

The Cost of Law School and the Burden of Law Student Debt
A City Bar Association Program Held on April 27, 2004

Summary

ABCNY's Committee on Legal Education and Admission to the Bar has devoted considerable attention to issues relating to the cost of law school and the effects on law graduates of the substantial levels of debt incurred to finance legal education. The Committee has met with representatives of Access Group (the largest funding source for law student borrowings) and of Concord Law School (Kaplan Inc's on-line law school). The Committee has issued its own report on the subject of law student debt, available on this website. On April 27, 2004 the Committee convened a panel of experienced educators to discuss both topics. The group included the ABA's Consultant on Legal Education, who heads the ABA's accreditations program, the President of Kaplan Inc., two current law school deans (NYU, Syracuse) and a former Cornell dean who is a pioneer in on-line legal resources. What follows is a lightly edited transcript of their discussion, some charts providing the basic statistics, and an abbreviated bibliography.

Panel Discussion:
The Cost of Law School and
The Burden of Law Student Debt
Transcript - ABCNY, 4/27/04

MR. BEHA: I'm Jim Beha, the current Chair of the Association's Committee on Legal Education and Admission to the Bar. This evening's topic is The Cost of Law School and The Burden of Law Student Debt.

Perhaps not surprisingly, the financial resources of those entering law school have not increased significantly over the last fifteen years. What has increased dramatically is both the cost of completing a legal education and the level of financing, borrowing that is available to the more than 145,000 law students who are prepared to learn now and pay later. So dramatic have been the increases in law school tuitions and related costs and the amount of debt that some wonder whether the enrichment of the law school curriculum that so many law schools have enjoyed is itself the product of an absence of pricing demand that has been facilitated by open-ended financing. Others wonder why modern technology has not brought down the cost of law school, and nearly everyone wonders about the consequences for our profession of persons graduating from law schools and entering legal careers with more than \$100,000 in total educational debt.

One of the handouts tonight is a bibliography of reports and articles that focus on some aspect of law student debt and debt repayment including the Association's own report on that subject and each of the speakers tonight will address some strand of this knot of issues. I am just going to briefly introduce all of them now in the order in which they will speak. As to each of them you may be sure I'm mentioning only a small portion of their accomplishments.

John Sebert was a faculty member at the University of Minnesota and then at the University of Tennessee College of Law and had also served as Deputy Director of the Association of American Law Schools before becoming Dean of the University of Baltimore Law School in 1993. In the year 2000 he became the American Bar Association's Consultant on Legal Education. In that role, he oversees the national law school accreditation process for the Council of the ABA section on Legal Education and Admissions to the Bar, which is the nationally recognized accrediting agency for law schools. His own recent article on the costs and financing of legal education is one of the works noted in the bibliography, and most of the charts in the other handout come from that article.

After Dean Sebert, we will hear from Peter Martin, a graduate of Harvard Law School who is the Jane M.G. Foster Professor of Law at Cornell Law School where he has been a member of the faculty since 1971 and was Dean from 1980 to 1988. Of immediate import, in 1992 he and Thomas Bruce established the Legal Information Institute at Cornell. The LLI created the first internet law resource and today operates the most heavily used nonprofit comprehensively legal website in the world, responding to over a million data requests a day. In 1996 the Institute added distance learning in law to its internet activities and has to date enrolled approximately 500 upper-class law students in those internet distance learning courses.

After Professor Martin we will hear from Andrew Rosen, who is the President and Chief Operating Officer of Kaplan Inc., a subsidiary of the Washington Post Company that is a broad-based provider of educational services at all levels. Mr. Rosen received his J.D. from Yale Law School and, in addition to other accomplishments, served as law clerk to Levin Campbell then the Chief Judge for the U.S. Court of Appeals for First Circuit. Kaplan today has some 700,000 students, including 1600 students enrolled in Concord Law School which opened in the

Fall of 1998 as the nation's first fully online law school. Tuition at Concord, which is not currently ABA accredited, is approximately \$30,000 for its full four year program. In other words, Concord charges less for four years than most private law schools charge for one year. The relatively low cost and distance learning aspect of Concord has provided an opportunity for students with a very wide range of backgrounds, many of whom would not have had traditional access to education at a fixed site law school.

After Mr. Rosen, we will hear from Dean Hannah Arterian, who is Dean and Professor of Law at Syracuse University College of Law. After receiving her J.D. with high distinction from the University of Iowa, Dean Arterian began her legal career at Dewey Ballantine where she practiced corporate tax law. Before coming to Syracuse, Dean Arterian had taught at Arizona State, the University of Houston and the University of Iowa Law Schools and had served as Associate Dean of the law school at Arizona State for ten years.

Finally in the more formal part of the program, we will hear from Richard Revesz, who is Dean and Lawrence King Professor of Law at NYU School of Law. Ricky, as he is universally known, graduated summa cum laude in Civil Engineering and Public Affairs from Princeton University, got an M.S. in Civil Engineering from MIT and his J.D. from Yale. He joined the NYU law faculty in 1985, and anyone who has looked at his bio knows that he is a prolific writer on numerous topics with particular interest in bringing empirical investigations to bear on policy questions.

The way we are going to proceed, and it's going to be kept as informal as disputes among the panel allow, is to let each panel speaker talk for about 8 to 10 minutes on some aspect of the cost/debt issue, perhaps with a question or two from each other. At the end of that more or less hour, I will reinsert myself, ask the panelists to pose some questions for discussion and if

they run out of questions to ask each other, invite some questions from the floor. The only thing I ask about questions from the floor or the group of us is that they be truly questions for the panel members and not personal testimony that ends with “don’t you agree.”

With that admonition, which will then be ignored as appropriate, I’d ask Dean Sebert to get us started.

DEAN SEBERT: It’s a pleasure to be with you today. I personally believe that this greatly increased cost of legal education and the commensurate increase in law student debt creates significant problems for law schools and for the profession, and I know the Association agrees. The report that your group issued was a very thoughtful and provocative report, and I hope this evening’s discussion will move our consideration of those issues further forward.

I do have to begin with a brief caveat: the views that I expressed this evening are my views personally. They are not my boss’s views. I’m not representing the Council of the Section of Legal Education, and I just wanted to make that clear.

Law school tuition has obviously increased dramatically over the past thirteen years. Basically about tripled over the thirteen year period between the early 90’s to 2003, and you see those data in this handout [Table A]. So that now median private law school tuition is \$25,000, median public law school non-resident tuition is \$20,000, and median resident tuition even is \$10,000. So public law school tuition has more than tripled, private law school tuition has almost tripled. What we basically see, most importantly, is the withdrawal or failure to increase state support for public higher education and particularly for public law school. Public law schools used to be state-supported. Now most of them are at best state-assisted, and some are only state-located. The public is not willing, or the institutional and political leaders are not

willing, to put the money into public higher education and particularly into the public legal education that they did for many years until the early 1980's.

Let's look then at what has happened with law school expenditures. The average per student expenditure at ABA-approved schools over the last quarter century has about quintupled, from about \$5,000 per student in the late 70's to almost \$24,000 per student in last fiscal year 2002-2003. Now some of these increased expenditures, and I dare say many, have led to significant improvements in the quality of legal education. The major example I will emphasize to you is the huge reduction in student/faculty ratios at law schools over this period. In the late 70's and early 80's typical student/faculty ratios at law schools were 25 to 1 to 35 to 1. This past Fall, the average student/faculty ratio at ABA approved schools was 17 to 1. That reduction in student/faculty ratio has permitted the great burgeoning of sophisticated skills training, good first year, second year legal writing and research programs that weren't possible at all with the student/faculty ratios that existed when I went to law school, Michigan in the mid-60's. There have been other major improvements -- we all know most of them, I'm not going to bore you with them now.

So where were the increases? Well if you go to Table B on this, surprise (well, maybe not surprise), over the nine-year period between 1993-94 and 2002-2003, by far the largest percentage increase in law school expenditures was for financial aid. 161% increase over that nine-year period. Now, some of that was to try to relieve the burdens, the financial burdens, created by the high cost of legal education and reduce somewhat the debt burdens of their students. I think most of us believe that by far the major explanation for the increase in financial aid expenditures at most law schools, however, is more increased competition for entering students, and US News rankings -- because over the past seven to ten years there's been a huge

shift at many law schools from primarily need-based financial aid to primarily, or at least significantly, merit-based financial aid. So that you're looking to attract the students who will raise your 75th or 25th percentile LSAT score by 1 or 2 points from wherever you are. It happens -- it is one of the most difficult impacts of US News, but it's there.

The second largest percentage increase in categories of expenditures, it's not faculty salaries and it's not library. It's a broad category of other, and within that other, the major things that are increases show a shift over the past ten years toward expenditures that were not typically heavy budget items in law schools. But now a lot higher expenses in travel, particularly admissions recruiting travel, in publications, admissions publications but also the glossy publications that attempt to aid your alumni and development enterprise but also increase your public visibility. Huge increases in expenditure on technology. Used to be we were just worrying about the hardware, and now it's software for administrative purposes and for faculty and students; now it's expensive classroom technology, much of which can produce very good advances in what we do in the classroom -- but it's very expensive and [so is] the staff to permit people to be able to use the new technology that we're getting.

So then let's turn to the financiers of legal education. That's the law students, right, who pay the tuition and borrow. Surprise! I told you that basically tuitions over a fifteen-year period about trebled; so did student loan volumes over a fifteen-year period, from 1990-91. Public law school loan volume more than tripled between 1990-91 and 2002-2003. Private law school loan volume almost tripled. So it is the students and student borrowing that basically supports legal education.

Many Deans have been saying that for years. It's true. Even state-assisted schools are increasingly tuition dependent. When I was Dean at the University of Baltimore, the

state's subvention paid the overhead, basically the overhead that I owed the central university. My whole operating budget was funded by tuition.

Okay. So what debt does this produce? About 80 percent of J.D. students borrow to finance some part of their legal education. That number's been pretty constant for at least the past 5 to 7 years. We did not, the ABA did not, begin collecting median law school debt at graduation data until most recently, but now for the graduating class of 2003 the data show that the median debt, cumulative law school debt, for graduates of public law schools is about \$45,000, that's median. For graduates of private law schools it's about \$69,000. Now you often hear larger figures from the Access Group, but you must remember that their figures are only for those who borrow from the Access Group. Most of those people are people who have to borrow more than the \$55,000 which is the ceiling on federally-assisted loan programs.

So that is a substantial debt. Then what do they have to pay off that debt? On the next page [of the handout] we have data what many of you are familiar with from NALP, showing median salaries. Median salaries for all graduates for the Class of 2002 was \$60,000, but this of course shows the spread that you're very familiar with. And it clearly, it seems to me, shows that if one graduates with the median debt from a private law school, \$69,000, one's going to have real difficulty accepting, and keeping food on the table, if you're taking a job with public interest firm, government or a relatively small firm where median salaries are below \$60,000. That's going to be a problem. And if you end up with a debt that's higher than the median, it's going to be almost impossible to take those types of jobs.

So, there are significant problems created by the cost of legal education and the way we finance it. As Pogo says, we've somewhat found the enemy, and some of them is we. A significant portion of the increased costs of legal education, particularly in the last ten years, has

been because of increased competition for students and increased competition for public visibility, i.e., US News rankings. There's also been, though, an increased shift of resources toward new services that law schools didn't provide before. Expanded career services operations, much better academic support, much better first-year legal research and writing programs. So I'm not suggesting that all of that [increased cost] is wasted.

I think that ultimately since almost all of these cost increases are basically paid for by the students and causes them to accumulate substantial debt, many of us have a problem, and I don't think it's hyperbole to suggest that if these trends aren't moderated, there will in the reasonable future at some law schools be greater barriers both to the quality of legal education and to access, and those are problems that I think we need to be talking about. So now that I've done my Bleak House, I can turn it over to the panel for the solutions. Right?

PROF. MARTIN: Before you flee the podium let me ask you to step out of averages and historic trends, but take advantage of the incredible wealth of familiarity you have with law schools in the United States to deal with the following hypothetical. I'm asking you to hypothesize a start-up law school that wants to be the Wal-Mart or the Jet Blue of legal education. That is to say, it wants a very different price point. Wants to offer a J.D. of fine quality but one that will allow the graduates without inordinate debt to go out and practice law with a small firm or within a public sector setting, a public interest setting. Could you do it within the ABA accreditation rules? And if so, what would be the major steps that that law school would take that would bring down these costs that you say average \$24,000 per student in the average law school?

DEAN SEBERT: I think there are a lot of things one could do to provide quality legal education that met the Standards; remember though, that the Standards' job is to establish

minimum standards; we expect that a lot of law schools will do more than minimum. But you could do a lot more to provide that education at much less than the price of \$25,000. Let me suggest some things that you can do. One, there's a lot of flexibility in what you need in library resources, and you can have a lot of those resources right now in different electronic formats. You probably couldn't get away with an entirely electronic library right now, but you can significantly reduce your hard copy versions. It's not written in stone, you know, that faculty teaching loads have to be three or four courses a year. Faculty (don't tell the union that I've said this but) faculty could teach more, and, actually, when I was at Baltimore some of my faculty who were good teachers, but were not writing that much, were teaching more than four courses a year. So you get more utility out of them.

You can do, take advantage of, some of the things that you [Professor Martin] and others have done as far as sharing resources for upper class curricula. Okay, you can't afford a faculty that will do specialized intellectual property, specialized international law courses; you may be able to share those courses electronically with faculty from other jurisdictions or other schools. You can share library resources. Those are some of the things you can do. I will tell you, at Baltimore I thought we provided very good legal education. Our per student expenditure (it was a dual division school, there are also some economies of scale there), our per student expenditures were about \$15,000 or would be now about \$15,000 compared to the \$25,000 average.

Peter, you're on.

PROF. MARTIN: I'm going to relax the constraint that necessarily I put on my question to John and that is consistency with the ABA accreditation rules, in my brief remarks. Before I pursue that particular hare, however, I want to make two preliminary observations. First

of all, I understand John you don't make the rules and that it would be a mistake to attribute all of the ABA accreditation rules to you, and I'm not doing that. But you are here, and who else can one speak of these things to and ask for at least some rationale for why they exist. So, I mean I acknowledge, that the rules and you are not the same, even as I start talking about the rules.

The second preliminary that I want to suggest is that if the ABA accreditation rules were to fall away tomorrow, there'd be not much change in how law schools behave, that is to say [how] the collection of 187 ABA accredited schools [would behave]. There are many inhibiting forces, many barriers that would cause most of those institutions to progress along the same path. Faculty governance is one of the inhibiting forces. Alumni are heavy stake holders in the institutions as they are and would be aghast at anything that came across as depreciating the value/cost of the degree of that institution. But that said, let me sketch a few straightforward measures that could lop significant costs out of that J.D. bundle, [measures] which share the characteristic that they are inconsistent with ABA accreditation rules. Except as indicated, these measures are complementary or additive.

The first cluster have to do with the multiplier that gets hit against the tuition or some other charge for instruction. The simplest way to reduce the cost of a J.D. by a third is to cut a third off three -- that is to say, to have a two year degree, as it has been advocated by influentials for a long period of time. But that's my bottom line; let me edge up closer to that dramatic proposition by observing some puzzles about the current rules. Measure Number One would be to give matriculating law students advance credit for law courses they had taken previously. Undergraduates at Cornell, and I assume at many other colleges and universities, take a lot of very rigorous law courses. Particularly if they imagine they might become lawyers.

My colleagues at Cornell teach undergraduates law. Nova Southeastern has a pre-admission pair of law courses that it invites students to take, and if they do well on the courses, they get into the law school -- but they don't get credit for those courses that they took and got a passing grade on that got them into the law school.

I had a call yesterday from a student who was coming to a graduate program at another field at Cornell, and he thought he wanted to minor in law as he took this graduate degree, and he wondered if he could take courses in the Law School toward that aim. I said sure. And then he said if I got into law school, could I count those courses toward the degree. I said no. I couldn't explain why that was, but simply said ABA accreditation rules say we cannot give credit for law courses taken prior to matriculation toward the degree. There is something magic that happens as you become a matriculated law student that allows the counting of law courses toward that degree.

Measure Number Two, give credit toward the J.D. for prior legal experience. Paralegals, law enforcement officials, people who've got rich law experience, come to law school, and yet the slate is wiped clean. They get no credit toward the three-year program for that past experience, even though once they become law students they can get up to a semester's worth of credit for field placement work in law, broadly defined. Why is it that we can't give credit for relevant, valuable professional experience to people who come to law school?

Third measure, give credit for field experiential law-related work after students have matriculated even though they get paid for it. It puzzles me that it becomes disqualifying for credit for a field placement that you've been paid for it.

Well, so summing up this first set of measures, it simply amounts to an observation that one can trim an awful lot of the cost of a J.D. by reducing the time to degree.

One can either do it straight out, by declaring that one only needed to do two years for a J.D., or one can do it for those who have relevant prior study or experience and bring it with them to law school. It appears to me that the ABA accreditation rules are far more concerned that students not be permitted to graduate without paying three years' tuition, than they are in what happens in that legal education during those three years. Collective experience and empirical studies say that the third year of law school is a period of substantial disengagement. Same studies and experience indicate that the clerkship experiences the students get between their second and third year of law school are very valuable professional experiences. The one students are obliged to pay for, the other they can't get credit for because they are paid.

A second family of measures John alluded to, but I'm just going to press a little bit further. Why have a library? He suggested one have a smaller library. Why have a library? We're talking about a \$1.2 million dollar item in the cost structure of an average law school, in this day of distributed information resources, where desktop and home access to far better collections of legal information than many law schools used to have are available.

Salaries and fringe benefits are the lion's share of the law school budget, and the largest chunk of that directly and indirectly are tenured faculty. Faculty who divide their time between scholarship and teaching. Why not allow the start-up law school that wants to be the Jet Blue to say: We don't do scholarship here, we teach. We hire teachers. We value teaching, and we ask for four courses or more from our teaching faculty as opposed to a teaching/research faculty.

A final cluster of proposals focuses on a cost or a set of costs of legal education that John's report doesn't include, and those are the opportunity and relocation costs associated with attending a law school. I'm perhaps particularly sensitive about these because my law

school is in upstate New York. Here's the deal: you come and be a law student and pay \$100,000 over three years, tuition and fees at my law school, and you've got to move to upstate New York. So if you've got a job, you've got a family, I mean that substantial costs of those sorts are involved in coming to get a degree at my law school. Well, I ask you to compare and contrast legal education and the options it holds out for those who want a J.D. with some other graduate fields, and notably graduate management education. Graduate management education has several options that law schools don't have -- and can't have under the ABA accreditation rules. They include executive programs, which are designed for people who have full-time employment, who don't want to move, or may have family, commitments and other ties to a community, and online programs. It's not, I think, a coincidence that law students are so young. You know how young law students are, right? You know that 25 and under and you captured 70% of law students in ABA accredited schools. At 26-27 you've got 80%. Graduate management education deals with people who've had experience and are older, and one of the reasons that's true is that they have formats that are available for, attractive for, congenial to people who are more mature and would find it impossible for who they are and where they are that they would rip and move and incur the costs of a J.D. in some other place.

Well happily, in the cost equation and virtually all these ways there is a law school that violates the ABA Standards in countless ways and as a consequence can offer a J.D. at the price point that you've already heard, which is to say for four years less than my law school charges for one, and I want to know more about Concord Law School.

MR. ROSEN: Thank you Peter. I want you to put all your preconceptions aside for a moment, put them aside -- they'll be there again when this panel ends, I promise you -- and just imagine for a second a law school that has the following characteristics. First, it's

extraordinarily diverse. Students from all 50 states, from dozens of foreign countries, a much higher proportion of non-white students than you find at most traditional law schools. Students who are not all in their 20's, as Peter described in traditional law schools, but students who range from their 20's to their 70's with an average age in the low 40's. A law school where 40% of students already have a graduate degree, and a law school where a high proportion of the students want to pursue public interest law. They want to pursue government jobs. They want to continue in their current jobs at higher levels of responsibilities. Or they want to hang out their own shingle and practice law on their own.

Now imagine a law school where the educational environment is very deep and very rich, where the school invests a very high proportion of its revenue in enabling the faculty-student interaction. Where there is a tremendous number of writing opportunities and assignments and a school mandate that every single one of those assignments is returned to the student with detailed written feedback within 48 hours of its submission. And imagine a school with a flourishing community of students and faculty, with student bar association, clubs, moot courts, study groups, and so on.

Imagine a school that has a focus not on instruction but on learning, and a detailed assessment and accountability structure that's designed to insure that students are, in fact, learning, not just sitting in the classroom (or not showing up in the classroom), with a proper mediation process in place for students who are not, in fact, learning as they go. A school where you can have regular, straightforward testing along the way to make sure the students are ready to enter the classroom, where students are assessed before they come to a lecture to be sure they've done the reading and if they haven't done the reading, they're are kicked out. They can come back again when they are ready to learn from that classroom. And a place where the

faculty really is available to students and, in fact, interacting with students, and are measured in a way that assures that that's the case.

And imagine a school that has a real record of success on external measures like the bar exam with pass rates that are comparable to those of other ABA accredited schools and double the pass rates of state accredited schools. Imagine a school with happy students, most of whom say this is the best educational experience they've ever had -- and this for a school in which 40% of the students already have a graduate degree (over a 100 of the students already have doctorates).

And now imagine if you do all that for \$30,000 for the whole degree. As Peter said, less than the cost of one year at many law schools. Now you would think that a law school like that would be a dream for a panel that's thinking about issues like this, for the people who are agonizing about whether we're excluding people who can be public service lawyers or government lawyers. Everybody would be coming to look and say what is happening at Concord, because this obviously is a description of Concord Law School, a school that exists today.

You know what? The phone hardly ever rings. Very few people within the traditional educational establishment have any interest in what's going on at Concord. You know who does have interest? Sixteen hundred students. One of the largest law schools in the country. Why? Because there is a tremendous untapped demand for education that is high quality, low cost, and, maybe most important of all, flexible and accessible to students who are shut out of the traditional educational process. Students who live in Montana, students who have family commitments, students who are not willing to move their entire life to upstate New York or somewhere else. They want to stay where they are; in most cases they want to continue

working in their current jobs. But they want to go to law school. When we introduced Concord, you wouldn't believe the number of people who've said I have always, always wanted to go to law school, and I never could. This is a blessing to me. This is the answer to my dreams.

Now, that \$30,000 tuition is a dramatic difference from most traditional law school, but really understates the case. Because students don't have to pay to move; they don't have to pay for a duplicate residence if they're commuting from their family. And we're not taking a single dollar from the state. We're not asking for subsidies, and, in fact, we're not even asking for Title IV funding. The result is that we have students who come out of Concord with, by definition, much less debt than are coming out of traditional schools. But are able to, well some of them, are able to practice law.

Now here's the catch. It's been mentioned a couple of times. It's not accredited. It's not accredited by the ABA. Why? Because we can read. Concord Law School does not come close to meeting a number of the Standards within the ABA regulations. Does it meet standards that would say you should get a good education, you should learn, you should be trained in those things that will make you an effective lawyer? We would be happy to put ourselves up against anyone on that front. But many of the ABA Standards are about inputs. How big is your library? Are you sitting in a classroom as opposed to across a wire? And by those Standards we are not ABA accredited, and, unless the Standards change, Concord students won't be able to take the bar outside of a limited number of states that accept students who go through this kind of process.

So what are the implications of that? You know Peter started off here asking how would you cut? Well I'm telling you. The answer is right here. It is right in front of us, if people would want to look. And we invite everyone here, invite people on the panel, we invite

the ABA to come and take a look. Because a lot of people have an instinctive reaction to an online law school. It can't be possible. It can't be quality. It's got to be the antithesis of everything we hold dear within the notion of law school. But I'll tell you, I can't think of a single person who has come and seen it and experienced it and spent some time with Concord who doesn't come away thinking this is the future of law schools. This is the kind of thing we should be thinking. So again I invite you all to come.

I think sometimes -- Peter asked if the ABA regulations fell away tomorrow, what might we do? I would ask a slightly different question. If we were starting the process of legal education today, how would we design it? Is it possible that we would design it requiring classroom attendance for all students for three years in location? There are many faculty members of law schools who've been asked to consult on creating a legal structure in Iraq, for example. Is it possible that they would emulate the American legal education system? I can't imagine this because, you know what? The American legal system is wonderful. Our law schools are wonderful, but they don't meet all of our needs. You can go to Peter's law school at Cornell and become a sophisticated antitrust lawyer, but what if you have people who want to get a J.D. so they can work within their company as a contracts administrator or just as a counsel within a company? What about people who want to do standard day-to-day litigation? What about people who want to do divorces? How are their needs being met by the current system? So I guess I would pass this along to you Hannah and pose two questions. First, what is it driving the tremendous increase in the expenses and cost in law schools and what can a dean at a respected law school do about it?

DEAN ARTERIAN: Interesting questions. I thought you were going to ask me if I was one of the people who thought this [Concord] was the future of legal education. Well,

by the way I don't want to get into a him and me debate on that one, but I do want to make one point that seems not to have been made yet, and that is that part of, I think, what American legal education has delivered is, in fact, the continuing development of legal thought and structures, and that doesn't happen without a faculty, I think, who are deeply committed to furthering that through their own research and scholarship. I don't want to spend over much time on that, but as a Dean of a law school that's embedded in a university, I think that there are a number of factors that ought not to be lost ultimately in the discussion about how we deliver legal education.

Let me go to the questions. Actually I think John, probably I don't need to talk, John answered all the questions at the beginning about the cost of legal education. But I would say that sitting behind a lot of those factors that he mentioned are what I would call two overall factors. One is, just frankly, a very consumer-driven culture, and it's not just in law school. It's in high school -- in high schools where there's money anyway, and I understand that many places there is no such, there're no funds. It's true in colleges. The constant drive to produce a product, a physical product, a service product, that will attract people to your institution, and I don't think law schools, at all, are out of that culture, and I don't know that it's a law school-created culture. In fact, I'd say it isn't a law school created-culture. And when you put that in that context of things like, let's just take the McCrate Report, that said law schools you've got to stop delivering legal education in the way you're doing it, you need to do much more in skills training, whether it's the clinical training or legal writing -- completely appropriate. Not only does that increase the cost, in terms of personnel cost, but just think about a facility cost if what you need to do is run many more classes, with fewer students in them. The technology point has already been raised, but I don't think it's a minor point, and I don't think it's something that you just walk away from. It's not just the cost of acquiring the technology, it's the cost of

maintaining it, servicing it and servicing the consumers of that technology, which happens, almost in a much greater proportion than faculty, to be students.

Another part, I would say, of the consumer culture has to do with the vast increase in demand for, and I think appropriately in many respects, student services personnel. We kind of had a little conversation, a couple of us did, before coming in here, talking about what -- think about, for those of us who are much older than many people in this room, what your own law school education [involved], for the most part in schools that would be very well regarded. There was not a huge bunch of people in a career placement office that I remember. Nor were there people, tons of people in student services. I don't even think we had lockers, as far as that went. We just did not have the same kind of facility, either physical plant or the personnel. I never hear students say "Gee if I could just spend a little less money, I'd be happy to forego the ten people in student services, or the on campus, in-box financial aid people." For example, at our law school a large number of students take joint degrees [but I don't hear students say] I'd just as soon not do that. [I don't hear anyone say that] I really don't want the technology and I don't want a courtroom in which I can do my trial advocacy or appellant work that meets the standards that are going to be out there as I go in to the courtroom myself, which is the high-tech courtroom.

There's just a lot of factors that go into this that I don't see are as simple as a greedy faculty -- which is sort of there is sort of a little element of that [in complaints about cost]. I think, certainly it is not my experience that faculty don't care about teaching because they are doing their research. In fact, I think there are many faculty who believe, with good reason, that their work as scholars deeply informs their teaching.

You know Peter, I don't know whether or not it's really so that ultimately if we did a lot more kind of joint teaching with the technology, that it really would reduce the cost. I mean, there are technology support mechanisms -- and by the way we have experience with working with Peter and we will again, I think, have students jointly take courses taught by him. But those are not -- I mean it's not, oh gee you do that and it's just cheap. It's not cheap. At least not necessarily at the end of the school that is receiving the education in that way.

I think that there just are a lot of factors here that are not so easily eliminated. And frankly, I don't know if I am deeply hostile to your mode [of technology for teaching], but what I object to is really a kind of indictment of those people who have been committed, I think, to rigorous academic programs with people in the room face to face, with research being viewed as an important part of what legal education is supposed to do, not just for faculty but for students.

So I think there are lots of reasons. At the end of the day, do I think those reasons can be fully justified at the level that they seem to have been justified by the deliverers of legal education over the last ten years. I think the answer to that is no. I personally view -- for example, I don't think there is any reason why a student going into law school today should ever have to face an increase in tuition while they're in law school. You come in, you should know what it is you're going to be facing in tuition costs, and I've taken a position in my institution that that shouldn't happen -- but I think most of us don't unilaterally get to set the tuition in our law schools.

I'm actually a much more cheerful and less attacking person than this, but it was my job (and I always try to do my job) to be the wet blanket, and now I know that the Dean at NYU is going to be able to solve all of our problems. Wasn't that your job?

DEAN REVESZ: Oh yes. Sure. This is a great panel, and being last it is a little hard to know what to say, but I'll just say a few random things to put this issue in some perspective. I think first, we should keep in mind the fact that this is not just a problem of legal education, this is the national phenomenon affecting all higher education. One of Peter's colleagues at Cornell, Ron Ehrenberg, wrote a very good book, showing that since the early 1900's the average price of university education has risen about 2 percentage points a year more than the rate of inflation, and when you think about the power of compound interest, that is a very, very high increase. It would be unusual if university education in general was going up at a certain rate and law school education was somehow going up at a lower rate.

The second point is that tuition does not pay the full cost of the education that we provide. One number to focus on is the subsidy that we provide our students through the combination of past and present philanthropy. Past philanthropy is the distribution from our endowment, and present philanthropy is our annual giving plus restricted gifts we get for current programs that are not endowed. In NYU Law School, the subsidy is about 22% this year. It's actually not among the highest, but it is high compared to most law schools. It is not right at the top of the sort of hierarchy.

One of the interesting things I had my financial people do in preparation for this panel is to rank law schools just based on sort of indicators of financial strength. And no matter how you slice the number -- endowment per student, endowment per faculty, the subsidy issue -- it turns out, no matter what the rankings (and the US News rankings were mentioned; I can mention them again, since they were mentioned once), the rankings for the schools that I looked at which are the ones that I had information, there was uncanny resemblance between those rankings and these sort of rankings that were purely financial, with our exception. We were

actually ranked better on quality than we were on these financial indicators. But nonetheless, there is in our school and there is in a number of schools, there certainly is in Peter's school, a subsidy that comes from the combination of past and present philanthropy.

The third thing that was alluded to is financial aid, so one of the things that you might think about is what's the net cost of education, not the sticker price -- net cost varies. One of the claims that was made is well it would be nice if we sort of gave this money to people who need it, that we're just using it to purchase better ranking in US News. It's clearly the case that some of that goes on. But that oversimplifies the problem. I know what decisions I made in our budget for this year. We actually increased need-based financial aid by 50%. We spend about three and a half million dollars a year in loan payment assistance for students who take public-interest jobs. So we've chosen to do that. We've had the ability to do that in part because we're being subsidized by past and present philanthropy. We could have used the money in some other way. So my goal with respect to these financing questions is to say look, it turns out that at graduation close to 70% of our students take jobs in very large law firms, and for them actually their investment in their education is a pretty good deal. It's a very good return on their investment. I think they would like to get investment returns of this sort.

The other point is that the ratio of the full cost of attending law school to their first year compensation has uncannily been essentially unchanged for about thirty years. I looked at this sort of mid to late 60's. The total student budget at NYU Law School which was, by the way, something like \$2500 in the mid 60's was for three years, so multiply that by 3, was about the starting compensation for one year by the Wall Street firm, and it is still is that actually. So that's interesting. You can draw all kinds of conclusions, but it's sort of interesting.

So that I suggest that the investment is as good as it was -- a lot of our students want to do that, that's what they do.

A lot of our students don't want to do that. 12% of our students take a first job in government or public interest organizations. Those jobs, those salaries have not kept up with inflation, much less with the increase of the cost of legal education that's been faster than inflation, and there's an enormous disparity between those salaries and the private sector salaries. In 1967, a lawyer going to one of the Wall Street law firms made 10% more than an entry level lawyer going to the U.S Department of Justice. Now that is basically like a ratio of four. That's an enormous, enormous change. It is a very negative one. It's not one that the law schools have had much to do with. So my feeling is that to the extent that we can, and we're lucky that we can do that, we're going to pay that cost -- I mean so basically any loan that our students take in order to attend law school, and it's not just loans for tuition but loans for living expenses, we will pay for as long as they make less than the certain threshold, which is the threshold that essentially is a function of public service salary, and we will make that threshold vary as a function of a number of years out of law school. Someone who actually stays in this and they stay for sort of the ten-year period that was the period for the payment of the loans, and they don't get sort of unusually high increases through government or public-interest jobs, we will bear the cost and so they won't bear it.

We also have to put a lot of money in -- I just finished an endowment campaign where I, basically, I can go out and raise money for all kinds of things and I have some control as to what people give me money for, but I chose to raise money to basically double the number of students in our Root-Tilden-Kern program, which is a public-interest program, so that they can

actually go into, come to law school (they are selected based on their sort of interest in these career paths), without really having to worry about very much debt.

Our financial aid expenditures are about a quarter of our tuition revenues. A substantial proportion of these expenditures are subsidized by philanthropy. A lot of our financial aid is based on need, or consists of payments to graduates through our Loan Repayment Assistance Program, so that's need coming out of law school as opposed to need going into law school, or is specially targeted with people who want to pursue careers where salaries are low so people that we assume are going to be needy are coming out.

So where is this money going? Law school has become more expensive. So where does this go? Well, I think that actually running a quality law school is more complicated now. So, some examples:

All of us want to train leaders, people who we hope will be leaders of the bar, society and so on. It's hard to imagine that you can do that these days without giving them some pretty good grounding on how the U.S. legal regime interacts with legal regimes of other countries or of the international community, or of how the U.S. economy is linked to the global economy on issues of trade, or environmental protection, or labor standards. Well, that wasn't necessary when I went to law school. I don't think law schools took that as their mission. I think they do now, and I think that's appropriate.

Clinical programs have expanded a lot, and I think to some extent it has been driven by the Standards. But I think a lot of us do a lot more because we think it's a good thing. We think we're providing good education that is going to be useful to students when they come out, and it's expensive because the student/faculty ratios are very different [than in the past].

You know, it's just cheaper to teach at sort of student/faculty ratios of 100 to 1 than it is in the kind of ratios that we use in our clinics.

The public interests subsidies, either for scholarships or for loan repayment assistance, were not necessary in the 1960's because the salaries were quite comparable. I said that now law school is a good investment for graduates who take high paying jobs because one year of salary and bonuses basically is the rough equivalent of three years of education. Well that was close to true for public interest jobs in the late 60's.

Hannah did a great job at explaining the value of research. Research is a public good, and the universities in this country have provided this public good for a very long time. I think it's one of those things we ought to be proud of as educators, and I can't really say it any better. She did a great job. So I will add my voice: that is an important part of our mission, and it is an expensive one.

Thanks. So I was like the clean-up crew, but I just put some issues on the table for us to think about and I guess I'll turn things back to the moderator.

MR. BEHA: There was a moment there where I thought sparks were flying, so let me at least try some questions I'll try to make pointed. The first: Ricky, I was intrigued by your comment about a subsidy to law students. Most law students at university-embedded institutions that I hear from express the view, about which I'd like your comment, that in fact the law school is a money-making operation for the university as a whole, and that they are subsidizing the philosophers, sociologists, and perhaps even the physicists. In terms of the economics of the private university law school, is that totally unfair?

DEAN REVESZ: You want me to address this?

MR. BEHA: You can start with it -- I think the only person who is exempt from the question is probably Andy. So everyone else can talk about their institutional experiences.

DEAN REVESZ: Well I can only talk about my institution; I think it would be interesting to know what aggregate statistics are. Maybe John has them, I don't. We do pay the university money, and I'm actually very aware of how much that is. That money covers certain direct costs the university provides to us. For example, they provide us with electricity, and we pay for it. We just pay for what it costs. That is not a subsidy. We'd pay Con Edison, if they provided it to us directly. The University provides certain services to us which are allocated by use. For example, we don't have our own payroll, so they issue checks for our employees, and we pay some allocated part of the costs of running that operation. I don't think of the payment as a subsidy. Then we actually pay the university some amount of money for things that are hard to allocate, like the President's Office. How does one sort of measure what benefit John Sexton gives us?

MR. BEHA: Does it matter whether the President of the university used to be the head of the law school?

DEAN REVESZ: No, it seems not to matter. But that amount is allocated in sort of proportion to the number of students that various units have; there is a formula that makes a certain amount of sense. If you add up what we pay the university for utilities, what we pay for things that are basically sort of direct consumption of services, and we pay for these, somewhat more amorphous costs, that is about roughly 9% of our budget. In contrast our subsidy from philanthropy is 22% of the budget.

MR. BEHA. Let me ask the other current Dean to pick this up, and then those who used to be Deans and are therefore freer to speak might comment.

DEAN ARTERIAN: Well, I'll just be very straightforward. That [NYU's situation] is not our situation. It isn't and it should be, and that's sort of my mission as the Dean of my law school to make us closer to what you [Dean Revesz] described. But I am well aware of the fact that we are part of a university and that we get a benefit, a huge benefit, from being part of it. We are physically embedded on the campus. We get all the advantages of them -- just because of where we happen to be -- clearing the snow, putting the salt down on the ice. We do have the resources -- not just I would say of the President's Office or in our case the Chancellor's Office or the Vice Chancellor's Office, the budget people and whatever; we also have the ability to use their great library as well.

I think that some times the law students are [of the view] -- I understand their view because I probably share it more than they realize -- that we are paying, we should be getting. But I also know that when you are a school that's part of a university, that students may not always fully appreciate some of what they are getting simply by being part of the university. Whether it be just the enormous variety of speakers and intellectual life, cultural activities that they can go to for nothing. Now they may say I don't care about that, but I'll say the same thing to you that I say when I talk to admitted students: You can make decisions about where you go to law school. There are lots of different ways to cut it, but one of the ways to cut it is would you prefer, are you interested in being part of a university setting, taking courses that they don't pay for, additionally, in other units, getting joint degrees with other units. That's just a different setting. So I think that law schools can be exploited by their universities, but I think that there is sometimes very little recognition of what it means to be part of a university when you're a law student. I mean there's a lot that's going on that they may not fully appreciate.

I know there are some Deans that view it as a franchise fee. I mean you kind of get the ability to use the name of the university, and that can be a huge plus as well. But I think there certainly is the possibility of exploitation taking place if there is not a real recognition by the university of the value of the law school.

MR. BEHA: At the other end John or Peter -- John, for example, does the ABA keep franchise fees statistics?

DEAN SEBERT: Not really. There was a time until the mid-90's when the ABA did worry, probably over much, about how much "overhead" private universities took from the law schools. That ought not be a question for the Standards. Questions for the Standards ought be, and now is, whether the school has the financial resources necessary to support a program that meets the Standards, and if it does, sorry folks, we're not going to help you with your president just because you want to reduce a 30% overhead fee to 15%. That is not one of the things that we ought to get involved in when our job is minimum standards. Now, there can come a point when at a small number of law schools the university "take" is in fact resulting in a negative impact on the quality of the program, and then that's a different question. Then that's a Standards issue. Peter?

PROF. MARTIN: I don't have a significantly different picture to paint. First of all Cornell, like NYU, doesn't -- the costs of the student's J.D. does not rest solely on tuition. There is significant subsidy from philanthropy. It is also the case that Cornell, like NYU, pays the University for various infrastructure benefits and services. There are always quarrels about exactly how those are measured and whether it is a fair measure, but it is an honest process, one that doesn't get a disproportionate charge levied against the law school, except, I would observe, that there are other units in the university that end up not being able to pay their overhead charge,

and the university then in effect subsidizes them to a degree out of its unrestricted resources in a way that it is not true of the law school. So in that sort of subtle sense the law school is paying a share that other units don't of the costs to be part of the university.

The other thing that I'm sure varies from university to university, and that is how dollars go on the heads of students. Our students are free to go out and take courses at university. Law school dollars go on their heads, and so one of the ways we pay for a great university is by paying other units for the courses taken in them by our students. One of the strong incentives for us to be an interdisciplinary player and be offering courses for other students is so that we don't run this incredible deficit in cost-benefit calculus of the university.

DEAN ARTERIAN: I would just say that we don't do that. Our students can take whole years at other schools and we, they, don't pay the tuition there.

MR. BEHA: My third question is definitely going to be an Andy Rosen question. But my second question doesn't quite get there yet, because although you're proud of your graduates, there haven't been very many. I wanted to ask those from sited law schools, so to speak, why, recognizing what each of you may feel a law school of the highest quality could wind up costing, why is it that at least in the private sphere the pricing gap between the first 50 and the next 75, say, seems to be much smaller than one might expect -- what I think I might call law school price inelasticity? And the other side of that coin is, understanding that there are a relative handful of very well endowed (although perhaps seeking even more endowment) law schools that can afford ambitious LRAPS, what is the rest of the world to do? I think those two questions are not unrelated. Can I get somebody to start?

PROF. MARTIN: Sure I'll start but it'll be quite short. The thrust of my remarks were to see if there weren't a way that there could be a wider range of choice. It was not

a knock on the fine institutions that have a rich mission that includes scholarship and teaching, but rather a wish that the inhibitors could get out of the way so that on the array of options for prospective J.D. students there would be some that would have a dramatically different price point.

MR. BEHA: John I think by inhibitor, he meant you so . . .

DEAN SEBERT: Well, yeah, let me talk about the flexibility that it actually is there in the Standards right now. I mean, we tend to think J.D. education as three year day education. It's not in terms of, number one, the many part time-programs. A third of ABA-approved law schools have them, and we have, every year we have more schools wanting to start them, as they realize that there's a market there for that evening J.D. education.

Let me tell you about some of the other things that have become available in the last five or six years that weren't before. One, you could structure a part-time legal education program where classes are primarily or exclusively on the weekend -- a weekend J.D. scheduling option. We have two ABA-approved schools that have them. Then, the Council substantially expanded the flexibility, two years ago, that schools have to use distance learning techniques in their programs, so that now -- you can't do it in the first year, but -- you can offer twelve of the say 85 credits that a typical law school would require for graduation in entirely distance learning -- could be entirely online, if it's well done. You can also offer a third of any other courses in your J.D. program through distance learning technology under the Standards that presently exist. It'll be interesting to see whether substantial numbers of our approved schools take advantage of that.

Right now it's clear to me that there's hardly an ABA-approved school that is pushing at the edges of the flexibility they currently have under the Standards. And I think it's

fairly clear that when some of them do, they're going to come to the Council, and the Council will at least think about change. Now, you know, legal education institutions do not tend to be change agents, and a member of the Council when they passed the revisions in distance learning said, "Oh this is the most radical thing that's happened in legal education in my lifetime." Well, it might not have been, but there's a huge perception out there.

Institutions move slowly. One of the things that the Council is looking at is, well, let's see whether institutions take advantage of the flexibility they presently have, and let's take a look and see what the outcomes are there. I think some of the reasons they didn't choose to go further at this stage are: one, nobody was pushing at this stage. Secondly, a lot of concern from some of us who believe -- I want, for example, to believe that in an entirely online environment you can offer a substantial number of courses that are just fine, particularly if your major objective is substance. The problem that a lot of people have is whether or not one can adequately in an entirely online context develop the "thinking like a lawyer" that we think the first year provides, or the sophisticated skills training that most law schools now provide in a lot of third-year classes. Those are the types of concerns that you hear about an entirely online or an entirely distance learning format for legal education. But a lot of schools combining distance education for some parts of it and weekend scheduling could get probably half way, at least, toward the executive MBA programs that are fairly successful, and are used, and you see them, in a lot of contexts. We haven't seen schools trying to do that yet.

MR. BEHA: And if you [Dean Arterian] could just pick up, I'm still curious about price inelasticity and what you do when you don't have the endowment for a multi-million dollar LRAP program.

DEAN ARTERIAN: Well, I agree, I think there is price inelasticity. But I think part of it is basically what I described. The idea that only the top ten ranked law schools have needs for the kind of student/faculty interaction ratio or physical plant, the skills training, is just - - again there is consumer demand for a wide variety of services -- I think it's not accurate.

And so I just think there's price inelasticity, and I also think that not every law school freely sets its own tuition, and certainly in my institution I can't really set my own tuition. Decisions are made by the Board of Trustees at the universities. Decisions are made in public institutions many times by the Board of Regents or whatsoever. That is in other words it's not like the law school dean stands up one day and says well this is going to be my tuition. He may be able to get into a discussion about what it is, but I don't think that, once you're not a free-standing law school, we're completely autonomous with respect to that. And I suppose too if you're running a law school and you're sitting around with a big surplus at the end of the day because you're not actually spending your money to deliver the education, you have a whole other -- you might think you just have a whole other question about why then are you charging, what's your point in charging that kind of tuition? But I expect there aren't a whole bunch of law schools that fit into that category. [this paragraph from audiotape lost in switching videotapes]

The one comment that I think that, I just will throw in as an aside, I am more troubled by the notion that the ABA will now just say: "what we care about is whether or not you bring in the money to meet, to deliver a kind of minimal legal education." That kind of doesn't leave a lot of room, I think, for aspirations for many schools that maybe want to do more, so I'm hoping that maybe I misheard that a little bit. But that could be, by the way, another reason why there's inelasticity in the market, if some of the money is going to other purposes,

and law schools still need and feel they must deliver a really good legal education to all their students.

MR. BEHA: Let me just pick up on the line about skills training and put that issue to Andy. I know that law professors have expressed that concern to me. Our Committee earlier this year did see a Concord presentation, and I think everybody was impressed with not merely the quality of some of the lectures that we sampled but also with structures in place for tracking students and for interacting with them. But then almost everyone asked, and I'm not sure you have the experience yet to really answer it, is what do you do about the clinical aspect of legal training that has become more and more engrained at traditional law schools, and also is one of the things fueling costs at those law schools. Do you have a plan for how that's going to get solved on your road to reforming the ABA?

MR. ROSEN: First thing is that our goal is not to reform the ABA, particularly. Our goal is certainly not to undermine the outstanding law schools that exist today. I graduated from a very highly regarded law school, and I value that experience, and I think it made a huge difference for me. Our issue really is about choice. It's not that there are thousands of people who won't benefit from today's law schools. There are thousands of others don't have access to today's law schools for whatever reason. You mentioned at the beginning that Ricky is known for his empirical investigations. We think that over time empirical investigation of our graduates is going to demonstrate what it demonstrates. We expect is that we will be judged by the quality of our graduates. If our graduates do well and are contributing lawyers within society, I think we'll be evaluated well, and I think the ABA will acknowledge that.

I don't view the folks at ABA as bad actors, I think they're trying to -- it's a relatively slow moving profession certainly compared to some of the other educational

disciplines. But I do believe in the essential rationality of the ABA and the legal profession. We are not one of those who man the barricades and file a lawsuit; that's not who we are. We're an organization that's been around for 68 years, and we'll be around for hundreds more, and over time I believe that Concord will be accredited by the ABA. That's obviously going to take some period.

On the issue of skills in particular, it's ironic of course that John says well I don't know how an online school can deliver a third year skills curriculum a half an hour after Peter asks why don't we get rid of that third year which is something that quite a few people are saying about how you address some of these questions. Is it really so essential to have these skills if people are talking about eliminating it all together?

Now there are a lot of ways on line of delivering a skill experience, and of course we also have opportunities for those students who find it important to have face-to-face opportunities. So for example, we have a moot court program that we offer at William Mitchell School in Minnesota, and our students who want to do that go there and participate in that and in other programs if they want to do it directly. We have a tremendous externship program that enables people to work with practicing lawyers to gain skills that they want. I think that, again I would say the issue is that people should come and see Concord and evaluate for themselves. Concord is a work in progress; it's only been around for five years. We're not claiming to have answered all the questions; we think we are providing an outstanding alternative for many students who wouldn't have had opportunities before. We're also offering opportunities for some people who do have other choices, and they choose Concord for their own reasons.

Can I go back to your first question? Concord does generate a surplus; what my colleagues call a surplus, at Kaplan we call a profit. So for that \$30,000, it's profitable and we

don't go to our students for additional contributions; we don't think it would be appropriate to go and ask them to contribute further to our bottom line. But again as you sort of stack up the cost differential, I think what you're really seeing -- I think some of it is that we're the Jet Blue of the industry, having thought about how to do some things a little better, but really we're able to focus our expenditures on the educational experience. We're not having to spend money on dormitories, on physical classrooms, on dining halls, on landscaping, on art work, on all the things that my colleagues here on the panel have to invest in. We don't have to deal with those issues, and, as a result, we're able to invest more money, or at least I would argue relatively more money, on the actual educational experience, which for our students, who are in their 30's and 40's by and large, that's what they care about. It's not about the sort of extraneous issues that are associated with an education, but are not necessarily integral to that experience.

DEAN ARTERIAN: My question really has to do with the externship placement, feeding into Peter's point. Because you are not subject to the ABA Standards, are those placements things where your students are able to be paid for what they're doing? These are placements with experienced practitioners.

MR. ROSEN: They can be paid, yes.

DEAN ARTERIAN: And then I have a question for Peter that sort of connects with this; I'm making something of a link here. My question is, when you talk about reducing the amount of time at law school by cutting off a year and you also talk about getting people credit for things they did before they went to law school, in your imagined brave new world law school, would both of those things be possible: both enrolling under a two-year program, and you get credit for what you had done prior to coming to law school?

PROF. MARTIN: No, one is a more radical view than the other. In other words, one is just taking a year off, and there are distinguished federal judges who think that ought to be done. The softer version is to say only trim it down to two years for certain students, that is to say give students credit for prior relevant rigorous law courses or prior law experience.

DEAN ARTERIAN: But not both at the same time.

PROF. MARTIN: Not both at the same time.

MR. BEHA: We are approaching a quarter of nine which is close to the get out of here point but if there is a question or two from the floor, I ask with trepidation, we can do it. Just for purposes of recording if you wouldn't mind going to the mike over there. Go ahead and go over. It's wireless. You can take it out.

QUESTION: [individual first asks about "lack of live relationships" in the Concord curriculum and its relationship to legal practice, and also raises a question about "politicized" government support of higher education]

MR. BEHA: Andy, do you want to pick up on the first question?

MR. ROSEN: Well if I can start with the first question and pass the second question to someone else. What do you do now? [response inaudible] Have you ever negotiated a deal in which you never met the person or persons that you dealt with or met them only once? [response inaudible] Most people through much of their career, and they do do deals all the time by over the phone, by e-mail, by video conference. That's the way our lives are today. So we can mythologize the notion of the face to face, but the reality is that the world doesn't always work that way. I'm not saying that face to face is not valuable. At Kaplan we have over 500 locations, and I manage locations from a distance, but I try to get there as much as I can, some places once a year or once every two years, because there is some value, I agree, to face-to-face.

But to say that's the only way to communicate -- those who say that it's impossible to offer a legal education because you need to have people see each other face to face are saying that it is necessary to do things face-to-face. I guess I can't agree with it. It's not the way my professional life works. It's not the way most people's professional lives work now. Technology does permit us to do things that used to be viewed as exclusively the province of face to face interaction. [inaudible comment from floor] This issue is not necessarily about whether you value it -- it's a question of whether you say that's the only value that matters and or that that value is worth an extra \$65,000 to me. [It's a question of whether] no one should have the choice of giving up whatever their relative value is assigned to the day-to-day face to face. We are not arguing that students shouldn't have the opportunity to have a bricks and mortar law school experience. I am saying that students should have the choice to pursue that [experience] on line.

MR. BEHA: Let's just pick up the political question for a second, because one of the things about the financing of loan school debt is the extent to which it does involve the political process, including the federal government's position on consolidation of loans, the federal government's position on the extent of lending that's available on various, either on grants or on the Stafford loans. One thing I haven't heard anyone say about people who have a lot of debt and go into low-paying jobs is that the government ought to take care of it.

Maybe it's just a different -- in a different era we would have said the government should take care of everything, and maybe we've fallen away from that, but I again go back to the question of what do you do when you're not an extremely well endowed law school and more of your students going to relatively low compensated jobs, many of which may not be public interest jobs. John was pointing out in his statistics that if you get to a firm size below 26 lawyers (and although in New York that may be difficult to imagine, in the rest of the country

it's not unusual), you're down at the level where carrying that debt load becomes extremely difficult. Does anyone have any views about what you do at that point?

DEAN SEBERT: Well Jim let me just tell you about some of the things that are going on. The Higher Education Act is supposedly going to be reauthorized. It gets reauthorized every five years. We hope this year; it's probably next. But the ABA's working with the ALS to try to make -- at least the most substantial improvement we're trying to make is to make the income contingent loan repayment program under this federally guaranteed loan program much more attractive. The nature of the program is if your income is below a certain level, you have a longer time to pay off your loan, and at the end of that time the remaining balance is forgiven. So you pay off at a lower level. The trouble is, under current law, guess what, you get to pay off for 25 years before the balance is forgiven, and that's so long that very few people take advantage of it. What we're trying to push is a fifteen-year cap, so that one pays off at a lower level through fifteen years; the remaining balance would be forgiven. Politically, if its going to happen at all, it will happen only for those who do a substantial amount of full-time employment in pubic service or public interest work. There's a possibility that something like this will get through in this round, probably next year.

MR. BEHA: We're only going to have time, I think, for one more, so why don't you go ahead.

QUESTION: [question from floor re federal funding of higher education]

DEAN SEBERT: It's affecting all of public education. Basically the state legislators and governors are devoting a smaller portion of the state budget to, particularly, public higher education than they used to, because they are and they use it to building prisons, paying for health care costs and lots of other things. Mark Udall [?] had a piece a couple of

years ago in the Chronicle of Higher Education demonstrating a huge reduction over, say a 10 or 15 year period, in the percentage of typical state budgets that go to public higher education. This past year actually for this current fiscal year, 2003-2004, state appropriation for higher education actually fell, 2.1% national average. First time, maybe first time ever the state appropriation for higher education actually fell. Here I'm talking about direct appropriations to publicly-assisted higher education. [inaudible audience comment] Higher education is competing unsuccessfully with a lot of the other priorities that state legislators are having to face in the world in which there's huge pressure against raising taxes.

MR. BEHA: In that connection, John, one of the things I note by way of a son-in-law who is at U. Va. is that U. Va is divesting -- the law school is in effect separating itself from the university under a negotiated buyout. None of the students think that means that the tuition will go down. In looking at the state-affiliated law schools, do you see any trend of that sort?

DEAN SEBERT: Well as I was saying, many of them are now state-assisted instead of state-supported, and some like Virginia and my alma mater in Michigan are only state-located. Particularly the more elite of the non-California publicly-assisted law schools are increasingly tugs on their own bottom. They're completely funded by the combination of tuition and alumni and development support, and to the extent there is state money it goes to the central administration, to defer central administration costs.

DEAN REVESZ: To address the question you asked twice now about the Loan Repayment Assistance Program and what schools that have fewer resources should do. Well, every school should take a hard look at its use of resources. The more one values LRAP, the more one spends money on it ahead of other things. It is not necessarily the case only a few

schools should be able to afford LRAP. Actually more schools should be able to afford it than have it now.

The second thing is that if this is only viewed primarily as a responsibility of law schools, then there's going to be difficulties for the reasons that you mentioned. The legal profession as a whole needs to take a position on this issue by paying for it in some way. Hannah and I went to a meeting not too far from here with the President of the State Bar Association, and the Bar Association has LRAP -- turns out they don't have much money for this program; they have \$25,000 a year to spend statewide in the State of New York. On the other hand, they actually think this is worth having and hopefully they will over time increase the funding for it. I think the profession has an interest in positions remaining viable for people making other choices in the market place, and should put resources in that.

The government clearly is to blame for a great part of the problem, and that has to do with the enormous erosion of the government salaries. The not-for-profit public interest groups to a certain extent track government salaries, and the decrease in real terms government salaries is a lot of this, and it's a big social problem. I once got a call from the Judge that I clerked for, he has been a federal judge for more than 40 years now. And he asked, "why does it make sense that my law clerk who leaves my chambers after one year out of law school is going to make more money than I make after 40 years as a federal judge?" I said Judge, you know, it doesn't make sense." That wasn't the case, those ratios were not that way 40 years ago.

The fact that the government bears responsibility doesn't mean the government is going to solve this problem. I can understand that, but to some extent this is a serious social problem that the law schools are being asked to address. The problem is not primarily of their own making, and ultimately as a whole -- I mean we [at NYU] are very fortunate that we can do

a fair amount for this -- but as a whole the law schools are not going to be able to take care of the problem on their own, it would be unrealistic to expect them to do that.

MR. BEHA: Now that we have finally gotten to the point of shifting from blaming the ABA to blaming the government, where I always feel most comfortable, I think it's the point, as we are also approaching nine, that we ought to thank all our panelists for their time and for their travel here and thank you the audience for coming. We're going to adjourn for the evening, and again thank you very much all of you.

Cost and Financing of Legal Education
By John A. Sebert ABA Consultant on Legal Education
[as published in *Syllabus*, the newsletter of the ABA Section of
Legal Education and Admissions to the Bar, vol. 35, No. 2, February 2004]

Table A: Average Law School Tuition

	<u>1990</u>	<u>2000</u>	<u>2003</u>	<u>13-Year Increase</u>
Average Public Resident Tuition	\$3,236	7,790	10,820	234%
Average Public Non-resident Tuition	7,385	15,683	20,171	173%
Average Private Tuition	\$11,728	21,790	25,584	118%
Change in CPI				41.5%

Table B: Average Direct Expenditures by Law Schools

<u>Expenditure Category</u>	<u>1993-94</u>	<u>1999-2000</u>	<u>2002-03</u>
Total Salaries & Benefits	\$6,775,574	\$9,216,547	\$10,662,041
Total Library Operations	\$850,418	\$1,103,991	\$1,221,178
Total Other Law School Operations	\$1,291,364	\$2,047,302	\$2,290,135
Total Financial Aid	\$959,053	\$1,797,500	\$2,511,641
Total Direct Expenditures	\$10,098,534	\$14,498,481	\$17,485,921

Table C: Law Student Borrowing and Loan Debt

	<u>1990-91</u>	<u>1999-2000</u>	<u>2002-03</u>
Public Law School Loan Volume	\$200 million	\$560 million	\$672 million
Private Law School Loan Volume	<u>\$650 million</u>	<u>\$1,520 million</u>	<u>\$1,875 million</u>
Total Loan Volume	\$850 million	\$2.08 billion	\$2.55 billion

Table D: 2003 Graduate Borrowing

Public Law School Median Amount Borrowed for Law School, 2003 Graduates: \$44,591

Private Law School Median Amount Borrowed for Law School, 2003 Graduates: \$68,805

Median Starting Salaries, Law School Graduates of 2002

Overall private practice	\$90,000
Firm size > 250	\$125,000
Firm size 101-250	\$100,000
Firm size 51-100	\$80,000
Firm size 26 – 50	\$65,000
Firm size 11 – 25	\$52,500
Firm size 2 – 10	\$45,000
Business & industry	\$60,000
Government (excluding judicial clerkships)	\$42,000
Judicial clerkships	\$42,000
Public interest	\$36,000

The following table and footnote is taken from the ABA Commission on Loan Repayment and Forgiveness report, “Lifting the Burden: Law Student Debt as a Barrier to Public Service” (2003, American Bar Association), at page 17:

Change over Time in How Many Students Are Borrowing and How Much They Are Borrowing.¹

	1992-1993	1995-1996	1999-2000
Percentage of students attending law school who borrow to attend	74.8%	84.5%	86.4%
Average amount borrowed for law school by those who borrow	\$37,637	\$49,415	\$77,300

Report reflecting cumulative borrowing prepared by Kipp Research for Access Group, Inc. Figures based on data from the National Center for Education Statistics, NPSAS 1993, 1996 and 2000 surveys.

¹ Estimates of the average and median debt law school graduates incur to pay for their legal education vary. The ABA Section of Legal Education and Admissions to the Bar reports the following as average debt of 2002 law graduates: \$70,299 (private law schools); \$44,649 (public law schools) (Source: 2002 Annual Questionnaire). Access Group, a private nonprofit lender, estimates the median debt for 2000 law graduates as \$84,400 (memo of July 2002 prepared by Jeffrey E. Hanson, Ph.D., Directory of Debt Management, Access Group). This figure reflects borrowers who borrowed at least one Law Access Loan from Access Group while in law school. Those who borrowed only federal loans and/or the Bar Exam loan but no Law Access loan are not included in the analysis. Finally, the National Center for Education Statistics estimates the average debt of 1999-2000 law graduates at \$62,103.(http://www.nces.ed.gov/surveys/npsas/table_library/tables/npsas98.asp).

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Equal Justice Works, *Paper Chase to Money Chase: Law School Debt Diverts Road to Public Service* (2002), available at

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http://www.nvsba.org/Content/NavigationMenu/Sections_Committees/Student Loan Committee/slapireport3.pdf