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Summary of the Proceedings

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**A SUMMIT ON THE FUTURE OF LEGAL EDUCATION AND
ENTRY TO THE PROFESSION
FLORIDA INTERNATIONAL UNIVERSITY COLLEGE OF LAW
CO-SPONSORED BY THE LAW SCHOOL ADMISSION COUNCIL
APRIL 11–12, 2018**

SUMMARY OF THE PROCEEDINGS

Scott F. Norberg*

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Legal education and the broader legal profession are undergoing profound changes. Technology, globalization, and other economic forces are transforming law and legal services,¹ and changing the number and nature of jobs for new law graduates.² These changes bring significant opportunities to expand the roles that lawyers play and the people they serve.

*Professor of Law, Florida International University College of Law. The Summit entailed top-notch contributions by many individuals. Thank you to the speakers, panelists, and moderators, each of whom is recognized in this summary of the proceedings. And thank you to the leadership and members of *FIU Law Review*, both this year's and last. As virtually everyone who took part in the Summit has said, they were most gracious hosts. In addition, they have done superb work editing and producing this issue of the law review. The Summit would not have come off so smoothly and comfortably without the expert and tireless efforts of Felicia Williams and Gori Rodriguez on the logistical arrangements. Last, but certainly not least, thank you to Kellye Testy and Andrea Sinner for their key parts in conceiving the program, and to the Law School Admission Council for generous financial and marketing support.

¹ See *infra* pp. 322–23 (summarizing remarks of Connie Brenton, Senior Director, Legal Operations, NetApp, Inc. and President and CEO, Corporate Legal Operations Consortium); *infra* pp. 318–20 (summarizing remarks of Hilarie Bass, President of the American Bar Association); *infra* pp. 332–33 (summarizing remarks of Fernando Garcia, General Counsel and Government Affairs and Corporate Secretary, Nissan Canada).

² See *infra* p. 331 (summarizing remarks of James Leipold, Executive Director, The National Association for Law Placement); *infra* pp. 331–32 (summarizing remarks of Bernard Burk, former

Over the past generation, the private bar has reduced its investment in training new lawyers while calling on law schools to do more.³ State governments have also reduced support for higher education.⁴ The cost of legal education has increased dramatically,⁵ and many students are burdened with huge debts.⁶ Access to law school is financially challenging for many potential students, with cost being cited as the leading barrier to entry and a deterrent for applicants facing a market with constrained job opportunities for new lawyers.⁷ Law school graduates struggle to find work that makes use of their law degree⁸ and the access-to-justice gap grows ever wider.⁹ Moreover, the financing model, including prevailing financial aid and scholarship policies, in legal education and higher education more broadly has become an engine of inequality rather than increased opportunity.¹⁰

Assistant Professor, University of North Carolina School of Law); *infra* pp. 332–33 (summarizing remarks of Fernando Garcia, General Counsel, and Government Affairs and Corporate Secretary, Nissan Canada). See also Bernard A. Burk, *The New Normal Ten Years In: The Job Market for New Lawyers Today and What it Means for the Legal Academy Tomorrow*, 13 FIU L. REV. 341 (2019).

³ See *infra* p. 324 (summarizing remarks of Stephen Sheppard, Dean, St. Mary’s University School of Law); *infra* pp. 318–20 (summarizing remarks of Hilarie Bass, President of the American Bar Association).

⁴ See, e.g., MICHAEL MITCHELL, MICHAEL LEACHMAN & KATHLEEN MASTERTSON, CTR. ON BUDGET AND POLICY PRIORITIES, A LOST DECADE IN HIGHER EDUCATION FUNDING: STATE CUTS HAVE DRIVEN UP TUITION AND REDUCED QUALITY 1 (2017), https://www.cbpp.org/sites/default/files/atoms/files/2017_higher_ed_8-22-17_final.pdf (reporting that “overall state funding for public two- and four-year colleges in the 2017 school year . . . was nearly \$9 billion below its 2008 level, after adjusting for inflation.”); AM. BAR ASS’N, REPORT OF THE TASK FORCE ON THE FINANCING OF LEGAL EDUCATION 28 (2015), https://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.pdf (discussing a dramatic 102% increase in inflation-adjusted tuition at public law schools between 1999-2000 and 2013-2014).

⁵ See AMERICAN BAR ASSOCIATION, *supra* note 4, at 7.

⁶ See *Law School Costs*, LAW SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/costs/debt/> (last visited Mar. 26, 2019) (collecting and analyzing data on the average amount borrowed by law students).

⁷ See *AccessLex Research Priorities*, ACCESSLEX CTR. FOR LEGAL EDUC. EXCELLENCE, <https://www.accesslex.org/research-and-data> (last visited Mar. 26, 2019) (observing that legal education is in a “position where the price to students is increasing while the income opportunities are decreasing”).

⁸ See Burk, *supra* note 2; Scott F. Norberg, *JDs and Jobs: The Case for an ABA Accreditation Standard on Employment Outcomes*, 67 J. LEGAL EDUC. 1035, 1049–51 (2018).

⁹ LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 6 (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> (reporting that “71% of low-income households experienced at least one civil legal problem” in the past year, and that “86% of [these problems] received inadequate or no legal help”).

¹⁰ See *infra* pp. 336–38 (summarizing remarks of Aaron Taylor, Executive Director, AccessLex Center for Legal Education Excellence); *infra* p. 337 (summarizing remarks of Jerry Organ, Professor of Law, University of St. Thomas School of Law); *infra* pp. 337–38 (summarizing remarks of Kyle McEntee, Executive Director, Law School Transparency). See also Aaron N. Taylor, *The Marginalization of Black Aspiring Lawyers*, 13 FIU L. REV. 489, 503–09 (2019).

This state of affairs—a huge unmet need for legal services, too few jobs, the high cost of legal education, the maldistribution of financial aid, and the changes in the practice of law being wrought by technology and economics—requires that law schools and the larger legal profession rethink the existing model for preparing new lawyers and admitting them to practice. At the same time, we need to find alternatives to the prevailing law school financial model. There is a strong possibility that in the next few years Congress will act both to limit the amount that graduate students may borrow under the federal student aid programs and to cut back existing income-based loan repayment options. Such changes could threaten the survival of more than a few law schools.¹¹

The goal of the Summit on the Future of Legal Education and Entry to the Profession is to be a catalyst for changes necessary to meet these challenges by bringing together leaders in legal education and the broader profession with prominent scholars on the subject of legal education. Summit participants generally expressed optimism, but recognized that existing challenges are compounded by structural impediments. As Dean Sheppard noted in his remarks:

We in law have mainly relied, not only on a division of labor between legal education and the bar, but also on a segregation of responsibility between supreme courts, state legislatures, the NCBE [National Conference of Bar Examiners], the ABA [American Bar Association], the ABA Council of the Section of Legal Education and Admissions to the Bar, and law schools themselves, which [maintains] a perfect circle of responsibility in which no one is truly accountable for the failures among each of them.

The fragmented and protectionist system of bar admissions has impeded market solutions. ABA President Bass predicts that the huge unmet need for legal services will fuel technological and other changes in the delivery of legal services. Pressures to bridge the vast access to justice gap will also force changes in the legal regulatory structures that govern the unauthorized practice of law by non-lawyers.

The Summit included eight panels over two days addressing two basic topics: the need for change in the prevailing financial model in legal education today, and how changes in the practice of law should be reflected in law school curricula and the processes for admission to the bar.

The opening panel, *Making the Case for the Role of Legal Education in the Legal Profession*, featured the heads of the six major legal education-

¹¹ See *infra* p. 334 (summarizing remarks of Christopher P. Chapman, President and CEO, AccessLex Institute).

related organizations: the ABA Section of Legal Education and Admissions to the Bar, Association of American Law Schools (AALS), Law School Admission Council (LSAC), National Conference of Bar Examiners (NCBE), The National Association for Law Placement (NALP), and AccessLex Institute. A panel on *Meeting the Needs of the Market* helped to lay the foundation for much of the subsequent discussions with information and analysis on the current and projected state of the legal employment market for recent law school graduates. A pair of panels and a breakout group session explored *Developing Sustainable Funding Models for Legal Education* and *Addressing Law School Affordability and Access*. Finally, a second pair of panels—*Taking an Integrated View of Legal Education and Licensure* and *Envisioning the Future of the Bar Examination and Entry to the Profession*—considered issues concerning the alignment of law school curricula with the licensing system and with the future needs of the profession.

What follows is a summary of the Summit proceedings. For those interested in the complete record, the entire Summit was broadcast by livestream, and the recording is available at: <https://ecollections.law.fiu.edu/lawreviewsymposia/LegalEducation/>.

In addition, this issue features four articles by Summit participants that expand upon topics they addressed during the Summit. In *Ringing Changes: Systems Thinking About Legal Education*,¹² Joan Howarth and Judith Wegner elaborate a framework for discussing reform of the legal licensure system. In *The Marginalization of Black Aspiring Lawyers*,¹³ Aaron Taylor documents and discusses how law school admissions policies disproportionately exclude Black applicants and how law school financial aid policies impose higher costs and greater debt on Black students, who then obtain worse bar passage and employment outcomes than other students. In *More Transparency, Please*,¹⁴ Kyle McEntee makes the case for having law schools disclose data on student debt, scholarships, and diversity as a means to promote more equitable financial aid policies. In *The New Normal Ten Years In: The Job Market for New Lawyers Today and What It Means For The Legal Academy Tomorrow*,¹⁵ Bernie Burk closely examines the contraction in the various sectors of the entry-level legal employment market over the past ten years, and then considers the implications for law schools going forward.

¹² 13 FIU L. REV. 383 (2019).

¹³ Taylor, *supra* note 10.

¹⁴ 13 FIU L. REV. 465 (2019).

¹⁵ Burk, *supra* note 2.

I. MAKING THE CASE FOR LEGAL EDUCATION IN THE LEGAL PROFESSION

Panelists:

- Christopher P. Chapman, President and CEO, AccessLex Institute
- Barry Currier, Managing Director, ABA Section of Legal Education and Admissions to the Bar
- Judith Gundersen, President, NCBE
- James G. Leipold, Executive Director, NALP
- Wendy Perdue, President, AALS
- Kevin Washburn, LSAC Board of Trustees

Moderator:

- Daniel B. Rodriguez, Dean, Northwestern University Pritzker School of Law

In the opening panel, Managing Director Barry Currier kicked off the Summit by stating that the need for real change in the legal education model is urgent, and suggesting that while there has been a good bit of change in legal education over the last generation, it has been “around the margins.”¹⁶ The “cost [of legal education],” he explained, “is way out of proportion to starting salaries [for most law school graduates].” President Chris Chapman echoed the point, stating that “for many law schools and many students at most schools, there is a disconnect between the price of legal education and what the market is willing to pay graduates.” Executive Director Jim Leipold added that “we are here at a perilous moment” in legal education, explaining that giving in to the temptation for schools to enroll larger classes this year in response to the increase in applicants will be self-defeating because there are more law graduates than there are entry level law jobs. While legal education is, in important part, a public good, the high cost of legal education and resulting debt for law students has driven the focus on the value proposition and return on investment. Dean Wendy Perdue pushed back on the claim that law schools have not made significant changes, contending that schools are delivering a different product today as compared to a generation ago, “doing more with more.” The challenge, she suggested, is “how we continue to do more for less, or whether we do less with less.”

A second theme of the opening panel concerned the need for legal education organizations to work together to lead legal education in making

¹⁶ Compare the comments of Dean Rodriguez, *infra* pp. 323–24 (discussing five trends in the evolution of law school curricula), with Erwin Chemerinski, *Reflections on the Future of Legal Education*, 13 FIU L. REV. 215 (2018) (observing that legal education is very similar today to how it was 40 years ago, and contending that it will likely look much the same 40 years from now).

transformative change. In his opening remarks, Currier also observed that while the organizations must work collaboratively, their ability to do so will be tempered by the responsibility that each has to represent the interests of its own constituency.

Several of the panelists noted that there are other important players in bringing change to legal education, in particular state supreme court justices who determine what is required for admission to the profession; and that our fragmented and antiquated licensing structure has not allowed market solutions to bubble up quickly enough. Several others made the point that the academy is disconnected from the profession with respect to understanding that lawyers and law firms are no longer the only vendors for solving legal business problems. The legal services ecosystem has expanded greatly, with corporations increasingly looking to technology firms and law providers to meet their needs for legal services.¹⁷

Finally, the opening panel touched on the inequities in the distribution of financial aid to law students. Students with greater financial need tend to pay more (and incur more debt) for law school and at the same time tend to graduate into lower paying jobs, while students with less need tend to pay less to attend law school while garnering higher paying jobs. As Leipold commented, this is a “place of moral jeopardy for legal education.”

II. A CONVERSATION WITH HILARIE BASS, PRESIDENT OF THE AMERICAN BAR ASSOCIATION

Moderator:

- Kellye Testy, President, LSAC

The conversation with President Bass began with a discussion of the need to align the skills and knowledge that legal employers expect law graduates to possess with what law schools are teaching and with the professional licensing system. This alignment, Bass explained, should begin by defining the knowledge, skills, and values new lawyers should possess. We would then design a licensing system to test those domains, and finally, law schools would structure their curricula to prepare students for licensure and practice. Bass noted that the ABA is uniquely capable of bringing together the various stakeholders to address these challenges. She has appointed a Commission on the Future of Legal Education that will issue a report by August 2019 after nearly two years of work.

¹⁷ In her panel presentation, Connie Brenton, President of Corporate Legal Operations Consortium, provided a detailed account of the newly emerged corporate legal services industry. *See infra* pp. 322–23.

Asked what competencies new law graduates need for the practice of law today but which currently are not taught in most law schools, Bass mentioned two primary areas. The first encompasses: technological skills, for example, how artificial intelligence is going to affect the practice of law; basic project management skills; and the ability to solve legal problems efficiently. The second comprises the professional skills necessary for students to be practice-ready when they graduate. Bass floated the idea of a mandatory, post-graduate year of supervised legal work, perhaps serving low-income clients and thereby ameliorating the access to justice gap, before licensure. Regarding the respective roles of law schools and the profession in educating new lawyers, she explained that the cost to firms of training lawyers is significant, and because Millennials typically do not plan to stay at their first job for the longer term, firms are less willing to invest in the training of new lawyers and increasingly look to hire third- or fourth-year laterals who have been trained elsewhere.¹⁸

In discussing law school curricula, Bass suggested that we need to do a better job preparing graduates for the jobs of today, and ensure that legal education is as transformative as the profession. As Richard Suskind has said, the practice of law will be more transformative in the next 20 years than it has been in the past 200. Legal education needs to catch up and be reflective of that.

She indicated that the ABA Commission on the Future of Legal Education could address the need to reform law school curricula by formulating a set of best practices or principles to which law schools could commit, thereby signaling to employers that they understand what is needed to prepare students for law practice.

Bass took direct aim at the current system for licensing new lawyers, stating that it makes little sense and serves primarily protectionist interests. “We continue to teach as we have for the past 100 years, and to test as though graduates will enter practice in the 1950s.” If we were to design a system from scratch today, she stated, it would not be a single test given after three years of law school, which would have to be retaken in its entirety if not passed on the first attempt. “Who would design a test like that, except to create a barrier to entry to the profession?” More than thirty states have adopted the Uniform Bar Examination, but they have set varying cut scores although there are no validity studies establishing that a certain minimum score is needed to demonstrate competence. Further, about 90 percent of

¹⁸ Dean Sheppard made the point somewhat differently in his presentation. He observed that “legal education in the U.S. is absorbing from the profession much of the responsibility for training and mentoring new lawyers. The profession has significantly reduced its investment in lawyer training over the past two decades, not for the benefit of clients, but to enhance per partner profits.” *See infra* pp. 324–25.

graduates who fail the bar exam on the first attempt go on to pass it within two years thereafter. In the meantime, they have forgone income and incurred more debt, but no one thinks that they will be better lawyers for having done the additional studying needed to pass the exam. “It’s just a barrier to entry that is not producing better lawyers.”

Bass questioned whether the bar exam should be more focused on skills and problem solving, and less on substantive knowledge. Further, she raised the idea of a staged bar admission system in which knowledge of substantive law would be tested after the first year, and essential legal skills and the ability to solve legal problems would be tested upon graduation. (Testy noted that it is highly challenging to design a test of skills that is valid and reliable.) Students who do not pass the exam on substantive knowledge after the first year of law school would stand to save the time and cost of two more years of law school by leaving law school at that point. Finally, Bass also said that students should be allowed to retake only those test subjects that they had not passed, rather than requiring them to retake the entire exam (as in Accounting).¹⁹

Regarding the political will to effectuate changes to the bar exam, Bass stated that the Commission might recommend several alternatives to the current regime, and that the transition to a new system could start with just one or several jurisdictions leading the way.

III. TAKING AN INTEGRATED VIEW OF LEGAL EDUCATION AND LICENSURE

Panelists:

- Connie Brenton, Senior Director, Legal Operations, NetApp, Inc. and President and CEO, Corporate Legal Operations Consortium (CLOC)
- Alli Gerkman, Director of Educating Tomorrow’s Lawyers (ETL), The Institute for the Advancement of the American Legal System, at the University of Denver
- Daniel B. Rodriguez, Dean, Northwestern University Pritzker School of Law
- Stephen M. Sheppard, Dean, St. Mary’s University School of Law

¹⁹ As later noted by Judith Gundersen, President of the NCBE, see *infra* p. 328, most jurisdictions currently use a compensatory scoring model whereby a high score on one part of the bar exam can offset a low score on other parts.

Moderator:

- Joan Howarth, Distinguished Visiting Professor, Boyd School of Law, University of Nevada Las Vegas, and Dean Emerita and Professor of Law, Michigan State University College of Law

The speakers on this panel addressed effectively aligning law school curricula with the needs of the profession; the changing and expanding ecosystem of corporate legal services vendors and what this means for law firms, law schools, and law students;²⁰ trends in the evolution of law school curricula; and the disconnect between legal education and the current system of licensure, on the one hand, and the interests of clients, on the other.

Director of Educating Tomorrow's Lawyers Ali Gerkman reported on ETL's ongoing project, Foundations for Practice. The project has three objectives: (1) to identify the foundations entry-level lawyers need, (2) to develop measurable models of legal education that support those foundations, and (3) to align market needs with hiring practices. With respect to the first objective, ETL surveyed more than 24,000 lawyers regarding 147 legal skills, professional competencies, and personal characteristics that lawyers need in the short term (right out of law school), that lawyers need over time, that are advantageous but not essential, or that are not relevant. Seventy-seven foundations were identified by more than 50% of respondents as foundations that lawyers need right out of law school. 40.3% of these foundations are personal characteristics, 39.0% are professional competencies, and 20.8% are legal skills. Of the 20 foundations most commonly identified as necessary, only one (researching the law) is a legal skill, and only 50.7% of respondents indicated that core knowledge of relevant substantive and procedural law is necessary right out of law school.²¹

ETL is now in the process of addressing the second objective, developing measurable models of legal education to support the 77 foundations identified by a majority of the survey respondents as necessary right out of law school. To facilitate the development of the models, the 77 foundations are classified within five broader areas: the lawyer as (1) practitioner, (2) professional, (3) communicator, (4) problem-solver, and (5) self-starter. To ensure that a model is achieving its goals with regard to

²⁰ As part of the panel on Meeting the Needs of Society and the Market, Fernando Garcia also discussed how in-house legal departments are increasingly looking to hire lawyers with a wide breadth of knowledge across multiple disciplines—such as technology, business, risk management, and compliance—that allows for collaboration with key areas of the business. *See infra* pp. 332–33.

²¹ The full ETL report, Foundations for Practice: The Whole Lawyer and the Character Quotient, is available at: <https://iaals.du.edu/publications/foundations-practice-whole-lawyer-and-character-quotient>.

students acquiring the foundations, schools must make their learning outcomes explicit, and measure student and program outcomes in order to assess and improve the outcomes.

From her vantage point as President of CLOC and Senior Director of Legal Operations at NetApp, Connie Brenton described the changes that are taking place in how corporations buy legal services. Corporate legal services today comprise an expansive ecosystem that includes in-house lawyers and legal operations, law firms, legal technology providers, law companies, consultants, staffing agencies, and law schools. It is not just in-house legal staffs and outside counsel as in the past. The changes in how corporations meet their legal needs are being driven by the highly competitive pressures faced by law firms, the evolving role of in-house general counsel, the expectation that the legal department will be run like the rest of the business, the advent of legal operations (centralizing legal services purchasing), advances in technology, the entry of law companies and legal labor arbitrage into the market (adding further competitive pressures), and the founding and rapid expansion of CLOC, which brings together corporate buyers of legal services.

These changes in how corporations buy legal services are significantly impacting law firms. Demand for legal services from law firms is flat or increasing only marginally; pricing pressure, including from CLOC and other industry groups is intense; and corporate clients are demanding more for less. Corporations are not paying for first-year associates. Lawyers regularly move laterally from one firm to another. The Big Four accounting firms have had a significant impact on the legal market in Europe, and that trend is coming to the States. Law companies are growing and winning business. Legal technology companies are automating services and services delivery.

Within corporations, the need for legal services is increasing, as business has become more complicated and global. As a result, the cost of legal support is increasing, and this reality is met with counter pressures to reduce costs and to bring work in-house because it is cheaper and better. In-house legal operations can see across the organization and implement legal technology across the entire enterprise (e.g., work flow technology). The market offers a myriad of legal support options, and in-house legal operations managers are expert in managing the purchase and delivery of legal services efficiently from the ecosystem of providers. The role of the general counsel has changed significantly over the past two decades, with general counsel today having moderate to high sensitivity to legal fees and rates.

There are more and bigger law companies in the marketplace today. Indeed, the largest law company in the United States is only four years old.

Legal operations has assumed broad responsibilities within corporations for purchasing legal services. Legal operations may be defined as a multi-

disciplinary function that optimizes legal services delivery by focusing on core competencies such as data analysis, financial management, cross-functional alignment, and service delivery and alternative support models. Legal operations have spurred advances in technology, such as automated workflow tools, electronic signatures, e-Discovery, artificial intelligence, chat bots, e-Billing, contract management, IP management, data analytics and dashboards, and records management.

In closing, Brenton observed that these changes in the way corporations manage their needs for legal services present opportunities for law schools and law students. There will be many job opportunities in all of the various parts of the legal services ecosystem, including positions with law companies, legal technology companies, as well as with in-house law legal departments and legal operations. To open these doors, students must understand the business of law and how to navigate the complex ecosystem. Technology has eliminated the need for a lot of types of legal work, but at the same time, there is a need for law-trained people who can create and refine technologies that will further reduce the cost and increase the efficiency of corporate legal services.

Dean Dan Rodriguez described the broad contours of law school curricula today, and current trends in their development.²² While there are significant variations across law schools, curricula today commonly ensure: exposure to the institutions that protect and advance the rule of law, familiarity with the contours of public and private law, competence in legal reasoning and thinking like a lawyer, development of quantitative skills and an ability to work with data, and the acquisition of “soft” skills such as professional values and leadership skills. ABA accreditation requirements, he noted, impose few mandates on the composition of law school curricula.

Rodriguez identified five trends in the evolution of law school curricula: expanded experiential education;²³ placing writing at the center of the curriculum; promoting cumulative knowledge through building blocks; inculcation of the idea that the business of law entails the provision of legal services, which is not limited to lawyers but includes other providers; and course work and extra curricular activities that expose students to the intersections of law, business, and technology.

Rodriguez highlighted two initiatives that reflect some of these trends. The first is the Institute for the Future of Legal Practice, created by a consortium of three schools, including Northwestern. The Institute is

²² For a more detailed consideration of changes in law school curricula, see Daniel B. Rodriguez, *Legal Education and Its Innovations*, 13 FIU L. REV. 199 (2018).

²³ See also Edward M. Peñalver, *The Role of Skills Instruction in Legal Education*, 13 FIU L. REV. 229 (2018) (addressing “the challenge of clearly defining the skills [graduates] will need to succeed as young lawyers” and how to incorporate them in both doctrinal and clinical courses).

comprised of two summer boot camps. The first is “basic” and lasts three weeks, followed by a 10-week summer internship. Offered after the 1L year, the basic boot camp covers business accounting, professional communication and team work, mergers and acquisitions, high volume commercial contracting, project management, and data analytics. The second boot camp lasts five weeks, followed by a 7-month paid internship. The internships arranged by the Institute are with leading corporations and national law firms.

The second initiative, also involving Northwestern and several other schools, aims to expose students to the field of artificial intelligence and machine learning (e.g., smart contracts, block chain). The instructors in this program are from industry, not from the law faculty.

Finally, Rodriguez emphasized the importance of “de-siloing” legal education and integrating it with knowledge and skills from business and technology; and of ensuring that students understand that legal services are client-centered.

Dean Stephen Sheppard is chair of the Texas Task Force on the Bar Exam appointed by the Texas Supreme Court and charged with making recommendations concerning the future of the Texas bar examination. The Task Force’s report had not been issued as of the time of the Summit,²⁴ but Sheppard presented a number of observations regarding the Task Force’s work that are relevant to how best to align legal education, bar admissions requirements, and the needs of clients, including:

- Lawyers most define themselves by their professional skills and values.
- U.S. law schools are among the least practical among all U.S. professions, and U.S. law licensure is the least practical among countries, in terms of instruction in and assessment of practical skills.
- Legal education in the U.S. is absorbing from the profession much of the responsibility for training and mentoring new lawyers.
- Law school impracticality may serve an essential standard setting function with respect to professional skills and values. Because they are free of the incentive to maximize profits on an annual basis, and have a certain distance from the day-to-day, tenth-of-an-hour to tenth-of-an-hour concerns of legal practice, law schools are better positioned to determine the professional

²⁴ It has since been released, and is available here: https://www.txcourts.gov/media/1441612/final-task-force-report_051518.pdf.

expectations of new lawyers in terms of skills and values, and to ensure that these skills and values are increasingly interdisciplinary and appropriate to the moment.

- The process of licensure and the process of legal education are needlessly segregated in the legal profession.
- U.S. legal education focuses less on the needs of the client than nearly all other professional education. Likewise, the licensure system in the U.S. focuses less on the needs of the client than nearly all other professional licensing systems.
- U.S. law needs champions for clients, for justice, and for the rule of law. This requires lawyers with skills, knowledge, and values that are more like medicine and its integrated systems of education and licensure than U.S. law licensure and legal education are now. Legal education and licensure should become more like medical education and licensure by adopting: the idea of a standardized client; a licensing system that is integrated with the law school program with tests administered in stages both during and at the end of the educational program; and mandated clinical experiences throughout the educational program, with assessments of the ability of the student to demonstrate competence in essential skills such as communicating effectively with clients.

IV. ENVISIONING THE FUTURE OF THE BAR EXAMINATION AND ENTRY TO THE PROFESSION

Panelists:

- Diane Bosse, Chair, New York Board of Bar Examiners
- Judith Gundersen, President, NCBE
- Joan Howarth, Distinguished Visiting Professor, Boyd School of Law, University of Nevada Las Vegas, and Dean Emerita and Professor of Law, Michigan State University College of Law
- Judith Wegner, Dean and Burton Craig Professor of Law Emeritus, University of North Carolina School of Law, and principal investigator of the Carnegie Report on Educating Lawyers

Moderator:

- Cynthia Nance, Dean Emeritus and Nathan G. Gordon
Professor of Law, University of Arkansas School of
Law

Deans Joan Howarth and Judith Wegner began by outlining a proposal that they, along with Professor Claudia Angelos of New York University School of Law and Carol Chomsky of the University of Minnesota School of Law, have submitted to the ABA Commission on the Future of Legal Education. The proposal, which is discussed in greater detail in the article by Howarth and Wegner appearing in this volume,²⁵ addresses the intersection of the three key issues being addressed by the Commission: licensure, future skills, and access to justice. In addition, it seeks to reduce the cost of legal education.

Preliminary to the proposal, Howarth noted that the notion of lawyer competence is complex and ambiguous, that it is “constructed” rather than pre-ordained, and that it must be constructed based on the perspectives of both lawyers and law professors.²⁶ The proposal consists of four parts: (1) a new national post-1L year “pre-bar” or “early-bar” exam; (2) new pathways to limited licensure; (3) skills-based residencies in the second year of law school; and (4) improvements in post-law school state bar licensing exams. The post-1L test could be implemented by schools themselves, while new pathways to limited licensure would require states to establish limited licenses in particular areas of law practice. State bar admission authorities and the NCBE would determine improvements in post-law school licensing exams.

The post-1L exam would consist of multiple-choice and performance tests assessing critical thinking abilities, and legal research and writing skills in the context of several first-year courses. Taking issue with the premise that there is a broad range of doctrinal subjects that every attorney needs to know to be competent, the proposal contemplates that the post-1L exam would test fewer subjects.²⁷ Unlike the current bar exam, it would be a uniform criterion-based test of competence, not simply a rank ordering test. Testing doctrinal

²⁵ See Howarth & Wegner, *supra* note 12.

²⁶ As noted above, Dean Sheppard suggested in his presentation that law schools are better situated than the bar to determine the professional expectations of new lawyers, and to ensure that these skills and values are increasingly interdisciplinary and appropriate to the moment, because they are free of the incentive to maximize profits on an annual basis, and have a certain distance from the day-to-day concerns of legal practice. See *supra* pp. 324–25.

²⁷ In contrast, Diane Bosse suggested that because the license to practice law is a general license, authorizing practice in any area of law, bar admission tests must broadly sample the domains of knowledge covered by the license. See *infra* pp. 328–30.

knowledge and application after the first year could lead to improvements in legal education without adding to the cost.²⁸ A post-1L “pre-bar” could be developed by the LSAC, AccessLex, academic support professionals, and other legal educators.

As the first exam in a staged licensing system, the post-1L exam would free up the 2L and 3L years for more experiential education and specialization. Borrowing from Washington State’s Limited License Legal Technicians licensing system, the second part of the proposal calls for the 2L year to be devoted to foundational courses and courses in an area of specialty limited license (e.g., family law, debtor-creditor law, immigration law), and a supervised residency related to the limited license to be sought. At the end of the second year, students would take a limited license test and receive the limited license. This component of the proposal would expand access to justice in the areas of limited licensure and improve legal education through the sequenced development of mastery and expertise. In addition, it would reduce law school costs by enabling licensed employment after two years of law school, giving students more choices about whether and when to complete the J.D. degree for full licensure, and making it possible to complete the 3L year in residence, on line, or in a hybrid program. Further, it would allow the 3L year to be devoted to advanced courses in skills, doctrine, and theory, and to preparation for full licensure through such means as portfolio work products and specialization tests.²⁹

Finally, the proposal calls for significant reforms to existing state bar exams, including better practices to validate bar exams for broader notions of core competence; a two-stage bar admission system, allowing applicants to choose specializations; and incorporation of better methods of examination patterned on those introduced in Canada (open book), and England and Wales (skills-oriented simulations).

²⁸ Perhaps a post-1L test would save money for students who would not go on to incur an additional two years of debt upon failing the exam. *See supra* pp. 318–20 (summary of remarks of ABA President Hilarie Bass, suggesting that staged bar exam could save students the time and expense of two years of law school where they fail the post-1L exam). On the other hand, students might incur additional costs and debt to study for and retake the exam, as is the case with the current post-graduation bar exam. As noted by Dean Pierre in the panel discussion, the post-1L test can be compared to the “baby bar” that California requires of students attending non-accredited (ABA or state) schools. Howarth added that the “baby bar” serves a consumer protection function precluding students from continuing their legal education after the first year, incurring significant additional costs, where they have not passed it.

²⁹ Bosse also urged careful thought on whether a staged licensing system would decrease or increase access to the profession. For example, students might have to incur the time and costs of two bar review courses and two summers studying for the two stages of the bar exam. She further expressed hope that access to justice could be improved in ways that did not require providers to invest in two years of law school and a limited license. *See infra* pp. 328–30 (summary of remarks of Diane Bosse, Chair, New York Board of Bar Examiners).

In her presentation, Judith Gundersen noted several significant changes that have been made in the bar exam over the past ten years, and stated that the NCBE has set up a task force to study future changes based on the competencies, skills, and values needed by new lawyers today.

The Uniform Bar Examination (UBE) is a significant recent innovation that provides substantial savings in cost and time to new law graduates. In 2017, 26,876 UBE scores were earned, and 3,776 were transferred from one jurisdiction to another. The number of jurisdictions adopting the UBE has taken off, with 30 states on board so far. While passing cut scores are not uniform, there has been a march toward the middle ground, with 22 of 29 UBE jurisdictions requiring scores between 260 and 270, a range of five MBE points. The Multi-State Performance Test (MPT) allows jurisdictions to test some skills. For example, recent MPT problems have asked takers to counsel a client on accepting a settlement offer, draft findings of fact and conclusions of law, and analyze a proposed contract and redraft provisions to meet the client's needs.

Gundersen noted that there are two essential aspects of a licensing exam: it must be valid and reliable, and it must be fair. NCBE's process for developing and producing test questions for the MBE, MPT, and UBE takes nearly three years.

Looking to the future, Gundersen stated that the NCBE is open to considering any proposed reform to the bar exam, and that its task force on testing will solicit feedback from all stakeholders. She noted that the practice of law is changing, and that advances in technology may allow for testing skills and other competencies in ways that have not been possible in the past.

Diane Bosse wears or has worn several hats that relate to the future of the bar exam, including Chair of the New York Board of Bar Examiners, Chair of the NCBE's task force on testing, Chair-elect of the ABA Council of the Section of Legal Education and Admissions to the Bar, and former Chair of the NCBE Board of Directors. "The future bar exam may not look like the present or the past," she began. "I think we will see significant changes in the future."

Fundamentally, Bosse noted, the purpose of the bar exam is to give reasonable assurance to the public that people who are licensed to practice law have mastered to a reasonable degree the skills and knowledge that are necessary to do the job. Thus, in constructing the bar exam, the first task is to identify those core competencies that are required for the practice of law. Because admission to the bar permits an attorney to practice in any area of law, the exam should broadly sample the domains of knowledge and skills that are authorized by the license.

Looking to the future, Bosse addressed three key dimensions of the bar exam: content, format and method, and cost. She thought that the core MBE

subjects (Contracts, Torts, Civil Procedure, Property, Criminal Law, Constitutional Law, and Evidence) are likely to continue to be tested, but that the specifications may change—it may not be necessary to test as deeply within these subject areas as is the case today. The other subjects that are most commonly tested are Business Associations, Trusts, Wills and Estates, Conflicts of Law, Secured Transactions, and Family Law. The latter two subjects may be the best candidates for elimination, but there are compelling reasons for continuing to test them. Further, there are good reasons to add several subjects that are not currently tested. Legal Research should probably be tested beyond what is now tested on the MPT. Perhaps a basic knowledge of Accounting should be expected. Employment law has become very important, and arguably every lawyer should have a basic level of knowledge of it. The same may be said for Intellectual Property. Other domains of knowledge that have been mentioned during the course of the Summit as key to successful legal practice in the future include project management, technology, artificial intelligence, compliance, risk management, and quantitative skills.

Regarding the format of the exam, Bosse stated that performance test questions and the testing of legal skills through simulated skills performances should be considered. Agreeing with Gundersen, she anticipated that advances in technology and the widespread use of laptop computers by applicants to take the bar exam will enable testing of skills such as legal research, counseling, interviewing, negotiation, and drafting. Technology likely also will permit testing of existing subjects in new ways.

Finally, the time and cost of the exam are significant considerations. How long should the test be? Who will pay for it? The goals to be achieved in changing the bar exam must be considered in light of the costs and potential unintended consequences of the changes. State bars must consider the impact on legal education of changes in what is tested and how it is tested.

The idea of a staged bar exam should be considered, Bosse indicated, but it could impose significant unintended costs on applicants who would then take two summers and two bar preparation courses to prepare for the multiple tests.

As noted by Gundersen, any test must be valid, reliable, and fair. This requires that the test ask lots of questions. Thus, unless the test will extend over multiple days, it will have to be comprised in large measure of multiple-choice questions. A day could be added to test skills such as interviewing, counseling, and negotiation. However, extending the length of the exam might raise costs and decrease access. In addition, law schools will likely raise concerns that testing the additional subjects leaves less room in their curricula for students to specialize and that the bar exam is adding to the cost of legal education.

Bosse highlighted several non-test requirements that state bars should consider as means to assure new lawyer competence with respect to legal skills. One idea that has been mentioned is portfolio requirements whereby applicants would demonstrate that they have completed prescribed skills experiences as certified by a qualified supervisor, whether in law school or in a job held during law school. Along the same lines, state bars could implement mentoring programs whereby applicants or new lawyers would complete prescribed skills experiences under the supervision of a licensed mentor. In New York, every applicant must demonstrate that they have the skills and values necessary to provide effective, ethical, and responsible legal services through one of five pathways that the court has developed. For example, under one of the pathways, the applicant's school has developed a curricular plan for assuring competence in skills, and certifies that each individual applicant meets the basic requirements.

Another potential approach to reforming the current licensing system is to adopt required post-graduation, pre-licensure professional education modules. For example, with the adoption of the UBE, New York has implemented a 15-hour online course and open-book exam that all applicants must complete. It has been very effective in exposing applicants to topics such as practice pointers, social media issues, and license maintenance requirements.

Finally, reacting to the Howarth-Wegner proposal regarding limited licensure, Bosse expressed hope that the access to justice gap could be effectively addressed without requiring students to take two years of law school and incur two years of debt.

In the panel discussion, Dean Nance asked about the prospects for reforming the all-or-nothing rule on passing the bar. Unlike the CPA exam, for example, if an applicant for the bar does not pass the exam, he or she must retake the entire test, rather than just parts that were not passed. Gundersen explained that most jurisdictions use a compensatory scoring model whereby a high score on one part can offset a low score in other parts, but agreed that the all-or-nothing approach should be reconsidered. Relatedly, because the state portion of the bar exam is scaled to the MBE in most states, allowing an applicant to take only one day of the exam in a sitting would be problematic but possible as long as the state portion could be properly anchored. (Unlike the MBE, state section questions are not pre-tested, and so the degree of difficulty unavoidably varies somewhat from administration to administration.) It would be possible, but perhaps logistically challenging, to schedule the two sections of the exam with a break of several weeks between the MBE and state parts. Computer-based testing would ease the logistical problems.

V. MEETING THE NEEDS OF THE MARKET AND SOCIETY

Panelists:

- Bernie Burk, On Sabbatical, former Assistant Professor, University of North Carolina School of Law
- Fernando Garcia, General Counsel, Government Affairs and Corporate Secretary, Nissan Canada, Inc.
- James Leipold, Executive Director, NALP
- Scott F. Norberg, Professor of Law, Florida International University College of Law

Moderator:

- Jerome M. Organ, Professor of Law, University of St. Thomas School of Law

NALP Executive Director Jim Leipold began this panel with an overview of law graduate employment outcomes and trends over the past decade. In almost every sector – law firms, business, government, clerkships, public interest, and education – the number of jobs has declined over the past three years. The only exception has been the number of entry-level jobs at the largest firms of 500+ lawyers, and the most recent summer clerkship hiring data indicate that the number of those jobs will likely decline in the next cycle. The class of 2016 obtained the fewest number of law firm jobs since 1996. The percentage of graduates employed has gone up over this period almost entirely because the number of graduates has been declining. With respect to starting salaries, there is a bimodal distribution, with half of all graduates earning starting salaries in the \$45,000-\$65,000 range.

Professor Burk focused on the market for “law jobs,”³⁰ which he defined as full-time, long-term jobs that require bar passage. These jobs, Burk maintained, are jobs that justify three years of law school and the high cost of the law degree. The total number of law jobs is down 22% since 2007, and by 14% since 2001. The proportion of law graduates obtaining law jobs is down 10.5 points since 2007, and 8.5 points since 2001. There is not a single sector of the law job market that employs more graduates in law jobs than before the Great Recession. The number of entry-level non-law-firm jobs is down by 45% since 2007, and by 36% since 2001. The number of entry-level law jobs in private law firms is down by 14% since 2007, and flat compared to 2001. In sum, the law job market is not improving. Looking ahead, Burk

³⁰ In a full-length article appearing in this volume, Burk provides substantial additional detail regarding the employment market for new law graduates, and discusses the moral hazard faced by law schools as applications to law school have increased significantly this year while the numbers of law jobs are not expected to increase more than incrementally. Burk, *supra* note 2.

anticipates that the demand for entry-level law jobs will see gradual growth at best, roughly paralleling increases in GDP.

Burk stated that if law schools increase their entering class sizes, their employment outcomes are likely to deteriorate proportionately. “This is exactly the moral hazard that Jim Leipold talked about,” he said, referring to Leipold’s cautionary note about the perilous moment that law schools face with the increase in law school applications this year.³¹ “It is a classic collective action problem in that any individual law school has an incentive to increase its size, but if everybody does what is individually rational, we will all get burned something awful.”

My presentation, *What Responsibility Should Schools Have for Their Employment Outcomes?*, in effect addressed the collective action problem described by Burk. I have advocated that the ABA consider adopting an accreditation standard setting a minimum graduate legal employment rate as a response to the staggering levels of graduate debt incurred even as the entry level legal employment market has declined.³² While most law schools have strong graduate employment outcomes, a small but not insignificant group of about 20 schools report consistently very weak numbers. Yet, since 2011 these schools almost uniformly have pursued admissions policies designed to maintain enrollments rather than boost employment outcomes. (In the most extreme example, a school that reported fewer than 30 percent of graduates in FT, LT BPR jobs in 2011 and 2016 has decreased its median and 25th percentile LSAT scores by 5 and 6 points, respectively, between 2011 and 2017, and seen its bar passage rate fall by 26 points.) Most have markedly reduced admissions standards, and their bar passage rates have fallen, only further impairing their graduates’ employment prospects.³³ These data show that there is a gap in the ABA accreditation standards that should be filled with an employment outcome standard. An employment outcomes standard could replace the current bar passage standard, as bar passage is necessary but not sufficient for legal employment.

General Counsel Fernando Garcia addressed how in-house legal departments are increasingly looking to hire “T-shaped” rather than traditional “I-shaped” lawyers; and the possibilities for reducing the costs of legal services and meeting the access to justice gap in the future. The I-shaped lawyer has a depth of knowledge in law, while a T-shaped lawyer has, in addition, a breadth of knowledge across multiple disciplines—such as

³¹ See *supra* p. 331.

³² See, e.g., Norberg, *supra* note **Error! Bookmark not defined.**, at 1049–51. The number of law graduates has significantly exceeded the number of available law jobs in every year since 2001. With the oversupply of law graduates has come deflation and stagnation in starting salaries. *Id.* at 1040–45.

³³ See *id.* at 1046–49.

technology, business, risk management, and compliance—that allows for collaboration with key areas of the business.

Garcia noted that in Canada, like the United States, there are vast unmet legal needs, and many people with legal problems turn to non-lawyers for assistance. Thus, there are opportunities to tap into this market, and the question is how we can take advantage of the opportunities. Garcia foresees lowering the cost of legal services through the use of legal technology, including artificial intelligence; by reducing overhead and using flexible work arrangements; and by leveraging diversity to reach communities in need of legal representation.

Much of the ensuing discussion focused on the question of whether J.D. Advantage (JDA) jobs are good employment outcomes for law school graduates. There was a consensus among the panelists that the category is overbroad, and that while some JDA jobs are desirable outcomes, many of them are not jobs that students would purposefully invest the time and money required for a J.D. degree in order to obtain. Indeed, many are jobs that one-year master of laws degree programs are designed to prepare students for.

Relatedly, the panel discussed the tension between preparing students for law practice in the future and preparing them for non-lawyer jobs. It is increasingly difficult to predict the future needs of the profession as the pace of technological change accelerates, yet schools must plan their curricula based on what is known about future needs at the time. It was also noted that, whether because of the regulatory structure or the reputational capital game, there is very little specialization among schools with respect to the types of jobs (e.g., small practice or corporate practice) that they prepare students for. In sum, given that the current economy requires many fewer lawyers than law schools are graduating, law schools are faced with the difficult choice of either getting better at preparing students for JDA jobs or enrolling fewer students.

VI. DEVELOPING SUSTAINABLE FUNDING MODELS FOR LEGAL EDUCATION

Panelists:

- Grant Carwile, Managing Director, SL Capital Strategies
- Christopher P. Chapman, President and CEO, AccessLex Institute
- John Pierre, Chancellor, Southern University Law Center

- Patricia D. White, Dean, University of Miami School of Law and Chair, ABA Commission on the Future of Legal Education

Moderator:

- Wendy Perdue, Dean, University of Richmond School of Law and President, AALS

This panel addressed two basic topics: the likelihood of reductions in federal student aid programs and how these reductions will impact the financing of legal education; and how law schools can cut costs, and replace and expand tuition revenues. Dean Patricia White noted at the outset of this panel that developing sustainable funding models for higher education including legal education is among the greatest challenges currently facing the United States.

Chris Chapman provided an overview of the current federal student aid programs and an update on likely changes. On the front end, the federal student loan program currently covers the full cost of attendance (tuition and living expenses). On the back end, income driven loan repayment options provide for loan forgiveness by permitting borrowers to repay based on a percentage of income available after living expenses. This is not a sustainable model, and it is likely that the feds will act within the next several years to both place a cap on how much graduate students can borrow on the front end and reduce the extent of loan forgiveness on the back end. Depending on where the cap is set, it is likely that more than a few schools will be forced to close because even a radical restructuring of the budget would not make survival possible.

These changes will require law students to access the private lending market in order to finance their legal education. As explained by Grant Carwile, private lenders (which include banks/finance companies, and state agencies in about 20 states), unlike the federal government, make lending decisions and set interest rates based on the risk posed by the individual borrower using sophisticated credit scoring systems (state agencies typically use FICO scores). The approval rates on private loans are approximately 20-30%, and fewer loans are approved now than in 2006 when the federal government began lending to cover the full cost of attendance. In order to enable students to get private loans, schools may need to share the risk of nonpayment, such as by agreeing to guaranty some percentage of the dollar loss.

As White explained, both private and public institutions today are funded primarily by tuition. Faculty and staff salaries are the largest expenses followed by scholarships/tuition discounts, and therefore the possibilities for cutting costs are limited. At the same time, greater competition for students

and the declining college-age population limit schools' ability to raise tuition or increase the number of students/customers. Perhaps most significantly, as noted above, the federal government may soon place limits on the amounts that students can borrow to attend graduate school.

Schools must think creatively about how to replace and expand tuition revenues. They can diversify their offerings, such as by adding non-JD law degree programs, CLE programs, leadership or similar sorts of training programs, and certificate programs. But these are minor fixes, unlikely to generate anywhere near the revenues needed to fund the costs of legal education. Schools might consider more radical diversification, such as selling legal services as part of training students (which could also ameliorate the access to justice gap), or partnering with legal services providers or even unrelated businesses. On the expense side, law schools might be operated more efficiently if "law school exceptionalism" is reduced and some functions are consolidated with larger university functions. Further, some schools might differentiate their programs by focusing more on teaching and less on scholarship, thereby cutting the cost of delivering legal education to students.

On a structural level, perhaps the length (and thus the cost) of law school could be reduced by permitting students to take the first year of law school as the final year of undergraduate study. Or law schools could develop specializations whereby students could focus on a particular area of law practice and complete the degree in a shorter time. Further, states should consider licensing legal practitioners to practice in limited areas that do not require a full three-year J.D. degree. A federal cap on graduate student loans is likely to bring part-time law study back into vogue.

The subsequent breakout group discussions also generated ideas for law schools to increase revenues and reduce costs. Ideas included: develop niche law firms within schools to train students and generate income; facilitate expanding the number of schools where scholarship is not a significant faculty responsibility so that teaching loads can be increased and the size of the faculty reduced; reduce to six years the time required to earn the B.A. and J.D. degree by counting credits earned during the first year of law school toward the last year of the undergraduate degree; increase efficiency by creating consortiums among law schools that would share offerings and services; review faculty and staff salaries; and find ways to leverage relationships with the bar to implement clinics at scale.

In his presentation, Dean John Pierre discussed how his school, a public law school that has seen significant reductions in state support, is working creatively to diversify revenue streams. He described several public-private partnerships and programs where the school is providing legal and other services. In the Clean Water Initiative, the law school essentially is working

as a consultant to rural communities across the state on water quality issues, and in addition has contracted with the state to perform water testing. In the Disaster Legal Clinic, students under the direction of faculty members are helping low income individuals resolve legal issues related to obtaining FEMA aid in the wake of massive flooding in Louisiana. With the approval of medical marijuana in the state, the school has created a new program to provide training to state and industry officials and added several specialized courses to its J.D. curriculum. In addition, the school is developing two legal software applications (one to address criminal conviction expungements) that if successful will generate significant revenue. In some cases, these programs not only bring in additional revenue, but also provide paid work for students, thereby reducing their costs of attendance. Finally, the school runs what Pierre referred to as an “employment service” to help students find jobs during law school to help them finance their legal education, with some students taking more than three years to get the degree in order to make time for the employment while in school.

Where the law school is providing legal services, it is potentially in conflict with the practicing bar. This has not been the case with Southern University Law Center’s programs, however, because the work has been in areas where there is not expertise in the bar or for clients who could not pay for legal representation.

VII. ADDRESSING LAW SCHOOL AFFORDABILITY AND ACCESS

Panelists:

- Kyle McEntee, Executive Director and Co-Founder, Law School Transparency
- Jerry Organ, Professor of Law, University of St. Thomas School of Law
- Jamiene S. Studley, President, Western Association of Schools and Colleges Senior College and University Commission
- Aaron Taylor, Executive Director, AccessLex Center for Legal Education Excellence

Moderator:

- Scott F. Norberg, Professor of Law, Florida International University College of Law

This panel presented empirical data on the distribution of scholarship aid among law students, and offered ideas and proposals for how to bring about a more equitable distribution. AccessLex Center for Education Excellence Executive Director Aaron Taylor presented data from the 2016

Law School Survey of Student Engagement (LSSSE) showing that the large bulk of law school scholarships are merit-based, not need-based; that black and Latino students were less likely to receive merit aid than non-Hispanic white students; and that students from families where neither parent had more than a high school education were less likely to receive merit-based aid than students from families where one or both parents had a college degree. Merit-based aid correlates closely with LSAT scores, and the average LSAT scores of black and Latino students are significantly lower than those of non-Hispanic white students. Respondents who are black, Latino, or first-generation are both more likely to receive need-based aid and less likely to receive merit scholarships.³⁴

Professor Jerry Organ presented data gathered mostly from law schools' Standard 509 information reports. He divided schools into six categories of LSAT score bands based on median LSAT score. From 2010 to 2014, net tuition has gone up by roughly 10% at schools in the highest and lowest LSAT bands, and has gone down at schools in the four middle bands. Further, a much higher percentage of students with LSAT scores below 145, and between 145 and 149, pay full tuition than students overall. Black, Latino, and first-generation students have lower average LSAT scores than white students, and are more likely to attend schools with the lowest LSAT medians. Further, students at schools with conditional scholarships are far more likely to retain the scholarship after the first year if they attend a top-100 school than if they attend a bottom-100 school. The bottom line is that black, Latino, and first-generation students on average pay significantly more to attend law school than other students.

Further, from 2011 to 2015, there were 28 schools at which there was a nine-point difference between the 25th and the 75th percentile LSAT score. At these schools, the students in the top quartile receive very substantial scholarship aid, while students in the bottom quartile are mostly paying full freight. "There is moral hazard here," Organ noted, because at the same time the students in the bottom quartile of LSAT scores are paying far more for law school, the nine-point spread suggests that they will attain substantially worse bar pass and employment outcomes.

Kyle McEntee added empirical data on gender disparities in law school enrollments. Women perform about two points lower on average on the LSAT than men, and more often attend lower-ranked schools with significantly worse placement rates. As explained by Organ, these are the schools that have higher tuition, more students paying full tuition, and fewer students receiving full scholarships.

³⁴ In his full-length article appearing in this issue of the law review, Taylor focuses on how law school admissions and financial aid policies marginalize Black aspiring lawyers in particular. *See* Taylor, *supra* note 10.

The panel next turned to a consideration of means to address the inequitable distribution of financial aid. McEntee proposed that the ABA require schools to disclose data on tuition paid and debt incurred by students disaggregated by race/ethnicity and gender. Many schools are likely not aware of the extent of the inequities in their financial aid policies, and some schools would adjust their policies in light of the data. Further, just as with the ABA disclosure requirement regarding renewal of conditional scholarships imposed several years ago, the transparency of the data on financial aid policies would prompt many schools to reform their policies in response to applicant awareness of the data.³⁵

Taylor suggested that schools ask their students in the application process more about where they come from and whether they have overcome disadvantage. Under current admissions practices, schools are typically simply unaware of the need or lack of need on the part of applicants. In this connection, the FAFSA is now available at the time of application, so that it is now feasible to consider need at the admissions stage.

Recognizing that the weight given in the US News rankings to median LSAT score creates irresistible incentives to allocate financial aid based on “merit,” law schools could lobby US News to change its formula to factor in need-based aid or diversity. Along these lines, US News might be persuaded to take into account the spread between a school’s 25th and 75th percentile LSAT scores because of the especially profound disparities that likely exist at schools with very significant differences. McEntee advocated raising a fund to simply buy US News and shut it down.

Another possibility would be for legal education organizations such as the ABA and AALS to take the lead in lobbying Congress in the reauthorization of the Higher Education Act to limit the ability of higher education institutions to grant tuition discounts using funds borrowed by other students under the Title IV aid programs. Finally, law schools could take advantage of an existing antitrust law exemption that allows educational institutions to enter into agreements regarding the award of financial aid where they make all admissions decisions on a need-blind basis. This exemption is not currently used by any overlap group in higher education. Legal education’s leadership groups might also lead an effort to lobby Congress to expand the exemption so that more institutions would use it to increase need-based aid.

In the breakout group sessions following the panel, Summit participants brainstormed additional strategies for redressing the inequitable distribution of financial aid. Ideas included: educate alumni, foundation, and donor

³⁵ McEntee fleshes out his proposal in his full-length article appearing in this issue of the law review. See McEntee, *supra* note 14.

constituencies to condition gifts and funds on the school adopting equitable financial aid policies; create a certification system to recognize schools that adhere to defined equitable financial aid policies; and forcefully renew the call for schools to boycott reporting to US News.