

**Vision 2016 Legal Education Group Report
Final April 19, 2016**

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A. Vision 2016 Legal Education Group Roster

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B. Chair's Acknowledgement

The Chair would like to acknowledge the hard work of everyone on this commission. Our subgroup faced two unique challenges during our work. The first is that reform in legal education is an incredibly thorny problem that numerous practitioners and scholars have been wrestling with for many years. Vision 2016 was not going to have a breakthrough akin to mapping the human genome, but neither could it merely rehash what others have done. This committee exhibited an incredible amount of dedication and patience in educating everyone on the tenor of the legal education reform movement to date, followed by extensive work to find new angles and directions from which this particular group could add its voice.

Second, unlike other potential areas of study in Vision 2016, the Legal Education Group wrestled with the reality that The Florida Bar has no direct power over legal education. While law schools answer directly to many masters, the connection to the Bar in any state is a surprisingly indirect one—a situation that we ultimately determined contributed to the stagnancy of legal education in many circumstances.

Through these above listed challenges, the group persevered despite an early leadership change and a great diversity of members' viewpoints and experiences. We provide recommendations and a plan that could improve legal education in Florida and forge a better working relationship between the Bar and the Academy for generations to come.

C. Executive Summary of Process, Findings and Recommendations

Introduction

The Vision 2016 Legal Education committee's charge was to examine legal education and find ways to better prepare law students for the practice of law and the future of the profession. The recommendations from this committee come after two years of extensive discussions about the relationship between legal education and the Bar and have been focused on enabling law students to better enter the profession and to promote a better working relationship between the Bar and the Academy for generations to come. The committee's conclusion is that real reform can be made in legal education—law schools, students, and the profession all support changes, but the path must be cleared of obstacles to the implementation of programs that can meet the needs of the future of the profession.

Overview

The Legal Education committee determined early on to break its challenge into different phases. The three phases were: determining competencies of new lawyers (year 1), studying models for change to meet those competencies (year 2), and obstacles to implementation of those models and recommendations (year 3).

Year One

In considering how to better prepare law students to become members of the legal profession, we defined the qualities, known as competencies, which new lawyers should have entering the profession. Our final list of competencies operates as a set of institutional learning outcomes for legal education. In determining these competencies, the committee dissected these outcomes into three categories, not always previously considered in a legal education curriculum: a. Legal Skills b. Non Legal Skills c. Professional Identity. All recommendations are geared toward

changes to enable new lawyers practicing in Florida to better have these competencies, which should continue to evolve through continued discussions between the law schools and the Bar.

Year Two

The committee explored models on how to rethink the educational process to better produce students that have identified broad based competencies. The commission explored a variety of models for change, rather than furthering a one-size-fits-all approach to legal education reform. This range of ideas should be further discussed by law schools with continued input from the Bar to help determine how law schools can best serve their students' needs given their geographic, population and mission differences. The models for change studied among the legal group included the following:

- a. Variety of partnerships between the practicing bar and law schools.
- b. Partnerships between local bar associations and law schools, such as local bar associations hosting activities at the law schools in an effort to enhance law school students' ability to network.
- c. Legal incubators, providing low bono community legal work while enhancing training for recent graduates.
- d. Reinvent Law Laboratory, which helps prepare students for the "New Normal" of practicing law which includes e-discovery, legal analytics, design thinking for lawyers, and legal project management, etc.
- e. Potential elimination of certain types of classes and revamping of seminars in the law school curriculum to allow for more experiential training for law students
- f. Third Year Experiential/Clinical/Simulated Programs of different lengths and requirements
- g. Mandatory Intern/Externship programs for all law students
- h. Technology training required for graduation or bar admission
- i. Medical Model (aligning with medical school to require a split classroom/externship division of the curriculum)
- j. Two Year Program (eliminating third year entirely);
- k. Washington & Lee Model (replaces the third year of law school with a full year's credit load of courses that places students in the role of a practicing lawyer.)
- l. Suffolk Model: "accelerator-to-practice program" that consists of a comprehensive three-year course of study and practice designed to prepare graduates to join or start sustainable law practices serving average-income individuals and families.
- m. Elon Model: places students in full-time faculty-directed residencies in the practice of law

n. Professional Identity Curriculum Model: attempts to teach students to understand his or her role as a lawyer relative to all of the stakeholders in the legal system, including clients, courts, opposing parties and counsel, the firm, and the legal system itself.

Year Three

The committee's very strong position is that the key obstacle to implementing legal education reform is the Florida Bar exam. Other obstacles include: ABA accreditation rules, faculty governance, and the lack of connection between law schools and the Florida Bar.

Prospective Recommendations:

The following is a list of recommendations approved by the Legal Education Group of Vision 2016:

1. In order to provide more curricular space for law schools to innovate models of change with the goal of producing new lawyers with a full range of competencies, skills, and attributes including but not limited to experiential learning, technology education, and professional identity education, we concretely recommend that there be a reduction in the number of subjects tested on The Florida Bar Exam to a number that could be covered entirely in two of the three years of full time legal education or less.

2. The Board of Governors should either create a new committee or completely reimagine the current Student Education and the Bar committee to be a permanent body to advise and cooperate with law schools and to act as a liaison on the following issues:

A. Technology training for law students geared toward the practice of law for new lawyers with a possible widespread graduation requirement instituted by the schools.

B. Supporting and/or setting up incubator programs at law schools for new practicing attorneys

C. Further defining and cooperating with law schools to ensure all new graduates have the full range of legal, non-legal and professional identity skills necessary for new lawyers building on the list of competencies approved by the committee after our first year of study and discussion.

D. Exploring partnerships with the Bar, law firms and individual lawyers to reduce the cost of law school.

E. Working with schools individually to pursue alternative methods of structuring curricula best suited to each law school environment as discussed throughout the report.

F. Monitoring all sources of legal education reform, including the Section of Legal Education and Admissions, The Florida Supreme Court, ABA House of Delegates, Board of Bar examiners, American Association of Law Schools, ABA Section of Legal Education and Admission to the Bar, and others. The committee should be charged with specifically maintaining the institutional knowledge of all legal education reforms for the Board of Governors to prevent any disconnect between the Bar and legal education in the future.

Such membership should not be limited to academics, but rather contain an assortment of young lawyers, including student representatives, established lawyers, academics, judges, and non-lawyers.

3. Working with law schools specifically and immediately to enhance opportunities for students to engage in live client experiences to meet the ABA six-credit experiential learning graduation requirements, or enhancing simulation experiences through Bar programs designed for each law school.

4. Increasing the number of students engaging in live-client experiences by:

A. The Board of Governors approving the YLD proposal to change the requirements for a student to appear as a certified legal intern, in accordance with the April 8, 2016 proposal to the Board of Governors requiring Level 2 background checks and other requirements in lieu of a full Florida Bar Board of Examiners character and fitness study.

B. Considering the ABA proposal to allow students to earn income and credit for field placement experiences satisfying the experiential learning requirement

5. Creating a nonvoting rotating law school position on the Board of Governors to advise on the law school perspective on prospective rule changes to the Bar and allowing law schools quicker and more frequent access to information on Bar changes.

D. Detailed Report of Findings

1. Competencies (Year One):

Although the charge of the Legal Education Group of Vision 2016 was to consider the role of legal education in the future of the profession, the group quickly coalesced around two ideas. First, legal education needed vast improvement. And second, that we could not determine the degree or the direction of this improvement until we captured the end purpose of legal education—what skills and attributes law schools’ graduates should have.

Law schools have historically considered their educational objective as one of providing students with legal skills. But our commission, using the collective experiences of practitioners’ actual needs in the workplace, determined that an education consisting only of legal skills would be, by itself, incomplete. Instead, collegiate law programs should be providing their student populations with a comprehensive list of legal skills combined with a full range of non-legal skills that are key to the profession, as well as an arsenal of professional identity capabilities.¹ The committee was in unanimous agreement that a law student’s education should include, to various degrees, training in all three of these areas.

¹ Professional identity “is the way a lawyer understands his or her role relative to all of the stakeholders in the legal system, including clients, courts, opposing parties and counsel, the firm and even the legal system itself (or society as a whole).” Professional identity goes beyond legal ethical rules and encompasses ideals regarding our roles and how we apply them. Martin J. Katz, Teaching Professional Identity in Law School, 42 The Colorado Lawyer 45 (October 2013).

Our full list of attributes is found here, with explanations of their importance:

Law Based Skills

-Legal Research

- Research Law
- Citation

-Analysis and Reasoning Skills

- Arguing from precedent
- Arguing from statute
- Factual argument
- Innovative thinking

-Written Communication

- Substantive: experiential writing
- Procedural: experiential writing
- Advocacy

-Oral Communication

- Substantive

Non-Law Related Skills

-Client Service & Development

- Creating a client development strategy
- Client Service: updates and responsiveness
- Visibility: Writing & Speaking
- Networking
- Questioning
- Understanding client needs
- Managing client expectations for pricing & budgeting
- Managing billing including handling disputes, retainer management and collections
- Closing & Beginning Engagements
- Managing client expectations for a matter in general

Professional Identity/ Attributes Subgroup -Intrapersonal skills/attributes

- Commitment to Professional Development toward excellence (lifelong learner)
- Initiative/Drive/Ambition/Strong work ethic (internal motivation)
- Integrity/Authenticity & Honesty/Trustworthiness
- Passion/Engagement
- Professionalism in Attitude
- Stress/time management
- Open-mindedness, Self-reflection and Self-regulation (ability to recognize one's strengths/weaknesses and the limits of one's knowledge/skills)

- Procedural
- Advocacy

-Basic Legal Principles

- Substantive courses

-Interviewing/ Counseling/ Negotiation Skills

-Professionalism

- Courtroom decorum
- Relationship with court and opposing counsel

-Professional Responsibilities

- Ethical Rules (MPRE test areas)
- Trust Accounting
- Legal Malpractice

-Experiential Skills

- Clinics
- Internships/ externships
- Simulations

-Financial Literacy and Financial Advocacy

- Identifying the intersection between legal and business issues

-General Business Skills (for any corporate job an attorney might have)

- Reviewing & Analyzing Financial Statements
- General Finance & Economics
- Business Strategic Planning
- Researching Facts
- Understanding Corporate Governance & Boards
- Understanding impact of legal matter onto the company
- Management skills, including giving feedback and coaching
- Project Management
- Business negotiations
- Impact of securities laws on entities (hedge funds, publicly held companies, etc.)

-Interpersonal skills/attributes

- Ability to perceive, control/manage, and evaluate emotions (Emotional Intelligence)
- Civility
- Good Listening skills
- Leadership (composite of many qualities)
- Professionalism in Dress, Speech, and Manner
- Working with people from diverse backgrounds

-Cognitive or Process skills/attributes

- Good Judgment/Common sense, problem-solving
- Recognize and resolve ethical dilemmas

-Communication Skills

- Informal business writing
- Writing articles
- Presentation skills

a. Law Based Skills

When academics, practitioners, and students consider the substance of legal education, the first order of discussion is usually the legal subjects that are part of the curriculum and the format/substance/scope of them. Much of this conversation is driven by the effect that the Bar Exam has had on legal education—discussed elsewhere throughout this report, but in short, a cumulative exam that focuses on doctrinal legal subjects, and primarily in a memorization format. The Florida Bar Exam emphasizes traditional legal doctrine in two ways: first, by the extensive list of doctrinal subjects taught, and second by the format in which they are taught. Three-quarters of the exam is multiple choice, while one-quarter is essay format.

Certainly, legal doctrine is an important component of legal education. However, the commission emphasized that the most important legal skill that new law graduates could have was not the ability to recite, by rote memorization, any doctrine of law (which is constantly changing), but rather the ability to find, read, understand, analyze, and communicate the law both in writing and orally to a variety of audiences. Our list of legal skills is constructed to emphasize those skills above doctrinal memorization.

Additionally, our group expanded the definition of law-related skills to go beyond those that have been traditionally considered important. These new skills include specific decorum and behavior in legal settings, such as a courtroom or judge’s chambers, fiscal responsibilities of lawyers such as trust accounting, and a mastery of not just the ethics of the legal profession, but also the ramifications of ethical violations.

In short, the Legal Education Group has constructed a list of law related competencies that we hope will move the target of law school curriculum away from the more traditional doctrine and more towards being inclusive of legal, interpersonal, and intrapersonal skills that will set the stage for a new lawyer to be prepared for all aspects of their career. To summarize an old saying, if we teach new lawyers mostly static doctrine, they will practice for a day, if we teach them the law skills needed to find and use any law in any setting, they will be able to practice for a lifetime.

b. Non Legal Skills

As noted in the previous section, new lawyers entering the field often lack the real-world skills necessary to effectively service clients. Clients look for lawyers who are strategic business partners, persuasive advocates, and effective negotiators. Although technical legal skills are critical, clients need and want more from their lawyers. Clients want well-rounded lawyers with an array of skills including business acumen, negotiation, teamwork, emotional intelligence, and creativity. These skills can often make or break a lawyer’s ability to be successful.

First, new lawyers must be able to understand the interplay between a client’s legal problems and the business of law. This means knowing how to communicate with clients, assess the competing issues at stake, counsel clients on risks and alternatives, develop a formal or informal project management plan, and execute on that plan. As such, legal education should incorporate training that develops various client service skills that new lawyers will need while practicing law, including creating a client development strategy, providing effective client service through regular updates and responsiveness, networking, managing client expectations for pricing and budgeting, managing billing (including disputes related, retainer management, and

collections), and closing and beginning engagements. In addition to client service and development skills, legal education should help new lawyers develop general business skills because most clients' legal problems involve aspects of business and finance. These skills include reviewing and analyzing financial statements, general finance and economics, business planning, understanding corporate governance and boards, management skills, project management and business negotiation, and impact of securities laws on entities.

c. Professional Identities:

The committee believes that incorporating professional identity education into legal education is a critical part of a future lawyer's formation. In considering how law schools can do this, we recommend the following discussion at the curricular level of every law school:

Professional Identity

- Answers questions –
 - Who I am as a member of the profession?
 - What am I like, and what do I want to be like in my professional role?
 - What place does ethical-social values have in my core sense of professional identity?
- Integrated Legal Professional
 - Values and Virtues
 - Critical Thinking and Judgment
 - Service Orientation with Clients
 - Working with Others
 - Communications
- Professionalism Elements
 - Internalized moral core with deep responsibility or devotion to others and some restraint on self interest
 - Ongoing solicitation and feedback and self-reflection
 - Internalized standard of excellence at lawyering skills
 - Integrity, honesty, and adherence to ethical codes
 - Public service, especially for the disadvantaged
 - Independent professional judgment and honest counsel
- Elements of Professional Identity
 - Commitment to individual justice, social justice, public responsibility, and responsibility toward the profession
 - Commitment to and respect for the administration of justice, the institutions of the law, and public service in general
 - Resiliency and coping skills to develop personal resources to deal in healthy ways with challenges that accompany the practice of law
 - Integrity, consideration and civility, compassion, respectfulness, and commitment, competence, knowledge, skill, financial propriety, honesty, trustworthiness,

reliability, respect for legal obligations, responsibility, civility in dealings with others, personal integrity, and empathy

- Bridge Law of Lawyering with Morality and Character through Professional Ethical Engagement
 - Current Difficulties
 - Apprenticeship of professionalism and purpose is subordinated to cognitive, academic apprenticeship
 - Curricular emphasis on analysis and technical competence at the expense of human connection, social context, and social consequences
 - Courses, particularly first year courses, focus on details of particular cases and moral concerns or compassion for clients and concerns of substantive justice are deemphasized or not discussed
 - A dispassionate perspective for the nature of the roles of lawyers diminish hope that they might serve substantive good in their careers
 - Devalues emotional or ethical matters including a student's personal values, individual sense of justice and the sense of purpose, withholding the development of qualities necessary for morally responsible use of that tool
 - Some faculty specialize in legal ethics and leads many faculty members whose specialty is not the law of lawyering to consider themselves unqualified to introduce ethical concerns into their courses and reinforces segregation of ethical issues from the rest of the curriculum
 - Research
 - Clear that higher education can promote the development of more mature moral thinking, that specially designed courses in Professional Responsibility and Legal Ethics do support that development, but that unless a specific effort is made, law schools do not contribute to greater sophistication in the moral judgment of most students
 - Clarity of moral thinking plays an important role in predicting ethical conduct
 - Teaching legal ethics and professional responsibility in small, interactive seminars had a strong, positive impact on students' moral judgment scores
 - Pro bono experiences can strongly influence a student's future involvement in public service (and even become a highlight of law school experience)
 - Possible Solutions
 - Law schools should develop plans for the development of professionalism and professional identity with detailed and concrete goals and measurements
 - Should integrate legal cognitive skills with a lawyer's own moral and ethical standards and sense of justice and put those skills to use in service of a client's moral standards
 - Cohesive understanding of legal decisions on relationships, focusing on the attorney-client relationship
 - Appreciate and adhere to a culture of collaboration rather than a culture of competition and promote understanding of complexities and uncertainties inherent in professional judgment

- Classroom criteria
 - Should include case analysis and discussion, simulation and role playing, enactment and coaching, and others for stimulating reflection on current experiences and aspirations for the future
 - Pervasive teaching throughout the curriculum – incorporate ethical issues into full range of doctrinal courses. See also ABA Professionalism Committee
 - Mandatory orientation
 - Exit workshops
 - Practice Management Course
 - Skills Training and Leadership Courses
 - Consider first year lawyering course or perspectives on the law course and can be offered in multiple modules by multiple instructors
 - Simulation courses of client interviewing and counseling permit introduction of technical and ethical problems
 - Clinical Training and Externships
 - Students learn to integrate not only knowledge and skill but the cognitive, practical, and ethical-social facets of lawyering
- Student accountability and law school environment
 - Conduct and Honor Codes to establish standards of professional behavior that promote core professional and character values beyond minimal compliance with mandatory standards of conduct
 - Remediation Programs
 - Character and Fitness Information complying with state bar requirements
 - Diversity
- External Contacts and Influence
 - Mentoring opportunities for all first year law students
 - Relationships with bar associations, legal community, and pro bono programs
 - Learning outcomes through surveys of alumni and employers

2. Models for change (Year Two):

The second year of work by the commission was dedicated to investigating models of change in legal education—from big to small—that would have the potential produce students with appropriate competencies. After much research, reading, and analysis, some ideas were discarded as ineffective. While other ideas were discarded as mere repackaging of already existing educational practices. However, some ideas survived the vetting process, and although there are obstacles for law schools implementing them, the commission believes that the future of the legal profession would be well served if law schools used these ideas as models for change. This section is a detailed report of every model considered, as well as an explanation that the commission is

not furthering a one-size-fits-all approach to legal education reform. Rather it is a range of ideas that could help law schools best serve their students' needs in their communities.

a. Subgroup One Models

This group has focused on potential viable models for legal education in the future. These models included the possibility of partnerships between the practicing bar and law schools. This would include bar associations in the city/circuits of Florida's twelve law schools to establish local support for the law schools and the transition of students into the profession. A similar model that was also being explored was hosting bar association luncheons at law schools. This model explored the feasibility and convenience for such events and the potential quality of impact they would have on law students and their ability to participate and allow for networking.

Legal incubators for recent graduates were also discussed as a potential model. As of January 2011, there were 29 programs nationally run through law schools, bar associations, alumni groups, legal aid programs, and other non-profits. The majority serve the low bono community and either provide pro bono opportunities or require participants to take on pro bono cases. Programs are offered to newly graduated law students or within the first five years and accommodate 3 to 30 participants. Currently, no programs show potential for growth in excess of 30 participants, thus serving a small percentage of new graduates.

The programs vary in that some have no restrictions on the type of cases to those that have a specific area of practice ranging from entertainment, arts, intellectual property and innovation law to environmental and land use cases where the participants either run their own independent practices or the program runs as a law firm. The length of the programs last from 9 months to three years where some participants pay a fee or rent from \$100 to \$500 per month. The resources offered by some of the programs include free or subsidized office space, stipend or other financial contribution, mentoring on substantive legal issues, opportunities to shadow lawyers, assistance and training with practice management issues, free or subsidized CLE programming, free or subsidized malpractice insurance, online and in-person networking, programming on client development, case referrals, and legal research resources.

Another proposed model is the Reinvent Law Laboratory, the school "laboratory" at Michigan State School of Law Co-founded by Professor Dan Katz (current Director) and Professor Renee Knake Recently profiled in New York Times ("[This is Law School?](#)"). The "lab" is made up of several components. As for curriculum, students take several courses to prepare them for the "New Normal" of practicing law which includes e-discovery, legal analytics, design thinking for lawyers, and legal project management, etc. There are also annual conferences in the United States, United Kingdom, and the Middle East. Lastly, the program also utilizes start-up incubations for case competitions.

Finally, there was also discussion and research done regarding the potential elimination of "Law and X" classes from law school curriculums to allow for more experiential training to law students and whether these programs provide a true practical benefit to law students. While this was discussed at length, it did not materialize into a useful suggestion.

b. Subgroup Two Models

INTRODUCTION

Team Two was assigned to study the following models and, based on that study, to recommend changes to the standard law school curriculum:

1. Third Year Experiential/Clinical/Simulated Programs
2. Mandatory Intern/Externship
3. Technology
4. Replace Seminar Writing Requirement

In Phase I of the study, the Vision 2016 Legal Education Group identified the core competencies that a law school education should address. In Phase 2, we identified the competencies targeted by each model we studied, the obstacles that may be encountered in integrating the models into the current law school curriculum and the potential solutions that might address those obstacles.

During Phases I and II, we recognized that the Third-Year Experiential Model (converting the third year of law school to experiential only learning) and the Mandatory Intern/Externship Model (requiring mandatory experiential learning not in a simulation environment) were producing virtually identical lists of core competencies, obstacles and solutions. Team Two decided that since both of these models addressed the same goal of providing students with practical experience prior to graduation, we would discuss them as alternative ways to deliver a single model, the Third-Year Experiential Model.²

In Phase III, we made our final recommendation about whether to proceed with any or all of the models that we had studied. In making those recommendations, Team Two took into consideration the benefits (core competencies) and obstacles and costs (solutions) for each model. The Vision 2016 Legal Education Group was sensitive to the financial burden already placed on new lawyers by the high cost of obtaining a degree. Therefore, any recommendation that would have added to the current length and cost of law school programs was deemed to be a non-starter.

THIRD YEAR EXPERIENTIAL MODEL

² It is not clear whether the ABA would agree that these are different ways to deliver a single model. The ABA accreditation standards address experiential coursework, clinical programs and simulated experiential coursework separately, under different standards.

Brief Description: *Two years of standard law classes followed by a year that is comprised of some combination of in-house/outside placement experiential learning, including simulations, live client, and classroom instruction components.*

As originally envisioned, this model substitutes a mandatory, full year experiential program for the current course-based third year, what is often referred to as the Washington and Lee Model.³ This model is a radical increase from ABA accreditation standard 303(a)(3), which requires law schools to offer “one or more experiential course(s) totaling at least six credit hours” as part of the curriculum. Team Two believes that the ABA’s standard six credit hour requirement is woefully insufficient. A rigorous experiential requirement, ideally in the form of a full year program, is absolutely necessary to prepare students to practice law. The Vision 2016 Commission Survey of Florida Law School Students showed that law students understand the importance of practical experience, but find it difficult to fit experiential programs into their school schedules.⁴ While 62% of current third year students reported that it was more important to obtain practical skills than to take courses on subjects that could be covered on the Bar exam, 84% of current law students reported that they will be spending their third year studying Bar exam subjects.

Core Competencies: Team Two identified the following core competencies as being addressed by the Third Year Experiential Model:

Law Based Skills: *Specific skills would vary based on the nature of the practice area of the placement, but conceivably this model could address all law based skills competencies.*

Non-Law Related Skills: *Additional non-law skills may also be addressed, depending on the nature of the practice area, but the following would likely be addressed in most experiential programs:*

- Client Service (updates and responsiveness)
- Understanding client needs
- Managing client expectations for a matter in general
- Project Management

Professional Identity/Attributes: *Ideally a yearlong experiential program would address all professional identity/attributes competencies.*

³ <http://www.jdsupra.com/legalnews/washington-lee-is-the-best-legal-educa-09038/>

⁴ This survey is available from the Florida Bar upon a request for information.

Obstacles to Implementation and Solutions:

OBSTACLE	POSSIBLE SOLUTION
Loss of third year of classroom time to study subjects tested on The Florida Bar Exam.	Florida Board of Bar Examiners adopts Uniform Bar Exam or modified Florida-specific test.
Limited availability for placements (this would be even more of an obstacle for law schools located outside of large legal markets or those in those areas with more than one law school competing for local placements). There is not enough capacity in existing programs (clinics operated by law schools or with Legal Aid/SA/PD) to absorb all third-year law students in Florida.	Bar/Law School partnerships to encourage Bar Sections and Bar members to provide opportunities for experiential learning. Develop new programs with other nonprofits that provide legal services.
Limited availability for placements in certain practice areas. Students seeking to enter practices for which no placements are available would lose their opportunity to take third year courses in their practice area in order to be placed in an experiential program outside their intended practice area.	Bar/Law School partnerships. Encourage corporations with general counsel’s offices in Florida, as well as state and federal legislators with local offices to provide opportunities for experiential learning.
Loss of opportunity for paid law firm employment in third-year.	Stipends/Waive or significantly reduce third year tuition, which raises the question of how schools will fund these payments.
Incorporating this component into part-time and evening law school programs.	Evening and part-time programs may need to rely on simulations. Alternatively, they could offer a program that spans more than a year, allowing students to participate on a part-time basis over two or more years (the “Army Reserves” model).
Federal Labor Standards Act challenges to unpaid positions (current FLSA 6 factor test for unpaid internships may not apply, especially to internships at private firms or companies). Related issue: Current ABA standards prohibit course credit for paid field experience, although this rule is in the process of being reversed, removing this obstacle. ⁵	Nonprofits may be able to meet the FLSA test for unpaid interns, but that leaves the capacity problem. Change in the FLSA test may be required.

⁵ ABA Interpretation 305-2 provides:

Monitoring consistency and quality of offsite learning experience – schools may be unable to prevent some exposure to bad lawyering or unprofessional conduct. Six credit hours (the ABA experiential requirement) in a problem program is not necessarily a concern, an entire year may be.	Incorporate these students’ experiences into the classroom portion without breaching confidentiality. Faculty could provide more hands-on supervision, but that raises confidentiality, cost and capacity concerns.
In a profession that is not always known for its commitment to diversity, making this a graduation requirement may place an undue burden on students from diverse backgrounds or students with disabilities, who could have difficulty finding a placement.	Program providers need veto power over someone who will be working with their clients. However, schools need to be prepared to take appropriate action to protect students from discrimination.
Perception among students that it is unfair to charge full tuition for year spent working off campus.	The costs reported in footnote two exceed the cost of classroom instruction. We have concluded that the experiential year provides tangible value to the students’ legal education.

Discussion: Team Two discussed that all students be required to complete an experiential component prior to graduation. Ideally, this would be a full third year program, which would provide greater depth and breadth. However, if current obstacles cannot be overcome, we discussed that the Bar should work with Florida’s law schools to develop help develop necessary components for experiential programs that would aspire to include (1) two semesters of practical experience, (2) one-on-one mentoring, (3) drafting pleadings or transactional documents, (4) client interaction, (5) use of law office technology and (6) active participation in law office management, all with (7) oversight by the law school or a qualified third party provider.

Students and schools should be allowed reasonable flexibility in designing the experiential component. The program must be a valuable part of students’ preparation for practice, preferably in their intended practice areas, rather than a graduation requirement box that simply needs to be checked off. Team Two further discussed that technology training and the development of practical writing skills be incorporated into students experiential learning.

TECHNOLOGY

Current law school students are clearly more tech-savvy in general than more experienced lawyers. However, that does not mean that upon graduation they will be prepared to use law office technology. The October 2014 Vision 2016 Commission Survey of Florida Bar members revealed that 63% of recent law school graduates (those who graduated within five

A law school may not grant credit to a student for participation in a field placement program for which the student receives compensation. This Interpretation does not preclude reimbursement of reasonable out-of-pocket expenses related to the field placement.

years or less) reported that law school had not adequately prepared them for the technology component of practicing law. Team Two recommends that law office technology and the ethical use of technology be covered in the standard law school curriculum. Our findings and recommendations are reported in detail in a separate section of this report.

REPLACE SEMINAR WRITING REQUIREMENT

Brief Description: ABA Standard 303(a)(2) requires students to learn writing in a legal context through two rigorous writing experiences – one of which is addressed in the first year research and writing course and a second, upper-class writing assignment that generally takes the form of a research paper written for a seminar course. Complaints from judges and law firms about the poor writing skills of recent law school graduates indicate that skills acquired in satisfying the current seminar writing requirement may not be transferable to the writing skills required to practice law. Many schools throughout the country have already replaced the seminar requirement with either a third semester of legal research and writing, which often focuses on practice-based drafting skills, or an advanced legal writing requirement that can be satisfied by assignments other than a seminar class research paper. Ultimately, Team Two concluded that other types of legal writing could be substituted for the traditional research paper in existing seminar courses. The benefits of the seminar model should not be lost. Seminars allow in depth treatment of specific areas of the law that may not be covered in the core curriculum, as well as providing opportunities for faculty scholarship.

Core Competencies: Team Two identified the following core competencies as being addressed by changes to the current Seminar Writing Requirement:

Law Based Skills: Regardless of the course context (seminar, skills, clinical) or the type of legal writing (research paper, brief/extensive motion, or legal document), the following legal skills would be addressed:

- Legal Research
- Analysis and Reasoning
- Written Communication

Professional Identity/Attributes: ABA Standard 302 requires individual meetings with the instructor, assessment throughout the project and review of multiple drafts, which address the following competencies:

- Internal Motivation
- Passion/Engagement
- Professionalism in attitude
- Stress/Time Management
- Reflection

ABA Standard 301 requirements implicate the following skills:

- Civility
- Listening skills
- Professionalism in Manner
- Cognitive Skills: Good Judgment/Common sense, problem solving

Non-Law Related Skills:

- Client Service and Development: Unless the writing requirement is part of a field experience or clinical program, the student will not have a real client. However, unlike a research paper, a drafting assignment will provide a simulated client experience that may be an opportunity to address some client service skills.
- General Business Skills: Researching Facts and Project Management
- Communications Skills: Additional experience in persuasive writing will address students' written advocacy skills

Obstacles and Solutions: The major obstacle to change appears to be the ABA. While one of the best ways to teach practical writing skills could be to embed the upper class writing requirement in an experiential program,⁶ it appears that may be absolutely prohibited by the current ABA Standards:

ABA Interpretation 303-1 provides:

A law school may not permit a student to use a course to satisfy more than one requirement under this Standard. For example, a course that includes a writing experience used to satisfy the upper-class writing requirement [see 303(a)(2)] cannot be counted as one of the experiential courses required in Standard 303(a)(3).

It would appear that under the current ABA Standards, law schools must provide upper-level practice-based writing skills training in addition to any writing component that is part of its experiential program(s).⁷ As discussed above, upper class law students are already under pressure to take classes for all subjects covered by The Florida Bar Exam.

⁷ Additionally, although the ABA provides some guidance on the standards that they use to evaluate whether or not an assignment fulfills their standards for rigor, it is not clear whether the ABA would allow the requirement to be met by a by course that focuses on the practical drafting skills that students can expect to use after graduation. ABA Interpretation 303-2 provides:

Factors to be considered in evaluating the rigor of a writing experience include the number and nature of writing projects assigned to students, the form and extent of individualized assessment of a student's written products, and the number of drafts that a student must produce for any writing experience.

Recommendation: Team Two initially looked at replacing the current seminar writing requirement with a writing requirement that would provide practical experience in either litigation-skills or transactional-skills drafting, or both. As a result of our study, we concluded that the seminar model offered certain benefits that could not be easily duplicated by other models. Team Two therefore does not recommend the wholesale elimination of the seminar model, but rather encourages schools to explore innovative solutions to allow students to satisfy their upper-class writing requirement by practical writing skills coursework or as part of an experiential program. Schools should be afforded the flexibility to develop innovative programs and curricula help their students develop the writing skills required to practice law, but concluded that the standard is not an obstacle to law school curricula reform.

c. Subgroup Three Models:

Subgroup Three identified and assessed six distinct models that could be implemented in legal education to train new lawyers. The group inventoried the core competencies emphasized in each model, identified the relative pedagogical advantages and disadvantages compared to the traditional law school model, and evaluated the practical difficulties that might arise upon integration into the law school curriculum. The six models are the: (1) Medical Model; (2) Two Year Program; (3) Washington & Lee Model; (4) Suffolk Model; (5) Elon Model; and (6) Professional Identity Curriculum Model.

Medical Model

The Medical Model implements a method of training akin to that used in medical schools to prepare physicians for practice. Medical education follows a generally accepted pattern of study combined with opportunities to observe and work with real patients to address real medical issues in a clinical setting. Medical students undergo two years of standard classes in professional skills, two years of clinical rotations, and a multi-year residency program to provide additional training in a clinical type setting. This gives medical students an opportunity to develop practical skills in a decreasingly controlled environment such that their transition from student to practitioner is experienced more gradually than the immediate realization new lawyers often experience upon licensure.

The Medical Model emphasizes experiential learning, critical thinking, professional confidence, and decision-making. By seeing, doing, and teaching within a structured educational setting, this model exposes students to the total integration of theory, skills, and professional values. While legal education would benefit through the medical model's extensive use of simulation to train clinical skills and develop problem-based learning, this approach may be difficult to fully incorporate without fundamentally altering the nature of legal education and

It may be that the rigor requirement could be addressed by requiring one or more extensive practice-based drafting assignments, such as a lengthy motion and memo of law in a litigation skills class (e.g., a motion for summary judgment) or complex estate planning documents in a Trusts and Estates or Tax course.

substantially increasing the burden on law schools in developing consistent yet competitive curricula.

Two-Year Model

The Two-Year Model eliminates the third year of legal education. Many legal educators continue to question the necessity of and value added attributable to the third year of law school. While this model does not inherently emphasize any particular core competencies in new lawyers, it does have several appealing advantages. Chief among its advantages are a reduction in the financial burden of law school on new lawyers, quicker entry into the workforce, and a more direct pathway to experiential learning.

The subgroup determined, however, that the Two-Year Model's disadvantages substantially outweigh its advantages. Students in this setting would have little opportunity for mentored or controlled experiential learning, no meaningful opportunity to benefit from participation in traditional co-curricular or extracurricular programs such as law journals or competitive advocacy programs, and less opportunity to test and refine the key legal thinking and problem solving skills. Additionally, there is real concern that students in this model would be less marketable than graduates in a traditional three-year program because of the perception that the new lawyer with one less summer and academic year has had insufficient time to adequately develop essential legal skills and has had less opportunity to benefit from summer internships and clerkships.

Washington & Lee Model

The Washington & Lee model replaces the third year of law school with a full year's credit load of courses that place students in the role of a practicing lawyer. The third year is comprised of two main sections: a two week "immersion" at the beginning of the semester followed by fourteen weeks of co-curricular experiential courses. The two-week immersions alternate between transactional practice and litigation. The goal is to simulate a traditional legal job. In litigation immersion, students interview the client, draft pleadings, conduct discovery, engage in motion practice, counsel the client, and eventually take a case to trial. In transactional immersion, students represent parties to a sale or acquisition, draft documents, conduct due diligence, and deal with employment and executive compensation issues. After the two-week immersion, students take co-curricular experiential courses including clinics, externships, or simulations, and are required to complete forty hours of law related service. Simulations can be designed and managed in ways that clinics cannot, and for planned exposure to chosen issues and practices. Externships send the student outside the law school to experience first-hand practice as it exists. This model blends various methods to put the student in the role of lawyer in the course's practice setting.

As has been discussed widely in legal education, this model is a major change in the legal education experience and structure for law schools. The history and process of effectuating this

kind of change a complicated one that could not be imposed externally on any law school, but may serve as inspiration for movement to experiential learning.⁸

Suffolk Model

The Suffolk model is a self-described “accelerator-to-practice program” that consists of a comprehensive three-year course of study and practice designed to prepare graduates to join or start sustainable law practices serving average-income individuals and families. The model includes the creation of a fee-generation law firm within the law school to train students to be competent lawyers within three years through specialized professional development and law practice management instruction. The program has four components: (1) professional development and skills curriculum that expands the breadth of required instruction to enable students to master a wide range of competencies; (2) training in law practice technology and innovation; (3) experiential training through supervised internships and clinical insourcing of legal work each year; and (4) career development and practice support to assist graduates as they enter the market. These components are integrated into a full-time, three-year program that includes two summers and a significant portion of the final year immersed in supervised practical training.

Elon Model

The Elon model places students in full-time, faculty-directed residencies in the practice of law. Experiential learning is integrated throughout the curriculum, representing more than twenty percent of the program. The introductory program focuses on legal analysis, writing and communication, as well as leadership and professionalism. Students are assigned a four-person professional advising team, which includes a faculty advisor, a working attorney mentor, an executive coach, and a career consultant. The program has a seven-trimester schedule with students completing studies in December, allowing them to take the February bar exam and begin practicing law in the spring as opposed to the fall when students from traditional programs would begin practicing.

The Washington & Lee, Suffolk, and Elon models all recognize the need to achieve a balance between doctrinal and practical training with an emphasis on building professional identity. These programs prioritize the competencies necessary for the practice of law above the study of legal theory. The advantages to these models include opportunities for extensive experiential learning across broad practice areas, while the disadvantages include the potentially high costs associated with running such programs and whether those programs are achievable in a larger school atmosphere.

Professional Identity Curriculum Model

The Professional Identity Curriculum attempts to teach students to understand his or her role as a lawyer relative to all of the stakeholders in the legal system, including clients, courts, opposing parties and counsel, the firm, and the legal system itself. Professional identity goes beyond ethical rules and precepts of professionalism to encompass the ideals lawyers hold

⁸ David M. Moss and Debra Moss Curtis, *Reforming Legal Education: Law Schools at the Crossroads* (Information Age Publishing 2012).

regarding their professional roles, and how to apply those ideals to complex situations encountered in the professional context.

Legal education can promote the development of more mature moral thinking through courses in professional responsibility and ethics, but unless a specific effort is made, law schools do not otherwise contribute to greater sophistication in the moral judgment of most students. Law schools can better incorporate the development of professional identity into curricula by integrating legal cognitive skills with a lawyer's own moral and ethical standards throughout the curriculum.

Classroom criteria should challenge students to analyze issues and make recommendations considering case analysis and discussion, role playing, enactment and coaching, the incorporation of ethical issues into a full range of doctrinal courses, simulation courses of client interviewing and counseling to permit an introduction of technical and ethical problems, externships and clinical training, along with student accountability with honor codes, and external contacts and influence.

3. Obstacles to Implementation (Year Three):

The commission has determined that there are various obstacles to implementing models for change in legal education. The commission's position is that the key obstacle is The Florida Bar Exam. However, this report also discusses other obstacles to changes in legal education, including ABA accreditation, and any other paths that need to be cleared to pave the way for change.

a. Identifying Obstacles

The first job of the subgroup was to evaluate all models proposed through a benefit/obstacle analysis. To accomplish this, each subgroup member was given the following questionnaire to complete regarding potential models for legal education. Members were encouraged to consult with any resources necessary when considering and answering these questions:

Model Name:

Brief Description of Model:

1. List five competencies that you believe this model would meet (see next page for list compiled by Vision 2016 committee)
2. List and explain the *obstacles* you believe would be impediments to a law school adopting this model. Please be as specific as possible (i.e. please don't merely list "money" or "bar exam" but rather say where you believe the actual costs lie or the conflicts are)
3. List and explain any *solutions* to these obstacles that you can think of, even if they are far-reaching or require enormous changes. Please be as specific as possible (i.e. changing bar exam—to what?)
4. List any *people or organizations* you believe would be helpful in *overcoming these obstacles*.

5. List and explain any reasons you may have, if any to believe this model is **not** beneficial to legal education and should not be pursued (other than obstacles to implementation).
6. Given your evaluation of *all of the above* are there any *changes to this model* that you believe would help *increase its usefulness or its chance of successful implementation*?

b. Obstacles to change from Questionnaire:

i. Bar Exam

Since 2009, our profession has asked American law schools to better prepare students for the practice of law. There is no doubt that a law-school curriculum integrating skills with doctrine better prepares students for entry into the profession. Unfortunately, the emphasis on increased skills training is undermined by the broad scope of subjects tested on The Florida Bar Exam. As a result, law students are confronted with a difficult choice of enrolling in more experiential education courses to better prepare them for practice or enrolling in courses that assist them in passing The Florida Bar Examination. Currently, law students may not enroll in both experiential courses and bar exam content courses because there are simply not enough credit hours allotted to a law degree to allow for dual enrollment. Taking more credit hours than those required for the degree can affect a student's financial aid status and their graduation date, both of which are unacceptable outcomes for this committee.

There are a number of ideas for ameliorating the dilemma: adopting the Uniform Bar Exam; retaining the MBE and consciously overlapping its subject areas in the Florida-specific essay section; or identifying a limited set of the more important subjects for testing, announcing to test takers which subjects those are, and then testing those subjects most heavily. Moreover, the adoption of the Multistate Performance Test (MPT) should be considered, furthering the goal of assessing lawyering skills without adding to the substantive areas needing to be mastered.

A. The Problem

Today, few graduates have the luxury of beginning their practice with the time to develop nascent lawyering skills on the job. Law schools can and should place greater emphasis on skills training and reduce (but not eliminate) our focus on traditional doctrinal instruction and assessment by examinations alone.

Yet, law schools face one significant impediment in shifting toward more practical skills training: the structure of the bar exam that exists in many states, including Florida. Most law students seek jobs that require bar passage, and even those who choose to utilize their legal training in "J.D. Advantage" positions, that is, positions not requiring a law degree or passage of the bar examination, want the advantage that bar passage brings.

Students know that an appreciable amount of exam takers fail on their first attempt in Florida, and that this number has increased in recent years. As demonstrated in information released by the Board of Bar Examiners, in July 2015, close to one-third of first-time test takers did not pass the bar examination, and in February 2015, more than one-third of first time test takers did not pass. As a result, students increasingly conclude that the exam is extremely difficult, and that their first educational priority is taking classes that will assist them in passing the bar

examination, even though they might prefer to take courses that would develop the lawyering skills their prospective employers seek.

B. The Current Bar Exam

At present, graduates begin their bar preparation knowing they might be tested on 19 Florida-law subjects in addition to the eight subjects tested in the MBE (see Figures 1 and 2 below). Graduates have an understanding that some subjects are always included in the test (e.g., Civil Procedure and Criminal Procedure). On the other hand, students can only speculate about what other subjects will be tested. This means that many students feel compelled to take as many bar-related courses as possible, believing that their insufficient preparation on one or two less-tested subjects may lead to failure.

Students who select their courses in this way have 86 or 88 credit hours dictated by scope of The Florida Bar Exam. Together with other requirements necessary for graduation, literally every hour they spend earning their degree—and then some—is determined for them.

To demonstrate, a representative law school curriculum is identified below with a list of those courses in which students typically enroll in for the primary purpose of preparing for The Florida Bar Examination.⁹ The credit hours associated with these courses are also provided. When no course addresses the bar-tested subject or is duplicated with a course previously listed, it is listed with "x" for the credit hours.

Figure 1 – Florida

Bar Subject	Course	Credit Hours
Article 3 of UCC	Commercial Transactions	4
Article 9 of UCC	Secured Transactions	3
Business Entities	Business Entities	4
Criminal Law		X
Civil Procedure (FL)	Florida Civil Procedure	3
Criminal Pro. (FL)	Florida Criminal Procedure	3
Constitutional Law (Fed.)		X
Constitutional Law (FL)	Florida Constitutional Law	3
Constitutional Crim. Pro.	Crim. Pro. (Investigation)	X
	Crim. Pro. (Adjudication)	X
Contracts		X
Evidence (FL)		X
Family Law & Dependency	Family Law	3
Juvenile Delinquency	Children & the Law	3
Prof. Resp. – Ch. 4 & 5	Professional Responsibility	3
Professionalism		X
Real Property (FL)	Florida Real Estate	3
Torts (FL)	Florida Tort Law	3

⁹ Courses listed are offered at the Stetson University College of Law.

Trusts	Trusts and Estates	4
Wills & Admin. of Estates		X
Total Florida Credits		39

Figure 2 - Multistate

Bar Subject	Course	Credit Hours
Civil Procedure	Civil Procedure	4
Constitutional Law	Constitutional Law I	4
	Constitutional Law II	3
Contracts (incl. Article 2)	Contracts	4
	Sales	3
Criminal Law	Criminal Law	4
Criminal Procedure	Crim. Pro. (Investigation)	3
	Crim. Pro. (Adjudication)	3
Evidence	Evidence	4
Real Property	Property	4
Torts	Torts	4
Total Multistate Credits		40

According to the ABA, a law school shall require, as a condition for graduation, successful completion of a course of study of not fewer than 83 credit hours.¹⁰ Based on the above, there are 79 credits in which students often enroll specifically to prepare for The Florida Bar Exam. These credits do not include courses such as Multistate Strategies (four credits) and Survey of Florida Law (three credits)—courses many students take to further improve their chances of passing The Florida Bar Exam. If students were to enroll in all the courses that assist them in preparing for The Florida Bar Exam, they would dedicate 86 of the 88 credit hours needed to graduate to bar exam preparation.

Moreover, the ABA Standards require at least six hours of experiential education.¹¹ This means that only 7% of the credits necessary to graduate are devoted to experiential education. The marketplace demand for graduates to be better prepared for practice requires more than the six-hour minimum currently required for accreditation purposes. Further, to develop the research and writing skills needed for a successful practice, many law schools also requires seven credit hours of legal research and an upper-level writing requirement of one to three credits. Thus, a student attempting to satisfy all of our requirements for skills/experiential education while enrolling in bar exam preparation courses would have to take 100 credit hours, exceeding by 12 credit hours the total credit hours required to graduate. Such a student would effectively require a full additional semester of law school.

¹⁰ Standard 311(b) of the ABA Standards for the Approval of Law Schools. For example, students enrolled in the College of Law at Stetson must complete 88 credit hours to graduate. The number of credit hours is consistent with credit requirements at many law schools.

¹¹ Standard 303(a)(3) of the ABA Standards for Approval of Law Schools.

C. Alternative Proposals

If The Florida Bar Exam were to be redesigned, tested topics should have broad application. Those topics would measure the ability of students to analyze, synthesize and communicate, as well as measure their competence in lawyering skills not tied to specific subjects. By doing so, this revised Florida Bar Exam would (1) provide sufficient coverage of topics with which new lawyers should be familiar; (2) reduce the demand on students to enroll in bar-tested subjects; and (3) enable law schools to increasingly focus on developing the practical skills that new lawyers need as they enter our profession.

1. Uniform Bar Examination

In May of 2015, the New York Court of Appeals adopted the recommendation of the Advisory Committee on the Uniform Bar Examination (UBE), effective July 2016. The Advisory Committee also recommended, and the Court of Appeals adopted, a requirement that applicants for admission in New York be required to complete an online course on New York law and take and pass an online examination on New York law, as a requirement for admission.

Under the new plan in New York, one day of the bar examination will still be devoted to the 200-question Multistate Bar Examination (MBE), an exam currently administered in Florida. The other day of UBE testing will have six essays (the Multistate Essay Examination (MEE)) and two “lawyering skills tasks” (the Multistate Performance Test (MPT)).

Under the model curriculum presented above, the total number of credit hours students will need to prepare for this portion of the UBE remains at 40.

The MEE covers the following topics, listed in the table below with their corresponding courses and any additional credit hours beyond those already accounted for (see Figure 3).

Figure 3 – Multistate Essay Examination

Bar Subject	Course	Credit Hours
Business Associations	Business Entities	4
Civil Procedure		X
Conflict of Laws	Conflict of Laws	4
Constitutional Law		X
Contracts		X
Criminal Law		X
Criminal Procedure		X
Evidence		X
Family Law	Children & the Law or Family Law	3
Real Property		X
Torts		X
Trusts & Estates	Trusts & Estates	4
UCC – Secured Trans.	Secured Transactions	3
Total MEE Credits		18

Under this model, students would enroll in a maximum of 58 credits (40 multistate credits (Figure 2) and 18 MEE credits (Figure 3)) in addition to a Multistate Strategies course for a total of 62 credits. This provides significantly more flexibility in the curriculum. The final component of the UBE is the MPT, a test that currently consists of two 90-minute sections designed to assist in determining competence to practice. According to National Conference of Bar Examiners (NCBE), who administers the MPT, the MPT tests the “ability to use fundamental lawyering skills in a realistic situation and complete a task that a beginning lawyer should be able to accomplish. The MPT is not a test of substantive knowledge. Rather, it is designed to evaluate certain fundamental skills lawyers are expected to demonstrate regardless of the area of law in which the skills arise.” So, based on the NBCE’s statement, the MPT evaluates competencies, does not require additional bar subject courses, and places greater emphasis on integrated skills learning.

2. Florida Specific Essay Examination with MBE-Topic Overlap

An alternative to the UBE would be for Florida to continue to administer the MBE, adopt the MPT, and create a Florida-specific essay examination that has some topic overlap with topics covered by the MBE. While the topics are subject to debate, the following topics are listed to demonstrate the scope of the proposed essay section as opposed to the specific subjects covered by the current bar examination (see Figure 4).

Figure 4 – Florida Specific Topics

Bar Subject	Course	Course Credit
Business Entities	Business Entities	4
Civil Procedure	Florida Civil Procedure	3
Criminal Procedure	Florida Criminal Procedure	3
Evidence		X
Professional Responsibility	Professional Responsibility	4
Wills, Trusts, and Estates	Trusts & Estates	4
Total Florida Credits		18

Under this model, students would enroll in a maximum of 58 credits (40 multistate credits (Figure 2) and 18 Florida Specific Topic credits (Figure 4)) in addition to a four-credit Multistate Strategies course for a total of 62 credits. This proposal also provides significantly more flexibility in the curriculum.

3. Weighting the Subjects Tested

This final option would require The Florida Board of Bar Examiners (FBBE) to identify a limited set of the more important subjects for testing, announce these subjects to test takers, and test those subjects most heavily. This recommendation could be accomplished under the current Florida Bar Exam format or in combination with the adoption of the Florida Specific Essay Examination with MBE-Topic Overlap (Recommendation 2 above).

Reducing the number of subjects actually tested in a given year alone is not sufficient. Students will not be able to predict which subset of possible subjects will be tested. Consequently, they know that their success may depend on their specialized knowledge of one or two less commonly tested subjects. As a result, even a reduction in tested subjects, without more guidance, is unlikely to deter students from building their curriculum around the subjects tested. For that reason, the FBBE should consider (a) identifying a limited set of the more important subjects for testing, (b) allocating the greatest amount of credit to these subjects, and (c) announcing to test takers those subjects that will be weighted most heavily.

These suggestions would help in several ways. First, law students could selectively enroll in a smaller number of courses that receive greater emphasis on the bar exam, while leaving to bar preparation courses their introduction to less emphasized subjects. Second, test takers would be relieved of the anxiety that any shortcomings in preparing for a subject less commonly tested could be fatal to their success on the exam.

The literature on educational testing emphasizes that, to be valid, a test should examine a fair and representative sample of those materials emphasized in a course. A test should not give undue weight to tangential or secondary material. This should be the goal of the bar examination.

D. Conclusion

To address the untenable situation that has arisen, in which the sheer number of bar tested subjects drives law students' course selections at the expense of the additional experiential education opportunities that would better prepare them for practice, the Committee offers two proposals for consideration: adoption of the UBE or a Florida-specific essay exam with MBE-topic overlap. Finally, the Committee also offers a proposal of providing advance notice of the relative weights assigned to the most heavily tested topics on the exam. This last proposal could be adopted under the current Florida Bar Exam and could be adopted in combination with the Florida-specific essay exam with MBE-topic overlap.

ii. Teaching Technology

THE NEED FOR TEACHING TECHNOLOGY

The Florida Bar's most recent (2014) Economics and Law Office Management Survey¹² shows why new lawyers must become competent in the use of law office/project management software and other technology before they begin looking for their first job. Today's law firms are becoming smaller, leaner, and increasingly dependent on technology to remain competitive. Ninety percent (90%) of Florida Bar members surveyed agreed that "[a]ll practicing lawyers should possess some minimum level of technological competency and proficiency in order to practice." Nearly three-quarters (73%) reported that technology had changed their relationship with clients, with the majority (63%) saying that it had changed that relationship for the better.

THE TREND TOWARD SOLO AND SMALL FIRM PRACTICE

¹² The results of the 2012 and 2014 surveys are available on The Florida Bar website.

Unfortunately, the survey results show that the smallest law firms have the least access to technology assistance. While seventy-one percent (71%) of all respondents reported that their firm or legal office uses a technology consultant, that percentage dropped with the size of the firm, with almost half of solo practitioners reporting that they did not have the assistance of a tech consultant. At the same time, the number of Florida Bar members who practice in small firms continues to grow. Two thirds of the Florida Bar members responding to the 2014 survey work as either sole practitioners (36%) or in small firms of two to five lawyers (31%). The percentage of solo practitioners has increased slightly (1%) over the 2012 survey results.

The legal job market continues to drive new graduates into solo practice. The ABA reports that just over two percent (2.1%) of 2014 law school graduates set up their own solo law firms in the year after their graduation, while the National Association for Law Placement (NALP) reported that just over four percent (4.1%) of last year's graduates had gone solo. For these graduates a "practice ready" law school education is essential. The alternatives—disciplinary actions, financial mismanagement, and providing less than competent legal representation—are simply not acceptable.

THE COMPETITIVE EDGE

In 2012, thirty-nine percent (39%) of responding Florida Bar members reported that they were planning to increase spending for law office technology. Baby boomer lawyers especially may expect new hires to help them learn and use their technology investment.¹³

There is little doubt that current law school graduates are more tech-savvy than many of the lawyers who will be hiring them. However, that does not mean that upon graduation they will be prepared to use law office technology or avoid ethical pitfalls that await recent graduates transitioning from social media social butterflies to professionals with responsibilities for the security of their clients' electronic documents and communications.¹⁴ By teaching the responsible use of the latest technology as an integral part of the curriculum, Florida's law schools can help their graduates convert preexisting technical skills into an employment advantage.

DEVELOPING CORE COMPETENCIES

The factors discussed above make it imperative for today's lawyers to become skilled in the appropriate use of technology. Technology also can be used to help students develop many of the core competencies that are fundamental to the practice of law.

LAW BASED SKILLS:

- Advocacy – Presentation programs for mediation and trial advocacy simulations.
- Legal Malpractice – Task and time management introduces automated tickler systems to students.

¹³ About 40% of the Florida attorneys surveyed in 2012 were over 50 years old.

¹⁴ The Vision 2016 Technology Committee recommends that the comment to the Bar's competency rule—Rule 4-1.1—be amended to state that lawyers should have technological competence in their practice area and in issues relating to preserving the confidentiality of electronic communications.

- Clinics, Internships/Externships – Experience with case management programs before starting an experiential program will allow students to focus on learning substance and procedure.
- Simulations – Use of management software in substantive classes can turn assignments into simulations. Students wanting transactional experience have few options for real life practice experience, document preparation, and project management. Software could fill that gap.

PROFESSIONAL IDENTITY/ATTRIBUTES:

- Stress/Time Management – Case management tickler systems break down overwhelming tasks into a series of smaller to-do lists that can be assigned internal due dates.
- Professionalism in Speech and Manner – Using technology-based systems to communicate with clients, opposing counsel, and the courts in a professional manner.
- Recognize and Resolve Ethical Dilemmas – Use simulations to explore ethical issues (e.g. conflict checks using case management software, online security issues, maintaining confidentiality in the era of social media, etc.).

NON-LAW RELATED SKILLS:

Many case and project management systems include features that address issues such as client relations (tickler system for client updates), time entry, billing and client cost management, and law office financial reports that would allow students to explore practice management issues in a simulated setting.

THE CURRENT STATUS OF TECHNOLOGY TEACHING

In October 2013, the eLawyering Task Force of the ABA’s Law Practice Division surveyed the academic deans of the 203 ABA-accredited law schools, asking about the extent to which legal technology and related subjects are the focus of courses and other activities. The survey questions specifically inquired about the teaching of document assembly and drafting, courtroom technology, decision support systems, the ethics of legal technology, legal tech start-ups, marketing, matter and knowledge management, new model law firms, online dispute resolution, project management, software development, legal process engineering, access to justice and legal technology, cloud computing, law firm Web development, online marketing issues, social media and lawyering, and computer security and law practice. Of the 32 law schools that responded to the ABA survey, one-quarter reported that they operated a center with a primary focus on the technology of law, and one-fifth reported that they offered more than two courses in that area.

We conducted our own informal and anonymous survey of law school faculty via an online open invitation across the state, asking them to identify which of the fifteen identified specific law office technology skills and thirteen described communications/ethical issues were being taught as part of their school’s current curriculum (see Figure 5).¹⁵ We received fifteen responses. Only three of the fifteen technology skills and only one of the thirteen communications/ethics issues received positive responses from a majority of those who returned surveys. If these responses are representative, most students do not learn basic law office technology or consider the ethical use of technology as part of the existing curriculum at their schools.

¹⁵ We also asked whether substantive coursework covered computer crime or electronic transactions.

Figure 5: Detailed Response Information from Informal Faculty Survey

If N = 15, 1 response = 6.67%	Not Covered	Mentioned	Taught	Taught experientially
Court Documents: e-filing	60.00%	33.33%	6.67%	0
Court Documents: Online dockets/Retrieving Pleadings	60.00%	26.67%	13.33%	0
Online Public Records Searches	46.67%	33.33%	20.00%	0
Communication and Ethics: Basics of E-Document Security	60.00%	20.00%	20.00%	0
Communication and Ethics: Redaction	60.00%	26.67%	13.33%	0
Communication and Ethics: Metadata	73.33%	13.33%	6.67%	6.67%
Communication and Ethics: Client portal/document access	93.33%	6.67%	0	0
Communication and Ethics: Email attachments	53.33%	13.33%	26.67%	6.67%
Communication and Ethics: Representing “do it yourself” clients	93.33%	0	6.67%	0
	73.33%	20.00%	6.67%	0

If N = 15, 1 response = 6.67%	Not Covered	Mentioned	Taught	Taught experientially
Communication and Ethics: e-Discovery				
Communication and Ethics: Confidentiality of electronic communications	40.00%	20.00%	40.00%	0
Communication and Ethics: Electronic Communications with clients, opposing counsel or courts	53.33%	0	46.67%	0
Communication and Ethics: Social media	53.33%	20.00%	26.67%	0
Communication and Ethics: Internet/advertising/website	66.67%	26.67%	6.67%	0
Communication and Ethics: Cloud computing	80.00%	13.33%	6.67%	0
Communication and Ethics: Virtual assistant/offsite contractor supervision	93.33%	6.67%	0	0
Law Office Technology: Client management	66.67%	13.33%	6.67%	13.33%
Law Office Technology: Document management	60.00%	26.67%	6.67%	6.67%

If N = 15, 1 response = 6.67%	Not Covered	Mentioned	Taught	Taught experientially
Law Office Technology: Case/Project Management	73.33%	6.67%	6.67%	13.33%
Law Office Technology: Document Creation	53.33%	13.33%	13.33%	20.00%
Law Office Technology: Time and billing	66.67%	20.00%	0	13.33%
Law Office Technology: Legal fee payment systems	80.00%	13.33%	0	6.67%
Law Office Technology: Financial Management	80.00%	6.67%	6.67%	6.67%
Law Office Technology: Case Presentation N = 14	71.43%	7.14%	14.29%	7.14%
Law Office Technology: Legal research	33.33%	6.67%	13.33%	46.67%
Law Office Technology: Virtual law office technology N = 14	85.71%	14.29%	0	0
Law Office Technology: Collaborative software	86.67%	6.67%	6.67%	0

If N = 15, 1 response = 6.67%	Not Covered	Mentioned	Taught	Taught experientially
Law Office Technology: Microsoft office (or similar)	40.00%	33.33%	6.67%	20.00%
Law of Technology: Electronic transactions/banking	73.33%	26.67%	0	0
Law of Technology: Computer crime	86.67%	13.33%	0	0

It is apparent that many law schools may be ill equipped to train their students on the legal technologies that are widely available today. Yet, the survey does not tell the whole story. What percentage of students enroll in the classes in which technology issues are taught (or even mentioned)? How many students can be accommodated in the experiential courses that provide hands-on technology experience? Stand-alone classes and clinical programs certainly benefit the students who enroll in them, but they leave out many more students. For many of today's students, the law school experience may still resemble the 1973 movie *The Paper Chase*.

RECOMMENDATION: LAW SCHOOLS MUST ENSURE THAT AS A REQUIREMENT OF GRADUATION ALL STUDENTS UNDERSTAND THE ETHICAL ISSUES RELATING TO THE USE OF TECHNOLOGY AND RECEIVE TRAINING IN CORE LAW PRACTICE TECHNOLOGY.

Our informal survey—like the previous 2013 ABA survey—shows that many law schools have begun to address issues relating to technological competency and proficiency; however, for the most part, current efforts lack both breadth and depth. While schools will design the programs that work best for their students, we recommend that they develop a coordinated technology curriculum that includes stand-alone classes, interdisciplinary conferences, the integration of technology into existing substantive law and practice skills classes, and opportunities for hands-on experience, including clinical programs and externships.

OVERCOMING OBSTACLES TO IMPLEMENTATION

TRADITION VERSUS INNOVATION

Law schools cannot train twenty-first century lawyers using twentieth century tools. Law school pedagogy continues to rely on appellate court rulings and a case method that was developed 150 years ago. These traditional methods may remain effective, but they must be repackaged to

reflect the reality of today's legal practice. The Committee believes that law schools and faculty are ready to make the necessary changes, but there are practical obstacles that must be overcome.

INTEGRATION INTO EXISTING PROGRAMS

Our survey shows that many law schools have started to make the necessary changes. A majority are already addressing the confidentiality of electronic communications in ethics class. After thirty years, Westlaw and LexisNexis are well integrated in research and writing courses and document drafting software should be an easy fit for many substantive classes. Schools can be expected to prioritize the subjects that would benefit most from the integration of technology. While it may be more difficult to find ways to teach the project management and practice management technologies, some options might be to cover these topics in an online class, to hold a virtual law firm competition, or to have students use these technologies to manage their time, studies, and assignments throughout law school.

HARDWARE AND SOFTWARE COSTS

Many law schools may have made recent significant investments in upgrading their academic technology, including adding online learning management software programs like Canvas and Blackboard and hardware such as smartboards or smart podiums. Adding new technology can be expensive, especially if it requires the modification of existing systems. Law office technology companies often offer free or low-cost software to law schools as a marketing strategy, so additional costs should not be prohibitive.

FACULTY AND STUDENT TRAINING

Full-time faculty who have never used practice management technology in a law firm setting (or who have not used it recently) may have to overcome a learning curve before they can incorporate technology in their teaching. In reality, the curve may not be that steep. Again, software providers provide the solution with free online training for new users. Law office technology software builds on many of the technical skills that today's law students and faculty already have, reducing the time that may be needed for formal instruction.

CONCLUSION:

The Technology Committee of Vision 2016 has made recommendations to help practicing lawyers get up to speed and stay current.¹⁶ The Legal Education Committee's task has been to recommend changes that will help law students graduate with not only the skills needed to succeed today, but also the skills they will need to adapt to the changes that technology will continue to bring to the profession. Finally, The Bar must encourage its members to become partners in the process by supporting Florida's law schools as they prepare students to deal with the challenges of our changing profession.

iii. Cost of Legal Education

According to the ABA Task Force on the Financing of Legal Education, inflation-adjusted tuition jumped 46% at private law schools and 132% at public law schools between 1999 and

¹⁶ Information available from The Florida Bar.

2014.¹⁷ Almost 90% of all law students finance their education, in whole or in part, through student loans. The average inflation-adjusted debt for private law school students rose from \$102,000 in 2005 to \$127,000 in 2012. Public law students' average debt went from \$66,000 in 2005 to \$88,000 in 2012. Anecdotally, recent law graduates are paying over \$1,000 per month on their student loans, and this is before rent or mortgages, car loans, and the costs of living a modest lifestyle.

The causes of this rise are multi-dimensional. Law schools, responding to demand for more practical education, have instituted experiential and clinical courses, which have lower student to faculty ratios, and thus higher cost. Competition among law schools for talented faculty has driven up the costs to the schools. Lower percentages of government subsidies for public schools have driven up the expense borne by the students. Declining enrollments have also driven up the costs of law school, as it drives down the cash flow to the schools. Another factor is financial incentives law schools are giving better qualified applicants in order to attract them to the schools and improve the law schools' ratings (e.g. U.S. News and World Report rankings). Pressure is also coming from the larger university institutions. Historically, law schools have been profitable for universities. Pressures from the universities to maintain, or increase, profitability may be the exact disincentives that the law schools do not need at this time. All of this puts an even greater financial burden on students paying all or most of their law school tuition.

Needless to say, the funding formulas of law schools are not transparent. It is hard to realistically criticize schools, or give advice to schools, without accurate information on the nuts and bolts of how they operate. Moreover, different law schools operate on different business models. Thus, there is no "one size fits all" solution.

Some of the increased costs are driven by student demands. The results of a survey by The Florida Bar Vision 2016 Commission¹⁸ shows that, after legal research and writing and evidence, the three most desired courses are clinical, trial advocacy, and internships. This is consistent with the responses of attorneys that 79% of young lawyers say they graduated law school without sufficient practical skills. The areas most requested by survey respondents to improve law school training are law office management, practical skills, internships, and business management. This is consistent with the survey results that the three lowest areas of preparation by law schools are financial, work alternatives, and law office management.

Still, law students want law schools to prepare them for The Bar Exam, which at present contains twenty-four potential topics. As shown in the section on The Bar Exam (pages 24-31 of this report), if law school students took courses on all twenty-four subjects, it would leave them with two credit hours for electives (like practical courses, clinics, externships, and law office management).

Another telling result of the Vision 2016 survey is that young and middle career lawyers' advice to those contemplating law school is to consider the amount of debt that will be incurred. These barriers to law school entrance and successful entry into the legal profession can be

¹⁷ Information available from www.americanbar.org

¹⁸ Information available from the Florida Bar.

overcome, but it will take a major re-shaping of the law school curriculum as well as the law schools themselves.

While the sub-committee can only speculate as to the reason why law school costs to students have risen out-of-proportion to inflation, some of these are educated guesses. If the demand for new lawyers rises, and the enrollments at law schools increase, the cash-flow to law schools will increase, and the cost per student should decrease (at least in theory). If law schools can generate funds from third-year students and recent graduates in legal incubators, that would not only increase skills training, but also provide some extra cash flow to law schools.

The bottom line is that the cost of law school will not come down, although it may slow to the rate of inflation, or at least it may get closer to the rate of inflation. But the high debt incurred by today's law students, and the competitive job market at present, is placing increasing burdens on young lawyers.

Law students have no control over the costs of law school. Unlike other consumers who can affect the costs of goods, the law students have no control over supply and demand, other than to choose either not to go to law school, or to choose the less expensive alternative law schools. The ABA accreditation standards prohibit law schools from admitting students who do not appear capable of satisfactorily completing a program of legal education and being admitted to the bar.¹⁹ Such a standard is well discussed in the legal education world as to how to enforce this properly and fully to prevent students with no real probability of success in the law school environment or career prospects as a practicing lawyer from being enmeshed with mountains of debt.

It is suggested that, eventually, "the market" will cause a correction. Law schools on the margins will not be able to sustain their expenses and/or students will hold them accountable. Clients' demand for "practice ready" lawyers will lead to several possible results. One potential result is more practice preparation by law schools. Another potential result is that law firms will go back to training young lawyers, but charging significantly less for their services. Pressures on law schools will grow to provide a better value for their graduates in the form of innovative classes and programs (such as an incubator). While this may be so, the question is whether The Bar wishes to let blind forces have their sway as opposed to The Bar becoming pro-active in shaping the young lawyers of the future.

If the trends continue, and are not addressed, there are a myriad of possible results. Qualified college graduates, seeing the cost-benefit ratio, will simply choose other professions that have greater pay compared to less debt. Law schools will be motivated to lower costs, and possibly lower services, especially at a time when increased services (so-called practical courses) are in higher demand. It is not a vicious circle, but rather a vicious downward spiral in a race to the bottom. The profession, the justice system, and the legal consumers deserve better. To quote the ABA Task Force: there has been an "insufficient development of core competencies that makes one an effective lawyer."

¹⁹ ABA Standard of Legal Education 501 (b).

Another question being posed is whether the legal profession has lost its esteem and thus the attractiveness to high quality law students? The debt being carried by current young lawyers and students could lead to financial disaster for a portion of young or mid-career lawyers. Many young lawyers may simply not be able to afford to pay off their debt based upon the earnings they receive as lawyers. Other professions may offer greater financial stability. This might, in turn, lead to the loss of many talented lawyers.

Consideration has been given to other innovative solutions. The first observation is that there is no clearinghouse for identifying the success or failure of innovative programs. It is imperative that there be continued conversation to give feedback. Such a suggestion is included in the proposals below. One suggestion is the medical school model. Third-year medical students are placed in paid internships at hospitals associated with their schools. The income to the students, coupled with the practical experience, will address both of the greatest needs of law students today.

Fleshing out this idea a little more, it is said that there is over \$45 billion in unmet legal needs by the “low-bono” population; this population consists of those with too much income for legal services assistance, but insufficient extra funds to pay for a lawyer (e.g., simple wills, landlord/tenant, simple divorces, business agreements, employment contracts, small claims, and simple bankruptcy). If the law schools would provide an ability-to-pay fees basis for people needing these services, the income can be used to either pay law student interns, or to offset the cost of education. One objection to such a service is that it takes business away from current lawyers. This objection is illogical because these services would be directed at an underserved clientele; that is to say, a population that is not already served by current lawyers’ needs.

Another solution to decrease costs to students while meeting current demands for more practical courses is the increased use of experienced lawyers as adjuncts. An adjunct can teach one class a semester at a nominal fee, and provide invaluable insights to the students as well as practical knowledge. An alternative option is the use of mentorships. However, this is an idea that has been rejected several times in the past by the Board of Governors.

Because of all the pressure on students to pass The Bar Exam, there is a disincentive to taking innovative courses. We need to look at reducing the number of subject areas for the Bar Exam.

Because of rising student debt it is hard for a student to take a low-paying public service job. Solutions to this may be subsidies to the public service employers, or loan forgiveness for lawyers who take on this work.

Ideally, reducing law school to two years combined with practical training in the first years of practice would cut student debt by, roughly, a third. A variant of this idea is increased utilization of the 3 + 3 method, where, after three years of undergraduate school, the senior year of college is satisfied by the first year of law school, reducing schooling from seven to six years.

Another suggestion is to make the third year of law school into a supervised practical internship. One source of change might be a business model that gives incentives to lawyers to

provide practical training to young lawyers. Or even, law schools could pay stipends to firms to hire, and train, their students.

And, one other solution suggested is for The Florida Bar to institute “Bar Certified” law school programs. If the law schools can establish that they meet certain standards, they can be certified in some way to make them more attractive to students (in the same way a board certified lawyer is more attractive to clients). “Bar Certified” law school graduates may be exempted from certain portions of the bar exam. However, this could potentially erect more barriers for students to be admitted to a variety of bar exams and reduces the ability of law schools to individually distinguish themselves in education. Thus, while this was discussed, it was not a recommendation.

The problem is multi-faceted and the solution will also have to be multi-faceted. The solution will also require cooperation between law students, the schools, The Florida Bar, the Florida Board of Bar Examiners, law firms, public sector employers, public interest employers, clients, and, most importantly, the Supreme Court of Florida. We have taken the liberty of proposing solutions without the burden of justifying the ideas. The hope is that this will generate solutions by the various constituents of the legal profession.

iv. Cost of Legal Education to Law Schools to Implement Innovative Programs

The first observation by The Committee is that the rising costs to run a law school, while varying from school-to-school, and by type of school, is a nationwide problem. Florida is not alone in facing this challenge, and The Committee recommends collaboration between states, the federal government, the ABA, and law schools (as well as law school regulating agencies) to address these problems on a long-term basis.

The costs to law schools and the costs to students are intertwined issues. If you implement some of the suggestions from the prior section of this report, you increase law school costs. For example, trial advocacy classes are lower student to faculty ratios and therefore more faculty-intensive. On the other hand, if law schools implement some of the suggestions below, the costs are decreased, but the law students and the profession are not getting the “practice ready” young lawyers they are seeking.

As seen in the prior section, the costs to students have out-paced inflation. At the same time, the profession is asking the law schools to produce more “practice ready” law graduates. This requires more labor intensive, and hence more expensive, classes. Legal Aid clinics, trial advocacy courses, skills courses, internships, and similar innovations simply cost more to provide. Where are the law schools to get the financial ability to meet these demands and needs?

There are many factors driving up the costs of law school. Some are obvious: rising costs of the physical plant, basic staffing needs, building technology oriented class rooms, increasing pressure to provide financial aid, the costs of keeping current in technological hardware and software, greater outreach to increase diversity, and giving professors more research time and less class time are among the factors. Some factors are not so obvious: meeting the ever-increasing demands for specialized courses, developing or re-developing courses for on-line use, for some schools, demands for more contributions by law schools to central universities, demands for larger

profit margins on the “for profit” law schools, demands for more diversity in class hours to accommodate students’ schedules, subscriptions and web-based legal research costs, and costs of recruiting.

Before discussing possible solutions, it must be recognized that over 40% of the students taking the Bar Exam went to law schools outside the State of Florida. It must also be recognized that each Florida law school is an independent entity. Even if we identify a workable solution, the only way to implement the solution is through moral suasion. Some considerations are:

- Law schools can increase “externships” where students receive credit for work as law clerks for judges, or interns at law firms, public defender offices, state attorneys’ offices, public interest offices, or legal clinics. Law schools would be paid tuition for credit hours the law schools need not provide faculty to teach.
- Reduce law school to two years. Law students can sit for The Bar Exam after two years, and work as clerks or interns the first year while awaiting Bar results.
- Increase reliance on on-line classes. In fact, some courses can be provided on-line at more than one school. For example, if the University of Florida has developed an on-line course for evidence, there is no reason why the other eleven law schools could not give credit for completing the same on-line course.
- Create a clearinghouse to identify and promulgate programs that are successful at lowering law school expenses.
- Establish a clearinghouse for software and hardware, so schools can pool resources and access software “in the cloud” using volume discounts.
- Consider “hybrid” classes, where half of the hours are taught by professors, and half of the hours are conducted on-line. This would release professors either to teach more classes, or to get in more time for research.
- Develop external sources of funds for law schools. Many law schools now have free legal clinics for the indigent. Some schools may want to consider ability-to-pay clinics charging a fee for services provided.
- A school, or group of schools, could come together in a consortium to produce a Florida Law software program that can be sold and which would provide do-it-yourself forms for many legal tasks for which a lawyer generally is not needed. Artificial intelligence, cyber-law, and other technology-based innovations could be developed by the consortium to create profit-generating software.
- Increase the use of adjuncts rather than increasing the number of professors.
- Instead of using publishers of textbooks by professors, considering the feasibility of producing “e-textbooks” in house.

As was said at the beginning of this section, what the Committee has produced are just suggestions. There can be no fiat by which law schools are forced to become less costly and less expensive. The schools, ultimately, have to make the decisions themselves. It is the fervent hope that schools will make honest efforts at cost containment, and consider these, as well as other, suggestions. Further, it would behoove law schools to work together and share information on effective innovations that can benefit the law academy as well as the law practice.

v. ABA regulations that affect the Possibility of Reform in Legal Education

Obstacle 1. Standard 316. BAR PASSAGE

(a) A law school's bar passage rate shall be sufficient, for purposes of Standard 301(a), if the school demonstrates that it meets any one of the following tests:

(1) That for students who graduated from the law school within the five most recently completed calendar years:

(i) 75 percent or more of these graduates who sat for the bar passed a bar examination; or

(ii) in at least three of these calendar years, 75 percent of the students graduating in those years and sitting for the bar have passed a bar examination. In demonstrating compliance under sections (1)(i) and (ii), the school must report bar passage results from as many jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency.

(2) That in three or more of the five most recently completed calendar years, the school's annual first-time bar passage rate in the jurisdictions reported by the school is no more than 15 points below the average first-time bar passage rates for graduates of ABA-approved law schools taking the bar examination in these same jurisdictions. In demonstrating compliance under section (2), the school must report first-time bar passage data from as many jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency. When more than one jurisdiction is reported, the weighted average of the results in each of the reported jurisdictions shall be used to determine compliance.

(b) A school shall be out of compliance with this Standard if it is unable to demonstrate that it meets the requirements of paragraph (a)(1) or (2). (c) A school found out of compliance under paragraph (b) and that has not been able to come into compliance within the two-year period specified in Rule 13(b) of the Rules of Procedure for Approval of Law Schools, may seek to demonstrate good cause for extending the period the law school has to demonstrate compliance by submitting evidence of:

(1) The law school's trend in bar passage rates for both first-time and subsequent takers: a clear trend of improvement will be considered in the school's favor, a declining or flat trend against it.

(2) The length of time the law school's bar passage rates have been below the first-time and ultimate rates established in paragraph A: a shorter time period will be considered in the school's favor, a longer period against it.

(3) Actions by the law school to address bar passage, particularly the law school's academic rigor and the demonstrated value and effectiveness of its academic support and bar preparation programs: value-added, effective, sustained and pervasive actions to address bar passage problems

will be considered in the law school's favor; ineffective or only marginally effective programs or limited action by the law school against it.

(4) Efforts by the law school to facilitate bar passage for its graduates who did not pass the bar on prior attempts: effective and sustained efforts by the law school will be considered in the school's favor; ineffective or limited efforts by the law school against it.

(5) Efforts by the law school to provide broader access to legal education while maintaining academic rigor: sustained meaningful efforts will be viewed in the law school's favor; intermittent or limited efforts by the law school against it.

(6) The demonstrated likelihood that the law school's students who transfer to other ABA-approved schools will pass the bar examination: transfers by students with a strong likelihood of passing the bar will be considered in the school's favor, providing the law school has undertaken counseling and other appropriate efforts to retain its well-performing students.

(7) Temporary circumstances beyond the control of the law school, but which the law school is addressing: for example, a natural disaster that disrupts operations or a significant increase in the standard for passing the relevant bar examination(s).

(8) Other factors, consistent with a law school's demonstrated and sustained mission, which the school considers relevant in explaining its deficient bar passage results and in explaining the school's efforts to improve them.

Analysis: Standard 316 indirectly impacts a law school's ability to affect major changes to curriculum and culture because of the current structure of the Florida Bar exam. By tying a school's bar passage rate to its accreditation, the culture of the relationship between the bar and the legal education institutions has changed. Schools feel the pressure of this standard, and in turn, increase the pressure on the students to focus more and more on the curriculum to be aligned with the bar exam. Despite empirical evidence that there is not necessarily a correlation between courses took in law school and bar passage rate,²⁰ the ABA's holding schools accountable for their students' success leaves schools no choice but to push to focus students' educations on subjects tested on a bar exam, otherwise they run the risk of losing their accreditation. Such pressure in combination with the mismatch of the bar exam in Florida to what the profession needs makes this standard resonate deeply in Florida law schools.

The true obstacle at the heart of this issue however, is that the exam itself is oversized and under-useful as an indicator of a practice ready attorney. In short, the ABA is tying a law school's accreditation to an exam that tests subjects in ways that the Bar does not find useful for newly admitted lawyers to have.

Obstacle 2. Standard 402. SIZE OF FULL-TIME FACULTY

²⁰ Nicholas L. Geogakopoulos, Bar Passage: GPA and LSAT, Not Bar Reviews, www.ssrn.com (September 19, 2013).

A law school shall have a sufficient number of full-time faculty to enable the law school to operate in compliance with the Standards and carry out its program of legal education. The number of full-time faculty necessary depends on

- (a) the size of the student body and the opportunity for students to meet individually with full-time faculty members;
- (b) the nature and scope of the program of legal education; and
- (c) the opportunities for the full-time faculty to adequately fulfill its teaching obligations, conduct scholarly research, participate effectively in the governance of the law school, and provide service to the legal profession and the public.

Analysis: By keeping a focus on full-time faculty with a rule focusing only on full-time faculty, this rule seems more focused on protecting law professor employment than ensuring the best teachers are available for appropriate areas for students. Rather than focusing on whether faculty are full-time or not, schools who wish to innovate should be more concerned with pairing the most knowledgeable and up to date instructors available to meet their learning outcomes (the competencies detailed in section 1). These may include practitioners, faculty employed in other teaching, judges, or others available. While full-time faculty certainly are necessary for an extended list of reasons, the focus should be on the best match of instructors for the law school's program without concern as to the status. While the standard does not specify an exact number of full time faculty needed, it is putting the emphasis on the wrong aspect of the professional needed to potentially teach in the best possible ways.

Obstacle 3. Standard 403. INSTRUCTIONAL ROLE OF FACULTY

(a) The full-time faculty shall teach substantially all of the first one-third of each student's coursework. The full-time faculty shall also teach during the academic year either (1) more than half of all of the credit hours actually offered by the law school, or (2) two-thirds of the student contact hours generated by student enrollment at the law school.

(b) A law school shall ensure effective teaching by all persons providing instruction to its students.

Analysis: This standard again singles out full time faculty and its role in student education. While there are valid reasons for full time faculty to be engaged with 1L students, this rule effectively precludes a law school from innovating its first year curriculum in a way that changes who teaches them. For example, if a law school wanted to bring practical legal experience taught by practitioners or judges into the 1L experience in a way that "substantially" all of the student's coursework was affected; this rule would preclude them from doing so. Additionally, this problem is even more complicated for part time students, who could then progress well into their second year of study only being exposed to full time faculty members. The focus should be on the learning outcomes of the program, and how best to meet them, not who is best to meet them as characterized by employment status.

Obstacle 4. Standard 405. PROFESSIONAL ENVIRONMENT

(a) A law school shall establish and maintain conditions adequate to attract and retain a competent faculty.

(b) A law school shall have an established and announced policy with respect to academic freedom and tenure of which Appendix 1 herein is an example but is not obligatory.

(c) A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.

(d) A law school shall afford legal writing teachers such security of position and other rights and privileges of faculty membership as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction as required by Standard 303(a)(2), and (2) safeguard academic freedom.

Analysis: Standard 405 separates out full time clinical faculty and legal writing teachers as being “different” from “regular” faculty and sets the stage that they may be treated differently in hiring, retaining, and promoting, as long as a school can attract and retain qualified ones, academic freedom remains, and there are similar standards. The focus here on having differently delineated faculty with different forms of security is contrary to the ability and encouragement of a law school to innovate its program. By reinforcing the idea through this standard that some are “clinical” and some “writing” this standard actually encourages law schools to stagnate into traditional law school programs and roles rather than innovate and allow for full professional growth, which would benefit the institution and the professional development of those teaching in it.

vi. Additional outside factors causing schools to focus on traditional theory courses verses the new competencies. (Examples would be US News rankings)

Amongst the other various obstacles that have been identified, there are additional outside factors, which may cause law schools to focus on traditional theory courses versus new competencies. The most glaring is likely the pressure law schools have to have a high ranking in each year’s U.S. News Best Law Schools rankings.

The U.S. News rankings of one hundred and ninety eight law schools fully accredited by the American Bar Association are based on a weighted average of the twelve measures of quality including quality assessment including both peer assessment score and assessment score by lawyers/judges, selectivity, median LSAT score, median undergraduate GPA, acceptance rate,

placement success, bar passage rate, faculty resources, expenditures per student, student-faculty ratio, and library resources.²¹ Some criticisms include that these measures of quality are arbitrary.

There has been a variety of criticisms of law school rankings and their various effects, but likely those most critical to the reform of legal education involve the impact of schools focusing on obtaining or retaining a high ranking thus encouraging expenditure of great resources to attract the highest quality students resulting in tuition increases. When an institution's resources are focused on programs to garner favor with the rankings, they are detracted from using those resources towards the reform of law school including hiring additional faculty to teach experiential courses. Things stay the status quo to ensure the school is giving a quality ranking. A recent Connecticut Law Review essay stated that the effect of U.S. News Rankings and "other competitive forces has been to encourage law schools to get bigger and more expensive, and to devote more resources to faculty scholarship and merit-based financial aid."²²

Another obstacle for law schools is that they are business and in constant competition with one another. Much like the rankings discussed above, schools are trying to get the best students to drive up their rankings thus there is a great deal of competition for talent. Like any business with great competition, law schools have to find something that sets them above other law schools to attract their target audience. It might be a criticism that law schools are operating like any business, especially when it comes to for-profit law schools. An issue arises with for-profit law schools that are relying on students obtaining law loans who then are not able to obtain gainful employment after graduation. This situation appears, for now, to only benefit the law school.

While law schools have to define themselves as the right choice for the students they are looking for, this competitive business model may be a potential solution to education reform. As the prospective law student becomes savvier and has a better understanding of the potential market post-graduation, what may give a particular law school a competitive edge would be a law school that provides a unique approach to legal education. This might even give a school with a lesser ranking in the U.S News an edge over higher rank law schools by providing a particular specialty or focus where a student will have a better guarantee of obtaining a certain skill set that will allow them to be more employable after graduation. Perhaps this reform serves best in this system of viewing this as a business. Prospective law students will give their "business" of attendance to law schools that focus on the customer.

But it is difficult for any of this to get accomplished with obstacles like Supreme Court Rules dictating the number of subjects on bar examinations in turn pressuring students to only take classes that are covered on the bar exam. This issue is discussed in more detail by the Vision 2016 education subcommittee, but students who forego the possibility of learning in a more experiential manner to ensure they take courses that are covered on the bar exam is a further obstacle perpetuated by the number of subjects tested on the bar examination.

If law schools have difficulty filling clinics because of the student focus on bar examination subject courses, then law schools may not be as incentivized to make more programs available. Moreover, because some of the experiential courses at Florida law schools require a background

²¹ Sam Flanigan and Robert Morse, *Methodology: 2016 Best Law Schools Rankings*, U.S. NEWS & WORLD REPORT, Mar. 9, 2015, 9:58 PM), <http://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology>.

²² David Yellen, *The Impact of Rankings and Rules on Legal Education Reform*, 45 CONNECTICUT L. REV. 4 (2013).

check pursuant to Supreme Court rules, if those background checks are not completed quickly enough then a student may not be able to participate in such a program. These additional rules from the Supreme Court further hinder potential reform at law schools. If the high courts of the respective states focus on the quality of lawyer that law schools are attempting to graduate, some of the rules may be revisited so as to allow for a reform of legal education.

A recent *Newsweek* article “Law Schools: Reform or Go Bust” discussed that the key for legal education to find a new business model may rest with the states’ respective high courts. James Huffman wrote that, “[i]f their bar admission standards focus more on the qualifications in individual applications and less on where applicants acquired those qualifications, legal educators would be feed to succeed or fail on the basis of the quality of the education they offer.” Thus, by courts identifying a different set of bar standards would, hypothetically, in turn encourage law schools to focus on those standards.²³

Politics may be an additional factor that law schools have to weigh when approaching reform. The prospect of Florida allowing reciprocity got the attention of the lawyers of the State of Florida. As a result of this backlash to change, the Supreme Court of Florida may be reluctant to start indicating bigger changes to bar examination standards. Any quick action by the Court may appear as though the Supreme Court is making the exam “easier” in the face of reciprocity being denied. Other potential changes may now go to the back burner, so to speak, because people may be concerned and see something like the Uniform Bar Exam as another attempt to obtain reciprocity disguised as bar examination reform. Finally, when it comes to education generally, education policy is political, conservative, and change-averse. Education policy change tends to come in punctuated bursts.²⁴

vii. Adapting Legal Education to the Future Practice of Law

The Vision 2016 Legal Education Group identified core competencies needed by today’s lawyers, identified obstacles that can hinder Florida’s law students’ achievement of those competencies and recommended solutions to overcome those obstacles. Governance in legal education has not traditionally looked to the future as much as to the past but many faculties and many law schools have made that mindset adjustment with the hope that more will continue to look forward and support forward thinking legal education programs. However, by the time the Vision 2016 recommendations are implemented, lawyers will face new challenges. Five or ten years ago, legal futurists predicted advances in the practice of law that seemed impossible; today many of those practices are already passé. Florida’s law schools must not only be able to respond to changes in the legal profession as they occur, they must be able to anticipate those changes and become active participants in shaping the future of the practice of law.

²³ James Huffman, *Law Schools: Reform or Go Bust*, NEWSWEEK (Feb. 20, 2015, 4:51 PM), <http://www.newsweek.com/law-schools-reform-or-go-bust-308339>.

²⁴ Andrew J. Rotherham, *The 3 Main Obstacles in the Way of Education Reform*, THE ATLANTIC (Apr. 20, 2012), <http://www.theatlantic.com/national/archive/2012/04/the-3-main-obstacles-in-the-way-of-education-reform/256144/>.

Without systemic changes, the obstacles that Vision 2016 has already identified will continue to keep legal education tied to the past:

- The Florida Bar Exam
- ABA accreditation standards
- The influence of *US News and World Report* rankings
- The cost of legal education to both law students and law schools
- A law school culture that often values tradition over innovation

As a result, Florida's future law school graduates may find it even more difficult to succeed in the face of globalization, the phasing out of the traditional law firm model, changes to the attorney-client relationship, and competition from legal services corporations.

Globalization: Florida's lawyers cannot continue to operate as an island. Business is internationalized; trade is internationalized; individuals are increasingly mobile and often own foreign assets and investments. In order to provide competent legal representation to clients whose business, financial, personal, and family relationships extend beyond U.S. borders, Florida lawyers must be prepared to understand and address issues of international law and international jurisdiction. Florida's schools will need to have greater flexibility to allow them to find solutions to better prepare their students, such as partnering with foreign law schools to offer distance learning opportunities, language classes covering foreign legal terminology, dual degrees, and even assistance with gaining admission to practice in foreign jurisdictions.

The Decline of the Traditional Law Firm Model: The Florida Bar's Economic and Law Office Management Surveys from 2006-14 show that the percentage of sole practitioners has steadily increased every year. According to the most recent survey, 67% of Florida Bar members practice in firms consisting of 1-5 lawyers, with 36% now in solo practice.²⁵ While this trend may have had its origins in the economic downturn, other factors mitigate against a return to the traditional law firm model. These factors include consumer demand for more affordable legal services and the availability technological innovations that reduce overhead costs (such as support staff, closed file storage and physical office space). Law firms may be replaced by flexible partnerships that allow attorneys to collaborate on a case-by-case basis.

In order to successfully practice outside a law firm structure, new graduates must be prepared to answer such questions and to manage their own law offices and their cases without the support and resources formerly provided by law firms. While not part of the law school curriculum, these skills are at least as critical to the ethical and competent practice of law as any core substantive coursework.

²⁵ Survey available from the Florida Bar.

The Changing Attorney-Client Relationship: Technology can fundamentally change the nature of the attorney-client relationship. All communication with clients, soliciting business, gathering information, giving advice, and providing representation can be handled electronically.

Additionally, clients now may come into the attorney-client relationship with legal information (or misinformation) they have obtained from the internet. They may have prepared their own contracts, estate planning documents, corporate documents, and legal notices using non-lawyer online legal services. Or they may have relied on generic legal “advice” from another lawyer’s blog. These clients bring a cost-conscious consumer mentality to the attorney-client relationship, seeking only limited legal services. This development is not unique to the legal profession; physicians at urgent care clinics treat acute conditions, rather than treating the whole patient. The transition from patient to consumer has undoubtedly saved lives and reduced the cost of medical care.

Similarly, the transition from client to consumer may reduce the cost of basic legal work and provide greater access to legal services for small businesses and individuals who previously would not have been able to afford to hire a lawyer. A brief consultation and a revision of what the client has prepared may be preferable to the client’s proceeding on his or her own or with the only the assistance of a non-lawyer.

However, (in addition to raising ethical issues and malpractice concerns) the idea of attorney services that add value to generic legal products challenges the very foundation of a traditional legal education by raising questions about what it means to “think like a lawyer.” As with each of the issues that the Vision 2016 Legal Education Team has addressed, Florida’s law schools must be allowed the flexibility to get ahead of the curve and help shape the legal profession of the future.

E. Recommendations for the Future

The last section of the Legal Education group report identifies solutions for change, identifies groups and organizations to carry out the work of the commission, and how to transition its charge to them.

1. In order to provide more curricular space for law schools to innovate models of change with the goal of producing new lawyers with a full range of competencies, skills, and attributes including but not limited to experiential learning, technology education, and professional identity education, we concretely recommend that there be a reduction in the number of subjects tested on The Florida Bar Exam to a number that could be covered entirely in two of the three years of full time legal education or less.

This recommendation has been approved by Vision 2016 Legal Education group and endorsed by:

Scott DeVito, Dean, Florida Coastal School of Law

Leticia M. Diaz, Dean, Barry University School of Law

Alfredo Garcia, Dean, St. Thomas University School of Law

Jon Garon, Dean, Nova Southeastern University College of Law

Christopher M Pietruszkiewicz, Dean, Stetson University College of Law and endorsed by the Faculty of the Stetson University College of Law

Donald J. Weidner, Dean, Florida State University College of Law

2. The Board of Governors should either create a new committee or completely reimagine the current Student Education and the Bar committee to be a permanent body to advise and cooperate with law schools and to act as a liaison on the following issues:

A. Technology training for law students geared toward the practice of law for new lawyers with a possible widespread graduation requirement instituted by the schools.

B. Supporting and/or setting up incubator programs at law schools for new practicing attorneys

C. Further defining and cooperating with law schools to ensure all new graduates have the full range of legal, non-legal and professional identity skills necessary for new lawyers building on the list of competencies approved by the committee after our first year of study and discussion.

D. Exploring partnerships with the Bar, law firms and individual lawyers to reduce the cost of law school.

E. Working with schools individually to pursue alternative methods of structuring curricula best suited to each law school environment as discussed throughout the report.

F. Monitoring all sources of legal education reform, including the Section of Legal Education and Admissions, The Florida Supreme Court, ABA House of Delegates, Board of Bar examiners, American Association of Law Schools, ABA Section of Legal Education and Admission to the Bar, and others. The committee should be charged with specifically maintaining the institutional knowledge of all legal education reforms for the Board of Governors to prevent any disconnect between the Bar and legal education in the future.

Such membership should not be limited to academics, but rather contain an assortment of young lawyers, including student representatives, established lawyers, academics, judges, and non-lawyers.

3. Working with law schools specifically and immediately to enhance opportunities for students to engage in live client experiences to meet the ABA six-credit experiential learning graduation requirements, or enhancing simulation experiences through Bar programs designed for each law school.

4. Increasing the number of students engaging in live-client experiences by:

A. The Board of Governors approving the YLD proposal to change the requirements for a student to appear as a certified legal intern, in accordance with the April 8, 2016 proposal to the Board of Governors requiring Level 2 background checks and other requirements in lieu of a full Florida Bar Board of Examiners character and fitness study.

B. Considering the ABA proposal to allow students to earn income and credit for field placement experiences satisfying the experiential learning requirement

5. Creating a nonvoting rotating law school position on the Board of Governors to advise on the law school perspective on prospective rule changes to the Bar and allowing law schools quicker and more frequent access to information on Bar changes.