State Bar of California
Task Force On Admissions Regulation Reform: Phase I Final Report

June 24, 2013

Jon B. Streeter, Chair

Hon. Steven A. Brick
George O. Davis
Matthew K. Edling
Richard A. Frankel
Karen M. Goodman
Patrick M. Kelly
Loren Kieve
Wells B. Lyman
Dennis Mangers
Dean Shauna I. Marshall
Alan S. Yochelson
James McManis
Steven A. Nissen
Heather L. Rosing
Robert A. Shives Jr.
Prof. Marjorie M. Shultz
Jill A. Switzer
Dean Deanell R. Tacha
William C. Vickrey
Patricia P. White

INTRODUCTION **1**

I. BACKGROUND AND FINDINGS **3**

A. PAST STUDIES 3
B. CHANGES IN LEGAL EDUCATION 5
C. CHANGES IN THE PROFESSION 6

II. BEYOND THE "NUTS-AND-BOLTS" OF LAW PRACTICE: INCULCATING THE VALUES OF PROFESSIONALISM **10**

A. PRO BONO SERVICE 11
B. REPRESENTATION OF MODEST MEANS CLIENTS 11
C. CLOSING THE JUSTICE GAP: PRO BONO AND MODEST MEANS REPRESENTATION SHOULD BE PART OF ANY COMPETENCY TRAINING PROGRAM 13

III. WHAT A NEW COMPETENCY TRAINING REQUIREMENT SHOULD LOOK LIKE AND HOW TO IMPLEMENT IT **14**

A. WHAT COMPETENCIES ARE MOST CRITICAL? 14
B. FOR PRE-ADMISSION COMPETENCY TRAINING IN LAW SCHOOL, HOW MANY COURSE UNITS SHOULD BE REQUIRED? 15
C. HOW CAN WE PROMOTE GREATER PARTICIPATION BY PRACTITIONERS AND JUDGES IN THE TRAINING OF NEW LAWYERS? 18
D. SHOULD LAW PRACTICE MANAGEMENT BE INCLUDED IN A COMPETENCY TRAINING REGIMEN? 20

IV. CAUTIONARY COMMENTS ON ANY NEW COMPETENCY TRAINING REQUIREMENT **20**

A. POTENTIAL ADVERSE IMPACT ON DIVERSITY 20
B. POTENTIAL COST BURDEN ON LAW STUDENTS AND NEW LAWYERS 21
C. POTENTIAL IMPEDIMENT TO NATIONAL UNIFORMITY AND MULTISTATE PRACTICE 22

V. RECOMMENDATIONS **24**

A. PRE-ADMISSION: COMPETENCY TRAINING REQUIREMENT 24
B. PRE- OR POST-ADMISSION: REPRESENTATION OF CLIENTS ON A PRO BONO OR MODEST MEANS BASIS 25
C. POST-ADMISSION: COMPETENCY TRAINING MCLE OR MENTORING REQUIREMENT 25

CONCLUSION **26**

INTRODUCTION

The Board of Trustees of the State Bar of California charged the Task Force on Admissions Regulation Reform (the "Task Force") with "[e]xamin[ing] whether the State Bar of California (the "State Bar" or the "Bar") should develop a regulatory requirement for a pre-admission competency training program, and if so, proposing such a program" for submission to the Supreme Court.

Most American law schools today follow the traditional Langdellian model of legal education, emphasizing doctrinal study as the basis for teaching students the art of "thinking like a lawyer." Over the course of more than a century since this model of legal education took root around the country, law schools have gradually incorporated clinical experience and competency training into their core curriculum. The importance of providing new lawyers with opportunities to develop competency skills has been driven, in large part, by the rapidly changing landscape of the legal profession, where, due to the economic climate and client demands for trained and sophisticated practitioners fresh out of law school, fewer and fewer opportunities are available for new lawyers to gain structured competency training early in their careers. Many new lawyers, in fact, are now entering the profession as solo practitioners, without the solid foundation necessary to represent clients in a competent manner and with nowhere to turn to build that foundation.

From the standpoint of regulatory policy, this situation presents serious issues of public protection that cannot be ignored. The record that we have compiled and examined confirms the importance and urgency of a thoughtful policy response. Following a series of hearings during which the Task Force took testimony from many practitioners, legal academics, judges, clients, and members of the public at large, and based on a thorough review by the Task Force of the literature on the topic of law practice competency training for new lawyers -- an extensive body of work going back decades that has repeatedly addressed the same set of questions considered here, and that has time and again confirmed the need for reform -- we now answer the charge given to us in the affirmative: In our view, a new set of training requirements focusing on competency and professionalism should be adopted in California in order to better prepare new lawyers for successful transition into law practice, and many of these new requirements ought to take effect pre-admission, prior to the granting of a law license.

With this brief introductory background in mind, we set forth below our findings and the basis for our call for reform. We conclude by outlining a recommended program of reform. Our proposed recommendations, in brief overview, are as follows:

- **Pre-admission**: A competency training requirement fulfilled prior to admission to practice. There would be two routes for fulfillment of this pre-admission competency training requirement: (a) at any time in law school, a candidate for admission must have taken at least 15 units of practice-based, experiential course work that is designed to develop law practice competencies, and (b) in lieu of some or all of the 15 units of practice-based, experiential course work, a candidate for admission may opt to participate in a Bar-approved externship, clerkship or apprenticeship at any time during or following completion of law school;

- **Pre-admission or post-admission**: An additional competency training requirement, fulfilled either at the pre- or post- admission stage, where 50 hours of legal services is specifically devoted to pro bono or modest means clients. Credit towards those hours would be available for "in-the-field" experience under the supervision and guidance of a licensed practitioner or a judicial officer; and,

- **Post-admission**: 10 additional hours of Mandatory Continuing Legal Education ("MCLE") courses for new lawyers, over and above the required MCLE hours for all active

members of the Bar, specifically focused on law practice competency training. Alternatively, credit towards these hours would be available for participation in mentoring programs.

In general, we are recommending an approach that maximizes freedom of choice from a menu of options, so that law students and new admittees to the Bar are presented with a variety of ways to fulfill their competency training requirements, at different times and in different ways, during law school and in the early years of practice. Flexibility is of paramount importance in addressing an issue of this complexity and potential cost. The adage that "no one size fits all" is certainly apt. That is why we recommend a structure for the 15-unit pre-admission competency training requirement that has multiple paths: (i) law school coursework, (ii) externship, clerkship or apprenticeship programs, or (ii) some combination of both paths.

Because we believe that closing the gap in practice-readiness must involve a collaborative effort in which the law school community, practicing lawyers, and the Bar each have a role – it must be a shared endeavor in which burdens are shared and responsibility is shared as well – we view the academy as a partner. We call for no radical change in legal education as it exists today. And by including in our pre-admission proposal an alternative that would permit law graduates to meet their requirement through externships, clerkships or apprenticeships, we hope to promote greater participation by practitioners and judges in the training of new lawyers.

In recent decades, law schools have made tremendous progress toward closing the practice-readiness gap. By increasing opportunities for clinical and other experiential education, and by offering new, innovative forms of course work that combine traditional doctrinal teaching with practice-based teaching, the legal academy has in many respects led the way on this issue. We wish to promote and build upon their example. Law schools must, in our view, continue to have maximum leeway to offer curricula that, in their best judgment, fit whatever pedagogical model they choose to adopt and whatever student demographic they serve. Thus, we propose that the 15 unit pre-admission requirement would be based on a system of self-verification in which law schools themselves would designate which of their courses qualify for credit toward that requirement.

We have no illusions that the State Bar can fashion a new, more practice-oriented training regimen overnight or prescribe exactly what it must look like in every detail. But we are confident that the Bar can establish a regulatory framework that will provide a structure for the organic evolution and growth of such a system. We intend the recommendations we make in this Report to provide the foundation for that framework. To put these requirements into effect, we recommend that the Bar develop a set of implementing rules, with full and extensive vetting in the rulemaking process, and that the final rules go into effect gradually, perhaps phasing in first the post-admission requirements in 2015, the pro bono/modest means requirement in 2016, and the classroom requirements in 2017.

I. Background and Findings

A. Past Studies

The Task Force reviewed and considered several past studies dealing with a perceived gap between law school education and preparation to practice law. All echoed a common theme: While law schools are able to impart "a distinctive habit of thinking that forms the basis for their student's development as legal professionals . . ." they are less successful in the "task of connecting these conclusions with the rich complexity of actual situations that involve full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions.. . ."[1]

In 1992, the American Bar Association ("ABA") Section of Legal Education and Admissions to the Bar published its 400-plus page *Report of the Task Force on Law Schools and the Profession*.[2] Known as the "MacCrate Report," this influential study documented the findings of a task force commissioned to examine the connection between legal education and the profession.[3] The MacCrate Report found that "[t]he skills and values of the competent lawyer are developed along a continuum that starts before law throughout a lawyer's professional career."[4] After extensively reviewing the state of the profession and of legal education, the MacCrate Report issued a "Statement of Fundamental Lawyering Skills and Professional Values" that, in concluding summary, made some simple findings: a lawyer should (1) attain a level of competence in one's own field of practice, (2) maintain a level of competence in one's own field of practice, and (3) represent clients in a competent manner.

The MacCrate Report emphasized the value to law students of practice-oriented instruction that includes clinics, externships and simulations. It also recognized the value of part-time employment during the academic year as a complement to classroom instruction. It noted that apprenticeships have fallen into disfavor in the United States, but are generally required in English commonwealth jurisdictions. The MacCrate Report avoided acknowledging any "gap between law school and law practice," but recognized the existence of "bridge the gap programs" in most states. The MacCrate Report did not address when, in the educational continuum, the level of competence to represent a client must be achieved, but did note the importance of continuing legal education.

---

[1] WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter CARNEGIE REPORT], at 5-6.

[2] AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MACCRATE REPORT]. *See also* LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (Robert MacCrate ed., 1992); Robert MacCrate, *The Lost Lawyer Regained: The Abiding Values of The Legal Profession*, 100 DICK. L. REV. 587 (1996).

[3] The task force report took its name from the chair, Robert MacCrate, a well-known and successful lawyer from New York. (Reporter's Transcript ["RT"] of August 1, 2012 Task Force Hearing (remarks of Professor Shultz), p. 104).

[4] EDWIN W. PATTERSON III & JONATHAN I. ARONS, JOINT NOBC/APRL COMMITTEE ON COMPETENCY: FINAL REPORT (2010), *available at* www.nobc.org/uploadedFiles/About_Us/Final_Report.pdf [hereinafter JOINT NOBC/APRL COMPETENCY COMMITTEE FINAL REPORT] at 1, 3.

Commenting in retrospect on the continuing importance of the MacCrate Report today, former Chief Justice Randall Shepard of the Indiana Supreme Court recently said:

> [T]he central contribution of the MacCrate Report has been to help all of us view 'legal education' as something that does not conclude with law school graduation but rather continues well thereafter. Whether we do it through the law-school admissions process, through law instruction in school, through the bar admissions process, or through continuing legal education, we should view lawyer education as a lifelong continuum in which various players take principal roles at different moments but which, in fact, ought to be one long and useful venture.[5]

In the ensuing years since the MacCrate Report was published, several other major studies have appeared, each finding essentially the same thing.[6] Clinical legal education is, naturally, central to the vision for legal education advocated by these various studies. As part of a program designed to promote student competence, some commentators have endorsed universal clinical education, arguing that all students should be required, during their third year of law school, "to participate in externship courses or in-house clinics in which students represent clients or participate in the work of lawyers and judges, not just observe it."[7]

---

[5] Randall T. Shepard, *From Students to Lawyers: Joint Ventures in Legal Learning for the Academy, Bench, and Bar*, 31 IND. L. REV. 445, 447 (2011) [hereinafter "*From Students to Lawyers*"].

[6] *See also* CARNEGIE REPORT, pp. 5-10; ROY STUCKEY ET. AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (2007) [hereinafter "BEST PRACTICES REPORT"]. The critiques in the MACCRATE REPORT, the BEST PRACTICES REPORT and the CARNEGIE REPORT have a long lineage. Jerome Frank said many of the same things in the 1930s. *See* Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 916 (1933) (emphasis omitted) ("Law students should be given the opportunity to see legal operations."). A fellow member of the Legal Realist school of thought, Karl Llewellyn, echoed Frank's critique of the law school method of instruction of his time. *See* Karl N. Llewellyn, THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY at 101(1930) ("[The first year] aims, in the old phrase, to get you to 'thinking like a lawyer.'"). Decades later, the themes articulated by these scholars still had currency. *See* Anthony G. Amsterdam, *Clinical Education – A 21st Century Perspective*, 34 J. LEGAL EDUC. 612 (1984).

[7] For another useful summary of how clinical education fits within the traditional legal education curriculum, including a survey of the historical development of the clinical education movement, *see* Marc Feldman, *On The Margins of Legal Education*, 13 N.Y.U. REV. L. & SOC. CHANGE 607 (1985).

B. Changes in Legal Education

Much has changed among law schools in the years since the MacCrate Report was issued. Clinical education is now widely available in most law schools and a great deal of experimentation is occurring, with many schools finding new and innovative ways to integrate it into their traditional curricula.[8] Despite these laudable changes, however, it is clear that the economics of legal education are putting the traditional law school model under great strain.

Due to the staggering cost of the education, those who cannot pay for law school on their own or by tapping family wealth are graduating heavily burdened by debt, only to face one of the worst employment markets for recent law graduates in decades. While we in the profession see and are taking steps to respond to the crisis in access to justice,[9] the economics of legal education point to another developing crisis, this one more insidious -- the emerging crisis in access to legal education. If things continue on the current trajectory, over time only the wealthy will be able to afford law school. For all but the financially well-endowed, law school will soon make no sense as a career choice.

In the face of sharply declining enrollments, the question is not whether law schools will respond to this issue, but how they will do so. The ABA's Task Force on the Future of Legal Education (the "ABA Legal Education Task Force"), a blue-ribbon group appointed in 2012 by Immediate-Past ABA President William T. Robinson III, is currently examining this question. From some quarters, fairly radical steps have been suggested. For example, what began years ago as an odd-sounding suggestion that the third year of law school be simply abandoned and that law students be permitted to sit for the bar examination after two years is now re-surfacing more and more frequently, and in one state, Arizona, the Supreme Court has recently changed the admission rules to allow that.[10] Others have suggested that ABA accreditation standards should be relaxed to allow for more experiential learning, since these standards limit the use of adjunct faculty, impose library requirements that are outmoded, and impede the use of on-line learning.[11]

---

[8] *See* AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A SURVEY OF LAW SCHOOL CURRICULA: 2002-2010 at 15-16 (Catherine L. Carpenter ed., 2012) [hereinafter ABA LAW SCHOOL CURRICULA SURVEY at 15-16.

[9] *See e.g.* ILLINOIS STATE BAR ASSOCIATION SPECIAL COMMITTEE ON THE IMPACT OF LAW SCHOOL DEBT ON THE DELIVERY OF LEGAL SERVICES (March 18, 2013) [hereinafter ILLINOIS BAR SPECIAL COMMITTEE REPORT ON STUDENT DEBT].

[10] *See* Debra Cassens Weiss, *Two-year law school was a good idea in 1970, and it's a good idea now, prof tells ABA Task Force*, ABA JOURNAL (February 9, 2013) (citing the testimony of Professors Paul Carrington and Jim Chen before the ABA Legal Education Task Force).

[11] *Id.* (citing testimony of Professor Luke Bierman before the ABA Legal Education Task Force).

We do not embrace or endorse the idea that law schools are somehow "broken."[12] We take that thesis into account only as a marker of the vigorous debate about change now underway within the academy itself, as it is in the profession. We also choose not to enter into the debate about whether some forced restructuring of law school education is in order.[13] This issue is better addressed at the ABA level, where national change may best be accomplished, if appropriate. Here in California, at the state level, we believe that closing the gap in practice-readiness must involve a collaborative effort in which the law school community, practicing lawyers, and the Bar each have a role – it must be a shared endeavor in which burdens are shared and responsibility is shared as well.

We view the legal academy as a partner, and we are disposed to give considerable weight to the views we hear from its members, while recognizing that it does not speak with one voice. During our Task Force proceedings, we heard helpful and illuminating testimony from a number of law school deans. We accept much of the advice given by those deans who testified before us. In particular, we agree with the suggestions that any new competency and professionalism training requirements be implemented gradually and that there should be a focus on the immediate post-admission period when new lawyers are just entering the profession. We adopt those points in our recommendations. We may differ in some respects, mostly because we look at these issues through a regulatory frame, always bearing our public protection charge in mind, but to the degree we part ways with some in the academic community, we believe we do so only by degrees.

C. Changes in the Profession

Coming out of law school, new lawyers today face a crushing debt burden -- the average is well over $100,000 – and many have great difficulty finding jobs. At the same time, hastened by the economic realities of the last few years, lawyers must learn to be more efficient, more cost effective, and more attuned to both client desires and expectations.[14] Changes in the economics of the profession are making it more and more difficult for new lawyers to find the training, hands-on guidance and mentoring that is necessary for a successful transition into practice. Big law firms and government agencies had in the past done trainings to provide that sophisticated knowledge. Now, clients no longer want to pay for that training and are refusing to do so. Just as many other industries have had to restructure over the past five years, restructuring is at hand for the legal profession as well. Further, more than half of the recently admitted attorneys have not found jobs with big law firms or government agencies, and have instead

---

[12] BRIAN TAMANAHA, FAILING LAW SCHOOLS (2012). *See also* William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble: How Long Will It Last if Law Grads Can't Pay Bills?* ABA JOURNAL (Jan. 1 2012), at www.abajournal.com/magazine/article/the_law_school_bubble_how_long_will_it_last_if_law_grads_cant_pay_bills/.

[13] *See* Shepard, *From Students to Lawyers at* 448-449 (urging the bar to exercise prudence and caution in calling for law school reform since lawyers often overlook the powerful institutional pressures that many law schools face, such as raiding of tuition revenues to cross-subsidize undergraduate education, and intense competition to hire top quality faculty).

[14] RT of August 1, 2012 Task Force Hearing at 130-148 (testimony of Professor William D. Henderson). *See* RICHARD SUSSKIND, THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES 270–84 (2d ed. 2010) at 22-23, 28-33, 148.

worked in firms of five or less.[15] While some small firms have provided excellent mentoring and training, many lawyers have had to rely upon themselves to find "on the job" experience with no safety net for themselves or their clients.

The skill-set that new lawyers develop as they transition into the profession must be well-matched to the impact of technology on how the law is practiced these days. Thus, any changes to admission requirements, in terms of a new competency training requirement, either pre or post admission, must take technology considerations into account. Internet search engines, such as Google and FindLaw now make it possible to use machine algorithms to replace people, particularly in finding information. No longer is legal research the exclusive preserve of lawyers. The emergence of a global supply chain that allows for off-shoring of routine legal work to locations where lawyers work for much lower wages is becoming increasingly evident. And although always an essential part of lawyering, the value and importance of developing a deep trusting relationship with the client is even more critical, now that electronic communications is so prevalent.[16]

The day-to-day business of practice and the challenges associated with law practice management are also changing. Due to technology, there is a diminishing need for secretarial assistance. Location is less of an issue, since lawyers can now work from home, share space, or have a virtual office wherever necessary. The expense of maintaining a hard copy law library is also a relic of the past, as online resources replace the books and mortar.[17] Intertwined with those changes are changes in client expectations, primarily based on economics. Corporate clients are no longer willing to pay high hourly rates for associate training. These clients, in fact all clients, want quality work at lower costs. They now seek alternative billing methods, reduced rates for routine work, and other ways to lower the costs of legal services.

Not only does technology empower clients, it levels the playing field so that solo and small firms can compete with bigger firms. Virtual offices, e-lawyering, cloud computing and social media were concepts unimaginable less than a decade ago, but now they represent different ways of providing cost efficient legal services. Lawyers entering the profession need to understand technology, for their own practices, and also for the representation of clients, especially in ediscovery matters. Having project management skills may also make sense for those entering the profession now and in the years to come. Change will continue to come to the profession, redefining how lawyers practice, how they use technology, and how they interact with clients and manage their expectations. The world is no longer lawyer-centric, and new lawyers must understand that and prepare for the continuing evolution of how legal services will be provided going forward.

A number of state bars around the country have issued studies canvassing recent changes in the profession and commenting on challenges facing today's new lawyers as they begin the process of

---

[15] *Class of 2011 Has Lowest Employment Rate Since Class of 1994,* NALP Bulletin, July 2012, available at http://www.nalp.org/0712research. *See also* Law School Graduate Employment Data, ABA Section of Legal Education and Admissions to the Bar, Compilation-All Schools Data, 2011 Class, at http://employmentsummary.abaquestionnaire.org/.

[16] *See* RICHARD SUSSKIND, TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE (2013); William D. Henderson, *Why Are We Afraid of the Future of Law?* THE NATIONAL JURIST (September 2012).

[17] Kendall Coffey, *Underserved middle class could sustain underemployed law school graduates*, NATIONAL LAW JOURNAL (August 15, 2012).

transitioning into the profession. For example, Stephen P. Younger,[18] a recent Past-President of the New York State Bar Association, addressed the Task Force regarding a comprehensive report on lawyers and legal education (the "NYSBA Report") that was conducted during his Presidential term.[19] Motivating the NYSBA Report was one fundamental question: Why should students go to law school today, given the cost of legal education, layoffs in the profession, and the necessity for attorneys with over 25 years' experience to "retool" their practice?[20]

The NYSBA Report makes a number of recommendations designed to promote an educational process that trains young lawyers so that they are more practice-ready right out of law school. The NYSBA Report notes the groundbreaking impact of the MacCrate Report in triggering changes within the legal academy, and recommends more capstone courses[21] and other modes of practice-based learning in law schools, but emphasizes the importance of viewing professional development as a continuing process in which law school is just the beginning. "The MacCrate Report was important in many ways and focused all of us -- the profession, the academy, the bench and all lawyers -- on the ways lawyering requires the integration of multiple dimensions of knowledge and skills, a process that begins in law school and continues throughout one's professional life." [22] This key insight underscores a critically important aspect of professional skills development: It must be a shared enterprise in which the profession undertakes a central role.

The NYSBA Report recommends, for example, that a study be undertaken to look at whether bar examination testing in New York could be better aligned with the core competencies required for good lawyering, drawing on the rich body of learning that has been developed since the MacCrate Report on these core competencies.[23] Given the natural pressures in law school to "teach-to-the test" for admission, this recommendation has merit in California as well. Within the profession, we must recognize the close link between our professional licensure standards, law school curricular offerings, and the choices law

---

[18] Mr. Younger is a partner with the New York law firm of Patterson, Belknap, Webb & Tyler. He is a Past President of the New York State Bar Association.

[19] NEW YORK STATE BAR ASSOCIATION REPORT OF THE TASK FORCE ON THE FUTURE OF LEGAL EDUCATION (April 2, 2011) [hereinafter NYSBA REPORT].

[20] RT of August 1, 2012 Task Force Hearing at 72-78, 80 (testimony of Stephen Younger).

[21] "Capstone courses are designed to reflect real-world scenarios that integrate doctrine, skills, and theory into legal education. They 'build on previous learning, require students to be responsible for their learning, and encourage reflection on legal ethics, professionalism, and what they learned.'" NYSBA Report at 49, *quoting* John O. Sonsteng, *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WILLIAM MITCHELL L. REV. 1, 104 (2007).

[22] NYSBA REPORT at 42.

[23] Specifically, the NYSBA REPORT recommends a serious study of important potential licensing reforms including: (i) adoption of the Uniform Bar Exam, a format that would promote efficiency and reciprocity; (ii) sequential licensing, which would permit limited practice for new professionals pending further training and examination; (iii) adjusting an applicant's score on the bar exam to reflect the successful completion of skills courses; and (iv) permitting licensure after a period of closely supervised public service work. NYSBA REPORT at 7.

students make about how to spend their law school time. If we are going to expect more practice-based learning at the law school level, then we too should be open to "seriously examin[ing] our assumptions about the Bar Exam…"[24]

The NYSBA Report finds great value in mentoring, as do we. Mentoring has always played a part in professional development. It is, after all what the old-style apprenticeship system of bar admission was based upon. Based on a survey of different mentoring programs in a variety of states, the NYSBA Report finds that "mandatory mentoring has the potential to be the most effective system to assist newly admitted lawyers in their development of professional skills and professional identity." In a Bar as large as ours, we question whether any mandatory mentoring program could succeed in California. Consistent with our preference for giving law students and new admittees flexibility in meeting any new competency training requirements, we view voluntary mentoring by choice -- through voluntary associations -- as the better approach.

One of the best, most successful examples of an association of lawyers whose mission is dedicated in major part to mentoring as a central feature of professional development for lawyers is the American Inns of Court ("Inns of Court), an organization that was founded in 1980 by then United States Chief Justice Warren E. Burger, using the English Inns of Court system as a model. More than three decades later, the Inns of Court is now a flourishing national umbrella organization that operates hundreds of local Chapters. Today, there are more than 28,000 judges and lawyers across the country who participate in an Inn of Court Chapter. There are also more than 80,000 judges and lawyers who are alumni of an Inn.

The core mission of the Inns of Court is to foster excellence in professionalism, dedication to the rule of law, ethics, civility, and legal skills. By its membership creed, adopted by all members, the Inns of Court requires a pledge to these core principles. While the Inns of Court originally started as a way to foster the development of trial advocacy skills, its practice scope has expanded. There are in fact now special Inns for transactional law made up of attorneys engaged in the practice of various types of transactional law. Each Inn of Court Chapter has Master members, Barrister members, and Associate members, reflecting all experience levels in the profession. Sitting and retired judges are included among the Masters. Participation in an Inns of Court Chapter is entirely voluntary and takes place in the evenings, on top of the daily demands of law practice. But the proliferation of Inns of Court Chapters evidences the relative scarcity, and the demand for, such associations.

---

[24] Referring to the New York State Bar Examination, the NYSBA REPORT observes:

> It is a good test of substantive knowledge, abstract analysis and exam writing skills. These are not inconsiderable aspects of competent lawyering. But many urge that the test could be more efficient in those areas and could expand its scope to include other skills that lawyers need. The Bar Exam also plays an important role in diversifying our profession, and significant attention must be paid to those concerns. And, of course, the Bar Exam has a powerful effect on law school curriculum, teaching methods and student selection at many law schools. For these and other reasons, many look to improving the Bar Exam as a key step in meeting the challenges faced by our profession. Strong as it is, the Bar Exam could better align with the best current thinking on measuring and incentivizing best practices in legal education.

NYSBA REPORT at 50-51. These observations are equally apt here in California.

In California, we already have a strong and deep network of associations that could serve as the backbone for more mentoring programs modeled on the Inns of Court. There are more than one hundred county, municipal and specialty bar associations in California. Some of those organizations already offer mentoring programs, and with the right incentives and support from the State Bar, many more mentoring programs could be developed. Moreover there is a network of more than 100 legal services programs in California, most of them have been actively involved in supporting and mentoring pro bono lawyers for many years. We believe, for example, that if MCLE credit were offered to lawyers who serve as mentors, in much the same way that enhanced MCLE credit is given to lawyers who teach MCLE programs, the number of programs would grow and the number of Bar members who choose to participate actively in the professional development of new lawyers would increase. Since we envision a variety of new roles that experienced practitioners must play if members of the Bar are to shoulder part of the burden of training, as they should, we see MCLE credit as a potentially valuable tool to incent their participation.

II. Beyond the "Nuts-and-Bolts" of Law Practice: Inculcating the Values of Professionalism

Effective and meaningful orientation to the legal profession for new lawyers involves more than simply teaching them such day-to-day details as how to find the courthouse, how to format pleadings properly, how to draft contracts and other legal instruments, how to conduct interviews of clients and third-party witnesses, how to negotiate, how to frame questions, how to find and examine documents, how to recognize and take precautions to ensure the protection of privileged and other confidential matters, how to set up and manage the business of a law practice, and any of the other myriad details that a young lawyer must learn. It also involves orientation in the values of professionalism and the identity of what it means to have the privilege of holding a law license. Some aspects of professionalism, such as honesty, integrity and respect for clients, other attorneys and the courts, can be addressed by experienced lawyers and judges in "bridging the gap" programs, as well as through clinical programs and externships during law school. In addition, we believe that including a requirement that all new admittees spend some time either in law school or in the first year of practice, or both, serving those who cannot afford a lawyer will help to inculcate the values of professionalism. As a model for this aspect of our recommendations, we look to the example of New York.

A. Pro Bono Service

Recently, responding to the call of its Chief Judge, New York has found a path-breaking way to enhance the competency skills training of new lawyers *and* address the access to justice crisis. Following the issuance of the NYSBA Report, on May 1, 2012, Chief Judge Jonathan Lippman announced that, beginning in 2013, prospective attorneys will be required to spend 50 hours performing pro bono work before admission to the New York bar. To set the guidelines for implementation of this requirement, the Advisory Committee on New York State Pro Bono Bar Admission Requirements issued a report to Chief Judge Lippman in September 2012 (the "Advisory Committee Report"). The Advisory Committee Report explains that the pro bono bar admission requirement arose primarily to respond to the access to justice crisis. The Advisory Committee Report further explains that, by requiring 50 hours of highly supervised pro bono work, the State of New York is not only improving access to justice, but is helping prospective attorneys build valuable skills. It additionally imbues in them the ideal of working toward the greater good.

The Advisory Committee Report focuses heavily on the issue of supervision. It is mindful that the individuals complying with the proposed rule will most likely be law students, not admitted practicing lawyers, and that in New York State, as with most jurisdictions, the unauthorized practice of law is forbidden. In order to ensure a high level of supervision, the Advisory Committee recommends an affidavit of compliance form. The Advisory Committee urges the organized bar, through its young lawyer and pro bono sections, to create programs that assist legal services providers and law schools in implementing the program. The Advisory Committee specifically finds that qualifying pro bono work is an essential part of education and therefore should not be deferred until admission. It rejects the adoption of a post-admission deferral option because it would result in administrative problems and inequities.

B. Representation of Modest Means Clients

What is sometimes called "low bono" or "modest means" law practice involves the handling of legal matters at greatly reduced rates for clients who cannot qualify for pro bono legal assistance but who also cannot afford traditionally priced legal services. [25] Modest means legal services are critically important in a variety of areas, including, but not limited to, family law, bankruptcy, unlawful detainer, and breach of contract matters. In California, low bono services have traditionally been provided in the context of local bar association lawyer referral services. Many county bars have special panels of attorneys willing to take on cases in certain designated areas for qualifying modest means clients.

Modest means representation, by definition, focuses on the increasingly large population of people in the middle class and those aspiring to be in the middle class who can pay a little for a lawyer, but not a lot. Among these clients, the most common legal needs tend to revolve around personal finances, housing, consumer issues and real property. Many of these clients are only a paycheck away, a divorce away, or an eviction away from needing legal help that is now unaffordable for them. Providing help for them is a crucial issue that the legal profession must not ignore. Including this form of practice in our new regime of competency training thus offers the dual advantage of providing needed legal services to those who do not qualify for legal aid services while also giving young lawyers exposure to the day-to-day realities of modern legal practice.

[25] Luz Herrera, *Rethinking Private Attorney Involvement through a Low Bono Lens*, LOYOLA OF LOS ANGELES LAW REVIEW, Vol. 43, No. 1 at 1 (December 19, 2009), Thomas Jefferson School of Law Research Paper No. 1524433, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1524433

The modest means segment of law practice provides an excellent example of how law schools are developing new approaches to practice-based, experiential education. For example, in her testimony before the Task Force, Lilys D. McCoy, Director of the Solo Practice Concentration & Lawyer Incubator Program at the Thomas Jefferson School of Law, described an innovative program that her school has launched recently. [26] The program is led by experienced practitioners who take a hands-on approach to teaching new lawyers about how to set up and run a small practice geared to those with limited ability to pay. Not only do newly emerging low bono programs help recent law graduates find gainful employment in the law, they promote the value of serving the underserved.

A number of law schools have created fellowship programs that are designed to support law graduates in their immediate post-graduate period if they wish to pursue careers in legal services for impoverished or modest means clients. An excellent example is Lawyers for America ("L*f*A"), a 501(c)(3) foundation that Hastings Law School Professors David Faigman and Marsha Cohen launched recently.[27] The mission of L*f*A is to "improve the practical skills of new lawyers, to expand the availability of legal services for those who cannot afford lawyers, and to increase the ability of government and legal offices to render such services." L*f*A and the Solo Practice Concentration & Lawyer Incubator Program illustrate an emerging trend. A new infrastructure of organizations designed to support students who wish to devote their immediate post-law school years to service for the poor and middle class is emerging. We believe that trend should be encouraged by the Bar.

---

[26] Called the "Center for Solo Practitioners at Thomas Jefferson School of Law," this is a post-graduate program through which law school alumni offer low-cost legal representation to people who are traditionally cut off from legal services and denied access to justice. The new lawyers in residence at the Center for Solo Practitioners address unmet legal needs in the following areas:

- Consumer law, including debt collection issues, credit report errors, credit card law, automobile fraud
- Wills and trusts, including simple wills and education on trust administration, probate, guardianships, and conservatorships
- Small-business advising, including city permit requirements and business formation
- Family law, including child support, spousal support, child custody, dissolution
- Immigration law, including visas, residency, naturalization, and asylum
- Landlord/tenant, including advice on unlawful detainer laws and procedure
- Real property law, including advice on foreclosure law and procedure
- Criminal law, including misdemeanors and felonies in both state and federal court
- Personal injury, including automobile accidents, insurance disputes, products liability, and premises liability

Similar programs can be found in a number of schools around the country, including the University of Utah S. J. Quinney College of Law, *see* ULaw Today, *College of Law Announces University Law Group to Provide Low Bono Services to Underserved Populations*, November 17, 2011, http://today.law.utah.edu/2011/11/college-of-law-announces-university-law-group-to-provide-low-bono-services-to-underserved-populations/, and Wake Forest University School of Law, *see* John Trump, *Alumni provide low-income legal assistance with support of the Community Law and Business Clinic*, Wake Forest University School of Law, February 22, 2010, http://news.law.wfu.edu/2010/02/alumni-provide-low-income-legal-assistance-with-support-of-the-community-law-and-business-clinic/

[27] *See* http://www.uchastings.edu/academics/clinical-programs/lawyers-for-america/index.php

C. Closing the Justice Gap: Pro Bono and Modest Means Representation Should be Part of any Competency Training Program

Proposed California Rule of Professional Conduct 6.1 provides that "[e]very lawyer, as a matter of professional responsibility, should provide legal services to those unable to pay. A lawyer should aspire to provide or enable the direct delivery of at least 50 hours of pro bono publico legal services per year."

This proposed rule, passed by the State Bar Board of Trustees in 2010, is only the latest step by the State Bar to address the importance of providing legal services to the poor and underserved. The commitment to pro bono service that we have made in California is also in line with longstanding national trends. For more than 50 years, since the founding of the Legal Services Corporation and the beginning of the legal aid movement in America,[28] lawyers in the United States have been seeking to address what has come to be known as the justice gap -- the shortfall between those who need legal help to address crises in their lives, but cannot afford to pay for it, and the availability of lawyers to meet that need.[29]

Due to the recent economic downturn, the number of people who qualify for civil legal aid has risen by 10 million nationwide since 2007. At the same time, there has been an explosion in demand for legal services in specific areas, such as bankruptcy, child dependency, foreclosure, and also in the number of first-time applicants for free legal services. A large number of returning veterans from Iraq and Afghanistan have been forced to turn to legal services agencies for help upon returning home to face new economic and family challenges. Across the country, the need for legal services among those who cannot pay or have limited ability to pay has never been higher. And although the United States has one of the best justice systems in the world, millions of Americans cannot access this system effectively because they cannot afford a lawyer.[30] We have seen the same disturbing trends in California, especially in recent years as chronic underfunding of the courts has exposed the problem more than ever.[31] In addition, there has been chronic underfunding of legal services programs and pro bono programs.[32]

In the face of these challenges, and given the recognition by the State Bar Board of Trustees in passing proposed Rule of Professional Conduct 6.1-- which would elevate pro bono service to the status of an ethical duty on the part of every member of the Bar -- we agree with the remarks of New York's Chief Judge Lippman, when he announced the formation of the Advisory Committee on New York State Pro Bono Bar Admission Requirements:

> [I]f pro bono is a core value of our profession, and it is — and if we aspire for all practicing attorneys to devote a meaningful portion of their time to public service, and

---

[28] EARL JOHNSON, JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE AMERICAN LEGAL SERVICES PROGRAM (1974).

[29] CALIFORNIA COMMISSION ON ACCESS TO JUSTICE, ACTION PLAN FOR JUSTICE (2011); CALIFORNIA COMMISSION ON ACCESS TO JUSTICE, AND JUSTICE FOR ALL: FULFILLING THE PROMISE OF ACCESS TO CIVIL JUSTICE FOR ALL IN CALIFORNIA (1996).

[30] LEGAL SERVICES CORPORATION, REPORT OF THE PRO BONO TASK FORCE (2012).

[31] ONEJUSTICE, HEARINGS ON CALIFORNIA'S CIVIL JUSTICE CRISIS (2012).

[32] *See* http://californiahearings.org/executive-summary-and-recommendations/

> they should — these ideals ought to be instilled from the start, when one first aspires to be a member of the profession. The hands-on experience of helping others by using our skills as lawyers could not be more of a pre-requisite to meaningful membership in the bar of our state.[33]

But we propose to go further. Modest means representation -- as an alternative way of fulfilling part of the new requirements we propose -- may help to introduce many young lawyers to an area of private, for-pay law practice focused on a middle class segment of California's population. That segment, often in rural areas or in specialty areas such as consumer law or elder law, has long been underserved by new attorneys in search of "glamorous," high-paying career paths.[34] In short, we believe that modest means legal service is, in reality, a vastly underdeveloped part the legal economy. To the extent possible, the profession should embrace that sector and encourage young lawyers to train for it. The competency training regimen that we propose here is an opportunity to do so.

III. What a New Competency Training Requirement Should Look Like and How to Implement It

A. What competencies are most critical?

Summarizing the MacCrate Report, the Carnegie Report, the Best Practices Report and several other studies like them, the ABA published a 2010 study (the "ABA Core Competencies Study") that brings together a number of common threads and concludes that, to be effective, any program designed to facilitate the transition of law students into the legal profession must focus concretely on the various competencies that it takes to be a good lawyer -- competencies not covered by doctrinal learning, including problem solving, exercising good judgment client relations, time management, communication, and ability to see and understand opposing points of view.[35]The ABA Core Competencies Study builds upon the pioneering empirical work of two leading scholars in the field, Professors Marjorie Shultz and Sheldon Zedeck, in 2008 (the "Shultz and Zedeck Study").[36]

---

[33] ADVISORY COMMITTEE OF THE NEW YORK STATE PRO BONO BAR ADMISSION REQUIREMENTS: REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK AND THE PRESIDING JUSTICES OF THE FOUR APPELLATE DIVISION DEPARTMENTS (September 2012) at 1.

[34] *See* E. Thomas Sullivan, *The Transformation of the Legal Profession and Legal Education*, 46 IND. L. REV. 145, 153 (2013) ("We have a maldistribution of lawyers,…the result of which is we have many sectors of society that are not being serviced optimally or at all. There continue to be real 'access' and justice issues because of this maldistribution.") (footnote omitted); *see also* Coffey, note 17 *supra*, *Underserved middle class could sustain underemployed law school graduates.*

[35] JOINT NOBC/APRL COMPETENCY COMMITTEE FINAL REPORT *supra* note 4.

[36] Marjorie M. Shultz and Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admissions Decisions,* LAW & SOCIAL INQUIRY, JOURNAL OF THE AMERICAN BAR FOUNDATION, Vol.36, Issue 3, 620, 661 (2011). *See also* Susan Swain Daicoff, *Expanding the Lawyer's Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law,* 52 SANTA CLARA L. REV. 752 (2012).

We view this extensive body of work on core competencies to be foundational for purposes of setting expectations about what a new more practice-oriented training regimen for new lawyers ought to include. The specific areas of pre-admission competency training that we recommend are intended to be a distillation of concepts found in these studies. If our recommendations are adopted, we do not see them as fixed or set in stone. We anticipate that, in the implementation phase, further study will be given to ensuring that the areas of competency training that we specify fit sensibly with the curricula that law schools and continuing education courses can deliver. We also emphasize that our focus is not just on law schools. We are recommending, as the NYSBA Report does, a study of how the California Bar Examination might be better aligned with and better assess core competencies that are required for good lawyering.[37]

B. For pre-admission competency training in law school, how many course units should be required?

We approached this issue with four things in mind. First, the trend toward increasing practice-based, experiential curricular options in law school should be reinforced and encouraged by creating incentives for students to choose these courses. Second, we propose to create the incentive structure we think is needed through a pre-admission competency training requirement under which students must devote a substantial amount of the law school coursework to practice-based, experiential learning. Third, the primary tool for incenting students to make the choices we have in mind would be a new requirement that all new Bar admittees demonstrate that they have taken at least 15 units of practice based, experiential coursework while in law school, in addition to existing requirements for licensure.

How would qualifying coursework be determined? We envision a system of law school self-certification. The law schools themselves -- at least, those that are accredited, either by the ABA or by this Bar -- would have the ability to designate which of their courses should be accepted for the pre-admission requirement that we are recommending. To promote and build upon the tremendous progress that law schools have made in expanding clinical education, externships and other forms of supervised field work, and in developing new forms of "integrated" coursework that combines experiential learning and traditional doctrinal learning, we believe we must ensure that law schools continue to have ample leeway to structure the law school experience that they offer as they see fit, tailored to their unique institutional settings. We believe that self-certification accomplishes that goal.

Why 15 units and when must those units be taken while in law school? Based on a survey of law schools that require or guarantee experiential education to date, a recent study concludes

> 1) that outcome-based, effective legal education should include experiential legal education focused on competency and professionalism that provides foundational learning for successful transition from law student to law practice; 2) that clinical courses are essential in preparing competent, ethical, and practice ready law graduates; and 3) that law schools should require that each graduate complete at least 20 credits (roughly 25% of the ABA required 84 credits) in

[37] Because the Committee of Bar Examiners ("CBE") is specifically charged with administering and developing rules for the California Bar Examination, this study ought to be undertaken and carried out by the CBE, on a separate track from the development of implementing rules for our recommendations, and on a timetable established by the CBE.

experiential courses over the three years of legal education, beginning in the first year and progressing throughout, including at least five credits in clinic or externship courses. [38]

We ultimately chose 15 units, using the rule of thumb that, in a traditional law school model, where all or most of the first year is devoted to doctrinal courses, at least 25% of the final two years of school should be devoted to experiential learning of some sort, either in the classroom or in clinics, externships, and skills courses. That translates into approximately 15 units. We believe that the timing of *when* these units must be earned is secondary. In many law schools, where competency training is included in the traditional first year doctrinal courses offerings, the 15 units might spread over all three years. Because we do not wish to restrict the manner in which schools may offer courses that will meet the objectives we have in mind, the 15 units of pre-admission competency training coursework may be earned by students at any point while in law school.[39]

We initially considered measuring the pre-admission competency training requirement in the form of credit hours, but ultimately opted for the more precise measure of academic units -- 15 units, or in

---

[38] Karen L. Tokarz, Antoinette Sedillo Lopez, Peggy Maisel, and Robert Seibel, *Legal Education and the Legal Profession in Crisis: The Need for Expanded Experiential Legal Education and Required Clinical Courses for All Law Students*, manuscript at 7, 43 WASH U.J.L. & POLICY (forthcoming fall 2013). Professor Tokarz and her colleagues studied all law schools across the country that require or guarantee experiential education. Their survey includes a "mix of…private and public schools, schools in urban and rural areas, schools whose graduates work in the school's local region and those who work across the country, schools with part-time programs an d those with only full-time students, and schools with significant tuition and those charging among the lowest in the country." *Id.* at 8. Among these school are the following:

- This year, the University of Denver's Sturm College of Law announced what it calls the "Experiential Advantage Curriculum," an optional program in which students will spend the equivalent of a full year of law school in a combination of live client clinics, externships and legal simulation courses (24 units during the second and third years and 6 units in the first year). *See* http://www.law.du.edu/index.php/experiential-advantage
- Four years ago, Washington & Lee Law School adopted a new third-year curriculum, requiring all students to take 20 experiential course credits in simulation or practice-based courses that must include one clinic or externship, three problem-based electives, and two skills immersion courses. *See* http://www.law.wlu.edu/thirdyear
- Since 1983, CUNY Law School has required all students to take 16-20 experiential credits, with a minimum of 12 credits in clinics. *See* http://www.law.cuny.edu/academics/planning.html
- Since 1986, University of District Columbia Law School has required all students to take 16 experiential credits, with a minimum of 14 credits in clinics. *See* http://www.law.udc.edu/?page=Clinic

Some of the comments we received on discussion drafts of our report from representatives of law schools suggested that our proposed recommendation of 15 units is arbitrary, too costly, and not feasible, but Professor Tokarz and her colleagues conclude that the experience of the law schools they examined "dispels the view that barriers to experiential legal education and universal clinic education for all students are insurmountable." *Id*. at 13.

[39] In deciding to permit the required pre-admission competency skills units to be earned by law students at any point while in law school, we also took into account the fact that, in the part-time law school setting, coursework required for graduation may continue beyond a third year.

ABA terms, 10,500 classroom or classroom-equivalent minutes. In the development of implementing rules, further attention should be given to refining precisely the 15-unit requirement and its application. We are aware, for example, that units earned in the field often require a much higher number of hours than classroom units do, and as a result, it may be appropriate to develop separate levels of units for classroom and field work. But that consideration must be counterbalanced against the fact that students in field placements spend less time preparing for their classroom sessions. All we can conclude at this stage is that further study of this issue is in order. Because we have opted to recommend that externships, clerkships and apprenticeship programs be accepted, in whole or in part, in lieu of the 15 units of law school coursework, in the implementation stage it will be necessary to develop standards for equivalency in close consultation with law schools.

During the implementation phase, we see a need to request data from law schools as to how much practice-based, experiential learning law students are already doing and to calibrate the amount of required units as much as possible to actual experience. If, for example, data showing the nature and amount of the coursework students are taking shows that, on average, it would be too burdensome for them to meet a 15-unit requirement, or too costly for law schools to offer the necessary coursework for them to meet it, our recommendation of that number of units may be adjusted. But we do not accept the idea that any numerical threshold at all should be avoided or would be counterproductive. Throughout law school, law students make curricular choices. They also seek eventually to enter a profession in which accountability -- to clients, to courts, to the public -- is basic to our sense of professional ethics. Without a clear numerical threshold, students will feel no sense of long-term professional accountability for their choices, and the Bar can expect none from them. Academic accountability is not enough.

C. How can we promote greater participation by practitioners and judges in the training of new lawyers?

Law school should be the starting point for learning the core competencies that it takes to be a good lawyer, but law school should not be viewed as the only place to handle any new competency requirements. The current reality is that most of the tenured faculty in law schools has had little or no practice experience.[40] Over time, perhaps that may change. We think it should, and that in law school hiring for tenure-track positions, greater weight should be placed on experience in law practice, and more practicing lawyers ought to be integrated into law school faculties, perhaps by expanding the use of adjunct teaching roles. But we also see skills training in the core competencies of lawyering as something that happens on a continuum, beginning in law school and continuing after the transition into law practice. Thus, mentoring and continuing education must be included in any new practice-based training regimen for new lawyers.

A key feature of our recommendations is the pre-admission externship, clerkship or apprenticeship alternative. This option adds flexibility in how Bar applicants may meet their preadmission training requirement, accommodates concerns on the part of law schools that we seek to force changes on them that are impractical and bound to increase costs, and most importantly, promotes a greater role by practitioners in pre-admission competency training. In the long run, as a new system for clerkships and apprenticeships develops, it could also serve the function of helping new lawyers find jobs by giving them exposure as trainees to potential employers.

A Special Committee of the Illinois Bar Association put the matter well in its recently issued Report on the Impact of Law School Debt on the Delivery of Legal Services:

> The practicing bar can and must play a prominent role in reform by engaging with law schools and legal education. In previous generations, most lawyers were trained through the apprenticeship model, in which new lawyers developed the skills, practical wisdom, and judgment necessary to legal practice by working in close proximity with experienced lawyers. On both an individual and institutional level, the practicing bar can again create and support opportunities for experiential learning. The bar need not do this exclusively outside of law schools. To the contrary, the developing infrastructure [within law schools] of live-client clinics,

[40] *See* David B. Wilkins, *The Professional Responsibility of Professional Schools to Study and Teach About the Profession*, 49 J. LEGAL EDUC. 76, 92 (1999) ("Not so long ago, hiring faculty members with substantial practice experience was fairly common. This is no longer the case at most schools."); Erwin Chemerinsky, *Why Not Clinical Education?*, 16 CLINICAL L. REV. 35, 37 (2009) ("The emphasis on inter-disciplinary study. . . means more law professors with a Ph.D. as well as a law degree, but with no practice experience.").

simulations, and supervised externships at many schools creates opportunities for the bar to partner with law schools to provide apprentice-like programs.[41]

To promote the development of externships, clerkships, apprenticeships, mentoring programs, and greater participation by practicing lawyers in legal education of all forms – in law schools, and as MCLE instructors – we recommend that the Bar develop expanded rules for MCLE credit designed to incent lawyers to engage in these activities. Because effectiveness of these programs depends on continuing, active engagement and oversight by a supervisor or instructor, certification standards must be developed to ensure quality and accountability.[42] We also recommend that the Bar support changes to any ABA accreditation standards that may stand in the way of the growth in opportunities for law students to have externships, clerkship or apprenticeship experiences, such as ABA Accreditation Standard 305, which prohibits students from receiving academic credit for paid work.[43]

---

[41] ILLINOIS BAR SPECIAL COMMITTEE REPORT ON STUDENT DEBT *supra* note 9 at 38. *See id.* at 49-50 (making the following specific recommendations for ways in which bar associations can play an active role in providing experiential training opportunities for new lawyers: (1) facilitate firm apprenticeship programs, (2) partner with law schools to provide practice experience to law students, (3) facilitate pro bono work among young attorneys and law students, (4) facilitate the sale of rural law practices to young lawyers, (5) assist pre-law advisors to provide counseling for prospective law students, (6) provide debt counseling to young lawyers, (7) provide resources for solo practitioners and small firm lawyers, and (8) partner with groups to ensure lawyers are placed where they are needed).

[42] In the comments on our draft recommendations, some commentators from the academic community expressed skepticism about whether externships, clerkships and apprenticeship programs can ever be genuinely equivalent in pedagogical value to their own law school course offerings and whether incenting law students to choose such experiences as an alternative to law school coursework might undermine the schools' curricular programs. Coming from law schools with sufficient resources to deliver extremely high quality clinical and other "in house" experiential education on their own, this is an understandable criticism, even if it does appear to overlook the maturation and growth in educational opportunities through externships and other field placement programs that many law schools across the country have been able to develop in recent years. *See* ABA LAW SCHOOL CURRICULA SURVEY *supra* note 8 at pp. 15-16; James Backman and Cory Clements, *Significant but Unheralded Growth of Large Externship Programs* (March 18, 2013), 28 BYU JOURNAL OF PUBLIC LAW (Fall 2013), and citations at note 12 thereof. Available at SSRN: http://ssrn.com/abstract=2235215. Nonetheless, because it is a line of criticism that echoes a theme we heard consistently from law school commentators – advising that we do nothing that might intrude upon the autonomy of law schools to deliver an educational experience they deem best fitted to their students' needs – we must accommodate it. In the implementation phase of our work, we will be open to considering whether any accredited law school that desires to do so may opt out of allowing its graduates to count externships, clerkships or apprenticeships toward the pre-admission competency skills requirement. Providing such an option would certainly be consistent with our desire to ensure that law schools continue to have full latitude to offer curricula that, in their best judgment, fits whatever pedagogical model they choose to adopt. While we would hope that such an opt-out would not be widely demanded, given the key importance in our proposed recommendations of encouraging the growth of externships, clerkships and apprenticeship programs as one route toward satisfying the pre-admission competency training requirement – an approach that is designed to give students maximum flexibility -- we place equal importance on working in partnership with law schools.

[43] *See* James Backman, *Law School Externships: Reevaluating Compensation Policies to Permit Paid Externships*, 17 CLINICAL L. REV. 21 (2010).

D. Should law practice management be included in a competency training regimen?

The Task Force heard testimony to the effect that discipline issues do not tend to arise with new admittees, but rather are typically seen among lawyers who have been in practice for some years. Moreover, many discipline issues are traceable directly to problems with law practice management.

To the extent that there is a discernible pattern here, it is that a new attorney who is forced to "figure things out on his or her own" can often pick up bad habits early, and those habits may remain latent as a discipline risk for some years. Misconduct warranting discipline may not be manifested until the attorney's middle to late years in practice, when common financial pressures of adult life -- such as, for example, divorce or home foreclosure -- combine with the increased scale and responsibility of a mature law practice. Thus, we do not find it especially noteworthy that we are not seeing many young lawyers in the discipline system. More than likely, what that means instead is that the true magnitude of the problem with poor competency training among young lawyers is being masked and may not show up for a number of years. It also means that, if we do not act now to try to correct the problem, the profession -- and the public -- could be at greater risk than we may realize in the future.

Because law practice management problems do tend to be closely associated with discipline patterns, we are convinced that any new competency training requirement should include a significant law practice management component.[44] Running a law practice competently requires business skill, and as a result, we believe that the nuts-and-bolts of operating a business should be part and parcel of good competency training for young lawyers. The fiduciary responsibilities of lawyers provide a special overlay to the kind of business training that lawyers need, but at bottom law practice management is about understanding the financial aspects -- and risks -- of operating an enterprise. That subject can and should be taught, and taught early.

IV. Cautionary Comments on Any New Competency Training Requirement

A. Potential adverse impact on diversity

We gave careful consideration to concerns about potential adverse impact on diversity in the profession. We believe that giving greater emphasis to competency training in the areas of competency that are found among the best and most successful lawyers, as opposed to the heavy reliance on standardized test-taking skills and knowledge of legal doctrine that we currently use in the Bar Examination, will, in the end, spur greater diversity in the profession rather than obstruct it. At the policy development stage where the most anyone can do is speculate about this important issue, diversity cannot be used as a talisman to ward off change, particularly where there are good reasons to believe that the long-term effect of what we have in mind may be to improve diversity in the profession

One variation on concerns about adverse impact on diversity is that law students at the most prestigious and highly ranked schools will have an advantage in meeting any new competency training requirement. This critique rests on a flawed assumption. While many of the top law schools in the country have been leaders in developing and offering more and more clinical offerings to their students, the opposite is not true. Because some of the most innovative and advanced practice-based law school curricula are in law schools of lesser status in the hierarchy of the *US News & World Report* rankings,

[44] RT of Septmber 25, 2012 Task Force Hearing at 64-67 (testimony of Ed Poll, representing the Bar's Law Practice Management and Technology Section).

students who attend those schools might well find themselves better positioned to fulfill any new competency training requirements than students at more highly ranked schools.

We are mindful that we must be especially careful in recommending the introduction into the licensing process of mentoring or apprenticeship programs that may be accessible to a select few based on "who you know." That is always a matter of legitimate concern for historically unrepresented groups. We think that the Bar certification process --which should examine equal opportunity and even-handed membership selection in mentoring and apprenticeship programs -- is an important safeguard here. It is also important to bear in mind that participation in mentoring and apprenticeship programs would never be mandatory. Thus, the programmatic flexibility that we have in mind would, itself, help to guard against any potential disparate impact on disadvantaged groups.

B. Potential cost burden on law students and new lawyers

An issue raised by many witnesses who appeared before the Task Force as well as by many Task Force Members is the financial impact of any new competency training requirement. Many recent law graduates face staggering levels of debt,[45] and as a result, mandating that these graduates bear the burden of paying additional monies to fulfill new competency training requirements is a matter of great concern. Of all the concerns expressed about whether to add any new requirements, we find this one to be the weightiest, especially given the challenges that so many new admittees face today in finding employment. But in the end, we have concluded that, while the root economic conditions that drive this concern are real and of great moment to the profession, the idea that new competency training requirements will materially add to the cost burden for new lawyers can easily be overstated, since, as many of the law school deans pointed out, most law schools are already moving in the direction we wish to see.

In evaluating cost concerns, the most important thing to keep in mind is that we are recommending something that is designed to improve the employability of law school graduates. The scarcity of jobs for new lawyers in recent years was not simply a statistical phenomenon, isolated from the issue of employability, and driven purely by macro-economic factors outside of the legal profession. For many years before the recent downturn in the economy, there was widespread concern that the cost of training new lawyers was being foisted onto clients, which played a significant role in driving up legal costs. If, in the future, new lawyers come into the profession more practice-ready than they are today, more jobs will be available and new lawyers will be better equipped to compete for those jobs. Critics of improving competency training as too costly overlook this key point. They also fail to consider the role that inadequate practice-readiness among new lawyers has had in contributing to the difficult job market that these lawyers face.[46]

We are not proposing the addition of a fundamentally *new* set of competency training curricula in law schools -- necessitating the creation of a raft of new courses, adding to the existing cost structure, and driving tuition up -- but rather that there would be a shifting of priorities within law schools in a way that

---

[45] ILLINOIS BAR SPECIAL COMMITTEE REPORT ON STUDENT *supra* note 9 at 1 ("The average student graduates from law school today with over $100,000 of law school debt. After adding accrued interest, undergraduate debt, and bar study loans, the debt burden of new attorneys frequently increases to $150,000 to $200,000, levels of debt that impose a crushing burden on new lawyers.").

[46] *See id*. at 3 ("[T]he tight job market facing recent law school graduates may have – at least in part – *resulted from* the inadequate training of law students for the jobs that are available." (emphasis in original)).

encourages the existing trend toward incorporating more clinically-based, experiential education.[47] Nor do we have in mind suddenly foisting upon law students a new and wholly unexpected set of requirements. We accept the advice we heard from a number of the law school deans that we should proceed gradually. We expect that any change that takes place following our recommendations would take place over a number of years. We envision a staged implementation, beginning with a further period of study to develop specific implementation rules, and then a multi-year period in which the implementation is executed. To put these requirements into effect, we recommend that the Bar develop a set of implementing rules, with full and extensive vetting in the rulemaking process, and that the final rules go into effect gradually, first phasing in the post-admission requirements in 2015, the pro bono/modest means requirement in 2016, and the classroom requirements in 2017.

By the time any new requirements for competency training fully take effect, everyone who is affected, teachers and administrators in law faculties, law students, the Bar itself -- which will need to build new administrative capacity for implementation -- and, of course, practicing lawyers, many more of whom will need to do far more mentoring and teaching than they have done in the past, will have had plenty of time to anticipate and adjust to the new environment. Because we recommend a gradualist approach, we simply do not accept the "sky is falling" warnings about increased costs. Nonetheless we acknowledge that these new requirements will results in increased costs for those involved in implementing this requirement. We emphasize, above all, that we expect future improvement in practice-readiness will prepare new lawyers for the changing legal job market far better than they are today, which will help them become productive lawyers with the capacity to begin repaying educational debt at the earliest opportunity, and ultimately will lower costs to clients, who, in today's legal market, are too often forced to bear the costs of training young lawyers, either in the form of increased fees or ineffective lawyering.

C. Potential impediment to national uniformity and multistate practice

When we examined what other state bars are doing in this area, we found that most states have already begun implementing new requirements to enhance competency training. A clear trend toward

[47] *See id*. at 37 (The U.S. News & World Report rankings-driven "focus on academic scholarship prevents law schools from focusing on the time-intensive instruction techniques that are necessary to educate new lawyers….[¶]Any reform must therefore focus on reorienting law schools toward the education of lawyers for practice and away from the production of academic scholarship….[while ensuring that the] majority of law schools…have the freedom to experiment with new models of legal education focused on educating lawyers for practice at reasonable cost.). *See also* Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 612-13 (2010).

enhanced competency training for new lawyers is evident. [48] That trend points toward taking action, not shirking away from it. Our State Bar, with some 230,000 licenses, is the largest organized bar in the country, by far. If we take a leading position on this issue, as New York has already done, we suspect that what we do may point the way towards ultimate national uniformity.

The Task Force considered various other concerns and issues, including whether our recommendations could require changes in ABA Law School Accreditation Standards, [49] and what exemptions from any new admissions requirement are appropriate. It may well be that our recommendation will prompt discussion of some reforms in the ABA Accreditation Standards. As we note above, we believe ABA Rule 305 in particular, which prohibits law schools from giving academic credit for paid work, should be revisited, and we would support any other changes that might facilitate the implementation of our recommendations. But at the end of the day, ABA Accreditation Standards reform is not our goal here. We are focused on the standards of competency that we should expect for admission to the State Bar of California. As for the issue of exemptions, members of the Task Force showed very little appetite for creating categorical exceptions to any new requirements that may flow from our recommendations. While it may be that rules exempting Bar applicants who are eligible for membership after passing the Attorneys' Bar Examination are well worth considering, we leave that specific issue to further study in the implementation phase.

---

[48] The Task Force considered a chart that summarized the pre and post admission requirements in 23 states. In comments to the Task Force, which were accompanied by a PowerPoint presentation, Chairman Streeter noted that there are 10 states that have selected a pre-admission regulatory approach. The majority of the states on the chart, however, have adopted a post-admission requirement of some nature. Most commonly, these are mentoring programs or CLE requirements. Chairman Streeter highlighted the discussions on this topic in New York and the Massachusetts. The New York model was proposed in September 2012 by the Advisory Committee on New York State Pro Bono Bar Admission Requirements. The general proposal is that each new lawyer be required to perform 50 hours of pro bono legal services pre-admission. In Massachusetts, a Task Force on the Law, the Economy and Underemployment released a report in May 2012 exploring the causes of and solutions for underemployment of law school graduates. The Task Force recommended that the Massachusetts Bar Association encourage the law schools to re-tool the third year to provide greater opportunities for practical experience and to provide additional training in legal writing. The report additionally recommended the creation of a legal residency program.

[49] For background, Professor Catherine Carpenter of Southwestern Law School, the author of the ABA LAW SCHOOL CURRICULA SURVEY *supra* note 8, and a member of the ABA Accreditation Standards Review Committee, appeared before the Task Force and provided an excellent overview of pertinent ABA Accreditation Standards, focusing on Standards 302 and 305. RT of August 1, 2012 Task Force Hearing at 116-26; *see id*. at 116-26. Professor Carpenter described the evolution of Standard 302(a)(4) into, by 2005, a generalized requirement that each student receive some amount of professional skills education, and advised the Task Force of a pending proposal before the ABA Accreditation Standards Review Committee to "amp up" this requirement by adopting a minimum threshold for practice-based, experiential education. *See id*. at 122-23 ("Professional skills has always been in the standards, but this was a big step to say it's required of each student. Now, seven years later, the proposal on the floor that will go up to the council this coming year is to put more teeth into that professional skills requirement, at least a three-unit experiential course.").

V. Recommendations

A. Pre-Admission: Competency Training Requirement

The Task Force recommends that the State Bar propose to the California Supreme Court a new set of requirements mandating that Bar admittees certify prior to admission that their law school course work has included a substantial amount of practice-based, experiential training prior to admission.

There would be two routes for fulfillment of this pre-admission competency training requirement: (1) in law school, where 15 units of coursework designed to foster the development of professional competency skills must be taken, or (2) in lieu of some or all of the required 15 units of law school coursework, participation in Bar-approved externships, clerkships or apprenticeships for courts, governmental agencies, law firms or legal service providers. Our intention is that law students could "mix and match" coursework, externships, clerkships or apprenticeships, and meet the required 15 units through any combination of those experiences. For externships, clerkships or apprenticeships to count toward the 15-unit requirement, it would not be necessary that those experiences also earn academic credit.[50]

Credit for the law school training units would be given for stand-alone courses, or for clinical work integrated into the core curriculum in such a way that it is part of and complements existing doctrinal classes; or it may take the form of earned credit units in externships, clerkships, or other apprenticeship-type work. Furthermore, in an effort to encourage greater integration with experiential learning, law schools may certify portions of courses to count towards satisfying this requirement. For those who elect to satisfy this requirement during law school, 15 units of coursework would be required from among the following subject areas:

- Oral presentation and advocacy
- Advanced legal research and writing (excluding first year legal research and writing)
- Negotiation and alternative dispute resolution (i.e. mediation, arbitration)
- Client counseling, effective client communication, and problem solving for clients in practice settings
- Witness interviewing and other investigation and fact-gathering techniques
- Law practice management and the use of technology in law practice
- Project management, budgeting and financial reporting
- Practical writing (e.g. drafting of contracts and other legal instruments, drafting of pleadings)
- Preparation of cases for trial during the pre-trial phase, including e-discovery
- Trial practice
- Basics of the justice system, including how courts in California are organized and administered, and what responsibilities lawyers have as officers of the court
- Professional civility and applied ethics (i.e. ethics in practice settings)[51]

---

[50] A law student who works in a summer clerkship, for example, would not earn academic credit but would be eligible to receive credit toward his or her pre-admission competency training requirement. Similarly, a law graduate who works in judicial clerkship after graduation but before taking the Bar examination would not earn academic credit but would be eligible to receive credit his or her pre-admission competency requirement.

[51] *See* notes 35-36 *supra* and accompanying text.

The above list of subject areas is illustrative, is not intended to be exclusive, and is subject to further refinement in the implementation stage. Credit toward the 15-unit requirement, to the extent it falls within the parameters of one of the designated categories, may be received for in-the-field experience such as hours devoted to legal clinic work or in judicial or other governmental externships, and to the extent it is earned for in-class work, courses may entitle students to full or partial credit (thus permitting law schools to give appropriate levels of credit for integrated curricula involving a combination of experiential and doctrinal education). The 15 units may also overlap with the units required in Section B. below.

Offering law students the choice of meeting the pre-admission training requirement through an externship, clerkship or apprenticeship experience is key. We believe that this aspect of our proposed pre-admission competency training requirement will provide flexibility for students, so that if any student feels that available curricular offerings in law school do not meet the requisite number of in-class units, or if any student elects for whatever reason not to take courses that are available, an alternate path to fulfilling the pre-admission competency training requirements may be taken. And it will mean that no law school must necessarily change its course offerings, if, for example, doing so would be cost-prohibitive or inconsistent with the pedagogical model it has chosen. Most importantly, giving credit for approved externships, clerkship or apprenticeships would promote greater participation in training and mentorship by experienced practitioners, potentially assist with permanent job placement, and avoid the appearance that the Bar seeks to foist the entire burden of better competency training on law schools.

B. Pre- or Post-Admission: Representation of Clients on a Pro Bono or Modest Means Basis

The Task Force recommends requiring 50 hours of legal services in the pro bono or modest means areas. Care must be taken to ensure that participants are provided with adequate supervision. The 50 hours would have to be carried out in a Bar-certified Pro Bono Program/Modest Means Program, or under the supervision of a Bar certified Mentor.

In addition to addressing the justice gap and increasing core competencies, the breadth of this requirement -- by including low bono as well as pro bono -- is designed to expose more new lawyers to the possibilities for developing law practices geared to clients who are not indigent but are of limited means. The 50 hour requirement may be satisfied in whole or in part at any point during law school, post-graduation, and during the first year of licensure. It must be completed no later than the end of the first year of practice. For anyone who chooses to fulfill the pre-admission competency training requirement in whole or in part through a Bar-approved externship, clerkship or apprenticeship with a court, governmental agency or legal services provider, the 50 hour pro bono/modest means requirement would be deemed automatically satisfied.

This requirement, spanning the transition years from law school into practice, would be enforced by mandating a certification from the Bar applicant or new admittee. For those who fulfill all or some of the requirement post-admission, failure to provide satisfactory certification, as with the Bar's existing MCLE regime, would result in license suspension.

C. Post-Admission: Competency Training MCLE or Mentoring Requirement

The Task Force also recommends that new admittees be required to complete 10 hours of certified MCLE courses by the deadline for the first compliance period following the completion of the first year of practice, or at their option, to participate in a Bar-certified voluntary mentoring program. This post-admission MCLE or Mentoring requirement is *in addition to* the regular 3-year, 25-hour requirement

for licensees. For MCLE, 10 hours must be in a course that covers one or more of forms of competency training in the same areas described in Section A above. For certified mentoring programs, the participation would have to involve in-person meetings at least once a month of two hours or more.

Conclusion

The new competency training requirement we propose must be forward-thinking. We seek to better prepare law students and new lawyers for practice in the 21st century. We want them to be cognizant of the continuing changes in how legal services will be delivered and of the marketplace pressures that are expected to continue into the future. Twentieth century skills will not be sufficient for the new legal world.

We do not delude ourselves that it is possible to bring about a system of training in which new lawyers would somehow emerge from law school fully formed and in possession of all the wisdom and maturity that we know comes only from experience. Nor do we seek to supplant the excellent system of legal education that we have.[52] What we do expect, however, is that new lawyers enter the profession oriented to the actual experience of practice and the values of ethics and professionalism, so that when they begin to absorb that experience as practicing lawyers, they all have a proper foundation for growth. If we continue to throw most new members of the profession into the experience of practice on a "sink or swim" basis, as we do now, some will find their way and prosper, and some will not – but those who stand the most to lose are clients and the public at large.

We are the only learned profession that sends our newest members out into the world of practice without a period of intensive, supervised training. We also stand alone among English common law countries in not universally requiring that new lawyers undergo some type of apprenticeship training period prior to licensing. Long ago, when American lawyers entered the legal profession by reading law in the office of a practicing lawyer, as Abraham Lincoln did, the training regimen for new lawyers was integral to law practice. That venerable tradition has long since disappeared, never to return, and we do not propose to bring it back. Our proposal here is simply that some elements of that venerable tradition -- namely, a serious focus on practice-based, experiential learning, and early inculcation of the values of ethics and professionalism -- be revived. The future of our profession depends on us doing so.

[52] Sullivan *supra* note 34 at 154 (suggesting that while better practical skills training may improve the depth of technical knowledge that young lawyers bring to their early years of law practice, it is no substitute for "the requisite judgment and wisdom that come from a more generalist-centered legal education experience").