

THE CALL FOR LAWYERS COMMITTED TO SOCIAL JUSTICE TO CHAMPION ACCESSIBLE LEGAL SERVICES THROUGH INNOVATIVE LEGAL EDUCATION

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INTRODUCTION

Oh? Have I got your attention now? Good.
—Blake in *Glengarry Glen Ross*¹

As the *Glengarry Glen Ross* film groupie recognizes, the character played to perfection by Alec Baldwin is a brutal Mitch and Murray boss sent from the downtown office to shake up a group of well-intentioned but distracted company salesmen.² The team has become too comfortable at work, and Baldwin's character arrives just in time to whip them into shape.³ Though painful to watch, he gets the job done.

There is no single person from the “home office” applying intense pressure to legal educators to step up to the many challenges facing today's law school. Instead, we are being overwhelmed with several calls and challenges to improve legal education. Students want more.⁴ Employers want more.⁵ The public

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¹ GLENGARRY GLEN ROSS (New Line Cinema 1992); *accord* *Glengarry Glen Ross Quotes*, IMDB, http://www.imdb.com/title/tt0104348/trivia?tab=qt&ref_=tt+trv_qu (last visited Sept. 24, 2015).

² GLENGARRY GLEN ROSS, *supra* note 1. For a look at this pivotal scene, see Andy Chau, *Glengarry Glen Ross Speech*, YOUTUBE (Mar. 2, 2010), https://www.youtube.com/watch?v=8kZg_ALxEz0.

³ Chau, *supra* note 2.

⁴ See Elizabeth Olson, *Law School Is Buyers' Market, with Top Students in Demand*, DEALBOOK, N.Y. TIMES (Dec. 1, 2014, 8:17 PM), <http://dealbook.nytimes.com/2014/12/01/law> (describing the ways and reasons students are now in more control).

wants more.⁶ The organized bar wants more.⁷ And simple economics dictate that the combination of low student applications and an excess of seats means that law schools will have to make radical adjustments to attract and retain students.⁸ Demand is down by almost 40 percent.⁹ The competition for students has been described as “hand-to-hand combat” as schools seek to respond to the economic hardships for law and law school graduates.¹⁰ The numbers don’t look good: The American Bar Association reported that “the number of first-year law school students fell 11 percent in fall 2013 from fall 2012”—this number is just part of the notable 24 percent decline in merely three years.¹¹ In 2013, the incoming class was just 39,675 students.¹² This enrollment figure represents the smallest first-year law school class since the 1970s.¹³ Law schools are streamlining,¹⁴ merging,¹⁵ and shutting down.¹⁶

⁵ See David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES (Nov. 19, 2011), <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html>.

⁶ See, e.g., Stanley Fish, *The Bad News Law Schools*, N.Y. TIMES: OPINIONATOR BLOG (Feb. 20, 2012, 9:00 PM), <http://opinionator.blogs.nytimes.com/2012/02/20/the-bad-news-law-schools> (summarizing many of the issues that have dominated the coverage of the recent “American legal education is in crisis” storylines).

⁷ See Mark Hansen, *ABA Task Force Calls for Sweeping Changes in Legal Education System*, A.B.A. J. (Jan. 24, 2014, 1:58 PM) http://www.abajournal.com/news/article/aba_task_force_calls_for_sweeping_changes_in_legal_education_system. In 2012, the ABA formed a Task Force on the Future of Legal Education to study the problems facing the academy. *Task Force on the Future of Legal Education*, A.B.A., http://www.americanbar.org/groups/professional_responsibility/taskforceonthefuturelegaleducation.html (last visited Sept. 24, 2015). In 2014, the ABA formed another Task Force on the Financing of Legal Education. *ABA Task Force on the Financing of Legal Education*, A.B.A., http://www.americanbar.org/groups/legal_education/committees/aba-task-force-on-the-financing-of-legal-education-.html (last visited Sept. 24, 2015).

⁸ See Jacob Gershman, *Fewer and Fewer Students Are Applying to Law School*, WALL ST. J.: L. BLOG (Jan. 15, 2015, 12:13 PM), <http://blogs.wsj.com/law/2015/01/15/law>.

⁹ James Huffman, *Law Schools: Reform or Go Bust*, NEWSWEEK (Feb. 20, 2015, 4:51 PM), http://www.newsweek.com/law-schools-reform-or-go-bust-308339?piano_d=1. “The same number of law schools have 33,000 fewer prospective customers than they had five years ago.” *Id.*

¹⁰ Olson, *supra* note 4.

¹¹ *Id.*

¹² *Id.*

¹³ Jennifer Smith, *First-Year Law School Enrollment at 1977 Levels*, WALL ST. J.: L. BLOG (Dec. 17, 2013, 1:12 PM), <http://blogs.wsj.com/law/2013/12/17/first-year-law-school-enrollment-at-1977-levels/> (“First-year enrollment at U.S. law schools plunged to levels not seen since the 1970s, as students steered away from a career that has left many recent graduates loaded with debt and struggling to find work.”).

¹⁴ See, e.g., Debra Cassens Weiss, *Suffolk Law School Offers Buyouts to All Tenured Faculty*, A.B.A. J. (Sept. 2, 2014, 11:37 AM), http://www.abajournal.com/news/article/suffolk_law_school_offers_buyouts_to_all_tenured_faculty.

¹⁵ Hamline University School of Law and William Mitchell College of Law recently announced plans to merge. Tim Post, *Hamline, William Mitchell Law Schools to Merge*, MPR

We're finally paying attention.

For the law professor committed to social justice, the greatest demand for change should come from within. Indeed, the need to transform legal education most acutely impacts the public served—or often ignored—by the legal profession. This is a truth that can't be forgotten as law schools explore, promote, and implement changes in legal education. Academic activists should be first in line to lead the way to promote the democratization of both access to law school and access to legal services. Too often, however, law schools and educators replicate the hierarchies that they rail against. The so-called rankings of American law schools have become particularly pernicious, with practices that drive up cost, decrease minority enrollment, and ignore many of the key factors that help law schools cultivate students that will engage in socially responsible lawyering.¹⁷ Rather than run from change, progressive law professors must embrace transformative legal education that promotes access to justice. It is a reflection of the special privilege that runs with being a lawyer.¹⁸

NEWS (Feb. 13, 2015, 6:25 PM), <http://www.mprnews.org/story/2015/02/13/hamline-william-mitchell-merger>.

¹⁶ Thomas Cooley Law School recently announced plans to close its Ann Arbor campus. Nathan Bomey, *Cooley Law School Closing Ann Arbor Campus*, DET. FREE PRESS (Oct. 9, 2014, 3:08 PM) <http://www.freep.com/story/money/business/michigan/2014/10/09/cooley-law-school-closing-ann-arbor-campus/16960617>.

¹⁷ Despite its persistent popularity in some circles, many critics have correctly pointed out that the U.S. News & World Report (USNWR) rankings by an out-of-print magazine do not accurately take into account the factors that would allow a student to become a successful lawyer. See discussion *infra* Part I. The methodology of the U.S. News ranking system has also been criticized as relying too heavily on “reputational prejudices.” Malcolm Gladwell, *The Order of Things*, NEW YORKER, Feb. 14, 2011, at 68, 73, <http://www.newyorker.com/magazine/2011/02/14/the-order-of-things>. The system also ignores the value of diversity. Vikram David Amar & Kevin R. Johnson, *How Prospective Law Students Can Make Better Use of the U.S. News Law School Rankings that Are About to Be Released*, JUSTIA: VERDICT (Feb. 27, 2015), <https://verdict.justia.com/2015/02/27/prospective-law-students-can-make-better-use-u-s-news-law-school-rankings-released> (noting the limited data scope of USNWR). “Among the data that it ignores is how diverse a law school’s faculty or student body is.” *Id.* Furthermore, the criteria by which the U.S. News rankings are calculated incentivize the very practices that lead to escalating tuition cost. John Tierney, *Your Annual Reminder to Ignore the U.S. News and World Report College Rankings*, THE ATLANTIC (Sept. 10, 2013), <http://www.theatlantic.com/education/archive/2013/09/your-annual-reminder-to-ignore-the-em-us-news-world-report-em-college-rankings/279103>. “The U.S. News rankings help to push college costs higher because the formula they use in calculating their rankings rewards schools that spend more money, so colleges and universities do precisely that, and then inevitably have to raise their tuition to cover growing costs.” *Id.*

¹⁸ Professor William Quigley, in his *Letter to a Law Student Interested in Social Justice*, shares a very powerful reflection on privilege:

Part of solidarity is recognizing the various privileges we bring with us. Malik Rahim, founder of the Common Ground Collective in New Orleans, speaks about privilege often with the thousands of volunteers who come to help out with the grassroots repair of our community. In a recent interview with Amy Goodman, Rahim said:

First, you have to understand the unearned privilege you have in this country just by being born in your race or gender or economic situation. You have to learn how you got it.

As discussed in this article, recommendations for reform are now wide-sweeping and expansive. Concrete proposals include expanding practice-oriented instruction, making law degrees less expensive and time-consuming to obtain, improving law school accessibility for students with diverse academic credentials, restructuring pricing, and opening the legal practice to non-J.D. legal service providers. Seemingly, nothing is off the table.

Nevertheless, the call for transformation must be balanced against adherence to some core values. As law schools seek to control costs and streamline the law school experience, academic activists cannot abandon a commitment to pedagogically sound practices, diversity, and initiatives that propel the profession in meaningful ways. We should be particularly mindful that the challenges in legal education do not open the door for some to jettison principles essential to the profession.¹⁹ The charge of recreating the law school experience and culture falls to the lawyers committed to social justice. Now that all of the players are paying attention, it's time to take some radical steps.

Part I of this article will challenge the elitism entrenched in American legal tradition as a barrier to promoting access to legal education and legal services. It will trace the relationship between more equitable admissions policies and

You have to learn how to challenge the systems that maintain that privilege. But while you are with us, we want to train you to use your privilege to help our community.

This is the best summary of the challenge of privilege and solidarity in social justice advocacy I have heard recently. This is a lifelong process for all of us. None of us have arrived. We all have much to learn, and we have to make this a part of our ongoing re-education.

William P. Quigley, *Letter to a Law Student Interested in Social Justice*, 1 DEPAUL J. FOR SOC. JUST. 7, 21–22 (2007) (footnote omitted).

¹⁹ We should be equally mindful that “reformers” do not take advantage of these opportunities to exploit students or law teachers. Several organizations have stressed to the ABA that the standards reflect a commitment to maintaining a competent faculty. Security of position, for instance, is central to academic freedom and the ability to experiment in the classroom. These benefits also flow to the students and the community served by faculty. *See* SOC’Y OF AM. LAW TEACHERS, COMMENT OF SOCIETY OF AMERICAN LAW TEACHERS ON ALTERNATIVES TO ACCREDITATION STANDARD 405, at 3 (2014), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/201401_comment_ch_4_salt_2.authcheckdam.pdf (“SALT urges the Council to strengthen, not weaken, legal education by continuing to expect schools to provide tenure or comparable security of position to full-time faculty.”); *see also* CLINICAL LEGAL EDUC. ASS’N, COMMENT OF CLINICAL LEGAL EDUCATION ASSOCIATION ON ALTERNATIVES TO ACCREDITATION STANDARD 405 (2014), <http://www.cleaweb.org/Resources/Documents/Security%20of%20Position.pdf> (discussing the value of secure faculty positions for experiential learning); Letter from Association of Legal Writing Directors to The Hon. Solomon Oliver, Jr., Council Chairperson, and Barry A. Currier, Managing Dir. of Accreditation and Legal Educ., Section on Legal Educ. and Admissions to the Bar (Jan. 29, 2014), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/201401_comment_stds_205_206_303a3_ch_4_alwd.authcheckdam.pdf (discussing quality legal writing instruction and security of position, as well as the impact on women); Hazel Weiser, *Deregulation Is Just Another Word for . . .*, SALT LAW (Oct. 26, 2011), <https://www.saltlaw.org/deregulation-is-just-another-word-for> (addressing the perils of deregulation of law schools).

the public good. It will also critique, more generally, the outdated traditions and practices that negatively impact law schools and the public.

In Part II, this article will explore one particularly novel approach to expanding the reach of both legal education and the delivery of legal services. Specifically, this part of the article will examine the rise of the limited license legal technician—a first in Washington State—as one possible solution. It will explore the ways law professors can shape and support this change as a means of closing the “justice gap” through this controversial and novel effort.

In Part III, this article will call for more aggressive exploration of how legal education is delivered, and to whom it is delivered. Shortened terms, online/live hybrid models, and training for paralegals are just some of the options under consideration. Already, several law schools have started to experiment with the American law school experience. These new pressures to transform legal education brings both new opportunities, risks, and rewards. Most importantly, it gives law professors with a passion for justice the chance to champion the reform in legal education with a commitment to promote social justice. Truly innovative legal education will improve the law school experience and help close the justice gap for Americans.

I. THE RELATIONSHIP BETWEEN ACCESS TO LEGAL EDUCATION AND ACCESS TO JUSTICE

It has been reported that access to affordable civil legal services in the United States is no better than access to such services in Kyrgystan, Mongolia, and Uganda.²⁰ Studies show that the proportion of unrepresented people in many states exceeds 80 percent.²¹ The situation can be especially challenging for people involved in housing, family, and consumer protection problems. In New York, over 90 percent of people with these problems appear in court without legal representation.²² Much of the discussion surrounding the recent crisis in legal education uncritically reinforces the myth that we have too many lawyers. The truth is that we have too many lawyers competing for limited jobs representing clients who can afford to pay the high cost of most legal services.²³ Martha Bergmark, Executive Director of Voices for Civil Justice, calls for changes in the culture of legal education and the legal profession: “Rather than

²⁰ WORLD JUSTICE PROJECT, RULE OF LAW INDEX 2014, at 184 (2014), http://worldjusticeproject.org/sites/default/files/files/wjp_rule_of_law_index_2014_report.pdf.

²¹ See Wallace B. Jefferson, *Liberty and Justice for Some: How the Legal System Falls Short in Protecting Basic Rights*, 88 N.Y.U. L. REV. 1953, 1960 (2013).

²² See generally Gillian K. Hadfield & Jamie Heine, *Life in the Law-Thick World: The Legal Resource Landscape for Ordinary Americans*, in BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE FOR AMERICANS OF AVERAGE MEANS (Samuel Estreicher & Joy Radice eds.) (forthcoming 2016).

²³ See Martha Bergmark, *We Don't Need Fewer Lawyers. We Need Cheaper Ones*, WASH. POST (June 2, 2015), <http://www.washingtonpost.com/posteverything/wp/2015/06/02/we-dont-need-fewer-lawyers-we-need-cheaper-ones>.

a shortage of people who need lawyers, what we are seeing is a disgraceful failure of our legal system to meet the serious legal needs of most Americans, who are increasingly priced out of the market for legal services.”²⁴ In an Op-Ed recently published by the New York Times, Theresa Amato decried the “justice gap” and called for a shift in thinking about the legal profession so that “[p]restige and professional success” are not “defined by income or office space.”²⁵

Outside of progressive elements within the established bar, community legal services circles, the Society of American Law Teachers (SALT), and more recently the American Bar Association Task Force on the Future of Legal Education (ABA Task Force), where is the discussion that seriously and explicitly addresses the fact that the legal profession and law schools do not serve the majority of Americans who need legal services?²⁶ Why do we retreat from challenging the common wisdom that the role of law schools is to enroll the highest achieving test-takers in order to train them in posh law schools to be fully licensed lawyers who primarily serve affluent individuals, businesses, and government agencies? Is elitism so entrenched in the modern American legal tradition that we have confused educational excellence with power, prestige, and affluence?²⁷

²⁴ *Id.*

²⁵ Theresa Amato, Opinion, *Put Lawyers Where They're Needed*, N.Y. TIMES (June 17, 2015) <http://www.nytimes.com/2015/06/17/opinion/put-lawyers-where-theyre-needed.html>.

²⁶ The ABA Report addresses this issue:

2. *Misdistribution of Legal Services.* The supply of lawyers appears to exceed demand in some sectors of the economy. Yet in other sectors demand very much exceeds supply. In some rural areas, for example, there are few lawyers and it is difficult for communities to encourage new ones to set up practice, either because of low prospective return on investment or lack of interest in small town or rural life.

Most strikingly, poor and lower income populations remain underserved because lawyers can be made available to clients like these only if the lawyers are paid or subsidized by a government or private benefactor. Funding for lawyers to serve these populations is far less than what is needed and, except as noted below, there are few alternatives to fully trained lawyers as providers of law-related services. This lack of access to affordable legal assistance affects segments of the middle-income population as well.

TASK FORCE ON THE FUTURE OF LEGAL EDUC., AM. BAR ASS'N, REPORT AND RECOMMENDATIONS 13 (2014) [hereinafter ABA TASK FORCE REPORT], http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf.

²⁷ See, e.g., George Critchlow, *Beyond Elitism: Legal Education for the Public Good*, 46 U. TOL. L. REV. 311, 317 (2015) (giving a historical review of how modern law schools have adopted elitist philosophies and practices that neglect the needs of certain students and elements of society, and asking “whether it is time to think about ‘excellence’ in terms of whether or not a school (1) admits students based on factors that show their ability to become effective lawyers or legal technicians; (2) makes law school affordable and attractive for a range of applicants by controlling tuition and allocating scholarships based on need as well as merit; and (3) benefits society by admitting and preparing public service-minded students for middle-class careers that address the needs of society’s underserved middle- and lower-income population”); Brent E. Newton, *The Ninety-Five Theses: Systematic Reforms*

Consider a hypothetical Latina student who was raised in poverty, whose Spanish-speaking parents immigrated to the United States, and who is the first person in her family to graduate from college. She possesses the qualities we know are necessary for effective lawyering but she does not score well on standardized exams, including the LSAT.²⁸ Her ambition is to become a legal professional so she can work with low-income clients in immigrant communities to help them deal with immigration issues, income maintenance, family law problems, housing, and employment challenges. If this student enrolls in law school, could remote experiential learning placements and online classes mitigate the cost of her education? Might she benefit from a model in which multiple law schools reduce costs by sharing instructors and technology? Could she benefit from a two-year law school curriculum? In fact, must she even pursue a traditional law degree or learn from tenured law professors? For this student, a lower cost “legal technician” program or other limited license could provide an alternative career path.²⁹

of American Legal Education and Licensure, 64 S.C. L. REV. 55, 77–78 (2012) (discussing how rankings have led schools “to engage in a wide variety of practices, some unethical and possibly illicit, to game or exploit the system”); David C. Yamada, *Same Old, Same Old: Law School Rankings and the Affirmation of Hierarchy*, 31 SUFFOLK U. L. REV. 249, 260–62 (1997) (discussing how the ranking system “reinforces the notion of an educational caste system” while ignoring “diverse perspectives” and neglecting “to consider the topic of finances”). See generally George Critchlow, *Kim Kardashian and Honey Boo Boo: Models for Law School Success (or Not)*, 45 CONN. L. REV. 1319 (2013) (offering a satirical account of law schools whose operative mission is to become highly ranked at the expense of more meaningful goals that emphasize social justice and the public interest); Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982) (denunciating law school elitism and alienation and arguing for equitable admissions and other progressive change).

²⁸ See MAJORIE M. SHULTZ & SHELDON ZEDECK, FINAL REPORT: IDENTIFICATION, DEVELOPMENT, AND VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING 14 (2008), <http://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf>; see also John Nussbaumer, *Misuse of the Law School Admissions Test, Racial Discrimination, and the De Facto Quota System for Restricting African-American Access to the Legal Profession*, 80 ST. JOHN'S L. REV. 167, 174 (2006) (showing that schools who raised their twenty-fifth percentile LSAT score saw their African-American student populations decline quicker than the national average). Research consistently shows that heavy emphasis on LSAT scores in admission decisions substantially reduces the presence of African-Americans and other minority students in law school and the legal profession, and diminishes the prospects of admission of those from most non-elite families. *Id.* at 170, 175, 179.

²⁹ See generally SHULTZ & ZEDECK, *supra* note 28 (finding that LSAT and undergraduate grade point average were not good predictors of lawyer performance and suggesting that alternative predictors be explored). Professor Brent Newton also supports the broadening of admissions protocols:

3. *The LSAT should be jettisoned, or at least retooled, so as to serve as a better predictor of success as a lawyer.*

A recent study by two professors at the University of California at Berkeley makes a convincing case for abandoning or modifying the LSAT as a significant part of the admissions calculus for law school. As they note, and as the Law School Admission Council appears to confirm, the LSAT does not accurately predict an applicant's overall success in law school, but

Could law schools craft financial aid programs that support our hypothetical student based on need and not just merit? Should law schools assume that the federal government loan programs will continue to fully fund endless increases in tuition?³⁰ Even if students can borrow to go to law school, should law schools be content with saddling students (or, in the event of default, taxpayers) with massive debt that chills their desire to serve middle- and low-income clients? In short, what are we legal educators doing to provide a realistic, practical path for our hypothetical student to become an educated legal services professional who spends her career helping clients who might not otherwise have access to justice?

If we think of expanded delivery of legal services as a pyramid, the consumer enters the pyramid at the bottom and may be satisfied with what is found there: online information, publications, and forms that permit the consumer to understand and perform basic legal tasks with no need for consultation with a legal services provider. At the top of the pyramid is the delivery of legal services related to complex legal issues requiring the assistance of a fully licensed lawyer. In between the bottom and top of the pyramid are limited license legal technicians (trained and regulated to deliver limited legal services in discrete areas of law—much like physician assistants, nurse practitioners, and medical technicians in the medical field), courthouse facilitators, limited practice offic-

instead, only predicts first-year grades. More importantly, the LSAT does not predict success in the legal profession because it assesses only a narrow range of cognitive competencies. Therefore, law schools should either abandon their heavy reliance on applicants' LSAT scores or, assuming it were possible, replace it with some type of assessment that considers the many types of intelligence needed to be a competent attorney.

4. *The law school admissions process should give meaningful consideration to other types of intelligence besides those academic and analytical abilities tested in written form.*

In addition to “hard” analytical and cognitive skills, the successful practice of law requires many “soft” competencies such as “emotional intelligence,” maturity, a strong work ethic, and integrity. The law school admissions process, which currently focuses almost exclusively on undergraduate GPA and LSAT scores (both of which are largely the product of written testing), should incorporate a meaningful assessment of an applicant’s potential in these other areas. Such an assessment need not be done (and perhaps could not be done) in a standardized test. Instead, it could occur through an evaluation of a candidate’s strengths and weaknesses evinced in other facets of his or her life, such as two years or more of full-time work experience between college and law school. Additionally, law schools should conduct mandatory interviews of applicants, either live or via video conference, in order to assess their interpersonal and oral communication skills.

Newton, *supra* note 27, at 63–65 (footnotes omitted).

³⁰ BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 177–81 (2012) (discussing federal student loan policies and alternatives that would restrain law school tuition increases); William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble*, 98 A.B.A. J. 30, 32 (2012), http://www.abajournal.com/magazine/article/the_law_school_bubble_how_long_will_it_last_if_law_grads_cant_pay_bills (“Heavy loans now threaten to consume the future earnings and livelihood of the nation’s young lawyers. . . . Very few critics . . . have examined the part played by the federal government through its student loan policies in creating a law school bubble that may be on the verge of bursting . . .”).

ers, navigators, document preparers, etc.³¹ Not every consumer needs a licensed lawyer and not every prospective student interested in providing basic legal counseling to low-income clients needs to invest the time and tuition associated with a traditional J.D. curriculum.³² While there are unauthorized practice of law (UPL) issues that permeate any discussion of non-lawyers performing law related tasks, as a practical matter these are simply questions of definition and quality control. The practice of law is what courts or legislatures say it is.³³ From a consumer perspective, the critical issue is access to a licensing and regulatory scheme that ensures the competence and integrity of all legal services providers, those with J.D.s and those without.³⁴

The argument is made that law schools should do what law schools do best: train students to be lawyers. This argument suggests that any authorized limited practice law-related training be left to vocational schools, community colleges and four-year colleges. That argument not only fails to value the unique talent that exists on law school faculties to teach about the law, it undervalues the synergistic advantages of teaching and learning about law in a context that acknowledges and strategically addresses the varied but related and largely unmet legal needs of modern day society. If law professors care about serving society's middle- and lower-economic populations, they could intentionally strive to build models of education that focus on training for the delivery of a range of legal services—services that are efficient, connected, overlapping, and mutually supportive of the goal of delivering affordable legal services. Law professors might develop innovative pedagogical strategies and methods that teach, for example, not only the discrete knowledge and skills necessary to be a competent family law or immigration legal technician, paralegal, or lawyer, but how these legal service providers can efficiently work together to put legal services within the economic reach of ordinary people. A law school simulated, elder law skills class might include J.D. students and

³¹ See Paula Littlewood & Stephen Crossland, *Alternative Legal Service Providers: Filling the Justice Gap*, in *THE RELEVANT LAWYER: REIMAGINING THE FUTURE OF THE LEGAL PROFESSION* 25, 28–29 (Paul A. Haskins, ed., 2015) (“The pyramid metaphor helps us not only visualize matching consumers with appropriate types of providers, but also identify potential opportunities for additional provider types limited by scope of service, perhaps including both ‘licensed legal professionals’ and ‘nonlegal professionals.’ Making available a diversity of professionals and information fulfills the individual consumer’s legal needs in a more efficient and effective manner.”).

³² See generally Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 *FORDHAM L. REV.* 2587 (2014).

³³ *Id.* at 2588. See generally Andrew M. Perlman, *Towards the Law of Legal Services*, 37 *CARDOZO L. REV.* (forthcoming 2015), <http://ssrn.com/abstract=2561014>. Professor Perlman urges the creation of a framework for regulating legal services—for nonlawyers as well as lawyers. *Id.* He emphasizes that the body of law that applies to the practice of law is inadequate to deal with needs of modern consumers of legal services. *Id.* Instead of seeking to define the practice of law, and limiting the practice to lawyers, we should authorize trained and competent nonlawyers to provide a range of discrete legal services that are appropriately regulated. *Id.*

³⁴ Rhode & Ricca, *supra* note 32, at 2608.

non-J.D. students working together in a law firm or affiliated business setting. These students could be trained to serve the needs of low and fixed income seniors with income maintenance and health care problems—problems that are often adjudicated in administrative tribunals that do not require advocates to be fully licensed lawyers.

A new definition of excellence in legal education—one that does not equate excellence with hierarchies established by the current USNWR rankings system—would focus on the private interests of students (to become licensed legal services providers and find fulfilling employment) and society's interest in having a critical mass of legal services providers who are diverse, have a desire to provide access to justice for the underserved, and are admitted to law school based on their ability to serve effectively and ethically. Understanding excellence in a way that departs from notions of LSAT selectivity, money spent per student, national reputation, faculty status, and scholarly production could benefit society by allowing law school academic programs and budgets to do what teachers' colleges and schools of education have done for decades: train students to serve and contribute in exchange for rewarding and comfortable lives, but not with the expectation of getting rich or becoming members of an elite club.³⁵

II. A DISCUSSION OF LIMITED LICENSE LEGAL TECHNICIANS AS ONE INNOVATION

The Limited License Legal Technician (LLLT) program in Washington State may serve as a meaningful bellwether of changes coming to legal education. Adopted by the Washington Supreme Court in 2012, Washington Admission and Practice Rule (APR) 28 creates the LLLT profession and authorizes LLLTs for licensure to practice law.³⁶ APR 28 defines an LLLT as

³⁵ The authors are not arguing for unregulated or unaccredited legal education similar to the system that has grown up in California. Some of these California schools appear to exploit the market for legal education by enticing students of questionable preparedness to enroll in low-cost programs that provide insufficient academic support and experiential training. See Jason Song, Victoria Kim & Sandra Poindexter, *Nearly 9 in 10 Students Drop Out of Unaccredited Law Schools in California*, L.A. TIMES (July 25, 2015, 10:00 AM), <http://www.latimes.com/local/education/la-me-law-schools-20150726-story.html#page=1>. However, many ABA accredited law schools (due to expense, location, rigidly traditional curricula, and status driven admissions policies) are frequently inaccessible to underprivileged students who might be inclined to provide meaningful access to justice for America's middle- and lower-income communities. These students and their future clients would benefit from a system of legal education that provides something more than a stark choice between prohibitively expensive traditional law schools and cheap unaccredited programs that do not lead to success.

³⁶ For a comprehensive review of APR 28's history and requirements, see generally Stephen R. Crossland & Paula C. Littlewood, *The Washington State Limited License Legal Technician Program: Enhancing Access to Justice and Ensuring the Integrity of the Legal Profession*, 65 S.C. L. REV. 611 (2014), and Brooks Holland, *The Washington State Limited Li-*

[A] person qualified by education, training and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by this rule and related regulations. The legal technician does not represent the client in court proceedings or negotiations, but provides limited legal assistance as set forth in this rule to a pro se client.³⁷

LLTs thus are circumscribed significantly in the legal services they may provide, and for now LLTs are prohibited from representing or negotiating a client's position,³⁸ and from appearing in court.³⁹ Yet, LLTs can provide much more comprehensive legal services than ministerial form completion or traditional paralegal services. Under APR 28, LLTs may:

- (1) Obtain relevant facts, and explain the relevancy of such information to the client;
- (2) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;
- (3) Inform the client of applicable procedures for proper service of process and filing of legal documents;
- (4) *Application*. Provide the client with [approved legal] self-help materials . . .;
- (5) Review documents or exhibits that the client has received from the opposing party, and explain them to the client;
- (6) Select, complete, file, and effect service of [approved legal forms] . . . and advise the client of the significance of the selected forms to the client's case;
- (7) Perform legal research;
- (8) Draft legal letters and documents . . . if the work is reviewed and approved by a Washington lawyer.
- (9) Advise a client as to other documents that may be necessary to the client's case, and explain how such additional documents or pleadings may affect the client's case; [and]
- (10) Assist the client in obtaining necessary documents . . .⁴⁰

The recently adopted LLT Rules of Professional Conduct ("LLT RPC") reinforce that LLTs will "practice law" within a limited scope by confirming

Legal Technician Practice Rule: A National First in Access to Justice, 82 MISS. L.J. SUPRA 75 (2013).

³⁷ WASH. ADMISSION TO PRAC. R. 28(B)(4).

³⁸ *See id.* R. 28(H)(6).

³⁹ *See id.* R. 28(H)(5). Washington Supreme Court Chief Justice Barbara Madsen has commented publicly, however, that the Washington Supreme Court is evaluating whether to permit LLTs to negotiate on behalf of clients. *See* Barbara Madsen, *Luncheon Keynote: The Promise and Challenges of Limited Licensing*, 65 S.C. L. REV. 533, 542 (2014) (noting that "there is discussion on the court about allowing technicians to negotiate their client's rights with third parties"). Chief Justice Madsen also commented during a recent access to justice conference that the Court may consider whether to allow limited court appearances by LLTs in the future as well. *See generally id.*; *Washington State Access to Justice Conference Agenda*, WASH. ACCESS TO JUST. BOARD, <http://wa-atg.org/agenda> (last visited Sept. 27, 2015).

⁴⁰ WASH. ADMISSION TO PRAC. R. 28(F)(1)–(10).

that these legal services require LLLTs to represent a client competently and diligently,⁴¹ to advise a client candidly,⁴² to exercise independent professional judgment,⁴³ and to provide conflict-free legal assistance.⁴⁴

The LLLT program accordingly licenses a cohort of non-lawyers to practice law fairly broadly and dynamically within authorized areas of law—currently only family law.⁴⁵ The avowed purpose of the LLLT program is to increase access to justice by mobilizing this cohort of trained and regulated legal professionals into the market to perform limited-scope services at a cheaper rate than lawyers can because of reduced entry and business costs.⁴⁶ Indeed, the Washington Supreme Court expressly endorsed the LLLT programs' access to justice purpose in both APR 28 itself,⁴⁷ and in the court's order explaining and adopting APR 28.⁴⁸

⁴¹ See *id.* app. J, R. 1.1, 1.3.

⁴² See *id.* app. J, R. 2.1.

⁴³ See *id.*

⁴⁴ See *id.* app. J, R. 1.7–1.10.

⁴⁵ See *id.* R. 28(B)(4) (authorizing and defining domestic relations practice for LLLTs). The LLLT program initially contemplated practice areas including immigration, elder law, and housing law in addition to family law. See Madsen, *supra* note 39, at 540. The Washington Supreme Court will consider whether to authorize additional practice areas in the future. See Steve Crossland, *Restore Access to Justice Through Limited License Legal Technicians*, 31 GPSOLO, May-June 2014, at 56, 59, http://www.americanbar.org/publications/gp_solo/2014/may_june/restore_access_justice_through_limited_license_legal_technicians.html (noting that “the new areas will be those where there is a significant unmet need,” and observing that “[t]he LLLT Board believes that selecting additional practice areas is important to serve the public,” and “licensing an LLLT in more than one practice area will allow for more diverse business models for LLLTs.”).

⁴⁶ For analysis supporting the view that non-lawyer licensure programs like Washington's LLLT program can increase access to justice, see Elizabeth Chambliss, *Law School Training for Licensed “Legal Technicians”?: Implications for the Consumer Market*, 65 S.C. L. REV. 579 (2014); Leslie C. Levin, *The Monopoly Myth and Other Tales About the Superiority of Lawyers*, 82 FORDHAM L. REV. 2611, 2615–16, 2630–31 (2014); Deborah L. Rhode, *Access to Justice: A Roadmap for Reform*, 41 FORDHAM URB. L.J. 1227, 1241–46 (2014); and see generally Jack P. Sahl, *Cracks in the Profession's Monopoly Armor*, 82 FORDHAM L. REV. 2635 (2014) for a discussion of the implications of the creation of LLLTs. The potential of non-lawyer licensure to increase access to justice was argued long before adoption of APR 28 in Washington State. See, e.g., Deborah L. Rhode, *Meet Needs with Nonlawyers*, 82 A.B.A. J., Jan. 1996, at 104. Some commentators, however, have challenged several of the premises on which the LLLT program's access to justice claim rests. See Tom Lininger, *De-regulating Public Interest Law*, 88 TUL. L. REV. 727, 754–56 (2014); Milan Markovic, *Juking Access to Justice*, GEO. J. LEGAL ETHICS (forthcoming 2015), <http://ssrn.com/abstract=2561558>; Shannon Achimalbe, *Nonlawyer Legal Technicians: Access to Justice? Or Will They Make Things Worse?*, ABOVE LAW (Jan. 14, 2015, 1:31 PM), <http://abovethelaw.com/2015/01/nonlawyer>. See generally Robert Ambrogi, *Unauthorized Practice: Washington State Moves Around UPL, Using Legal Technicians to Help Close the Justice Gap*, 101 A.B.A. J., Jan. 2015, at 72 (summarizing arguments).

⁴⁷ See WASH. ADMISSION TO PRAC. R. 28(A).

⁴⁸ See *In the Matter of the Adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians*, 12-13-063 Wash. Reg. 5, 5 (June 15, 2012), <http://lawfilesext.leg.wa.gov/law/wsr/2012/14/12-14MISC.pdf> (“[T]here are people who need only limited levels

To fulfill this access-to-justice objective, the LLLT program will need a new system of quality legal education to train LLLTs. Will traditional J.D. program law schools fill this need?

Not surprisingly, the LLLT program has generated a lot of skepticism and criticism that may bear on whether and how traditional J.D. program law schools should be involved in educating LLLTs. One major critique emphasizes quality control: LLLTs' limited education and training will expose clients to unacceptable risks of incompetent legal services and subpar professional judgment.⁴⁹ Lawyers, however, are not immune to this risk either, notwithstanding a J.D. degree. An important quality-control check on this risk with lawyers happens through legal education, which assures that all law graduates enter the profession with necessary aptitude in legal doctrine, skills, ethics, and normative reasoning. As the putative experts in entry-point quality control for the legal profession, law school educators stand to help tremendously in mediating quality control concerns regarding LLLT programs by ensuring that LLLTs are educated to practice competently within their prescribed spheres of authorized legal assistance.

Another major critique of LLLT programs, however, focuses less on consumers' needs and more on disruption to the existing market of legal services: LLLTs needlessly will compete with lawyers for work, particularly with young lawyers and small-practice lawyers, during one of the most difficult legal job markets in history.⁵⁰ This difficult job market has negatively impacted the legal

of assistance that can be provided by non-lawyers trained and overseen within the framework of the regulatory system developed by the [WSBA]. This assistance should be available and affordable. Our system of justice requires it.”) In adopting APR 28, the Washington Supreme Court responded directly to Washington’s 2003 Civil Legal Needs Study, which documented vast swaths of unmet legal needs in Washington State. *See generally* Ambrogio, *supra* note 46, at 76; Holland, *supra* note 36 (reviewing Washington’s 2003 Civil Legal Needs Study and relationship to LLLT rule). The Washington Civil Legal Needs Study was just updated to 2014 data and conclusions, which reveal even greater levels of unmet civil legal needs. *See Sunday Plenary Features Poverty Trends and Civil Legal Needs Study Update*, WASH. ACCESS TO JUST. CONFERENCE (Apr. 18, 2015), <http://wa-atj.org/sunday-plenary-features-poverty-trends-and-civil-legal-needs-study-update/>.

⁴⁹ *See* Lininger, *supra* note 46. *See generally* Holland, *supra* note 36 (detailing these arguments from segments of the WSBA).

⁵⁰ *See, e.g.,* Tamara Tabo, *Does the ABA Care More About ‘Access to Justice’ than It Cares About Members’ Access to Jobs?*, ABOVE LAW (Feb. 6, 2015, 5:58 PM), <http://abovethelaw.com/2015/02/does-the-aba-care> (critiquing the American Bar Association’s Commission on the Future of Legal Services’ examination of LLLT programs as “a sharp reminder that the ABA is not fully committed to advancing the interests of new lawyers”); Holland, *supra* note 36, at 105–07 (recounting market competition objections to LLLT program from interests within the Washington State Bar Association); *cf. In the Matter of the Adoption of New APR 28*, *supra* note 48, at 9 (Owens, J., dissenting) (noting challenges of the economy for lawyers, and arguing that “this rule and its attendant regulations impose an obligation on the members of the WSBA to underwrite the considerable cost of establishing and maintaining what can only be characterized as a mini bar association within the present WSBA”).

education market,⁵¹ and so teachers at traditional J.D. program law schools understandably have a self-interested reason to be skeptical, if not hostile, to LLLT-type programs. As the authors can attest from personal classroom experience, law students learning of the LLLT program often communicate frustration and concern over how this program could undermine the value of their J.D. degree, particularly if they pursue solo or small-firm practice. Law schools do not want to educate students who effectively create a market conflict of interest with law schools' bread-and-butter J.D. program students.

The LLLT program, however, is not designed simply to foster direct market competition with lawyers. Rather, the LLLT program is meant to increase access to justice for consumers who are not being served by the existing market of legal services.⁵² So yes, market disruption is an intended consequence of the LLLT program, to the extent this disruption increases access to justice. As a result, traditional J.D. program teachers who are committed to social justice reform have an important question to address: If LLLTs in fact can increase access to cost-effective legal services that remain undelivered or under-delivered, what opportunities and responsibilities exist for traditional J.D. program law schools to support LLLT programs educationally?⁵³

This question is not limited solely to Washington State law schools, as other states are evaluating similar "legal technician" licensure programs.⁵⁴ Nor is

⁵¹ In 2013, the Wall Street Journal reported: "First-year enrollment at U.S. law schools plunged this year to levels not seen since the 1970s as students steered away from a career that has left many recent graduates loaded with debt and struggling to find work." Jennifer Smith, *U.S. Law School Enrollments Fall: Lack of Jobs Has Students Steering Away from Legal Career*, WALL ST. J. (Dec. 17, 2013, 7:41 PM), <http://www.wsj.com/articles/SB10001424052702304858104579264730376317914>. This downward market trend has continued. See Mark Hansen, *Count Off: Law School Enrollment Continues to Drop, and Experts Disagree on Whether the Bottom Is in Sight*, 101 A.B.A.J., 64, 64 (Mar. 2015); Elizabeth Olson & David Segal, *A Steep Slide in Law School Enrollment Accelerates*, DEALBOOK, N.Y. TIMES (Dec. 17, 2014, 7:04 AM), <http://dealbook.nytimes.com/2014/12/17/law-school/>.

⁵² Cf. Ambrogi, *supra* note 46, at 74 (reporting concern that "[t]he economics of traditional law practice make it impossible for lawyers to offer their services at prices [low-income] people can afford"); Crossland, *supra* note 45, at 58 (noting in article directed to solo and small-firm practices' concern about competition from LLLTs, "If that segment of the market were being served by our profession, we wouldn't be having this discussion."). For more commentary on the failure of the existing lawyer-based market to meet legal needs, see Amato, *supra* note 25; Bergmark, *supra* note 23.

⁵³ Cf. Deborah L. Rhode, *We Have a Problem with Lawyers: This Is How We Fix Law School and the Legal Profession*, SALON (June 7, 2015, 8:59 AM), http://www.salon.com/2015/06/07/we_have_a_problem_with_lawyers_this_is_how_we_fix_law_school_and_the_legal_profession/ (connecting law schools to failure of legal profession to thrive and meet legal needs).

⁵⁴ For example, the Legal Technicians Task Force recently submitted a report to the Oregon State Bar Association's Board of Governors recommending "that the Board of Governors consider the possibility of the Bar's creating a Limited License Legal Technician (LLLT) model as one component of the BOG's overall strategy for increasing access to justice." LEGAL TECHNICIANS TASK FORCE, FINAL REPORT TO THE BOARD OF GOVERNORS 9 (2015),

this question something that can be answered in the abstract, divorced from professional and cultural resistance in the academy to changes that may reorder entrenched expectations that are tied, or be perceived as being tied, to quality control. Some anecdotal examples of this resistance that the authors have encountered include: “I did not become a law professor to teach glorified paralegals”; “These legal technicians will accelerate the Walmartization of legal education”; and “If our school gets involved in this legal technician business, people will think we’ve become a trade school.” Can traditional J.D. program law schools actively educate LLLTs while maintaining both the expected quality of legal education and law schools’ societal role as institutions of higher learning, all without aggravating market competition for work between lawyers and LLLTs?

A productive way for the academy to evaluate its role in educating LLLTs along with lawyers already may exist in literature developing regulatory models for LLLT practice as part of a diversified legal profession. For example, in *Towards the Law of Legal Services*, Professor Andrew Perlman has outlined a regulatory model for a legal services profession that does not rely only on lawyers as authorized legal services providers.⁵⁵ Professor Perlman explains his conception of the “Law of Legal Services” this way:

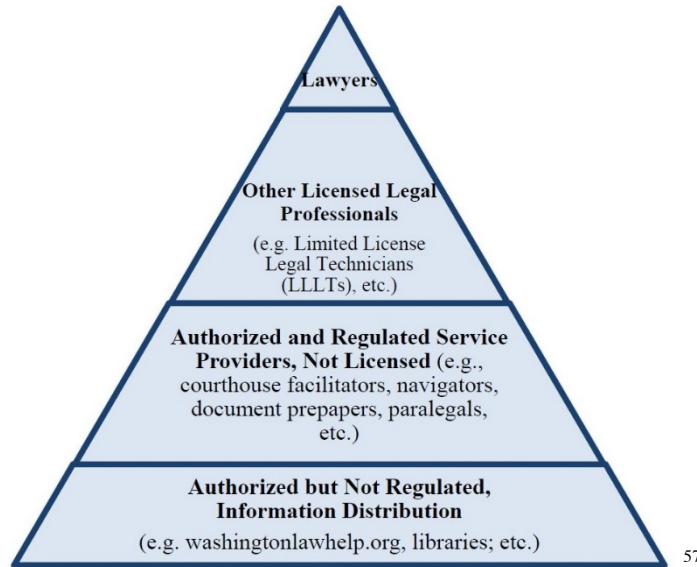
[T]he current lawyer-based regulatory framework should be reimagined if we hope to spur more innovation and expand access to justice. Rather than focus on the so-called ‘law of lawyering’—the body of rules and statutes regulating lawyers—this Article suggests that we need to develop a broader ‘law of legal services’ that authorizes, but appropriately regulates, the delivery of more legal and law-related assistance by people who do not have a J.D. degree.⁵⁶

Professor Perlman illustrates this regulatory framework through a pyramid depiction of a diverse legal services market:

bog11.homestead.com/LegalTechTF/Jan2015/Report_22Jan2015.pdf. California and New York also are actively evaluating comparable non-lawyer licensure programs. See Ambrogio, *supra* note 46, at 75–78; Chambliss, *supra* note 46, at 590–94 (discussing New York and California). Other states, such as Colorado, are investigating whether to develop this option as part of access to justice initiatives. See James Carlson, *Colorado Studying New Limited Legal License*, COLO. SUP. CT. (Spring 2015), <http://www.coloradosupremecourt.us/Newsletters/Spring2015/Colorado%20studying%20new%20limited%20legal%20license.htm>.

⁵⁵ See generally Perlman, *supra* note 33.

⁵⁶ *Id.* (manuscript at 2–3) (on file with authors) (footnotes omitted); see also *id.* (manuscript at 5–9) (distinguishing law of lawyering from law of legal services).



This pyramid reflects an increasingly diversified legal profession, with the tier of lawyers representing a progressively more specialized, and likely shrinking, segment of the pyramid.⁵⁸ But currently, law schools educate only the top tier of the pyramid: lawyers. Law schools instead could structure their educational model to teach to the entire pyramid, or at least the two *licensed* tiers of this pyramid. In this model, moreover, the pyramid could depict both a diverse and *integrated* profession, rather than a profession where each tier of the pyramid is siloed from the others—where consumers go to a LLLT *or* they go to a lawyer.⁵⁹ This diversified and integrated profession more closely would resemble the medical profession, which itself is trending to managed team care,

⁵⁷ See *id.* (manuscript at 39) (image reproduced with permission). Professor Perlman acknowledges Paula Littlewood, Executive Director of the WSBA, for conceptualizing this pyramid model. See *id.* (manuscript at 39 n.229). For the original pyramid conception of this diversified legal services market, see Littlewood & Crossland, *supra* note 31, at 28.

⁵⁸ Cf. RICHARD SUSSKIND, *THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES* 99–105, 136–45 (2008) (examining changes to legal practice where much lawyer work may be eliminated by automated systems and processes). For an example of automated systems replacing lawyers to solve legal problems, see Debra Cassens Weiss, *Contesting a Traffic Ticket? Getting Divorced? Some Jurisdictions Use Software to Resolve the Issues*, A.B.A. J. (July 14, 2015, 5:45 AM), http://www.abajournal.com/news/article/contesting_a_traffic_ticket_getting_divorced_some_jurisdictions_use_softwar.

⁵⁹ Professor Perlman seems to suggest that the lawyer tier in fact would be siloed from the other tiers of legal services. See Perlman, *supra* note 33 (manuscript at 3) (referring to non-lawyer pyramid tiers as “people who do not have a J.D. degree and do not work alongside lawyers”).

where different professionals provide different kinds of direct care to meet patient needs more effectively and more efficiently.⁶⁰

Therefore, imagine law schools that teach LLLTs not as a discrete track of legal education removed from J.D. program students, but within an integrated educational portal of legal services, where lawyers and LLLTs learn to work together within one profession, maximizing efficiencies by drawing on each service provider's strengths and practice authority. Clinical programs in particular could shine at developing this sort of integrated model for legal services education, teaching J.D. and LLLT students how to collaborate efficiently and effectively. Indeed, clinical programs already teach law students the efficiencies, and increased justice, that can be realized when lawyers collaborate actively with non-lawyers to provide comprehensive legal services.⁶¹

This integrated pyramid model of legal services education could deliver several strengths for legal educators who are committed to social justice. First, the addition of LLLT students to J.D. program matriculates could produce much-needed revenue streams for law schools to continue to produce competent legal professionals who are committed to serving persons in need.⁶² Second, the more involved traditional law schools are in educating LLLTs, the more likely the LLLT brand will be viewed as legitimate and not as a second-class option for legal services or a legal career.⁶³ Law schools' currency in legal education thus could minimize equal justice concerns that have been identified as a potential barrier to the success of LLLT programs.⁶⁴ Finally, joint LLLT-J.D. program education could improve the quality of education for lawyers entering markets that will be shared by LLLTs by empowering these lawyers to collaborate effectively and efficiently with other segments of the developing legal services pyramid.⁶⁵

⁶⁰ Cf. Crossland & Littlewood, *supra* note 36, at 613–15 (discussing medical profession model); Holland *supra* note 36, at 103, 124–26.

⁶¹ See, e.g., *Medical-Legal Partnership*, GONZ. U. SCH. LAW, <https://www.law.gonzaga.edu/academics/law-clinic/students/medical-legal/> (last visited Sept. 27, 2015).

⁶² See Chambliss, *supra* note 46, at 607 (observing that “[t]he design and delivery of specialty courses aimed at experienced paralegals and other ‘nonlawyer professionals’ could be a significant source of revenue for law schools” (footnote omitted)).

⁶³ Cf. *id.* at 584 (“The involvement of ABA-approved law schools in the delivery of paraprofessional training could play a key role in the standardization of titles and training for nonlawyer professionals—that is, the creation of paraprofessional ‘brands.’ Such standardization could facilitate the development of a national consumer legal market” (footnotes omitted)).

⁶⁴ See generally Holland, *supra* note 36 (discussing concern that even if LLLTs increase access to justice, they also could increase equal justice problems by cementing two tiers of justice between persons of means and persons of limited means).

⁶⁵ Cf. Chambliss, *supra* note 46, at 607–08 (noting that “there may be pedagogical benefits to training experienced paralegals and law students together”); Stephen A. Rosenbaum, *The Juris Doctor Is in: Making Room at Law School for Paraprofessional Partners*, 75 TENN. L. REV. 315, 319–20 (2008) (noting benefit to law students of exposure to experienced paralegals by teaching valuable collaboration, communication, and skills).

The Washington Lawyer RPC and LLLT RPC already support, if not envision, this sort of integrated legal services profession between lawyers and LLLTs. These rules do not treat the two professions as operating in distinct legal spheres. Rather, the RPC anticipate significant interaction and even partnership between LLLTs and lawyers.⁶⁶ In particular, the RPC in Washington now will permit lawyers and LLLTs to partner and share fees with each other under regulated conditions.⁶⁷ These professional partnerships may permit LLLTs and lawyers to integrate more than just profits. These partnerships may integrate efficiencies, skills, and workflows to better economize the delivery of legal services,⁶⁸ and consequently deliver “market expansion and a well-timed status boost for the traditional three-year J.D.”⁶⁹ Where better to train for these partnerships than in law school?

Thus, as Washington Supreme Court Chief Justice Madsen recently observed, “What an opportunity for law schools!”⁷⁰ Modeling a role for seizing this opportunity, Washington law schools have participated actively in educating LLLTs,⁷¹ as the LLLT rules require.⁷² The role of Washington’s law schools, however, remains less ambitious than is suggested here. For instance, only one Washington law school thus far delivers curriculum directly to LLLTs, and this school teaches LLLTs solely through an online format dedicated exclusively to LLLTs, removed from the J.D. program educational experience.⁷³ Even in Washington, therefore, J.D. and LLLT students likely will graduate from their respective programs with little to no professional contact as students. As a result, these graduates less likely will appreciate how lawyers and LLLTs can work together as part of a diverse and integrated legal profession.

As the LLLT program grows in Washington State to include other practice areas, and to require new skillsets for negotiation and even limited courtroom appearances, this compartmentalization of legal education may make less and less sense. On the contrary, as the LLLT program grows, so will the opportunity for law schools to support and benefit from increasingly diversified legal ed-

⁶⁶ See, e.g., WASH. R. PROF’L CONDUCT §§ 4.2–4.4, 5.3 (all envisioning various types of communication and interaction between lawyers and LLLTs).

⁶⁷ See *id.* § 5.9.

⁶⁸ Cf. Crossland, *supra* note 45, at 58–59 (discussing possible models).

⁶⁹ Chambliss, *supra* note 46, at 586.

⁷⁰ Madsen, *supra* note 39, at 544.

⁷¹ See *id.* (“I know our law schools are jumping on board.”).

⁷² See Crossland & Littlewood, *supra* note 36, at 616–21 (detailing education and examination requirements for LLLTs).

⁷³ At this juncture, only the University of Washington School of Law is providing courses to LLLTs. See *Limited License Legal Technician Program in Family Law*, UNIV. WASH. SCH. LAW, <https://www.law.uw.edu/apply/special-programs/lllt/> (last visited Aug. 22, 2015). Gonzaga University School of Law and Seattle University School of Law thus far have opted not to deliver LLLT curriculum, although faculty members from Gonzaga are teaching in the University of Washington’s LLLT program and are actively supporting the LLLT program from within the WSBA. See generally *id.*

ucation to train professionals for an increasingly diversified legal profession. Yet, this role for traditional J.D. program law schools will require innovation and commitment from those schools, state bar associations, and the principal accrediting authorities for U.S. law schools—the American Bar Association and the Association of American Law Schools.

III. WHAT ELSE CAN BE DONE?

Because of the convergence of external and internal pressures—and the economic hardships confronting law schools—progressive professors and law school leaders are thinking more critically about reforming legal education. The newest trends move beyond smoke and mirrors into more meaningful change. Law schools are experimenting with different models.

One model aims to make law school “cheaper, faster and better” for its students.⁷⁴ Elon University School of Law, which faced challenges in enrollment and job placement, recently made several changes to its J.D. program. Rather than the traditional six-semester program, Elon recently adopted a seven-trimester program.⁷⁵ The school will also implement curricular changes that will highlight experiential learning and include a faculty-directed residency.⁷⁶ The residency will be required.⁷⁷ Furthermore, the law school will lower tuition.⁷⁸ School administrators at Elon hope the model will better equip students to practice after graduation and place them ahead of competitors by allowing them to sit for the February bar.⁷⁹

Another law school elected to experiment with the delivery model for legal education. William Mitchell College of Law recently became the first ABA-approved law school in the country to offer a part-time hybrid program—offering a split between on campus and online offerings for law students.⁸⁰ In January 2015, the law school launched its first class under the hybrid model.⁸¹

⁷⁴ Mike Stetz, *Elon's Bold Move*, 24 NAT'L JURIST, Jan. 2015, at 8, 8.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Mark Hansen, *Elon Law to Cut Total Tuition by Nearly \$14k and Offer Law Degree in 2.5 Years for All*, A.B.A. J., (Oct. 9, 2014, 4:55 PM), http://www.abajournal.com/news/article/elon_law_announces_groundbreaking_new_legal_education_program. The law school will reduce tuition from \$114,000 to about \$100,000 and guarantee against a cost increase for class of 2015. *Id.*

⁷⁹ *Id.* Already, Elon has seen an 18 percent jump in enrollment for the entering class of 2015. Andrew Huang, *Elon Reports Higher Enrollment Due to Curricular Changes*, PRELAW NAT'L JURIST (Aug. 6, 2015), <http://www.nationaljurist.com/content/elon-reports-higher-enrollment-due-curricular-changes>.

⁸⁰ *The Hybrid Program*, WILLIAM MITCHELL C. LAW, <http://web.wmitchell.edu/admissions/hybrid-program> (last visited Sept. 29, 2015).

⁸¹ Maura Lerner, *William Mitchell Welcomes Its First Hybrid 'Online' Law School Class*, STAR TRIB. (Jan. 12, 2015, 9:55 PM), <http://www.startribune.com/local/stpaul/288350831.html>.

The program is designed to make law school more accessible for working adults, who are able to take online courses from their homes without uprooting their lives.⁸² It is especially aimed at people living in rural areas, where the access to legal representation gap is especially acute.⁸³ In its inaugural class, the Minnesota law school has already attracted a wide range of applicants—ranging from an anesthesiologist⁸⁴ to a baggage handler.⁸⁵ The first roll out of the program attracted eighty-five students from thirty states.⁸⁶ They ranged in age from twenty-two to sixty-seven.⁸⁷ The part-time program will include ten weeks of on-campus practical training over a four-year period.⁸⁸ The school applied for and received a variance from the ABA to experiment with expanded delivery through online instruction.⁸⁹

To explore alternative delivery models to increase access to law school and the profession, the ABA must continue to be liberal and transparent about variances from the standards.⁹⁰ The increase of online offerings is an interesting area for exploration because it allows more people to attend law school without the disruption in their lives. This step could be an important avenue to attract nontraditional students.

While there are several changes underway regarding the delivery of legal education—shortened semesters, online learning, and more experiential learning—some law schools also started to experiment with admissions criteria for the entering class. Recently, a handful of law schools elected to admit students without the LSAT.⁹¹ The ABA allowed schools to admit up to ten percent of

⁸² *Id.* For instance, William Mitchell is offering scholarship assistance to attract residents of reservations located far from any law school. *New Scholarships Available for People in Rural America, Small Towns, and Indian Reservations*, WILLIAM MITCHELL C. LAW (Feb. 5, 2014), <http://web.wmitchell.edu/news/2014/02/new-scholarships-available-for-people-in-rural-america-small-towns-and-indian-reservations>.

⁸³ Danielle Paquette, *8,500 Residents. 12 Attorneys: America's Rural Lawyer Shortage*, WASH. POST (Aug. 25, 2014), <http://www.washingtonpost.com/news/storyline/wp/2014/08/25/how>.

⁸⁴ Lerner, *supra* note 81.

⁸⁵ Laura Martin, *William Mitchell Launches First Hybrid Online/On-Campus J.D.*, PRELAW, NAT'L JURIST (Jan. 21, 2015), <http://www.nationaljurist.com/content/william-mitchell-launches-first-hybrid-onlineon-campus-jd>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *ABA Approves Variance Allowing William Mitchell to Offer 'Hybrid' On-Campus/Online J.D. Program*, WILLIAM MITCHELL C. LAW (Dec. 17, 2013), <http://web.wmitchell.edu/news/2013/12/william-mitchell-to-offer-first-aba-accredited-hybrid-on-campus-online-j-d-program>.

⁹⁰ See A.B.A. TASK FORCE REPORT, *supra* note 26, at 32.

⁹¹ See Lauren Coffey, *Will the LSAT Soon Be a Thing of the Past?*, USA TODAY (Mar. 12, 2015, 12:40 PM), <http://college.usatoday.com/2015/03/12/will-the-lsat>. The State University of New York-Buffalo, St. John's University, and the University of Iowa are among law schools those that have taken advantage of the alternative admissions process that does not require the LSAT. *Id.*

the “incoming class without an LSAT score, and instead rely on GPA, other standardized tests, letters of recommendation and an application essay.”⁹² Under a revised version of standard 503 and interpretation 503-3 adopted in 2014,⁹³ the waiver for the LSAT requirement was limited to qualifying students who completed their undergraduate programs at the same institution as the admitting law school and scored in the eighty-fifth percentile on another standardized test (such as the ACT or SAT).⁹⁴ School officials at affected law schools said the move would help them attract students from their undergraduate institutions and save students the time and expense of prepping for the LSAT.⁹⁵ The LSAT exemption, however, proved to be a short-lived experiment.⁹⁶ The exemption was reversed after only one year.⁹⁷

The LSAT has long been criticized as a minimally effective tool for measuring incoming law students and for reflecting disparate impact among students of color;⁹⁸ however, the SAT suffers from many of the same flaws.⁹⁹ Nevertheless, proponents of the temporary LSAT exemption embraced the process as one way to reach out and mentor undergraduates headed to law school.¹⁰⁰

Perhaps the most radical idea whose time has come is incorporating non-J.D. programs into a law school program of study. A law school (or law schools collectively) might consider discarding the traditional definition of a law school as an educational institution that only trains future lawyers. Instead, legal education might remake itself in such a way as to respond seriously to the legal needs of society’s underserved middle- and lower-income citizens. It might do so—in concert with the ABA, state bar associations, and state supreme

⁹² *Id.*; see also SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2014–2015, interpretation 503-3, at 33 (2014), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_bookmarked.authcheckdam.pdf.

⁹³ See ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2014–2015, *supra* note 92.

⁹⁴ Andrew Denny, *St. John’s and Buffalo Waive LSAT for Select Students*, N.Y. L.J., (Mar. 5, 2015), <http://www.newyorklawjournal.com/id=1202719599340>.

⁹⁵ *Id.* The LSAT costs 170 dollars, and the test-preparation courses for the LSAT can cost students additional money, usually tacking on thousands of dollars. *Id.*

⁹⁶ See Mike Stetz, *ABA Reverses Experimental LSAT Waiver*, PRELAW, NAT’L JURIST (Sept. 9, 2015), <http://www.nationaljurist.com/content/aba-reverses-experimental-lsat-waiver>. The reversal takes place next year, so law schools will be able to rely on the LSAT exemption process for the Class of 2016. *Id.*

⁹⁷ Karen Sloan, *LSAT Exemption Plan Scrapped After One Year*, NAT’L L.J. (Aug. 10, 2015), <http://www.nationallawjournal.com/id=1202734199126>.

⁹⁸ See discussion *supra* Part I and accompanying notes.

⁹⁹ See Anisha Chadha, *SAT: Standardized Tests Do Not Put Students on a Level Playing Field*, RECORD, (Apr. 8, 2014, 8:50 PM), <http://www.newsrecord.co/sat-standardized-tests-do-not-put-students-on-a-level-playing-field>. See generally Andrea A. Curcio, Carol L. Chomsky & Eileen Kaufman, *Testing, Diversity, and Merit: A Reply to Dan Subotnik and Others*, 9 U. MASS. L. REV. 206 (2014).

¹⁰⁰ See Denny, *supra* note 94.

courts—by training for a range of legal services that could be authorized under state licensing and practice of law rules.¹⁰¹ In addition to the legal technician training program, a law school could offer a paralegal certificate program, a real estate closing program, a program of study for using online legal information and forms, a two-year accelerated J.D. program, a traditional three-year J.D. program, a “theory” oriented J.D. program, a “practice” oriented J.D. program, certificate programs of varying lengths for non-lawyers in a range of specialties, and specialized Masters programs.

But not everyone is excited about the innovative models already underway. Critics have questioned the changes as part of a rush to fill seats in this declining market for law schools.¹⁰² Specifically, it has been hard to ignore the relationship between the plummeting applications and the novelty of programs and practices intended to attract new students. Critics of the LSAT waiver, for example, say the move smells of desperation.¹⁰³ Other critics of the new models for more flexible delivery have stressed that the changes are merely efforts to lure in students and capture revenue.¹⁰⁴ Despite the possibility of mixed motives on the part of law schools to experiment with new models, there is a correlation between increased access to the profession and increased access to justice. That relationship should tip the scales in favor of more innovation in both delivery and admissions.

The American Bar Association Task Force on the Future of Legal Education recently emphasized the need for state licensing authorities to explore cost effective ways to expand access to essential legal services:

This should include authorizing bar admission for people whose preparation may be other than the traditional four-years of college plus three-years of classroom-based law school education, and licensing persons other than holders of a J.D. to deliver limited legal services. The current misdistribution of legal services and common lack of access to legal advice of any kind requires innovative and aggressive remediation.¹⁰⁵

¹⁰¹ See ABA TASK FORCE REPORT, *supra* note 26, at 3 (“Broader Delivery of Legal and Related Services . . .”).

¹⁰² See Jordan Weissmann, *Some Law Schools Will Now Accept Students Who Didn't Take the LSAT. That's an Awful Idea.*, SLATE: MONEYBOX BLOG (Mar. 3, 2015, 1:06 PM), http://www.slate.com/blogs/moneybox/2015/03/03/law_schools_drop_the_lsat_bad_idea.html (“Mostly, this is yet another example of just how desperate law schools are to fill their classroom seats.”); see also Jim Vassallo, *More Law Schools Could Stop Requiring LSAT for Admission*, J.D. J. (Mar. 14, 2015), <http://www.jdjournal.com/2015/02/25/more-law-schools-could-stop-requiring-lsat-for-admission/?hvid=1EzRog> (citing the enrollment drops at Iowa and Buffalo in an article about the new LSAT waiver policy).

¹⁰³ See Weissmann, *supra* note 102.

¹⁰⁴ See Stetz, *supra* note 74, at 8–9.

¹⁰⁵ ABA TASK FORCE REPORT, *supra* note 26, at 3; see also Stephen Gillers, *How to Make Rules for Lawyers: The Professional Responsibility of the Legal Profession*, 40 PEPP. L. REV. 365, 412–18 (2013) (suggesting a new committee that would seek to lead the movement toward limited license legal technicians if it is found that they help clients with moderate means); Mark Hansen, *Two Different Animals: ABA Entites Pursue Separate Paths in*

The demands for increased access to legal services should push law schools to move even further away from the comfort zones of their traditional models.

CONCLUSION

The possibilities for innovation and social responsibility are endless once an institution has unshackled itself from elitist traditions, copycat curricula and cultures, and the belief that law schools exist primarily to serve the needs of affluent clients, students who want to be rich, and faculty who want protection from markets and the demands of practice.¹⁰⁶

Legal education is anchored in a culture that is fundamentally conservative and resistant to change.¹⁰⁷ The reasons for this are manifold, but the proposition is hard to dispute. Law professors, even those who identify as liberal, populist, egalitarian, or reformist, become enmeshed in career processes that lead to comfort, job security, relative wealth, prestige, and professional freedom. These perquisites are enticing, hard to part with once achieved, and expensive.

Search of Ways to Improve Legal Education, 99 A.B.A. J. 62, 62 (2013) (addressing the ABA Task Force on the Future of Legal Education miniconference which took suggestions on reducing law school to two years and creating limited license legal technician programs); Luz E. Herrera, *Educating Main Street Lawyers*, 63 J. LEGAL EDUC. 189, 196 (2013) (discussing the Washington LLLT rule); Holland, *supra* note 36, at 77; Jefferson, *supra* note 21, at 1976–78 (citing LLLT programs, such as Washington’s, as a potential solution to a lack of availability of legal services); David Yellen, *The Impact of Rankings and Rules on Legal Education Reform*, 45 CONN. L. REV. 1389, 1406 (2013) (citing the limited license legal technician program as a way to enhance the legal profession by engaging in a state effort to limit the barriers to legal practice).

¹⁰⁶ George Critchlow, *Beyond Elitism: Legal Education for the Public Good*, SALT LAW (Nov. 14, 2014), <https://www.saltlaw.org/beyond-elitism-legal-education-for-the-public-good>; *accord* Critchlow, *supra* note 27, at 336.

¹⁰⁷ ABA TASK FORCE REPORT, *supra* note 26, at 16.

2. *Resistance to Change*. People are generally risk-averse. Organizations, which are composed of people, tend to be conservative and to resist change. This tendency is strong in law schools (and higher education generally), where many people in the organization find their positions especially attractive because they are largely outside market- and change-driven environments. A law school’s successful embrace of solutions to the challenges, problems, and demands described in this Report and Recommendations requires a reorientation of attitudes toward change, including market-driven change, by persons within the law school.

Id.; see also Erwin Chemerinsky, *Keynote Speech: Reimagining Law Schools?*, 96 IOWA L. REV. 1461, 1462 (2011). According to Chemerinsky,

[T]here is another reason why law schools are resistant to change. If there is going to be change, it is going to have to largely come from law faculties, and they are the group with the least incentive to bring about change. Being a law professor is probably the best job on the planet. You get paid a great deal of money for relatively little in terms of required expectations, certainly when I compare it to what elementary or high school teachers have to do or even my colleagues across campus, let alone all the other jobs one can think of. Short of course of being shortstop for the Chicago Cubs, I cannot think of many better jobs.

Id.

Further, it is sometimes a challenge for us to visualize a different model or system of education because we are products of the same system, a system that produced our own professional identities and success. Many of us, unlike our hypothetical Latina student who hopes to be legally trained in order to serve the immigrant community, came from privileged backgrounds, from prestigious colleges and law schools, and if we worked as lawyers, often represented affluent and powerful clients who could afford to hire the most accomplished legal talent. But law professors committed to social justice should lead the efforts to transform legal education. We must remake legal education so that it is more cost-effective, more accessible, more diversified, and more capable of meeting the needs of low-income clients seeking access to justice.