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A More Cost Effective Model for Legal Education

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Jack Graves *

In his most recent book, Richard Susskind focuses on three primary drivers of change in the market for legal services: (1) the “more-for-less” challenge; (2) the “liberalization” of the regulatory environment; and (3) the effective use of “information technology.”¹ These same three drivers provide the keys to unlocking a more efficient and effective system of legal education. The price of a legal education must be significantly reduced at the vast majority of law schools, and we must deliver a better education at this reduced price. Together, these two objectives comprise the obvious, yet daunting, “more-for-less” challenge we face as educators. Meeting this challenge will require a “liberalization” of the law school regulatory environment, along with the effective use of “information technology.” It will also require a willingness on the part of educators to move beyond the status quo and many of our respective comfort zones. This essay suggests the basic outlines of one model for doing so.²

Most readers are likely familiar with the current bimodal salary distribution curve for first year legal employment. This bimodal distribution reflects a small minority of graduates grouped tightly around \$160,000 and the vast majority within a more widely distributed group centered around \$50,000. The basic problem with current law school economics is that the cost of tuition generally reflects the high side of this curve, while students are paying that tuition (typically, by paying off law school debt) with income generated on the low side—and that’s assuming they find legal employment. For the vast majority of law schools, employment on the high side of this curve is the rare exception, and tuition must reflect more accurately real employment outcomes available to the majority of graduates. Reducing law school tuition (and resulting debt) will also make it far easier for graduates to consider the sort of endeavors likely to improve access to justice.

In his authoritative article on law school ROI, former Louisville Dean Jim Chen provides a useful “rule of thumb” suggesting that, for “adequate” financial viability, total law school tuition should not exceed a graduate’s starting salary.³ For purposes of this essay, I adopt Chen’s rule of thumb and further assume a “median” starting salary of \$50,000. This assumption is likely generous when one considers all graduates—not just those reporting employment and income. Thus, my “target” for **total** law school tuition is \$50,000 or less—a very substantial reduction for many law schools. Before addressing the proposed model, however, one additional issue is worthy of note.

About 10% of JD graduates take, but fail to pass, the bar exam, leaving approximately 150,000 law graduates (as of 2010) with a 0% chance of securing employment requiring bar passage.⁴ And this does not include students who begin law school, but fail to complete it, often incurring significant financial costs in the process. The percentage of law school and bar exam failures will likely increase as law schools dip more deeply into a shrinking pool of applicants.

Thus, in addition to providing a reasonable return on invested tuition dollars for successful students, an improved model should also minimize the financial risk for unsuccessful students.

With the foregoing in mind, the model objectives can be outlined as follows:

- (1) Provide an education leading to a JD degree for \$50,000 or less in total tuition;
- (2) Do so in a manner that reasonably minimizes the risk of failure; and
- (3) Improve the overall quality of the education provided.

Yes, this represents a serious challenge—one that likely requires a significant reduction in total faculty compensation (the primary cost driver in legal education) derived from JD student tuition. However, if we focus squarely on improving legal education—and not on preserving the status quo—then I believe these objectives are achievable.

I find it helpful to break legal education into distinct “stages.” Stage 1 focuses on basic doctrine and analytical skills, along with legal research, writing and professional responsibility—in short, everything a law student needs to pass a current bar exam.⁵ Stage 2 focuses on further development of the skills, values, and judgment a graduate will need to practice law—all of which a prospective attorney should acquire prior to licensure. Ideally, Stage 1 would be relatively inexpensive and would be followed immediately by the bar exam. A student would only begin the necessarily more costly Stage 2 after successful completion of Stage 1, thereby allowing a student to begin to specialize and focus on practice-oriented course work, without further concerns about “bar preparation.” However, licensure would require the successful completion of both Stages 1 and 2—providing at least the functional equivalent of a current JD program.⁶

The proposed model would deliver the first half of the JD curriculum at a dramatically reduced price and would do so over twelve consecutive calendar months. Cost reductions would be achieved by moving to a twelve-month academic year and improving the efficiency of doctrinal course delivery, likely utilizing larger classes and including significant online components. While research, analysis, and writing instruction would continue to be delivered in relatively smaller classes, this too would likely benefit from greater efficiencies through the use of online components. Faculty would generally be expected to teach increased individual loads to reduce costs further.⁷ All of the doctrinal content necessary to prepare for the bar exam, as well as the necessary analytical and writing skills, would be delivered in three successive trimesters (or four quarters) within these first twelve calendar months.

This Stage 1 program could serve multiple objectives, all of which would potentially generate law school revenue from a common nucleus of courses, thereby reducing the required individual tuition price per student. First and foremost, Stage 1 would lay the basic doctrinal and analytical foundation for a JD and prepare the student to take the bar exam upon completion. However, the completion of Stage 1, by itself, could also be recognized in a “Certificate” or “Master of Legal Studies” program intended for those interested in a basic legal education without the actual practice component and predicate to licensure, or as an ideal introduction to U.S. law and legal methods for a foreign trained lawyer (i.e., as the primary basis for an LLM program in U.S. law for foreign trained lawyers).

This combination of reducing costs and broadening revenue sources would allow for a lower tuition cost per student. Such changes are fully achievable without sacrificing educational quality—provided we are willing to take full advantage of available “information technology” and employ new pedagogical innovations. The tuition for Stage 1 should be no more than \$15,000.⁸

Having successfully completed Stage 1, a student would then, ideally, be allowed to sit for the bar exam—not as a final step to licensure, but as an intermediate gateway to Stage 2 of the JD program. After the successful completion of Stage 2, the graduate would then (and only then) be eligible for licensure, without further examination. The typical student would likely spend three to six months outside of the JD program between Stages 1 and 2, depending on the time required for bar exam results. Students might spend the time between exam administration and announcement of the results in a variety of ways, including positions analogous to current summer internships or clerkships. However, a student would not be eligible to begin Stage 2 until he or she had successfully passed the bar exam.

For students that ultimately failed to pass the exam, the cost of the experience would be far lower than under the current model. Thus, the financial cost of failure would be significantly reduced. This approach could more fully realize the goals of providing increased “access” to a legal education, while minimizing the risks associated with such increased access and significantly reducing the collateral financial casualties associated with the current model.

Once a student had successfully passed the bar exam, he or she could focus more fully on learning how to practice law during the final 12 months of the JD program delivered in Stage 2.⁹ The second stage would focus on practical skills, employing simulations, clinics, externships, and other practical experiences, all in combination with additional doctrinal development (including seminars) in students’ chosen areas of focus.

The resulting cost of delivering Stage 2 in an appropriate small group setting would be significantly greater than Stage 1; though, it might be partially subsidized by revenue generating clinics, as part of a law school, as law firm (similar to the medical or dental school model). Practice-focused Stage 2 curricular content would be, to a large degree, delivered by faculty simultaneously engaged in the practice of law.¹⁰ The tuition for Stage 2 might be in the range of \$30,000. However, no student would incur this amount without having first passed the bar exam, and the total JD tuition would be under \$50,000. A student would also be eligible for licensure almost a full year earlier than under the current model.¹¹

For the most part, this entire model can be realized under current ABA and state licensure rules. However, two crucial changes are needed to maximize its potential:

- (1) State bar examiners must allow early administration of the bar exam—not as a final step to licensure, but as an intermediate gateway to continued legal studies.
- (2) The ABA and state licensing bodies must allow broad use of effective online instruction throughout the JD program.

The “information technology” necessary to meet the “more-for-less” challenge in legal education is here today and improving constantly. All that is needed is a “liberalization” of the regulatory environment and a willingness on the part of the academy to face and meet the challenge.

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¹ RICHARD SUSSKIND, TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE (2013).

² This model was first described in an earlier essay, Jack Graves, *An Essay on Rebuilding and Renewal in American Legal Education*, 29 TOURO L. REV. 375 (2013), which was also submitted as a Comment to the ABA Task Force on the Future of Legal Education, on March 5, 2013. The current essay borrows liberally from the aforementioned publication (with permission of Touro Law Review), but omits many of the citations for the sake of brevity.

³ See generally Jim Chen, *A Degree of Practical Wisdom: The Ratio of Educational Debt to Income as a Basic Measurement of Law School Graduates' Economic Viability*, 38 WM. MITCHELL L. REV. 1185, 1203 (2012).

⁴ Jane Yakowitz, *Marooned: An Empirical Investigation Of Law School Graduates Who Fail The Bar Exam*, 60 J. Leg. Ed. 3 (2010).

⁵ Reforming the bar exam is another admirable objective, but beyond the scope of this essay.

⁶ In my earlier essay, I also address optional post-licensure training in "Stage 3." See Graves, *supra* note 2.

However, Stage 3 is omitted from this essay for the sake of brevity.

⁷ This may require us to reimagine other faculty roles, perhaps reducing the time spent on law school governance and focusing more on writing related directly to our teaching or related practice areas.

⁸ One might reasonably compare this price to the final three semesters of a hypothetical undergraduate degree in law.

⁹ This practice-focused approach might be analogized, in some respects, to the highly acclaimed Daniel Webster Scholar Honors Program at the University of New Hampshire School of Law. While not avoiding the bar exam, the experience could be quite similar after its completion and would be available to all students.

¹⁰ The intent here is not necessarily to suggest "adjunct" faculty (though they may too have a role to play), as much as professional faculty grounded in both practice and teaching, as is generally the case with current clinical faculty.

¹¹ Under this proposed model, the graduate could be licensed immediately upon graduation, 27 to 30 months after beginning law school, while the current model requires approximately 33 months, plus the time required to take and pass the bar exam and receive results, generally about 38 to 40 months in total.