Academy requires substantial support from the legal community, especially bar regulators. Given today's educational climate, it may seem nothing short of momentous for a bar regulator to reclaim its role in training tomorrow's lawyers in a meaningful way.[85] After all, bar regulators in every state have outsourced a large segment of their regulatory authority to the ABA Section of Legal Education. Relying on the ABA is not without reason—it may even be ideal. But if the crisis in legal education reaches disastrous proportions and causes people to question their reliance on the ABA, the decision to reclaim legal education will require assuming more responsibility. This expanded responsibility is different from current undertakings, and it is also risky. Minimizing the risk requires investigating the value of the Academy and developing a detailed blueprint, but this will cost money and time, and could damage individual reputations and relationships. Many attorneys and judges who have found success in the profession credit part of that success to their alma maters, and value the networks they have built at least in part around where they attended law school. Asking these leaders of the profession to support the Lawyer Academy may put them

85. It does not follow from having an alternative route to practice that the legal community and bar regulators are "all in" on reimagining legal education.

in a difficult position, where supporting the Academy means withdrawing their support for, or even rallying against, their law schools.

The employers who are most likely to be interested in hiring Lawyer Academy graduates are members of the legal community in the Academy's jurisdiction. A non-trivial number of employers need to express a desire to hire these graduates, and not just those from the top of a class. Although the bar would be lowered in one, narrow sense—the lack of a higher education requirement as a prerequisite for entry—the Academy seeks to otherwise raise the bar by credentialing only those candidates who perform well enough to advance and can be ready to practice law on day one. In theory, if a candidate who successfully completes the curriculum and survives all reviews makes for a competent attorney, a college degree should be irrelevant. In practice, we have a culture that places a great deal of value on academic credentials, often to the point of believing that any price, no matter how exorbitant, is worth paying.

Age and maturity will be a significant concern. Though some countries have functioning legal systems in which attorneys enter the profession in their early twenties, this fact alone may not convince enough people that seven years of higher education is excessive.[86] One way to allay those fears would be to remove the liberal arts aspects of the Academy while making certain coursework a prerequisite. This would make the Lawyer Academy a direct competitor of J.D. programs, where a B.A. (or partial completion) would still be required. Altering the model in this way results in fewer years of legal education but an equal or greater number of years pursuing higher education. If the proposed admissions standards seem inadequate, it may be desirable to reduce opportunity cost savings in favor of ensuring more mature graduates.

Institutional credibility extends to recruiting faculty as well. Lacking generous compensation packages and the freedom for full-time faculty to allocate teaching time flexibly, the Academy needs to appeal to something other than money and freedom. For practicing attorneys, demand might stem from the benefits of establishing their employer's brand and business, broadening their network and influence, honing their presentation skills or legal expertise, or earning CLE credits. And if classes are graded on a pass/fail basis, where sorting relies on end-of-level examinations and qualitative class evaluations, eliminating the least favorite aspect of teaching

86. *E.g., Professional Degrees: Law School in Australia*, AUSTL. GOVERNMENT, http://www.studyinaustralia.gov.au/northamerica/Education-in-Australia/Professional-Degrees/Law/Law (last visited Oct. 10, 2012).

for many faculty members—grading—could prove to be a great recruiting tool.

One downside of implementing this sorting method is that legal employers may shun the program. Some employers (notably large law firms) view the current legal education system as more or less a quick way to sort desirable job applicants. The traditional model offers three meaningful stages of sorting. First, colleges sort high school students by SAT score, curricular achievement, caliber of high school, and extracurricular achievements. Second, law schools re-sort college graduates by LSAT score and undergraduate GPA. Third, law schools re-sort their students by GPA at all but a handful of schools. With few exceptions, legal employers that offer the highest-paying or most prestigious jobs are interested in the students who made it through the system to land at a top law program or at the top of their class at a less reputable program. The remaining jobs follow a hodgepodge of sorting schemes, though it appears that graduate outcomes fall in a regional hierarchy by school.[87]

Under the Lawyer Academy's system, the sorting function looks much different. The academy sorts high school students when they first apply for candidacy. Beyond that, the sorting mechanisms are less clear than in the traditional law school model. This may decrease the employability of graduates. If legal employers perceive the sorting mechanism as less than adequate, they may decline to choose the Lawyer Academy's graduates over traditional graduates, regardless of their preparation for practice.[88] The Academy relies on significant contact with potential employers to facilitate the selection of qualified individuals. Ideally, by putting the Lawyer Academy directly in the hands of the profession, employers can see first-hand what to expect from the candidates. One way to gauge employer interest is to survey potential employers and then determine how best to insert intuitive sorting mechanisms throughout a candidate's instruction at the Academy.

Gauging demand on the student side also raises questions. Will people want to forego a bachelor's degree for what may be perceived as only a chance at being a lawyer? Some of these considerations assume rational consumers who are capable of evaluating risk, assumptions which have been repeatedly questioned in the legal

87. Kyle P. McEntee & Derek M. Tokaz, *Take This Job and Count It*, 2 J. OF LEGAL METRICS 309, 334 (2012).

88. There is evidence that this happens now. *See* Henderson & Zahorsky, *supra* note 73.

education context.[89] Still, even irrational consumers might nonetheless prefer the traditional route, particularly if the perceived risks and subsequent stigmas of failing out of the Lawyer Academy or graduating with no job and no fallback degree are overstated.

The more appropriate question for a bar regulator is whether students ought to want to attend the Lawyer Academy and whether employers want to hire graduates. This question pertains to how the Lawyer Academy is built and then portrayed to would-be applicants and employers. Proponents of the Academy ought to first show that it is both affordable and that it provides demonstrable value. This means top-notch attorney training, a candid and favorable showing of the likelihood of graduating (and thus becoming a lawyer), and a significant likelihood of obtaining full-time legal employment that does not also subject graduates to debt servitude.

Any fair evaluation of whether a prospective candidate ought to attend the Lawyer Academy must look at both the "winners" and "losers" emanating from the system. In the educational context, this usually means estimating attrition levels and asking what happens to those who leave an institution. But focusing only on attrition rates assumes that merely finishing the program represents a desirable outcome. One should ask whether someone who fails out of the Lawyer Academy with $20,000 in debt (and no bachelor's degree to fall back on) is better off than someone who graduates from an ABA-approved law school with $100,000–$300,000 in undergraduate and law school debt and does not pass the bar exam or obtain a legal job. If too many people walk away from the Academy with large debt burdens, unable to practice law and confused about where next to take their lives, they may find themselves in a worse position than graduates of traditional law schools, who can enroll in economic hardship programs or rely on their bachelor's degree to pursue a different career.

One solution could be that the Lawyer Academy would also provide a post-secondary degree. This would allow somebody to leave the Academy without too much hardship. Providing this degree program would also enable access to traditional federal student

89. One has only to look at Thomas Cooley Law School's Tampa Bay campus for the latest evidence that people want to become lawyers and will pursue the path uncritically. *See Cooley Law School's First Class Reports to New Tampa Bay Campus*, THOMAS M. COOLEY LAW SCH. (May 7, 2012), http://www.cooley.edu/news/2012/cooley_law_schools_first_class_reports_to_new_tampa_bay_campus.html. Cooley had an employment score of 29.9 percent for the class of 2011, which means that less than one-third of its graduates found full-time, long-term legal jobs. *Thomas M. Cooley Law School Profile*, LAW SCH. TRANSPARENCY, http://www.lstscorereports.com/?school=Cooley (last visited Sept. 7, 2012).

loan programs, because the school would likely seek regional accreditation to make the post-secondary degree worthwhile for those who fail to finish the Lawyer Academy.[90] The downside is that the regional accreditation is likely to come with a price premium.

Beyond employability, demand, and cost issues, it is not clear how much this model can foster fundamental change in legal education without wide-scale adoption across multiple jurisdictions. Limited application of the Lawyer Academy model may be like putting out a forest fire with a watering can. If this is true, it may not be worth a bar regulator's time to consider and implement this program. Serious consideration of bar reciprocity rules and the changes that need to be made at the state judiciary level are also critical to determining the Academy's feasibility.

Successful Lawyer Academies can be expected to benefit both individuals and the profession. Talented young individuals will have an option to pursue a career in law that does not require the increasingly cost-prohibitive path of seven years of higher education. They will be burdened with significantly less debt, will be ready and authorized to practice law at graduation, and are more likely to be committed to serving the communities in which they live and work. The legal profession will realize meaningful and long-term gains in the number of lawyers who are well-trained, ethical, and economically free to pursue their desired career goals. But a number of barriers must be overcome for such a positive outcome to materialize. In addition to the barriers already discussed in this section, there may be concerns that Lawyer Academies facilitate protectionism by allowing the practicing bar even more control over entry, or lead to less diversity in the profession. As with any proposed model, it is important that these and other concerns be raised, evaluated, and addressed when thinking through the Lawyer Academy. Fear of novelty alone should not bar study or implementation of a model, especially when it has the chance to provide a high-quality and low-cost path to entering the legal profession. We think that the Lawyer Academy can meet these ends and therefore warrants further study.

CONCLUSION

In conceiving and analyzing these models, we observe two significant intellectual barriers to discussing alternative paths of legal education. First, there is a lack of structural transparency. Information

90. *See, e.g.*, *Accreditation*, SO. ASS'N OF COLLS. AND SCHS. COMM'N ON COLLS., http://www.sacscoc.org/FAQsanswers.asp (last visited Nov. 9, 2012).

is scarce about the internal workings of law schools, which prevents a full dissection and diagnosis of legal education's financial problems and opportunities. Those who have access to detailed structural information about how a law school operates at best have been unable to come up with and achieve reforms on their own. At worst, they are too self-interested to do anything but restrict access to information that could permit others to demonstrate how to improve a school's value proposition.

Creating a thorough model for affordable legal education requires comprehensive data about law school finances, among other information, that is not *yet* publicly available.[91] Being able to claim that a new model can be done for X price or without a particular feature are both key to moving forward with reforms. But without structural transparency, skeptics of a new model can rest their dismissive retorts on statements like "you don't understand enough about law schools," or on appeals to authority. Structural transparency is therefore essential to falsify unjustly powerful objections and analyze the true potential of these models; otherwise, the inmates will continue to run the asylum.[92]

The bulk of people interested in legal education reform simply do not possess the relevant data. Structural transparency would greatly expand the pool of people capable of putting together a workable model. This sort of crowd-sourced solution has already worked in the scientific community. For example, Eli Lilly and Company, stumped with challenging biochemistry problems, began posting its problems on the Internet in 2001 along with a bounty for solutions.[93] Remarkably, people working on problems outside of their own field of expertise were more likely to solve the posted problems.[94] Law schools have an abysmal history in terms of cost reform and appear to have been hampered by self-interest.[95] Given

91. Although Form 990s are available for some private law schools, and open records laws provide access to public school budgets, a comprehensive public database containing these data does not exist.

92. *See generally* ANDREW GILLEN, DANIEL BENNETT & RICHARD VEDDER, THE INMATES RUNNING THE ASYLUM? AN ANALYSIS OF HIGHER EDUCATION ACCREDITATION (2010), *available at* http://www.centerforcollegeaffordability.org/uploads/Accreditation.pdf.

93. The crowd-sourcing platform "InnoCentive," a spin-off of Eli Lilly, helps numerous other organizations find third-party solutions to their problems. To date, InnoCentive has over 260,000 registered users in 200 countries, and has solved more than 1,200 problems (a 57 percent success rate) with over $35 million awarded. *Facts & Stats*, INNOCENTIVE, http://www.innocentive.com/about-innocentive/facts-stats (last visited Nov. 9, 2012).

94. Karim R. Lakhani, Lars Bo Jeppesen, Peter A. Lohse & Jill A. Panetta, *The Value of Openness in Scientific Problem Solving* 4, 10 (Harvard Bus. Sch., Working Paper No. 07-050, 2006), *available at* http://www.hbs.edu/research/pdf/07-050.pdf.

95. *See* TAMANAHA, *supra* note 4.

the unreliability of the law schools in preventing the crisis, it is time to expand the reform team.

Second, the profession (from those who desire entry to those who make it their life-long career) is, according to many observers, obsessed with prestige to an unhealthy degree.[96] This fixation likely limits how far a model can venture from the traditional J.D.-granting institution. Obsession with rankings like the AmLaw 100, Vault 100, NLJ 250, and *U.S. News*, which all rank large law firms or top law schools, pervades decision-making at a number of levels.[97] Many people define their own value within the profession using these metrics, and it appears to trickle down into considerations such as who can obtain plum board of director positions, get hired by the highest rated firm, or make the most money.[98] While there is no use in blaming people for a culture that emphasizes internal and external sorting mechanisms, we would be remiss if we did not point out how massive a challenge this aspect of American legal culture poses to reforming its system of education.

The three responses we discuss in this Article may find their greatest utility, we hope, in shaping the approaches of legal educators and others toward training the next generation of attorneys. We want the two new models to be intellectual blueprints and to pave the way for new and better ideas about legal education. Accordingly, what matters is that this Article provides a starting point for considering how the new models could work in principle. It is clear that cost reform is necessary, and it is likely that substantial reform is coming. What it will look like depends on those who get involved, who we hope include more than just those who led legal education into this disaster.

96. *See* Henderson & Zahorsky, *supra* note 73.
97. *Id.*
98. *Id.*

APPENDIX A

	Intro		Class 1		Class 2		Class 3		Class 4		Class 5		Class 6		Class 7		Class	Hours /	
	LoL	PR	Lec.	Lab	Lec.	Lab	Lec.	Lab	Lec.	Lab	Lec.	Lab	Lec.	Lab	Lec.	Lab	Minutes	Week	Difference
June #1	100	300															700	11.7	-0.8
June #2	300	300	300														1000	16.7	4.2
June #3			300	75	300												675	11.3	-1.3
June #4			300	100	300	150											850	14.2	1.7
July #1																			
July #2			300	150	300	150											900	15.0	2.5
July #3			300	150	300	150											900	15.0	2.5
July #4			300	150	300	150											900	15.0	2.5
July/Aug			300	75	300	100	100										875	14.6	2.1
Aug #1					300		200										500	8.3	-4.2
Aug #2							300										300	5.0	-7.5
Aug #3							300	150	400		200						1050	17.5	5.0
Aug #4							300	150	300	150	200						1100	18.3	5.8
Sept #1							300	150	300	150	200	100					1200	20.0	7.5
Sept #2							300	150	300	150	300	100					1300	21.7	9.2
Sept #3																			
Sept #4							300	100	300	150	300	150					1300	21.7	9.2
Oct #1									300	300	150	150					700	11.7	-0.8
Oct #2									200		200	100	200				700	11.7	-0.8
Oct #3											300	100	100	100			600	10.0	-2.5
Oct #4											250		200	100	300		850	14.2	1.7
Oct/Nov													100	100	300	100	600	10.0	-2.5
Nov #1													300	150	300	100	850	14.2	1.7
Nov #2													300	150	300	150	900	15.0	2.5
Nov #3													300	100	300	150	850	14.2	1.7
Nov #4																			
Dec #1													300		300	100	700	11.7	-0.8
Dec #2													300		300	100	700	11.7	-0.8
Dec #3																			
Dec #4																			
Minutes	700	700	2100	700	2100	700	2100	700	2100	700	2100	700	2100	700	2100	700			

Note: Dark rows indicate a week where no classes are held. Solid, unnumbered cells indicate an exam instead of classes for a particular course.