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Legal Education in Crisis, and Why Law Libraries Are Doomed

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Legal Education in Crisis, and Why Law Libraries Are Doomed*

James G. Milles**

The dual crises facing legal education—the economic recession and the crisis of confidence in law schools’ ability to meet the needs of lawyers or society at large—have undermined the case for not only the autonomy but the very existence of traditional law school libraries. What choices individual schools make will largely depend on how they play the status game.

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Legal Education in Crisis

¶1 Legal education is in crisis. Numerous major newspapers and magazines have reported on the soaring student loan debt burdening law graduates and the dismal job market waiting for them.¹ Many observers both inside and outside of

* © James G. Milles, 2014.

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1. See, e.g., Ethan Bronner, *Law Schools’ Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES, Jan. 31, 2013, at A1; Ethan Bronner, *A Call for Drastic Changes in Educating New Lawyers*, N.Y. TIMES, Feb. 11, 2013, at A11; Ethan Bronner, *To Place Graduates, Law Schools Are Opening Firms*, N.Y. TIMES, Mar. 8, 2013, at A14; Lincoln Caplan, *An Existential Crisis for Law Schools*, N.Y. TIMES, July 15, 2012, at SR10; Chris Fletcher, *A Message to Aspiring Lawyers: Caveat Emptor*, WALL ST. J., Jan. 2, 2013, at A11; William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble: How Long Will It Last if Law Grads Can’t Pay Bills?*, A.B.A. J., Jan. 2012, at 30; Steven Davidoff Solomon, *The Economics of Law School*, N.Y. TIMES, Sept. 25, 2012, at F8; Elizabeth Lesly Stevens, *Will Law School Students Have Jobs After They Graduate?*, WASH. POST MAG. (Nov. 1, 2012), http://www.washingtonpost.com/lifestyle/magazine/will-law-school-students-have-jobs-after-they-graduate/2012/10/31/f9916726-0f30-11e2-bd1a-b868e65d57eb_story.html; Jennifer Smith, *A Crop of New Law Schools Opens Amid a Lawyer Glut*, WALL ST. J., Feb. 1, 2013, at B1; J. Maureen Henderson, *Why Attending Law School Is the Worst Career Decision You’ll Ever Make*, FORBESWOMAN (June 26, 2012, 10:21 A.M.), <http://www.forbes.com/sites/jmaurenhenderson/2012/06/26/why-attending-law-school-is-the-worst-career-decision-youll-ever-make/>; Debra Cassens Weiss, *Law School by the Numbers: 300K Additional Law Grads by 2020; 73K New Jobs Forecast for Decade*,

legal education have concluded that law schools are on an unsustainable path. A year ago this may have been the fringe view of a few dissatisfied law grads and dissident law professors, but by now it is the common wisdom. Law schools cannot keep on doing things as they always have, and as economist Herbert Stein has said, “[i]f something cannot go on forever, it will stop.”²

¶2 The figures are alarming. Law school applications are down eleven percent from 2012 and twenty-four percent from the peak in 2010.³ Enrollment is the lowest it has been since 1975, when there were nearly forty fewer ABA-accredited law schools.⁴

¶3 Most observers agree that the outlook for law schools, at least in the near to midterm, looks grim. The question is whether this is simply another cyclical downturn, a temporary slump due to the post-2008 recession, or a structural change—a long-term and radically constricted “new normal.” The best evidence suggests that this is more than a temporary or cyclical decline: we are facing a long-term restructuring of the legal market, and that restructuring is reflected in the decreasing demand for new lawyers and the declining attractiveness of a legal education.

¶4 If the believers in structural change are correct, long-term change is coming to law schools. Some law schools may change very little; others may change deeply, in ways that are difficult to foresee. Future changes are always hard to predict, especially with complex institutions like law schools—and law schools are more complex institutions than ever before. Functions like admissions and placement, which may once have been staffed part-time by law professors as part of their administrative service roles, with a few relatively low-level administrative staff, are now highly professionalized units within the typical law school, with full-time, highly educated professionals with decanal titles. It is therefore useful to look closely at law schools as the complex, professionalized institutions they are. An examination of law school libraries may help shed some light on the effects of larger changes within law schools. Law libraries inevitably will feel the effects of the shrinking lawyer market and the contraction in legal education. Most professional law librarians recognize that law libraries will change radically; many advocate for taking charge of these changes to ensure that law libraries remain viable, if not essential. After all these changes, though, we might well ask: what, if anything, will remain of law libraries as we have known them?

¶5 When I say “law school libraries are doomed,” I want to be clear what I mean. I do not mean that all law libraries will disappear, although I suspect a few schools will operate successfully without anything resembling a law library. What I

ABA JOURNAL (Nov. 5, 2012, 10:29 A.M.), http://www.abajournal.com/news/article/law_school_by_the_numbers_300k_additional_law_grads_by_2020_73k_new_jobs; Jordan Weissmann, *Law School Applications Are Collapsing (as They Should Be)*, THE ATLANTIC (Jan. 31, 2013, 1:19 P.M.), <http://www.theatlantic.com/business/archive/2013/01/law-school-applications-are-collapsing-as-they-should-be/272729/>.

2. Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177, 178 (2012) (quoting Herbert Stein, *Herb Stein's Unfamiliar Quotations*, SLATE (May 16, 1997)).

3. Mark Hansen, *Law School Enrollment Down 11 Percent This Year over Last Year, 24 Percent over 3 Years, Data Shows*, ABA JOURNAL (Dec. 17, 2013), http://www.abajournal.com/news/article/law_school_enrollment_down_11_percent_this_year_over_last_year_data_shows.

4. *Id.*

mean is that the law library as (1) *an iconic place within the law school*, (2) *managed financially and administratively as part of the law school*, and (3) *with staff devoted to the law school*, will become increasingly rare.

¶6 The *American Bar Association Standards for Approval of Law Schools* have long required that a law school that is part of a university must, in most instances, maintain an “autonomous law library.”⁵ The exact definition of this autonomy, and what degree of autonomy is required, has been contested for just as long. Standard 602(a) requires that “[a] law school shall have sufficient administrative autonomy to direct the growth and development of the law library and to control the use of its resources.”⁶ Standard 602(b) provides that library policy must be determined by the law school dean and the director of the law library, in consultation with the faculty.⁷ Standard 602(c) vests responsibility for “selection and retention of personnel, the provision of library services, and collection development and maintenance” in the law library director and the dean.⁸ Finally, Standard 602(d) requires that “[t]he budget for the law library should be determined as part of, and administered in the same manner as, the law school budget.” Interpretation 602-1 softens these requirements a bit:

While the preferred structure for administration of a law school library is one of law school administration, a law school library may be administered as part of a general university library system if the dean, the director of the law library, and faculty are responsible for the determination of basic law library policies.⁹

¶7 The long-standard model of the autonomous law school library has always had shallow support.¹⁰ When times were good and law schools could use ABA accreditation to push universities around a bit, large, attractive libraries were useful bargaining chips. But now times are getting bad, and law schools will have to make deep cuts. If law schools do not plan carefully, law libraries may well be among the first on the chopping block.

The Case for Structural Change

¶8 Those who cling to the hope that this is merely a cyclical downturn forget that in past cycles, when the economy was poor, law school applications went up, not down. Every few years, university graduates waited out the slow economy by going to law school. It seemed to make sense to take advantage of easily available student loans to gain another degree and entry to a lucrative profession. Now, however, with typical law school loan burdens exceeding six figures, and job prospects that will enable them to pay off those loans dwindling, prospective law students are wisely looking for other options. Applications from students in the highest LSAT

5. James G. Milles, *Leaky Boundaries and the Decline of the Autonomous Law School Library*, 96 LAW LIBR. J. 387, 387, 2004 LAW LIBR. J. 25, ¶ 1.

6. AM. BAR ASS'N, 2013–2014 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 44 (2013) (Standard 602).

7. *Id.*

8. *Id.*

9. *Id.*

10. Milles, *supra* note 5, at 393–400, ¶¶ 13–30.

range have shown the steepest decline, more than twenty percent, leading some observers to lament that “the wrong people have stopped applying to law school.”¹¹

¶9 Others recognize that the current numbers are not those of typical law school enrollment cycles but attribute the decline to the post-2008 recession and look forward to things getting back to normal when the economy recovers. However, Indiana University law professor William Henderson has shown that law office jobs in fact peaked in 2004 and have been declining ever since.¹² The fact that law school applications have continued to decline, even as the economy shows signs of recovery in other areas, is further evidence that the depressed legal market is driven by factors independent of the 2008 fiscal crisis and that the number of lawyer jobs will never return to pre-2007 levels.¹³

¶10 Both applications to law school and employment after graduation are falling dramatically. These numbers are signs, rather than causes, of the crisis in legal education. In fact, the crisis is twofold: an *economic crisis* affecting both the job market and the pool of law school applicants, and a *crisis of confidence* in the ability of law schools and the ABA accreditation process to respond and to meet the needs of lawyers or society at large. The second crisis feeds into and magnifies the first.

The Economic Crisis in the Legal Profession

¶11 While it is becoming clear that the economic crisis is not solely attributable to the post-2008 recession, it is still true that the recession has played a part in restructuring the legal profession. The recession has taught corporate clients and their in-house counsel to demand greater cost savings with respect to what they spend on legal services. As William Henderson and Rachel Zahorsky write:

In the corporate realm, general counsel are increasingly expected to achieve what other departments and businesses do—get better results at lower costs. No longer viewed as purveyors of the law, in-house lawyers are problem solvers and key business strategists. . . . The multimillion-dollar budgets that flowed unchecked into the coffers of the nation’s largest law firms are now closely guarded and counted.¹⁴

11. Jordan Weissmann, *The Wrong People Have Stopped Applying to Law School*, THE ATLANTIC (Apr. 10, 2012), <http://www.theatlantic.com/business/archive/2012/04/the-wrong-people-have-stopped-applying-to-law-school/255685/>.

12. Bill Henderson, *Lots of Jobs for Law Graduates—Just Not Grads in the U.S.*, LEGAL WHITEBOARD (May 12, 2012), <http://lawprofessors.typepad.com/legalwhiteboard/2012/05/good-news-for-law-graduates.html>. “Law office jobs peaked in 2004—four years before the collapse of Lehman Brothers. Total employment in law offices (NAICS 54111) totaled 1,123,000 jobs, which was 92.2% of the larger legal services sector (NAICS 5411). Since the high water mark in 2004, the sector shrank by 26,100 jobs (at least through 2009).” *Id.*

13. John O. McGinnis, *Will Law School Applicants Return?*, LIBR. OF L. & LIBERTY (Feb. 15, 2015), <http://www.libertylawsite.org/2015/02/15/will-law-school-applicants-return/>.

14. William D. Henderson & Rachel M. Zahorsky, *Paradigm Shift*, A.B.A. J., July 2011, at 40, 45. There is no question that a serious recession caused a heightened sense of awareness for law firms and consumers,” says Gregory Jordan, who works out of Pittsburgh and New York City as Reed Smith’s global managing partner and chairman of the senior management team and executive committee. “As the recession starts to reverse itself, there will be some movement away from that super-heightened awareness of cost, but this recession gave buyers of legal services enough time to really appreciate that they could get the same quality of service for less than before the recession. The better, faster, cheaper concept is very much here to stay.

¶12 Of course, not all law students aspire to work in large corporate law firms. At many schools, such as SUNY Buffalo, students tend to stay in the region and seek positions with smaller regional law firms. The largest Buffalo firms are small by the BigLaw standards of the *National Law Journal's* top 350 law firms.¹⁵ But the smaller firms have also experienced contraction, if not in the form of layoffs, then at least in decreased hiring. In addition, graduates of schools like SUNY Buffalo feel the effects of the cutbacks in BigLaw. Less hiring in law firms leaves fewer opportunities for associates to receive the crucial first few years of training that might enable them to form their own small firms or solo practices. The contraction in the corporate law firm market has ripple effects that touch on all sectors of the profession.

¶13 In addition, much of the work that had traditionally been done by newer associates at larger firms (e.g., pretrial discovery document review) is now being outsourced overseas, to lower-cost regions of the United States, or replaced by automated review using advanced technologies such as predictive coding.¹⁶ Larger law firms are hiring fewer new graduates; when they do hire, they prefer to hire laterally, after associates have received training at other jobs. Firms are also increasingly turning to hiring temporary contract attorneys, who perform legal work for \$20 to \$30 an hour, with no benefits and no prospect of permanent employment.

The federal government estimates that, at current graduation rates, the economy will create about one new legal job for every two law school graduates over the next decade. Most knowledgeable observers believe that the situation is unlikely to improve even if the economy fully rebounds. More employers are relying on paralegals, technology and contract attorneys to do work previously performed by recent graduates, and cash-strapped public sector agencies are facing pressure to curtail legal expenditures.¹⁷

¶14 The increasing cost of law school might be less of a burden if the JD continued to afford reasonably sure entry into a well-paid professional career. The fact that law schools have been graduating twice as many lawyers as there are jobs for has destroyed that traditional path into the professional class. Law schools answer by claiming that the JD is a highly flexible qualification that benefits graduates in any number of career choices, but this is increasingly doubtful. Certainly most schools can claim some highly successful businesspeople among their alumni, but many of those “use” their law degrees only in the most remote and ill-defined ways. Other law graduates find that their degree leaves them overqualified for many jobs; stories abound of law grads from well-regarded law schools working for minimum wage at Starbucks¹⁸—but at least there they get health benefits.

15. *Introducing the NLJ 350*, NAT'L L.J., Apr. 16, 2012, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202489565842>.

16. RICHARD SUSSKIND, *TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* 34 (2013).

17. Letter from the Coalition of Concerned Colleagues to the ABA Task Force on the Future of Legal Education, *The Economics of Legal Education: A Concern of Colleagues* (Mar. 2013), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/032013_coalition_revcomment.pdf [hereinafter Letter from Coalition of Concerned Colleagues].

18. J. Maureen Henderson, *supra* note 1.

The Crisis of Confidence in Legal Education

¶15 The perception of the diminished value of the law degree (or, at least, of the law degree offered by many schools below the elite fourteen or twenty-five) and the reluctance of many law school faculty and deans to respond to the problem have contributed to a widespread sense that laws schools, if not affirmatively taking advantage of students, are at least willfully blind to their problems. Almost three years ago Brian Tamanaha wrote a sobering blog post entitled “Wake Up, Fellow Law Professors, to the Casualties of Our Enterprise”:

Their complaint is that non-elite law schools are selling a fraudulent bill of goods. Law schools advertise deceptively high rates of employment and misleading income figures. Many graduates can't get jobs. Many graduates end up as temp attorneys working for \$15 to \$20 dollars an hour on two week gigs, with no benefits. The luckier graduates land jobs in government or small firms for maybe \$45,000, with limited prospects for improvement. A handful of lottery winners score big firm jobs.

And for the opportunity to enter a saturated legal market with long odds against them, the tens of thousands [of] newly minted lawyers who graduate each year from non-elite schools will have paid around \$150,000 in tuition and living expenses, and given up three years of income. Many leave law school with well over \$100,000 in non-dischargeable debt, obligated to pay \$1,000 a month for thirty years.¹⁹

¶16 The loan debt numbers are even worse now. *U.S. News & World Report* has published the debt figures for the class that graduated in 2013.²⁰ But as Paul Campos noted about the 2012 list, those figures do not include interest: “The #1 school on the list, Thomas Jefferson, reported 98% of its [2012] graduates taking out a mean of \$168,800 in federal loans. A student who borrows that amount will have \$201,000 in federal loan debt at repayment, six months after graduation.”²¹

¶17 Instead of squarely facing the economic problems of their graduates, law schools by and large sought to justify their costs with appeals to the supposed flexibility of the all-purpose law degree or, alternatively, to blame students for believing the law schools' own hype.²² Meanwhile, law schools continued to raise tuition every year. Legal education began to look self-serving, if not actually deceitful, to exploit naïve and misinformed law students.

¶18 The image of law schools also has been tarnished within the profession of law, by widespread complaints that law school is ineffective in teaching the skills a

19. Brian Tamanaha, *Wake Up, Fellow Law Professors, to the Casualties of Our Enterprise*, BALKINIZATION (June 13, 2013), <http://balkin.blogspot.com/2010/06/wake-up-fellow-law-professors-to.html>.

20. *Which Law School Graduates Have the Most Debt?*, U.S. NEWS & WORLD REP., <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/grad-debt-rankings> (last visited Dec. 8, 2014).

21. Paul Campos, *Latest Law Graduate Debt Figures*, LAWYERS, GUNS & MONEY (Mar. 13, 2013), <http://www.lawyersgunsmoneyblog.com/2013/03/latest-law-graduate-debt-figures>.

22. Paul L. Caron, *Caveat Emptor Makes for a Lousy Law School Motto*, TAXPROF BLOG (Sept. 26, 2012), http://taxprof.typepad.com/taxprof_blog/2012/09/caveat-emptor-.html (quoting *Breakingviews: Law Schools Owe Students Truth About Job Market*, REUTERS (Sept. 25, 2012), http://newsandinsight.thomsonreuters.com/New_York/News/2012/09_-_September/Breakingviews__Law_schools_owe_students_truth_about_job_market/ (“The courts may be correct that, legally, schools can't be held liable for phony job figures. But ethically, it should be a different story. Caveat emptor makes for a lousy law school motto.”)).

lawyer needs.²³ The complaints are familiar but recently have seemed to gain more traction: law professors are unable to or uninterested in teaching “real law”; professors spend too much time on scholarship that is of no practical use to the profession; the third year of law school is invariably a waste of time.

¶19 One possible response to these perceived problems—strengthening the ABA accreditation process²⁴—is also widely discredited. Law professors and deans view accreditation as an expensive and unwelcome interference. A generation ago, the accreditation visit was an opportunity to extract resources from university administrations: new and improved buildings, added resources for faculty salaries, and increased library budgets. But the ABA has lost its teeth. University presidents routinely defy the ABA and win—if not outright, at least by achieving compromises that weaken the ABA’s stand overall.

¶20 The results of this discrediting are somewhat paradoxical. While faculty and deans view the ABA accreditation process as a pointless annoyance, the practicing bar and judges dismiss it as a tool controlled by self-interested law professors and deans, ineffective in ensuring that legal education meets the needs of the profession or of the public the profession serves. The lack of support for the ABA makes it unlikely that it will be effective, either as a force for reform or as a conservative voice preserving and strengthening the “traditional values” of legal education.

¶21 The ABA is trying to respond. The accreditation standards are moving from inputs to outcome measures. Input measures such as physical plant, number of faculty, size of faculty offices, faculty-to-student ratios, and budget figures are counted because they are easily countable, while outcomes are less tangible. Libraries have lots of things to count: volume numbers, acquisitions budgets, hours of service, circulation and interlibrary loan numbers, and numbers of seats in the library. Basing measures of quality on inputs, therefore, tends to benefit traditionally resource-heavy institutions such as libraries. Connections between library resources or services and educational outcomes, however, are difficult to make, and attempts to do so have had little success.

¶22 In addition, it is important to note that the *ABA Standards for Approval of Law Schools* have always been meant to be *minimum* standards. The preamble to the 2012–2013 edition states, “They are *minimum requirements* designed, developed, and implemented for the purpose of advancing the basic goal of providing a sound program of legal education.”²⁵ Law librarians have long tried to push the ABA in the

23. David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1.

24. The term “ABA accreditation” is common but misleading shorthand for the process of accreditation of law schools under Department of Education regulations.

Under Title 34, Chapter VI, §602 of the Code of Federal Regulations, the Council and the Accreditation Committee of the ABA Section of Legal Education and Admissions to the Bar are recognized by the United States Department of Education (DOE) as the accrediting agency for programs that lead to the J.D. degree. In this function, the Council and the Section are separate and independent from the ABA, as required by DOE regulations.

AM. BAR ASS’N SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR, THE LAW SCHOOL ACCREDITATION PROCESS 3 (rev. Aug. 2013), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_revised_accreditation_brochure_web.authcheckdam.pdf.

25. AM. BAR ASS’N, 2012–2013 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, at ix (2012) (emphasis added).

direction of “best practices,” to encourage the adoption of “standards” that in fact aim to improve the status of libraries and librarians. However, the increasing disparity between the cost of legal education and the employment prospects of graduates is strengthening calls for reforming the ABA standards *downward*, or even abolishing accreditation altogether. Gonzaga University law professor George A. Critchlow speaks for many critics in a comment to the ABA Task Force on the Future of Legal Education: “The Task Force should seriously consider what it would take in terms of accreditation flexibility for a law school to competently train students at a cost of \$15,000 a year. Everything from the use of adjuncts, library resources, on-line teaching, tenure, and faculty scholarship should be open for discussion.”²⁶ The ABA Council on Legal Education and Admissions to the Bar is not interested in a “best practices” philosophy of accreditation standards. In 2010, it removed Standard 104, “which had provided that ‘an approved law school should seek to exceed the minimum requirements of the Standards.’”²⁷

¶23 Dissatisfaction with accreditation is also reflected in the recent moves of New York and other states to impose their own requirements, not directly in the form of state accreditation, but indirectly by means of restricting access to the bar application process. New York, for example, has recently imposed on all applicants to the bar a fifty-hour pro bono requirement, as well as a requirement of a two-hour freestanding ethics course.²⁸

¶24 One of the most respected advocates of reform in legal education, Brian Tamanaha, believes that interest groups have used and distorted the accreditation process far beyond the purposes of assuring a high-quality legal education.²⁹ Three years ago, clinical faculty protested moves to weaken tenure requirements in the standards. Much of their argument, writes Tamanaha, was grounded on a claim for fair treatment:

It’s true, and lamentable, that clinical teachers have second-class status within many law schools. For that matter, professors who teach legal writing—an essential lawyer skill—have even lower status, third class, but have never [been] able to muster a lobby strong enough to get protections for themselves written into the ABA standards. Clinical professors are paid less than doctrinal professors, legal writing professors are paid still less, and on many faculties neither [has] full voting rights on matters such as faculty hiring. Nothing is fair about any of this. The market for law professors and governance within law schools developed this way.

Fairness and sympathy, however compelling, are not reasons to include special measures for clinicians in *accreditation* standards. These measures belong in the standards only if clinicians can establish that law schools would not be able to produce competent lawyers if clinicians do not enjoy such protections.³⁰

26. Letter from George A. Critchlow, Assoc. Prof., Gonzaga Univ. Sch. of Law, to Art Garwin, Deputy Dir., ABA Ctr. for Prof. Responsibility (Jan. 28, 2013), *available at* http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/201301_george_critchlow_comment.pdf.

27. Judith Areen, *Accreditation Reconsidered*, 96 IOWA L. REV. 1471, 1491 (2011) (quoting AM. BAR ASS’N, 2009–2010 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 6 (2009) (Standard 104).)

28. N.Y. Rules of the Court of Appeals for the Admission of Attorneys & Counselors at Law, 22 N.Y.C.R.R. § 520.3(c)(1)(iii) (2014) (“a minimum of two credit hours must be earned in a course or courses in professional responsibility”).

29. BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 33 (2012).

30. *Id.* at 32–33.

Note that the status of librarians is apparently so far below third class that they do not even merit a mention.

¶25 For Tamanaha, legal education needs wholesale reform that focuses on decreasing the cost of legal education. Some of the reforms he advocates would have direct impacts on law libraries and their relations to both their law schools and their university libraries:

Legal education cannot continue on the current trajectory. As members of a profession committed to serving the public good, we must find ways to alter the economics of legal education. Possible changes include reducing the undergraduate education required for admission to three years; awarding the basic professional degree after two years, while leaving the third year as an elective or an internship; providing some training through apprenticeship; *reducing expensive accreditation requirements to allow greater diversity among law schools*; building on the burgeoning promises of internet-distance education; *changing the economic relationship between law schools and universities*; altering the influence of current ranking formulas; and modifying the federal student loan program.³¹

Hard Choices and Law School Priorities

¶26 All of these pressures are converging to force on law schools an era of hard choices. For a long time law schools have been able to raise tuition at will, confident that uncapped, federally guaranteed student loans would ensure a steady supply of students able to pay. Increasing scrutiny of legal education and the increasing likelihood of default on student loans mean that this flow of money to law schools may be curtailed.³² William D. Henderson and Rachel M. Zahorsky predict drastic restrictions on federally guaranteed student loans.³³

¶27 New revenues are not going to appear simply by encouraging admissions or development officers to try harder. Law schools are going to have to cut expenses. Law librarians know this better than anyone, as libraries have borne the brunt of budget reductions for years. But until recently, at least, the idea of the existence of the autonomous law library has been sacrosanct. Will this continue, as fewer things remain to cut?

¶28 Where can law schools cut expenses? Stop hiring new faculty? Lower faculty salaries? Increase teaching loads with less time for scholarship? Lower research and travel stipends? Fewer interdisciplinary centers and programs? Fewer student scholarships? Fewer student activities such as moot courts and law journals? Less administrative staff? (Which ones—Career Services? Alumni? Development?) Less technology?

31. Letter from Coalition of Concerned Colleagues, *supra* note 17 (emphasis added).

32. "In July [2011], a second US Senator, Charles Grassley, ranking member on the Judiciary Committee, sent a letter to the president of the ABA raising concerns about law school scholarship practices, the overproducing of law graduates during a bleak job market, and the risk that growing numbers of students might default on federally backed student loans, costing taxpayers a great deal of money. The prospect of closer scrutiny by the Senate of the law school situation was implicit in the list of thirty-one questions set forth in the letter, with a demand for a prompt response." TAMANAHA, *supra* note 29, at 75 (citation omitted).

33. Henderson & Zahorsky, *supra* note 1.

Fewer clinics?³⁴ Or cutting the law school's support for the library? In view of the priority all these aspects of the law school hold, the library may be the most vulnerable.

The Overriding Value of Status

¶29 Consider where law school tuition increases go: “huge increases in dean and faculty salaries, significantly reduced teaching loads, dramatically expanded leave policies, expensive marketing campaigns, money redistributed to high-end merit scholarship recipients, and other drivers that have marked the reality of most modern decanal careers.”³⁵

¶30 Law libraries have been spared the worst for a long time by the simple fact that the *U.S. News & World Report* ranking algorithm is driven in part by expenditures per student.³⁶ When the money was relatively plentiful, thanks to an open flow of guaranteed student loans, the library was as good a place as any to spend. The ABA's input measures made little distinction with regard to how those inputs were allocated. Now, however, law schools have to set priorities and choose where the more limited resources are going to go. The smart money would not bet on most law schools cutting funds directly supporting faculty.

¶31 Given a choice, neither deans nor faculty are going to reduce support for faculty scholarship. The culture of academic status³⁷—the “economy of prestige”³⁸—is too strong. It is much easier to cut inessentials than to change the culture of an entire academic discipline. From the perspective of faculty at least, law schools are first and foremost scholarly institutions.³⁹ Concern over status is pervasive. As Brian Leiter writes, “The battle for academic distinction rages continually at almost every law school in the United States, at both an institutional and personal level.”⁴⁰

34. “It may well be that live-client clinical education provides a richer learning experience than do externships, even when combined with simulation, but clinic programs still are much more expensive to operate than the alternative model.” Richard W. Bourne, *The Coming Crash in Legal Education: How We Got Here, and Where We Go Now*, 45 CREIGHTON L. REV. 651, 693 (2012).

35. Gene R. Nichol, *Rankings, Economic Challenge, and the Future of Legal Education*, 61 J. LEGAL EDUC. 345, 350 (2012) (citations omitted).

36. Sam Flanigan & Robert Morse, *Methodology: Best Law Schools Rankings*, U.S. NEWS & WORLD REP. (Mar. 10, 2014), <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2014/03/10/methodology-2015-best-law-schools-rankings?page=2>.

37. See DEBORAH RHODE, *IN PURSUIT OF KNOWLEDGE: SCHOLARS, STATUS, AND ACADEMIC CULTURE* (2006).

38. See, e.g., William D. Henderson & Rachel M. Zahorsky, *The Pedigree Problem: Are Law School Ties Choking the Profession?*, A.B.A. J., July 2012, at 36; Michael J. Madison, *The Idea of the Law Review: Scholarship, Prestige and Open Access*, 10 LEWIS & CLARK L. REV. 901 (2006); Richard E. Redding, “Where Did You Go to Law School?” *Gatekeeping for Professoriate and Its Implications for Legal Education*, 53 J. LEGAL EDUC. 594 (2003); Richard Schmalbeck, *The Durability of Law School Reputation*, 48 J. LEGAL EDUC. 568 (1998); David C. Yamada, *Same Old, Same Old: Law School Rankings and the Affirmation of Hierarchy*, 31 SUFFOLK U. L. REV. 249 (1997).

39. Am. Bar Ass'n, Task Force on the Future of Legal Educ., Working Paper 14 (Aug. 1, 2013), available at http://www.americanbar.org/groups/professional_responsibility/taskforceonthefuturelegaleducation/taskforcedrafts.html (“Status is important in measuring individual and institutional success.”).

40. Brian Leiter, *Measuring the Academic Distinction of Law Faculties*, 29 J. LEGAL STUD. 451 (2000); see also Russell Korobkin, Essay, *In Praise of Law School Rankings: Solutions to Coordination*

¶32 Some faculty engage primarily in empirical scholarship, making relatively little use of traditional legal information resources. Other faculty rely mostly on electronic information sources such as Westlaw, LexisNexis, HeinOnline, and JSTOR, and may simply take for granted the role of the library in providing access to electronic information. For some of these faculty members, law libraries may not seem essential to producing their scholarship.

¶33 Law schools will not simply shut down or hand off their libraries—or few will. Rather, law libraries will be chipped away notch by notch, by attrition of personnel and services. But it is clear that faculty will not protest, or at least not much. In the literature on legal education reform, libraries, if they are mentioned at all, are almost uniformly described as wasteful, unnecessary, an outdated sign of the input-based measurement of law school “quality.” While legal writing is mentioned with some regularity as an important skill, legal research is rarely mentioned at all. Law school deans have resisted ABA accreditation for years. The ABA review process is no longer a ticket to a new building. Deans and faculty treat it as a nuisance to ignore when they cannot actively flout it.

¶34 Legal historians are still attached to traditional law libraries, but most faculty do all their legal research electronically (or more likely, have their research assistants do it). Furthermore, most trendy and cutting-edge scholarship now is interdisciplinary and/or empirical. Old-fashioned doctrinal scholarship fell out of fashion years ago. Even traditionally practice-oriented schools are hiring more fancy scholars doing trendy scholarship. This means less reliance on the law library as the primary source of research materials, and a greater reliance on a cooperative, if not centralized, library system. Interdisciplinary scholarship fosters continued reliance on academic libraries, but since no law library can collect all the interdisciplinary materials faculty need, it tends to decrease reliance on the law library. The law library arguably has not been central to the law school for more than a generation. Certainly faculty are not going to give up sabbaticals, high salaries, or new faculty hiring for the sake of an autonomous law library.

¶35 Many librarians insist that their faculty love the library and would never let the university wrest control from the law school, but that sentiment grants law faculties more power than they have in the modern university. As I wrote in the informal context of a Facebook comment:

I don't know a single law school that doesn't love its librarians. But I also don't know a single law school that I would rely on to give up other things to protect its autonomous law library when the pressures for centralization grow strong enough. Would your law school turn over Admissions or Development to the central administration to keep the law library under law school control? Or would your faculty give up sabbaticals, take on increased teaching loads,

and Collective Action Problems, 77 TEX. L. REV. 403, 408 (1998) (“Students understand that rankings serve a coordination function, matching ‘high quality’ students first with each other and then with the most sought-after employers”) (footnotes omitted); Yamada, *supra* note 38, at 253–55 (“concerns about institutional prestige have grown into something of an obsession within legal education”; *U.S. News* rankings undervalue student priorities, favor the corporate bar, and affirm a bias against evening programs). For a critical view, see David A. Thomas, Essay, *The Law School Rankings Are Harmful Deceptions: A Response to Those Who Praise the Rankings and Suggestions for a Better Approach to Evaluating Law Schools*, 40 HOUS. L. REV. 419 (2003).

or forgo faculty hiring, to save the library? Or maybe they want to keep the law library so they can raid its budget and space for other needs?⁴¹

¶36 In the current literature on law school reform, you have to look long and hard to find a defense of the law school library. Paul Campos writes in *The Crisis of the American Law School*:

[I]t seems quite odd to be pumping ever-greater sums into bricks and mortar, given changes in information technology that enable education to take place outside of a \$100 million structure. This point applies with special force to law libraries, which grow ever-more pharaonic even as the practice of law becomes less book-based, and as, if my own observations are accurate, law students find it less and less necessary or desirable to use these literary labyrinths even as opulent study spaces.⁴²

Campos also suggests:

Many other opportunities for cost savings with little or no sacrifice of educational quality will likely present themselves in a world in which law schools face a choice between reducing their expenditures and ceasing to exist. As legal practice continues to move away from requiring lawyers to consult books of any sort, the millions of dollars per year that the typical law school expends on maintaining a comprehensive law library could be reduced to a more rational level of expenditure.⁴³

¶37 Of the fifty comments submitted as of March 11, 2013, to the ABA Task Force on the Future of Legal Education,⁴⁴ only the letter from the American Association of Law Libraries (AALL) mentions law libraries in a positive light. Even that letter is probably intended less to persuade a critical ABA committee than to reassure AALL members that their association is doing something. Other mentions, when they appear at all, describe expenditures on libraries as wasteful and unnecessary.

¶38 Tamanaha does not hesitate to be specific:

The entire set of rules relating to the law library must be deleted. These rules require law schools to maintain unnecessarily expensive library collections and a large support staff; the book-on-the-shelf library is virtually obsolete in the electronic information age.⁴⁵

41. James Milles, Facebook status update (Jan. 7, 2013).

42. Campos, *supra* note 2, at 194–95 (citations omitted).

43. *Id.* at 217.

44. This Task Force is separate from the academic-dominated Section on Legal Education and Admissions to the Bar. The Task Force was created under the auspices the Center for Professional Responsibility, in which practicing attorneys dominate and academics represent a minority. It was charged with

study[ing] the key challenges facing the delivery of legal services and the provision of legal education in the United States, such as: [t]he impact of economic trends on the rising cost of legal education and declining legal employment prospects[;] [i]nnovations, methods and advocacy efforts by state and local bar associations and other groups to reduce the cost of legal education, improve practical skills training, match new lawyers with job opportunities, and provide student loan debt relief[;] [and t]he impact of structural changes in law practice to the nature of lawyer work and the number and distribution of attorneys in the bar. The Task Force will make recommendations on how the ABA and the legal profession can best address these issues.

ABA Task Force on the Future of Legal Educ., Initial Charge, available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/initial_charge_of_the_task_force_on_the_future_of_legal_education.authcheckdam.pdf (last visited Dec. 30, 2014).

45. TAMANAHA, *supra* note 29, at 173.

¶39 Many veteran law librarians find none of this a surprise. Writes Steven D. Hinckley, Associate Dean for Library and Information Services and director of the law libraries at Penn State Dickinson School of Law:

The ABA has been “over” law libraries for years now. After completing the last accreditation inspection team visit I went on, I swore I would never do another one. Back in the day, the librarian member of those teams mattered because the ABA’s Standards on law libraries had some teeth. Now, after years of watering down those Standards, law schools often tilt toward *US News* rankings as the end all/be all and as we know, library matters have an infinitesimal impact on USN’s calculations. I think the fact that no one (outside of our own professional association) is mentioning libraries as a part of the future of legal education is (sadly) not accidental.⁴⁶

The Future of Law Libraries

¶40 What matters most to law schools? Going forward, it will not be law libraries. *Revenue-generating* departments such as development, alumni relations, and career services, and perhaps *status-enhancing* programs such as law journals, interdisciplinary programs, and research centers, will be strengthened, while *revenue-draining* departments will be cut. Faculty privileges will be preserved and expanded wherever possible. Faculty salaries may eventually decrease, but faculty and deans will try every measure they can before that becomes necessary. Legal writing programs and clinics, which have allied with law libraries to some extent in seeking faculty status and resource allocation, will increasingly compete with libraries and each other.

¶41 What will be left of law libraries? What is essential to a law library? What are those elements without which a law library no longer exists?

¶42 The first casualty will be tenure for law library directors. Tenure in higher education is under threat across the board. As law library directors retire or are replaced, it will be increasingly rare that their replacements will have full law faculty status with tenure. This has already been going on for some time. Universities are increasingly shifting from tenure-track faculty to greater numbers of adjunct and temporary appointments. In this environment, law librarians are widely viewed as just another interest group with no real claim to tenure within law schools. Faculty status and tenure have long been seen as important in preserving a voice for the law library. With the loss of tenure, library directors become easily replaceable—and disposable—staff administrators, or the job becomes yet another part-time administrative task to hand off to a faculty member. Advocacy by law librarians may slow the process in some places, but the influence of librarians is diminishing. Legal scholarship depends less on traditional legal sources. The arguments for the centrality of the autonomous law library are losing their force.

¶43 For ambitious law librarians, this may make the career path to law library director less attractive. If conversations I have had with newer directors are representative, many of them do not even want tenure. Maybe this means fewer individuals will give up the relative security of a midlevel librarian position for the

46. Steve Hinckley, comment on Facebook posting (Mar. 11, 2013).

demands of a director position without the security of tenure. Maybe those ambitious and talented individuals who might once have become law library directors will turn instead to administrative positions in university libraries. Either way, the loss of talent going into law library directorships will be a net loss for law schools as well.

¶44 Technical services will be absorbed into university libraries. Space constraints will cause law libraries to share compact storage space with university libraries, with corresponding loss of autonomy over access services. After sharing compact or offsite storage, it is only a few short steps to sharing space for what remains of their active collections.

¶45 Reference librarians will probably be the last to go. Many law librarians insist that skilled law librarians will always be needed to provide the level of services law faculty demand. Even these positions, though, might be shared with other university libraries. In an environment of increasingly interdisciplinary legal scholarship, it might make sense, and might even better serve faculty research needs, to have librarians who are familiar with, but not specialized in, disciplines such as political science, sociology, or economics as well as law—and since law is unlikely to be privileged in such a shared staffing structure, they are less likely to require law degrees.

Conclusion

¶46 Of course, much will be lost in terms of the high levels of service law schools are accustomed to. However, the Yirka Question—“What should law libraries stop doing in order to address higher priority initiatives?”⁴⁷—does not apply only to libraries. Law schools will increasingly examine what they will be willing to give up to survive, much less to grow and move up in the rankings.

¶47 That last point—rankings—may be the best hope for the survival of law school libraries. The elite schools may continue to see the iconic law library as a signal of their elite status—although some elites have already ceded control of key functions like technical services to university library centralization. Other “wannabe,” lower-prestige schools may also want to distinguish themselves from their less elite competitors by maintaining something like a traditional law library.

¶48 Maybe I am wrong. I hope so. I do not want to see law libraries disappear. I do believe, however, that law schools must shrink admissions and control costs, not only for their survival but also to ensure access to legal services for other than large corporate clients. Law libraries serve law schools, and law schools serve—or ought to serve—the public interest. If the legal education crisis inspires legal educators to renew their commitment to the public interest, we will all gain something more valuable than traditional libraries.

47. Carl A. Yirka, *The Yirka Question and Yirka's Answer*, AALL SPECTRUM, July 2008, at 28.