



# REPORT OF THE TASK FORCE ON LAW, THE ECONOMY AND UNDEREMPLOYMENT



## BEGINNING THE CONVERSATION

MAY 17, 2012



## PREFACE

This report is the culmination of a series of meetings, conversations and summary analyses of readily available data, conducted over a six-month period by 14 volunteer task force members who, at the request of Massachusetts Bar Association President Richard P. Campbell, came together to explore the growing problem of underemployment among many of today's law school graduates in Massachusetts. The report is intended only as a starting point in the quest to better understand root causes of the problem of underemployment among law school graduates in Massachusetts and potential solutions thereto.

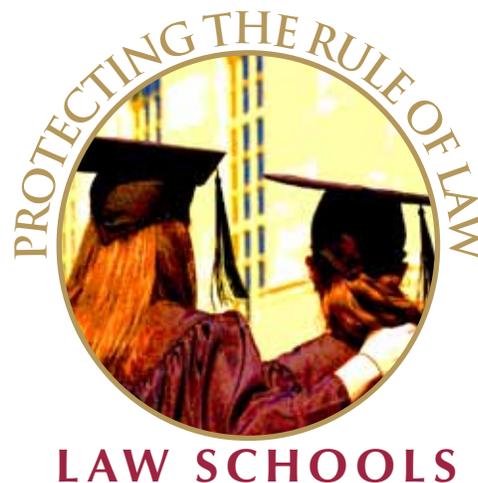
Our hope is that the MBA will consider the recommendations contained in this report with the goal of establishing a permanent committee to study and ultimately endorse proposed changes to the current law school teaching model and to identify and better manage obstacles to employment that are confronting recent graduates and seasoned professionals alike.

As co-chairs of the task force, we wish to thank each of our members who generously gave of themselves and their precious time to study this highly controversial topic and helped formulate recommendations that we hope are just the beginning of the long and important process of improving the prospect of employment among law school graduates while meeting society's demand for quality legal services.

Respectfully submitted,

*Radha Natarajan, Esq. and Eric J. Parker, Esq.*

Co-chairs, MBA Task Force on Law, the Economy and Underemployment



# TABLE OF CONTENTS

INTRODUCTION .....	1
I. CURRICULUM REFORMATION: Placing a Greater Emphasis on Practical Legal Training and the Argument for the Creation of a Legal Residency Program.....	3
II. FAIR DISCLOSURE AND REASONABLE EXPECTATIONS.....	10
III. OBSTACLES TO EMPLOYMENT .....	15
IV. RESOURCE UTILIZATION AND SKILL ENHANCEMENT.....	18
SUMMARY.....	19
CONCLUSION .....	28
APPENDIX .....	29
FOOTNOTES .....	30

# INTRODUCTION

The MBA Task Force on Law, the Economy and Underemployment began its work in November of 2011 with a mission to study factors contributing to the problem of underemployment among recent law school graduates in Massachusetts. The task force was comprised of the following members (in alphabetical order):

- **Heather Cox**, student, Suffolk University Law School, Boston;
- **Heather A. Engman, Esq.**, deputy general counsel, Massachusetts Department of Public Health, Boston;
- **Kyle R. Guelcher, Esq.**, Law Office of Kyle R. Guelcher, Springfield;
- **John B. Koss, Esq.**, Mintz Levin, Boston;
- **Marc A. Moccia, Esq.**, 2011 graduate, Suffolk Law School, Boston;
- **Denise I. Murphy, Esq.**, Rubin & Rudman, Boston;
- **Lynn Sari Muster, Esq.**, staff attorney, Massachusetts Appeals Court, Boston;
- **Radha Natarajan, Esq.**, Committee for Public Counsel Services, Somerville;
- **Elizabeth O'Connell**, pre-law advisor, Wellesley College, Wellesley;
- **Eric J. Parker, Esq.**, Parker Scheer LLP, Boston;
- **Doreen M. Rachal, Esq.**, Bingham McCutchen, Boston;
- **Hon. David Ricciardone**, associate justice, Massachusetts Superior Court, Boston;
- **Paul Edward White, Esq.**, Sugarman, Rogers, Barshak & Cohen, Boston; and
- **Marc P. Zwetchkenbaum, Esq.**, Marc Z. Legal Staffing, Boston.

In an effort to achieve its mission, the task force members were divided into four sub-committees, assigned to explore and report on: (1) law school curriculum reformation and the creation of a legal residency program; (2) fair disclosure of data by law schools and reasonable expectations by prospective law students; (3) structural obstacles to employment; and (4) avenues to utilize the resource of new law graduates while enhancing their skills for employment. While these topics are by no means an exhaustive list of factors contributing to the current employment picture, the task force used them as a launching point for what it hopes will be a more extended conversation.

The task force initially examined two non-legal professions currently experiencing little to no unemployment among its recent graduates, and compared their teaching methodologies to that of a typical modern law school. The task force found that both the medical and dental school teaching models place considerable emphasis on providing the kinds of hands-on practical training that more fully equips students to begin practicing soon after graduation. In contrast, while law schools offer a certain amount of practical training, largely at the election of the student, the primary concentration of offerings continues to be highly theoretical. The task force recommends that the MBA encourage Massachusetts law schools to reinvent the third year so as to provide greater opportunities for law students to gain practical legal experience and expand opportunities to hone their legal writing skills, beyond that offered through traditional first year legal writing programs.

In order to incentivize law schools to make such a shift, while remaining responsive to the needs of its readers, *U.S. News & World Report* should be pressed to incorporate a new criterion into its ranking system, based on how well each law school prepared its graduates for actual practice. Finally, the task force recommends that the MBA further explore the concept of a highly supervised legal residency program, which would provide practice-area specific training (such as civil trial law, criminal defense or probate practice training) to third year students and/or recent graduates in their chosen area of legal concentration.

The task force also considered the highly publicized issue of law schools misreporting admissions and employment data. While there have only been two recent examples of law schools supplying false admissions data, the task force considered whether the sanctions for misreporting are sufficient to deter other law schools from doing the same. As one suggestion to ensure better compliance, the task force recommends that the MBA support legislation, similar in concept to the goals of the Sarbanes-Oxley Act, requiring law school deans and trustees to certify that the data provided by the law school is fair and accurate. With respect to employment data, because of significant changes made recently by the American Bar Association in collecting data from the law schools, it is premature to determine if more must still be done. However, the task force recommends that the MBA further explore alternative sources — rather than the law schools themselves — to provide the critical data upon which prospective law students rely when choosing a law school. At the same time, the task force members did feel that prospective law students bear some responsibility to conduct adequate investigation and adjust their expectations to the economic realities of the legal job market.

It is important to note that the task force did not limit its focus solely to law schools as it explored root causes of underemployment among new lawyers. It also examined existing barriers to employment in Massachusetts, including the oversupply of lawyers caused by the virtual open door bar admission policies existing in Massachusetts. In an effort to reduce these barriers, the task force recommends that the MBA pass a resolution to better regulate the bar passage rate in Massachusetts by tying it to the national average. The task force further recommends that Massachusetts limit reciprocity with lawyers admitted in foreign states and initiate reciprocal *pro hac vice* rules, particularly with its border states. The task force further suggests that Massachusetts law schools provide incentives for their students to practice in other states, to further expand the footprint of employment opportunities for graduates of the nine existing Massachusetts law schools.

Finally, the task force catalogued a number of resources and opportunities already available to unemployed and underemployed lawyers in Massachusetts in order to fill gaps in legal services' needs, and to provide recent graduates with experience necessary to increase marketable skills and thereby employment opportunities. While the task force made a number of recommendations to expand existing programs, the task force also supports the creation of certain new programs, including postgraduate clinics and the law school law firm, first proposed by Bradley T. Borden and Robert J. Rhee.

Together, this report and the recommendations contained herein, represent the beginning of an important conversation to address the dynamic employment prospects faced by current and future law school graduates. Perhaps the most significant of the task force's recommendations is that the MBA establish a permanent committee to study these and other factors contributing to underemployment among law school graduates with the goal of more closely monitoring evolving employment trends and developing strategies designed to overcome identified obstacles to employment.

# I. CURRICULUM REFORMATION:

## Placing a Greater Emphasis on Practical Legal Training and the Argument for the Creation of a Legal Residency Program

In an effort to identify potential root causes of underemployment among recent law school graduates, the task force examined the teaching models adopted by a variety of other professions which, according to published data, were not suffering the degree of underemployment currently experienced by recent law school graduates. While the comparisons were intentionally rough, certain features of the comparison models offer compelling arguments for the reformation of the current law school paradigm, particularly in the third year.

As part of its investigation, the Curriculum Reformation Subcommittee examined two unrelated professions in order to assess whether deficiencies existed in the current law school model that may be contributing factors in the underemployment of recent law school graduates. The two professions studied were the medical and dental teaching models. For discussion purposes, no specific regard was given to the geographical location of the models compared.

### THE MEDICAL SCHOOL MODEL

In contrast to the standard three-year law school model, medical school is a four-year program. There are approximately 18,665 medical school graduates each year.<sup>1</sup> The number of medical school openings has increased by 13 percent over the past few years because of a physician shortage predicted for 2020.<sup>2</sup> Only 43.6 percent of applicants are admitted to medical school.<sup>3</sup> Generally speaking, the first two years of medical school involve basic science/medicine lecture courses. The second two years involve a series of rotations through different specialties where students are exposed to the duties and responsibilities unique to each area of specialization.

Following medical school, graduates must complete a medical residency in order to become Board Eligible and, ultimately, after passing written and oral exams, Board Certified in a specific area of medical sub-specialization such as neurology or dermatology. Residencies are approximately three to six (or more) years in length and are specific to the type of medicine the physician intends to practice. Residents treat patients in a hospital setting under the supervision of senior residents and attending physicians. Each year, there are approximately 23,000 residency positions available for first-year graduates.<sup>4</sup> There are more residency positions available each year than there are graduates from U.S. medical schools. Accordingly, nearly all medical school graduates are able to secure a training program. Resident salaries range from approximately \$40,000 to \$60,000 annually. Medicare pays \$9.1 billion per year to teaching hospitals for resident salaries and other teaching costs.<sup>5</sup> Once the residency is complete, physicians are eligible to become Board Certified in their chosen areas of specialization.

Currently, there is no appreciable underemployment in the medical profession. In fact, all sources indicate an expected physician shortage, particularly in primary care, in the coming years. Depending on the specialty, average physician salaries range from \$150,000 to \$350,000.<sup>6</sup>

While comparisons are myriad, there are several striking differences between the medical school and law school teaching models. First, the number of students admitted to medical school is tightly controlled; only 43.6 percent of applicants are admitted. By contrast, according to the Law School Admission Council (LSAC), in the 2010–11 academic year, 87,900 individuals applied to law school and 60,400 students were admitted,<sup>7</sup> an admission rate of 68.7 percent. The number of medical school openings has been increased slightly in recent years because of a predicted physician shortage. There is little doubt that the national organizations that control medical education regulate the number of medical school graduates with a close eye on the number of available medical positions.

Second, approximately two years of the standard four-year medical school program is devoted to rotations through a variety of specialties. By the time medical students make decisions about their preferred residencies and the specialties they will pursue, they have already had significant experience in, and exposure to, a broad range of medical

fields and are thereby able to make more fully informed career decisions. By contrast, few law students receive exposure to more than one area of legal practice before accepting their first job, and that practice area may or may not be one to which the law school graduate was previously exposed, or had an interest in pursuing.

Third, the medical residency component of medical education provides true hands-on training and is funded by the federal government. Unlike the law school model, medical practitioners do not bear the cost of training doctors. Also unlike the law school model, every medical school graduate is virtually guaranteed to receive the basic training required to practice medicine within their self-selected area of specialization.

Interestingly, most patients do not pay for medical care out of pocket. Most medical care is paid for by private insurance or by the Medicare/Medicaid programs, or by other free care programs. Accordingly, the demand for medical services is not as sensitive to fluctuations in the economy as compared with the demand for legal services which, with certain exceptions, are privately funded. For this reason, the subcommittee chose to look at the dental profession, where services are more typically paid for with private funds.

## THE DENTAL SCHOOL MODEL

Like medical school, dental school is typically a four-year program. During the 2009–10 academic year, approximately 12,202 individuals applied to dental school and 5,089 were admitted, correlating to an admission rate of approximately 41.7 percent.<sup>8</sup> In contrast, according to the LSAC, in the 2010–11 academic year, 87,900 individuals applied to law school and 60,400 students were admitted<sup>9</sup> — an admission rate of 68.7 percent. By comparison, in 2009, 4,873 students graduated from dental school<sup>10</sup> while nearly 10 times that figure graduated from American law schools.<sup>11</sup>

As part of their formal dental school education, dental school students spend a significant portion of their time in laboratory instruction and provide highly supervised dental school-based patient care.<sup>12</sup> Over the course of the four-year dental school program, students spend their time as follows:

- 50.9 percent = dental school-based patient care
- 24.9 percent = didactic instruction
- 17.6 percent = laboratory instruction
- 6.7 percent = community based patient care<sup>13</sup>

Less than a quarter of all dental instruction is lecture-style with the remaining 75 percent of time spent on actual patient care or laboratory instruction.

Approximately 80 percent of dental school graduates are general dentists.<sup>14</sup> Post-doctoral training is generally not required to practice as a general dentist.<sup>15</sup> Of the 186,084 professionally active dentists in the United States, 170,694 dentists, or almost 92 percent, are in private practice.<sup>16</sup>

By comparison to recent law school statistics, there is no appreciable underemployment among recently minted dentists. According to the U.S. Bureau of Labor Statistics, dentists have a 0.8 percent unemployment rate and the “[e]mployment of dentists is expected to grow by 21 percent from 2010 to 2020, faster than the average for all occupations. Dentists will continue to see an increase in public demand for their services as studies continue to link oral health to overall health.”<sup>17</sup> The average income for dentists is approximately \$192,680 for a general practitioner and \$305,820 for a specialist.<sup>18</sup>

As with the medical profession, the number of students admitted to dental school appears carefully regulated. Additionally, as exists in the legal profession, most graduates are not required to complete a residency in order to practice. However, unlike law school, dental students spend the majority of their time in dental school in hands-on laboratory instruction and performing highly supervised patient care. Through this course of training, dental students receive the practical skills necessary to treat patients and earn income immediately upon graduation.

In summary, both medical and dental schools appear to regulate the volume of their graduates. Medical (including residency training) and dental schools provide students/graduates with the hands-on practical experience necessary to secure gainful employment and practice independently immediately upon the completion of their formal education. Private practitioners do not bear the cost of training doctors or dentists. The result of these myriad factors is a limited supply of doctors and dentists, relatively high demand for their services, and very low or nonexistent levels of unemployment. What can law schools learn from this comparison?

## **REINVENTING THE THIRD YEAR**

The Curriculum Reformation Subcommittee considered the question of how law schools can help strengthen the skill set currently possessed by new practitioners to increase employment among recent graduates. The underlying assumption in this analysis is that students with marketable real-world experience are more likely to be of greater value in a more competitive job market.

This assumption is supported by the suggestion of some commentators that major post-graduate employers such as law firms (and their paying clients) are now less willing to pay for new lawyers who do not possess any skills related to the actual day-to-day practice of law or any awareness of the legal needs of clients.<sup>19</sup> Whether this fundamental premise or the consequent shift in the expectations of employers is actual or perceived, the fact remains that the legal sector lost more than 45,000 jobs between 2008 and 2010 and continued to shed jobs through the end of 2011.<sup>20</sup> Additionally, despite some additional recruiting volume noted in 2011, law firms continue to bring in small summer classes that have barely increased in size from recession-era lows.<sup>21</sup>

In response to these recruiting realities, the subcommittee sought to identify ways to seize upon the third year of law school as the last best chance, prior to licensure, to expose students to the broad variety of job-related tasks they are likely to encounter in today's job market and in modern legal practice. While such experiences will not guarantee a law graduate a job, it is the belief of the task force that by ensuring a higher level of work experience, graduates will best position themselves to grapple with the reality of more competitive recruitment and will begin to change the perception employers have about new lawyers being a drain on resources.<sup>22</sup>

## **WHAT WOULD A REINVENTED THIRD YEAR LOOK LIKE?**

Offering law students greater practical training and marketable legal skills need not necessarily require a complete reinvention of the existing third year law school curricula at most law schools. Instead, law schools should consider increasing the focus and emphasis they place on the practical options they offer during this final — and in the opinion of some — the most critical year of legal training prior to practice. The central questions are as follows: If a student wants to gain greater practical legal experience, where can such training be found? And, if such training were scarce, what kinds of programs should be added to most benefit students?

As with students in the medical and dental profession, the task force recognizes that law school graduates possess the highest market value and are more employable once they have gained hands-on experience and legal skills of greater demand, especially in a more-competitive job market where such skills are relatively limited. The basis for this conclusion is common sense: students with hands-on experience are best able to appreciate the needs and expectations of employers and will be further empowered to consider employment opportunities that are ideally suited for their interests and skill sets. Such legal skills could also further embolden employers to rebut the perception that new lawyers lack useful, value-adding skills by allowing them to highlight new-hires who gained specialized legal training and experience during law school.

By way of example, since 1968, one Massachusetts law school, Northeastern University School of Law, has offered what it calls a Cooperative Legal Education Program. According to Northeastern, the law school integrates four quarters of full-time employment into its second- and third-year curricula. Work experiences are highly varied, are tailored to each student's individual professional interests and include more than 900 cooperative positions in more than

40 states and foreign countries. These positions include employment at law firms, judicial clerkships, public interest law settings, and government and service organizations.

In the cooperative program, after students complete their first year of law school study, they alternate quarters as either full-time law students or as full-time legal interns in real-world cooperative positions. These cooperative experiences afford law students the opportunity to experience and participate in the practice of law on a first-hand basis. Through direct exposure to diverse legal environments, these students are steeped in the expectations of their employers and gain the skills required to practice.

The net result of these cooperative experiences is that law students graduate with at least one full year of practical experience along with a resume that includes substantive areas of training, as well as the connections and recommendations that come along with (in medical school parlance) four rotations.

By all accounts, the Northeastern Model is an enviable one with, on average, 40 percent of cooperative students accepting post-graduate employment with a former cooperative employer.<sup>23</sup> Because these positions are part of each student's curriculum, they are also maximizing their exposure to potential post-graduate employers unlike students at other law schools who typically have the limited opportunity to accept similar positions during the summer. In a sheer numbers game, so the argument goes, these cooperative students have a competitive advantage of at least two additional employment experiences compared with students who work only one job each during the summers between their first and second years.

The advantages of a cooperative program such as Northeastern's are obvious in that it provides law students with practical experience in areas they choose for themselves as well as lasting connections that enhance future employability. Equally important are the connections these students establish in the legal community. Building a network of contacts that have witnessed a student's work first hand and can serve as mentors and references is essential to future employment opportunities.

Several other Massachusetts law schools offer clinical programs during the third year of law school that provide students with the opportunity to learn the fundamentals of trial advocacy and to step into the shoes of a criminal or civil litigator. Massachusetts Supreme Judicial Court Rule 3:03 allows a law student to appear on behalf of indigent parties in civil proceedings in any division of the District Court, Juvenile Court or Housing Court departments or in the Boston Municipal Court department; or in criminal proceedings in any division of the District Court, Juvenile Court or Housing Court departments or in the Boston Municipal Court department, or in the Supreme Judicial Court or the Appeals Court.<sup>24</sup>

Under Rule 3.03, generally speaking, civil litigation programs allow students to work alongside clinical instructors who supervise the student's management of actual cases for indigent clients. Civil litigation clinics typically offer students a choice of subjects upon which to focus their case work including housing issues, employment matters, disability benefits, and asylum, among others.

In the clinical setting, students undertake all aspects of case management including interviewing clients and witnesses, drafting pleadings and other legal documents, negotiating with attorneys, conducting research, drafting legal memoranda and representing clients before courts and administrative tribunals.

Similarly, in criminal litigation programs, law students carry full responsibility for the prosecution or defense of criminal cases. Students generally select whether they wish to focus their work on the prosecution or the defense of criminal law cases.

Under the supervision of clinical faculty, students gain hands-on experience in conducting investigations, formulating trial strategy, filing and arguing pretrial motions, participating in plea bargaining, trying cases, making sentencing arguments and drafting appellate briefs.

While these clinical experiences are focused largely on civil and criminal litigation in the context of public service, the litigation skills taught and the comprehension of the processes underlying the cases brought to trial have broad application to litigation in a more general context, whether at a law firm or some other type of employer. In other words, while the game may change, the rules remain the same, and these clinical experiences indoctrinate law students in the rules of the game.

Moreover, the contact these students make with opposing counsel, judges, and others involved in the litigation process, whether in the criminal or civil arena, allows these students to develop connections with the legal community resulting in increased mentoring, and a greater awareness by junior attorneys as to the needs and expectations of those who will be hiring following graduation. Because of the invaluable experience clinics and similar offerings provide, law schools are encouraged to expand those opportunities to ensure that a slot exists for every student who wishes one.

## **ENHANCING THE EXISTING CURRICULUM WITH ADVANCED LEGAL WRITING OPPORTUNITIES**

Even if it is not feasible for every student to receive a full year of practical legal training, additional attention to the legal writing skills required by the profession is another task force recommendation designed to increase employment of young lawyers.

Among the most challenging skills to master for new lawyers is the art of contract drafting and persuasive writing. Apart from first year writing programs offered by most law schools, it is common for law students to complete their formal training without further exposure to the requirements and rigors of advanced legal writing.

Options for such advanced writing classes could vary widely and take on multiple forms. A civil litigation writing class could assume the form of a case-study in which law students assume the role of practitioners running a case, beginning with a client interview, to gain sufficient facts to prepare a complaint or an answer to one. Students could prepare motions, engage in the drafting and answering of discovery requests, prepare a summary judgment filing, draft motions *in limine*, and try their hand at crafting jury instructions. Keying the entire class to the life of one case would not only allow these students to master the art of drafting for civil litigation but would also lead to a much more realistic understanding of case management and expectations at each phase of a civil lawsuit.

Similarly, for a writing class focused on contract drafting, students could assume the role of a deal team working through the negotiation of a complex transaction. Throughout the course of a semester or full year, students could engage in the various steps required to prepare and finalize the deal. This would be especially valuable to students interested in corporate law who, despite a first year writing program, generally had little or no practical instruction in the art of contract drafting.

While the recommendations set forth above do not present radical departures from the current offerings of most law schools, every third-year law student's focus must be recalibrated to emphasize and develop the skills required for post-graduate legal practice.

From these initial steps, the subcommittee hopes, will come increased opportunities to learn by doing and to learn from those who have done so before. Increased collaboration with existing practitioners and increased engagement of law students before they enter the job market will result in a clearer set of expectations for new lawyers and will provide benchmarks against which law students and law schools can gauge readiness. With such benchmarks in place, law students will approach the job market with more confidence, and will likely enjoy greater success in locating gainful and professionally satisfying employment.

## **WHAT INCENTIVES DO LAW SCHOOLS HAVE TO REINVENT THE THIRD YEAR?**

While commentators have long discussed law curriculum reformation,<sup>25</sup> law schools have made only incremental, not comprehensive, changes to bridge the gap between theory and practice.<sup>26</sup> For example, in 2007, the Carnegie Foundation's report on educating lawyers found as follows:

“Compared to 50 years ago, law schools now provide students with more experience, more contextual experience, more choice and more connection with the larger university world and other disciplines. However, efforts to improve legal education have been more piecemeal than comprehensive. Few schools have made the overall practices and effects of their educational effort a subject for serious study. Too few have attempted to address these inadequacies on a systematic basis. This relative lack of responsiveness by the law schools, taken as a group, to the well-reasoned

pleas of the national bar and its commissions antedates the study on which *Educating Lawyers* is based.”<sup>27</sup>

One reason why law schools may not have responded more readily to the criticism is that one of their own key yard sticks — the ranking system operated by *U.S. News & World Report* (*U.S. News*) — gives little weight to how a law school prepares its students in the practical aspects of lawyering. Instead, *U.S. News* continues to place disproportionate weight on factors such as the general reputation of the school, that do not incentivize law schools to try to better prepare law students for the practice of law.<sup>28</sup> At a time when competition to obtain the best students is intense (and is likely to become even more so), it is unrealistic to expect law schools to adopt such an approach, or to dramatically increase the number of course offerings that teach these practical skills, when prospective students select law schools based on rankings that do not value or reflect the offering of such a syllabus. One approach to improving rankings is to use them “to create beneficial incentives instead of harmful ones.”<sup>29</sup> This section examines how law school rankings could be adapted to create beneficial incentives for law schools to offer a different model for training new lawyers with an emphasis on the practical skills needed for them to succeed, and how the MBA and other bar associations could assist in promoting such a change.

## **WHY RANKINGS AFFECT HOW LAWYERS ARE TRAINED**

Rankings matter for the simple reason that law schools pay attention to them. Law school rankings do two things that are significant to any discussion about legal education and lawyer employment. First, rankings affect a law school’s behavior about course offerings and teaching models.<sup>30</sup> Second, law school rankings affect prospective law students’ choices about which law schools to apply to and/or attend. Both behaviors necessarily affect the success of law school graduates in the marketplace. If the school chosen by the student is ranked higher than its competitor even though it prepares its students poorly for practice after law school, employers, clients and the new lawyer him/herself are all poorly served.

Currently, *U.S. News* uses 12 factors to create its ranking of law schools. Two of the factors (ratings by academics and ratings by lawyers and judges) involve purely subjective judgments of school quality and reputation. This combined quality assessment accounts for 40 percent of the overall score. The other 10 factors are based on objective data, such as the school’s median LSAT score for admitted students, its bar passage rate and the employment rates for graduates.<sup>31</sup> Not a single factor assesses the effectiveness of the school to prepare students for the practical aspects of lawyering.

## **TAKING ACTION TO IMPROVE RANKINGS SO THAT THEY CREATE INCENTIVES FOR LAW SCHOOLS TO OFFER A CURRICULUM THAT BEST PREPARES LAW STUDENTS FOR THE PRACTICE OF LAW**

Because the criteria used in the *U.S. News* rankings incentivizes law schools to adjust their programs to achieve higher rankings in those areas, one way to motivate law schools to change their curriculum so as to have a greater practical focus would be if one of the criteria used in the ranking system was the effectiveness of the law school in preparing its graduates for the practice of law. It is likely that such a criterion would be embraced by prospective law students who would want to determine the ability and effectiveness of a law school in providing practical training. Furthermore, if law schools knew that they were being graded on this criterion and that prospective students paid attention to it, it would provide a real incentive to them to include more practice-based courses in their curriculum.

How then should the MBA lend its voice to this debate? Since all the ranking systems function in a market economy, the MBA can serve as the voice of the consumer in promoting change. Specifically, the task force recommends that the MBA adopt a resolution that, without endorsing the use of ranking systems per se, resolves that any ranking of an accredited law school should include a measure of how well that law school prepares its students to be effective lawyers in practice.

For *U.S. News* to include this criterion in its rankings, it would first have to obtain this information from law

graduates. Currently, *U.S. News* relies on the American Bar Association to provide it with data about law school graduates nine months after graduation. Therefore, the ABA would have to include in its survey of graduates a specific question as to how each graduate rates the effectiveness of the law school in training him or her in the practical skills of lawyering. Each law school would be required to administer this survey question to its graduates and all respondents would be able to rate their law school on a scale from marginal (1) to outstanding (5) (the same ranking system used by *U.S. News* for the score that provides the reputational ranking of the law schools). To prevent any bias from those graduates who are unemployed (and therefore, potentially resentful of their law school), answers could be sought only from those who are employed in a law-related field. This information could then be used by *U.S. News* (or other ranking system) to rate how successful the law schools were in preparing their students for the practice of law and could be incorporated into the ranking system. Accordingly, the task force further recommends that the MBA seek to persuade the ABA to include such a question in the survey it currently requires law schools (and their graduates) to complete and to encourage *U.S. News* and other ranking systems to adopt as a new criteria how well the law school trains its graduates for the practice of law.

By adopting these recommendations, the task force hopes to provide an incentive for law schools to take seriously the need to adjust their curriculum to provide this vital training and thereby keep pace in the rankings game.

## **AN IDEA WHOSE TIME HAS COME: THE LEGAL RESIDENCY PROGRAM**

A legal residency program, conducted under the auspices of the MBA (in partnership with the Board of Bar Overseers and participating Massachusetts-based law schools and law firms), would be the most comprehensive approach to providing practical training for new lawyers. In such a program, recent law school graduates could apply for legal residency positions with Massachusetts law firms participating in residency training.

Legal residency programs would allow recent graduates to perform needed legal tasks while receiving direct supervision from experienced lawyers in a wide range of practice areas. For example: a postgraduate could apply for a civil trial residency through a participating law firm, where that student would receive instruction, training, and practical experience in all phases of trial-related work. Unlike interns and law clerks who typically assist lawyers with legal tasks, a formally supervised legal residency would have a structured curriculum to ensure exposure to a range of key tasks. Residents would be evaluated and upon successful completion of the program would receive certification from the Board of Bar Overseers, or other supervising body, attesting to the satisfaction of the requirements of the chosen residency program.

The benefits of such a program are myriad and long overdue. First, the rapid rise in unemployment among recent law school graduates has led to a dramatic rise in the formation of solo practices by recent graduates desperate to generate income necessary to cover basic living expenses and six-figure student debt. As an alternative to an unsupervised and trap-laden legal practice, legal residents would perform the same work under the direction of experienced lawyers, thereby reducing the likelihood of negligence on the part of the resident. Law firms would be free to share in fees for the work they supervised, in accordance with a program-approved fee schedule (which would protect the share of fees retained by the resident who originated the legal work).

Second, in addition to providing postgraduates with invaluable practical experience, a structured residency program would provide a level of supervision likely to increase confidence in those considering the referral of new work to newly admitted attorneys. The goal of a legal residency program is to insert a long-overdue level of training that would typically occur in the student's third year of law school or within six months of graduation from law school.

The task force recommends that the MBA continue to study the ways and means of a formal legal residency program, including considering requirements for certification and gauging participation by the law schools, the Board of Bar Overseers and private law firms.

## II. FAIR DISCLOSURE AND REASONABLE EXPECTATIONS

Despite the marked increase in unemployed law school graduates in recent years,<sup>32</sup> the number of law schools and the number of students enrolled in law school has increased. In 2002, 46,000 students matriculated from ABA-accredited law schools; by 2010, that figure had increased to 49,700.<sup>33</sup> In addition, law school tuition and corresponding loan payments have soared.<sup>34</sup> Because of this apparent disconnect and the resulting oversaturation of the legal market, concerned commentators and those directly affected by the unsettling employment trend have questioned whether law schools are providing the most accurate information to their prospective students.<sup>35</sup> Indeed, there have been recent examples of law schools misreporting data, giving credence to these concerns. At least 14 lawsuits have already been brought against law schools for misreporting employment information and, at the time of this writing, at least another 20 are expected to follow.<sup>36</sup> While the first of those lawsuits has been dismissed,<sup>37</sup> further litigation is likely to continue. The task force sought to examine not only a law school's responsibility for fair disclosure of its composition and the employment of its graduates but also whether prospective law students need to realign their expectations with the realities now facing the legal profession.

The Subcommittee on Fair Disclosure and Reasonable Expectations considered the following broad questions: How can we ensure that prospective law students are informed consumers? Is there an alternative to relying on law schools to provide accurate data? How big a problem is the reporting of misinformation by law schools? Are the current consequences for reporting misinformation sufficient?

In tackling these questions, the subcommittee first considered the current state of information available to prospective law students. Specifically, the subcommittee explored what information is currently available, how that information is gathered, and whether the information is verified in any way. Next, the subcommittee considered ways to better gather the information needed by prospective law students and whether other mechanisms/governmental bodies would be better suited to reliably collect that data. The subcommittee also identified the sanctions currently available for intentional misreporting and considered whether additional sanctions are necessary to ensure that students are not misled to believe that a law degree is a ticket to financial security. Finally, the subcommittee commented on the responsibility prospective law students must take to align their expectations regarding their post-graduate opportunities with that of realities now facing the legal profession.

### GATHERING AND REPORTING ACCURATE DATA

While prospective law students and the public at large have traditionally relied somewhat heavily on *U.S. News* for information regarding law schools, there are other resources available to those considering law school. These resources include an abundance of literature, ranging from online resources to books to government publications, and opportunities with lawyers, ranging from shadowing lawyers to informational interviews to legal internships.<sup>38</sup>

In order to be useful to prospective law students, however, any resource must offer accurate, reliable, and complete information. There are at least two sets of data that are relevant to the career decisions of prospective law students: information about the students that are currently enrolled in a particular school (including median LSAT scores and undergraduate grade point averages) and information about the employment prospects for graduates of that school. Both data sets are gathered by the law schools and reported to different bodies, including the ABA and NALP: The Association for Legal Career Professionals.

### ADMISSIONS DATA

Admissions data is in the possession of the law schools, and *U.S. News* relies on those law schools to provide such information to form its rankings. Two highly publicized instances of admissions data misrepresentations in the recent past involve Villanova University Law School and the University of Illinois Law School. Both were uncovered only by

the confessions of the law schools themselves. While the misinformation provided by the University of Illinois Law School was arguably insignificant, the erroneous data by Villanova was both extensive and meaningful.<sup>39</sup>

## EMPLOYMENT DATA

While law schools have easy (and arguably exclusive) access to their own admissions data, the gathering and reporting of useful employment data has proven to be a more complicated endeavor. Law schools obtain employment information from their graduates, but how law schools frame the questions to be answered and what percentage of graduates respond to these questions affect the overall reliability of the information. For example, if employment information is not sufficiently detailed, a law graduate working part-time as a restaurant waiter will be counted the same as a law graduate employed full-time at a law firm, even though the difference between the two scenarios would be very significant to a prospective law student. Additionally, if only a small percentage of graduates report salary data, and that small percentage reflects only the top earners of the graduating class, the resulting picture of the ability of that law school's graduates to generate high incomes would be skewed.

As indicated above, employment information is currently gathered from the law schools by the ABA and NALP. The ABA then publishes its data in the *ABA-LSAC Official Guide to ABA Approved Law Schools*<sup>40</sup> and NALP<sup>41</sup> reports its data on the NALP website. Then, *U.S. News* relies on the information provided to the ABA to form its rankings.

## RECENT CHANGES TO THE GATHERING OF EMPLOYMENT DATA<sup>42</sup>

While the ABA and NALP have traditionally shared employment data, within the last year the ABA has assumed a more active role in obtaining this information, seemingly in response to the need for more detailed — and therefore more reliable — data. This shift is summarized below by NALP representative Brian D. Lewis from the University of North Carolina School of Law:

“Historically law schools have reported employment data to NALP in the spring following graduation (nine-month figure). This remains true. More recently, the ABA began producing its own questionnaire, which follows the NALP questionnaire by approximately one month, and which is also based on the nine-month data. Until last year, the ABA asked the law schools for summary figures from the data that the law schools had reported to NALP. Beginning last year, the ABA began asking the law schools for raw data on each graduate.”

In addition to now requiring raw data from the law schools, in the Fall of 2010 the ABA began reviewing the employment questions posed in its annual questionnaire.

“Upon request, the Pre-Law Advisors National Council (PLANC) submitted a statement to the ABA on pre-law advisor perspectives on the ABA Law School Questionnaire in November 2010, recommending that the ABA augment its questionnaire to include, for example, questions on whether the graduate's employment required or preferred a J.D.<sup>43</sup> The ABA made progress in revising its survey questions,<sup>44</sup> yet their fall 2011 questionnaire revisions did not include a question on employment requiring bar passage.”<sup>45</sup>

On Dec. 3, 2011, the ABA introduced a new set of requirements<sup>46</sup> for law schools regarding employment reporting. On Jan. 17, 2012, NALP released for the first time, a set of best practices for law schools that included a detailed employment survey, a document on which NALP worked closely with the ABA.<sup>47</sup> In February 2012, the ABA issued a new questionnaire, focused solely on employment results for the class of 2011. This questionnaire requires that schools identify each graduate's employment situation, including whether bar passage is required for that student's position.

These new resources offer significant promise in providing law school candidates timely and more transparent employment data, thereby helping them to make informed choices. For these guidelines and surveys to be effective, however, the law schools must ensure that they obtain accurate employment information from the vast majority of graduates. To address this problem, law schools should take action to ensure that they are meeting an established minimum-response rate. For examples of such action, the task force recommends the following:

- **Incentivize Responses.** Recent graduates should be given some incentive to report their employment information. Law schools could provide an incentive in the form of a retail gift card or entrance into a raffle in exchange for a fully completed survey. The MBA, for example, could further stimulate this process by offering a free CLE class or a free membership into a MBA section for graduates who provide complete responses to the questionnaire.
- **Follow-up.** Schools should follow up with questionnaire recipients at least once while simultaneously offering assistance to those who are unemployed or underemployed.
- **Look to secondary sources when direct attempts at reaching the graduate have failed.** For example, if salary information is not completed by the graduate, it may still be possible to obtain that information from a secondary source that compiles salary data based on firm size or geographic location.

The task force further recognizes the recommendations by NALP for law schools to tackle the problem of non-responsive graduates without relying solely on graduates to reply to questionnaires. NALP suggests that schools account for non-responsive graduates in three ways:

1. Directly, by periodically texting and e-mailing recent graduates, requesting information on forms graduates complete to receive diplomas, and attending bar admissions ceremonies and similar events to connect with graduates and ask about their employment status;
2. Indirectly, by monitoring social networking sites to glean information related to employment status and viewing resumes uploaded to “Symblicity” or other resume-sharing sites; and
3. Through third parties, by checking state bar websites for employer information or by performing Google searches of non-responsive graduates to see if they are listed on an employer’s website. While some of these ideas are unlikely to be adopted by the law schools for logistical reasons, they do serve as creative examples of how to obtain otherwise elusive information that is crucial to prospective law students.

Now that the ABA is collecting raw data from the law schools, it will be easier for the ABA to both (1) determine what percentage of graduates are responding to the questions completely and (2) verify the information provided by the law schools. However, while the task force is optimistic, it is too early to tell whether the ABA’s collection of this information will impact the reliability of the information provided to prospective law students in the future.

## IS THERE ANOTHER WAY?

While there are many steps law schools could take to better gather the employment data of its graduates, the question still remains whether law schools should be the ones relied upon by prospective law students to provide this critical information. Indeed, a law school’s ability to attract its students (and their corresponding tuition payments) depends on the data collected; this begs the question as to whether a law school would choose to utilize its resources to gather employment data from graduates whom it suspects are either unemployed or underemployed, when it can instead report only data from those who have met some level of success.

In order for prospective law students to be assured that the data they are receiving is both accurate and complete, the information should come from a source other than the law schools. This would require an independent body to assume the task of gathering the data and reporting it accurately. Such an independent body could be a dominant Massachusetts legal publication, providing, perhaps, a free three-month subscription to any Massachusetts law graduate who completes a detailed employment survey, or it could be a regulatory body like the Board of Bar Overseers, which might require employment information as a condition to admission to the Massachusetts bar. To become viable, such ideas require further consideration by the MBA.

## STANDARDIZATION FOR LAW SCHOOL REPORTING

In addition to reporting accurate information, the task force believes it would be beneficial for each law school to report the information in a standardized manner. Implementing a standard format for how each ABA-accredited law school distributes its admissions and employment data will help avoid situations in which schools inadvertently or intentionally arrange statistics to portray their school in the best light possible. The standardized format should include categories such as the number of responding graduates, the percentage of total students responding, employment by sector, whether bar passage was required for employment, whether employment is part-time or full-time and a salary breakdown by type of employer.

After researching websites of the Massachusetts area ABA-accredited law schools, the task force found that Boston University School of Law's (BU Law) website provides the best example of what could become a required standardized format.<sup>48</sup> BU Law, in addition to its excellent breakdown of information, also provides background information regarding how the economy may have affected the statistics and the number of students that responded with salary information compared to the total number of students who replied to the survey. All law schools should aim to provide employment information in a clear, accessible, and transparent format to ensure that prospective law students make informed choices and to avoid future litigation based on apparent or perceived misrepresentations.

## SANCTIONS

Recently, the ABA has sanctioned Villanova University Law School for its intentional misreporting of admissions data to the ABA and to the public. The sanctions leveled against Villanova were as follows.<sup>49</sup>

1. The law school must distribute a public censure, issued by the ABA, to the deans of ABA-approved law schools and post the public censure on the school's web page;
2. The law school shall issue a public statement of correction to be submitted to the ABA Consultant's Office for approval and then distribute it to all ABA-approved law schools and to PLANC;
3. The law school shall engage and pay an independent compliance monitor for a period of at least two years to better ensure that future misreporting is prevented.

While the sanctions are likely to cause Villanova some inconvenience, the information regarding the school's reporting violations may not ever reach prospective students — the target audience for the purpose of this task force — unless he or she is specifically looking for the public censure. There is no requirement as to where the public censure must be posted on the school's website and while Villanova has placed a blurb with a link to the censure on its home page, it is small and buried in the lower left hand corner of the page, far from the eyes of prospective students.

Ideally, every prospective law student would examine and review all of the available resources (ABA, NALP, PLANC, etc.), allowing him or her to discover which law schools have been sanctioned. However, this is not always common practice. There is essentially only one website that prospective law students are obligated to visit during the early stages and application period — that of the Law Schools Admissions Council, LSAC.org. A flagging system on LSAC, similar to WestLaw's KeyCite Flags, would be tremendously effective in informing prospective students of law schools that have been sanctioned within a defined time period as determined by the ABA. These flags will create a system that will ensure that every prospective student applying to an ABA-accredited law school will be notified if the school to which he or she wishes to apply has recently been sanctioned for intentionally reporting inaccurate admissions or employment data. Implementing a flag system on LSAC would likely increase the deterrent effect that sanctions would have on other law schools which may be tempted to misrepresent relevant data. Such a practice could also result in student loan originators either increasing or reducing the interest rates charged for tuition loans intended for that institution.

There are other means to make law schools more accountable for misrepresentation. For example, a measure along the lines of the Sarbanes-Oxley Act could be implemented, requiring law schools to provide accurate data about

its students (both in admissions and employment) and further require the deans and the trustees of the law school to personally certify any reports under the pains and penalties of perjury.<sup>50</sup> Keeping in mind the fact that most law students receive government-backed loans to fund their law school tuition payments, Congress has an interest in considering such legislation. While most law schools may already provide the most accurate information possible with no attempt to mislead potential students, enacting legislation along these lines would send a strong message about the power of the information law schools report and the effect it has on the public.

## **DO PROSPECTIVE LAW STUDENTS HAVE REASONABLE EXPECTATIONS?**

While the task force did not attempt any comprehensive survey to gauge prospective students' expectations of a career in law, the task force felt it was important to raise the possibility that even if all law schools accurately reported the employment statistics of their graduates, many people (more than for whom jobs are available) would still apply to law school and pursue a legal career. In other words, misreporting is only one part of the disconnect between the number of law graduates and the number of available law jobs. Even though there have been many recent reports on the underemployment of law graduates, law continues to be regarded as among the most prestigious professions, and media (i.e. television and motion picture) portrayals of the legal profession continue to depict young lawyers as highly successful and wealthy during the earliest stages of their careers. Therefore, while law schools must take responsibility for their dissemination of information, and the interest of the public must take priority over the law school's profit incentive, prospective law students must also take responsibility for performing adequate research before committing to hundreds of thousands of non-dischargeable dollars in student loans and embarking on a legal career that will likely fall short of inflated financial expectations.

### III. OBSTACLES TO EMPLOYMENT

While the relative ease with which Massachusetts law school graduates secure law-related employment is largely dependent upon the abundance of law-related job opportunities, a number of other factors also impact employment statistics and are largely distinct from the relative highs and lows of both the Massachusetts and national economies.

The task force looked at some of these factors (what it termed “obstacles to employment”) and formulated recommendations to overcoming those obstacles to reduce the employment challenges facing both recent graduates and more experienced lawyers.

#### **GREATER REGULATION OF BAR PASSAGE RATES.**

In an effort to contain the virtual open door bar admission policy currently existing in Massachusetts, the task force would recommend, among other controls, greater regulation of the current bar examination pass rate, potentially by keying that rate to the average national bar passage rate, as a means of better controlling the number of attorneys licensed to practice within the commonwealth.

Currently, a generous surplus of attorneys admitted to practice in the Commonwealth of Massachusetts — both those who take and pass the Massachusetts bar exam and those gaining admission to the Massachusetts bar on motion — are vying for a relatively low number of available paid legal positions.<sup>51</sup> According to statistics published by the National Conference of Bar Examiners (NCBE) for the year 2010,<sup>52</sup> Massachusetts had an average annual (both February and July exams) pass rate of 81 percent. By comparison, California had a 49 percent average pass rate in that same year. To help stem the flow of new attorneys competing for jobs in Massachusetts, the task force recommends that Massachusetts adopt a bar pass rate tied to the national average. Achieving such a target would involve grading the bar exam on a curve calibrated to the national average bar examination pass rate. In addition to reducing the current bar pass rate, the bar exam could also be limited to a specific number of attempts, as is the case in Texas, which limits bar examination sittings to five,<sup>53</sup> or as low as New Hampshire and Iowa that limit the number of attempts to two.<sup>54</sup>

#### **LIMITING RECIPROCITY.**

Another means of improving employment opportunities for both recent law school graduates and more experienced Massachusetts attorneys would be to impose greater limitations on the existing reciprocity rules applicable to foreign attorneys seeking admission in Massachusetts. Currently, unlike states that require applicants to pass a full bar examination, such as Nevada and Florida, Massachusetts grants admission to any applicant who has been admitted in another state, district, or territory for at least five years prior to application for admission to practice law in Massachusetts, and who are in good standing in each such state, district, and territory. Applicants must be a graduate of a law school that, at the time of graduation, was approved by the ABA or was authorized by a state statute to grant the degree of bachelor of law or juris doctor.<sup>55</sup>

While the task force engaged in considerable discussion as to the benefits and disadvantages of requiring a full bar exam of all applicants, the task force ultimately concluded that such a measure could actually reduce overall employment opportunities for Massachusetts attorneys seeking employment opportunities in foreign states, as adoption of such a measure would likely result in the imposition of a similar requirement for Massachusetts attorneys seeking admission in those foreign states. By generally limiting reciprocity with other states, Massachusetts attorneys would likely experience a reduced footprint within which to expand their legal practice.

Notwithstanding the foregoing, the task force did conclude that Massachusetts attorneys should have parity with those New England states (and particularly its border states) that do not currently extend reciprocity to Massachusetts licensed attorneys. Currently, the New England states of Rhode Island and Maine, as a condition to admission, require Massachusetts attorneys to take the state portion of their respective bar exams or a shortened attorneys exam, with

the additional requirements that the attorney have practiced for at least five years and have been in good standing in their current jurisdiction. Notably, Maine does permit reciprocity with New Hampshire and Vermont, but it does not currently permit reciprocity with Massachusetts. Therefore, although Massachusetts attorneys will not necessarily gain admission in those states (without passing their bar exams), if the recommendations of the task force are adopted, attorneys from those states would face similar restrictions, thereby reducing the opportunity for employment competition with existing Massachusetts attorneys.

## **RECIPROCAL *PRO HAC VICE* RULES**

In addition to disparate rules governing reciprocity of licensure between states, there also exists disparity between Massachusetts and its border states with respect to their respective criteria for admission *pro hac vice*. For example, while Massachusetts is generally regarded as liberal with respect to its requirements for *pro hac vice* admission extended to non-Massachusetts attorneys,<sup>56</sup> Rhode Island takes a far more obstructive posture, including restrictive requirements for attorneys seeking admission on a *pro hac* basis.<sup>57</sup> This one-way valve increases competition between Massachusetts licensed attorneys who might otherwise be retained to handle in-state matters and non-Massachusetts attorneys who appear in Massachusetts on an as-needed basis and then depart.

Under current standards in Rhode Island, applicants for *pro hac vice* admission must file a miscellaneous petition in which they must aver that they have a concentration in the complex area of the law involved, have a longstanding representation of the client, the local trial bar is inexperienced in the field involved, the matter involves complex legal questions under a foreign jurisdiction with which the applicant is familiar, the matter requires extensive discovery in a foreign jurisdiction or the applicant is defendant's counsel of choice in a criminal matter. In addition, local counsel must certify that he or she will participate in the matter as required by the rules. Significantly, the clients must also submit a certification in which they agree that they wish to have the applicant as their representative in the matter and that they will engage the services of local counsel.

In contrast, Massachusetts has none of these requirements and offers *pro hac* admission to applicants who graduate from an ABA-accredited law school or one authorized by statute to confer the appropriate degrees, who have practiced for at least five years, and who are in good standing in the jurisdiction in which the practice. Rhode Island also requires that *pro hac vice* applicants have, as a baseline, these same requirements, but places significant additional criteria upon its out-of-state applicants.

The imposition of parallel restrictions upon applicants for *pro hac vice* status from states that impose stricter standards than that of Massachusetts would, at the very least, help level the playing field and might increase the likelihood that clients would engage the services of Massachusetts attorneys instead.

## **ESTABLISH INCENTIVES TO EXPLORE LEGAL PRACTICE OUTSIDE OF THE COMMON-WEALTH UPON GRADUATION**

The majority of graduates taking and passing the Massachusetts bar exam attended one of the nine law schools in Massachusetts. Indeed, while 1,381 graduates of the nine Massachusetts law schools took, and 1,176 of those graduates passed, the Massachusetts bar in 2011, only 755 graduates of all other law schools in the country took, and 618 passed, the Massachusetts bar exam that same year.<sup>58</sup> If Massachusetts law schools graduates continue to stay in Massachusetts to practice, the competition they create will continue to produce mounting obstacles to employment in the current economy. Of the six New England states, Massachusetts has by far the greatest number of law schools within its borders, which, in turn, leads to Massachusetts claiming the second-highest ratio of lawyers to non-lawyers of all states in America.<sup>59</sup> Connecticut falls a distant second, with just three law schools within its borders. Maine, New Hampshire, Vermont and Rhode Island each have only one law school.

Several of the nine Massachusetts law schools place some degree of emphasis on teaching Massachusetts law, Massachusetts practice and Massachusetts procedure. As a consequence, many of these students prepare for and take

the Massachusetts bar exam rather than seeking admission and employment in foreign states.<sup>60</sup> With little or no exposure to foreign jurisdictions, a majority of these students eventually graduate, pass the bar, and attempt to begin practice in Massachusetts rather than pursue legal opportunities in other New England States.

In an effort to better manage the volume of graduates from the nine Massachusetts law schools entering the Massachusetts legal community, or until such time as market forces reduce the oversupply of lawyers seeking employment in Massachusetts, the task force recommends that Massachusetts law schools increase exposure to legal practice opportunities in the surrounding five New England states. This exposure would provide additional employment opportunities for Massachusetts law school graduates while decreasing the load on the existing Massachusetts legal job market. Massachusetts law schools could establish programs akin to a student year abroad or legal exchange program, through which students could work in law firms and court systems outside of Massachusetts with the potential of gaining admission and employment in those states. These law students could potentially take up residency (for six months to a year), become exposed to that state's culture, practice, and procedures, and establish roots there as well, while earning their law degree from a Massachusetts law school.

The primary goal of such a program would be to expand opportunities to Massachusetts law students by increasing exposure to locations within reasonable proximity to the students' own law school. Such exposure would benefit neighboring states by establishing ties with Massachusetts businesses, law firms, and court system and would provide participating students with a greater source of opportunities within a broader geographic range.

## IV. RESOURCE UTILIZATION AND SKILL ENHANCEMENT

Faced with today's daunting legal employment climate, recent Massachusetts law school graduates must consider alternatives to the traditional law firm entry-level position.<sup>61</sup> While limited, opportunities currently exist in both the private and public sectors, especially for the independent-minded, that provide valuable experience while, in some cases, also providing income. Even those opportunities that do not offer income still provide ways to gain experience, remain current with the practice of law, and network with other lawyers. The subcommittee on Resource Utilization and Skill Enhancement produced the following survey of opportunities currently available to the commonwealth's law school graduates, with recommendations as to how resources may be further utilized to employ greater numbers of new lawyers.

This survey is organized according to the current status of the particular program or concept. Those identified in group A are already underway or in existence, and are available now to law school graduates. Group B is comprised of those programs that may now be in existence but require some further investment to become a more practical resource to a greater number of graduates. Finally, the idea in group C presents an innovative concept that challenges the traditional model of legal education in a search for long-term solutions.

# SUMMARY

## A. SHOVEL-READY PROJECTS

1. Lawyer referral services
2. Reduced-fee panels
3. Limited assistance representation
4. Bar advocate programs and children and family law appointments
5. Senior Partners for Justice
6. Volunteer Lawyers Project
7. Mentoring

## B. READY WITH SOME INVESTMENT

1. Law-school-funded law clerks
2. Post-graduate clinics

## C. LONG-TERM SOLUTION

The law school law firm

---

### A1. LAWYER REFERRAL SERVICES<sup>62</sup>

The MBA and most of the county bar associations operate referral services that connect persons in need of legal advice or representation with an attorney enrolled in the service. The process begins with the individual's call or e-mail to a telephone number or e-mail address listed on a website, in the telephone book, or advertisement in a pamphlet distributed to courthouses and libraries. In that first contact, a screener collects sufficient information to make the actual referral to a lawyer chosen from a rotating list of names in different areas of practice.

The prerequisites for an attorney's involvement in a referral service are not onerous. The general requirements for inclusion are the following: admission to the Massachusetts bar, membership in the specific association, professional liability coverage with the minimal coverage amounts of \$100,000/\$300,000 and payment of a modest annual fee. There is no specific experience requirement for inclusion, beyond proficiency in the area(s) of law designated.

There is also no limitation on the type of case referred or the fee generated. There is, however, a standard payment of (typically 15 percent) referral fee to the association, which is used to pay for the program's advertising and other costs (or to fund other, non-fee-generating, programs).

Besides the fee for participation in lawyer referral services, the bar association may require donation of time on a "dial a lawyer" service or a legal clinic. The bar associations also should provide, or require that those who participate be involved in, continuing legal education and mentoring. In so doing, the associations promote a cost-effective way for a new lawyer to build a practice while insuring the quality of legal representation for the client.

## A2. REDUCED-FEE PANELS<sup>63</sup>

The lawyer referral service programs described, *supra*, have been in existence for decades and are a source of clientele for any practitioner, new or established. However, a more recent hybrid system geared toward serving the marginally indigent client is particularly suited to the recent law graduate. This service is known as the reduced-fee panel in the commonwealth,<sup>64</sup> and, at the time of this writing, only exists in the MBA, the Boston Bar Association (BBA), the Massachusetts Chapter of the National Lawyers Guild and the Essex, Hampden, Middlesex and Worcester county bar associations.

Reduced-fee panels serve those clients who do not qualify for representation by legal assistance agencies or the Committee for Public Counsel Services (CPCS), but who do not have the funds to hire private counsel. The cases addressed by the panels are limited to those that will not generate a contingent fee, such as mortgage foreclosures, collections, probate and family cases and many others, including criminal cases. Typically, the people served by the panels must have income that does not exceed, on average, 200 percent of the federal poverty guidelines; this currently works out to an annual income for a family of four of about \$45,000.<sup>65</sup> For their part, the lawyers agree to limit fees to \$75 per hour, also subject to initial retainer limits.

There are less than rigorous requirements for an attorney to be registered with reduced fee panels. One has to be a member of the Massachusetts bar, belong to the particular organization, pay a very modest fee, and otherwise be qualified to represent clients in the particular area of law. Additionally, membership on one panel does not prohibit membership on any other, including lawyer referral services, nor does it limit the number of referrals received. Moreover, there is no requirement to contribute a percentage of the fee to the organization.

Involvement with reduced-fee panels should particularly suit the new attorney, but it probably would not present as attractive an option to the established attorney who is likely dealing with higher overhead costs. Provided that participating bar associations take some responsibility for continuing legal education and mentoring, there is no reason why reduced-fee panels should not be expanded throughout the commonwealth. The end result could well be more fully employed new attorneys and increased access to justice by Massachusetts residents.

## A3. LIMITED ASSISTANCE REPRESENTATION

Limited Assistance Representation (LAR) permits lawyers and clients to agree that the lawyer will assist the client with part of a legal matter, while the client self-represents on other aspects. LAR has been referred to in other states as partial or discrete task representation, i.e., unbundling. LAR lawyers in Massachusetts can provide, for example, advice on court procedures, assistance with document preparation, or appearances in court on specific occasions or for specific purposes. Begun as a pilot program in 2006 in two divisions of the Probate and Family Court, LAR was expanded several times until 2009, when it reached several complete departments of the Trial Court so as to expand access to justice.

The LAR program is supervised by the Supreme Judicial Court Steering Committee on Self-Represented Litigants and offers training at Massachusetts Continuing Legal Education (MCLE) regarding the rules and pitfalls of LAR. Lawyers also can do the training outside of the classroom, though they must provide certification of completion in order to participate.

Specifically, LAR allows lawyers to provide legal services to those who need them, without major or unlimited commitment to the client or the case. A qualified attorney may limit the representation of a client if the limitation is reasonable in the circumstances and the client gives informed consent. The attorney files a Notice of Limited Appearance that states precisely the court event or discrete issues to which the limited assistance pertains.

An attorney may not enter a limited appearance for the sole purpose of making evidentiary objections, nor may the attorney and the litigant argue the same legal issue during the period of the limited appearance. The attorney may file a new Notice of Limited Appearance at any time should the purpose of the representation change. Attorneys should take care not to file any pleading, motion, or other document outside the scope of the limited appearance or

risk being deemed to have entered a general appearance. Following the events listed in the Notice of Limited Appearance, the attorney must file a Notice of Withdrawal of Limited Appearance (or risk sanctions by the court).

LAR is especially useful if the lawyer would like to provide pro bono legal services on a discrete task. The a la carte assistance also allows lawyers to obtain some monies from those with some ability to pay. Many lawyers (new and experienced) have found LAR to be a practice-builder and it is available statewide in Probate and Family Court, Boston Municipal Court, District Court and Housing Court. Another benefit is that the LAR program does not burden the lawyer — there is no requirement of a library, a secretary or even an office. The lawyer is required, however, to maintain his/her own professional liability coverage.

There is no supervision of LAR lawyers, beyond the training provided, so it is a better option for those with some legal experience, i.e., laid-off or underemployed lawyers, or those desiring to gravitate towards their own private practice. The task force recommends that the MBA create a mentoring circle specifically for LAR lawyers to discuss cases and other issues encountered by LAR lawyers.

#### **A4. BAR ADVOCATE PROGRAMS & CHILDREN AND FAMILY LAW APPOINTMENTS<sup>66</sup>**

- (a) **Bar Advocate Programs.** Private attorneys throughout the commonwealth are able to receive court-appointed criminal cases in the juvenile, district and superior courts.<sup>67</sup> CPCS' Private Counsel Division, in conjunction with a nonprofit corporation based in each county, oversees these attorneys who are known as bar advocates. The programs do not require any particular number of years of experience after admission to the bar for practice in the juvenile and district courts, as long as the advocate is accepted into the panel of a county bar advocate program,<sup>68</sup> undergoes a five-day training course sponsored by CPCS, agrees to attend at least eight hours of continuing legal education annually (most of which may be offered free by the program, depending on the county), and, of course, contracts to represent zealously and professionally the indigent clients to whom the lawyer is assigned. In addition, the application prerequisites usually include membership in the local bar association, an office within the county, and a professional liability policy with no less than \$100,000/\$300,000 limits.

The attorneys who are accepted into the bar advocate programs currently receive remuneration at the rate of \$50 per hour for juvenile (except youthful offender cases) and District Court cases, and \$60 per hour for work in the Superior Court.

Working as a bar advocate is one way for a recent law school graduate to gain valuable experience representing clients in a trial practice. Many attorneys who practice criminal law in Massachusetts have represented clients at some point in their career as a bar advocate. Some may remain on the list for decades as a means to maintain a regular courtroom presence and a steady income stream. However, in difficult economies, there may be long waiting lists to become an attorney able to accept such assignments.

Most county programs limit the number of lawyers who can be available to take duty days, i.e., days when the courts appoint lawyers to cases. In some programs, this results in a high level of experience in the representation of indigent persons, but it may also curtail the infusion of the fresh legal talent and healthy competition that keeps all participants performing at the highest levels.

For the few programs that do not limit the number of lawyers who may accept assignments, the swollen ranks of bar advocates reduces the number of cases that each individual will receive. This may result in the more experienced attorneys, who are more likely to have an established private practice in addition to their appointed work, choosing to leave the program due to diminished returns. The bar advocacy programs must guard against the potential for a gradually decreasing level of experience in the representation of indigent people. Nevertheless, all bar advocates are supervised by attorneys in CPCS' Private Counsel Division who review cases randomly through audits, investigate client complaints, and generally ensure that the bar advocates are in compliance with strict performance requirements.

In lieu of addressing the question whether a bar advocate list should remain open and accessible by all, is the concept of appointment for a specific term, e.g., two years. The bar advocate then would undergo a re-application interview with a program staff attorney, possibly to include the board of directors. This process would provide a more standardized means of quality control, perhaps addressing minor issues before they morph into ineffective assistance of counsel claims.<sup>69</sup>

- (b) **Children and Family Law Appointments.** The civil counterpart to bar advocate programs is the Children and Family Law (CAFL) appointment list. The CAFL division provides legal representation to children and indigent parents in child welfare matters, including care and protection proceedings, Children in Need of Services cases (CHINS), actions to terminate parental rights, state agency-sponsored guardianships and any other child custody proceeding where the Department of Children and Families (DCF) is a party or where the court is considering granting custody to DCF. The appointment lists are maintained by the clerks of the juvenile and probate and family courts of the commonwealth. Unlike bar advocate appointments, however, CAFL appointments are made on an as-needed basis from a rotating list of attorneys who are contacted as to their availability; there are no duty days.

The pay rate for CAFL attorneys is the same as for bar advocates. Admission onto the CAFL trial panel is by application only and requires satisfactory completion of a five-day training program combining substantive law and trial skills. Upon completion of the trial certification training, attorneys are assigned to an experienced CAFL attorney for mentoring and support. Regional coordinators also are available to provide advice and technical assistance to CAFL attorneys. Admission to the CAFL appellate panel requires application and completion of an appellate training program. CAFL attorneys also must complete at least eight hours of continuing legal education annually.

CAFL appointments thus present an excellent opportunity for the new practitioner interested in this area of the law to gain experience, income, and a potential client base.

## A5. SENIOR PARTNERS FOR JUSTICE

Established in 2002, Senior Partners for Justice (SPFJ) is an organization that provides pro bono family law legal services to low-income people in Greater Boston and Western Massachusetts. Seeking to build on existing resources, SPFJ teamed up with the Boston Bar Association's Volunteer Lawyers Project (VLP), an organization with more than three decades of experience providing pro bono legal services to low-income people. Specifically, VLP provides the case referrals, infrastructure, and administrative support. VLP screens clients for eligibility and assesses cases for legal merit and relative degree of complexity. VLP then refers cases to participating attorneys, matching the case with the attorney's experience level and stated preferences.

For attorneys new to family law, introductory training by VLP attorneys provides a general overview, complete with sample divorce law pleadings. Beyond the introductory training, SPFJ provides all of its attorneys ongoing telephone mentoring as well as professional liability coverage. SPFJ also provides lawyers with client meeting space, library access for research, and administrative office support. The program fosters collegiality through its free monthly luncheons for attorneys, hosted by MCLE, addressing topics such as the division and valuation of marital assets, the tax implications of divorce, the psychological impact of the dissolution of marriage on young children and current legal issues. SPFJ stocks free written materials, sample forms, practice-oriented articles and checklists to familiarize attorneys with the family law issues facing *pro se* clients. The materials bring the attorneys up to date on significant trends and practices, and SPFJ also sends periodic legal updates to its member attorneys.

SPFJ already has contracted with 450 lawyers who range in age from 26 to 92, so one need not be senior in age, a partner, or a senior partner. In addition, there is no minimum commitment — attorneys can accept one case or a full workload. Some additional opportunities also exist outside of family law, including guardianship, wills/estates, landlord-tenant, foreclosures, unemployment benefits, bankruptcy and consumer, and MassHealth prior approval.

The continuing legal education will be of great benefit to new attorneys or those first venturing out on their own — the free training, case clinics, and practical workshops help immerse the SPFJ attorneys in family law. As stated, though, SPFJ provides experience only; there is no remuneration for attorneys.

## **A6. VOLUNTEER LAWYERS PROJECT**

The VLP provides pro bono legal assistance to low-income Boston residents. The VLP offers attorneys of all experience levels the opportunity to handle cases in a variety of areas, including landlord/tenant disputes, foreclosure prevention, issues related to homeownership, family law, guardianship, wills and estates, bankruptcy, unemployment insurance, consumer protection, criminal record sealing, tax and non-profit organizations. The cases that are distributed to volunteer attorneys are carefully screened prior to dissemination, and with each referral, volunteer attorneys are provided with a memorandum summarizing the case and outlining the key issues in the case.

The cases referred to attorneys range in complexity and require varying levels of time, attention, and experience. VLP provides ongoing mentoring to volunteer attorneys primarily through VLP's staff attorneys who have expertise in a wide range of areas. The program allows attorneys to handle cases autonomously, with periodically scheduled check-ins during the course of the case to ensure that the attorney has made contact with the client, that the matter is progressing, and that the attorney is receiving adequate support.<sup>70</sup> Because the level of difficulty varies from case to case, VLP staff screen and distribute cases in a methodical way, which allows new and junior attorneys to obtain hands-on experience and allows more experienced attorneys to take on challenging and more complex cases. Some clients come to VLP with a diverse range of legal issues that require the knowledge of different legal areas. This provides an opportunity for attorneys to explore new areas of law or to collaborate with other attorneys to help meet the client's needs.

The VLP provides professional liability coverage and limited office space and resources to volunteer attorneys. The program also offers on-going mentoring, partnering volunteers with staff attorneys who have expertise in many different areas of law.

Participation in the VLP would have a large impact on both the low-income Boston community as well as benefiting newly admitted attorneys. Given the current economic downturn and lack of available job opportunities, newly admitted attorneys could participate, and would be able to receive immediate client contact and invaluable professional development opportunities, allowing these attorneys to stand out when attempting to secure employment. In exchange, their service will provide much needed legal assistance to low-income Boston residents.<sup>71</sup>

## **A7. MENTORING**

Generally, mentoring programs have been instrumental in fostering relationships between junior- and senior-level attorneys. Mentoring programs also have been successful in easing the transition from student to practitioner, exposing new attorneys to the fundamental skills and values that are essential to the practice of law, skills that law school students typically are not exposed to during their law school experience. Mentoring programs should provide the following opportunities for participants:

- Assist in the development of practical skills;
- Improve legal ability and professional judgment;
- Promote collegial relationships among legal professionals;
- Encourage the use of best practices and highest ideals in the practice of law;
- Provide opportunities to develop new relationships; and
- Contribute to a sense of integrity in the legal profession.

With the current economic downturn and with more eligible graduates than available conventional legal positions, involvement in mentoring programs is essential and directly tied to the successful development of new lawyers.

**(a) Mentoring through the Massachusetts Bar Association**

The MBA has offered its membership an opportunity to be a part of its mentoring program, which provides an invaluable opportunity for experienced attorneys to provide practical advice and guidance to new, junior attorneys. Starting this past year, the MBA also has offered its members an opportunity to be a part of its Mentoring Circles, which consist of groups of MBA members who meet at least four times a year in an informal setting. Members in the circles have the opportunity to give and receive advice, share professional experiences, network, and discuss various topics as the group determines is appropriate. The group is typically made up of eight to 12 individuals, with various combinations of senior-level attorneys, retired attorneys or judges, and new or junior attorneys. The mentoring circles offer participants an opportunity to network and to create personal connections needed to develop professional legal skills and to develop business opportunities.

Because the current mentoring program is so successful, the task force recommends an expansion of the allowable membership in the MBA circles to include second- and third-year law school students to jumpstart the transition from student to practitioner, or as a component of a formal legal residency program, discussed elsewhere in this report. This will provide students with an opportunity to learn some of the practical and essential skills necessary to succeed in the legal profession and to obtain legal positions outside the traditional on-campus interviewing process. To be most effective, the task force further recommends that the circles meet bimonthly, and that they outline an agenda identifying key areas of professional development, e.g., networking, rainmaking, and seeking lateral movement.

**(b) Mentoring Circles through the Women's Bar Association**

In traditional mentoring, experienced practitioners give and junior apprentices take. In the Women's Bar Association (WBA) mentoring circles, each member is both a mentee and a mentor, offering professional development and networking opportunities for all members. While the benefits to a junior attorney might be more obvious, the circles offer equally valuable and compelling opportunities to mid-level and senior attorneys.

The circles are comprised of 10 to 15 women of varying levels of experience from a wide range of practice areas. The circles meet a minimum of four times per year; some meet as often as once per month. The WBA currently has circles in downtown Boston, Newton and Bedford, and approximately 160 women are active in the program. The circles address many of the same issues at the heart of the WBA's mission, such as professional development, networking and work-life balance. But the mentoring circles offer a smaller, private, and more personal forum that allows the groups to tailor solutions and strategies for its members. These discussions might touch on, for example, the balancing act of a new mother, the decision to change practices, a firm's hiring practices or efforts to increase retention. These issues draw on the personal experiences of junior, mid-level and senior attorneys alike.

**(c) Mentoring Through Affinity Bar Associations and Organizations**

Many affinity bar associations in Massachusetts provide formal mentoring programs for its membership, fostering the development of students and lawyers.

The Massachusetts Black Lawyers Association (MBLA) was founded in 1973 and has provided a valuable network for attorneys of color within the legal community. The MBLA provides its members with professional development and career advancement through roundtable discussions, trainings, and continuing legal education programs. The MBLA also has a mentoring program, which is designed to connect law students of color with members of the MBLA and is focused on furthering the development of these students. The program is also designed to ensure that every law student of color is paired with a member

of the organization and to provide these students with a role model who they can emulate and who will provide educational and career guidance and support.

The Asian American Lawyers Association of Massachusetts (AALAM) also provides mentoring opportunities for its members. AALAM was founded in 1984 and is devoted to serving the Asian-American legal community and improving the administration of law and justice. AALAM organizes a number of events throughout the year, offering professional development and networking opportunities to law school students and to its general membership. These events include an annual Speed Mentoring Night, Summer Associates Luncheon, monthly Networking Nights and panel discussions.

The Massachusetts LGBTQ Bar Association (Mass LGBTQ Bar) was founded in 1985 and is a state-wide professional association of lesbian, gay, bisexual, transgender and queer lawyers, providing a presence within the legal community. The Mass LGBTQ Bar has a mentoring program that is designed to provide a professional and social support network for LGBTQ members in all areas of professional practice.

The Boston Lawyers Group (BLG) also has been instrumental in connecting attorneys of color in the Massachusetts area with each other, and providing programs and events for law students and attorneys of color. BLG was founded in 1986 and its membership includes prominent law firms, corporate legal departments and government agencies in Boston. BLG's mission is to identify, recruit, advance and retain diverse legal talent in Boston. To that end, BLG provides a number of resources to its members by hosting forums, roundtable discussions, various educational programs and job fairs. Specifically, BLG's mentoring program pairs one lawyer with a first- and second-year law student of color, allowing those students to benefit from the one-on-one interaction, and enabling the attorney to share his/her experiences and to provide career and educational advice and guidance.

There are several other affinity bar associations and affinity organizations in Massachusetts, e.g., the Massachusetts Black Women Attorneys, the Massachusetts Association of Hispanic Attorneys and the South Asian Bar Association of Greater Boston, that also provide both formal and informal mentoring opportunities for their members and local law school students.

## **B1. LAW SCHOOL-FUNDED SUPERIOR COURT LAW CLERKS<sup>72</sup>**

Before the state-wide hiring freeze that began in 2008, there were approximately 55 full-time law clerks assisting some 80 justices of the Superior Court Department of the Trial Court. Through attrition, and because of the short-term nature of the position, that number has dwindled to just 11, as of this writing.

Some Massachusetts law schools recently have implemented programs to employ their graduates while at the same time helping fill the current void in the court system. The arrangement is as follows: the law school graduate receives a stipend to work as a full-time law clerk while receiving training, real-world experience, and (perhaps most important for the new lawyer) invaluable contacts for future networking. The law school advertises a unique and attractive feature to the prospective student while enhancing its own employment/placement statistics, and the court receives the much-needed assistance that does not deplete its limited budget.

The hiring process starts with the law school's decision to create one or more of these paid positions. The law school sets its own criteria for application and selects potential candidates who then are considered, interviewed, and ultimately selected by a hiring committee made up of 10 to 12 judges. The stipends paid by the law schools range from \$10,000 to \$40,000 for the 10-month position.

Despite the seemingly win-win nature of this arrangement, unresolved issues keep the picture less than rosy. The graduates are concentrated in the Boston area, while the court's needs are spread across all 14 counties of the commonwealth. Furthermore, the Superior Court's technical system currently is not geared to non-trial court employees having full access to its intranet and research capabilities, and the Superior Court does not have the resources

to provide laptops. This results in compatibility issues; for example, most court personnel are provided WordPerfect software while most law school graduates use Microsoft Word, creating regular, small headaches for secretaries and other administrative assistants.

There is also the specter of competing interests and perspectives between the individual law school and the courts. The law school likely is motivated by the most cost-effective way to bolster its employment statistics. In keeping a close eye on the bottom line, it necessarily would control the number of prospective law clerks to be furnished at any given time. For its part, the judiciary is sensitive to the compromise of its independence in any aspect of the administration of justice — including perhaps a hiring committee having to share the actual selection process. These interests and perspectives need not be mutually exclusive, but this cooperative arrangement between the two entities must be fully explored and standardized for its sustainability.

That said, the reports regarding the first two years of this program are generally positive. There is no reason why it cannot be expanded if the current unemployment/underemployment situation persists. Presently, only a handful of postgraduate law clerks have been hired this way, and at that, only for the Superior Court, and only in those counties in the Greater Boston area. The Probate and Family Court and the District Court departments, to name just two other court departments, are no less in need of law clerk assistance.

Several law schools currently provide paid law clerk positions, including Boston College Law School, Boston University School of Law, New England Law Boston, Suffolk University Law School and the University of Massachusetts at Dartmouth School of Law.<sup>73</sup> But law school participation could be increased to include all Massachusetts law schools, especially those that can provide for law clerks outside of Boston. Bar associations, regional and affinity, also could fund one (or more) law clerk positions with stipends, increasing diversity within the program. The task force hopes the MBA will continue to campaign for expansion of the program, especially where the courts are proscribed from engaging in such advocacy. For its part, the judiciary's budget may at some point allow for reimbursement of a graduate's travel expenses, even if it is not fully able to fund the position. This would provide more incentive for graduates to commute to under-served areas of the commonwealth and help to achieve the statewide assistance the courts need.

Furthermore, if this model of law schools' underwriting certain placement of graduates has sustainability; there is no reason why it could not be applied to the offices of the district attorney, Greater Boston Legal Services or CPCS. This would greatly expand the graduate's opportunities for practical training and experience while augmenting the respective office's legal staff. The offices would benefit, for one example, by bolstering its coverage for lower-level misdemeanor cases, while freeing up precious resources for more serious felony-level matters. Although the placements would be temporary, the respective offices would be able to hire from this pool as permanent positions become available.<sup>74</sup>

## **B2. POSTGRADUATE CLINICS**

Currently just an idea on paper, in the postgraduate clinics, unemployed or underemployed new graduates (those who have graduated only weeks or months earlier) would work in their own law school's clinics, providing volunteer legal services as needed, similar to the traditional third-year clinic. The graduates would be supervised by the school's clinical staff, again, similar to the supervision provided during third-year clinics. The commitment could be in three-month or six-month blocks of time to allow for quick transition to paid employment, should a graduate receive a job offer.

The clinics would allow the graduates to learn or enhance their lawyering skills, especially given that they would be supervised by the clinical staff, thus avoiding down time during any period of unemployment or underemployment after graduation. Clinics, generally, provide free or low-cost legal services to those who qualify, so the graduates would be filling a societal need as well as introducing those new lawyers to the pro bono commitment they should maintain throughout their careers.

The various law schools would need to provide the resources for the postgraduate clinics (which might require additional hiring, but of adjunct, not necessarily tenured, faculty), and the schools would receive no revenue, as they do from the tuition payments of third-year clinical participants. The graduates, however, would offer valuable assistance to the clinics by providing case coverage during holiday breaks, finals periods, and the late summer months, when law students might not be available. Another concern is that the clinics would not pay the graduates any salary, unless the law schools agree to provide a stipend, and, therefore, the clinics do not address or assist with the graduate debt. Professional liability insurance coverage also would need to be investigated, though perhaps the same coverage-type provided to the third-year clinical participants could be provided to the graduates.<sup>75</sup>

The task force recommends that the MBA encourage all law schools to open each of their clinics to one or more graduates who are struggling to find employment.

### **C. THE LAW SCHOOL LAW FIRM (Proposed by Bradley T. Borden and Robert J. Rhee in “The Law School Law Firm,” 63 S.C.L. Rev. 1 [2011])**

The law school law firm would be a professionally managed, revenue-generating, non-profit law firm, equivalent to a teaching hospital in the medical field. A chief executive officer and senior attorneys would manage the practice, train and supervise the new lawyers who participate, and model the best practices. The new lawyers would be those who have just graduated from law school and they would commit to, for example, one or two years, rotating through the various practice groups. A form of this idea already is in existence, in programs sometimes called “incubators,” at City University of New York School of Law, University of Maryland, University of Missouri-Kansas City School of Law and Pace Law School (forthcoming, September, 2012).

The law school law firm would aim to draw senior attorneys seeking professional fulfillment to run the practice, and ideally, it would generate sufficient revenue to adequately compensate those attorneys, although there would be no profit distribution. The law school law firm would include practice areas that are effective sources of revenue to balance those areas that are not. The senior attorneys would teach the new attorneys how to develop business, manage clients and files, and develop other skills needed to be a successful attorney. The law school law firm would aim to provide competitive compensation for the senior attorneys (for example, similar to small/medium-sized firms), while providing compensation similar to public service positions for the new attorneys. The law school law firm also would pair new attorneys with mentors, and provide other institutional support.

The new attorneys would be paid, in part, with money channeled through the law school and thus would require initial monetary and administrative support from law schools. There might be tax implications, which requires further research. The law school law firm, however, would directly address the concern that law schools do not mandate training as part of their curriculum, i.e., the new attorneys would gain that experience in the law firm and then move on to more traditional employment in the public or private sector.

## CONCLUSION

The current surplus of law school graduates in comparison to the dwindling opportunities for their employment demands new and creative cooperation between Massachusetts law schools and the public and private<sup>76</sup> sectors to assist in the placement of new lawyers in the workforce while benefiting the community at large. Additionally, the established bar associations have the ability to help by expanding underutilized referral services and increasing their mentoring role. Every member of the legal community will need to participate to assist new law graduates in overcoming the challenges of the current legal market.

# APPENDIX

## A1. LAWYER REFERRAL SERVICES

<http://www.massbar.org/for-the-public/need-a-lawyer>.

<http://www.bostonbarlawyer.org/>

<http://www.nlgmass.org/lawyer-referral-service>

## A2. REDUCED-FEE PANELS

<http://www.masslegalservices.org/directory>

## A3. LIMITED ASSISTANCE REPRESENTATION

<http://www.mass.gov/courts/sjc/limited-rep.html>

## A4. BAR ADVOCATE PROGRAMS & CHILDREN AND FAMILY LAW APPOINTMENTS

[http://www.publiccounsel.net/Office\\_Locations/bar\\_advocate\\_offices.html](http://www.publiccounsel.net/Office_Locations/bar_advocate_offices.html)

<http://www.publiccounsel.net/index.htm>

[http://www.publiccounsel.net/practice\\_areas/cafl\\_pages/civil\\_cafl\\_index.html](http://www.publiccounsel.net/practice_areas/cafl_pages/civil_cafl_index.html)

## A5. SENIOR PARTNERS FOR JUSTICE

<http://www.spfj.org>

## A6. VOLUNTEER LAWYERS PROJECT

<http://www.vlpnet.org>

## A7. MENTORING

<http://www.massbar.org/for-attorneys/mentor-program>

<http://www.massbar.org/for-attorneys/mentor-circles>

[http://www.womensbar.org/content.aspx?page\\_id=22&club\\_id=808000&module\\_id=71620](http://www.womensbar.org/content.aspx?page_id=22&club_id=808000&module_id=71620)

<http://www.massblacklawyers.org>

<http://www.aalam.org/index.shtml>

<http://www.masslgbtqbar.org/index.html>

<http://www.thebostonlawyersgroup.com/about/programs.html>

1. Association of American Medical Colleges, <https://www.aamc.org/data/facts>.
2. Association of American Medical Colleges, <https://www.aamc.org/data/facts>.
3. *Id.*
4. National Resident Matching Program, <http://www.nrmp.org/data/resultsanddata2011.pdf>.
5. Suzanne Sataline and Shirley S. Wang, "Medical Schools Can't Keep Up," *The Wall Street Journal*, April 12, 2010, available at <http://online.wsj.com/article/SB10001424052702304506904575180331528424238.html>.
6. <http://www.medscape.com/features/slideshow/compensation/2011>.
7. <http://www.lsac.org/LSACResources/Data/lsac-volume-summary.asp>.
8. American Dental Association 2009-2010 Survey of Dental Education, Volume 1, page 7, available at [http://www.ada.org/sections/professionalResources/pdfs/survey\\_ed\\_vol1.pdf](http://www.ada.org/sections/professionalResources/pdfs/survey_ed_vol1.pdf).
9. <http://www.lsac.org/LSACResources/Data/lsac-volume-summary.asp>.
10. American Dental Association, <http://www.ada.org/1444.aspx>.
11. Class of 2009 National Summary Report (NALP), available at <http://www.nalp.org/uploads/NatlSummaryChartClassof09.pdf>.
12. American Dental Association 2008-2009 Survey of Dental Education, Volume 4, available at [http://www.ada.org/sections/professionalResources/pdfs/survey\\_ed\\_vol4.pdf](http://www.ada.org/sections/professionalResources/pdfs/survey_ed_vol4.pdf).
13. *Id.* at 21, 144.
14. American Dental Education Association, *Go Dental*, [http://info.adea.org/DEP/Pathways/Future\\_Students/Career\\_Options/Career\\_Options](http://info.adea.org/DEP/Pathways/Future_Students/Career_Options/Career_Options).
15. American Dental Education Association, *Go Dental*, available at [http://info.adea.org/DEP/Pathways/Future\\_Students/Career\\_Options/General\\_Dentistry](http://info.adea.org/DEP/Pathways/Future_Students/Career_Options/General_Dentistry).
16. American Dental Association, <http://www.ada.org/1444.aspx>.
17. U.S. Bureau of Labor Statistics, <http://www.bls.gov/ooh/Healthcare/Dentists.htm>.
18. American Dental Association, <http://www.ada.org/1444.aspx>.
19. See, e.g., Patrick G. Lee, "Law Schools Get Practical," *The Wall Street Journal*, July 10, 2011, available at <http://online.wsj.com/article/SB10001424052702304793504576434074172649718.html#>.
20. The Association for Legal Career Professionals, "Perspectives on Fall 2011 Law Student Recruiting," March 2012, available at <http://www.nalp.org/perspectivesonfallrecruiting>.
21. *Id.*
22. See Lee, *supra* note 20.
23. <http://www.northeastern.edu/law/co-op/index.html>.
24. <http://www.sjccountyclerk.com/rule303.html>.
25. See, e.g., American Bar Association, Section of Legal Education and Admissions to the Bar, "Report of the task force on Law Schools and the Legal Profession: Narrowing the Gap," (The MacCrate Report)(July 1992).
26. See, e.g., Sullivan, William *et al*, "Educating Lawyers: Preparation for the Profession of Law" (John Wiley & Sons 2007), summary available at [http://www.carnegiefoundation.org/files/elibrary/EducatingLawyers\\_summary.pdf](http://www.carnegiefoundation.org/files/elibrary/EducatingLawyers_summary.pdf).
27. *Id.* at 7.
28. David Segal, "What they Don't Teach Law Students: Lawyering," *The New York Times*, Nov. 19, 2011, available at <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?pagewanted=all> (partially attributing law schools' failure to adequately prepare its students to U.S. News rankings that value legal scholarship over teaching).
29. Stake, *The Interplay Between Law School Rankings, Reputations and Resource Allocations: Ways Rankings Mislead*, 81 Ind. L.J., 229, 230 (2006). [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=700862](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=700862).
30. *Id.* at 266 ("All schools might prefer that there be no *U.S. News* rankings, or that certain criteria be excluded, or that all schools ignore the incentives created by *U.S. News*, but no school can opt out of the game. Refusing to play—refusing to allow the LSAT to drive admissions, refusing to allow bar passage to drive pedagogical choices, refusing to spend extra money on career services officers and advertising — means other schools that do play the game will pull ahead in the rankings.").
31. The other factors are median undergraduate GPA, acceptance rate into a J.D. program, employment rates, bar passage rate, faculty resources, expenditures per student, student/faculty ratio, and library resources. See Morse, Flanagan, "Methodology: Law School Rankings," *U.S. News & World Report*, available at <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/03/12/methodology-law-school-rankings>.

32. NALP: The Association for Legal Career Professionals, "Class of 2010 Graduates Faced Worst Job Market Since Mid-1990s: Longstanding Employment Patterns Interrupted," NALP: The Association for Legal Career Professionals, *available at* <http://www.nalp.org/2010selectedfindingsrelease>.
33. "LSAC Volume Summary," last visited May 2, 2012, <http://lsac.org/lsacresources/data/lsac-volume-summary.asp>.
34. "Tuition Three Times Faster Than Inflation, but Some Schools Buck the Trend," *National Jurist*, Feb. 22, 2012, *available at* <http://www.nationaljurist.com/content/tuition-three-times-faster-inflation-some-schools-buck-trend>.
35. David Segal, "Is Law School a Losing Game?," *The New York Times*, Jan. 8, 2011, *available at* <http://www.nytimes.com/2011/01/09/business/09law.html?pagewanted=all>. (this first in a series of five articles on legal employment written by David Segal raised public awareness regarding law schools' painting bright pictures of young lawyers' prospects while clouding actual employment outcomes).
36. "Plaintiff's firms target another 20 law schools, alleging fraud," *The National Law Journal*, March 14, 2012, *available at* [http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202545575181&Plaintiffs\\_firms\\_target\\_another\\_\\_law\\_schools\\_alleging\\_fraud&slreturn=1](http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202545575181&Plaintiffs_firms_target_another__law_schools_alleging_fraud&slreturn=1).
37. *See, e.g.*, "9 Graduates Lose Case Against New York Law School," *The New York Times*, March 22, 2012, *available at* <http://dealbook.nytimes.com/2012/03/22/9-graduates-lose-case-against-new-york-law-school>.
38. Employment information available to law school candidates at no or low cost includes law schools' web pages, the *ABA-LSAC Official Guide to ABA Approved Law Schools*, [https://officialguide.lsac.org/release/OfficialGuide\\_Default.aspx](https://officialguide.lsac.org/release/OfficialGuide_Default.aspx).
39. Villanova School of Law knowingly misreported its fall 2009 entering class median LSAT score as 162 and median undergraduate GPA as 3.44. However, for comparison, Villanova certifies for its fall 2010 entering class that its median LSAT score was 160 and its median undergraduate GPA was 3.33. <http://www.usnews.com/education/blogs/college-rankings-blog/2011/02/17/villanova-law-school-certifies-accuracy-of-new-data>. On the other hand, the University of Illinois Law School's most egregious exaggeration of its admission data was for its fall 2010 entering class where it reported a median undergraduate GPA of 3.8 when it was actually 3.6. <http://www.usnews.com/education/blogs/college-rankings-blog/2011/10/05/university-of-illinois-law-school-admits-to-submitting-inflated-admission-data>.
40. *The ABA-LSAC Official Guide to ABA Approved Law Schools* may be found at [https://officialguide.lsac.org/release/OfficialGuide\\_Default.aspx](https://officialguide.lsac.org/release/OfficialGuide_Default.aspx).
41. NALP: The Association for Legal Career Professionals, <http://www.nalp.org>, *Occupational Outlook Handbook*, <http://www.bls.gov/oco>, undergraduate speakers/alumni /ae panels, and college and university prelaw advisors.
42. With thanks to ABA representative Susan Krinsky (Tulane University Law School), current chair of the Prelaw Committee of the ABA's Section of Legal Education and Admissions to the Bar.
43. PLANC, "Pre-law Advisor Perspectives on the ABA Law School Questionnaire Comments from the Pre-law Advisors National Council (PLANC) November 2010," <http://www.planc.org/storage/PLANCpercent20commentspercent20toppercent20ABA.pdf>, accessed Feb. 28, 2012.
44. The ABA Annual Questionnaire with instructions, fall 2011, [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2011\\_aq\\_part1\\_general.doc](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2011_aq_part1_general.doc), accessed February 28, 2012.
45. Karen Sloan, "ABA Stalls on Honing Law Schools' Job Placement Reports," *National Law Journal*, Sept. 26, 2011, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202516871137&slreturn=1>.
46. *American Bar Association, Section of Legal Education and Admissions to the Bar, Statement Regarding Council Action on the Collection and Publication of Law School Graduate Placement Data*, Dec. 3, 2011, [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/2011\\_council\\_action\\_re\\_placement\\_data.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/2011_council_action_re_placement_data.authcheckdam.pdf), accessed February 28, 2012.
47. NALP, "Best Practices Guide for Managing Law School Employment Outcomes," January 2012" [http://www.nalp.org/lseotf\\_bestpract](http://www.nalp.org/lseotf_bestpract), accessed Feb. 28, 2012.
48. <http://www.bu.edu/law/prospective/careers/jd/employmentstats.html#stats>.
49. <https://www.law.villanova.edu/Aboutpercent20VLS/ABApercent20Publicpercent20Censure.aspx>.
50. Sarbanes-Oxley Act, Pub. L. 107-204, 117 Stat. 745; "Is the SEC the Answer to the 'Villanova Syndrome?'," *Wall Street Journal Blogs*, Feb. 8, 2011, *available at* <http://blogs.wsj.com/law/2011/02/08/is-the-sec-the-answer-to-the-villanova-syndrome>.
51. <http://economix.blogs.nytimes.com/2011/06/27/the-lawyer-surplus-state-by-state>.
52. [http://www.ncbex.org/assets/media\\_files/Statistics/2010Stats110111.pdf](http://www.ncbex.org/assets/media_files/Statistics/2010Stats110111.pdf).
53. [http://www.ble.state.tx.us/exam\\_info/tbe\\_instructions2.htm](http://www.ble.state.tx.us/exam_info/tbe_instructions2.htm).
54. <http://www.freerepublic.com/focus/f-news/1550200/posts>.
55. <http://www.juristech.com/chart.html>.
56. Effective Sept. 4, 2012, the Massachusetts Supreme Judicial Court amended its Rule 3:15 to require a \$301 fee for *pro hac vice* admissions in Superior Court Land Court and Appellate Courts (with the exception of the Appellate Division of the District Courts and the BMC); a \$101 fee for all other courts, which will be retained by the BBO to cover costs, with the balance to go to IOLTA. These fees do not apply if appearing pro bono.

57. See *Goodman v. Fuji Elec. Co. Ltd.*, PC 2002-3106, 2007 R.I. Super LEXIS 64 (April 25, 2007).
58. <http://www.mass.gov/bbe/statisticsjuly2011.pdf>.
59. <http://lawschooltuitionbubble.wordpress.com/original-research-updated/lawyers-per-capita-by-state/>.
60. Certainly, other factors contribute significantly to a law school graduates' decision to remain in Massachusetts, but familiarity with Massachusetts law is arguably among them.
61. One source calculates that there are now 5.4 unemployed law school graduates for every one lawyer job opening in Massachusetts. See [www.lawschooltuitionbubble.wordpress.com/original-research-updated/law-graduate-overproduction](http://www.lawschooltuitionbubble.wordpress.com/original-research-updated/law-graduate-overproduction). Given the focus of this subcommittee, the concentration here will be on actual short- and long-term employment of graduates admitted to the Massachusetts bar, as opposed to the participation of second- and third-year students in school-sponsored clinics or other volunteer positions, which can only help to better prepare the graduates for taking on the type of work discussed here.
62. The information on these services was provided in part through the kind assistance of MBA LRS Public Services Manager Claudia J. Staten.
63. Some of the information presented here was provided by Linda Peters of the Worcester County Bar Association.
64. It is known elsewhere as "modest means panels" and was surveyed nationwide by the American Bar Association in 2008, see [http://www.americanbar.org/content/dam/aba/migrated/legalservices/lris/clearinghouse/downloads/2008\\_modest\\_means\\_survey.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/legalservices/lris/clearinghouse/downloads/2008_modest_means_survey.authcheckdam.pdf).
65. See [www.uscourts.gov/FederalCourts/2011PovertyGuidelines](http://www.uscourts.gov/FederalCourts/2011PovertyGuidelines).
66. The availability of bar advocacy and children and family law appointments has been significantly affected by recent efforts to replace these appointment with full-time staff counsel. Specifically, while CPCS attorneys previously had been handling 10 percent of the court-appointed work, the mandate increased to 25 percent for fiscal year 2012 and may increase for fiscal year 2013.
67. Lawyers cannot receive appointments in the Superior Court without certification by CPCS based on the number of years of experience and the number of jury trials where the attorney was lead counsel. [http://www.publiccounsel.net/private\\_counsel\\_manual/private\\_counsel\\_manual\\_pdf/chapters/manual\\_chapter\\_3.2.pdf](http://www.publiccounsel.net/private_counsel_manual/private_counsel_manual_pdf/chapters/manual_chapter_3.2.pdf).
68. Suffolk Lawyers for Justice, for example, lists its selection criteria on its website: [http://www.sljinc.org/applying\\_slj2011.htm#Selection Criteria](http://www.sljinc.org/applying_slj2011.htm#Selection%20Criteria).
69. The federal version of the bar advocate lists, i.e., the Criminal Justice Act (CJA) panels, use a term-limit procedure; although the rate of pay for federal court-appointed work is currently \$92 per hour, substantially higher than the state rate, that program is not included here as CJA applicants are required to have at least five years of experience.
70. <http://www.vlpnet.org/client-quotes>.
71. In 2010, attorneys who participated in VLP contributed more than 17,500 pro bono hours, a value of approximately \$3,700,000.
72. The subcommittee thanks Hon. Carol S. Ball (Superior Court Law Clerk Hiring Committee) and Romeo Camba (Superior Court Legal Research Services) for assistance in this section.
73. The task force acknowledges the efforts of all Massachusetts law schools that have their own programs to place graduates in positions of public service.
74. Alternatively, instead of a stipend provided by the law school, the graduate could receive a grant from the commonwealth that would match (dollar-for-dollar at a law clerk salary) the graduate's repayment of law school debt.
75. S.J.C. Rule 3:03, which allows senior law students at authorized law schools to appear in court without compensation prior to admission to the bar, applies only to those whose right to appear in court commenced at least three months prior to graduation from law school. In addition, approval to appear is only in effect until the date of the first bar examination following a student's graduation, and as to a student taking that examination, until the announcement of the results thereof. For any student passing the examination, the 3:03 approval continues for six months after the date of the examination or until the date of his or her admission to the bar, whichever is sooner, unless otherwise ordered by the Supreme Judicial Court.
76. The task force recognizes that some law firms have assisted new attorneys who they ultimately were unable to hire, despite an initial commitment. Law firms also have provided new attorneys with deferred start dates and opportunities to do subsidized pro bono work or to work at a client company at a portion of the offered salary.