
SAVING THE CANARY

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INTRODUCTION

I still remember my introduction to the world of academic administration, now more than fifteen years ago. I had recently been named Associate Dean for Academic Affairs at the University of Connecticut, and was attending an American Bar Association conference in Grayling, North Carolina. There, I was to gain training on how to perform my new job. I had a wonderful guide in Dean Hannah Arterian, who was then Associate Dean for Academic Affairs at Arizona State. Other than her, I knew no one in the audience. And as I sat listening to speaker after speaker, I began to give in to despair. It wasn't as though the advice I was receiving struck me as ill-conceived. To the contrary, one dedicated professional after another provided useful tips about how I could use my new position effectively to improve my law school and the education provided to my students. No speaker doubted that he or she was engaged in meaningful work. But, alas, no one sounded like he or she was having much fun. That is until the final presenter came to the podium. I still remember his opening pitch, which went something like—"all we have heard is well and good, but" He then offered an inspired approach to running a law school (he was already a dean) that made my heart sing. His theme was the idea of unleashing the power and creativity of the faculty rather than managing to rules and scarcity. And he laid out a series of concrete steps he had taken to do just that. This final speaker, of course, was

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Rick Matasar. I have been a fan ever since.

I admire Rick for many reasons, but in this Essay I will stick to just two. First, Rick has reminded legal educators relentlessly, some might even say obsessively, that law schools have a strong moral obligation to deliver economic value to our students in exchange for tuition dollars. This is not to suggest that Rick is any less proud than the rest of us about the intellectual growth we foster in our graduates. But in speeches at deans meetings,¹ in an array of well-reasoned articles,² and through his pioneering work with Access Group, Rick tellingly emphasizes how many students graduate with significant debt and how obligated we are to position them to pay it off. Second, long before we hit the dramatic downturn in law school applications, Rick sounded a clarion call about the unsustainability of the law school business model for schools without large endowments or significant state support. He wondered, as we all do now, where the funds would come from to continue providing high quality education when the tuition increases common in the 1990s were no longer possible.

Law deans everywhere are now innovating to answer Rick's question through building new programs to reach new audiences, forging partnerships across campus to create efficiencies, and paying far more attention to minimizing costs. But it will surprise no one to learn that despite a potential small rebound in applications, law schools are at the beginning, not the end, of a period of dramatic change. If Rick's analysis is correct, and I am assuming here that he is on the right track, law schools in the near future will look very different than they do today.

In this Essay, after only the briefest summary of the lessons I attribute to Rick, I offer preliminary reflections on two questions these lessons raise. First, given the looming issue of a breakdown in our business model, why has it been so difficult for law school administrators and faculties to innovate and stay ahead of the curve? My point here is that the competitive posture of law schools and commendable commitments to academic integrity are much more to blame than concern for self-interest or a general reluctance to change.

1. See Paul Caron, *Is the Law Professor Gravy Train Over?*, TAXPROF BLOG (Jan. 20, 2009), http://taxprof.typepad.com/taxprof_blog/2009/01/is-the-law-professor.html (“We should be ashamed of ourselves. We own our students’ outcomes. We took them. We took their money. We live on their money And if they don’t have a good outcome in life, we’re exploiting them. It’s our responsibility to own the outcomes of our institutions. If they’re not doing well . . . it’s gotta be fixed.”).

2. See Richard A. Matasar, *The Canary in the Coal Mine: What the University Can Learn from Legal Education*, 45 MCGEORGE L. REV. 161, 206 (2013).

Second, I will highlight how current fiscal challenges risk blinding us to the even scarier questions involved in keeping legal education relevant in a rapidly changing landscape. The need for contemporary relevance challenges wealthy schools as well, and, although financial pressures vary, even many of the strongest schools have their eye on enrollment and rankings at the expense of true innovation. My emphasis here is that the Socratic method, the focus on appellate cases, and the general focus on “thinking like a lawyer” gave legal education a head start on the Internet age. But a head start doesn’t help much in a marathon, and our charge now is to invent a second, or, depending on one’s attitude toward co-op and clinical education, a third act. We owe our students and the country our best efforts if we are to do our part to ensure that democracy and the rule of law remain the dominant tools of social organization for the twenty-first century.

I. WHY THE CANARY?

It’s hard not to admire Rick’s turn of phrase observing that law schools resemble the canary in the coal mine because downward pressure on tuition increases, with potentially harmful consequences, is hitting law schools just a few years ahead of when it will batter our partners around campus. Yet faculty members throughout the country wonder why things seem suddenly out of control.

Here’s how I describe the situation to my colleagues. First, and this is something left out of unsophisticated stories in the press, it’s wrong to evaluate the cost of law school (or higher education) simply by measuring the rate of tuition increases against the rate of inflation. Simple math illustrates that because law schools must discount tuition to provide financial aid to students who need fiscal help and to students who are offered aid at rival schools, a 5% increase in posted tuition will never equal a 5% increase in revenue to the school. Add to this the higher levels of merit-based aid now being awarded and widespread declining enrollments, and we can safely predict overall tuition revenue at many law schools is declining, despite steadily increasing tuition rates. We will soon see average debt levels for students going down as well.

Second, let’s assume for the moment that law schools were able to continue to increase tuition revenue at the rate of inflation. Leaving aside any losses to financial aid, suppose that a tuition increase of 3% is imposed. Now consider that 80% or more of many law schools’ expenses are devoted to personnel salary costs. So if a law school chooses to provide raises to its faculty and staff at the same 3% rate as it increases tuition, 80% of the increased revenue from higher tuition will

immediately be earmarked to cover the raise costs (this assumes the budget was roughly balanced at the start and student enrollment stays constant). Before the current enrollment downturns, most law schools also paid roughly 20% of tuition revenue to the university. That means all of the new money from the tuition increase is already spent (not to mention increased fringe benefit costs) before the dean and faculty can spend a dime on new programs such as enhanced career services; clinical offerings; new faculty in key areas; student activities; campus events; or alumni/ae functions. And, this neglects the even graver problem of funding major campus repairs or constructing a new building. Of course, many law schools receive generous support from university coffers, graduates and friends, or state budgets. But you can see that without such support the economics of law schools demanded steady growth in tuition and student numbers. Ultimately, as Rick taught us, this had to become unsustainable. So at the end of the day the question for many law schools is not whether change will occur but what the change will be.

II. WHY NOT ADAPT?

The story of changing markets is the story of America, and no obvious reason exists why any part of higher education should be immune from transformation. But if law faculty members in some places are too slow to grasp changes in our business model, some university leaders can be too quick to assume that faculties are stubbornly resistant to change. Instead, most faculties, and the law deans who serve them, have a strong intuitive grasp of why certain changes, such as increased teaching loads or semi-coerced retirements, may provoke unintended consequences whereby the cure is worse than the disease.

Two overriding constellations of forces now hinder the kind of innovation that will inevitably occur as economic pressures intensify. First, institutional competition between one law school and another impels a cycle of spending in which it would border on suicidal for any one school to move too swiftly to bring costs in line with revenues. Schools forced to do so because they have no state, university, or philanthropic support will find themselves dancing on very thin ice. Second, those pushing for needed changes are often quick to forget how readily invention is likely to be read as corruption rather than improvement. Hiring professors in roles beyond the tenure track; mixing international students into J.D. classes; offering law courses to non-lawyer professionals such as compliance officers; or teaching some law in online formats are all examples of changes that may be seen as

purely budget driven rather than an extension of the law school's core mission. Faculty members can be enlisted in the change agenda only after innovators grasp the significance of agreement on core values towards which scarce resources will be allocated.

Here's why. Cultural and institutional norms that have been built over generations leave faculty members understandably proud to be part of a law school community. Security of position in the face of administrative pressure; academic freedom to control classrooms and research; faculty control over curriculum, hiring, and promotion; and democratic decision-making about life on campus stem from the bedrock institutional values that have made U.S. universities the envy of the world. We want our faculty members to refuse to award high grades to students not performing well, even if low grades are an obstacle to boosting the school's post-graduate employment totals. We don't want any student to get special favors, even if her parents have potential to be major donors. These sorts of ethical guidelines are easy to grasp. Yet academic leaders seeking change often overlook how colleagues see even more benign change efforts as little more than the collapse of standards. Many law schools, for example, afford international students from non-English speaking countries additional time on in-class exams within LL.M. programs. What should we make of a proposal to do the same for J.D. students? Would opening some J.D. courses to undergraduate students be an extension of our teaching mission or a watering down of our commitment to professionalism? If inertia is to be overcome, academic leaders must remind faculty members that the specific practices that support our deepest values were built carefully over many years. We cannot allow these practices to be seen as the equivalent of the values themselves so that a threat to one is viewed as an attack on the other. Indeed, the more cavalier leaders appear to be about embracing change, the more tightly our faculty colleagues will cling to old ways.

Our task in the years ahead is to build new practices that nourish our values under new conditions. We must create a culture of excitement about the law school of the future rather than a culture of slow dread about the collapse of the law school of the past. This cultural challenge, far more than faculty members fighting for perks or resisting new ideas, is the thing that keeps law school deans up late at night.

A. *The Structural Significance of U.S. News and World Report*

Few things are less appealing than law school deans whining about the insidious effects of law school rankings. I will try not to do so here. So let me start by acknowledging that law schools ought to be accountable for delivering on our promises. It's a salutary development that law schools have dramatically improved our communications with applicants concerning the quality of law school student bodies and the track record of our graduates in terms of employment and bar passage rates. Rankings have hastened this success. Moreover, and sometimes overlooked, the current ranking system has protected the value of research against short-sighted calls to cut tuition costs by increasing teaching loads and jettisoning time for scholarship. Because twenty-five percent of the ranking comes from survey voting by legal academics, widely read, faculty-authored publications are crucial to each school's success. In the end, this redounds to student benefit because it improves teaching quality and makes the academy a place that attracts first-rate lawyers with ambition to influence the broader community.

Everyone knows, however, (and everyone decries) that many aspects of the current ranking system distort decision-making at many law schools. I will mention just three that are particularly troublesome.³ First, *U.S. News* rankings have no factor that specifically measures a law school's curriculum or broader educational program.⁴ Voters across the country know little or nothing about the courses and clinics (or co-ops!) at other schools. Thus, the safest thing to do is keep the program at your law school looking enough like those at other schools so as not to engender notice. You can't be rewarded for innovation without massive investments in communicating your new approach to the voting audience. Indeed, it's not clear whether such communication is even possible, since the limiting factors include not only money to transmit

3. Although this has no impact on law school decision-making, another obvious flaw in the *U.S. News* methodology is the failure to randomize the order of schools in the survey. Schools are grouped every year by state, and thus a school such as Quinnipiac is every year paired in a group with Yale and the University of Connecticut. Voters now believe Quinnipiac is the weakest of these three schools. Familiar cognitive effects make it likely that Quinnipiac, a school for which I have high regard, suffers every year by receiving lower vote totals than it would if voters were making different comparisons.

4. The peer survey does encourage voters to consider "all factors that contribute to or give evidence of the excellence of the school's J.D. program, for example, curriculum, record of scholarship, quality of faculty and graduates." Paul Caron, *Seto on the Proposed Boycott of the U.S. News Rankings*, TAXPROF BLOG (July 28, 2008), http://taxprof.typepad.com/taxprof_blog/2008/07/seto-on-the-pro.html (comment by Jason Solomon). But since it can hardly be expected for voters to conduct research on all the schools, the overwhelmingly salient factor in the voter's mind is faculty quality based on publications.

your message, but the audience's attention span to absorb any new approach. But if you differ from others without selling your approach, prospective students, who, unlike *U.S. News* voters, have time to review your curricular offerings, may be fearful of choosing your school over others.

Second, *U.S. News* does not factor diversity of student body, faculty, or staff into its calculations. Given that success in the twenty-first century economy depends upon the ability to work with others who don't look like you, it is scandalous that law schools don't pay a rankings price for remaining homogeneous.⁵ Finally, and this is the most stunning to those running other businesses, schools are rewarded in the rankings simply for spending money on students. Imagine an office manager in a law firm telling the managing partners—"great news: we were able to get our clients to absorb a ten percent fee increase so we can buy new furniture for the conference rooms." Not bad so far but consider this twist. "What was wrong with the old furniture?" Answer—"Nothing at all, but by spending money in this way we can brag about our larger budget." Crazy, yes. But that's how *U.S. News* incentivizes law schools to raise tuition and increase spending.

Now I promised I wouldn't whine about any of this. So please don't read me as suggesting that the flaws listed here are somehow a force of nature permanently damaging to us all. To the contrary, I focus attention on these *U.S. News* factors precisely because they are deeply revealing about the current state of legal education and what we must understand to surmount barriers to change. How can we stand in front of classrooms offering proposals for how the legal system should regulate financial institutions or the environment if we have no grasp upon the forces that dominate our own universities?

What then can we learn from the current situation? We have understandably relied on the wisdom of applicants to choose the law school best for them and of employers to find the graduates best suited to their needs. It turns out, however, that using consumer choice as the vehicle to determine quality is a tricky business that requires new approaches in a world drowning in consumer information. Although consumer decision-making is generally a powerful force that improves the quality of products and services available to us all, it unravels when the consumer cannot fully grasp the value of the product without first

5. See Claire Cain Miller, *Why What You Learned in Preschool Is Crucial at Work*, N.Y. TIMES (Oct. 16, 2015), http://www.nytimes.com/2015/10/18/upshot/how-the-modern-workplace-has-become-more-like-preschool.html?_r=1.

being trained to appreciate it. Imagine a neophyte walking into a fancy wine store and being plied with advice on what wines to buy. If the store's owner starts explaining that this wine is dry and that one has a nutty bouquet, the customer may easily get lost. But if there's a chart on the wall ranking the California Cabernets from 1 to 100, who would be surprised if the buyer chose the highest ranked wine he could afford? And who would blame the wine manufacturers for trying to grow the grapes or cork the bottles in whatever way the ranking agency found most appealing? But then if the cost of the premium grapes began to rise and business consultants identified the need to shift to lower cost grapes, the wine manufacturers would find themselves in a terrible bind. Switching to cheaper grapes might make sense, but not if every customer who walked into the wine store now chose a wine made with the more expensive brand. Pay too much for the grapes and you risk losing your profit margin. Pay too little, and you risk losing your customers. And it doesn't matter if the cheaper grapes might actually be preferable to some customers because these customers will never sample your wines or know what you have to offer. Unless you please the wine rankings system, you will be unable to thrive. A similar dilemma faces law schools trying to change.

It takes a lifetime to understand the value of an educational experience. How many times have you had a professor who seemed to be teaching you little and then later in life you looked back and realized how much you had learned? The qualities that educators prize cannot be captured in sound bites. Accordingly, it is foolish to pretend as if law schools operating in a competitive environment can function effectively without some sort of translation mechanism, like rankings, to help students figure out what's best for them.

This means that rather than fighting rankings we should recognize the problem of designing better rankings as a paradigmatic case calling for regulatory invention. Such cases will soon come to dominate many sectors of the economy where straightforward consumer choice doesn't work. Consider the early example of regulating insurance rates to prevent insurance companies from lowering premiums below the point where the business would likely turn a profit. Or consider the many attempts now in health care to develop quality ratings indices for doctors and hospitals because patients cannot possibly evaluate doctors from afar. The rankings challenge is not an external force dropped upon us by an uncaring magazine. It's a problem deeply rooted in the contemporary conditions of competitive markets. We should stop decrying it and work together to solve it.

In the meantime, external calls from angry pundits wondering why

law schools don't change will do little to alter the fundamental situation. *U.S. News* voters respond well to certain kinds of faculty members. So law schools are going to be understandably reluctant (they were already narrow minded on this) to hire graduates of lower ranked schools. Consider how hard it is now to get a teaching position if you have attended any but a small number of law schools. This, of course, further entrenches the rankings. Voters know little about curricular innovation, so it's risky to spend money there. Voters prefer the expensive clinic to the less expensive externship. Voters understand the value of bringing Supreme Court Justices or Ivy League professors to campus far better than the impact of successful, local practitioners. So it's smart to chase the big names. And prospective students and prospective employers know little about any law school except the value of its brand name. So a dean and faculty would be fools indeed to label all this nonsense and bet exclusively on an alternative vision. It's not clear, of course, that hiring non-Ivy trained faculty, spending less on clinics, or bringing more local speakers will move schools toward stronger programs. What is clear is how little money or time there is to experiment on alternative approaches after trying so hard to pursue the rankings agenda.

No single path out of the rankings trap is readily apparent. Although I confess it's easier to carve a bold path when you have something such as our co-op program that is sufficiently distinguishable to be readily grasped. I can't imagine law schools adopting a salary cap that would prevent us from bidding for faculty members at rival schools, and I can't imagine the Department of Justice happily signing on if we did. The same logistical and legal problems would doom agreements to limit financial aid awards. So there are strong impediments to the obvious measures schools can take to reduce costs. But sooner or later we will figure out ways to re-establish fiscal balance because there is no meaningful choice. Imagine being at the front of a large group running swiftly over a cliff. You can't stop because you'll be trampled. But you can't keep going because you can't fly. So you have to slow down and hope the group slows with you just in time before you go off the precipice. And the best way to do that is to shout as loud as you can that the cliff is up ahead. That's one thing Rick Matasar has done for all of us.

B. When Formalism Fails

Our generation of legal scholars includes many who celebrate the indeterminacy of language and the desirable role judicial discretion plays in steering the law in a positive direction.⁶ From our embrace of good faith obligations in contracts to our support for reasonableness approaches in torts and elsewhere, we have introduced countless students to the ways that rigid rules often interfere with larger goals and purposes. Imagine how antiquated a law firm would look if it awarded bonuses purely on the basis of hours billed without regard to junior attorneys' work speed or quality. Yet as we contemplate the best ways to run our own institutions, the virtues of hard and fast lines suddenly become more salient.

Consider the well-received, and in many ways desirable, image of academic integrity. Decisions made in the course of operating a university are to be made on academic merit and not in response to business or fiscal concerns. Of course, this does not apply to all decisions. Setting tuition usually involves business leaders as well as professors. But when it comes to selecting students, planning curricula, grading student work, or conducting research and scholarship, key decisions are to be made by those well-trained in the relevant disciplines.

This sort of academic integrity provides the soul of the modern university. All of us would be appalled at the idea that a parent might offer the dean a cash payoff to the school to arrange for her child's admission. If anything it would be even more disgraceful for a school to arrange for high grades for the son or daughter of a prominent alumna.⁷ We don't want the managing partners of the three largest firms in our cities telling the faculty what courses to teach. And we would be most disgraced of all if faculty research was expected to produce results most pleasing to a law school's biggest donors. Fortunately, I know no deans who have ever suggested such corruption to their faculties.

But make no mistake—those of us privileged to lead law schools must pay attention not only to what we say, but also to what our colleagues hear. When we invite a prominent graduate to deliver a

6. For two classics see Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1707 (1976); Frank Michelman, *Law's Republic*, 97 YALE L.J. 1493, 1529 (1988) (citing Drucilla L. Cornell, *Institutionalization of Meaning, Recollective Imagination and the Potential for Transformative Legal Interpretation*, 136 U. PA. L. REV. 1135, 1202–04 (1988)).

7. Law schools are spared one of the most insidious pressures upon academic standards. *U.S. News* rewards undergraduate schools for high graduation rates within a set number of years.

speech on campus, our admissions committee might wonder how to handle applications from those close to our honored guest. If we ask to be informed if students with VIP connections are struggling academically, people may be nervous about enforcing standards that produce the struggle. If we are fortunate enough to partner with a donor who endows a chair in a certain field, our colleagues may worry that the faculty member's views will be subject to donor veto. And when we talk about "modernizing" the curriculum, some on campus will see this as code for catering to crass forces, or worse, a call to dumb things down. When I seek to convince my colleagues to spend some first year credits on surveying the nature and structure of the legal profession, I see this as an academic enhancement. But I must take care that it doesn't come across as abandoning hard core law for softer items.

The good news is that most deans understand these dynamics and heartily reiterate our adherence to basic academic values so as to reassure the campus that there will be no caving to corrupting influences. The bad news is that such reassurances will be unpersuasive to those who see purity as the only standard and insufficient for those hoping to define meaningful boundaries once absolute walls have fallen away. The problem is that the black and white lines that seemingly shield universities from financial pressure cannot be persuasively articulated to audiences we have trained so well to see nothing but grey.⁸ Many universities are quite open about offering admissions preference to children of alumni/ae, and still more actually do so. Law faculties readily consider the existence of grade inflation at other schools and what impact this has on the employment prospects of their graduates. Because contributors are virtually always forbidden to have a role in selecting faculty who will benefit from donated funds, some search committees might actually overcompensate when considering who might be the best candidate for a chair. And, of course, law schools considering curricular reform are hard pressed to draw sharp lines between adapting to contemporary aspirations of law as a profession and responding to immediate demands of employer communities that may de-emphasize the long run career prospects of our graduates.⁹

8. For my own contribution to such training (written with my friend Michael Fischl), see generally RICHARD MICHAEL FISCHL & JEREMY PAUL, GETTING TO MAYBE 21–105 (1999) (discussing how to train yourself to see ambiguity in law and facts).

9. This problem is further complicated by the tendency of many employers to lose sight of the ways that a strong theoretical background may be the most important thing law schools can provide to ensure practical success. See Jeremy Paul, *Theory Makes Successful Lawyering Possible*, N.Y.L.J. (Apr. 21, 2014), <https://www.northeastern.edu/law/pdfs/news/j.paul-nlj-4.21.14.pdf>.

How do most academic institutions handle the moves down the slippery slope that such examples suggest? We do so very carefully, and we talk about them as little as possible. That's because everyone has an image of the ethical dean who stands firm and makes no concessions to external reality.¹⁰ But what would it be like to openly describe an academic institution that hung tough on core principles but was flexible and bended when necessary? We don't have a clear and proud image of academic integrity that says to the dean—keep out except when we need you to butt in.¹¹ And this, of course, is just a subset of the pervasive problem that our cultural model of ethics is one built on rules—thou shalt not—rather than one built on judgments.

And so now we return to the second powerful reason why law school faculties understandably hesitate to embrace Rick Matasar's clarion call for reforms based on dramatic changes in current financial conditions. Faculty members see it as their job to resist any talk about financial pressures, when such pressures constitute the endless refrain of administrators. Faculties are proud of the many walls they have built to keep control over institutions and to leave it to deans to worry about external constraints. Their view differs little from the journalistic culture that finds it appalling for an editor to mention an advertiser or from the best standards in medicine that would frown upon a doctor being asked to consider one drug over another because of a hospital's relationship with the manufacturer. It's a desirable view of ethics that depends upon the strength of purposefully constructed ethical walls.

Those of us who believe such walls serve core values cannot stress enough our commitment to preserving the integrity of academic judgments. If our faculties see us as blind to what they wish to preserve, debates will descend into rhetoric pitting commercializing modernizers against recalcitrant resisters. What many deans fear may be happening, however—not just in law schools, but in many sectors—is that economic conditions have rendered the old walls vulnerable. The line between news and advertising, for example, has grown steadily blurry. We are heartened by what seems a greater consensus than ever that certain ethical breaches are simply unthinkable. Conflict of interest rules, for example, are becoming a standard aspect of running most

10. Of course, not everyone wants such a dean. I recall a particularly awkward conversation several years ago when a graduate asked me to resign on grounds that the law school couldn't afford to suffer to allow me to hold on to my integrity.

11. Indeed, we can imagine effective deans not only interfering to encourage faculty flexibility in the face of an overly formalistic approach to ethical standards, we also count on deans to preserve ethical standards when anyone in the community is tempted to cut ethical corners.

large organizations.¹² Yet we note that even the word “breach” imagines crossing of a line, and we aspire to an ethical vision with a new metaphor for what it means to go astray. Law schools need to generate excitement about how to preserve and even deepen our commitment to mission, or we will spend every day explaining why any proposed change doesn’t take us one step down a slippery slope towards an unattractive future. Nor is this imperative limited to schools beyond the wealthiest circle. The high costs and aspirations of running a wealthy school impose pressures that should not be underestimated or ignored by those imagining that any schools are immune from today’s financial challenges. In sum, our change agenda requires no less than collective work with the faculty on constructing strong ethical understandings that are less rule-bound but equally committed to the dominance, if not the purity, of academic values.

III. LAW SCHOOL’S DEEPER CHALLENGE

As tough as Rick Matasar’s message is for all of us to hear, there’s an even tougher one lurking in the wings. Legal education is at serious risk of losing its pre-eminence as perhaps the most rigorous form of professional education for college graduates. For decades, law faculties have been training students how to sort through large amounts of complex material and identify the key pieces of evidence relevant to an argument. We have shown students how the highest stakes can turn on the slightest detail. We have taught them that spotting ambiguity in a document or categorization is the beginning of discussion, not the end. Above all, we have developed an educational method that elevates the provision of conceptual lenses (“thinking like a lawyer”) over the transmission of raw information. This placed us at the forefront of professional pedagogy perfectly suited to the internet age in which information is available at the touch of a button.

Several well-known features of law as a discipline supported our approach. First, commercial and governmental publishers carefully collected and curated the raw material for our courses in the form of federal and state case reporters and printed statutes and regulations. It’s true the same can be said of English literature or higher mathematics, whose faculties have a ready canon from which to draw. But the scientific model, now thoroughly adapted to social sciences, often counts on university faculty to produce the object of study as well as to analyze and critique the educational materials. Second, our Socratic

12. SARAH E. PAUL & DANIEL L. KURTZ, *MANAGING CONFLICTS OF INTEREST: THE BOARD’S GUIDE TO UNBIASED DECISION MAKING* (Board Source, 3rd ed. 2013).

classrooms pioneered an interactive approach that engaged students in thinking through material rather than sitting back to receive it. Third, our method of student assessment via the issue-spotting examinations represented a powerful, and underappreciated, advance in testing students via problem solving more typically found in the quantitative disciplines.¹³ Finally, our ability to engage students over three years provided the opportunity during the long first year to focus heavily on analytical methods under the guise of courses organized along more traditional subject matter lines. No wonder we were proud when our graduates left school with finely honed analytical and communication skills as well as knowledge of the law.

Many of law school's longstanding advantages, however, are rapidly fading. Although there is yet no rival to the massive governmental effort to publish and collect laws, the rise of big data provides many other fields an equally if not more robust set of materials to grasp and analyze. The Socratic method still enlivens student discussion, but it's hard to see how it beats the flipped classroom now growing in popularity across campuses. Online education offers numerous forms of student assessment techniques that leave the law school exam just one of many familiar ways that students can be challenged not simply to answer questions but to solve problems. And the luxury of three years of traditional legal study has been battered by increasing cost pressures demanding shorter time spans. Against this demand are powerful countervailing pressures for more time for experiential training; exposure to other disciplines and legal systems; and training in the technological and business realities of running a law practice.

At the same time, developments in learning science have offered educators everywhere new approaches to skills that constitute the hallmark of a strong legal education. Consider just the example of the Minerva Schools at the Keck Graduate Institute. Founding Dean Stephen Kosslyn has pioneered an approach in which subject matter takes a back seat to four crucial competencies: critical thinking; creative thinking; effective communication; and effective interaction.¹⁴ In contrast, despite law school's admirable emphasis on legal analysis, core subjects such as torts, contracts, property, evidence, tax, and corporations still remain at the foreground of the student's curriculum. Similarly, law school's competitors in other disciplines, such as

13. For extended discussion, see FISCHL & PAUL, *supra* note 8, at 9, 204.

14. For description of the Minerva program see *Academics*, MINERVA SCH. KGI, <https://www.minerva.kgi.edu/academics/> (last visited Mar. 21, 2016).

business, have become far more rigorous, going well beyond quantitative finance to include fascinating studies of leadership, teamwork, organizational behavior, and decision theory. The *Harvard Business Review*, for example, has now become an exciting publication sold on magazine stands at airports. Could we imagine the same thing happening to the *Harvard Law Review* in its current incarnation?

Regaining a cutting-edge approach to professional education is a challenge even more formidable for law schools than responding to current economic conditions. It must begin with a hard look at those aspects of legal training that provide conceptual lenses not readily available to those educated in other ways. Part of this means identifying the core aspects of law as an academic discipline.¹⁵ We cannot be partners within the overall university enterprise without self-confidence that our approach to problems adds something that other disciplines do not. And we certainly cannot rest on how our graduates are learned in the substantive law. The substantive law is accessible to everyone. What we must show is that those with legal training have an edge at interpreting, applying, communicating, and constructing legal language that only formal education can provide.

Once we are successful at labeling some of the core conceptual maneuvers that are the hallmark of crafting legal rules, we must foreground these analytical methods within our curriculum. It will be some time until we can persuade bar examiners that understanding the difference between a literal and purposive reading of language is more fundamental than knowing the rules of consideration. So there are risks in moving too quickly to alter the familiar first year subjects, risks accentuated, as explained above, by the difficulty of getting rankings credit for curricular change. But there are risks too in clinging to a status quo built on mastery of doctrine at the expense of mastery of method. Each school will decide for itself which risks are more perilous.

Pinpointing key aspects of legal thinking will help on the next vital step in reforming legal education: re-imagining law school as a place that trains lawyers to communicate as well with non-lawyers as we do with each other. The paradigmatic first year moot court experience, in which students do verbal battle in front of highly intelligent and exquisitely prepared judges, represents a small fraction of what it means to function as a lawyer. Far more common are situations in which the lawyer's task is to communicate to poorly-briefed corporate or

15. For a promising beginning along these lines, see Hanoch Dagan, *Law as an Academic Discipline*, TEL AVIV U. L. FAC. PAPERS, Jan. 16, 2013, at 10, <http://law.bepress.com/cgi/viewcontent.cgi?article=1179&context=taulwps>.

government officials or to explain to clients or community groups how laws will affect them. Accordingly, law schools must move quickly to update training in advocacy skills using visual presentations, data analysis, social media, and, above all, language borrowed from other disciplines. This can be done through collaboration with other university departments whenever possible. We are committed to this approach at Northeastern, where we have created the new position of Associate Dean for Interdisciplinary Education charged with ensuring that our students learn not only the language of the law, but also the languages of their clients.

Law schools also need to reclaim our fundamental role in training students to be leaders in designing workable institutions for the future. The challenges of our complex society cannot be solved merely through litigation or private contracting. So the more we emphasize how lawyering transcends counseling people through disputes or negotiations, the quicker we will develop a form of education in which considerable attention is devoted to designing incentive systems; creating new forms of capitalist enterprises; structuring public/private partnerships; and reforming governmental structures to put more power into the hands of more people. We need an educational approach that paints lawyers as forward thinkers crucial to solving tomorrow's grand challenges. And one strong way to begin is to provide each student formal instruction about the various roles that lawyers play in society.

Finally, and perhaps you would expect this point to come from Northeastern's dean, law schools must lead the way in infusing experiential education with the longstanding rigor of which law schools have long been justifiably proud. No one should doubt the educational value simply of placing students in real world professional settings, as we do for four eleven-week stints for every student. I have been saying for years, on a riff off the idea of training students to "think like lawyers," that when I get into a cab I don't want someone who "thinks like a driver"; I want someone who "drives like a driver." The changing nature of the contemporary workplace makes this more important than ever. Learning from books will not be enough for students who arrive at new jobs every few years and find no manual on the desk telling them how to succeed.

Providing experiential opportunities for students, however, is not the same as structuring such opportunities in a way that clear lessons are captured and delivered in ways that allow the students to translate their learning to new situations. Every law school in the United States should focus as much energy as it can on perfecting pedagogical approaches that permit experiential learning to rival our tried and true classrooms.

Our clinical colleagues have long led the way on this project, offering students the valuable change to prepare for a performance under close supervision; to actually perform; and then to reflect upon the performance, again with skilled mentoring. But too many current incarnations of U.S. law school clinics are so expensive as to be under extraordinary pressure in this time of declining revenues and applications. Cost effective solutions to experiential education remain at the core of bringing law schools into the twenty-first century.

Finally, you may ask, why is it so important that law schools respond successfully to current forces that have thrown us for a loop? In the end, this imperative cannot be driven merely by the goal of continuing ongoing institutions; protecting the livelihoods of existing staff; or even affording continuing professional opportunities for the next generation. What keeps me working on legal education reform is the risk that without a vibrant legal profession, our country will lose sight of the public values that made us great. Business education has dramatically improved in recent times, and it's no coincidence that the year 2001 brought us our first U.S. President to hold an MBA or that the Republicans nominated another MBA candidate in 2012 (he had a J.D. as well). Bottom-line thinking and teamwork; leadership; and strategic thinking needed to achieve efficient outcomes are worthy of all the praise and admiration we can muster. What has long allowed the United States to lead the world, however, is a valuable pairing of business acumen with a deep seated commitment to the rule of law; to a level economic playing field; to transparent government; and to democratic accountability. Should law schools fail in our reform efforts we risk relinquishing public debate to monolithic discussions in which legal norms are seen as antiquated obstacles to capitalist success. This would be a tragedy for our nation and our planet. We cannot let it happen. And leaders such as Rick Matasar inspire us to keep up the fight.