
SYMPOSIUM TRANSCRIPT

Dean Robert K. Rasmussen, University of Southern California Gould School of Law:

Let me start by saying, quite simply, I just hate Rick Matasar. Do you know how frustrating it is to sit and think about a good idea and insight you have? Rick wrote it ten years ago. I mean it's really bad. I serve with Rick on the Access Board and it's the same thing. Rick chairs the Investment Committee, and I have a question and think it's a good question but its number five on Rick's list of questions.

Rick, you have had a front seat on legal education for about twenty-five years. I'm not trying to make him feel old here. Twenty years as dean, three very different law schools. Did time serving as Chair of the Board of Access Group, not now when it's fun, but during the times of market challenges.

You've been talking about the coming pressures in legal education for years. Like the stock market, you predicted nine of the next five recessions, but it finally happened, right? It finally imploded. And so from your sense now that we finally have the cataclysmic event, are things really changing?

Richard A. Matasar, Senior Vice President for Strategic Initiatives and Institutional Effectiveness, Tulane University:

No. Yes and no. It's remarkable that as much as there has been change over the last four-year period; how few places fundamentally rethought their core approach toward education. If we point to the folks in this room and say, "Your places are all going through significant change," each of you know how little that change is in terms of what you would like to accomplish and what's necessary. And so the real question that's out there is if this set of cataclysmic economic conditions were not the catalyst to making significant change happen, what would it take in order to force that? Asking that question is a thought exercise that is really important. You could say, "Well, maybe the closing of a law school would do that." But in this last year (2015) a law school in a well-known metropolitan area in California faced extraordinary financial challenges and was unable to meet its debt obligations. The bondholders determined the best and highest use for that law school was for it to remain a going concern as a law school. So that suggests that at the end of the day, if there is an end of the day, the profession itself will persist and move forward. And so, the resistance to fundamental change is going to remain in place for some time, just as a

drag on change and that's—it's sobering.

Dean Rasmussen:

You've written a lot. And in honor of the PGA Masters last week, if we give you a mulligan, which article or theme would you redo?

Senior Vice President Matasar:

Probably the *A Commercialist Manifesto* article.¹ I wrote that really early in my arc in thinking about a lot of these issues. At that time, I held a high level of optimism that increased revenue could solve a lot of problems. Therefore, the article assumed it made sense to picture a future where entrepreneurship was a primary vehicle by which we could overcome a lot of what might be financial issues. I didn't contemplate then that our cost curve wouldn't change even if we had more revenue. So I thought the extra revenue would result in lowering our students' costs. I didn't see that institutions would just take the additional revenue and devote it toward their operations. And I think if I were to reflect back on that, I should have said, have an escrow account and put all that new revenue into it—a rainy day fund. Use it to lower costs to students. During that portion of my career, I was still more focused on faculty and institution than on students. And I think the student focus didn't come till much later for me, probably until I was in a third deanship at a private school where the life arc moved from thinking about how does our school go up in *US News* role, how do we hire the next best great faculty member, how do we create some new cool scholarly program? To what do we do to return better value to our students. I think going back and looking at that piece, it was pretty immature in my thinking. Although, I like some of the little catch phrases that were in there.

Dean David N. Yellen, Loyola University Chicago School of Law:

I'll skip saying how great Rick is and how much he helped me in my career and earlier as a dean all of which is true but we'll just stipulate all of that. I'm going to try in keeping the spirit of hard hitting questions. Rick, considered the change needed in the educational model, what we do for our students, and in the financial economic model about tuition, how we allocate costs considering all of this. When you were at New York Law School on an assessment on making the school perform better for the needs of students academically, I think you get

1. Richard A. Matasar, *A Commercialist Manifesto: Entrepreneurs, Academics, and Purity of the Heart and Soul*, 48 FLA. L. REV. 781 (1996).

phenomenal grades ahead of the curve. On the financial model piece, why didn't you succeed? Because that wasn't success.

Senior Vice President Matasar:

I have an article I wrote and then didn't publish. It was called *Unilateral Disarmament Doesn't Work* and it was a reflection on exactly that question: Can you run out ahead of your colleagues by being a cost cutter in a market where everyone's increasing price? Can you go ahead of your colleagues in being a place that's freezing salaries when no place else is freezing salaries? Through the time when I was reaching the last few years of being a law school dean, it was not difficult to see out into the future that there might be some difficult financial times ahead, but it was very difficult to convince any person that I worked with that that time was out looming. Why? Because we had record numbers of applicants. We had the best students we ever had at any point in the history of the application pool for the school. And when in retrospect, questions about how much placement was going on, placement was incredibly robust. And so at that time to talk about cutting price, freezing salaries, and a series of other things, was not possible and it would have been a non-starter with our Board and a non-starter with our faculty.

That said, we did some interesting things. For example, we stopped adding base salary increases for the last four years I was a law school dean, and instead created a bonus pool. As a result what we ended up doing was taking all the salary that would have gone into incremental salary increases to base and turning that into two-time non-base bonus payments, once in December and once in June. Those bonuses were subject to being reconsidered in the next year. We rolled those non base bonuses for three years before we added anything to base which meant that faculty could learn to live on their nine-month salary, spent over twelve months without depending on two bonus payments that came in. When the downturn actually came in, my successor was able to eliminate bonuses and go back to the base without base salary increases. So it was my surreptitious way of doing something that was able to drive cost down ultimately for the law school, but it was not enough.

I came to recognize there was only so much you can do with the back end of a broken system. Law school sits as the last three years of a seven-year to eight-year to nine-year track for our students. And if you tried to just reduce the cost of that three-year J.D. education, you learn of the baked in costs you just can't ignore or eliminate. The regulatory regime bakes cost in, the cost of the faculty bakes things in, the cost of the building bakes things in. And I think David Yellen, you of all people know this because we've run this exercise in the back of an envelope,

what's the cheapest law school you could make? It doesn't end up cheap.

We could try to reduce tuition pricing substantially, but it is very difficult to imagine a competitive environment where anything that looks desperate wouldn't be seen as desperate. And I came to conclude that the only way to have a disarmament was to have multilateral treaties among large groups of schools competing in the same area which of course is a violation of the antitrust laws and so . . . here we are.

Dean Yellen:

I was surprised to read in a blog that universities can agree, that it actually is entirely legal for universities at least (I don't know about law schools) to agree for example, to only give out need-based financial aid. But so my follow up question is, I completely agree with what you said. It makes us all to some extent hypocrites to talk about need for change and yet then to say, as I've said many times: But here are the institutional constraints that make it impossible for me to do much of anything on that side of it. So how realistic is it to expect any school or dean or president to make any real fundamental change and if not, and I think your answer is it's not realistic, then what would action look like?

Senior Vice President Matasar:

I think this is a personal confessional rather than a prescription. The personal confessional side for me, is any move from being a law school dean to doing something else and going with the university as a whole because I think that solutions don't lie in the law school. Solutions lie across all of higher education and the transitional periods between high school and college, and between college and graduate school. Effectively using these transitions is where we can reduce opportunity cost for our students by compressing the time frame it takes to grow up in the United States. That to me is the most realistic solution to problems; it will not require a lot of structural change. It is one of the things I really am keen on working on over the course of the next couple of years. Also, if we don't make the change happen from within, externals for us will make changes happen. This is not one of those things where I could tell you the exact date. Let's spin it out for just a second, things that some of you've heard me doing in my apocalyptic fantasy mode, it has something to do with the premise—if all your funding rests upon borrowed funds and there's only one lender of those borrowed funds and that lender also regulates all the rules that have to

do with how your schools are accredited, there could come to be a day, in a not too distant future, where that regulator/lender decides to either stop lending or stop lending in favorable rates, or lend but only on the condition that there'll be price restraints that are put in place because it doesn't want the exposure to the debt.

That kind of external jolt will lead to systemic change and what we know is that the university as a whole, this change has been taking place without anyone announcing it. The move from tenured faculties at universities of 70% and 80% to tenured faculties of 30% to 40% is already producing a contingent work force solution that law schools have not engaged in. In fact, the legal academy's effort to resist rules that would permit schools the flexibility to deal with their terms and conditions of employment is one of those things that is uniquely in the law school space and that doesn't exist in the university. So the universities have already off-loaded labor cost in a way that's not taking place in the law school world. I suggest that's almost certain to happen at some point in law schools. As our senior faculties begin to retire, more contingent laborers will quite likely be the way to significant cost reduction.

As everyone in this room knows, tuition-discounting did not exist in most law schools in any significant way. If it did, it was through endowment support not through literal discount on tuition. I don't think there's a law school in the country now that isn't seriously engaged in discounting off its sticker price. That is the pathway that many of our colleagues in other disciplines have been walking for a long time. Discounting will force schools to put discipline on the cost side.

Dean Jeremy R. Paul, Northeastern University School of Law:

The question is, why hasn't that changed with the significant discounting? And moving to more generally, discussing the price.

Senior Vice President Matasar:

That's a great question because the illusion of high price is really important for lots of reasons. There's consumer acceptance about what is the cost to go to my law school. There's also consumer acceptance on the concept that I know I'm getting a scholarship. Both of those things influence the idea that rack rate is important to preserve.

In my current (2015) university, it is true that all of our tuition is the same in all of our programs and also true that the students pay quite differently depending on their discipline. It would be an anathema to the university for us to have a differential pricing structure. I suggest that

one of the things that's likely to occur is net price. You know, evident net price—tuition showing up across law schools as they do in the undergraduate college base. When that takes place it could expose broadly what's been going on nationally and reveal the actual rack rate reductions and kind of reset of it. And I think that would get people's attention. Net pricing is not visible. It's visible to the students and their parents or the decision makers because they now know how to go your office, say, "I can get 50% discount down the street at X law school, and you guys are only offering 35%, so what gives here?" You know for example, Hal Krent, you and David Yellen are competing directly for the same students and are going to have them bouncing the two of you off each other until they get down to the rock bottom price. That was going on a lot anyway in the best of times for the very best students. Now it's going on in the worst of times for the very worst students. What that tells us is we haven't hit an equilibrium pricing point yet where it's going to stabilize. Until either the demand curve goes up again and you can begin to offset some of that discounting or the schools decide they're going to just draw the line and say we can't go any lower. I think you're going to see discounting continue much as it has in the liberal arts college base until you reach the point where if you're below 50% in terms of your discount rate, you may as well just cut the damn price and acknowledge it.

Dean Victor J. Gold, Loyola Law School, Los Angeles:

I have a couple of questions. First, is the tuition-discount phenomenon really something we can characterize as change or is it a temporary strategy that most schools have adopted with the hope that they can wait out the downturn and good times will return?

Senior Vice President Matasar:

Every discounter always believes it's going to return to rack rate. That is the nature of discount. Otherwise it isn't a discount, it's the price. The notion of return to normalcy, even among people who know that the world has changed, is still very strong. Why would that be true? I mean, the typical law school leader is somebody who grew up in times of plenty, and we all remember that. We remember what it was like to be in our institutions when you weren't worried about whether you could bring a class in or whether you could support faculty travel or whether you could hire anybody or anything else that went into the core of what it means to lead a law school today. And the pining away for that past is pretty strong and our hopeful nature that makes us believe it

will come back is pretty strong. But the exceptions to the rule that currently exist make it clear that it's possible to have a future that doesn't look like the one that many of our schools have. And so, hope springs eternal, we all want to reach out for that, it's all good. And plausibly, one could imagine a better future over the short run but inevitably, and this is the point I think that is iron rule of the future, inevitably, we have a broken model.

I played this out for my colleagues across the university because I think it's the same phenomenon across the university it just hasn't been felt yet. And I'll ask you the same three questions I asked them.

Question one, can you raise your price 3.5% per year annually compounding from now until perpetuity? That's our financial model in most universities. If you think the answer to that is "no," then you already know you have a problem and the only question is the date.

If the answer to question one is "yes," then you have a set of assumptions about what the future's going to be, and it's tied into a prediction about wealth, about where your student body is coming from.

So, let's go to question two, if you're thinking you can compound your price 3.5% per year per annum from now until perpetuity, can you do that and maintain the academic quality of your student body? So the assumption if you want to say the answer again is "yes," it's assuming not only do we have our disproportionate share of rich people, we have our disproportionate share of smart rich people who will come to our place.

And if you can survive those two questions, you get to question three which is that if you can raise your price 3.5% percent compounding annually from now until perpetuity and you can maintain your academic quality, can you also maintain diversity? And I've not found a rational person in any place I've walked through these thoughts that says "yes" to all three questions. So, Victor, I think the answer is: we can hope for a long time but inevitably we're going to have to confront a reality that says there's something not going to work in this model.

Dean Gold:

I know everyone is enjoying the happy tone of the conversation so far, but let me push back on some of your assumptions. You've written that for many students, if not most, a J.D. is a bad investment. But since you wrote those words, we've seen Michael Simkovic produce some pretty impressive scholarship to suggest that actually a J.D. is a good investment for the vast majority of J.D. students, whether they come

from lower ranked schools, whether they rank lower in their classes. So, do you disagree with that? Do you think there's some fundamental flaw there? Is this just a matter of not really taking in full data together to make a measure, a judgment about the value of the J.D.? Are we just focused on that nine- or ten-month job number and are we sort of adopting a *U.S. News* position or what counts as a consequence?

Senior Vice President Matasar:

I think that's a really great question, and it relates to the regrets one has about the things you say at various points. Toward the end of writing about this particular line of thought, my own thinking evolved and changed quite substantially and was actually turned around and into "yes this is a good decision but only under some set of circumstances."

So what are the set of circumstances? The amount of borrowing you do has some relationship to whether or not it's a good investment. We have a lot of students who disproportionately borrow against what their expected return would be and it doesn't matter that their alternative choice might have raised less income for them because they've incurred too much debt versus that. If a quarter of your students are happy, your students have a pretty substantial number that over-borrow as against what their expected return would be. So that's bad in itself, but it's modestly controllable at some level if people are smart enough about their future. The thing I've come to understand is it's a relative question. So, is it a good investment? The question is, relative to what? Relative to only getting a high school diploma? Yes. Relative to having a bachelor's degree? Yes. Relative to getting an MBA? I don't know. Relative to getting a masters in finance, relative to doing a one-year technical degree that takes you to the engineering disciplines? Those are future career paths that we haven't traditionally been able to compare ourselves against and the data are not robust.

Looking at Michael Simkovic, those data are brute force comparisons. They are not nuanced comparisons. Most of our students are still getting third-party payers for their education whether borrowing it or having mom and dad still contribute to it. Those third-party payers are asking questions not just as law versus my B.A., but versus other potential graduate choices that are made.

If you go back to the undergraduate choice that was made, this is the place where our humanities colleagues in the liberal arts are going to be under tremendous pressure. It is harder to make the judgment that a B.A. versus a B.S. has a good return unless you link it with something in a graduate side.

A lot of my faculty members resist when I talk about the undergraduate degree because there's tremendous evidence that the arts and sciences have great rates of return, that the students have made great investments. But very little of the evidence looks at what happens if you just end at your bachelor's. It is the bachelor's linked to something that comes next that is critical.

I think the next part of the research must be in what I call relative comparisons. For many, being a lawyer is a great thing to be but intrinsically if you don't want to be a lawyer, choosing this because it has a good rate of return is a bad idea. Many students that we taught over the twenty-five-year period were students who came to law school because it looked like a good way to make a living. And, you know, some of them had no passion at all for the things lawyers do. That was a disastrous choice for them, and it would continue to be a disastrous choice for anyone moving ahead because being a lawyer is about being a lawyer. And the things that you earn as being a lawyer make it remunerative sufficiently that you made a good choice but, if you don't want to be a lawyer and don't make enough money that's pretty bad.

Dean Harold J. Krent, IIT Chicago-Kent College of Law:

I am the only one in this room Rick hired. So I have some kind of distinction. Rick, I wanted to take you up on that last point, because as we've been moving towards experiential learning and outcome metrics, and we've done it and other schools have done it as well. I think what's going to happen is anthropology down the road, and French history down the road. They're all going to use the same metrics we are now showing to justify people going to law school to track those for people going into art history, and we're missing the kind of academic discussions and breadth that's really good for America. So how do we—if we are complicit, what can we do to make sure that future isn't going to happen.

Senior Vice President Matasar:

Right. We law-type are certified Philistines, you know, persons of no academic value, because law is an applied discipline. I think it's important for us to recognize that the conversation in this room sounds nothing like the conversation that's taking place in the arts and sciences core at most of our schools. OK, the law school academic community has to fit into reality. In the categories of regrets, I regret anything I've ever said negative about a law school faculty member. I take it back.

My law school colleagues are—have always been, now that I look

back on it—wonderful and deeply concerned about student outcomes. There's a part of me that has come to recognize that an applied discipline like law is quite different than other parts of the university. That's not to denigrate other parts of the university. It's to say that we fail to recognize exactly the question you raised, Hal, which is the importance of education as being about core values. You know, legal education is a "means-to-an-end" kind of discipline, and with an increasing emphasis a means-to-an-end kind of discipline over the course of my professional life. Since graduation, and starting as a law professor, to now.

I started in 1980 as a law professor. And as a law professor in 1980, all I cared about were big questions. There was a period over a five-year stint, or a seven-year stint of doing nothing other than thinking about critical legal studies stuff. You know, there's all sorts of super-duper, lefty theory, righty theory, any kind of theory that was out there. And it's really only in the last fifteen-year period that "clinical" has not been a dirty word, that "applied" has not been a dirty word, that practical outcomes have not been dirty words. So we've moved along that pathway? It would be a bad thing if the university saw itself as vocational. That would be bad for the country. It would be bad for our students. So the question is how much can we preserve of what is the core academic value and realistically connect those things to the outcomes that students and their families expect. I think we have not been explicit in the undergraduate college and in the university as a whole about recognizing it is a legitimate concern of the parent, of society, and of the student to know what the student's outcome in life is going to be. If we see it as an illegitimate concern on behalf of the student and their family, we're going to move further in the wrong direction than we would if we were explicitly recognizing that we have some obligations to our students to help them find their pathway. The separation out of that vocational concern, from the academic concern, which takes place on a fairly daily basis among a lot of our disciplines, is unhealthy. I know why we do it, and I understand that the temptation to move so far in the other direction and destroy academic values is going to be great. So, how do we preserve and yet grow at the same time? I see that as a core challenge for me going forward in working outside of the law school and in the rest of the university. And frankly, I see this discussion as a core challenge for all of our universities as we go forward, because it's not a mature conversation at this point.

Dean Hannah R. Arterian, Syracuse University College of Law:

Rick, I want to test the notion that freshmen should be demanding to know outcomes as a result of what happens in college. Universities are really in the middle of this, I don't know if they're on the fringe of it at all anymore. What makes this frightening is, in that world, college is only successful as an instrumental experience. So the "story" has to be demonstrable. "This is what's going to happen, X, Y, and Z, and because of XYZ you're going to get alpha position." The reason for my concerns is regional accreditors of universities or colleges are concerned about losing their status as accreditors with the federal government. And now their current focus is all about outcomes. So whatever you are, the English department, history department, you're the landscape and architecture departments. We are the required university accreditors. You'd better show us. What's your goal? How are you going to measure it? What are your outcomes and how do you measure them?

When I see people prepping universities for these accreditors and how they want things from the law school, it's terrible. And they have very unrealistic timelines. But most important, what's an outcome? How about placement? Oh no, that's not an outcome. How about bar passage? Well that's not a direct outcome I think. What the heck can possibly be happening in the philosophy department? I find it hard to believe that in fact the core of a university, which is supposed to be measured by these things, can now show it.

And by the way, I'm definitely not into height measurements as outcomes.

Senior Vice President Matasar:

Part of the problem is: we academics are pretty uncomfortable with evaluations of any kind. I don't know how many of you have gone through a peer evaluation process; it is painful. We don't like evaluating our colleagues. As teachers, we didn't like putting grades on exams—I mean, there are lots of things about evaluation. Until we, as managers, get comfortable evaluating and being evaluated, moving to an outcome regime will be difficult. But even if we become comfortable, it still does not scale for our whole institution, it just blows up.

I frequently talk about owning outcomes. I don't literally mean that as a student walks in as a freshman, you can tell him or her here's your likely life outcome. But I would say if we don't care about outcomes, don't construct processes within our institutions that help students achieve good life outcomes and make them more likely, and do not construct lifelong processes that connect the student to the university,

it's placement services, it's support services, and it's alumni base, then we are failing to perform a set of duties that belong to us as institutions.

Getting serious about learning outcomes begins with individual courses and individual faculty members. Unfortunately, as I have come to understand since moving into the online education business, most of us are imprecise about our teaching goals. We may have a certain amount of material we want to cover, but we have not necessarily thought about what students are supposed to get from this material beyond its content. Why are we teaching what we are teaching? Why are we teaching it in the order that it has been assigned? How do we know that students have learned it? Do we care if students connect any particular material to other material? Do we have learning goals beyond content acquisition? Unless we ask and answer such questions we cannot construct meaningful measures of outcomes.

More precision can come when we deconstruct literally every teaching moment of a course—something almost impossible to do during a live performance of a class. In live teaching, we change course, often. We digress. We go off of our own message. We correct misimpressions from prior classes. So, we sometimes make it up as we go along. We “know it, when we see it.” We go by feel.

When one teaches online, except for those moments of live exchange, every captured set of lectures or assigned exercise must be precise. Each demands understanding what a student is expected to do and to learn. Having to plan in advance forces the teacher to understand his or her objective, the deeper learning that we hope students will achieve. And until going through this introspective exercise, one cannot truly understand how unformed our views are about what we seek to accomplish with our students.

That to me is revelatory as a teacher. It's revelatory in terms of what we can expect of our colleagues. So if I hear the claim, as I do all the time, that a good humanities-based education is about teaching people critical thinking skills, and I ask, “How do you know if you've accomplished it?” The response is: we wait and see what the life outcomes look like. And, you know that they accomplish things that show us that we've opened minds. I said if that's all we can claim, we haven't done very much. Because we can make that claim about a lot of things. Working at a summer job can help your critical thinking skills too. I unloaded boxcars one summer and I was the only guy that could read. That was a real eye-opening experience. It taught me a lot about the value of education. I learned about humanity, I learned about poor people. It wasn't a consequence of anyone planning it. And so as a teacher, if I'm taking ownership of the idea that I'm working on critical

thinking skills with my students, I'd like to know how do you know? What are the interim measures? What are the things you're putting students through? What kind of projects do they work on? And how are they working in an interactive fashion? And if those things are predictably related to helping people expand their capacity to deliver and understand how to work in a structured environment and in an unstructured environment, I can make the theory line up against what critical thinking looks like. And as a teacher, I'm doing a much better job.

When we have a serious conversation about outcomes, it's at the micro level for individual faculty members over what they control. At macro level for people who are department chairs, deans, provosts, to sit down and be able to define what the course goals are and whole departments to be able to add those things up. For example, "Even though this course is about largely math. It ties into our course that is largely about English in this way." And that is still in the early stages for us institutionally, and as we become more articulate, more profoundly and deeply committed toward owning those kinds of things for our students, we make progress. We're going to become better institutions and have a better and clearer understanding of what the value proposition is as we're trying to make that argument and articulate it against potential barbarians at our gates—regulators and legislators and others who would see the institutions as essentially too expensive, too little return on that investment. People working too little and charging too much because if that's the narrative popularly put forth in the press, we're not doing very much to overcome that narrative.

Provost John Valery White, University of Nevada, Las Vegas:

That narrative does exist. I had a meeting with our local member of the education committee to talk about their big review of the Higher Ed Act. And this is going to be very uncomfortable this summer because the Republicans will do what they've been doing in the House for the last six years, they're going to embarrass universities nonstop and they will argue these points you just summarize. But let me translate the difficulty. Just this morning I was working on a list of things that align with what our legislators have been asking us to do. It includes no humanities. We had a donor give us some money about creative writing so I was able to put that on the list as something we are focused on. I think the message that sends the faculty as priorities shift is difficult.

With that in mind, I want to turn the question a little bit. I like your fiduciary article, I thought it was a very nice way of framing things and I thought it was nice because I think I've done something like that in the

last three years. But how do you get to the fundamental difficulty of the faculty/administrator relationship? I caught one of the NPR radio shows the other day, and I think three callers in a row basically said the problem with higher education is too many administrators. We can talk about that a little bit, but that's the easy answer. We are—we administrators are—screwing this up by having contingent faculty, the whole list down the line, and what's under that at least for me is, that faculty feel that they are fiduciaries of a particular vision and all of these incursions are telling them that they are not the professionals that they meant to be. Or that they believe to be. It's clear to me that the secondary education playbook being played at the post K-12 level here and precisely those faculty were being made to be non-professionals. So if you have a fiduciary argument, aren't you just setting yourself up a long-term argument with your faculty about who has the better fiduciary sort of vision especially when you have to respond to the outside pressures?

Senior Vice President Matasar:

Yeah, that's why the provost job is the worst job in the university.

Provost White:

So the president has to do it too in their job.

Senior Vice President Matasar:

No, the president can say, "Provost, take care of this one, would you?" Fundamentally, the life of the faculty member is different today than it was ten years ago. And we haven't caught up with that announcement yet. And we do a lot that preserves the set of privileges that were built at a time of plenty that will be more difficult to continue to preserve over the years ahead.

Here is another thought exercise. What makes the university a university? And what things could destroy that? To me, the Research 1 University is dependent upon a system that allows subsidization to take place through educational cost borne by students that generate a surplus to fund the research mission of the university in most disciplines that don't have outside funding. That is the thing that is likely to be challenged. The sciences, engineering—places where there's external funding are not going to face the same challenges as the humanities or the law schools or places where there is no external funding for research. As a faculty member, I would ask what would it take for us as a university to preserve our capacity to continue to do research? What

are the sacrifices we might have to make to preserve that thing which makes me different than an adjunct faculty member? That thing that makes me a professional called a “professor” as opposed to a “lecturer”? To become and stay and remain as a professor we’ll have to give up the idea that contingent faculty are bad. Every place I’ve ever been our tenured colleagues are deeply opposed to the exploitation of our adjunct faculty. Even though the existence of the adjunct faculty are the only thing that allows tenured faculty to exist. Recognizing that is going to become part of what it means to be a grownup, for all of us in our faculty role. Second, the idea that there are people called legislators and people called regulators that have a legitimate stake in what takes place in our institutions requires a discussion about our public responsibility. Minimally, if we’re a not-for-profit institution, there is something that was seen in our mission that was about serving a public good and doing a public good, so there are two good things in that. The first is the public good we can help to define by saying, “Education is not a means to an end, it’s an end in itself.” And that’s our job and our responsibility as leaders to explain why it’s important to preserve a full-bore educational mission for our institutions. But the sacrifice of that is to recognize we also have obligations to our students and to their funders—whether it’s a legislature or the government or the parent—that have something to do with their expectations of the instrumental nature of the education. To me, those open, deep, transparent, frank conversations have to take place, and they don’t take place in every school. I can’t speak for you John, but there’s an infantilization of our faculty that takes place in most universities. You know, they can’t sit at the grownup table and talk about finances. They can’t sit at the grownup table and talk about regulators. They can’t sit at the grownup table to talk about bad things. And in that sense, we as administrators have failed because we don’t recognize that our colleagues are not infants and are not stupid.

The transaction cost of having to deal with things in a transparent fashion is painful. But in the regrets category, my regrets are not becoming an open card player much earlier, spending a lot more time walking through the reasoning process about why something is going to take place. At this stage of my personal and professional development, it is incumbent upon me to be a thought leader on those issues. And frankly, I’m glad I’m at a private school because the layer of politics on top of it in public universities is just too damn uncomfortable. It’s bad enough, you know, your board of trustees. It’s bad enough for the group of crazy parents. If you add in a legislature that really, truly does not care about education but truly and really cares about getting re-elected

and making a big splash, you're not having a conversation any longer about real things or having a conversation about what you can do to minimize damage. And I think unfortunately for our public regulation of higher education in our public universities, we've descended into a very ugly space over the last twenty-year period. You know, in this room, Hannah, Joe Knight, and I would say we have a great and deep experience of the University of Iowa. A place when we were there that preserved educational values whether governed by Republican legislatures and Republican governors or Democratic legislatures and governors. It went through storms, in places where there are others who were going crazy, it did not do so; now, unfortunately, it's gone to the dark side. And that to me is sort of indicative of the fact that if that place goes that way, there is no hope for us across most states to see the university as anything other than politicized.

Professor Mary Crossley, University of Pittsburgh School of Law:

I want to pick up with talking about faculty because that's the hat I wear now and sitting in faculty ranks first. There is certainly this feeling of, you know, you are taking away our role in the academy but there is also this feeling of, "Oh my God, we can't do what we need to do," or at least what people are telling us we need to do. So I've heard you say that you regret any of the bad things said about faculty, but I think you also were still standing behind what you say about we've been too faculty-centric in the past. And you have said that faculty, the life of law faculty today, is different now than it was ten years ago. You're prescient a lot of the time, Rick. And so I want to ask you in ten years in a law school that is thriving but that is not an elite law school, what does the faculty look like? How was it different from where it is now? Because at least when I read what you write about the role of technology, I don't know anybody at any of the law schools I've been at who is ready to teach in the way that you described. And so, so how are we going to get there?

Senior Vice President Matasar:

If we were hiring, our faculties would be quite different in ten years. We're not hiring and no one's retiring. There is a really good likelihood that in the ten-year arc that we're looking at, we're going to just be older, lazier, and less willing to change in a lot of schools. That said, there are many places that have already come out of the back-side of that age bubble and are beginning to hire in a quite different way. In the category of "oh that it were not so but it will be" we're going to hire

a lot more clinic-oriented faculty members. Now why do I say that as, “oh that it would not be so”? Because clinical education is expensive, clinical education is individualized, it’s more difficult and it doesn’t do the things that all of us like doing which is to sit in a library and do some research and write some cool stuff about what the law should look like. The character of the law school as a research institution is quite likely to change for a substantial number of law schools. It’s already changing in an implicit way. It will become more explicit in the years ahead and that’s not good. That’s not for the good of the country, it’s not for the good of the legal profession, it’s not for the good of justice that it is likely to occur. In the higher prestige ranks of our law schools, wealth will continue to accrue and the ability to do an education is going to grow. So the research faculty may be supplemented with significantly more allied colleagues who do not have the protections of tenure or even long-term contracts. And I would say if David Van Zandt² were here he’d say Northwestern walked this pathway first. And as likely to say—show for us in the future what a lot of law schools are going to look like which is heavily clinical-oriented with lower priced talent, a core research faculty that will even have greater capacity to conduct research.

Technology is going to take them anyway. And so, whether we as faculty are comfortable with technology will matter much less because our instructional technologies staffs at the university and the redefinition of what it means to be a teacher, that’s going to just happen with or without us. You know, I’ll give an illustration of that. At NYU the law school had teachers as its traditional first year lawyering course, which is a very granular one faculty member to twenty students. Every one of the students who comes through one of these sections has units on financial stuff. The law school is choosing to put together financial literacy as an online component. It will end up doing it for every set of students as a set of materials with competency-based testing that’s going to run along with it. And the faculty are relieved of those responsibilities as teachers.

So who is doing that?

It’s being done by some of the senior faculty and frankly if I had my way some of the people at the business school will end up delivering those content modules. If we were going to be truthful about ourselves, about what portions of our courses are about content conveying and we stripped those out, made them much more unified, clear, straightforward

2. President of the New School, former Dean of Northwestern University School of Law.

it would be an improvement. We could still have high value classroom dynamics going on, but it would be quite different. If you think about the flipped classroom model as it's frequently called, we are going to see that in the law schools. We want dialogue, we want to be freed from any of this conveying information crap and the hiding the ball stuff that we frequently end up doing as part of what the dialogue looks like. We can eliminate the hiding the ball stuff altogether. Really lay out a clear understanding of what are black letter rules in courses and then add higher value things going on in the classrooms. So I think that's going to come—even if our faculty remain the same—because we'll hire some people to go over those content modules and will force ourselves to become more effective and efficient. So we don't have three sections in civil procedure or have two sections in civil procedure and a bunch of adjuncts, you know, doing cohort discussion groups that run along with it.

One more question.

Professor W.H. (Joe) Knight, Seattle University School of Law, former Dean of the University of Washington School of Law:

Rick, because it's one last question, I'm going to make it three.

I think most of us around the room listened to you, have read what you have written, and we think to ourselves: "Wouldn't it be great to have a Rick Matasar as a thought leader in our institutions?" So the first part of the question is: You are like John the Baptist wandering around screaming in the wilderness and not many of us are hearing. How do you become more like John Appleseed and actually think about spreading and getting more people doing some of the things that you are doing now into higher education and into that sort of thought leadership? And along with that, part two of the question is thinking about Mary Crossley's notion with respect to faculty: Do you foresee an opportunity for law school faculty in particular to become more like medical school faculty where indeed they teach in groups as opposed to one single class, and that too might allow us to reach our highest sorts of potentials. And then the final question deals with the institutional aspects. What often happens in the business world is that when industries or institutions want to travel, they get acquired by others. And so what are your predictions with respect to consolidation?

Senior Vice President Matasar:

I don't think there is a hope in the world that I can have much impact on convincing people who are not already part of the choir. Why

do I say that? I'm frequently the entertainment on a panel of like-minded people, and I don't mind that role because it's useful to spur a conversation. But I've long given up the idea that this is about convincing people about things. It's really about laying down a marker to say these are things that we should be thinking about. And I think that's a really important part of our responsibilities in our scholarly role.

I once had this conversation when members of my faculty who said to me, "Dean, you are an embarrassment to our school. The things you say embarrass me with my colleagues because you're out there saying these things publicly about, you know, change and about you know the value proposition and about, you know, we shouldn't have a requirement for tenure" and whatever, you know that was on the list. And I said, "You have to remember that my title here is dean and professor of law. And so as professor of law, I have an obligation as a scholar and as a thinker to continue to say the things that I believe. And you know I can offer up my basis of evidence that supports those things." So I continue to see that as a role that I can take on. I read a lot and I form views about stuff that I read, and I think as everyone I know who is a faculty member if you've read some stuff and you have some views about the stuff, you'd feel compelled to say the stuff publicly either orally or in writing and usually both. So I'm going to continue to do that but, I don't hold the illusion that is about convincing people, but I hold the illusion it is about laying down a marker and someone down the road will pick up something you said and say that was useful or interesting or say that that was a stupid thing. And it's all about the dialogue. OK, second question? Joe was what again?

Medical school model. Yes, so I'm a big believer the collaborative teaching enterprise among faculty would be a more effective and efficient way for us to work with our students. One of the things that I've gotten completely into believing is project based learning as the only sticky learning that takes place. If you look at the taxonomy of what it is to be a learner (you guys have heard me talk about this on other occasions) I think you can largely talk about our job as a law professor as three roles. Content deliverer, drill sergeant, and actual wisdom provider. If you look at the content providing side of the job, lecturer just saying stuff about stuff, you know, here are some readings. We're going to make that more efficient, more effective, when we use technology to do it, you know, build knowledge in some people's heads more effectively doing other things rather than yakking away at people in a room. The drill sergeant part is "did you actually read the case?" "Yellen who is the plaintiff, who is the defendant" all of that is mechanizable also, OK? I mean, we can have iterative exercise. You

can have people go through decision trees. They can play games. They can learn stuff. You can put them in a room with each other and drill each other. That's not a high-end, best-use of faculty. What's the best use of faculty is to force students to teach *you* stuff. So you're clinical teaching right now, Joe I mean, what's the clinical model? The clinical model is essentially, see one, do one, teach one. So that last model, that idea of teaching someone something is the wisdom provided that we as faculty members do. We are better in collaboration with each other, we're better in collaboration with our students, and there's much more for them to learn as they are forced into the role of taking on responsibility. That doesn't mean everyone is a clinical teacher. What it means is that we are imparting knowledge through having people do things and then having them tell us how they've done it, and I think that's going to happen and only can happen in the medical school model or the clinical model or, you know, the effective team teaching model, or anything else that's about collaboration.

The last question was about consolidation. It's just—it's inevitable in the independent school space. It's impossible for the independent law school to survive in a down market, unless it's incredibly well-endowed. I can think of one that is incredibly well-endowed—my former place—you know, they can probably survive an incredible downturn and still manage their own finances. A lot of the other places are not wealthy and they will be in the position where they have to think about alternative structures.

That said, I think it's also going to be true among university-based law schools. It will be some kind of collaborative enterprise that will take place. I don't see them as mergers. I don't see them as acquisitions, although that is plausible that an acquisition could take place of an asset from one university. So let's think about a place in the far west called Seattle and a law school moved from one Washington-based institution to another. Those things are plausibly part of the future. For university-based law schools, especially in a place where its law school is an appendage to a university, the law school is not adding much value. What I do think is going to happen is a stripping of assets from some places and a repurposing of those assets to do other things.

So here's a final thought exercise. If you have excess capacity on a law faculty due to under enrollment, what do you do with your faculty? Well, as a provost, what I think I might do is find an undergraduate discipline in law and repurpose those faculty members from graduate education to undergraduate education until they retired. And I'm going to see internal reorganization as a very likely response. A law school that once had a 300 person entering class that now has a 150 person

entering class, but with no reduction particularly of its faculty has to make up that 150 lost serialized of 450 students some place. And I see doing that in the undergraduate space by adding some law certificates, compliance in the business school, things that completely are natural use of resources that we're not doing in a lot of places. In cities, like New York, Los Angeles, Chicago, everyone doesn't need to have a religion and law teacher, everyone doesn't have to employ a health law teacher. We're not going to have to see that kind of independent contractor status that every school is going to have one of every person on the ship. And so, I suspect that we will see more collaboration of that kind and maybe some shared assets and maybe even shared students. I have this dream, I once called it "national law school" and I had a real serious conversation with the deans that we would put together an East Coast place, a Midwest place, a Southern place, and a California place and share all the back office functions. We would share placement, we would let the students have open enrollment after their first year so they could navigate themselves to where they wanted to practice law, and just sort of see it as a single system. I think that's going to come. I don't know exactly how it's going to come, it might come through a consortium of schools. A kind of a set of like-minded places that have similar profiles, but are not directly competing for students with each other, that would make sense to me. But, I can't tell you the date that will happen.

Thank you.