I. Toni Massaro: Students With CLAS

In December of 2001, at the end of a long review session for Civil Procedure, a group of my first year law students remained after the session to talk. The conversation shifted from subject to subject, as we all began the exhale that occurs at the end of the most exhilarating semester of law school: the first. Their energy for the material was now being channeled into the nervous energy of exam preparation, as is typical. But this group of students was unusual because that nervous energy had not overtaken their first semester zeal for the law: on the contrary, they seemed eager to maintain the spirit that brought them to law school, and aware that much in the process can dissipate that spirit.

One of the subjects we turned to was the bar examination. A veteran of two – Illinois and Arizona – I commented that the summer of the bar examination is an exercise in lost opportunities. Like law graduates everywhere, ours take the commercial review courses in droves. The classes for some of these are held on campus, so I witness the annual migration and congregation – which peaks during the summer administration of the bar – of recent graduates who appear in late May, fresh from their law school convocation exercises. By late July their faces are drawn, many are unshaven, and all are genuinely miserable. Over two months have passed in which they have digested countless facts, mnemonics, and formulas, written countless practice essays, and answered endless numbers of multiple choice questions.

By mid July, I begin to get emails from frustrated or addled students studying for the bar, who either have lost faith in the review courses because they count as “correct” answers the students find so unnuanced as to be incorrect, or have lost faith in us for not teaching them the “right” answers to these questions. Some become so overwhelmed by the sea of information that they lose track of basics they had well in hand when the process began. For many of them, studying for the bar becomes an unreal experience in which “ordinary” people – who watch television, go to movies, and otherwise continue with their normal lives – lead alien, privileged existences that the bar sufferers envy from afar.

I have watched and lamented the ritual for over 20 years, I told my students in 2001. But I have done nothing to change it.

“What would you do instead?” one asked.

“Imagine that all of those students – or even some of them – spent that summer between law school and practice doing public interest work, or participating in a training program that
provided legal services to an under served population. Imagine that all of the time, energy, and money currently being spent on bar review courses and preparation instead were spent on some kind of hands-on service practicum, with an evaluative component, where students worked with attorney mentors, took classes on law, office management, and other issues chosen from a menu that was relevant to their career destinations, and then entered the profession.”

“Like Americorps!” one offered. “But how would this be financed?” another asked. And so the discussion continued – for over an hour, about a model for devising an alternative to the traditional bar examination that included a service component, a training component, and an evaluative component.

I was deeply impressed by these students. All of them had other, more pressing and self-serving things to do that afternoon than muse about an Americorps for lawyers. They had just spent several hours reviewing Civil Procedure, had their first set of final examinations looming, and were also – I suspect – hungry (it was late afternoon). Yet they warmed to the topic, brought insight and pragmatism to the discussion, and seemed unwilling to let it go.

As I made my way back to the office, though, I felt a familiar pang of guilt. Every year, I think about this, but do nothing to advance the discussion. The nature of the beast is such that there is no stable group of people with an interest in changing the examination in a significant manner. Those who must submit to it have their hands full preparing for the exam. The courts that administer it have their hands full in designing, administering, and grading it. Those who have passed it have little incentive to look backwards and engage in the agonizingly hard work of changing something that serves such an important gatekeeper role nationwide. Those who have failed it have the least ability to change it. Academics have little interest in modifying the examination, lest the gatekeeper function shift to law schools, and compromise their curricular autonomy. Yet each year, thousands of people submit to the examination, and pay up to $2,500 for commercial preparation courses. Their labors might yield a much finer fruit if only someone were to take the issues seriously, and devise a way to at least experiment with alternatives.

Enter CLAS.

Led by Sally Simpson, who will graduate in May of 2003, that original band of civil procedure students formed a student organization at the University of Arizona called CLAS – Community Legal Access Society. Beginning with nothing but that first discussion, they set out to research the bar examination and licensing process, any proposed or extant alternatives to the traditional examination, unmet needs of clients, potential costs of a mentoring program, political and other likely obstacles to alternatives, possible funding sources, and much else relevant to the success of a pilot program for an “alternative bar.” Members of their group were instrumental in the formation of a state bar task force devoted to investigating the feasibility of a “public service” alternative to the Arizona bar examination. Two students from the University of Arizona, and two from Arizona State University, were appointed to the state bar task force – the first time on record that law students have ever been appointed to a state bar committee.

They designed a web site, and developed a proposal - called CLABA – that attempts to answer the most important questions about how such a public service alternative to the traditional bar examination might work.

What follows is a description of that proposal by the person most responsible for its thoughtful development: Sally Simpson. This has been dubbed “the University of Arizona plan,” but the truth is that it is the work of a group of exceptionally dedicated and public spirit-minded Arizona students, not the law school itself. They proceeded until very little faculty supervision, and devoted enormous amounts of time and energy to a project that from its inception was
unlikely to ever benefit any of them personally.

I am proud of these students, and of the ethic of service their work portrays. When they graduate, they will have left something tangible behind for the whole profession to ponder: sound research, creative ideas, and a concrete proposal for change. Their admirable contribution is now gaining a wider audience, with this Symposium and the work of Georgia State University students and faculty. I am honored to be here to introduce their work. But again, I emphasize, that this is wholly their work. As their teacher, I have learned anew a beautiful lesson about motivated, creative students: they achieve so much more if we do not stand in their way!
II. Sally Simpson: The Community Legal Access Bar Alternative

The goal of the Community Legal Access BarAlt (“CLABA”)¹ is to assist the community at an interactive level, helping build it rather than simply protect it from incompetent attorneys. Initially conceptualized as an “AmeriCorps”-type opportunity for recent law school graduates, CLABA has evolved into an innovative, integrated solution to unmet legal needs within both the community and the profession.

In brief, CLABA anticipates a one-year, post-JD apprenticeship program that would provide reduced-fee legal counsel and representation to lower middle-income and modest means populations while serving as an alternative method of first-time attorney licensure and bar admission. CLABA is designed to address acknowledged legal service gaps, to ease the transition from law school to practice, to strengthen professionalism in young attorneys, to enhance public confidence in legal practitioners, and to offer an alternative evaluation methodology for initial lawyer licensure.

A. Proposal Summary

CLABA creates a freestanding 501(c)(3) “Institute” as a fully staffed office with flexible hours that covers a wide spectrum of practice areas² and acts as a community and professional resource.³ Individuals, small businesses, and not-for-profits with income of approximately $15,000 to $60,000 may be eligible for legal counsel and representation. This potential client base is demonstrably underserved in the full spectrum of legal needs. Fees likely will range from $15 to $35 per hour, with caps applied to some types of client matters.

Eighteen CLABA apprentices⁴ rotate in groups of three through six core practice areas, each lasting eight weeks. Each practice area is headed by a full-time lawyer-mentor recruited from a pool of applicants demonstrating wide depth and breadth of practical experience as well as high ethical values.⁵ Lawyer-mentors oversee case management, serve as attorney of record, and act as coaches and advisors for apprentices to ensure that all clients receive diligent, competent counsel and representation. The lawyer-mentors also conduct competency-based performance evaluations throughout the rotations.⁶ Assessment tools include both subjective and objective evaluation, and focus on the skills and values described as necessary for the effective practice of law.

Before starting the CLABA program, apprentices must matriculate from an ABA-accredited law school with a minimum GPA of 2.75 or equivalent, complete specific core classes, and pass the Multistate Professional Responsibility Examination (“MPRE”) as well as any jurisdictional character and fitness screening process.

¹ The CLABA proposal is under development by the Community Legal Access Society (“CLAS”), a student organization at the University of Arizona James E. Rogers College of Law. The proposal was formerly titled Alternative Competency-Based Eligibility Program for Admittance to Arizona Bar Practice.
² The six practice areas are: family law and domestic relations; personal finance and planning; personal and economic injury; business finance and planning; government regulation; and misdemeanor, criminal defense.
³ CLABA’s Board of Directors is comprised of three justices from the state’s highest appellate court, three state bar representatives, one public member, and the Institute’s Executive Director serving ex officio.
⁴ Apprentices are Institute employees with estimated salaries between $19,000 and $24,000 for the year.
⁵ CLAS surveys collecting interest and profile data on ideal lawyer-mentor applicants will be online December 2003 at www.law.arizona.edu/depts/claba/.
⁶ Lawyer-mentors undergo one week of specialized training before assuming their roles at the Institute.
Surveys taken at the two Arizona Law Colleges yielded a 20% response rate and showed three of four respondents with interest in applying to CLABA. Should the apprentice leave or be ejected before program completion for any reason, he or she may take the jurisdictional written bar exam to attempt licensure.

Although client fees will offset a substantial portion of the Institute’s operating expenses, other funding will be required. CLABA will not divert resources from existing legal aid programs, nor accept funding that could compromise program integrity. CLABA seeks a balanced portfolio of funding sources, national, state, and local as well as private and public (with minimal reliance on government funds). For reasonable assurance of a continuous ability to serve clients, CLABA will avoid undue reliance on any one source or sector and will space rollover and run-off timetables of grant funding accordingly. CLABA’s fiscal and apprenticeship years run from July 1 to June 30.

B. Current Environment - Unmet Needs and Their Multiple Causes

Low- and moderate-income populations’ unmet legal service needs are almost universally acknowledged. Periodically, studies are undertaken in an attempt to document the nature and extent of the problem, and these studies, surveys, and reports invariably indicate substantial unmet legal needs. Despite the profession’s attempts to address these deficiencies in a variety of creative ways, the needs continue to grow faster than the system is equipped to handle. Further, necessity dictates that the majority of available resources are directed to meeting the needs of the poverty-stricken, whose needs generally are more severe and problematic both as to the affected individuals and as to the courts’ systemic capacity.

With the majority of available funds allocated to the needs of those with the lowest incomes, working poor and moderate means households can be effectively locked out of the system, with little chance that their unmet legal needs will become sufficiently compelling for the system to fund an organized initiative to alter the situation. Although the need is evident,
available services are inadequate and likely will remain so for those between 125% and 500% of federal poverty guidelines. For myriad reasons, a substantial number of households earning up to $60,000 per year may be further unable or unwilling to seek an attorney’s assistance with legal problems. Negative perceptions of the legal profession and high costs relative to household income contribute to this population’s inability or failure to seek help from attorneys. Yet as the number of working poor and moderate means households rises, so do the number of situations where legal assistance may be appropriate. Without this assistance, individuals may fail to recognize that legal remedies are available, may choose to ignore the problem, may seek assistance from non-attorney service providers, or may attempt to navigate the system alone, sometimes with dismal and expensive results.

Many jurisdictions have initiatives under way to provide self-help information to the public, to provide online forms where feasible, and to generally make the system more transparent. Yet, however transparent the system may be, the law remains complex, nuanced, and phrased for lawyers – not laypeople. It is not surprising that self-represented individuals are less likely to enjoy favorable outcomes or leave the system satisfied with the experience.

The public’s unmet needs cannot be resolved by a profession with a public relations problem. While the legal system receives high marks for credibility, the lawyers within it are not viewed as favorably. Although most Americans say that lawyers know the law and can be helpful in navigating the legal system, they simultaneously categorize lawyers as greedy, manipulative and corrupt. Consumers view disciplinary bodies as not credible, because self-regulation is seen as self-protection, not as an effective method of protecting public interests.

Lawyer avoidance is a growing trend as consumer feelings of vulnerability, uncertainty, and distaste are common themes discovered in studying the public's feelings toward the legal profession. Consumers cannot tell a “good” lawyer from a “bad” lawyer, do not know what services they should be seeking or receiving, and also have limited understanding of how much the undefined services should or will cost. Consumers feel that attorneys oversell their qualifications, overcharge, over promise, and take overly long to resolve problems. The number one complaint received by most jurisdictions’ lawyer disciplinary bodies, however, is a simple matter of courtesy: failure to return clients’ phone calls.

On a more positive note, most consumers who hire a lawyer are satisfied with attorney performance and generally have better perceptions of the profession than individuals who have had no personal contact with lawyers. However, if lawyer avoidance continues and average consumers remain unable to afford legal fees, negative public perceptions will grow rather than abate. Consequently, tackling unmet legal needs will also require attending to the profession’s
Improving public perceptions of the legal profession would, in theory, simultaneously improve the bottom line for a large segment of the practicing profession if potential clients no longer shun their services.  

C. Access to the Profession

Entering the legal profession is difficult. For most students, law school is a grueling three-year regime of learning a new approach to solving problems within a complex system of rules, precedent, and jurisdictional differences. At the end of law school, the bar admissions process looms large with its potential to significantly reduce the number of entrants to the field. Even if admitted to practice, new challenges arise immediately. Nascent attorneys recovering from the bar exam must rapidly assimilate into the ever-more-specialized practice of law while spontaneously exhibiting professional competencies that could not have been sufficiently developed during law school. These “getting in” and “settling in” rites of passage are rarely questioned or considered sufficiently problematic to warrant immediate action. At the same time, the current call for renewed commitment to attorney professionalism provides impetus as well as an appropriate backdrop for just such action. The opportunity lies waiting to improve the transition from law school to practice, to strengthen professionalism in new attorneys, to enhance public confidence in legal practitioners, and to offer an alternative evaluation methodology for initial lawyer licensure that addresses both “getting in” and “settling in” issues.

1. The Bar Admissions Regime

Successfully navigating a state’s bar entry regime is the first hurdle in transitioning from law student to legal practitioner. All states perform character and fitness screening and most states require the Multistate Professional Responsibility Examination (“MPRE”). For the “written” portion of the exam, most states use the multiple-choice Multistate Bar Examination (“MBE”) to test general legal knowledge and some form of essay exam to test application of that knowledge to a set of facts. The Multistate Performance Test (“MPT”), a fairly recent addition to the bar exam regime, is growing in popularity, and will be used by 31 states in 2005.

Passing character and fitness screening and the MPRE indicates that applicants meet ethical standards and do not pose a threat to the public. The purpose of the written examination is to test the applicant’s ability to identify legal issues in a statement of fact, engage in a reasoned analysis of the issues and arrive at a logical conclusion by the application of fundamental legal principles in a manner that demonstrates thorough understanding of the principles. Its purpose is to protect the public, not to limit the number of lawyers admitted or to test for memory, information or experience. Passing rates vary widely from state to state and test to test, although the national average bar exam pass rate was 74% in 2002 for first-time exam takers.

At the same time, since the release of the groundbreaking MacCrate Report in 1992, the traditional written bar exam has been under scrutiny for its efficacy in assessing candidates for

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23 Improving public perceptions of the legal profession would, in theory, simultaneously improve the bottom line for a large segment of the practicing profession if potential clients no longer shun their services.  
24 NCBE 2002 Statistics, B. EXAMINER 24 (May 2003), at  
27 Id.  
28 NCBE 2002 Statistics, supra note 24, at 12.  
the skills that are actually necessary for the competent, diligent, ethical practice of law.\textsuperscript{29} Whereas the traditional bar exam tests for recognition and application of blackletter law, the MacCrate Report indicates a broader range of competencies that should be evaluated before commencing the practice of law: legal analysis, legal research, problem solving, oral and written communication, fact investigation, negotiation, client counseling, litigation and alternative dispute resolution, time management, and the recognition and resolution of ethical issues.

In addition to the many law review articles,\textsuperscript{30} symposia, and state bars extrapolating and integrating this competency-based testing concept, the Conference of Chief Justices (“CCJ”) addressed this topic in its 1999 National Action Plan:

State bar examinations traditionally test bar applicants’ knowledge of substantive legal principles, but rarely require more than a superficial demonstration of the applicants’ understanding of legal ethics, professionalism, or basic practical skills. Thus, they fail to provide an effective measure of basic competence of new lawyers. The format of the bar examination should be modified to increase the emphasis on the applicants’ knowledge of applied practical skills, including office management skills. Performance testing methods should be used to evaluating applicants’ writing, research, and organizational skills... A passing score on the bar examination should be an indicator of basic competency to practice law.\textsuperscript{31}

Individual jurisdictions integrated the MacCrate Report’s competency-based testing recommendations in various ways. One result was the implementation of the NCBE-developed MPT, although the debate continues whether it is really a new competency-based performance evaluation or merely a skillful repackaging of old methodologies testing the same blackletter and issue-spotting areas. Some law schools began their own programs integrating competency-based testing into their curriculums.\textsuperscript{32} Others proposed LLM-type post-JD residency programs based on the medical school model.\textsuperscript{33}

Of particular importance is a proposal by CUNY Law School Dean Kristen Booth Glen for an innovative Public Service Alternative Bar Examination (“PSABE”). PSABE is an alternative competency-based evaluation for bar entry that tests bar candidates during their service in the New York Superior Court system. Dean Glen’s comprehensive analysis of the methodology, outcomes, and deficiencies of the current bar exam process from multiple disciplinary viewpoints provides a solid foundation from which to judge all future proposals for

\textsuperscript{29} Andrea A. Curcio, A Better Bar: Why and How the Existing Bar Exam Should Change, 81 Neb. L. Rev. 363 (2003). Professor Curcio notes several deficits in the existing bar exam process, and proffers potentially viable testing enhancements as well as alternatives to the traditional admissions system.

\textsuperscript{30} See id.; Soc’y Am. L. Tchrs., Statement on the Bar Exam, 52 J. Legal Educ. 446 (2002); Kristen Booth Glen, When and Where We Enter: Rethinking Admission to the Legal Profession, 102 Colum. L. Rev. 1696 (2002).

\textsuperscript{31} CONF. CHIEF JUSTICES, A NATIONAL ACTION PLAN ON LAWYER CONDUCT AND PROFESSIONALISM 16 (1999), available at www.ncsc.kni.us/CCJ/NATLPLAN/ (footnote omitted).

\textsuperscript{32} Gregory Munro, Outcomes Assessment for Law Schools, Institute for Law School Teaching 2000, Professor Munro Presentation at the SALT workshop, on Oct 11, 2003.

\textsuperscript{33} Andrew J. Rothman, Preparing Law School Graduates for Practice: A Blueprint for Professional Education Following the Medical Professional Example, 51 Rutgers L. Rev. 875 (1999). Professor Rothman proposed a two-year internship program for Rutgers graduates to practice law in a mentored environment under a managing director with significant practice and management experience. The focus was as an adjunct educational enterprise, providing on-the-job instruction and professional responsibility training to equip fellows with all the necessary skills to successfully open a solo practice at completion. A byproduct of the program would have been providing low cost legal services to individuals making too much to qualify for legal aid but without means to afford full priced legal assistance.
2. Transitional Education and Professionalism

Broader than legal ethics, professionalism includes civility, competence, integrity, respect for the rule of law, participation in pro bono and community service, and conduct by members of the legal profession that exceeds the minimum ethical requirements. The apparent trend of declining “professionalism” is cited as a concern throughout legal literature; it is the focus of untold numbers of judicial and bar association boards, sections, committees, task forces, and working groups. Transitional education and support for new lawyers is imperative in developing the competency and professionalism required to serve the public and uphold the fair and equal administration of justice. Nationally, this need for transitional education and support for new attorneys was specifically addressed in the CCJ 1999 National Action Plan, noting “many young lawyers enter legal practice in need of basic lawyering skills, often without the support of a large firm to assist them during those first transitional years.”

CCJ further noted that the “lack of education and support is exacerbated by a ‘Rambo’ approach to lawyering that, to newly admitted lawyers, may appear to be the norm rather than the exception.” Rather than responding to existing disciplinary problems, CCJ recommends that judicial leadership support proactive practical skills training tailored to the individual needs of different categories of law practice, also urging consideration of more extensive apprenticeship programs.

The organized bar works diligently to provide educational opportunities and transitional support as well as encourage professional development. Many states now have mandatory practical skills and professionalism programs for newly admitted lawyers and make annual continuing legal education credits mandatory throughout attorney careers. Individual and collaborative programs are also emerging to fill gaps between law school theory and real practice demands.

D. CLABA Fundamentals

University of Arizona law students designed CLABA as a combined apprenticeship and post-graduate residency program focused on providing high quality, reduced-fee legal counsel and representation to those earning between $15,000 and $60,000 per year. Working from a
For insurance and conflict-of-interest reasons, each CLABA Institute, the apprentices deliver affordable services within a structured mentoring environment. The Institute would sponsor yearlong “residencies,” in which participants would be evaluated using rigorous, objective criteria under a variety of methods designed to test the full range of legal competencies required of a successful practicing attorney. CLABA would serve the community and the profession, using a synergistic approach to address multiple related issues and achieve economies by using the same dollars to achieve numerous goals.

1. **CLABA’s Organizational Structure**

   A CLABA Institute is a non-profit corporation whose directors are representatives from the jurisdiction’s lawyer licensing body, highest state court, state bar association, and the public, with the Institute’s Executive Director also serving as a non-voting member. CLABA’s Board approves policies for client and client matter acceptance parameters, apprentice and mentor selection processes, and apprentice evaluation methodologies. The Board is also responsible for final hiring decisions for apprentices and mentors, for annual performance evaluations of the Institute and its Executive Director, and for approval of candidates’ names for final submission to the state’s attorney licensing body. Board members do not receive compensation for their services.

   The Institute’s Executive Director performs multiple functions. As an established, experienced attorney, the Director fills a role similar to that of senior managing partner in a mid-sized firm, available for consultation on legal issues and also overseeing the Institute’s administrative components. In addition, however, the Executive Director is responsible for establishing and maintaining collaborations with members of the community and its major collective groups, both legal and non-legal in nature. The Executive Director is also responsible for garnering financial and in-kind resources to supplement fee income generated by the Institute. Because of the high-profile nature of this position, the heavy load of responsibilities, and the absence of year-end profit-sharing opportunities, the Executive Director will be relatively highly compensated.

   The Institute recruits, employs, and trains six lawyer-mentors that act as section heads, one for each of the six practice areas. Because in one sense they serve as functional equivalents to the Bar Examination Committee of each jurisdiction, the recruiting and selection process will be particularly careful in choosing only the most experienced and qualified candidates to act as evaluators and gatekeepers for entry to the profession. Once a lawyer-mentor candidate has been selected and approved by the Board, a week of structured training will be mandatory before the new hire is qualified to assume the role of a section head. This instruction will include (1) appropriate mentoring strategies and coaching techniques, (2) approved office management practices and processes for the Institute (within each Jurisdiction’s particularized parameters), (3) proper evaluation methodologies and their application within the Institute, and (4) a refresher course in professionalism and ethics. In addition to ongoing apprentice mentoring and evaluation, lawyer-mentor section head responsibilities include serving as attorney-of-record for all CLABA clients; this entails ultimate responsibility for client matters and periodic one-on-one interaction with CLABA clients.

   Apprentices are also CLABA Institute employees. During CLABA’s pilot period, the applicant pool will be limited to in-state law students, with eighteen apprenticeships available for
any given year (July 1 - June 30). To be as inclusive as possible, yet assure a continuing base of committed apprentices to serve CLABA clients, qualified students may apply in either their 2L or 3L years. A qualified applicant must have a minimum cumulative GPA of 2.75 at the time of application, and must submit an application package including a statement of interest, transcripts, letters of reference, and additional documentation. An unsuccessful 2L applicant may reapply as a 3L.

Candidates will submit application packets in October and November (with oral interviews as needed in January). The names of admittees and wait-listed candidates will be announced by January 30, although final admittance is contingent upon the graduate maintaining the minimum GPA through matriculation, completing selected core classes within the curriculum, and passing both the MPRE and the state’s character and fitness screening. Consolidated re-verification of the admittees’ qualifications before starting the apprenticeship provides reasonable assurance that (1) apprentices begin the program with sufficient “blackletter” legal knowledge to serve CLABA clients with only limited guidance from a lawyer-mentor and (2) traditional ethics, character, and fitness gatekeeping requirements have been met.

The CLABA Institute also employs three non-attorney staff members. An Executive Assistant will work closely with the Executive Director and serve as office manager and compliance officer for the Institute. Reporting to the Executive Assistant will be two Office Assistants, who each will provide administrative support to three section heads and nine apprentices. Support staff allows section heads and apprentices to retain primary focus on providing legal services.

CLABA staff and apprentices work from the CLABA Institute, which is a fully staffed office with flexible hours that serves as a community and professional resource. Legal services will be available for both private and public needs, broken into six umbrella practice areas. The model Private Life Practice Group contains family law, personal finance and planning, and personal and economic injury sections. The Public Life Practice Group includes sections for business finance and planning, government regulation, and misdemeanor criminal defense.

After an initial one-week orientation period, CLABA apprentices rotate in eight-week intervals through either the Private Life or Public Life Practice Group’s sections. Once a legal matter is accepted by the Institute and assigned to a practice section, the client matter remains with the original apprentice and lawyer-mentor despite an apprentice’s rotation to another practice area. Normal client matter runoff permits apprentices to accept new clients and client matters throughout later rotations.

At the end of the first Practice Group Rotation, one week is spent in file review, closeout, and debriefing with lawyer-mentors. The following week is spent in orientation with the other Practice Group’s section heads. This two-week “break” period is designed to fall in weeks 26 and

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41 Opening the selection process to both 2Ls and 3Ls doubles the potential pool of qualified applicants.
42 In the first year of the pilot program, all eighteen apprentices will be selected from 3L applicants. After the first year, however, two thirds of the available apprentice positions generally will be held by students who applied in their 2L year, while students who applied in their 3L year will hold one third of the available slots.
43 Equivalent minimums are easily calculable for law schools that do not use a 4.0 standardized scale.
44 Research indicates that a 2.75 GPA requirement at application and graduation allows 78-83% student eligibility for an Arizona CLABA apprenticeship.
45 The list of core classes will be chosen based on the jurisdiction’s traditional bar exam topic coverage.
46 These umbrella practice areas are designed to encompass the full spectrum of topics covered on every state’s “traditional” bar exam with the exception of criminal felony, which is precluded for risk management reasons. These areas are easily adaptable when a state’s bar exam topics change or expand.
27. Although apprentices contract with the Institute for a one-year employment period, CLABA will not impose penalties for situations beyond the apprentice’s control that preclude program completion (i.e., “good faith” breach).

48. For example, the Institute generally will not accept matters expected to last more than one year, nor will it take cases on a contingency-fee basis. The Institute cannot accept client matters exceeding pre-set, Board-defined risk exposure levels, and will not compete with private practitioners for clients. Clients with matters incompatible with Institute acceptance parameters will be referred to private practitioners or other community partners that are better suited for those clients’ legal matters.

2. CLABA Serving the Public - Legal Counsel and Representation

CLABA will have the capacity to serve both individuals’ personal and business needs, although certain risk-limiting restrictions will apply.

48. Eighteen CLABA apprentices supervised by six experienced lawyer-mentors directly serve clients whose legal needs would otherwise be unmet. If each apprentice averages 33 direct service hours per week for 45 weeks, more than 26,750 new hours of service will be available per year for these clients. If an average client matter takes an apprentice 10 direct service hours to resolve, then 2,765 clients could be served at the Institute annually at an average cost to each client of $250.

Clients come to the Institute from the general population, having learned of its services through referrals from community partners, private practitioners, on-line sources, friends or relatives using CLABA services, or through media public service announcements. In the first year of the pilot program, marketing efforts and collaborations will begin in March to publicize the Institute’s opening in July, and applications for its services will be taken as early as mid-June. Typical clients may be individuals, small and start-up businesses, or not-for-profit entities whose annual earnings and legal matters fit within Board-approved acceptance parameters.

CLABA’s family law section may provide assistance with divorce, paternity, child
custody and support, domestic violence, enforcement, modification, and other matters. Within the personal finance and planning section, clients may receive help with wills, trusts and estates, probate, personal bankruptcy, landlord-tenant disputes, tax, insurance benefits, social security, and related areas. CLABA’s personal and economic injury section may assist clients with breaches of contract, property damage, insurance/workers compensation, and personal injury. Within CLABA’s criminal defense section, misdemeanor and petty offense cases may be undertaken.

The CLABA institute will also be available to assist small businesses and community organizations. For example, CLABA may help with matters ranging from start-up planning to periodic contract review to navigating administrative law. Within the business finance and planning section, clients may receive help with contracts, employment, tax, intellectual property, bankruptcy, and related areas. CLABA’s government regulation section may address client concerns ranging from administrative law to limited individual civil rights issues.

Pricing of these services will depend on a mixture of client ability to pay and comparable legal service costs within the community. Some services will be subject to hourly billing and may have caps; other services may be provided for predetermined flat fees. A standardized price matrix will be maintained and made available to clients during the initial client interview to help them assess their potential costs in using CLABA services, thus eliminating one common source of consumer anxiety in utilizing an attorney’s expertise.

As in traditional private practice, CLABA retains the right to accept or reject client matters. A preliminary, user-friendly questionnaire will be used to assess income qualifications and gather general information on the cause of concern. Once the initial information has been processed (including conflict checks and income verification), the client will be scheduled for an initial interview in the appropriate practice section. Apprentices will take particular care during initial interviews to listen to client needs and desires and to communicate possible options and scenarios to ensure client understanding. In some situations, a client may decide that no action is warranted; there may be no legal basis for a claim, the cost of pursuit may outweigh the benefit, or an alternative method of problem resolution may be available. In other situations, the matter may fall outside CLABA’s parameters for case acceptance. In many instances, however, a client will choose to engage the Institute’s services.

In any of these situations, the consulting apprentice will make follow-up contact within one week, thus addressing another common client complaint – lack of communication from the attorney. The initial interview follow-up policy is just one example of the quality controls that are built into the system to safeguard clients and program integrity. Policies and procedures are designed, written, and enforced to assure the highest standards of professional conduct, from ethics to case and practice management. The experienced lawyer-mentors oversee apprentices at a 1:3 ratio, and thus are able to monitor closely the quality of service provision. Immediate feedback to apprentices on their performance allows them to improve the quality of service over the course of the year. CLABA anticipates using client surveys as an additional measure of current performance and as a source of ideas for improvement.

3. **CLABA Serving the Profession – Bar Admission Screening, Transitional Education and Professional Development, Mentored Professionalism**

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50 CLABA will not assume guardianships, as these clients generally require more continuity than a one-year apprenticeship period can provide.
CLABA, unlike the traditional bar exam, evaluates apprentices on a range of competencies using a variety of methods over an extended timeframe. During this period, apprentices practice hands-on application of legal theory and skills in a well-supervised environment. Unlike traditional “on the job” training, however, the CLABA Institute’s lawyer-mentors are pre-screened to be exemplary role models, epitomizing the professionalism, civility, and effective practice methodologies that should remain with the new lawyers throughout their professional careers.

a. Alternative, Competency-based Method of Evaluation for Attorney Licensure and Bar Admission

CLABA alters the existing bar admissions process rather than replacing it. Two of the three generally required elements for bar entry, MPRE passage and character and fitness screening, are unchanged; CLABA candidates must meet the same standards as prerequisites for entry to the apprenticeship program. In addition, CLABA’s evaluation processes and program safeguards meet or exceed the process integrity relied upon in the current written examination component.

To match the “rigor” of the written bar exam, CLABA benchmarks against its evaluators (the “who”) and its evaluation process (the “how”). First, lawyer-mentors are functionally equivalent to Bar Exam Committee members, thus their qualifications must meet or exceed those of Committee members. Required lawyer-mentor qualifications mirror those of Committee members, but also mandate supervisory experience and demonstrated competencies ranging from legal writing to organization and time management. Second, the lawyer-mentor hiring process must be equally vigorous in matching the Committee member selection and approval process. In general, vesting CLABA’s Board with final hiring authority mirrors the level of scrutiny and objectivity in selection and approval because the Board’s composition is a consolidated subset of the two bodies that select and approve Committee members.

Third, CLABA’s evaluation process must also uphold program integrity in assessing candidate competency and in protecting the public. This entails defining the purposes of the testing, the areas tested, the methods and assessment tools, and the quality controls for objectivity, reliability, and validity of the process results. Without going into exhaustive detail, CLABA generally matches or exceeds the current regime here as well. CLABA evaluates ten recognized legal competencies whereas the current system tests three. CLABA uses seven evaluation methods and various objective and subjective assessment tools continuously over a one-year period while generally the current system uses one method (written examination) and two tools (multiple choice and essay questions) over a two- or three-day period. CLABA’s lawyer-mentors receive structured training in evaluation theory, technique, and application;

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51 CLABA’s seven-member board includes three of the state’s highest appellate court justices and three senior state bar representatives, at least two of which logically would be Bar Exam Committee members.
52 Hundreds, perhaps thousands, of pages from multiple disciplines delve into defining the purposes of the testing, the areas tested, the methods and assessment tools, and the quality controls for objectivity, reliability, and validity of the process results. A succinct overview by Kristen Booth Glen will appear shortly in the Pace Law Review (draft available at www.law.cuny.edu/OurResources/otherlinks/PSABE). See also Steven Friedland, A Critical Inquiry into the Traditional Uses of Law School Evaluation, 23 PACE L. REV. 147 (2002).
Committee members may attend National Conference of Bar Examiners (“NCBE”) training or may receive training from their predecessors, relying on internal policies and procedures that have proven themselves as historically trustworthy.

CLABA further imposes systemic quality controls for objectivity and accountability that: (a) result in at least 14 different evaluators for each apprentice over the course of the year; (b) provide regular Board of Directors and Executive Director performance evaluations for the lawyer-mentors in carrying out their oversight and gatekeeping functions; (c) include both qualitative and quantitative evaluation methods; and (d) anticipate follow-up during the first ten years of the apprentices’ practice for continued competency and client satisfaction.

Conversely, under the current bar exam system, objectivity is assured through anonymous grading, different evaluators/ graders assessing different exam questions, and scoring and scaling partially based on NCBE computations of MBE results. The Bar Exam Committee reports to the highest appellate court, but no formal criteria or mechanism generally exists to “evaluate the evaluators.” Like CLABA, Bar Exam Committees employ both qualitative and quantitative evaluation methods, but hold calibration sessions during the grading period to ensure uniformity in their scoring of exam answers. Post-exam information on lawyer performance is derived from complaints and disciplinary actions; the fewer the disciplinary actions, the better the public protection accruing from the current gatekeeping regime.

Finally, CLABA evaluations result in feedback to apprentices so that they may improve their abilities. Bar examinations provide no such feedback mechanism to allow test takers to learn from their mistakes, yet one suspects that the general public would benefit from lawyers entering the profession further along the learning curve.

b. Transitional Education and Professional Development

Law students graduate with the ability to analyze and apply legal theory and blackletter law, but may have little practical experience. The current bar admissions system licenses bar exam passers whether or not they know the location of the court house, the basics of client interaction and case management, or bookkeeping methods to segregate client funds. Although law schools generally offer opportunities to access the knowledge, they do not mandate courses with this content. While many law students take clinical and skill courses, many others do not. Students instead may focus, quite logically, on the core courses that are tested on the bar exam and/or courses reflecting anticipated specialties.

Once licensed, there is a general systemic responsibility to ensure that new attorneys learn practical fundamentals. Fulfilling the responsibility most often falls to thinly resourced bar associations relying heavily on volunteer efforts and creative programming to fill the knowledge and skill gaps. They strive diligently to implement bridge-the-gap and mentoring programs as well as providing continuing legal education credits. A few states are home to collaborative programs emerging to fill gaps between law school theory and real practice demands.

On the other hand, CLABA provides orientation and ongoing assistance in a real-life setting to accelerate the apprentice’s learning curve. Clearly defined policies and procedures based on sound principles of client and office managements are in place; experienced and trained lawyer-mentors provide real-time assistance. Ongoing evaluation and feedback on apprentice performance allows learning and continuous improvement. Hands-on experience in six inclusive practice areas gives apprentices a broader base of understanding and knowledge with which to serve clients at the Institute and in future professional life.
c. Mentored Professionalism

Enhancing lawyer professionalism aids the goals of effective lawyer regulation. Competent lawyers exhibiting civility, integrity, ethical conduct, respect for the law, and participation in pro bono and community service are rarely candidates for the disciplinary process. CLABA enhances new lawyer professionalism in two ways. First, CLABA proactively pre-screens its lawyer-mentors for their abilities to be good role models; their counseling of apprentices reflects a commitment to the highest ideals of professionalism. Second, lawyer-mentors evaluate apprentices on their professional conduct as part of the CLABA program. Apprentices who are uncivil, who use dubious strategies undermining respect for the law, who fail to return client phone calls, or exhibit other unprofessional conduct are censured, put on probation, and expelled from the program if their conduct does not improve. Successful CLABA apprentices join the bar having demonstrated their professionalism and with a high likelihood of serving as good role models for future lawyers.

D. Summary

The legal profession has a unique obligation to serve both private interests and public good, simultaneously acting as client advocates and officers of the court in promoting justice and upholding the rule of law. To serve both constituencies well requires meeting consumer needs, but these needs are not being met.

In addition to the public’s unmet service needs, the legal profession faces internal needs in transitioning new attorneys from law school to practice, instilling professionalism in the development of young lawyers, attaining its gatekeeping goals, and overcoming negative public perceptions of the profession. The need is neither to admit more lawyers nor to reduce standards for bar admission. The need is to employ synergistic methods that provide immediate advantages to all constituencies while nurturing the necessary legal competencies in new lawyers that will best serve the public and the administration of justice.

CLABA proposes one such alternative that would benefit the community and the profession simultaneously. CLABA apprentices would contribute to the well being of society while refining their legal skills, demonstrating required legal competencies, and qualifying for bar entry based on an alternative method of objective, rigorous evaluation. Built-in quality controls safeguard the public interests in receiving quality legal services and in admitting only competent practitioners to the bar. While the finer details are still evolving, the CLABA prototype is adaptable to the needs of most jurisdictions. This Symposium is a welcome first step toward carrying the model to a wider audience.

CLABA is merely a launch pad whose construction has not fallen behind schedule. Although legal consumers have not yet called for “rocket science,” the profession should begin considering more launch pad blueprints for the day that the call comes. If the call does not come, it may be because average consumers feel they can no longer rely on the legal profession to fulfill their needs.