MEMORANDUM

To: Participants in Future Ed 2–Proposals for Reform

From: Richard A. Matasar, New York Law School

Re: Proposal for Accelerating Acquisition of a Law Degree

August 31, 2010

Description of the Problem

As discussed throughout the meetings of the Future Ed conference, education in the United States has become so expensive that its value is being questioned. Legal educators have focused on the value proposition of a law degree: simply put, does the return justify the cost? The question has become urgent as the conventional wisdom now suggests that for many (most?) students, their expected salary after graduation will not support the debt they have accumulated to obtain the degree. The now familiar bi-modal distribution of salary outcomes illustrates quite graphically that the bulk of law students will not earn an initial salary that will comfortably cover their debts and their living expenses after graduation.

Unfortunately, the focus on legal education understates the full dilemma that law school graduates face. First, they already enter law school with a substantial amount of undergraduate borrowing. Many already have federal loans approaching $20,000 or more. Many more have similar levels of debt that their parents have absorbed, either through loan guarantees they have provided, through home equity borrowing they have made to support their children, or through the federal parent loan programs. Further, many students and parents supplement their federal loans with private loans, which have become quite scarce and which carry very high interest rates when available. To fill the gap in their funding, many students take on consumer debt—credit cards, revolving credit, or installment loans. In short, whatever income law graduates receive must cover not only law school debt, but pre-existing loans as well.

Adding to the plight of American law school graduates is an increasing number of non-U.S. lawyers who are competing for the declining number of jobs. These non-U.S. lawyers can become members of the bar in the United States based on their undergraduate law school degrees, which often are deeply subsidized by government funding, and the equivalent of one-year of an American law school program. These non-U.S. competitors carry lower levels of debt
and may become lawyers in fewer years than American students; hence they have both lower cost education and reduced opportunity costs as they enter the workforce.

Responding to this problem has been an exercise in teeth gnashing, wool gathering, utopian hopes, and unrelenting pessimism. Law schools have neither shown the willingness nor the ability to cut their operating costs significantly. The accreditation process still demands many inputs that contribute to rising law school costs—limitations on the amount of distance learning, a preference for full-time faculty, large physical plants, job security for employees, required pre-law school undergraduate degrees, limitations on salary and credit for the same work, limitations on the amount of work students can take outside of their education, and so on. The employment market is not expanding and the number of higher paying jobs is not rising.

This suggests the need for structural or regulatory change that can improve the value of the law degree.

**Proposed Improvement**

One possible improvement to the cost/value dilemma in legal education can be in reducing the costs of becoming a lawyer—both out-of-pocket and opportunity. Law schools have already experimented with accelerating the J.D. Degree from three to two years. This has the benefit of putting the student into the market a year early and reduces the opportunity cost of delayed employment—IF THE STUDENT FINDS A JOB! However, the accelerated J.D. programs still require payment of three years of tuition, within the two years of study, and have not created new income opportunities for students to manage their debt.

However much law schools might desire to reduce the time students spend in legal education, there is an almost irreducible minimum set of educational expectations for a legal education. The first year has generally been a successful effort to introduce the culture of legal studies efficiently across all activities. The ABA requires a substantial additional number of hours and minutes of instruction and has made it impossible to create a law graduate in under two years. Moreover, the admitting authorities in most states adhere to ABA accreditation standards and have an expectation of completion of a standard law degree as a prerequisite to becoming a member of the bar. Therefore, to substantially reduce the time between high school and becoming a lawyer, it may be necessary to truncate other parts of a students’ per-law school education.

Under current ABA regulations: “A law school shall require for admission to its J.D. program a bachelor’s degree ...” Standard 502(a). Generally speaking, this is a four or five year program of study for most students. The Standards do permit so-called three (years of undergraduate study) plus three (years of law study) programs. See Id. (“a law school shall require ... successful completion of three-fourths of the work acceptable for a bachelor’s degree ....”). Additionally, in “an extraordinary case, a law school may admit to its J.D. program an applicant who does not possess the educational requirements of subsection (a) if the applicant’s
experience, ability, and other characteristics clearly show an aptitude for the study of law.” Standard 502(b). Together these rules have created a normal route to law school: four to five years of undergraduate education (leading to a bachelor’s degree) or in limited cases, three years of undergraduate education, with a year of law school counted toward the bachelor’s degree and two more years of law school leading to the J.D. degree.

This contrasts to many non-U.S. jurisdictions in which undergraduate education can be coupled with short-term post-graduate training programs as a prelude to a bar admission. The consequence is that U.S. trained lawyers may be a bit older than their counterparts in other countries, but have incurred significantly greater costs in achieving admission to the bar.

The proposal contemplates seeking a variance from Standard 502 which would permit at least one law school (New York Law School) to admit students with only two years of undergraduate education to the J.D. program. New York Law School will establish admissions criteria for the program to ensure that admitted students are mature enough to compete in the law school environment and have sufficient undergraduate experience and intelligence to manage legal studies. New York Law School intends to establish partnerships with a limited number of undergraduate schools and may establish methods by which students will receive both a bachelor’s degree and a J.D. upon graduation. The law school also may establish a program of study leading to an LL.B. if the student does not receive a bachelor’s degree concurrently with their law degree.

If permitted, the proposal will eliminate two years of out-of-pocket expenses for students and will reduce opportunity costs by two years.

1. To ensure that applicants are mature, we may focus initially on returning students—those who have delayed entry into undergraduate studies either because or family or financial reasons, returning veterans, or other “mature” students. Similarly, we may: recommend an undergraduate curriculum; have gateway introductory courses in economics, history, or other social sciences; have a minimum grade point average for undergraduate studies or a minimum LSAT score.

2. For many years, the first law degree offered by most American law schools was a Bachelor’s of Law (an LL.B.). This created the anomalous problem that law school graduates, with seven years of higher education, including three years post-graduate, would be graduating with a “bachelor’s degree—the same time frame within which other graduate students would be receiving “doctorates.” The juris doctor (J.D.) Degree was created to eliminate this anomaly. However, if law schools in fact were to begin to offer degrees to students who did not possess an undergraduate degree, the school might make a distinction between those students and others possessing such a degree by giving the former group an LL.B. and the latter group a J.D.
Implementation Strategy

By April of 2011, New York Law School will have: (1) established potential partnerships with at least one four year undergraduate degree granting institution as well as at least one community college; (2) adopted admissions criteria that (a) establish the maturity of applicants to the program and (b) establish their capacity for legal education; and (3) sought a variance from Standard 502 from the Accreditation Committee of the American Bar Association Section of Legal Education and Admissions to the Bar. New York Law School has already formed a faculty committee to accomplish these steps, had some preliminary meetings with presidents of undergraduate institutions, and made contact with the ABA about the variance process. The law school anticipates establishing its admissions criteria within by October of 2010.

Constituents Involved

This proposal entails the cooperation of several important constituencies: (1) the law school faculty of at least one law school (New York Law School, initially, and any other faculties that may also seek a variance to Standard 502); (2) at least one four-year and one two-year undergraduate college; and (3) the American Bar Association Section of Legal Education and Admissions to the Bar. In addition to these stakeholders, the proponents may need to meet with bar admissions authorities and courts in states that require bar applicants to have both an undergraduate and law degree. Finally, proponents may seek out undergraduate pre-law advisors for help in designing, implementing, and marketing the 2 + 3 program set forth in this proposal.

3. One of the primary beginning steps for the New York Law School committee working on this proposal will be to do a state-by-state analysis of bar admission criteria. Because admission is largely tied to graduation from an ABA accredited law school, many states do not have independent additional requirements like age or levels of education. However, before confidently moving forward with this proposal, we must have an accurate picture of each state’s requirements.