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# The Viability of the Law Degree: Cost, Value, and Intrinsic Worth

*Richard A. Matasar*\*

[S]tudents must bear the brunt of financing the expansion of new educational programs. The bad news is that students may not be as willing to do so today as they have been over the last decade. During that time, students have been able to finance their increasing educational cost by gambling that a strong placement market—with lots of jobs and firms that absorb increasing numbers of new graduates at ever-higher salaries—will always exist. Unfortunately for the gamblers, that era seems to be ending.<sup>1</sup>

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For years the law school market has been protected from fears that they are pricing their product out of the out of reach for most students. . . .

. . . [T]his financial model has come under some stress. . . . Most importantly, for many students, the legal employment market is too soft to support debt. Some . . . have problems finding any legal job within nine months of graduation. Those who fail the bar examination are especially hard hit, but are joined by many other colleagues who have not done well in school. Others may find jobs, but at modest salaries. Even those making the highest salaries find that the debt that they have accumulated while in school may tax them for years . . . .

These financial pressures may soon challenge the capacity of law schools to continue to raise their prices. If so, it may undermine the current model for American legal education . . . . In essence, we may be reaching the end of the golden era for law schools,

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\* President, Dean, and Professor of Law, New York Law School. B.A. 1974, J.D. 1977, University of Pennsylvania.

1. Richard A. Matasar, *The MacCrate Report from the Dean's Perspective*, 1 CLINICAL L. REV. 457, 467 (1994) (discussing the economics of legal education in 1994).

beginning the period of decline, and putting many schools' survival at risk.<sup>2</sup>

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In the light of this disturbing picture, one might expect that law schools are facing an imminent market collapse—declining applications, few students willing to take on financial risk, the need for significant internal cost savings, price cutting, and other similar measures. Surprise, surprise, surprise! The demand for legal education has remained strong throughout the economic downturn. Applications at many schools are at record levels. Enrollment has been solid, with many schools recording historically high yields of new students.<sup>3</sup>

After sixteen years of prognosticating—apparently with no ability to get it right—the editors of the *Iowa Law Review* must have a real sense of adventure to ask me to opine (once again) on the economic viability of the Juris Doctor degree. But a broken clock is right twice a day, so, undaunted, I will offer my views.

The simple answer is that the law degree will continue to be viable . . . for some. Law schools with ancient and powerful reputations will prosper over the short- to medium-term. The very few schools currently offering inexpensive degrees should survive, joined by newer, innovative, less-costly programs that will emerge. For the remaining, expensive mid-tier schools, the degrees they offer will become less and less attractive, unless they seek to create value for their graduates commensurate with their costs.

For the fortunate few individuals—those attending prestigious schools, who receive decent grades; those with large scholarships; and those at the top of their classes in schools outside the top tier—the law degree will continue to pay for itself. For those seeking a quick return on their investment, the law degree will not offer immediate returns and may never satisfy their financial needs. And for a large group of wanna-be lawyers, the degree will make sense only if they properly evaluate its cost, their expected financial returns, and most importantly, the intrinsic value of becoming a lawyer.

This Essay proceeds in three parts. First, it rehearses the now conventional analysis about future haves and have-lesses in legal education, concluding that inevitably, purely financial returns will be insufficient to make the law degree “sensible” for many (most?) students. Second, it suggests that there is intrinsic value in being a lawyer that will continue to

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2. Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y.L. SCH. L. REV. 465, 474–75 (2004) (discussing the economics of legal education in 2004).

3. Richard A. Matasar, *Does the Current Model of Legal Education Work for Law Schools, Law Firms (or Anyone Else)?*, N.Y. ST. B.J., Oct. 2010, at 20, 21 (discussing the economics of legal education in 2010).

make receiving a law degree attractive, and that unlocking that value is dependent on schools producing desirable, intentioned outcomes that will serve employers and the public. Third, it suggests that the cost of producing such value exacerbates the economic dilemma that students face. It concludes that law schools, law-school regulators, and the profession must be willing to experiment and permit new models of legal education to arise that can produce sufficient value at a reasonable cost in order to assure the continued viability of the law degree.

### I. ONCE MORE WITH FEELING

*A Story of Decline*<sup>24</sup> Legal education is a bad investment—so I have said, the blogs recount, and the world now seems to treat as a fact. In sum, the argument is simple: educational costs for most students have been rising at a much faster rate than the salaries they can expect to earn; very few students pay for their education and living expenses while in school without borrowing large sums of money; the debt service on these loans is so high in relation to the salaries earned that most students will have difficulty making their loan payments and managing all of the other expenses they will face; and the job market is terrible, with few openings in high-paid jobs, intense and brutal competition for other jobs, and likely underemployment or unemployment for many law-school graduates.

To this litany of woes, one might add the following: First, regardless of their ultimate employment, students at all levels of their graduating classes seem to borrow similar amounts. For most students, this means borrowing all or substantially all of the cost of their education—tuition, fees, books, and some or all living expenses. Second, students who avoid accumulating large debt either come from families of means, have an alternative source of funds like employment or savings to pay for school, or receive substantial “merit” scholarships. If Robin Hood took from the rich and gave to the poor, law school often does the reverse. It gives scholarships to top students, who have employment opportunities at firms that pay top salaries, funded by full-paying, lower-ranked students, whose employment will often be at organizations paying more modest salaries. Third, the number of “big law” jobs—those paying salaries sufficient to allow law graduates to manage their debt—is inadequate to employ most law-school graduates. Fourth, initial salary differentials often widen over time—assuring that the haves continue to prosper while the have-lesses continue to suffer.

Of course, there are additional worries to face. Tuition charges at state-supported law schools, traditionally the least expensive places to gain a law degree, are rising at an even faster pace than that of private schools. Many states are reducing their subsidy to law schools in favor of floating “market”

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4. See generally *supra* notes 1–3 (discussing the economics of legal education in 1994, 2004, and 2010).

rates for tuition—essentially privatizing them. But even if law-school debt alone was manageable, many students have financial worries before they even begin their legal studies. In recent years, undergraduate students have been taking on greater debt to cover the gap in funding their education, as access to nongovernmental loans has all but dried up and supplemental governmental gap loans have been available only to those with parents willing to take on the debt, i.e., the relatively well to do. Not to worry, students also have been taking on increasing consumer debt, credit cards, and car loans. Oh, and did I mention the worst financial crisis since the Great Depression?

I have chronicled elsewhere how this situation arose<sup>5</sup> and will only briefly rehash the analysis. Although it would seem to be common sense that schools be evaluated on how well their graduates perform as lawyers, “it is clear that neither students, faculty, employers, nor the public (represented through rankings) look to the actual performance of a school’s graduates in assessing that school’s quality.”<sup>6</sup> Students typically look only to a school’s reputation (or LSAT scores or other input measures) in deciding where to go to school. When they look at employment results, they look at averages, and deeply discount the 90% likelihood that they will not be in the top 10% of their graduating class.<sup>7</sup> Similarly, faculty rarely look to the quality of a school’s graduates in assessing which job to take or how to “rank” schools, employers use only shorthand formulae in deciding who to hire (a function of rank of school and class rank of students), and even *U.S. News & World Report* looks to anything other than actual performance by a school’s graduates as lawyers.<sup>8</sup>

As a result of this focus on inputs,

the law school market rarely asks whether the careers that graduates obtain bear a relationship to what they learn in school. It does not pose the question of whether the benefits law school graduates obtain are worth the cost of the education their school has provided. Instead, the market values law schools most highly for their inputs . . . . [A] school’s reputation becomes an end in itself . . . . Accordingly, schools engage in a quest for enhanced reputation as a means to improving their apparent quality. . . .

The consequence of this theory . . . is to drive schools to expend ever higher amounts to generate resources to enhance their reputations—better facilities, higher scholarships to buy better students, higher-priced faculty who bring fame to the school, more

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5. Matasar, *supra* note 2.

6. *Id.* at 476.

7. *Id.* at 493.

8. *Id.* at 476–77.

esoteric, but visible programs, famous speakers—whatever might gain an edge in reputation. Unfortunately, these expenses may only slightly affect the ultimate quality of a school's graduates. . . . [O]ver time, the competitors will respond and the battle will continue without ever really affecting the overall relative reputation of a school. Ultimately, costs have gone up without real quality improvements and with little reputational gain.<sup>9</sup>

In 2004, I suggested that there were five factors that prevented the immediate collapse of the law-school market. First, students were able to fully finance the cost of their education with low-interest, easily obtained credit—from the government directly, from private lenders with a government guaranty, from private lenders on securitized private debt, and from family resources.<sup>10</sup> Essentially, use of “OPM” (other people’s money) made education affordable. Second, I suggested that law schools (or other graduate education) prosper in a down economy, when there are few alternative career choices available.<sup>11</sup> Third, I suggested that historically, law graduates have been able to leverage their debt into higher-paying alternative careers than they may have otherwise obtained: “High debt makes sense when long-term returns on borrowing put the graduate into a position that is superior to what they could have achieved without borrowing.”<sup>12</sup> Fourth, I argued that students tend to discount the risks

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9. *Id.* at 477–78. Schools have engaged in the quest to boost their reputations for many years—with little success. Such searches have proven to be quite expensive—raising cost, by reducing teaching resources or increasing merit scholarships. *See* discussion *infra* pp. 1608–11. In the years ahead, schools will likely shift their attention to improving the quality of their education by providing education more focused on students’ needs and providing training more valued by employers. Such training will, unfortunately, continue to add cost. *See* discussion *infra* pp. 1595–1612. Significant quality improvements *and* decreased costs will necessitate much more radical restructuring of legal education. *See infra* Part III.

10. Matasar, *supra* note 2, at 491. From 2004 until the collapse of the financial markets, the economy was geared to encouraging the use of credit. Governmental policies were directed to depressing interest rates. Banks were willing to lend with no security, depending on optimistic views about housing values and the assumption that debtors could always sell to cover debt, using their unrealized equity. Parents borrowed on behalf of their children, taking their savings and investing them in arbitraging interest-rate differentials between low-interest student loans and high-investment returns. In short, the bubble that burst in 2007 to 2008 funded the boom in law schools along with other societal institutions.

11. *Id.* at 492 (“In a robust economy, businesses hire students directly from undergraduate school and are willing to bear training costs for the graduates. However, in less frothy economies, recent college graduates do not have such options.”). In the early 2000s, with the dot-com economic downturn, law-school applications increased. At the same time, the legal economy grew, creating all-time high salaries in big law and all-time high numbers of jobs. The great recession of the last few years saw an initial jump in applications as was experienced in the early 2000s. However, as this downturn has lasted much longer than prior recessions, and as the conventional wisdom has grown that we will not see a return to the boom years of the legal economy, applications have declined in the last year (curiously, just as the economy seems to be turning around).

12. *Id.* at 493.

associated with taking on educational debt—that they see themselves as the exception to the rule and overestimate their likelihood of being at the top of their graduating class.<sup>13</sup> Finally, I suggested that historically, lawyers' salaries rose, that they often took significant jumps upward, and that so long as students perceive a real chance at high returns, they accepted high levels of risk.<sup>14</sup>

Since 2004, the economic conditions facing the legal profession, law students, and the lending market have changed extraordinarily. Low-interest rates on student loans are now long gone. Even though interest rates in general remain quite low, deeply restrained by federal-government policies directed at stimulating the economy, student loans are significantly more expensive today than they were six years ago.<sup>15</sup> There is no longer a viable private-loan market for graduate students, including law students,<sup>16</sup> as the federal government now issues all loans through direct lending.<sup>17</sup> Offsetting the higher cost of funds, however, are new repayment programs that allow students to pay in accordance with their income and even to have loans forgiven for appropriate governmental or public service employment. While these mitigate the carrying costs of debt, students may lose forgiveness if they do not maintain qualified employment for ten years, may have interest capitalized while they have lower payback (which must be repaid if income rises too quickly in outer years), and may face a taxable event if their debt is ultimately forgiven because of income-based repayment.

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13. *Id.*

14. *Id.* at 493–94.

15. Rates are approaching a blended rate of 7% for Stafford and Grad PLUS loans—still nowhere as high as they were in 1994 when private rates were at 9%. See *Historical Interest Rates*, FINAID, <http://www.finaid.org/loans/historicalrates.phtml> (last visited Mar. 21, 2011).

16. The absence of the private-loan market has had some hidden but significant effects on law-school graduates. Before 2007, graduates could borrow funds at relatively modest rates to fund their study for the bar examination and their living expenses after graduation. Whatever private funds are now available for this purpose carry very high interest rates and may require a co-signer. Even more significantly, family resources—like access to a home equity line of credit or other parental funds—have significantly eroded as housing values have declined and mortgage defaults have risen.

17. One might ask whether the federal government will continue to provide funds if law student default rates increase. Simple economic theory suggests that the government, as the lender, will have to adjust its policies if defaults, income-based repayments, and loan forgiveness rise. These are unfunded mandates that eventually reach the bottom line. They will further increase government deficits at a time when the government is seeking to close its deficit spending. This suggests that eventually, the government will have to stop making the loans or raise the price substantially to account for borrowers who cannot repay—neither of which bodes well for continued long-term financing of legal education. Minimally, one should expect the government, as the lender, to differentiate between borrowers. It might provide lower rates for those who are lower credit risks and higher rates for higher risks. Or it may distinguish between students at various schools, providing lower rates to students at higher-rated law schools whose graduates have good job prospects and higher rates for students attending lower-rated schools, with appreciably worse job prospects. Or it may do both. It is unlikely that the policies will not change.

The job market has also changed substantially. While salaries at large law firms rose quickly from 2004 to 2007, once the recession began, law firms began to lay off substantial numbers of lawyers, delayed the starting dates of other lawyers, refused to honor offers to others, and severely curtailed their hiring. These changes affected the entire employment market, as new lawyers who might have been hired by large firms took jobs that once might have been filled by other lawyers, who in turn took jobs that other graduates might have taken. Overall employment of lawyers has decreased.<sup>18</sup> In addition to these effects, the downturn has made it more difficult for older lawyers to retire, further clogging the market. Finally, more students are graduating from law school each year, placing even greater pressure on students to find available jobs.

The trend towards the globalization of legal practice holds the prospect of further diminishing available legal jobs. Graduates of law schools throughout the world come to the United States to receive LL.M. degrees (at one-third the cost of their U.S. counterparts) and are authorized to take an American state bar examination, accept employment in the United States, or return home with degrees that will allow their employers to compete in the United States for legal work. Non-U.S.-based law schools are seeking accreditation by the American Bar Association (“ABA”) so that their graduates might sit for the bar examination—all without having ever set foot in the United States. Law firms are outsourcing some work to other countries<sup>19</sup> that work at much lower rates than full-time employees of law firms, leading to worries of even more lay-offs of American lawyers. The flat world of legal work promises even fewer jobs for graduates.

Baby-boomer lawyers, now the bulk of the management of law firms, are the largest population demographic. With losses to the value of their retirement accounts, they seem less inclined to retire quickly and make room for the next generation to take over their leadership. This further constrains the number of entry-level jobs. The layoffs of the last few years means that more experienced lawyers are now competing with less experienced law-school graduates for the same jobs. Former big-firm lawyers are now seeking smaller-firm jobs and those formerly uninterested in public-service-sector jobs are now competing for them. Contract lawyers—part-time situational lawyers—are taking jobs formerly filled by full-time lawyers.

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18. Throughout the mid-2000s many schools reported employment rates approaching the upper 90% range. Today, these percentages hover around the upper 80% to low 90% range. See NAT'L ASS'N FOR LEGAL PROF'LS, EMPLOYMENT FOR THE CLASS OF 2009—SELECTED FINDINGS 1 (2009), available at [http://www.nalp.org/uploads/Class\\_of\\_2009\\_Selected\\_Findings.pdf](http://www.nalp.org/uploads/Class_of_2009_Selected_Findings.pdf) (employment rate for law-school graduates was 88%, 90% and 92% for 2009, 2008, and 2007 respectively). These values are nowhere near as low as the average reported employment rates of the early 1990s. See Matasar, *supra* note 2, at 467 n.24 (83%, 1993; 84%, 1992; 86%, 1991).

19. They also are “on-shoring” work to domestic contract lawyers, working in large pools, doing work once done by full-time law-firm lawyers.



Virtual law firms have formed to compete with brick-and-mortar firms, but with lower overhead. The trend lines all point one way: greater demand for jobs, by those with greater debt, and fewer opportunities.<sup>20</sup>

*What's up with that?* As was true sixteen years ago, as was true six years ago, the tale of impending doom has not occurred. Why? Three explanations might be offered: (1) students are ignorant of facts; (2) law schools and the profession are willfully misleading prospective students; or (3) students are naive and overly optimistic. I have my doubts about all three.

Law students are not ignorant consumers. They are bombarded with information about the state of the legal-job market. They are subjected to a blogosphere containing website after website decrying the state of the law-school/law-job market and the purported “scam” being perpetrated on them. Even the *New York Times* business section devoted a cover story to the plight of law graduates.<sup>21</sup> Prospective law students today have access to more information than ever—information that is tested for its accuracy by a citizen-internet press corps anxious to reveal every misstatement by every school.

In recent years, students have become significantly savvier about costs. They bargain for higher scholarships, ask about the standards for retaining scholarships, seek information about future tuition hikes, and induce schools to bid for their admission with ever higher awards. Many students live at home while they go to school, find roommates, work while in school, borrow casebooks, and seek to minimize their expenses. They do not act irresponsibly and understand that they are taking risks.

Personal testimonials rarely count for evidence, but I know of no law school or dean that intentionally misleads students about the cost of education, the job market, or job prospects after graduation. That said, it is understandable that schools bear the brunt of anger over a dismal job market. There is a significant lag in information that reaches students. The class of 2011 was recruited in 2007, before the economic downturn. Most published guides containing cost and placement data are several years out of date. These same students often had employment prospects after graduation from college and incurred significant opportunity costs in going to law school. However, students in the classes of 2012 and 2013 came with quite different expectations and understandings of what they were taking on. For them, law school may have been one bad alternative among even worse alternatives.

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20. This might not bode poorly if law school graduated only the wealthy. However, a quick look at the cultural demographics suggests otherwise. Projections over the next several decades suggest relatively lower birth rates among families of means than those with lesser means—especially in immigrant communities.

21. See David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at BU1.

It is significantly more difficult to assess whether law students are unduly optimistic. Some of them clearly have made good choices. They are fulfilled in the education they have chosen. They avoided high-cost schools and enrolled in lower-cost alternatives. They received large scholarships. They found summer work. They have jobs after graduation. Many more, in retrospect, have taken on more than they can immediately manage, perhaps because they ignored the warning signs, discounted information explaining the risks they were taking, overestimated their own prospects, or even were misled.

My assumption is that all or some of these factors exist. Further, I assume that whatever failure the market currently has in conveying accurate information to students, eventually transparency in law school and job prospects will be the rule, not the exception. Given the last several decades, however, I am more reticent in predicting the end of legal education. Students will continue to come to law school, even if a few places close and others face greater difficulty in attracting the numbers of students they desire.

There are several factors that continue to make a law degree attractive. First, students still are not finding attractive alternatives. High school graduation is no longer a sufficient credential, even for entry-level service jobs. Undergraduate education is becoming a minimum credential for finding work, but outside of technical fields, demand for graduates is modest. Thus, law school and other graduate disciplines will continue to attract applicants.

Second, law school and the license to practice law are particularly enticing because of the intrinsic nature of legal work. It is a helping profession, giving practitioners a lifetime capacity to use their skills to make others' lives better—something many, if not all law school applicants point to as motivating their decision to go to school. It is a profession that promotes the rule of law at a time when our country is in a global conflict to expand law, bring democratic ideals to other cultures, and reduce irrational conflict. Whatever cynicism we may express about our own country's motivations, the need for more humane treatment of citizens in oppressive regimes has never been greater. Some of the countries that were the evil empires of the past are now becoming economic giants; some are even becoming paragons of treatment of their citizens. Totalitarian regimes have been shed and legally enforceable economic regulations are needed to prevent cataclysmic world recessions.

Third, lawyers have a state-granted monopoly to do legal work—a huge competitive advantage in finding a way to make serving others' needs a lucrative endeavor. Lawyers have great autonomy in choosing their clients, where they can live, what hours they work, and even in building life-long fields of expertise. Being a lawyer is useful and often helps others in crisis to

manage their problems and come out better in the end. Whatever problems the profession has, it has many advantages over other careers.

Economic forces have made the return on investing in a Juris Doctor more questionable today than at any time in the past. Costs are very high in relation to immediate returns. But the evidence has not yet surfaced demonstrating that the long-term value of becoming a lawyer is lower than alternative choices students might have had. Such evidence may yet be years away or may never be proven. One could conclude, therefore, that the degree is still worth its price.

But the analysis is incomplete. The critique of legal education has never been merely that its cost is too high. Rather, the argument is that the cost is too high given the value of what the student receives. Value in this context is not purely an economic return. It also contemplates that law schools have not provided the education that students will need to serve employers, clients, and the public well. In this analysis, legal education costs too much and is not good enough!

I have argued that until law schools direct their full energy to enhancing the value of their students' education, students will continue to be disenchanted with the bargain they have struck. They will be angrier about the cost of their education and they will demand better preparation. Until schools devote themselves to building better lawyers, they rightly will be accused of taking advantage of their customers. We have entered a new era for legal education—not because the degree is not worth pursuing, but because schools will now be seeking to maximize their value.<sup>22</sup>

## II. PRODUCING OUTCOMES, ADDING VALUE, AND INSTITUTIONAL CHOICE

I feel like Professor Harold Hill in the Broadway musical *The Music Man*,<sup>23</sup> who rushed into a small Iowa town warning of the imminent “trouble” the new pool table would cause, and proposed a kids marching band to keep the children of River City from falling into the abyss. Hill, a flim-flam man of the highest order, collected the money, pocketed the profits, and could have gotten away clean. But he fell for the townspeople, felt a kinship with the kids and families he was scamming, and got caught.

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22. I have already explored in some detail the need for schools and legal academics to shift their focus from their own interests to those of their students and other stakeholders. Richard A. Matasar, *Defining Our Responsibilities: Being an Academic Fiduciary*, 17 J. CONTEMP. LEGAL ISSUES 67 (2008). I argued that law schools have drifted into models that serve the interests of faculty, often at the expense of other stakeholders, especially students. *Id.* at 70–76. I proposed that we view students as investors, placing their (borrowed) funds with law faculty as the fiduciary managers of their investment. *Id.* at 76–81. I argued that this would shift the focus of law schools to promoting a curriculum, scholarly activities, and professional service that would benefit the investors in their schools—students, the state, and the public—before the employees of the schools. *Id.* at 81–120. I detail in the next section of this Essay how this might be accomplished. *See infra* Part II.

23. MEREDITH WILSON, *THE MUSIC MAN* (1957).

He only avoided tar and feathers by the last second miracle of praying for the kids to “think” the music. They did, the town was saved, and he lived happily ever after with the librarian.

I have been singing about our trouble in River City: the value proposition of a legal education. I have offered the equivalent of a marching band: legal educators must shift the focus from themselves to their student stakeholders and act as fiduciaries to assure that legal education provides sufficient value.<sup>24</sup> Like Hill, I could stop here, collect citations to the theories offered, head out of town, and never be heard from again. But I too have been caught up—in the real students who will suffer if the mere suggestion of a solution does not lead to real change. Thinking here will not be enough. We really have to make the music.

*Outcomes and Value.* I began teaching in 1980. Then (and until very recently), the academic world had simple measures of quality—the LSAT scores and undergraduate GPAs of incoming students, the size of a school’s library and facility, the academic credentials and scholarly output of the faculty, a school’s reputation, its *U.S. News & World Report* ranking, and so on. Most of these focus on inputs. This approach is wrongheaded. It is like measuring the quality of a meal by looking at its ingredients, or evaluating music by the notes on the page, or judging a car by the sheet metal with which it is constructed.

Quality cannot be measured by inputs alone. Food is judged by its taste and its nutritional value. Music is judged by its sound, the melody, the beat, and the groove. Cars are judged by their reliability, speed, and safety. In the real world outside of higher education, we judge quality by the outcome, not the input.

Raw materials do matter. It is very difficult to produce delicious food without fresh ingredients. Cake, no matter how artfully prepared, will taste awful if the eggs are tainted. Music, no matter how beautifully written, will not sound right without a decent instrument. Rusted steel makes a bad car. The same idea applies in producing a graduate. The input must be sufficient to permit the outcome.<sup>25</sup>

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24. Matasar, *supra* note 22, at 72–76.

25. How smart does one need to be in order to be a lawyer? This sounds like a philosophical question, akin to asking how many angels can dance on the head of a pin. We have some basic answers. Law students, on average, are very smart in comparison to the general population. They have all graduated from college—a process that winnows out those with less intelligence and drive. They have taken the LSAT and done reasonably well. The LSAT is administered to a very select group of high-achieving test takers when compared to the general population. Graduates from all law schools, from the top tier to the bottom tier, succeed in gaining admission to the bar and representing clients. As a class, graduates of all law schools are much more similar in intelligence to each other than they are to laypeople and non-professionals. Top students from all law schools work side by side as lawyers. In essence, nearly all students in law school are capable of doing the work of a lawyer.

That said, ingredients, raw materials, and musical instruments need not be perfect. The best inputs in the hands of the less competent produce less satisfactory results than more modest inputs in the hands of a virtuoso. In the end, what is produced matters most. The old football-coaching adage in assessing performance celebrates the coach who could “[t]ake his’n and beat your’n, and then take your’n and beat his’n.”<sup>26</sup> Schools should have a similar goal: to maximize the value they add to a student’s education.

It seems obvious that the finished product—the outcome—should be the best indicator of quality and of performance. Nonetheless, in legal education we have remained mired in input measures. Law schools look to LSAT and undergraduate scores in deciding which students to admit. These are admittedly useful indicators of law school performance, but even for that purpose they predict a low percentage of what accounts for law school performance. Bar-examination scores are the hurdle to bar admission, although no one can demonstrate their relationship to performance as a lawyer. Law firms often hire vast numbers of law-school graduates on the basis of their first-year law-school grades. However, the skills needed to be a successful attorney require much more than decent performance in school. Many firms hire graduates of only a limited number of elite law schools, when their own data show huge attrition by those graduates. Worse, they are managed by partners who are graduates of the very schools the firm now disdains, supported by rainmaking lateral partners who come from every walk of life. What could account for this continued, and seemingly irrational, reliance on input measures?

*Risk Aversion—the Input Fallacy.* Law-firm hiring illustrates uncritical use of inputs in decisionmaking. When firms hire for their summer programs, they do so on very little information—law school attended, law-school performance, a short screening interview, and a multi-hour interview at the firm. Ordinarily, the firm has set up rules well in advance of this process to limit the number of eligible candidates. They may decide to interview at a limited number of schools; they set a cut-off point on law-school grades below which they will not dip. For the highest-prestige schools, the firm may have no cut-off at all (relying on the school’s elite status to serve as a proxy for talent). For the next tier of schools, they may cut at the 50th percentile or the top 25th percentile. For many others, they will cut at the top 5th or 10th percentile. For others, nothing can overcome the low prestige of the candidate’s school.

When the graduate of the top-tier school succeeds, the firm attributes this to the pedigree of the candidate. The assumption is that their first-tier education has provided the skills, knowledge, and values necessary to

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26. See, e.g., Steve Gietschier, *Coach: The Life of Paul ‘Bear’ Bryant*, SPORTING NEWS, Mar. 17, 1997 (internal quotation marks omitted) (attributing the adage to legendary coach Paul “Bear” Bryant).

become a successful attorney. However, when one of these candidates fails, the failure is rarely attributed to the school or the school's educational program. Rather, the blame is placed squarely on the candidate—his or her unique character flaws have led to the failure. Those who decided to bring the candidate to the firm have done nothing wrong; the fault lies with the failed performer.

In contrast, when the firm reaches outside its comfort zone by hiring a candidate from an off-brand institution or with weaker grades, the candidate's failure is attributed to his or her pedigree. The candidate simply and predictably performed as expected. The candidate's success, however, demonstrates that the individual has overcome these limitations—that the candidate has succeeded despite the education he or she has received. The lesson is clear to those making the hiring decisions: hiring outside the norm risks being blamed for failure; hiring from within the norm does not.

Whatever the value of these biases, there is little reason for those making hiring decisions to continue to rely on preconceived, untested notions. Law-firm success, or success as a lawyer, seems to require much more than good law-school grades and a prior blue-chip pedigree. Lawyers in firms need to work well with others—an attribute never measured in prior educational ventures. They need to know how to network, to work unsupervised, to be creative, to problem solve, to be attentive to client needs, to work hard, and to have ambition—none of which safely can be assessed by whatever traditional inputs aspiring employees bring to the table.<sup>27</sup>

There is now a widespread belief that law-school graduates are not “practice ready,” that they do not understand the business of law, that they have not cultivated their nonanalytical skills, that they do not network well, that they do not know how to manage projects, that they lack empathy, and so on and so on! In the years ahead, it seems quite likely that firms will begin to search for new employees who have these traits. They will need assurances that these are the outputs of the schools from which they hire, and that the

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27. Law firms are not oblivious to this dilemma. They have often hired poorly. They have selected false positives—law students with good pedigrees who either fail to produce effectively as lawyers or who leave early. They also have many false negatives, students they reject who they later hire as laterals after the students have gone on to succeed at other employers. Both false positives and negatives are costly—firms fail to make money on unproductive lawyers or those who leave before they are fully trained. Accordingly, some firms have shifted to focusing on lateral hires. Others have built large professional-development operations to provide remedial training to their associates. Some have started to build robust human-resources offices that are trying to become much more systematic in assessing potential employees. The search for the “secret sauce” of great new lawyers will preoccupy both employers and law schools in the years ahead.

school's graduates actually possess them. In turn, schools must try to produce such results.<sup>28</sup>

My basketball coach had a saying: "You can't teach height." In law-school terms, this might mean: "You can't teach smart." But as with basketball, in which I was taught to overcome my vertical challenges by using my biggest ASSet, good law-school coaching should do much more to produce outcomes that overcome any input limitations.

The issue to confront is identifying the proper outcomes, creating the proper teaching to produce those outcomes, measuring and comparing the outcomes between students and schools, convincing those who will use the services of the schools to focus on the outcomes instead of (or as a supplement to) input measures, and creating a feedback loop to continually adjust and refine what is measured. In simple terms: owning outcomes maximizes the value of education and enhances the ability of each law graduate to serve employers and clients.

Inputs are easy to find, simple to use, and comfortable to rely upon. Others long ago created the standardized tests we use. Grades have been around forever. But there are no standardized, agreed-upon measures for "fire in the belly," client centeredness, comfort with ambiguity, working well with others, and capacity to generate business. Before one can reliably teach these skills, schools must theorize how to teach them, measure whether they are being taught, and assess whether students' subsequent performance validates the usefulness of the skill and its teaching. Schools then must ask whether their theory needs adjustment. If so, they must start the process over again—from theory to implementation to assessment, repeated until perfected. This requires schools to look deeply at student performance over a much longer period than what they have done at school; schools must look to performance in students' professional careers, and in students' lives. Schools should seek to reverse-engineer the traits of successful graduates and, where possible, try to produce them in law students. Schools must experiment and tinker with education to produce outcomes that are informed by employer and client needs. Schools must analyze data, change their behavior in light of the data, and give up cherished beliefs that turn out to be folklore, not fact.<sup>29</sup>

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28. As discussed throughout, this presents law schools with a difficult dilemma. They are already expensive, exceedingly so in some cases. Worse, the cost of producing their current product is very difficult to reduce and improving their product is likely to increase costs. See *infra* notes 45-57 and accompanying text. I argue, nonetheless, that law schools' first obligation is to improve their product—minimizing new costs where feasible, reallocating costs when possible, and working over the medium- to long-term to maintain quality at a reduced cost. See *infra* Part III (discussing strategies to drastically reduce the cost of higher education).

29. This process of total quality improvement is common to business processes. Changes in operations are driven by a search for improved results—often increasing revenue through reducing costs or increasing productivity. Educational change is significantly more resistant to reduction in costs. As discussed below, innovations that improve the product often come at

*Producing Improved Value—A Story of Bar Pass Rates.*<sup>30</sup> Once upon a time—it was 1999—New York Law School was shocked to see that its first-time-taker bar pass rate on the New York State bar examination had slipped to just over 57%. The results forced the law school into soul-searching, which in turn led to doing a deep analysis of data about its students and program. These data revealed a prolonged pattern over nearly twenty years. The top quarter of the class passed the examination at a rate of just over 90% in bad years and at a rate of 99% or higher in good years. The bottom quarter of the class passed at rates of 50–60% in good years and at rates under 40% in bad years. The middle of the class passed at about the state average. Most disturbing: the bottom 10% of the class often passed at rates under 10%.

For many years, the law school blamed these results on either lazy students, a poor admissions process, insufficient numbers of closed-book examinations, a conspiracy to keep bar admissions low, or other causes related to the moral failings of the students themselves. This led the school to tinker with admissions cutoffs, higher attrition rates, modifications to testing methodology, etc. Regardless of the modest attempts to ameliorate the problem—the entering credentials of the new students, bar policies, academic dismissals—throughout the period, the law school’s performance pattern on the bar remained the same—those at the top passed at disproportionately high levels; those at the bottom passed at disproportionately low levels.

Consequently, the law school looked more systematically at this pattern and noticed a few signs of hope. First, the bar passage rate was higher in years in which the law school lost fewer top students to transfers. Second, weaker students who took “bar pass” courses tended to do a bit better on the bar examination than similarly situated students who did not take such courses. Third, students at the bottom of the class who moved from full-time to part-time education tended to do a little better on the bar examination. Together, these data points suggested that the law school should not passively accept the outcomes that it had achieved during the prior twenty years. It might intervene by keeping better students and encouraging weaker students to take certain classes and move to the part-time program. Doing so

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additional costs because existing programs are hard to extinguish. Further, many fixed costs (personnel with tenure or other job security, physical plants, etc.) cannot be eliminated, making cost savings difficult to achieve. Improved outcomes achieved simultaneously with lower costs will necessitate more profound systematic change in the regulation and design of legal education.

30. See generally Donald H. Zeigler, Joanne Ingham & David Chang, *Curriculum Design and Bar Passage: New York Law School’s Experience*, 59 J. LEGAL EDUC. 393 (2010) (describing New York Law School’s development and implementation of its Comprehensive Curriculum Program and the results).



might produce better outcomes for the school and its students, especially at the bottom of the class.

Accordingly, the law school adjusted its program. It began by diverting students at the bottom of their classes at the end of the first semester into a legal method and reasoning class, rather than a more advanced lawyering-skills course. This helped those students to gain a better understanding of the fundamentals of legal reasoning, solidified their retention at the law school, and gave them a better foundation for upper-level courses. Next the law school created upper-level review courses of the major first-year courses tested on the bar. Later it created upper-level writing courses focused on bar subjects and essay writing. These steps stopped further deterioration of bar passage from recent graduates of the law school.

However, none of the steps alone altered the dismal results of consistent school-wide pass rates well below peer institutions (and below the state average). To achieve a significantly better outcome, the law school went further. First, it established an honors program to help retain the school's best students. The Harlan Honors Program immediately helped the law school retain its top students. Second, it mandated the Comprehensive Curriculum Program ("CCP") for students in the bottom third to quarter of their class. It required the bottom third of each section after the first semester to take a legal-reasoning course rather than the lawyering course. Then, at the end of the first year, it required students in the bottom quarter of the class to take a prescribed curriculum consisting of major subject areas on the bar examination, key practice courses, and a selection of writing and other skills classes. Further, students in the bottom 10% of the class were required to move from full-time to part-time in order to slow down their studies. Finally, every student in the CCP was required to take two upper-level courses: one that reviewed each of the major first-year courses tested on the bar examination and another that prepared them to write essay answers.

These steps together have produced significantly better outcomes. Overall, the school's pass rate has exceeded the state average in all five years since graduates of the program have taken the bar examination. The law school moved from being in the bottom four of the fifteen state law schools to being within the top five schools in the state in two of those years and in the middle of the group for the other three years. The first-time New York-bar pass rate went from just over 57% to over 94% in the summer of 2008 and has never been lower than the mid-80% rate in any other year. The pass rate improved at every quartile and decile of the school's class ranks. Students who enrolled in the CCP passed at higher rates than their peers who did not take the program. Even students in the bottom 10% of the class have performed at rates approaching the state's average performance. Theory, coupled with experimentation, assessment, and redesign, changed a

twenty-plus-year record of merely praying for better inputs to making real changes in outcomes.<sup>31</sup>

*Producing Improved Value: Outcomes and Mission.* It is difficult for a school to be all things to all students, faculty, and graduates. Instead, a school's mission should drive the outcomes it seeks to create and the valuable skills its students will need. A school with a public interest mission is likely to be quite different than a school hoping to produce investment bankers, corporate attorneys, and entrepreneurs. Similarly, a school with an academic, theoretical, or scholarly focus will do quite different things than a school focused on skills training. Even the few schools with sufficient resources to serve all of these goals cannot rely on a generic program to serve every student; they must create options for students, allowing each of them to tailor the program to his or her goals.<sup>32</sup>

To achieve desired outcomes, schools must have data-driven cultures, meaning they must be willing to evaluate current programs, design changes to those programs, implement those changes, evaluate the results, and repeat as many times as necessary to achieve desired results. They must adopt clear missions and make sure that their programs, courses, co-curricular activities, extracurricular activities, management goals, and outreach initiatives all have objectives that align with those missions. I discuss these missions below using New York Law School's experience to illustrate how a school might seek to increase its value to its students.

*Data-Driven, Experimenting Culture.* The most important step for an institution to reach its goals is for the institution to engage in significant planning. New York Law School engages in school-wide continuous planning. Every five years, faculty and administrative staff discuss the

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31. These changes have come with real costs. First, the law school added several faculty members specializing in academic support, research and writing, and bar preparation—amounting to several hundred thousand dollars in new expenses. Second, it gave up additional tuition revenue from students who moved from full- to part-time—giving 100% scholarships to them for their additional time at the law school. Third, it added significant counseling time for its CCP students, it required staff to monitor student progress, and it created new IT systems to chart changes. Improving bar results has certainly increased the value of the law degree for those students who would have failed in the past. In the years ahead, schools will have to achieve similar results without creating new costs—much more difficult, but essential to maintaining the value of innovations and improvements in the program. *See infra* pp. 1603–09.

32. The analysis I offer assumes that most law schools have clearly articulated missions and have developed programs to serve those missions. This is most certainly not the case; many schools have been built as the sum of varied and often inconsistent parts—faculty preferences, state directives, quirky historical commitments, and the like. Even the most thoughtful programs have added personnel and programs that have become out-of-date or less important over the years. Unlike many industries, however, in which inconsistent objectives may be eliminated, most schools cannot just eliminate faculty, close programs, and move in entirely new directions. These barriers make pursuing new objectives or specific mission goals more difficult. Existing resources may not be available to redirect those goals. As a result, the law school may need to incur new costs to fulfill its goals—costs most often passed on to students in the forms of higher tuition and fees.

school's mission. They review its prior performance and fulfillment of previous goals. Successes are retained. Failures are reviewed, and remedial plans are established. The school then defines its new objectives, describes the weaknesses that it must overcome, and sets out the initiatives to be taken. To assure that this process is well-informed, the planners look at data on performance across the program and assess successes and areas needing improvement.

The law school collects an enormous amount of data on each student—from a student's application file to his or her performance after graduation, with all steps in between.<sup>33</sup> It collects grading information, participation in law-school activities, numbers of appointments with counselors, engagement in extracurricular activities, pro bono work, and countless other activities. It measures faculty and staff productivity. It collects teaching evaluations, class visits, and student performance in each course. To these data, the law school has added the powerful information contained in the Law School Survey of Student Engagement ("LSSSE").<sup>34</sup>

The law school's commitment to collect data, assess performance, and engage in reflective programmatic change is a long-term commitment fueled by financial plans, revenue targets, enrollment projections, projected tuition charges, future and planned capital improvements and maintenance,

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33. The first person I hired at New York Law School was our institutional researcher. Her job is to help the law school understand what it is doing, whether it is being done well, and whether the results are consistent with the goals the school has announced. These data allow the law school to determine whether it must adjust its goals or its methods to produce outcomes. The data allow the law school to know whether it must improve its performance. And, as illustrated in the bar-pass story above, they force the law school to experiment and change.

34. New York Law School is one of only two law schools to have participated in every administration of LSSSE since it was piloted in 2003. Over the eight administrations, the law school has consistently received feedback from a third to a half of its enrolled students. This feedback has allowed the school to understand student perceptions about every aspect of the program—faculty-student interactions, administrative performance, student work patterns, student engagement, etc. Each year, the law school has attempted to improve in those areas that students deemed especially weak and has had enormous success in improving their perceptions of registration functions, information technology, career services, and other core administrative functions. The school has also learned important information about New York Law School students—they have much longer commutes than their peers at other urban schools, they work for pay outside the classroom much more than their peers, and they have less engagement with faculty outside the classroom. These data serve as the basis of changes the law school has been making and will continue to make for more effective teaching and serving its students. Student feedback has forced the law school to make better use of technology so that students can effectively study during their commutes. It also has led to a faculty advising system that requires every faculty member to do intake and follow-up meetings with a small group of entering students and to help monitor their goals and performance throughout law school. The data also have led to reorganization of various staff functions, made administrative offices more aware of their role in student satisfaction, and created the impetus for new investments in the academic program like the new first-year legal-practice program, which I describe later in this Essay.

and programmatic investments over a ten-year horizon. Linking programmatic improvements to financial plans allows the school to fund its changes, recapture assets from failed experiments, and avoid disruptive fits and starts in implementing new programs. It also informs the school's fundraising goals, giving fundraisers projects and laying out the long-term financial needs of the law school. These give the faculty and administration guidance on when new programs can be instituted and how much funding will be available to implement their designs.<sup>35</sup>

*Mission and Program Objectives.* New York Law School is a large, urban law school. Most of its students wish to practice law in an urban setting. They have very diverse goals—private practice in large, medium, and small settings; government service; and corporate work (both legal and business). The school has a strong scholarly tradition, although very few of its graduates pursue academic careers.

These characteristics have led the law school to describe its mission along two axes: (1) “learn law; take action,” which is a call for applied legal theory, teaching students how to use law to accomplish stakeholders’ goals and pushing faculty scholarship to solve social problems; and (2) “the right program for each student,” which focuses on individual student goals and providing diverse educational and career paths for them. In program terms, this has required the law school to offer a very wide-ranging curriculum that gives each student a chance to find a curricular niche, participate in skills courses, and engage in a wide array of rewarding professional-development activities.

These two axes seek to both broaden and deepen each student's knowledge of the law, their skill in practicing law, and their ability to form a professional identity supported by strong ethical values. To accomplish this, the curriculum has the following characteristics: (1) a first year that seeks to integrate skills and knowledge by coordinating the legal-practice courses

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35. The law school's new first-year legal-practice program illustrates this process. For over twenty years, the law school ran both a first-year legal research and writing program, staffed largely with adjunct faculty, and a lawyering-skills course, taught primarily by full-time faculty. In assessing these courses, the faculty concluded that students needed better training, teaching, and skills. Although the legal research and writing program and the lawyering program covered similar material, they often gave conflicting messages and were neither well integrated with each other nor with the remainder of the first-year courses. Further, the part-time teachers could not provide the kind of counseling and supervision necessary for effective skills training. Consequently, as part of the law school's strategic plan, the school decided to merge the lawyering program and the research and writing program into a single two-semester course, taught by full-time faculty. This required adding sixteen faculty members and cost millions of dollars. To effectuate the recommendation, the law school reallocated money from the current program, reassigned some faculty members to the new program, and planned for a transition over a three-year period using resources tied to its long-term financial plan. The new costs were absorbed by forsaking other planned hiring, greater reliance on new funds, and administrative budget cuts. Thus, the school implemented a huge programmatic change with minimal need to extract a significant premium in increased tuition charges.

with other first-year courses and offering a wide array of lawyering skills exercises; (2) a focused second year with gateway courses that are predicates to more advanced upper-level substantive and skills courses; (3) a robust group of research centers offering structured curricula, specializations, and graduate degrees; and (4) a chance to engage in a real-world project during the third year of law school.

To measure its success in broadening and deepening students' education, the law school currently measures various outcomes: the numbers of students enrolled in its various specialty degree programs,<sup>36</sup> the number of students engaged in specialty study tracks with robust objectives for those tracks,<sup>37</sup> its transfer rate (in and out), its bar passage rate, career outcomes (by sector), the number of externships it offers, and the number and quality of opportunities for students to engage in research and other projects with faculty members.<sup>38</sup>

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36. The law school has four graduate programs: LL.M.s in Taxation, Real Estate studies, and Financial Services law, and an M.A. in Mental Health and Disability law. In the years ahead, the law school will add online versions of its Real Estate and Financial Services programs. It also will add LL.M.s in American Business Law and Family/Elder Law. Additionally, it may create a year of clinical rotations, placing students in working law firms that can supplement the training in the LL.M. programs. Assessing these programs begins with the enrollments of each program and how many graduates of the programs obtain work in their chosen field or use the education in their jobs. Currently, the law school has only rudimentary data on graduates' career paths, since the programs are all relatively new.

37. As described above, the law school adopted an honors program for its top students. This program requires every student in the top 15% of the class to affiliate with one of the school's research centers: the Justice Action Center (public-interest law, civil-rights law, and international-human-rights law); The Institute for Information Law and Policy (intellectual property and information technology law); the Center for New York City Law (state and local government law); the Center for Real Estate Studies (real-estate and development law); the Center on Business Law and Policy (corporate law and business regulation); the Center for International Law (international-business-transaction law), and the Center for Professional Values and Practice (lawyer-regulation law and studies of the legal profession). Once the students affiliate, they enter a rigorous upper-level curriculum with sequenced courses, a commitment to the school's law review, requirements to engage in their Centers' public programming, and a capstone project. In addition to their honors programs, the Centers also have affiliates programs for students outside the top of the class, which organize the curriculum and give the students a chance to network with lawyers in the subject area of the Center. The law school has other Centers—the Media Center, the Diane Abbey Law Center for Children and Families, the Center for Financial Services Law—focused entirely on students outside the top of the class. These Centers offer sequenced curricula, projects, and activities geared to improving students' job prospects in fields in which they are interested. These various initiatives provide customization of paths for the students ("the right program for each student") and integration of theory and practice ("learn law; take action"). Together, they help to both broaden and deepen each student's training.

38. The law school has made a significant investment in creating opportunities for students to work on projects with their faculty members. Project-based learning is its attempt to increase skills training for every student without adding new costs. Traditionally, skills training has been very expensive, taught by specialist faculty members who teach intensive lawyering courses to small numbers of students. Most research faculty members cannot or will not teach such courses, seeing their role as teaching substantive courses and conducting scholarly

These efforts have been a good start in demonstrating that New York Law School is achieving valuable outcomes for its students. However, much more work remains. The law school must show its success on two major measures—that the education is helpful in building each student’s long-term career success and that it has helped students to achieve satisfaction in their professional lives—before it can comfortably conclude that it is sufficiently valuable to every student. Currently, the law school collects anecdotal information about the success of its graduates—focus groups at law firms and other employers, debriefings of alumni mentors and speakers, and one-on-one discussions with graduates. In the years ahead, the law school will systematically collect information by surveys of its graduates (and their employers if arrangements can be made). These data will help the law school further refine its mission, curriculum, and activities to fulfill its implicit goal of a broad and deep education that prepares every graduate for a successful and satisfying career.

*Course Objectives.* As described above, the law school’s first order of business has been to clearly describe its mission and program goals. Fulfilling these goals depends on successfully delivering education at the micro-level—each course and interaction with the students. Every course should fit into the overall strategy of permitting students to individualize their studies and have the opportunity to bring theory and practice together. Minimally, faculty members must describe their courses in a syllabus, collaborate with other colleagues teaching the same course, and coordinate with other teachers in their substantive area (or teaching in the same first-year section). Faculty will need to create learning checklists for their courses—substantive material that should be learned, larger themes that should be addressed, and other goals—that can be evaluated at the end of the semester (or beyond graduation). Collectively, these course objectives can be evaluated for their consistency with program objectives—where they align, they should be continued; where they do not align, they can be adjusted, or in rare cases, dropped.

*Co-Curricular Objectives.* Most law schools have student-run programs like law review, moot court, trial advocacy, negotiation, counseling, and interviewing in which students can receive academic credits. The programs are often not supervised by faculty and may inadvertently undermine the school’s primary teaching objectives. At New York Law School, co-curricular

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research. As a result, schools have hired additional faculty to teach skills. The experiment with project-based learning at New York Law School assumes that every faculty member can teach lawyering skills—clinicians through client representation; research faculty by engaging students to participate in their scholarly activities. The projects entail building teams of students to work on aspects of the faculty members’ research agenda, formulating public policy based on that research, doing public presentations concerning the research, and working on a deadline with the expectation to “publish” the work—through traditional scholarship, a website, or some other product. By engaging every faculty member in significant education, the law school can give all students enriched training, and not incur new costs.

programs are closely supervised by full-time faculty members and are devised to reinforce the school's overall program objectives. For example, members of *New York Law School Law Review* are in the honors program and are affiliated with a Research Center. They are supervised by a full-time faculty member, whose sole job is to be the Publisher of the Law Review and the teacher of the Law Review students. The Publisher teaches a skills course in editing legal scholarship. The students' written work fulfills requirements of their Centers.<sup>39</sup> The Centers provide materials for publication and often offer live symposia at which the students serve the role of hosts and staff members. Similarly, students in the Moot Court and the Negotiation, Counseling, and Interviewing programs take courses taught by their advisor/teacher and have obligations to host competitions and events at the law school.<sup>40</sup>

*Extra-Curricular Objectives.* Like most law schools, New York Law School has myriad extracurricular activities—student groups, volunteer opportunities, career services, mentor programs, and the like. Unlike many schools, however, the law school closely interacts with students to steer their activities into fulfilling the program objectives. Its Office of Professional Development coordinates all student extracurricular activities, from student government to public interest and community service; student organizations; and the office of career services. Counselors help students to leverage their out-of-class time into effective activities that will help them become successful in their goals. They help students find speakers, create networking events across the broad ranges of students' career goals, and supervise upper-level students—campus advocates—who are informal advisors to each new entering student. The Office of Professional Development also supervises faculty advising, beginning with the first week of classes during which every student does an intake interview with a faculty member who will be his or her advisor. The interview is structured to help students begin to devise their career goals and to describe their reasons for being in law school. The interview then becomes the text relied upon by career-services counselors and other law-school officials who will help students to customize their education and seek particular outcomes. By the second semester of school, each student should have then had an interview with a career-services counselor who will help them devise an "Individual

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39. See *supra* note 37.

40. There is a deeper purpose to the close supervision of students in the co-curricular programs. These organizations help students develop the skills sought by employers: the ability to work on a team, to complete work on schedule, to supervise others, to take instruction from others, to manage projects, to deal with diverse viewpoints, to engage outside clients, and to market the activities of the organization. Most schools do not "teach" these skills—leaving it to students to learn from each other by trial and error. By embracing these programs as part of the law school's teaching mission, and devoting to them substantial teaching resources, the law school more carefully can align the activities with its overall outcome objectives.

Career Plan” that will serve as the basis for the curricular planning and job search.

The Office of Professional Development also takes an active role in furthering the law school’s goal of producing graduates who are practice-ready. It challenges students to complete a five-point professional-development curriculum designed to create a portfolio for each student that can help potential employers judge their marketing skills. First, students must establish that they have participated in three work experiences—two summers and one semester. These include paid internships, externships for credit, work-study assignments, volunteer positions, and any other experiences in which the students have responsibility to perform legal work under the supervision of an experienced attorney. Second, students must work with their advisors to integrate their experiences, their course selections, and their career goals so that they can present a coherent description of what they may offer to the market. Third, each student must demonstrate a substantial accomplishment—fulfilling a difficult pro bono project, working on a client matter, or the like—that shows that they are capable of engaging in problem solving and can complete assignments they take on. Fourth, students must have a published writing or professional presentation that demonstrates an ability to take their legal knowledge and share it with others. Finally, students must establish a professional network of five advisors—faculty members, alumni, past employers, and others—who will serve as their references and continued advisors. These five points become a common touchstone that supports the law school’s overall program objectives.

*Management Objectives.* It is widely accepted that there is a severe principal-agent problem in higher education. The goals of the faculty and staff—career advancement, reduced teaching and other workloads, a focus on scholarship, higher tuition to create higher resources, etc.—can be at odds with the students’ goals. To reduce this problem, management of the school must seek to align employee goals with those of their students.

This is a complicated process. Students often have a difficult time understanding and articulating their goals. Faculty and staff are terrific at justifying their self-interest in terms that are student oriented. It is critical, therefore, to separate out the two different relationships that the law school has with its students: the student as consumer and the student as fledgling lawyer. In the consumer relationship, the school has an absolute need to serve students at the highest level of convenience: phone calls and emails should be returned, facilities should be pristine, grades should be timely, processes should be simple, and IT systems should be flawless, etc.<sup>41</sup> In

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41. The law school’s Human Resources Office has an extensive customer-service training program—the purpose of which is to equip every staff member with the tools and attitude to serve students well. Each administrative unit and each employee is expected to act in accord



training lawyers, the school must be transparent in its mission and relentless in pursuing it—even if its students (as consumers) would prefer something else.<sup>42</sup>

Having a deep commitment to this mission and student outcomes requires the school to carefully manage both student and faculty practices. This requirement means having high ethical standards about cheating and other misbehavior, requiring students to fulfill their academic responsibilities, and requiring them to take the courses the school deems necessary to their development, to state a few examples. This requirement also means that faculty and staff must be evaluated on their performance of institutional work and fulfillment of programmatic goals.<sup>43</sup>

For New York Law School, this remains a work in progress. While the Human Resources Office has already successfully implemented an extensive customer-service training program that has significantly improved students' perceptions of school services, it has been less successful in creating effective incentives for each administrative unit to adopt office goals that are tied to various successful student outcomes. More significantly, the law school has only barely begun to effectively align faculty incentives with institutional priorities. Project Based Learning, which tasks faculty researchers to involve students in their scholarly projects, to build teams of students doing some outward work in the subject area of the faculty member's research, and to supervise the student projects, is the law school's core initiative that seeks to align its research and teaching mission.<sup>44</sup>

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with goals set by the administrative and faculty deans to ensure that students receive the appropriate level of service. Occasionally, when students act unreasonably, staff members are expected to view the incidents as professional-development issues, involve academic counselors or deans, and use the interaction as a teachable moment that shifts the encounter from customer service to training.

42. The reaction of students to CCP is instructive of the clear difference in the two relationships. Students placed into the CCP seek an escape and a chance to explain why their reduced course choices, delay in graduation, or the implicit stigma of being placed into the program are unacceptable to them. They often explain that they should be the exception and be allowed to pursue their goals. A purely customer-service orientation might relent, but the law school has firm convictions about its obligations and mission. The rules are clearly spelled out before students enroll that their performance in school will determine their track. Further, there is no discretion to vary from the rules. The bargain is struck at the beginning: come if these rules are acceptable; do not, if you would like a more generic approach.

43. This evaluation can be extraordinarily difficult. Student counseling, career advising, and supervision of student activities are publicly invisible and can take time from research and writing. Publication is often a simpler metric to measure than intangible contribution to institutional goals. Thus, a critical portion of management time and effort must be made to align individual rewards for faculty and staff with program objectives. In the years ahead, this will be the law school's most critical personnel challenge.

44. It may be that there is no effective way to completely align faculty interests with institutional goals for student outcomes. Tenure and other job security give significant degrees of academic freedom to each faculty member to define his or her priorities. Institutional goals are hard to enforce without faculty peers who are willing to enforce them upon each other. It is beyond the scope of this Essay to discuss in detail whether schools can successfully move from

*Outreach Objectives.* Most law schools insufficiently utilize their vast network of graduates in improving the quality of opportunities for current students. New York Law School seeks to rectify this by making three asks of its graduates: first, that they serve as mentors to current students; second, that they help students find their first legal job; and third, that they contribute financially to the law school. The three asks are interrelated. Few successful lawyers have reached their goals without the help of others. Each generation, therefore, should owe to its successors an obligation to give back equally the benefits they received from the prior generation. But for their opportunities as students, they would not have achieved their current status. Accordingly, they should share so that others have similar opportunities.

Over the next several years, this three-part relationship will be expanded. The law school's graduates have the potential to be its teachers as well. Their substantive expertise can be shared in workshops, symposia, programs, master classes, videos, and other media to teach and inspire students. They can serve as advisors to law-school centers. They can serve as project managers in the school's Project Based Learning courses.

*The Relationship of Value and Cost.* As described above, law schools like New York Law School are engaged in a substantial shift—from focusing on traditional inputs, programs driven by reputation, and status-seeking, to focusing on improved student outcomes, better skills, and better ability to serve employers, clients, and the public. At its worst, producing better outcomes is expensive, requiring additional faculty, staff, facilities, and resources. At its best, it is cost neutral. The quest for quality improvement does not, however, lower the cost of education. Below I offer a short primer on law school programmatic costs to show how difficult it is to lower costs under the current model of legal education. I conclude the Essay by speculating about how education might be restructured, radically, to reduce those costs without sacrificing quality.

*Law-School Economics 101.* In order to understand what changes in legal education are feasible, one needs an appreciation of how law schools are funded, what their fixed and variable costs are, and how much it might cost to change what legal education delivers. Fundamentally, many of the costs of legal education are permanent over the short- to medium-term; these costs cannot be substantially reduced for many years.<sup>45</sup>

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being faculty-centric to student-centric in the absence of significant changes in the tenure system or whether the cost to academic freedom from abandoning that system is too high to be justified. Suffice it to say that in the years ahead, as students question the value of their degrees, schools will increasingly need to focus primarily on creating exceptional value for their students. The threat that schools implicitly face is that, unless they refocus, they may lose students, income, and credibility.

45. Long-term cost reduction will depend on regulatory change and internal restructuring of higher education. See *infra* pp. 1613–21 (discussing a proposal to move away from the current regulatory regime).

Law-school revenue is generally determined by the following formula:

- (1) (Number of students) x (tuition rate)
- (2) – (scholarships provided by tuition discount)
- (3) + (expendable fundraising)
- (4) + (draw from endowment)
- (5) + (grants from government or other sponsors)
- (6) + (subsidies from the university and state appropriations)
- (7) + (auxiliary income from dorms, food service, bookstore, etc.)

Of these, private schools generally derive most of their revenue (often more the 90%) from tuition revenue represented by (1). Public law schools frequently derive substantial income from both the tuition revenue represented by (1) and subsidies and state appropriations represented by (6). These revenues, as well as expendable fundraising represented by (3), most often are unrestricted—i.e., they can be used to pay any expenses incurred by the school. Revenues from endowments in (4), sponsored projects in (5), or auxiliary enterprises in (7) frequently are restricted to uses directed by the donor or grantor or related directly to costs associated with the activity generating the income.

From these revenues, schools pay out the following types of expenses: instructional and research grants (salaries and benefits for full-time and part-time faculty and those who support them, professional development, and the like); library and informational resources (personnel expenses associated with library and educational technology, book purchases, and information-technology purchases); student services (counseling, career advising and placement, academic advising); management (administrators, fundraising, and admissions); and facilities (costs associated with buildings, safety, grounds, maintenance, etc.). Many of these expenses are essentially fixed costs: debt service on facilities, the contracts for tenured or other job-secure faculty members, the minimum library services, and a few others. Moreover, these expenses make up the bulk of all law-school expenses, so once the institution has been built to a certain scale, many of its costs cannot be eliminated.

*Base Assumptions.* A more granular analysis of a hypothetical private school might illustrate this better. Assume the following: (1) the school has a total population of 1000 students (about the average of New York schools); (2) it maintains a fifteen:one student-to-faculty ratio (the average of New York schools) for a total of sixty-six faculty members; (3) fifty of the sixty-six faculty members are senior, job-secure faculty and the remainder are junior faculty members; (4) the faculty salaries and other support of instruction make up at least 45% of the school's total expenses (a percentage typical of many universities); (5) on average, the schools give scholarships of \$10,000 to about one-half of their students (the New York averages); (6) tuition is \$41,600 (the average for New York schools during the academic year 2009–2010) and schools have \$4,000,000 of other net income (fundraising and

similar nontuition funds) to defray their operating costs (about 10% of their other income).

The following model, based upon expenses typical to New York law schools, may be useful in evaluating the expenses associated with this hypothetical law school:

**Estimated Instructional Expense.** (Assume sixty-six faculty: twenty-five senior, job-secure; twenty-five mid-level, job-secure; 16 junior, on track to job security).<sup>46</sup>

Rank	Salary	Research Support	Benefits at 30%	Cost Per	Total (66)
Senior	\$200,000	\$12,000	\$63,699	\$275,600	\$6,890,000
Mid	\$160,000	\$12,000	\$51,600	\$223,600	\$5,590,000
Junior	\$140,000	\$12,000	\$42,000	\$194,000	\$3,104,000
					<u>\$15,584,000</u>
Adjunct Instructors From Practice (100 at \$6,000)					<u>\$600,000</u>
					<u>\$16,184,000</u>
Other Instructional Resources Bringing to 45% of Income From 1000 Students at \$41,600 Per Year					<u>\$4,336,000</u>
					<u>\$20,520,000</u>

*Assumed Additional Expenses.* In addition to these expenses that are pretty much fixed costs, most law schools have additional expenses that are quite difficult to avoid. A 250,000 square foot physical plant operating at a cost of \$100 per square foot would add \$2,500,000 in expense.<sup>47</sup> In addition, most law schools maintain libraries and information services, regularly amounting to about 10% of revenue (about \$4,160,000). In addition to the above, all law schools make significant expenditures for administrative services—deans, admissions offices, career services, academic advisors, etc. These vary widely by school, but a conservative estimate would amount to about half of instructional expenses (\$10,260,000).

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46. Salary estimates are based on recent hires in the New York market.

47. This is a very modest estimate. Many schools have financed construction of their facilities. Their capital expenses will be significantly higher.

Putting the three assumptions together describes a typical law school budget:

**Revenue**

(1000 Students at \$41,600)	\$41,600,000
Fundraising or Draw From Endowment (approximately 10%)	\$4,000,000
<b>Total</b>	<b>\$45,600,000</b>

**Expenses**

Scholarships	\$5,000,000
Instructional	\$20,520,000
Facilities	\$2,500,000
Library	\$4,160,000
Other Expenditures	\$10,260,000
<b>Total</b>	<b>\$42,440,000</b>

**Net Revenue**      \$3,160,000

The analysis suggests that to break even on its budget the school would need to achieve at least \$1,000,000 per year of expendable fundraising and have an endowment of at least \$60,000,000, earning 5% per year. Schools with greater resources could afford to pay faculty and staff greater salaries, invest more in programs, or otherwise expend more on behalf of their students. Schools without such resources would need to spend less. For purposes of this Essay, however, the model provides a useful baseline for evaluating how much flexibility schools have to lower their costs, how much it will cost to create new programs, and what effect cost reductions or expenditure increases will have on students.

*Effect on Students.* As illustrated above, a typical school may have some excess revenue in any given year. Such net revenue would permit the school to maintain a contingency fund to deal with various unforeseen financial setbacks (declining endowment values, lower than expected fundraising, under-enrollment, etc.) or to invest in other programs for the benefit of students, other personnel, programming, or additions to endowment or reserves. However, rather than assuming schools can use such revenue, one could evaluate whether the amount could be returned to the students as a cost reduction. What would the effect be of reducing tuition charges?

Law students finance their education with loans. Under the current system, virtually every student can qualify for a direct loan from the federal government each year for an amount equal to their cost of attendance: tuition plus living expenses (room, food, transportation, books, etc.).

Hence, a reduction in tuition will be a reduction in borrowing. Such a reduction translates into a lower monthly payment after graduation. Lower payments make it easier for a student to accept an entry-level legal job at a lower salary.

Under the hypothetical above, a school could reduce its overall tuition \$3,160 per year for each student—thereby reducing their debt by a total of \$9,480—a significant amount. In debt service terms, however, the effect of such a reduction is more modest. For a ten-year loan, it would amount to a difference of \$79 in principal payments (\$114.52 per month with interest paid at 7.9%).<sup>48</sup> Most students, however, extend their loan payback to twenty-five years, which would make a difference of \$31 per month in principal (or \$72.52 with interest).

Such modest savings per month are unlikely to make a substantial difference in the ability of law graduates to manage their debt service.<sup>49</sup> More chilling, however, is the modest effect on debt service even if a school were to reduce its tuition much more profoundly. For example, if our hypothetical law school were able to cut its expenses by slightly over 20%, it would reduce its yearly income by \$9,000,000 (\$9,000 per student per year). This would amount to a savings to the student of \$27,000 in tuition, which would reduce monthly payback on a ten-year loan by \$225 per month in principal (or \$326.16 in principal and interest). More likely, it would save the student \$90 per month in principal (or \$206.60 in principal and interest) on a twenty-five year payback. To put it another way: a tuition reduction from \$41,600 to \$32,600 (almost a 22% cut) would give a graduate a total of \$2,700 (\$3,913.92 in principal and interest) more in annual after-tax resources on a ten-year payback or \$1,080 (\$2,469.20) annually on a twenty-five year payback.

Any reduction on debt obligations facing law graduates is welcome, but the numbers are already so large that students will face significant burdens even if tuition does not rise at all.<sup>50</sup> To illustrate further, each of the fifteen New York law schools provides an estimated cost of attendance beyond tuition—ranging from \$12,916–\$26,430, with an average of \$20,266.

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48. I have used a loan repayment calculator provided by EdFinancial Services for this Essay. See *Repayment Calculator*, EDFINANCIAL SERVICES, <http://www.edfinancial.com/financialcalculator/repaymentcalculatorpage.aspx> (last visited Mar. 21, 2011). Interest rates are likely to be lower; they are a product of blended rates between Stafford loans (in the upper 6% range) and Grad PLUS loans (at 7.9%). However, for purposes of illustration of the effects on payment, I have chosen the higher rate. This offsets the likelihood that the amount borrowed will be slightly higher than the nominal value borrowed because interest accrues while a student is in school.

49. On a ten-year payback, students will save only \$1,373.24 per year. On a twenty-five year payback, they will save only \$868.48 per year.

50. A student borrowing \$40,000 per year for tuition and \$10,000 per year for living expenses will borrow \$150,000 to finance his or her legal education. Principal and interest on a ten-year payback will be \$1,812 per month. It is \$1,147.84 for a twenty-five year payback.

Hence, even a student with a full-tuition scholarship might face a debt burden above \$60,000.<sup>51</sup> To use another example, a student paying full tuition at a state-supported law school with low tuition (\$13,000), borrowing the average amount for living expenses would still need to borrow \$99,000 for his or her legal education.<sup>52</sup> Under any imagined scenario, students will need to borrow substantial amounts to become a lawyer.

*The Cost of Improvement—or Perceived Improvement.* As suggested earlier in this Essay, legal employers catalogue a litany of shortcomings in law schools and their graduates: law students do not write effectively, do not understand the needs of their clients, do not have a sense of the economics of practice, do not understand the underlying businesses of clients, do not work well in teams, do not have sufficiently robust work ethics, and so on. Schools might try to remedy these shortcomings in students by offering more effective training that would be attractive to employers.<sup>53</sup>

Despite their expressed preference for better law-school training, however, employers frequently act with disregard to the actual education students receive. Very few students report to their career service offices that employers delve into their training; this is likely because most hiring, at least in large firms, takes place after the first year of law school—a curriculum in which there is little difference between schools. Many employers do not hire students further along in their legal careers because they did not participate in summer internships with the employer. Thus, instead of looking at the student's training before making a decision whether to hire the student, the employer relies on two other indicia: the student's school and the student's class rank at that school. Of these measures, the former is a way to limit the pool of students from a school that will be considered by the employer, ranging from no students in low-ranked schools, to perhaps as many as 50% or more from a prestigious school. Once such a cut has been made, employers then further limit themselves by the exact rank of the student at the school they attend.

Because so many firms use this hiring strategy, many schools have not chosen to improve their education. Instead, they have taken steps to improve their ranking under the view that doing so may increase the percentage of students at the school who the employment market will consider. Such strategies, if effective, also have collateral benefits to the school: raising self-esteem of community members and alumni, improving opportunities for faculty members for professional advancement, and so on.

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51. Paying this back over ten years would be \$724.80 per month; it would be \$459.12 per month paid over twenty-five years.

52. Paying this back over ten years would be \$1,195.92 per month; it would be \$757.55 per month paid over twenty-five years.

53. I argue above that students will increasingly demand that their education be improved, that it be more useful to employers, clients, and the public. See discussion *supra* pp. 1597-1601.

Unfortunately, the “rankings” approach creates two significant problems. First, it usually is ineffective since most employers are not very sensitive to minor ranking differences between schools; these employers treat only a handful of schools as sufficiently elite to permit hiring students from the middle or bottom of their law-school class and treat the vast bulk of other schools as fungible with each other, making only small numbers of students eligible for employment. So fine movements upward or downward rarely affect student opportunities (leaving only the collateral benefits associated with a higher ranking for faculty and others). Second, steps to improve rankings can be expensive.

*Student-to-Faculty Ratio and Student “Quality.”* Under typical ranking systems, a lower faculty to student ratio may improve a school’s ranking. Similarly, higher student credentials may also improve a school’s reputation. Each of these strategies is expensive.

Student-to-Faculty Ratio. To move from the 15:1 ratio in the thousand person average New York Law School hypothesized above to a 13:1 ratio, for which a school would need to increase its faculty from sixty-six to seventy-six members. Assuming that all of these new hires were at the junior level, a school would need to raise nearly \$2,000,000 of new revenue just to cover the salary and benefits of the new hires—whose salaries will rise over time. In tuition terms, this would mean an additional \$2,200 per student—\$2,000 for tuition and \$200 to maintain the scholarship ratio of 10%.

Alternatively, a school could cut its student body size to lower its student-to-faculty ratio. With sixty-six faculty members, a school could lower its 15:1 ratio to 13:1 by cutting 120 students, leaving it with a student body of 880. The lost revenue of those 120 students would be approximately \$4,500,000 (or gross tuition of \$5,000,000 minus \$500,000 savings in scholarships). This would cost students an additional annual amount of \$5,000 in tuition to maintain the school’s current operations.<sup>54</sup>

Improved Student “Quality.” The conventional wisdom is that a school can improve the quality of its students by taking those with higher LSAT scores. One way to do this is outlined above<sup>55</sup>—cutting a school’s size, allowing it to be more selective in admissions. However, to achieve substantial improvement in the average LSAT scores of its entering class, a school often will need to cut far more deeply into its class size. Cutting from

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54. One could argue that the school could cut its operations an equivalent amount and thereby avoid passing on to continuing students the cost of cutting the size of the student body. For our hypothetical school, this would mean eliminating any financial cushion and still having to cut almost \$2,000,000 in expenses. Assuming that these would come from services other than instruction, one is left with the question of whether the search for a slight improvement in the student-teacher ratio would leave the remaining students better or worse off. Would the cuts leave quality in place? Moreover, there are only so many times a school can cut. Eventually, it will be unable to cut its way to an improved ratio.

55. See discussion *supra* p. 1608.



1000 students to 880 students means cutting 40 students per year. Averages, however, cluster around the middle student in a school. The middle student in an entering class of 333 (the size of one-third of a 1000-person law school) is between the 166–67th student in terms of LSAT ranking. The middle student in an entering class of 293 is between the 146–47th student. Most schools see minor LSAT difference from their median student to the lowest entering score of the top quartile of their class—somewhere around the 83rd highest LSAT score in the entering class. Unless a school has a very wide range of LSAT scores from the top to the bottom of their applicant pool, such a small difference in which student is the middle LSAT score is unlikely to yield significantly higher entering scores. Therefore, to raise the median LSAT score, schools might have to engage in even greater downsizing of the student body—with yet more costs being borne by remaining students.

Alternatively, a school could try to provide greater financial incentives to students with higher LSAT scores to attend the school. Buying better students with full scholarships represents lost revenue to the school of \$41,600 for every full-scholarship recipient. Accepting 20 more of such students per year (60 total over three years) would increase a school's scholarship budget by nearly \$2,500,000—an amount that remaining students would either have to absorb in higher tuition, more enrolled students, or greater fundraising (60% improvement in fundraising in the hypothetical school outlined above).

Whether trying to cut the size of the student body or adding scholarship students, the quest for improved quality may not help much in raising a school's profile. Small LSAT differences do not amount to significant improvements in reputation. They do, however, come with high cost.

*An Improved Academic Ranking.* Given these high costs, and modest returns, some schools have attempted to improve their overall ranking by improving their academic ranking. In the *U.S. News & World Report*, a significant part of a school's overall ranking is provided by its academic rank—one calculated by asking Deans, Associate Deans, and recently tenured faculty members to rank schools. The conventional wisdom is that an academic rank will reflect the scholarly productivity of the faculty. Schools boost their productivity by: reducing teaching loads, spending money to fund summer research, and funding sabbaticals every seven or so years, during which faculty members are expected to write substantial scholarship. Combining these various strategies has several consequences, which are described below.

Teaching Load and Summer Grants. For many years, faculty members taught an average of four courses per year. Cutting by one course per year effectively reduces teaching resources by 25%—the equivalent of sixteen additional faculty members on a faculty of sixty-six. Using our formulas above, this translates into a cost of about \$3,200,000—borne by students in

the form of either adding faculty to make up for the shortfall or eating the cost of reduced available teaching resources. For a faculty of sixty-six, summer grants make up nearly \$800,000 of costs (66 x \$12,000).

Sabbaticals. Assuming a productive faculty, where each member is entitled to a one-semester sabbatical every seven years, a school would lose the equivalent of 4.5 faculty members annually to sabbaticals—one-half of the teaching load of nine faculty members. This is the equivalent of another \$900,000 in additional faculty resources to replace the faculty members on sabbatical. Together with the reduced teaching loads and summer grants noted above, the attempt to raise rankings through increased scholarly productivity may amount to nearly \$5,000,000 of additional costs to a school.<sup>56</sup>

To sum up all of the various strategies above, while potentially improving the perception of a school, each strategy would have clear negative financial impact on the students of the school. Worse, such strategies apparently are rarely effective—a quick perusal of years of *U.S. News & World Report* rankings shows that very few schools have made significant rankings jumps, because most engage in similar tactics. Moreover, there is little evidence that an improved ranking alone improves the job prospects of the school's graduates. Worse yet, none of these steps directly improve the training of the school's students.

Consequently, for many years, law schools have been raising their price in a fruitless attempt to improve opportunities for students through better reputation. Given the already high cost of that education, the serious external criticism of law schools for engaging in expensive tactics to raise their rankings, and the growing clamor for improved training of lawyers, it seems likely that law schools will soon shift their attention to substantive curricular improvements. Unfortunately, these too will be costly.

*Improved Training.* I argue above that in the years to come, employers will expect law graduates to be better trained, more practice-ready, and more skilled. Many schools will attempt to do so by teaching differently or adding training not currently available.

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56. Of course, scholarly productivity is itself an important goal in any academic institution. Law schools are not solely about teaching. They also bear a critical social responsibility to produce new knowledge as well as new law and legal systems; they play a crucial role in the improvement of the justice system. These goals undergird a school's scholarly mission—one that may be independent of its teaching and training mission. However, the costs of this portion of a school's mission—just like the cost of providing student services, a facility, an academic support system, and special curricular niches—must be paid for primarily through tuition. Thus, it may be unfair to single out the scholarly mission for particular review as to costs dependent on tuition support. Unlike many other aspects of the program, however, the scholarly mission is sometimes harder to tie directly to students' career aspirations and therefore may call on schools to provide clear explanations of the mission and perhaps alignment of scholarly and teaching goals. It is likely in the years ahead that schools will need to justify all of their expenditures and priorities, even those serving important societal goals.

There are several prescriptions for improving the training of lawyers. However, many of these prescriptions rest on the need for closer, interactive teaching of real-world lawyering problems, either with live clients or in complicated simulations. Such education is very labor-intensive. One could imagine a program in which every third-year student was required to engage in such courses for one semester (about fifteen credits of courses). Three five-credit "clinics" would be a full-load for a student. Such clinics are generally taught in sections of eight, with clinical faculty members teaching two sections per year. Under this model, a school would need to provide forty-four clinical sections for each course (333 students divided into sections of eight). Overall, the school would need to provide 132 sections to constitute a full-time load for the entire third-year class (forty-four sections per course x three courses). This would suggest the equivalent of sixty-six faculty members, each teaching two sections of eight students.

Hence to achieve just one semester of intensive skills training for every student would require a faculty of sixty-six—the equivalent of the entire faculty of our hypothetical New York law school. To put it another way: one semester of teaching would cost the same as the entire legal education currently being taught at a cost of over \$15,000,000. To solve such a problem, the school could seek greater productivity of its current faculty—essentially doubling their teaching responsibilities. This raises several problems: first, assuming that faculty are already productive, it is unlikely that they can give that much more; second, greater teaching runs in the opposite direction of the current trend of release time within which to do scholarship; and third, it assumes that every current faculty member is capable of such teaching or can be trained to be effective at such teaching. Even if the current faculty could do significantly more teaching, they probably cannot do it all. Hence, to achieve even the modest goal of a clinical semester for each student, something must give.<sup>57</sup>

One choice would be to give up the goal of an entire semester of training. If each student had only one five-credit course, the number of sections could be reduced to forty-four (or twenty-two full-time faculty)—the equivalent of only \$5,000,000 (or \$5000 per student per year). Or perhaps, the work could be outsourced to lower paid faculty members—132 adjuncts, paid at \$12,000 (double the current adjunct rate for a three-credit course at many New York law schools) for about \$1,600,000. However, one might

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57. This is the insight giving rise to New York Law School's commitment to do project-based learning. While not strictly clinical, such projects do require students to engage in real-world problem solving, work closely together in a team, work on a deadline, work under supervision (and sometimes supervising others), and present material in published or other public format. The costs are borne by full-time faculty as a substitute for one of their current, low-enrollment courses or seminars. This shifts each faculty member's teaching slightly, gives many more skills opportunities to students, and does not signal a substantial new cost.

wonder how many high-quality adjuncts would be willing to work for \$12,000 at what is currently seen as a half-time job in the academy.<sup>58</sup>

To summarize: The value proposition of the law degree is widely being questioned. Students are already burdened by costs long ago baked into their education. Over the last several decades those costs have risen as schools have sought to improve their rankings. The costs might be acceptable if law graduates received the training that employers, clients, and the public clamor for them to have. However, there has been relatively ceaseless criticism that law school not only is expensive, but it does not adequately deliver what students need. Accordingly, schools have taken a step forward in recent years to improve the quality of their education, focusing on mission and outcomes and trying to serve client needs. They have done so without being able to cut their costs. Such a model is not sustainable in the long run. Eventually, schools must at least maintain (or improve) their quality *and* lower the cost. I explore the radical steps necessary to make this a real possibility.

### III. QUALITY AT A LOWER COST

I have been asked on several occasions to explain why legal education is so expensive. There is no short answer. The model has been built over many decades. As a result, many of the current costs borne by this generation of students are the product of choices made decades ago concerning the structure of law schools, their missions, and their personnel. In addition, faculty and administrators educated in this model have deep commitments to those choices. They were served well by them and have seen generations of law-school graduates trained under that model go on to successful and rewarding careers. Inertia plays a powerful role in maintaining the current model, avoiding disruptive new innovations, and making it difficult for new models to compete with existing schools.

Legal education is a regulated industry. Schools are required to offer an education that “is consistent with sound legal education principles”<sup>59</sup>; the prime purpose of which is to “maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession.”<sup>60</sup> The Standards and Rules of Procedure for Approval of Law Schools (“Standards”) impose significant costs on schools and their students.

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58. Perhaps current legal employers could take on these training costs. However, this seems unlikely given that many legal employers already believe that they are absorbing post-graduate training costs, are barely able to manage those costs, and face hostile clients increasingly unwilling to pay for the costs.

59. STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCH. Standard 101 interpretation 101-1, at 4 (2010) [hereinafter ABA STANDARDS & RULES].

60. *Id.* Standard 301(a), at 17.

Unfortunately, many of the Standards are only marginally related to ensuring a sound legal education. Their elimination might reduce the cost of education. Such standards include: the terms and conditions of employment for various law-school employees; the requirement for a certain number of full-time faculty members, especially where the standards define full time in relation to the job security of the faculty members; physical plant requirements, especially those that the accreditation committee imposes and that relate primarily to comfort and beauty; the time within which a program must be completed (and the requirement for undergraduate studies); the bar on receiving credit and pay for the same work along with general restrictions on paid employment while in school; and distance-learning restrictions. I discuss these in turn.

*Terms and Conditions of Employment.* Unlike other parts of higher education in which accreditation standards are silent on the status of faculty members, the standards governing legal education require certain terms and conditions of employment for deans,<sup>61</sup> faculty members,<sup>62</sup> clinical faculty members,<sup>63</sup> writing instructors,<sup>64</sup> and librarians<sup>65</sup>—such as tenure or other job security. To the extent the rules require academic freedom, they are appropriate. Faculty members must be free to teach and raise all viewpoints without being subject to discipline; failure to provide such protections exposes legal education to the risk that students will be subjected to a system of indoctrination, stultification of ideas, and orthodoxy. Many have often argued that tenure and other job security are necessary to assure rigorous academic freedom, but there is little reason to believe that alternative contract protections cannot serve the same end.<sup>66</sup>

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61. *Id.* Standard 206(c), at 12 (“Except in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty with tenure.”).

62. *Id.* Standard 405(b), at 32 (“A law school shall have an established and announced policy with respect to academic freedom and tenure . . .”); *id.* Standard 405 interpretation 405-1, at 33 (“A fixed limit on the percent of a law faculty that may hold tenure under any circumstances violates the Standards.”).

63. *Id.* Standard 405(c), at 32 (“A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members.”).

64. *Id.* Standard 405(d), at 33 (“A law school shall afford legal writing teachers such security of position and other rights and privileges of faculty membership as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction . . . and (2) safeguard academic freedom.”).

65. *Id.* Standard 603(d), at 42 (“Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with security of faculty position.”).

66. There is a real distinction between tenure or job security and academic freedom. The Standards overreach when they serve the latter through the blunt instrument of creating permanent employees whose performance may become marginal but yet not amount to giving a basis for revoking tenure. This is a highly contested matter among faculty members throughout higher education. Some see tenure or its equivalent as necessary to prevent overreaching by deans or other administrators. There have been real and substantial attacks on law-school clinics and clinical faculty by legislatures, governing bodies, and influential donors

I believe that beyond protecting academic freedom, the Standards should not delve deeper into the employment relationship except to require that whatever choices a school makes ensure that students will receive a sound legal education. Requiring more raises the cost of labor at the law school and makes it difficult for schools to contain costs.<sup>67</sup> As in any other industry, education ought to be free to alter the mix of its workforce depending on the emerging needs of its constituents (students, employers, the government) and the school's economic circumstances. If a school can attract first-rate teachers, whether full-time or part-time, without job security, it can fulfill a mandate to provide a sound legal education.<sup>68</sup> If job security is

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and alumni. It is argued that without tenure clinical faculty members are exposed to a real risk of losing their jobs where their teaching upsets such influential bodies and individuals. Others, however, argue that contract law is up to the challenge of offering protection by prohibiting negative consequences in employment tied to a teacher's pedagogical choices. In addition to these arguments, some argue that tenure or its equivalent is also necessary for procedural reasons. It shifts the burden of proof of negative job performance to those who would seek to dismiss faculty, and it embraces peer review, rather than administrative review, in making those decisions.

Whatever the merits of these arguments, as suggested below, having this system imposes significant costs on schools. Permanent employees cost more than contract employees. With the elimination of mandatory-retirement rules, job-secure employees whose work is somewhat out of fashion may not be easily persuaded to retool. If new areas of law arise, and current faculty do not wish to teach in such areas, new faculty must be added.

The question is not whether tenure or other job security should be "prohibited." That would be an undue interference with institutional prerogatives and would undermine choices many schools have made. The question is whether schools should be "permitted" to organize differently, experiment with other models, and try to offer less costly approaches to maintaining academic integrity.

67. Anecdotal evidence is always somewhat suspect, but there are stories throughout higher education of schools whose economic conditions force them to cut costs short of declaring an economic exigency that would lead to wholesale restructuring of employment relationships. Because many of their employees have job security, schools may be forced to search for cost savings elsewhere by giving up well-functioning programs whose employees do not have security. Or they may lay off employees who provide counseling or other student services. These may be the right choices, but without the ability to look to the whole labor force, schools' choices are severely constrained. One can imagine circumstances in which a school becomes weaker because job-security protections force it to make the wrong choices—surely a perverse and unintended consequence of the accreditation rules. Moreover, removal of a faculty member for cause is extremely difficult, except in the most egregious case of those who utterly fail in fulfilling their jobs. Mediocre performance is not a ground for dismissal. Peers rarely wish to judge each other harshly. They do not want to question whether each course is effectively reaching each student, whether the right subjects are covered, whether all relevant skills are being taught, or myriad other things that might be judged without strong job security. These problems are only magnified as faculty members become more senior, new technologies are being embraced by others, laws are changing, new subject areas are emerging, and innovation is called for. Without a robust workforce subject to constant improvement, costs rise, but quality may remain stagnant.

68. Concerns with the rights of employees, no matter how humane, are beyond the primary purpose of the accreditation process. Those concerns can be met in other ways. Schools operate in a labor market; if job security is necessary to attract qualified teachers, schools will act accordingly by meeting market demands. If they do not do so, and the

unnecessary to offer a sound legal education, it should not be required by the accreditation rules.

*Full-Time Versus Part-Time Faculty.* Currently the Standards require that most instruction be offered by full-time faculty members.<sup>69</sup> These rules are only loosely related to what is necessary for a sound legal education. For example, neither clinical faculty nor traditional classroom teachers who teach full teaching loads count as full-time faculty members unless they have tenure or its equivalent.<sup>70</sup> At the same time, however, a tenured faculty member who does little or no teaching counts as a full-time faculty member. Further, faculty at a school with a normal teaching load of twelve credits are credited with teaching resources no greater than a school with a normal teaching load of eight credits. Playing this numbers game is not rational because no case has been made for why a sound legal education cannot be offered by those without job protections—even if having full-time faculty is preferable. Nor is it rational to believe that only those with tenure or its equivalent must be preferred over practicing lawyers or other professionals who can teach substantial parts of the curriculum that need current expertise. The only measure should be whether students receive a sound education, not who delivers that education.

*Physical Plant Requirements.* The Standards require law schools to have “physical facilities that are adequate both for its current program . . . and for growth anticipated in the immediate future.”<sup>71</sup> However, in assessing

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education of their students suffers, an accreditation issue arises—whether the school is offering a sound legal education. Fulfilling this requirement may force the school to reassess its employment policies. But there is no reason to presuppose that a prescribed number of full-time teachers or that every type of teacher or administrator needs such protections in order to deliver a sound legal education.

69. ABA STANDARDS & RULES Standard 403(a), at 31 (“The full-time faculty shall teach the major portion of the law school’s curriculum, including substantially all of the first one-third of each student’s coursework.”); *cf. id.* Standard 402 interpretation 402-2(2), at 30 (describing student-to-faculty ratio of 30:1 as a presumptive violation of the Standards); *id.* Standard 402 interpretation 402-1(1), at 29–30 (describing calculations to determine how to count full-time faculty).

70. *Id.* Standard 402 interpretation 402-1(1), at 29 (“In computing the student/faculty ratio, full-time equivalent teachers are those who are employed as full-time teachers on tenure track or its equivalent . . .”). The Interpretation goes on to say that a school can utilize “additional teaching resources,” which are “counted at a fraction of less than 1.” *Id.* Standard 402 interpretation 402-1(1), at 29. However, these resources may constitute only 20% of the full-time faculty for purposes of the student-to-faculty ratio. *Id.* Standard 402 interpretation 402-1(1), at 29–30. The Interpretation then says that tenure-track teachers with large administrative assignments count as 0.5, *id.* Standard 402 interpretation 402-1(1)(A)(i), at 30, clinicians and writing instructors without tenure or its equivalent count as 0.7, *id.* Standard 402 interpretation 402-1(1)(A)(ii), at 30, and adjuncts count as 0.2, *id.* Standard 402 interpretation 402-1(1)(A)(iii), at 30. The consequence of these various interpretations is to undercount the teaching resources of large urban schools with high numbers of adjuncts or schools that choose to hire many people who do not have job protections. Combined with a requirement to have most of the curriculum taught by full-time faculty, it may drive up the cost of education.

71. *Id.* Standard 701, at 45.

adequacy, the Standards seem to go well beyond what is necessary for a sound legal education. They require “an office for each full-time faculty member for faculty study and for faculty-student conferences, and sufficient office space for part-time faculty members adequate for faculty-student conferences.”<sup>72</sup> The goal here is admirable, but is it a necessity? Law firms have managed to create vibrant workplaces with shared offices and conference rooms available for meetings. Other businesses have open space and shared work environments. Provision of individual work spaces in a time of high-end telecommuting by increasing numbers of faculty is expensive. The only proper question from an accreditation viewpoint is whether the faculty can deliver a sound legal education. If a school can do so without private offices, why shouldn't it be free to do so?

The Interpretations to the Standards also require “space for co-curricular . . . activities.”<sup>73</sup> But if a journal can be produced on a desktop computer, students can find meeting spaces, and the library can provide research resources, is a physical location necessary for the program of legal instruction?<sup>74</sup> Similar space-related standards all push in the same direction—large physical plants, constantly in need of more space,<sup>75</sup> and a continued imposition of increasing plant costs. In practice, these Standards and Interpretations have been used by schools to convince funders to upgrade the school. Desirable as this result might be, it is important that accreditation separate the desirable from the mandatory. The Standards and Interpretations regarding facilities should be simplified to require only what is necessary to deliver a sound legal education.

*Time Within Which To Complete the Program.* The Standards' requirements of residency, minutes of instruction, and the like envision a residential law-

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72. *Id.* Standard 701 interpretation 701-2(3), at 45.

73. *Id.* Standard 701 interpretation 701-2(4), at 45.

74. And as co-curricular programs expand—to moot court, trial advocacy, negotiations and counseling, peer counseling, academic support, and so on—the drive for further investment in physical plant is inevitable, so too is an increase in expense.

75. For example, Interpretation 702-1 seems to require library seating sufficient to “meet the needs of the law school's students and faculty.” ABA STANDARDS & RULES Standard 702 interpretation 702-1, at 46. This is sometimes read to mean a seat for everyone. Yet, in the modern law school, many (maybe most) students conduct research online from their own computers, wirelessly connected both on and off campus. Similarly, a law school is required to provide “quiet study and research seating for its students and faculty,” *id.* Standard 703, at 46, as well as “technological capacities that are adequate for both its current program . . . and program changes anticipated in the future . . .” *id.* Standard 704, at 46. These salutary goals contemplate both old (quiet contemplative spaces) and new styles (collaborative, technological spaces) of learning. In essence a school must supply redundant types of spaces for all students, even though only portions of the students use each style. Further, these interpretations imagine most learning takes place in residence. Each choice adds cost to education. The question is whether such choices are necessary to provide a sound legal education, or could a school offer a sound program with a different approach to its physical space?



school program<sup>76</sup> that may not be completed in less than two years.<sup>77</sup> Further, the Standards require all students to have an undergraduate degree (or at least three-fourths of one).<sup>78</sup> These Standards reflect laudable goals: ensuring that students do not rush through their studies and that they achieve some level of academic maturity before starting their professional training. However, the value of achieving these goals through rigid accreditation rules that allow for little variation may come at too high a cost, given the increasing price of a legal education.

The requirement of an undergraduate degree (or three-fourths of one that is usually completed by completing the first year of law school) is a twentieth century U.S. innovation. There are indications that the requirement reflected a class bias when many immigrants were finding their way to law schools at the turn of the century. Given the changes in the cost structure of higher education and the types of pre-law study now available, there is at least an open question whether a sound program of legal education still requires every student at every law school to have at least three years of undergraduate education. The advent of the associates degree at community colleges suggests that a more truncated path might be warranted if a student fulfills the requirements of such a program. Moreover, one could imagine a law school adopting a robust two-year pre-law course of study that it would find acceptable in lieu of traditional undergraduate education. Should they be precluded by accreditation rules from doing so? Finally, one might look to Europe where students may receive a legal education directly after graduation from high school with bar admission rules dealing with experience or other "maturity" issues. Our system, in contrast, imposes a mandatory, additional cost of an undergraduate education before a student may obtain a law degree. This may be desirable, but ought it be required when those costs are high and students must incur debt to complete their education? Similarly, critics of legal education suggest that little after the first year of instruction is new. If a school were to choose a one-year program, find appropriate work settings for its graduates who could gain experience over the summers before and after law school, and prepare them sufficiently to pass the bar exam and effectively take on the responsibilities of being a lawyer, why should they be disabled from doing so? In short, if schools find ways to offer minimally

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76. See *id.* Standard 304, at 22 (course of study and academic calendar); *id.* Standard 305, at 24 (study outside the classroom); *id.* Standard 306, at 26 (distance education). The rules are quite detailed, with specific requirements for minimum numbers of days of study (130 days), minutes of study (58,000), and hours in regularly scheduled class sessions (45,000). *Id.* Standard 304(a)-(b), at 22. However, the rules go on to disable schools from fulfilling the standards as quickly as possible by prohibiting them from counting "more than five class days each week toward the 130-day requirement." *Id.* Standard 304 interpretation 304-2, at 22.

77. *Id.* Standard 304(c), at 22. Students may take as long as eighty-four months to complete their studies.

78. *Id.* Standard 502(a), at 35.

sound legal education in a shorter time at less cost should not our accreditation rules permit them to do so? The high cost of education today would suggest that the standards should be more flexible.

*Credit and Pay.* The Standards prohibit students from receiving academic credit and pay for the same work.<sup>79</sup> They also restrict the number of hours that a student may work while enrolled full-time.<sup>80</sup> These rules are only tangentially related to delivering a sound legal education and should not be required in order to receive accreditation.

The cost of education is high. One way in which students might seek to cushion the cost of their education is to work while in school. However, not all work has educational value. Thus, one would expect that if a student could find work that has educational value, it would be desirable for the student to take such work, cushion their cost of attendance, and improve their education. The current Standards do not permit this. Instead, we put the students to a very difficult choice between taking a job or taking credit. Our assumption must be that teaching and learning are inconsistent with remuneration. But as lawyers know, teaching and learning between senior and junior lawyers often takes place when both are being paid. So long as the teachers focus on delivering a sound legal education, the Standards ought to be agnostic about pay.

It is also difficult to understand why students cannot work more than twenty hours while they are enrolled as full-time students. The Standards must assume that work and study are inconsistent—that a program will necessarily be unsound if students do not restrict the amount of time they work for remuneration outside of class. This is not rational. There are no restrictions on voluntary legal work, playing video games, surfing the net, going to parties, watching television, commuting, spending time with one's families, or any other number of competing demands. Rather, only paid work is singled out as a potential barrier to a sound legal education. A focus on a sound legal education might require students to complete their work or attend class in person or otherwise, but consistent with fulfilling their responsibilities as students, the Standards ought not impose barriers on students who try to make their education more affordable. Under the current regime, students either take on more debt or work and fail to disclose; neither is desirable.

*Distance Learning.* The Standards allow only a small part of a legal education to be provided by distance-learning technologies.<sup>81</sup> Distance

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79. *Id.* Standard 305 interpretation 305-3, at 25 (“A law school may not grant credit to a student for participation in a field placement program for which the student receives compensation.”).

80. *Id.* Standard 304(f), at 22 (“A student may not be employed more than 20 hours per week in any week in which the student is enrolled in more than twelve class hours.”).

81. *Id.* Standard 306(d), at 26 (“A law school shall not grant a student more than four credit hours in any term, nor more than a total of 12 credit hours, toward the J.D. degree for

education has now been offered for many years, both in legal education and in other disciplines. If a school can demonstrate that it can deliver a sound legal education through distant faculty members, it is hard to understand accreditation requirements that would prohibit the practice. The promise of such technology in teaching is that it can reduce the cost of a legal education by avoiding a large physical plant, reducing the number of permanent resident faculty, and encouraging shared resources between institutions. Other degrees, including Ph.D.s, have been offered and accredited using distance-learning technologies. We have drawn an untenable line. Some unaccredited schools already offer such degrees and have had success with students passing the bar examination. Even if legal educators believe a minimally sound legal education requires some time in residence, given the arguments above on time to complete a degree, it is hard to understand why further flexibility cannot be permitted.

*Moving beyond the Current Regime.* Perfect is often the enemy of the good. So it might be argued that the current accreditation standards seek to assure a high level of quality at every school and avoid a race to the bottom that inevitably would occur without clear, consistent, and relatively inflexible guidelines. Aversion to the risk that bad schools will chase away good schools, however, is costly. It prevents new schools from offering serious lower-priced alternatives to currently accredited institutions.

Students have no alternative than to attend schools that are remarkably similar. All students must have had an undergraduate education. They cannot complete their studies in less than two years. They must all attend school in person (except for a few limited courses). They cannot work more than twenty hours a week for pay. They cannot receive academic credit and pay for the same work. They will be taught primarily by full-time, job-secure, faculty members. They will attend classes in large physical facilities. Whatever variations exist among schools, these create certain minimum investments that must take place before the school can be accredited.<sup>82</sup>

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[distance-education courses].”). Further, none of these credits can be taken in the first year (or so) of law school. *Id.* Standard 306 (e), at 26 (“No student shall enroll in [distance-education courses] until that student has completed instruction equivalent to 28 credit hours toward the J.D. degree.”). Most law schools require between eighty-four and ninety hours for graduation. Thus, distance education can be only a small portion of any student’s education.

82. A dean once asked where it was written that all law schools should be the Ritz Carlton. In his metaphor, why shouldn’t there also be Motel 6 law schools? Like the Ritz, they would offer a clean bed, a shower, and a television, but at a substantially reduced cost reflected in its less impressive facilities and staffing, less costly amenities, and less prestigious locations. Perhaps it overstates the case to believe that all law schools are the Ritz, yet the argument has some saliency. There is very little price competition between schools because the minimum cost of creating a school is quite high. The least expensive schools are state supported—they cost the same, but state citizens subsidize those studying to be lawyers. The recent large price increases by California state schools, which now have tuition charges equal to private schools, illustrates the effect on price when subsidies are removed. Lower-priced alternatives, like Concord, the online school, or Massachusetts School of Law, which does not follow ABA employment

Revising the current accreditation standards would almost certainly make it possible for new entrants to the legal education market—schools using higher levels of distance learning, with much smaller facilities; schools taught by part-time, contingent faculty, paid at lower salaries; schools seeking to produce lawyers more quickly than two years; schools permitting work for pay; schools permitting credit for work that is paid by others; and so on. Such schools almost certainly would be lower cost than existing schools and might exert substantial pressure on those schools to change.

It would be erroneous, however, to conclude that eliminating current accreditation rules would lead to a massive reorganization of currently accredited schools. Most are committed to the current regime and believe that alternative ways to deliver the education will be unsuccessful (or at least of insufficient quality) to warrant changing their current operation. Over time, however, the new entrants will force existing schools to respond. I argue below that there are five inexorable strategies that schools can implement to lower their costs *and* maintain quality at the same time (some of which require regulatory change; others of which do not). I call these diversify, stratify, cooperate, accelerate, and disaggregate. I discuss each and its possible benefit for students and schools below.

*Diversify.* Law schools are single-product businesses limited in the number of customers they can serve. As such, to increase the salaries of their employees, to improve their facilities or equipment, to create new programs for existing students, or countless other investments, they must increase the price for their current customers. Over time, these new expenses continue to accrete—with the consequence of substantially higher prices.

Other businesses that face similar pressures use technology to drive costs down—a very limited option under the current regulatory regime. Alternatively, they increase the number of their customers and drive the price per customer down. This option is one method to contain or drive down costs. Schools can add new degrees for students seeking only a part of a legal education. They can package portions of courses and sell them to those seeking legal knowledge. They can market their expertise as scholars to bring in consulting revenue. They can build educational products like books, videos, and such to sell to consumers. Any net revenue in such ventures can then be used to subsidize those seeking law degrees—thereby lowering the price.<sup>83</sup>

Law schools also can service undergraduate students by creating legal-studies majors and receiving a share of their tuition payments. They can offer certificates that might be appended to other graduate degrees. They

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practices, cannot enter the market. With no low-priced alternatives, existing schools need not compete on price—especially when loans are still freely available.

83. See Richard A. Matasar, *A Commercialist Manifesto: Entrepreneurs, Academics, and Purity of the Heart and Soul*, 48 U. FLA. L. REV. 781 (1996) (arguing for a diversified law-school enterprise).

can offer customized programming for legal employers or businesses that are highly regulated, taking on professional development for a fee that would otherwise have to be paid by the employers to others. The possibilities are relatively limitless and offer tremendous opportunities to generate net income to be used to lower the cost of the J.D. degree.

Diversification can go only so far, however, without the possibility of diluting the school's focus. Moreover, staffing such programs calls on expertise beyond those of most faculty. If new entrepreneurs are hired to run such ancillary operations, they will not be keen on giving up the income they generate to be used by others. In short, diversification is only one small strategy to help in lowering current costs.

*Stratify.* Most law schools look similar to each other. Faculty have largely the same jobs: they teach three to four classes, conduct research, write, and perform institutional and professional services. Schools are compared to each other in a uniform "quality" measure—the *U.S. News & World Report*—and hence seek similar gains in their reputations.

As discussed earlier, the quest for increased prestige and improved rankings has been unsuccessful. Few schools change their position in the hierarchy. Nonetheless, they persist. However, this is unlikely to continue. Schools will begin to stratify. Those with a largely regional base of students and employees may seek to compete locally, only against similarly situated schools. They may tailor education to the needs of local employers. They may become teaching schools and eschew a research mission. Doing so has the potential to create distinction among generic programs. More importantly, it may lead to lower costs.

The research mission of a law school is costly. As detailed above, the cost of summer support and sabbaticals is substantial. The greater cost may be in the modest teaching loads of faculty who are expected to research and write. A full-time faculty member may spend as much as 50% of his or her time engaged in research. If this requirement were lifted or if a school chose to become a teaching school, it could substantially reduce its instructional cost by having every existing faculty member teach substantially more. Such schools also might rely much more heavily on adjunct faculty or practitioner experts, who will not conduct research but who will be focused on teaching. Such a school might be attractive to students, who would have a high percentage of all of their courses taught by teaching experts. More time could be spent in assessing students, in developing course templates more closely aligned with employer needs, and in mentoring and advising every student.<sup>84</sup>

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84. I often say that I would not enjoy working at such a school. The research mission currently extant throughout higher education has been extraordinarily valuable. Scholarly contributions by law faculty have made our country more just and have improved social conditions. Inevitably, however, other types of schools are likely to form in which faculty do not conduct research. Such schools will need other mechanisms to assure that their faculty remain

A newly stratified academy would give students more choices, would seek a more diverse skill-set from faculty, and would provide product differentiation between schools. These efficiencies might be invested in lowering students' costs or in providing them with even greater teaching resources.

*Cooperate.* There are 200 or so accredited law schools. All of them offer core curricula that are nearly identical—the same books, teachers trained at virtually the same law schools, notes handed from one generation of teachers to the next, all taught basically over the same period of time. The libraries at these schools have nearly identical core collections of legal materials, sometimes have collections of the same esoteric materials, and have connections to the same online materials. Students at the schools all want similar enrichment courses: sports and entertainment law, internet law, international terrorism law, water and gas law, agricultural law, and such. However, despite these overlapping resources and demands, schools have not generally found ways to share their resources, leading to duplication of costs borne at each school and passed on to the students.

In the years ahead, there almost certainly will be an enormous growth in cooperative arrangements between schools. Through consortia, partnerships, joint ventures, and other more exotic arrangements, schools will seek ways to share costs.

- Law libraries throughout the country participate in interlibrary loans, allowing users to share resources unavailable in home institutions, lent by another library. This model will be augmented by more strategic purchasing decisions, where libraries will agree in advance which of them will build which collections. Doing so will create broader resources for all schools and eliminate duplication.
- More schools will engage in joint listing of courses. New York Law School has cross-listed some of its courses with other law schools in New York City, making the courses available for credit to their students. Similarly, those schools have made some of their courses open to students from New York Law School.
- Non-U.S. law schools have listed distance-learning courses from U.S. schools and vice-versa. Schools arrange exchange programs or summer programs. These expose students to different cultures and yet add minimally to the cost of education.

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current on legal developments—as researchers always must be. Scholarly faculties will remain; they will be joined by other models, much like comprehensive research universities sometimes compete against small liberal-arts schools more focused on teaching.

- Schools are jointly teaching courses that none would offer on their own, with materials contributed from each member school. The ambitious Law Without Walls course hosted by the University of Miami Law School is being offered as an online seminar to students at Fordham Law School, Harvard Law School, New York Law School, Peking University School of Transnational Law, and University College London Law School, with faculty from each school participating with Miami and its students in the discussions.
- Schools have created consortia to staff enrichment overseas programs.
- At least one three-school system—the InfilLaw schools—is seeking to create full cooperation in curriculum and perhaps admission and placement activities.

This short list is illustrative of the many small ways schools are currently searching for efficiencies in core teaching and library activities. In addition to these, some schools are creating joint distance-learning or other information-technology services. Some are exploring ways of pooling insurance or other operating costs. Others are exploring shared dormitory spaces. Some have banded together to create recruitment and placement activities and joint marketing of education in distant markets. Together these suggest that barriers to greater cooperation are breaking down in the search for economies of scale. These perhaps portend even deeper collaborations within the academy in the years ahead.

Once such collaborations take hold, schools will seek other partnerships as well. Some schools may establish working relationships directly with some legal employers, creating post-graduate educational programs for lawyers or using lawyers to teach current students. These may lead directly to jobs for students, sources of income for schools, or low-cost enrichment programs for students. Some schools may become more deeply involved in continuing-legal-education (“CLE”) partnerships with bar associations or CLE providers, providing talent for a fee or sharing in profits. Some schools may partner with bar-review providers and share in revenue (or provide subsidies to their students enrolled in the courses). Other schools may partner with legal publishers or make materials available for sale through the web. Synergistic connections will be necessary in the years ahead to more effectively serve students, raise revenue, or lower costs.

*Accelerate.* It is a lengthy and expensive process to grow up in the United States. Most lawyers will follow a similar path: four years in high school (and in some urban areas, four years in private, tuition-driven high school!); four to five years of university or college studies; and three to four years of law school. This pathway has both high out-of-pocket and opportunity costs: seven to eleven years of tuition and several years of foregone income. These

costs are increasing yearly and create significant hurdles for nearly every law-school graduate who has accumulated debt.

In other parts of the world, high-school graduates can become lawyers after their university studies; they do not need an extra three years of seasoning. One might ask whether our citizens are particularly immature or whether the standards for becoming a lawyer elsewhere are particularly low. But assuming our citizens are as able as others and that the legal profession elsewhere is competent, our system has a profoundly negative impact. U.S. lawyers must earn more to cover their debt, clients will be taxed through fees to pay for this, and firms will be more expensive (or less profitable) than competitors with a shorter period to adulthood.

This is an unacceptable outcome. Ultimately, high schools, universities, and law schools must work together to find quicker and less costly ways to train professionals. Such experiments are beginning. Many high schools already offer advanced-placement courses. These are used at some colleges to reduce the required course loads of incoming students, perhaps allowing as much as one year of credit. Some high schools are offering high-school diplomas and Associate Degrees (qualified under the standards for community colleges), thereby permitting their graduates to gain a college degree in only two years. Some universities have established 3 + 3 programs with law schools, permitting one year of law school to serve as the final year of an undergraduate degree and thereby eliminating a year of study before one can be a lawyer. New York Law School is in the process of requesting permission from the ABA to create a 2 + 3 program in which students can finish undergraduate studies with one year of law school and summers as well as their J.D.s within five years. Some schools are asking whether four years of law school—one general-studies year, and three devoted to legal subjects—should be enough for admission to the bar. Other law schools have already created two-year J.D. programs.

The impulse in every one of these initiatives is to accelerate adulthood and reduce both out-of-pocket and opportunity costs for students. These are critical first steps to improving the value proposition of law (or other graduate) degrees. Their success will rest on whether such programs can maintain the quality of the current track. Will five years of training assure that graduates are mature enough to take on client responsibility? Will they be educated well enough to appreciate the full context of legal problems—economic, social, and historical? Will students have sufficient writing instruction?

These questions have made it difficult to experiment with alternative paths to becoming a lawyer. Nonetheless, if costs are to decline, such experiments will be critical. Perhaps such programs should be available only for mature students—returning military veterans, those who defer college, parents, etc. Perhaps they should be available only to students with demonstrably better high-school preparation. Perhaps they should be



available only if the profession itself creates more aggressive continuing legal education or professional-development programming. Whatever qualifications one might demand, however, such experiments are sure to take place in the years ahead.

*Disaggregate.* Facilities and personnel costs are a significant part of the cost of a legal education. With a largely tenured faculty teaching a full load of courses, additional training costs, new courses, and new employees add new costs. Law schools constantly must accrete to improve and grow. Moreover, there are few tools to gain greater productivity from existing teachers without increasing their workload. Such increases have limits. Law schools will be searching for ways to systematize their teaching, eliminate redundancy, and improve productivity without adding costs. Disaggregation is the most likely way to succeed.

Each faculty member engages in three primary teaching activities: delivering information, drilling students, and providing expert wisdom and guidance. The primary method of delivering these is through large Socratic classroom teaching. At any given time, one might find three teachers of three sections of the same course at each law school (multiplied by the 200 accredited programs) simultaneously engaged in this exercise. Must this be so?

One might argue that this system is incredibly inefficient. The portion of every class that is merely conveying information need not be done individually in each classroom. A lecture is essentially a commodity, one that is best delivered by the most dynamic, funny, interesting speaker. Once such a performance is recorded, it can be replayed endlessly (in 200 separate schools, available twenty-four hours per day seven days per week over streaming video). A school with many great teachers could ask them to divide the information-conveying function among the teachers and make the best lectures available to students across all sections of the same course. Moreover, pure delivery of information need not take place in the classroom. It may be disaggregated from the classroom and become background information that each student is expected to gain on his or her own time.

Drill work—the Socratic discussion—may similarly be disaggregated. Most schools can inexpensively acquire technology allowing every moment of every class to be captured on video that students can watch in asynchronous viewings. Capturing multiple iterations of each course would allow a teacher to edit together the perfect Socratic dialogue or allow students to see the multiple ways in which questions have been answered in the past and the varied pathways of discussions possible with varied answers. Faculty members can create online teaching objects to simulate dialogue, giving students a game-playing, self-teaching environment to test their own approach to the drill work inherent in the Socratic classroom experience. Perhaps we are on the verge of the Angry Birds game for each first-year

course. The insight is that much of the classroom experience can be disaggregated and turned into a learner-driven experience.

Taking information and drill work out of the classroom opens up a substantial amount of teaching time that can be devoted to the one aspect of teaching that is most precious and least susceptible to mass production: the provision of expert guidance and mentorship. With more time, faculty members can be freed to deliver more of this education, which is the most expensive part of the current model. Classes can be smaller. Time can be spent reviewing what students can learn on their own. Learning can be at the pace of the learner, not the pace of the lecturer. In short, gaining such efficiency has the prospect of making education better *and* cheaper—the holy grail of improving the value of legal education.

#### IV. CONCLUSION

Doomsday predictions are no fun. If they happen, the world has come to an end and the future is bleak. If they do not happen, the soothsayer has lost credibility and future warnings will be discounted. Predicting is also deeply academic, fatalistic, and depressing. That is why I have been happy that my predictions of the imminent demise of legal education have been overly pessimistic. It has given law schools the chance to alter an inevitable future, to change their destiny, and perhaps to enrich their students through better education that ultimately may decline in price.

This Essay suggests a course of action to stave off a continued devaluation of the law degree. Once schools have recognized that the return on investment is declining and that our current practices are expensive and provide insufficient value to students, they must change. Schools will seek to establish clearly defined missions, with clearly articulated outcomes. They will implement programs to produce such outcomes. They will assess their performance. They will modify their designs. And they will repeat the process as many times as necessary to assure that students gain what they need.

This regime will significantly improve the value of the law degree, but ultimately will not deliver enough return on investment to warrant continually escalating the cost of education that cannot be recouped in the job market. Students and schools will clamor for changes that will lower costs. The regulatory regime that places barriers to experimentation with alternatives to the current model will relent. Some of these experiments will perhaps lower the quality of training. They must be assessed to evaluate whether they are sufficiently acceptable, even if not perfect, in training lawyers. Other experiments will produce equal or greater quality at a lower cost.

Change will come. Schools will diversify, stratify, cooperate, accelerate, and disaggregate in the quest for high quality and lower cost. As in every other industry, legal education needs to be bigger, better, cheaper, and

faster. That's today's prediction. I'll be back in sixteen years for my assessment report!