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March 2020

# Breaking the ABA's Law School Cartel: A Proposal to Make Oklahoma Top-Ten in Innovative Lawyer Education - Summary\*

- The American Bar Association (ABA) has a monopoly over legal education in the United States as the only accrediting body for law schools.
- The monopoly was written into law—at the ABA's behest—in 47 states, including Oklahoma.
- The ABA monopoly erects unnecessary barriers to entry of new law schools, creates unnecessary burdens for acquiring a law license, and has homogenized legal education, stifling innovation.
- The monopoly is unseemly because the ABA is a conflicted interest group and exhibits a leftwing political bias, with real world consequences given lawyers' unique role in politics and government.
- Oklahoma can spark innovation in the delivery of legal education by eliminating its ABA accreditation requirement, opening space for new law schools that are more affordable, tailored to students' professional goals, and more effective in producing competent lawyers.
- If coupled with improvement of the bar exam to make it a better measure of legal competence, Oklahoma would find itself at the leading edge of innovation in an area that has been stagnant in the United States for more than seven decades.
- As a result, Oklahomans would benefit from a more competent bench and bar and more affordable legal services, and aspiring lawyers would have more opportunity to pursue their professional goals.

## Current Law and State of Legal Education in Oklahoma

- To be licensed to practice law in Oklahoma, applicants must graduate from an ABA accredited law school.
- Tuition is exorbitant at all three ABA-approved schools in the state: OKCU (\$35,340 per year), OU (\$20,903 in-state, \$32,288 out-of-state), and TU (\$25,254).
- No Oklahoma law school is ranked in the "first tier" (top 50) of law schools nationally. OU and TU are considered second

tier law schools (ranked between 50 and 100) and OKCU bounces between the third or fourth tiers (ranked between 100 and 150, and 150 and 200, respectively). There are 203 ABA-approved schools in the nation.

## Insulating Lawyers from Competition: the Origins of ABA Accreditation

- The ABA began accrediting law schools not to improve the quality of legal education, but in response to a perceived "overcrowding" of the legal profession in the early 20th century.
- Thus, the ABA was motivated primarily by the economic interests of its members, not protection of the public.
- Through aggressive lobbying, the ABA persuaded nearly every state to write an ABA monopoly into their licensing laws by mandating graduation from an ABA-approved school to gain admission to the bar.

## The Character of the ABA Makes its State-Enforced Monopoly Inappropriate

- The ABA is a conflicted interest group whose primary purpose is to protect and promote its members' interests. As such, it is incentivized to use its legally-mandated gatekeeping role to limit competition to its members.
- Because of the unique role of lawyers in politics and government, the ABA's leftward political bias has an outsized influence on society.
- The ABA dictates the structure and substance of legal education, which must have at least some influence on the views of students matriculating through law schools.
- The ABA's flawed accreditation standards do not ensure competent lawyers, homogenize and raise the price of legal education, and focus predominantly on inputs, like physical facilities and faculty-to-student ratios, rather than educational outputs.

## A Proposal for Oklahoma to Lead the Nation in Innovative Legal Education

### **Eliminate ABA Accreditation Requirement to Become Licensed:**

- Would introduce competition and innovation among legal education providers.
- Results would be
  - lawyers more prepared to practice law upon completion of their degree,
  - lower cost to students,
  - through apprenticeships, the opportunity for employers to hire low-cost, but high-quality skilled labor, bringing down the costs of legal services for consumers, and
  - better job prospects for matriculating law school graduates.

### **Reform the Bar Exam:**

- Oklahoma should change its bar exam to better evaluate lawyer competency.
- The Oklahoma bar exam covers a wide variety of topics and is tested in a timed, one-off written examination, encouraging a “shot gun” approach from examinees.

- A better approach would be to a multi-part exam completed in succession over the course of several years, with examinees advancing to subsequent subject areas on passage of prior stages.
- Examinees could be provisionally licensed during the testing phase, with more circumspect privileges, but still with the ability to be employed and earning a living.
- If the exam better measured lawyer competency, there is little or no need for a formal education requirement, which is in line with traditional paths to law practice in American history.

## Conclusion

More than seven decades of homogenized legal education, conflicted self-dealing, and partisan politics has stultified legal education in this country. More importantly, it has damaged the quality of the legal system, artificially inflated the cost of legal services, and likely improperly tilted the political scales in important government functions. The necessary first step to reversing these destructive forces is to break the ABA's cartel. Oklahoma should boldly lead the way.