
RICHARD MATASAR: A RARE AND EXCEPTIONAL LEADER'S CALL FOR EMOTIONAL INTELLIGENCE

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INTRODUCTION

I was honored and delighted to have been invited to participate in this Symposium examining and honoring Richard Matasar's many contributions to higher education. I have the highest regard for Rick. He has been a friend and an admired colleague for more than thirty years. He is an intellectual provocateur, a thought leader, and yet an amazingly well-adjusted, rational, and pragmatic actor. Rarely do we find his combination of talents and insights in any circle, let alone in higher education. I think of him as one of our most important and eloquent voices in the academy.

As hard as it is for me to believe, I have known Rick for more than thirty years. He and I were fortunate to begin our academic careers at the University of Iowa in the early 1980s. Several of us at this Symposium have described that time as a golden age for legal education. Perhaps it was. At that time, a law degree held a relatively unquestioned value and signaled a level of academic accomplishment. During the 1980s, more students, it seemed, saw law school training as a means to realize lofty dreams of intellectual and professional fulfillment as well as economic reward. In addition, law faculty members were valued and contributing members inside and outside the university. Many schools were expanding their faculty ranks. The law school applicant pool was growing and the costs associated with legal education were relatively reasonable. Moreover, employment opportunities after graduation seemed abundant. In the context of that world, Iowa already had it all: it was a highly ranked law school and

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well-regarded institution known for its quality, stability, and success. Having the opportunity to begin a career at such a place was a blessing in many ways.

Despite having many of the things that schools today seem to yearn for (low tuition; engaged students; productive faculty; involved, loyal, and contributing alumni; and a supportive university) the faculty and staff at Iowa were different. No one seemed satisfied to rest on the school's accumulated laurels. Instead, people pushed the school, their colleagues, and themselves, to think deeply and critically about how the law school could become even better. The business world frequently describes this approach as continuous quality improvement. It is a theme in all of Rick Matasar's efforts, including his scholarship.¹

I. EARLY LESSONS

The Iowa Law School had a clear vision about what legal education at Iowa should entail. We envisioned small enrollment and graduate-like classes taught by an engaging faculty. Students would receive integrated legal writing instruction that was incorporated into the substantive first-year courses. Students would also have a rigorous legal research program with hands-on experience in a quality library. There would be multiple credit-hour writing requirements in both the second and third years in recognition of the primacy of the written word to professional success. Finally, the school would demand an active involvement in the life of the institution by every student. This expectation aimed to teach students to develop collaborative relationships, to learn to work together, and to hold themselves and others accountable. There was also a belief that any and everything involving the school and university could be examined and improved. The entire institution was committed to that vision.

Senior faculty members set a tone and standard. They treated younger faculty members as colleagues, respected for our thoughts and ideas. All were accountable for the success of the academic enterprise. Nearly everyone at Iowa taught a small section writing class. In those classes, the challenges of teaching legal research and writing were incorporated into the substantive first year course. Imagine twenty to thirty students with three to five writing assignments each semester

1. See, e.g., Richard A. Matasar, *The Canary in the Coal Mine: What the University Can Learn from Legal Education*, 45 MCGEORGE L. REV. 161, 182 (2013) [hereinafter *Canary in the Coal Mine*]; Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y.L. SCH. L. REV. 465, 473 (2005) [hereinafter *The Rise and Fall of American Legal Education*]; Richard A. Matasar, *Skills and Values Education: Debate on the Continuum Continues*, 46 N.Y.L. SCH. L. REV. 395, 397 (2003).

where written feedback and multiple student-faculty conferences were the norm! There was a premium on classroom excellence and accessibility outside of class. Accordingly, faculty members were present and engaged from early morning to late evening, most with open door policies that encouraged students and faculty to drop by for conversation.

Even with the high demand on time and energy required of teaching, our Iowa colleagues also produced a steady and substantial volume of scholarship. Perhaps more importantly, senior faculty members were not only willing to review draft efforts by younger colleagues, but they were also willing to ask young colleagues to review their own works! In addition, faculty members sat on school and university committees, participated in Continuing Legal Education efforts, and still found time to participate in community and national legal educational events and gatherings. Our senior colleagues at Iowa initiated young faculty into our profession by role modeling behaviors that were expected in that institution. The faculty even taught us a few things about grace. Senior faculty often hosted dinners or other events in their homes.

In such an environment, it was easy for young faculty members to develop. We had exceptional role models as colleagues—people who worked as hard if not harder than we did; people who were unafraid to challenge or to be challenged; people who valued engagement over solitude, who saw one person's success as the institution's success, whether in the classroom, in scholarly achievement, or in service to the broader community. We all saw our roles as educators and community members, working to build an even better institution.

Iowa Law faculty meetings were also instructive. If we are to believe in self-governance, faculty gatherings should offer the opportunity to assess, examine, critique, and then address matters of importance concerning the school. I dare say that few of us have experienced that model in a faculty meeting these days. At Iowa, those meetings took on a different air, encouraging frank and open debate, if heated at times. Despite the meeting temperature, discourse was always respectful and forward-looking. One could agree or disagree with another colleague to an extreme, win or lose a vote, then take that "opponent" out to lunch. The wisdom of respectful engagement, focused on improving the institution, was not lost on Rick and me as young faculty. We came to understand the complexity and nuance involved in all human relationships, especially those in tradition-bound academic institutions.

How many law schools or universities today can confidently

describe their cultures this way? Rarely have I seen faculties other than Iowa operate so well individually and collectively. Long after Rick and I left, we would laugh and lament about our efforts to create the Iowa culture at our then-current school. I believe that our time on the Iowa law faculty taught both of us much about the best aspects of individual and institutional self-awareness and self-management.

At Iowa, Rick quickly established himself as an exceptional teacher and scholar—creative and imaginative in both the classroom and in his early scholarship on civil procedure and federal courts. He impressed so many of us as someone deeply thoughtful but always in control of his thinking and questioning. Rick’s clear-headed and independent thinking was accompanied with a calm, self-assured, but still humble manner. When colleagues, myself included, tended to get agitated, louder, or more strident during conversations, Rick proved to be a calm voice of reason during those brewing storms. He listened carefully and respectfully; he waited for opportune moments to speak; then, he would challenge the convention with an example that required people to dig deeper. He did not let charged issues become emotional problems. He could easily offer some “thought experiment” that could take the best of multiple points of view and work them into an illustrative example that both illuminated and developed thinking around whatever issue had caused a frenzy. His was a type of leadership that people quickly recognized and admired.

It came as no surprise when he left Iowa to become a law school dean. Although we saw each other less frequently, when we did get together, I soaked up his observations about the challenges of becoming a dean and leading a law school. When I became a dean, he and I would laugh about our youthful naiveté, having imagined that every law school was like Iowa, or at least just one leadership step away from what we thought was a utopia.

II. HOW ONE SEES THE WORLD MATTERS

In *Emotional Intelligence*,² Daniel Goleman argues that having an understanding of one’s own emotional development and recognizing that in others is more important than intelligence. In higher education, we not only prefer, but also demand that our leaders have academic intelligence. At times, we forget the importance of demanding an equal amount of emotional intelligence. Goleman outlined four necessary traits for emotional intelligence: self-awareness; self-management;

2. DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE* xi–xiii (1997).

empathy; and effective communication skills that help to build relationships.³ Each of those qualities was seen as essential to any true change in behavior and action.

Self-awareness is not the same thing as self-confidence. Awareness comes about from having a realistic sense of self-confidence.⁴ Both individuals and institutions need to understand their strong points, but also recognize and work on their less strong aspects. By acknowledging our shortcomings, we can then take the first steps toward improving: managing ourselves and our organizations better. Goleman wrote that self-aware people are also aware of their own feelings and that those feelings can make one emotional. Being aware of this fact can help an emotionally intelligent person manage that emotion.⁵ I have seen that type of self-awareness in so many of Rick's efforts. That same insight runs clearly through his writings about higher education. Several of his articles urge those of us in the academy to look inwardly, examine our circumstances, and become more self-aware. The world around us has changed and our institutions need to re-invent themselves by adapting. We must ask more of ourselves and schools. Self-awareness leads to thoughtful and well-constructed plans of action, including better self-management, the second aspect of Goleman's emotional intelligence.

Rick's and my early experience at Iowa gave us a keen appreciation for the value of high engagement, community encouragement, and constant efforts to improve. That formula leads one to really believe that any challenge can be tackled if you can dream of an approach and work hard to make it happen. In the years since our time in Iowa City, we have both learned how very challenging it is to get our colleagues in higher education to tackle those challenges. We thought it would be easy to re-create that Iowa experience of an engaged community at other institutions. We have learned that encouraging and empowering people and institutions to advance educational or institutional goals is true heavy lifting.

Sadly, many of our colleagues and institutions do not seem willing to rise to that task. Many continue to act as if we had blinders on—resistant to self-analysis, let alone awareness and change management. We are unrealistically hopeful (next year's enrollment numbers will change things) or quick to blame circumstances on other factors (*U.S.*

3. Daniel Goleman, *How to Be Emotionally Intelligent*, N.Y. TIMES (Apr. 7, 2015), http://www.nytimes.com/2015/04/12/education/edlife/how-to-be-emotionally-intelligent.html?_r=0.

4. *Id.*

5. *Id.*

News & World Report's latest ranking). Rick's writings push us to challenge those hopeful-but-unrealistic beliefs that things will return to "normal." Declines in student enrollment are not likely to change in the short term. Student demographics continue to evolve. Budget tightening cannot begin and end with cuts to the budgets of everything and everyone *except* those areas most dear to us.

Over the years, Matasar has challenged the myths we tell with facts. The simple truth is that university and law school communities must recognize the changes in the world around us. Most of our graduates, for example, do not graduate and proceed to work for a large law firm. More and more of our students see the law degree as a means rather than as an end point; today's students are more entrepreneurial and less place or position bound. Like Rick, I am disappointed that much of today's law school narrative starts by failing in critical self-analysis. We refuse to examine those underpinning strengths and weaknesses in our schools. We do not ask probing questions about internal matters such as pedagogical models or business operations. Is there something more than appellate case study? Are there other, more useful types of output measures than an at-graduation and nine-month placement rate? Could we create interdisciplinary clinical opportunities that would involve colleagues from other areas of the university? Are partnerships with groups and organizations beyond the university desirable? Are they possible? Most importantly would any of these efforts better prepare legal professionals for the world they will enter?

We seem willing to defer to the administration any and all questions about our business models of operation. What might new models look like? How do we listen better and improve the dialogues between law schools, bar associations, and the bench? What do our actions communicate to the public interest and business communities? Only recently have some begun to discuss the direction of the profession given the use and perhaps overuse of student debt. Anyone who reviews Rick's impressive body of written work examining the evolution of legal education cannot help but think broadly about the depth of his commitment to higher education. How many times have so many of us been led through one of his "thought exercises" as a means of illustrating a specific point? Often, those thinking experiments helped the then-existing dialog move to a different level of analysis or appreciation of the challenges involved in addressing a matter. In this regard, his storylines have helped many of us listening to see issues that we may have ignored or missed. In *The Rise and Fall of American*

Legal Education,⁶ he concisely describes the dilemma law schools face in the classroom in demonstrating the value-addition brought by legal training.

He notes that law schools rarely describe what law is; instead, so many of our classes focus on the context in which the laws were created. While context is essential to any analysis, Rick rightly notes that law schools have failed to make the case for our continued and almost exclusive use of appellate case study. The value of a legal education is far too broad and much more complex than what schools say and offer. Unfortunately, at times his analysis and critique seems to fall on deaf institutional ears.

We do not appear willing or able to describe the law school value proposition in any way other than to say we teach critical thinking. We say little about the business of the practice of law. We say even less about the consequences of acting with character and integrity, often casting those discussions to a class in professional responsibility, someone else's job to address. Worse, we tend to be dismissive of those who criticize our inability to experiment with new educational approaches.

Matasar notes how little we emphasize the importance of building, nurturing, and mentoring relationships in law school. Unlike business schools, law schools create few opportunities for true team and collaborative work outside clinical courses. Even though our profession is one built strictly around interpersonal interactions, few law school courses pay homage to creating relationships. Indeed, the case method does everything it can to focus only on the failed relationships. We hardly ever pay any attention to the skills necessary to create good relationships: listening carefully and with some degree of open-mindedness; thinking critically about possible approaches *before* responding thoughtfully and respectfully. How is a student to learn these skills if we do not provide that modeling in law school?

His *Rise and Fall of American Legal Education* and *Canary in the Coal Mine*⁷ articles push readers to go beyond legal education's lack of answers to the value proposition question to force us to think about the results for universities that fail to seek continuous improvement by analysis, experimentation, and adaptation. What happens to the recipients of our efforts: students, the profession, and the general public? He notes that we academics have a hard time showing or measuring educational progress. He asks why potential students (as

6. *The Rise and Fall of American Legal Education*, *supra* note 1, at 467, 496.

7. *Id.* at 489–97; *Canary in the Coal Mine*, *supra* note 1, at 206–08.

customers) and society in general (as the consumers of our product) should embrace our existing model and offerings. Where is the experimentation, the continual search to improve?

Goleman wrote that the second aspect of emotional intelligence was self-management. The sooner one acknowledges one's shortcomings, the sooner one can begin taking steps to address them.

Whether in his personal interactions or in his scholarship, Matasar provides exactly the type of respectful but analytical engagement that our education industry so desperately needs to hear, consider, and address. He pushes us to consider the difficult and even develops brave new ideas for us to consider or implement.

III. TOMORROW

For much of this twenty-first century, we have heard stories about the academy that paint a darker and less hopeful picture of legal education. We are told that law school is too expensive, that the best students no longer desire to go to law school, and that people in general question the value of a law degree. Economists suggest that the law school business operational model is untenable. Technologists assert that new innovations coupled with the millennial generation will make traditional legal education irrelevant to the world sooner rather than later. Schools, and especially we faculty members, struggle with this changed landscape. We have more demanding and critical customers (current students). The applicant pool for potential new students consists of a much more questioning and suspicious market (is law school a good investment of time and energy?). Our professional counterparts are increasingly critical. Expressions of dissatisfaction come from bench and bar about law graduate preparation. Law firms and public interest groups alike report that their clients are unhappy with the crop of young colleagues ("too high priced to know so little"; "all they seem to know is how to say no"). Even our alumni get in on criticizing the institution ("all they want is more and more gift money"). This wave of criticism is enough to make even the most positive of us turn morose and negative.⁸

With few exceptions however, law school and university responses to these criticisms have been to ignore, pine for days gone by, or to seek small and incremental changes in their operation. Throughout these past

8. I do like the approach Rick described in his piece, Richard A. Matasar, *Ya Gotta Pay the Pig*, 37 U. TOL. L. REV. 109, 110 (2005) (one dollar into the pig for each negative comment; no negotiation, no explanation). Perhaps this approach would encourage more thinking before speaking, the first step to trying to solve a difficult matter.

fifteen years, Rick Matasar has toiled in the field pointing out the reality of these criticisms and our collective shortcomings in failing to address them. He has urged schools and their universities to recognize the changed world and act to create new and different approaches and opportunities. He possesses the highly analytical and evaluative skills that we in the academy value. His calls to action are so well done that we cannot and should not ignore them. He is blessed with passion and persistence—I do not believe that he will stop urging us to consider how higher education can adapt and improve. It is those traits that make me hopeful that more than a few of us might find inspiration in his words and the energy necessary to change.