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**REDUCING THE COST OF LEGAL EDUCATION: THE  
PROFESSION HANGS TOGETHER OR HANGS  
SEPARATELY\***

**Victor Gold<sup>†</sup>**

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INTRODUCTION

Is a legal education worth the cost? Until just a few years ago, there was little doubt that the answer was yes. Tuition at public law schools was heavily subsidized by taxpayers and the cost of attending even the most prestigious private school was modest relative to the return in income most lawyers could expect over a career. For most of the twentieth century, Americans dreamed that their children would become members of a profession, with medicine and law at the pinnacle of middle-class ambitions. As our society grew more prosperous and complex, the need for lawyers also grew. Lawyers came to dominate not just the courtroom, but also the corporate boardroom and the highest levels of government. American law firms grew into national and then international legal services providers, some employing thousands of attorneys. As the private sector grew, so did government. The increase in government regulation of virtually every aspect of life required employment by government of armies of lawyers to enforce those regulations and, in turn, the employment of yet more lawyers in the private sector to deal with government lawyers. Judicial and legislative expansion of individual rights in the 1960s triggered a need for lawyers to defend those rights. Since the returns on a legal education seemed so solid, the price of that education had room to rise. Accordingly, during the last twenty years both private and public law schools significantly raised tuition.

The recession that began in 2007 changed everything. The job

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\* With apologies to Benjamin Franklin.

<sup>†</sup> William H. Hannon Professor of Law and Dean Emeritus, Loyola Law School, Los Angeles.

market for entry-level lawyers suddenly collapsed. With tuition high and job prospects low, many concluded that legal education was no longer worth the cost. The result has been a historic decline in law school applications. Richard Matasar documented the challenges confronting legal education and advises law schools to meet those challenges by reducing the cost of a degree.<sup>1</sup> Since law schools cannot control the job market, Matasar's prescription is seemingly the only way law schools can change perceptions regarding the value of legal education. But forces beyond the power of most law schools to control make it unnecessarily difficult to follow his advice.

The first section of this Essay briefly recounts the events of the last seven years of crisis in legal education. That discussion suggests that, while significantly cutting the cost of legal education is an effective way to deal with that crisis, some of the same forces that created the crisis in the first place undermine the ability of law schools to pursue such a strategy. The next section describes ways in which the legal profession responded to the crisis in legal education. Much of the profession's initial response was uninformed, politically motivated, and focused on passing judgment on law schools while deflecting responsibility for a problem that effects the entire profession. In fact, the response of the profession continues to make it more difficult to pursue Matasar's strategy of cutting costs. This Essay argues that the factors that drove up the price of a legal education will be easier to tame if there is a concerted effort by the entire legal profession. The stakes are high, since the future of the profession will turn on whether legal education is once again financially accessible to the American middle class. We either hang together or hang separately.

### I. A PERFECT STORM

In retrospect, the signs of the looming crisis were there for all to see. In the twenty-or-so years leading up to the recession that began in 2007, the cost of a J.D. degree escalated at a rapid pace.<sup>2</sup> Student debt

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1. See, e.g., Richard A. Matasar, *The Canary in the Coal Mine: What the University Can Learn from Legal Education*, 45 MCGEORGE L. REV. 161, 203 (2013); Richard A. Matasar, *The Viability of the Law Degree: Cost, Value, and Intrinsic Worth*, 96 IOWA L. REV. 1579, 1581 (2011).

2. See DENNIS W. ARCHER, TASK FORCE ON THE FIN. OF LEGAL EDUC., AM. BAR ASS'N, THE REPORT OF THE TASK FORCE 7 (2015), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/reports/2015\\_june\\_report\\_of\\_the\\_aba\\_task\\_force\\_on\\_the\\_financing\\_of\\_legal\\_education.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_june_report_of_the_aba_task_force_on_the_financing_of_legal_education.authcheckdam.pdf) [hereinafter "ABA FINANCING LEGAL EDUCATION REPORT"] ("Using the higher education price index (referred to as HEPI) private law school tuition increased 29% between AY1999-00 and AY2014-15, and public law school in-state tuition increased 104%. Using the familiar

soared.<sup>3</sup> Law schools expanded their operations and increased fixed annual expenditures as if the applicant pool would never contract and tuition could increase forever. Several factors encouraged and, in some cases, essentially mandated what was an unsustainable business plan.

First, beginning in the 1990s, the *U.S. News* rankings came to dominate the thinking of law school applicants, law firms, law professors, and any law school dean that wanted to keep that job. Virtually every factor in the methodology of the *U.S. News* ranking, from reputation to student selectivity to job placement, can be improved by spending money. For example, academic reputation can be boosted by assembling a lineup of all-star professors. But like a baseball team seeking to build a contender out of talented free agents, the price is high. Similarly, median grade point average and LSAT scores of first-year students can be improved by heavily discounting tuition for highly credentialed applicants. But the strategy works financially only if tuition for the rest of the class is given a healthy boost. Even job placement numbers can be improved by throwing money at the problem.<sup>4</sup> In fact, some of the *U.S. News* factors directly count how much money a law school spends per student, leaving no ambiguity about the perverse incentives created by that ranking system.<sup>5</sup> Simply put, the more a school spends, the better its score.<sup>6</sup>

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consumer price index (referred to as CPI) the increases were 46% and 132%, respectively.”).

3. *Id.* at 8 (“Using inflation-adjusted (CPI) 2014\$, the average debt for private law school students increased from \$102,000 in AY2005-06 to \$127,000 in AY2012-13; for public law school students the figures are \$66,000 and \$88,000.”).

4. See *The Price of Success*, THE ECONOMIST (Mar. 15, 2014), <http://www.economist.com/news/business/21599037-some-american-law-schools-are-paying-many-their-graduates-salaries-price-success> (“Some American law schools are paying many of their graduates salaries.”).

5. See KENT SYVERUD ET AL., SECTION ON LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, REPORT OF THE SPECIAL COMMITTEE ON THE U.S. NEWS AND WORLD REPORT RANKINGS 3 (2010), <http://ms-jd.org/files/f.usnewsfinal-report.pdf> (“As a recent study by the United States Government Accountability Office has suggested, the U.S. News [sic] methodology arguably punishes a school that provides a high quality education at an affordable cost. Because low-cost law schools report a lower expenditure per student than higher cost schools, it is difficult for low tuition schools to top the rankings. A school that works hard to hold down costs may indeed find itself falling in the rankings relative to a peer that increases tuition above the rate of inflation each year.” (citing U.S. GOV’T ACCOUNTABILITY OFFICE, HIGHER EDUCATION: ISSUES RELATED TO LAW SCHOOL COST AND ACCESS 25 (2009), <http://gao.gov/assets/300/297206.pdf>)).

6. See ABA FINANCING LEGAL EDUCATION REPORT, *supra* note 2, at 10–11 (“In testimony and materials reviewed by the Task Force, the issue of law school rankings arose repeatedly. Law school deans acknowledged that pressure to climb the rankings can shape decisions about student financial aid, faculty hiring, and myriad other dimensions of law schools in subtle and not-so-subtle ways. A 2010 ABA special committee reported that the

But in the *U.S. News* ranking system, a higher score does not guarantee a higher rank or even insulate a school from a drop in rank. This is because the ranking system does not employ normative standards but, instead, ranks relationally. Schools that increase spending the most enjoy the greatest boost in rank, and schools that increase spending, but at a pace slower than the competition, can actually drop in rank. The system is perfectly structured to mirror the unrestrained and futile arms race of the Cold War. After decades of law schools charging more and spending more in a vain attempt to rise in rank, the recession revealed that the logical result of *U.S. News* was mutually assured financial destruction.

During the same era that the *U.S. News* rankings came to dominate legal education, many law schools were compelled to send a significant percentage of revenues to their university. With a strong job market for lawyers and a healthy applicant pool, law schools became cash cows, with some paying twenty percent or more of their tuition revenue to the university's bottom line. More and more universities took note and decided to cash in, fueling an increase in the number of new law schools and an increase in enrollment at established law schools. Easy access to student loans, combined with the dream of high salaries, drove increasing numbers of young people to study law.

Whipped by a ranking system that incentivized spending money and fueled by annual increases in tuition, law schools rapidly increased their fixed costs. Schools invested in new buildings, technology, scholarships, library collections, and, of course, faculty.<sup>7</sup> Investment in faculty was driven by the fact that academic reputation is the most heavily weighted of all the factors in the *U.S. News* ranking, and the widely accepted assumption is that this factor is primarily a function of the scholarly productivity and fame of a school's professors. As a result, the most productive scholars became the target of bidding wars by the richest and most ambitious law schools.<sup>8</sup> The student-faculty ratio factor

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*U.S. News and World Report* ranking methodology tends to increase the cost of legal education for students, to discourage the award of financial aid based upon need, and to reduce incentives to enhance diversity in the legal profession.”); see generally Malcom Gladwell, *The Order of Things: What College Rankings Really Tell Us*, NEW YORKER (Feb. 14, 2011), <http://www.newyorker.com/magazine/2011/02/14/the-order-of-things> (*U.S. News* methodology ensures the wealthiest schools are highly ranked).

7. See ABA FINANCING LEGAL EDUCATION REPORT, *supra* note 2, at 9 (“An immediate driver for tuition increases is the inflation-adjusted increase in law school expenditures per full-time equivalent (FTE) student. Three areas of expenditure stand out and together they account for one-half of the total per FTE: instructional salaries, administrative salaries, and grants/scholarships.”).

8. While some academic stars have seen their salaries skyrocket, the *U.S. News* does

in the *U.S. News* rankings also incentivized many schools to expand the size of their faculty. Because of tenure, a larger faculty and higher salaries became fixed costs that could not easily or quickly be reduced if enrollment and tuition revenue suddenly declined.

During the same era that the *U.S. News* came to dominate legal education, the accrediting agency for law schools, the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association (the “ABA Council”) repeatedly revised accreditation standards in various areas to improve the quality of legal education. For example, the ABA Council called upon law schools to grow student opportunities in clinics. As a result, many law schools created clinics in which professors supervise a small number of students in dealing with real clients. While this is a terrific way to expose students to the practice of law, it is vastly more expensive than classroom instruction.<sup>9</sup> Each new improvement called for by standards imposed on law schools by the ABA Council added expense, adding to tuition’s upward momentum. At the same time ABA standards were becoming more demanding and expensive, some state bars were expanding the number of substantive subjects tested on their bar exam. California, for example, added several state-specific subjects roughly ten years ago. As a consequence, schools were compelled to expand both clinical and classroom offerings, creating pressure to add more faculty, build more physical facilities, and, of course, spend more money.

This was the state of affairs in legal education when the global economic recession hit. In the early fall of 2008, major financial institutions like Lehman Brothers and Bear Sterns collapsed almost overnight, precipitating something close to public panic. Less publicity was given to the equally devastating impact on the legal profession. Many large law firms, some in existence a century or more, suddenly closed their doors. Clients quickly discovered that they had the leverage to bargain with lawyers over fees and refused to pay for the work of inexperienced associates. Many of the law firms that survived the first shock of the recession did so by firing large numbers of young lawyers

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not incentivize law schools to boost faculty salaries overall. *See id.* at 35, n.66 (“Although there have been anecdotal reports of high salaries for a small number of full-time, tenure-line law professors at some schools, evidence presented to the Task Force using Bureau of Labor Statistics data on salaries show [sic] that inflation-adjusted median salaries for post-secondary law instructors (a category that includes law professors as well as those teaching in other venues) have not increased.”).

9. *See* U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 5, at 2 (“According to law school officials, the move to a more hands-on, resource-intensive approach to legal education and competition among schools for higher rankings appear to be the main factors driving the cost of law school . . .”).

and cutting back on, or entirely eliminating, entry-level hiring. Firms reneged on offers that they had already extended to the class of 2008, while others deferred start dates by months or even a full year, hoping that those deferred would look for work elsewhere. The recession also plunged into deep deficit every level of government, traditionally one of the most important employers of entry-level lawyers. Courthouses were shuttered and hiring freezes were imposed. Simultaneously, the legal job market absorbed further hits from forces that previously were undermining all segments of the labor market—technology, off-shoring, and the elimination of full-time jobs in favor of part-time workers with low salaries and no benefits. In short, the recession created a perfect storm for new law graduates seeking employment.

But for two or three years after the recession began, law schools seemed insulated from its effects. Applicants still numbered nearly 88,000 in 2010, off modestly from a high of 96,000 in 2005.<sup>10</sup> College graduates faced a poor job market and simply had nowhere to go. Many sought three years of refuge in law school, hoping that the recession would pass in the interim. These college graduates were encouraged by that fact that, in the first years of the recession, virtually all law schools continued to report what seemed like impressive job numbers for recent graduates. Those numbers were based on reporting standards and definitions established years earlier by the ABA Council. The ABA Council had employed a standard that broadly defined employment to include any sort of job, whether legal or non-legal, part-time or full-time, long-term or short-term. Thus, when the recession hit, a high percentage of new law school graduates could be counted as employed even if simply engaged in part-time legal work, short-term legal work, or work that did not require a legal education at all. Both the ABA Council and the law schools were slow to realize that the recession would not quickly pass, and the old definition of employment was not sufficiently granular for a world that had changed.<sup>11</sup>

The popular press and the blogosphere smelled a story. The decline in the employment prospects for entry-level lawyers was reported in a

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10. See *End-of-Year Summary: ABA (Applicants, Applications & Admissions), LSATs, Credential Assembly Service*, L. SCH. ADMISSION COUNCIL, <http://www.lsac.org/lisources/data/lisac-volume-summary> (last visited Mar. 21, 2016) [hereinafter *LSAC Data*].

11. The ABA Council has since changed its definitions and reporting standards and imposed requirements on law schools that require reporting of other consumer data. See STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCH. Standard 509 (AM. BAR ASS'N 2014–2015).

series of articles in the *New York Times*.<sup>12</sup> The story gained momentum as the gap between those prospects and the employment picture painted by the ABA Council's jobs definition became clear. Law schools were accused of running a scam. A dozen schools were sued for fraud. There were calls for law school deans to be criminally prosecuted. In an article published in the *New York Times*, Richard Matasar, then the Dean of New York Law School, was portrayed as one of the worst offenders.<sup>13</sup>

The relentlessly negative narrative in the popular press featured example after example of unemployed or underemployed law school graduates.<sup>14</sup> The unmistakable message of the narrative was that law school was a poor investment.<sup>15</sup> A dramatic decline in the law school applicant pool quickly followed, producing annual double-digit percentage decreases in each of the subsequent three admissions cycles. The national applicant pool for the fall of 2014 was only about 53,000, a decline of nearly forty percent since 2010.

It is important to recall that this decline came at the end of a generation of growth in the number of law schools, increasing the supply of legal education just before demand suddenly plummeted. When the recession hit and the applicant pool took a dramatic drop, most law schools were confronted with an uncomfortable choice: slash enrollment and heavily discount tuition to maintain admission standards or face big declines in the entry-level credentials of the entering class. For many schools that spent the preceding years building their programs and increasing fixed costs, the first alternative was financially impossible to quickly implement. But the second alternative threatened an immediate drop in ranking and, consequently, an even bleaker admissions future.

The drop in applications created a hypercompetitive market for law school applicants. Law schools reacted to the crises in various ways. A tiny number misrepresented their employment numbers in order to boost rankings and appear more desirable to applicants. A much larger

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12. See, e.g., David Segal, *Is Law School a Losing Game?*, N.Y. TIMES (Jan. 8, 2011), <http://www.nytimes.com/2011/01/09/business/09law.html>.

13. David Segal, *Law School Economics: Ka-Ching!*, N.Y. TIMES (July 16, 2011), <http://www.nytimes.com/2011/07/17/business/law-school-economics-job-market-weakens-tuition-rises.html>.

14. For a review and critique of the press coverage, see Michael Simkovic, *Newspapers' Negative Law School Coverage, 2010–2015*, BRIAN LEITER'S L. SCH. REPS. (Aug. 10, 2015), <http://leiterlawschool.typepad.com/leiter/2015/08/newspapers-negative-law-school-coverage-2010-2015-michael-simkovic.html>.

15. A more data-driven analysis suggests that, even during the worst of the recession, legal education remained a good investment. See Michael Simkovic & Frank McIntyre, *The Economic Value of a Law Degree*, 43 J. LEGAL STUD. 249, 252–84 (2014).

number technically played within the rules but engaged in various controversial strategies. For example, some schools simply employed a relatively large percentage of recent graduates in full-time, long-term positions in order to improve their ranking in the *U.S. News*.<sup>16</sup> *U.S. News* at first refused to adjust its methodology to downgrade the value of law-school-funded jobs, then reversed its position.<sup>17</sup> Other schools cut the size of their entering first-year class, but admitted large numbers of transfer students at the start of their second year of law study.<sup>18</sup> The purpose of this tactic was to maintain high entry-level credentials in order to maintain a lofty ranking, and then recoup the lost revenue a year later. Many of the students who transferred had received large first-year scholarships from the schools they were abandoning. This tactic had the effect of decimating the 2L classes at some lower ranked schools. It also had the effect of sending a very clear message to the next generation of lawyers: gratitude and loyalty are quaint relics while status is what counts. *U.S. News* refused calls to modify their ranking methodology to make schools account for admitting transfer students with lower test scores and undergraduate grades.

Other schools sought to cope with a drastically smaller admissions pool by significantly boosting the number and amount of scholarships.<sup>19</sup> Increasing scholarships is simply a way of reducing tuition, but on a student-by-student basis rather than an across-the-board tuition cut. The strategy is to discount tuition for students with good entry-level credentials while maintaining the higher “sticker price” for the rest of the incoming class. Again, this is driven by the rankings, which give great weight to the median LSAT and GPA of a law school’s first-year class. But this strategy results in the students in the bottom half of the

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16. Karen Sloan, *Law School Grads’ Job Rate Rises—But There’s a Catch*, NAT’L L.J. (Apr. 29, 2015), <http://www.nationallawjournal.com/id=1202724939233/Law-School-Grads-Jobs-Rate-RisesmdashBut-Theres-a-Catch?slreturn=20150802101049>.

17. See Robert Morse, *U.S. News Changes Methodology for Best Law Schools Ranking*, U.S. NEWS: MORSE CODE: INSIDE C. RANKINGS (Mar. 10, 2015, 12:01 AM), <http://www.usnews.com/education/blogs/college-rankings-blog/2015/03/10/us-news-changes-methodology-for-best-law-schools-rankings>. But to date, *U.S. News* still refuses to disclose to what extent those jobs are worth less in the rankings calculation than jobs that are not law-school-funded.

18. See Ry Rivard, *Poaching Law Students*, INSIDE HIGHER ED (Feb. 4, 2015), <https://www.insidehighered.com/news/2015/02/04/law-school-transfer-market-heats-getting-some-deans-hot-under-collar>.

19. See ABA FINANCING LEGAL EDUCATION REPORT, *supra* note 2, at 7 (“Tuition discounting through grants and scholarships occurs, is widespread, and is generally increasing. For private schools, the net tuition in AY1999–00 meant a discount of 16% in inflation-adjusted dollars (CPI). In AY2013–14 the discount had increased to 25%. For public schools the discount in AY1999–00 was 22% and it increased to 28%.”).

entering class subsidizing the education of the students in the top half. And if entering credentials accurately predict how students will do in law school, this strategy also results in the students with the poorest job prospects subsidizing those with the best job prospects.<sup>20</sup> As a result, those who graduate with the most debt are those least able to pay. Moreover, the obsession with rankings drains funds from need-based scholarships to focus on merit scholarships. The net effect is to take from the poor and give to the (relatively) rich.

Another strategy to deal with the drop in applications is to simply cut enrollment.<sup>21</sup> This tactic also is driven by rankings since, the smaller the class, the easier it is to maintain higher LSAT and GPA medians. But the obvious downside is loss of tuition revenue.<sup>22</sup> Pursuit of this strategy is difficult because law schools usually cannot cut expenses as fast as enrollment needs to be cut. This is because, as noted above, many law school expenses are in the form of tenured professors, buildings, established academic programs, and other more or less fixed costs. For schools fortunate enough to be part of a supportive university, the resulting budget deficits might be covered for a time by university funds. Thus, at some law schools, what had previously been a flow of cash from law schools to their universities is now reversing course. But it would be foolish to think that university subsidies can last forever. Thus, cutting enrollment necessarily requires a long term plan to reduce overhead.

## II. THE PROFESSION PILES ON

As the narrative demonizing legal education gained strength and law schools struggled to adjust to a new competitive landscape, virtually every segment of the legal profession joined in the attack on legal education. Many of the critiques were based on inaccurate assumptions about how law schools operate today, addressed non-existent problems, and focused on matters that were irrelevant to the problem of cost. Some critiques were contradictory, hypocritical, and politically

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20. One possible justification for this practice is that students who apply to a range of law schools will have a choice: accept admission at a higher ranked school with little or no scholarship assistance, or accept an admission at a lower ranked school but with a large scholarship.

21. *See id.* at 6 (“Enrollments are declining. Between AY2009–10 (AY means Academic Year) and AY2014–15, 30% fewer people entered a private law school; and 18% fewer entered a public law school. With fewer people attending law school there are fewer tuition dollars to help run a school’s operations.”).

22. Some schools make up the deficit by enrolling a large transfer class, thereby shifting the financial burden to schools that lost the transfer students. *See Rivard, supra* note 18.

motivated. Everyone had an opinion, but few members of the profession acted as if they owned a piece of the problem.

For example, various state bars imposed or called for more clinical training and the imposition of pro bono requirements in law school.<sup>23</sup> While in the abstract these are good things, they had nothing to do with the crisis facing legal education. And basic common sense says that when you ask law schools to do more, it will cost more. Just at the time when law schools needed to cut expenses, the organized bar made it harder to do so. Speaking to an audience of law school deans a few years ago, one attorney representing a state bar proposing these new requirements assured the audience that new requirements would impose no additional costs on legal education. The deans spontaneously burst into laughter, not out of calculated disrespect, but out of sheer incredulity.

Particularly hurtful was criticism from representatives of the ABA.<sup>24</sup> While blaming law schools for the problems confronting legal education, ABA leaders did not recognize the part that the ABA Council had played in the crisis. In fact, as the law school accrediting agency for nearly a century, no other entity had been more influential in shaping the existing model of U.S. legal education. It was, after all, the ABA Council that had established the definition of employment that was at the center of claims that law schools were a fraud. It was the ABA Council that for decades accredited an ever increasing number of law schools and continued to do so even as demand began to drop. And it was the ABA Council that adopted standards of accreditation that, while aimed at making legal education better, added more upward pressure on costs.<sup>25</sup> While it is true that the ABA does not control the actions of the ABA Council, the ABA is the leading organization of the legal profession in the United States. As such, in the face of a crisis in legal education, what should be the order of the day is not finger-pointing but responsible leadership.

Sadly, however, few leaders of the legal profession could resist finger-pointing and offered no more than facile sound-bites in the guise

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23. See, e.g., N.Y. COMP. R. & REGS. tit. 22, § 520.16(a) (2015) (fifty-hour pro bono requirement adopted September 2012); Joyce Cutler, *California Proposal Would Mandate Pro Bono, Practical Skills Requirements for Admission*, ABA/BNA LAW. MANUAL ON PROF. CONDUCT (Feb. 27, 2013), <http://www.bna.com/california-proposal-mandate-n17179872597/>.

24. See, e.g., Amanda Becker, *Critics Say Law Schools Don't Give Students Realistic Career Expectations*, WASH. POST (Feb. 21, 2011), <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/18/AR2011021805894.html>.

25. See BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 173–77 (2012).

of solutions. Members of the U.S. Supreme Court blamed law school professors for wasting time and money on legal scholarship or for teaching exotic courses.<sup>26</sup> Regardless of the merits of those critiques, they had little to do with the crisis roiling legal education. No less a figure than the President of the United States also had an opinion on what was wrong with legal education, suggesting that the solution was to cut law school from three years to two years.<sup>27</sup> But the President offered no advice as to how a law student might, in two years, meet new skills training and pro bono requirements imposed by state bars, learn the material tested on the bar exam, have a chance to develop a focus in any specific area of law, and engage in the networking and part-time work that today is often essential to getting a job as a lawyer. Even assuming this all can be done in two years, the President's suggestion also ignored the problem of implementing such a suggestion. Law schools have the fixed costs of a tenured faculty and the infrastructure of a three-year program built up over decades. Law schools are not financially nimble institutions. Any law school that attempts to quickly cut costs, by, for example, declaring a financial emergency and firing tenured faculty, will certainly destroy its academic reputation and ranking. Once that happens, the vast majority of applicants will look elsewhere no matter what the price.

Of course, a number of law professors publicly also weighed in on the crisis, achieving national notoriety by accusing legal education of being a scam and charging that law schools were pursuing a failed educational model. While long on critiques, they were short on practical suggestions. One could only imagine the angst these professors suffered every two weeks when they had to cash paychecks produced by what they believed to be such a bankrupt system. A much larger number of law professors simply remained mostly oblivious to the crisis in legal education, resisting needed curricular change and attacking their deans for a problem mostly beyond the control of any single law school.

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26. See, e.g., Tony Mauro, *Scalia's Remarks on Law School Renew Legal Education Debate*, NAT'L L.J.: LEGAL TIMES (May 23, 2014), <http://www.nationallawjournal.com/legaltimes/id=1202656574527/Scalias-Remarks-on-Law-School-Renew-Legal-Education-Debate>; Debra Weiss, *Law Prof Responds After Chief Justice Roberts Disses Legal Scholarship*, A.B.A. J.: DAILY NEWS (July 7, 2011, 10:29 AM), [http://www.abajournal.com/news/article/law\\_prof\\_responds\\_after\\_chief\\_justice\\_roberts\\_disses\\_legal\\_scholarship](http://www.abajournal.com/news/article/law_prof_responds_after_chief_justice_roberts_disses_legal_scholarship).

27. Peter Lattman, *Obama Says Law School Should Be Two, Not Three, Years*, N.Y. TIMES: DEALBOOK (Aug. 23, 2013, 5:31 PM), [http://dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three/?\\_r=0](http://dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three/?_r=0).

## III. WE HANG TOGETHER OR . . .

The law school crisis will not subside unless and until legal education is perceived to be a good investment. For this to happen, the cost of that education must be brought into line with the payoff. As for the payoff, while there are signs that the job market is improving, the pace of improvement is slow. That market is a product of forces that certainly are beyond the control of law schools and even the legal profession as a whole. But together, we can do something about cost.

The stakes for the legal profession are high. If the escalation in the cost of legal education is not brought under control, each new generation of lawyers will be burdened with more and more school-related debt. A lawyer in debt is more inclined to cut ethical corners and file frivolous claims, no matter how many ethics courses they were made to take in law school. A lawyer in debt is less inclined to work in the public interest sector or represent anyone other than the wealthiest in society, no matter what pro bono requirements we impose in law school. And if the profession that has given our nation many of its greatest leaders is accessible only to those who can afford the price, the pathway to power in our society largely will be closed to all but a small elite, with dangerous implications, not just for the profession, but for our democracy.<sup>28</sup>

But there is also a social price to pay if the cost of legal education is brought under control in a manner that brings the quality of that education below professional standards. The viability of our justice system depends on the presence of competent and ethical lawyers and judges. In short, American society has a strong interest in seeing U.S. legal education successfully transitioning to a model that is both financially sustainable but still pedagogically effective. Given what is at stake, the practicing bar, courts, and accrediting agencies should be

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28. [U]niversities, and in particular, law schools, represent the training ground for a large number of our Nation's leaders . . . . In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training. As we have recognized, law schools "cannot be effective in isolation from the individuals and institutions with which law interacts." Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.

Grutter v. Bollinger, 539 U.S. 306, 332–33 (2003) (quoting Sweatt v. Painter, 339 U.S. 629, 634 (1950)).

working with legal educators to help facilitate this transition.

Thankfully, much of the finger-pointing that characterized the period immediately after the recession began has given way to more sober and collaborative responses to the problems of legal education. But more should be done. The ABA Council and state bar associations need to reconsider existing law school standards and bar admission requirements that drive up the cost of legal education. The focus should be not on what is optimal but, rather, on what is necessary. After all, most of the leaders of the profession graduated from law school in an era when standards required much less. Why should the next generation of law graduates be required to do, and pay for, more? And until the crisis subsides, legal education needs a moratorium on the imposition of new rules that will increase costs.

Finally, the profession should work toward a system of evaluating law schools that could compete with *U.S. News*, measuring quality in terms that are not so easily manipulated by spending money.<sup>29</sup> Resistance to this suggestion is understandable since it is politically difficult to develop a consensus on how to measure quality. But there are important reasons to make the effort. Just as *Citizens United*<sup>30</sup> has made money the sine qua non of American politics, in the absence of any credible alternative, *U.S. News* will continue to do the same to American legal education.

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29. See ABA FINANCING LEGAL EDUCATION REPORT, *supra* note 2, at 10–11 (“While acknowledging the pressure exerted by rankings, the Task Force was not presented with any realistic solution for eliminating the rankings. To the extent such rankings produce incomplete or irrelevant information, the antidote would appear to be the provision of more and better information in the marketplace for students to consider in choosing whether and where to attend law school and how to pay for it.”).

30. *Citizens United v. FEC*, 558 U.S. 310 (2010).