

LAW SCHOOL DEANS AND “THE NEW NORMAL”

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I. INTRODUCTION

THE New Normal was the name of a short-lived television show that ran on the NBC television network during the 2012-2013 season.¹ The premise of the show involved a well-to-do homosexual couple in Southern California who decided to have a child with the help of a surrogate mother, whom they moved into their home, along with her nine-year-old daughter. Presumably, the television viewers (and there were few) were asked to accept this household structure as “the new normal.” While the television show has long ended, “the new normal” has found its way into the lexicon of America and, more surprisingly, into the current conversations about legal education.

On the blog *Legal Rebels*, law dean Phil Weiser recently wrote that law schools are now facing a “new normal” and that institutions have an opportunity to reinvent themselves, if they are committed to innovation and experimentation.² Dean Weiser’s comments could not be timelier.

Law schools have long followed a fairly uniform path. First-year curricula typically include required courses, such as Torts, Criminal Law, Property, Civil Procedure, Contracts, and occasionally Constitutional Law. In addition, all students are exposed to legal research and writing in some type of course that bridges both semesters of the first year. A few schools have added an elective to the first year in order to give students the opportunity to take a specialty course³

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1. See Lesley Goldberg, *NBC Cancels ‘The New Normal’*, THE HOLLYWOOD REP. (May 10, 2013, 5:52 PM PT), <http://www.hollywoodreporter.com/live-feed/nbc-cancels-new-normal-520920>.

2. See Phil Weiser, *Five Initiatives That Legal Education Needs*, LEGAL REBELS (Sept. 26, 2013, 1:30 PM), http://www.abajournal.com/legalrebels/article/five_initiatives_that_legal_education_needs.

3. See, e.g., *Courses*, STAN. L. SCH., <https://www.law.stanford.edu/courses/1st-year-program> (last visited June 29, 2015); *Academic Advising at Harvard Law School*, HARVARD L. SCH., <http://www.law.harvard.edu/academics/curriculum/academic-advising-at-hls/index.html> (last visited June 29, 2015) (“In the spring semester of the 1L year, you will also have the opportunity to choose an International or Comparative Law Course and an upper-level elective course.”).

or a course in “advanced civics,”⁴ but most schools seem to have not changed the first-year curricula very much.

During the past few years, legal education has experienced a significant downturn in the number of students applying to law school.⁵ There is great speculation about why students are not currently pursuing a legal education, with many people pointing to a widely held belief that it is due to the constant drumbeat of negative press about the cost of legal education and the lack of job prospects after law school.⁶ Others blame social media, bloggers, and the easy access that disgruntled law graduates have to vent their frustrations to a wide audience over their high student-loan debt and inability to distinguish themselves in the current job market.⁷ Still others want to point the finger at the legal academy itself, which has long eschewed connections with the bench and bar, preferring instead to focus student learning on theory and history, in place of praxis.⁸

The current law school admissions climate should be viewed as an opportunity to reexamine how law schools operate. This Essay describes some impediments to law school success and focuses on the role of the law school dean to suggest that these important administrators are the keys to that success in the future. In the face of a rapidly changing legal education world, deans must lead differently. This Essay challenges them to embrace the “new normal” and to view the role and functions of a law school dean in an entirely new way.

4. The term “advanced civics” courses is intended to include courses that remind, or teach students for the first time, about the structure of our federal government, with particular emphasis on legislative activity, statutory interpretation, and/or administrative law. Examples include: *Elements of Law*, PENN STATE L., <http://pennstatelaw.psu.edu/courses/elements-law> (last visited June 29, 2015) (“[The course] orients students to legal research and reasoning through caselaw, statutory interpretation, and legal history, processes, and institutions. The course covers topics across many substantive areas of law, and addresses legal methodology as it arises in the legal profession.”) and *Legislative and Administrative Process*, S. ILL. U. SCH. L., <http://www.law.siu.edu/academics/curriculum/index.html> (last visited June 29, 2015) (select link “Legislative and Administrative Process”) (“This course ... introduce[s] students to the basic principles of separation of powers, legislative authority, statutory interpretation, and administrative law.”).

5. See, e.g., Mark Hansen, *As Law School Enrollment Drops, Experts Disagree on Whether the Bottom Is in Sight*, A.B.A. J. (Mar. 1, 2015, 1:50 AM CST), http://www.abajournal.com/magazine/article/as_law_school_enrollment_drops_experts_disagree_on_whether_the_bottom (originally published as Mark Hansen, *Count Off: Law School Enrollment Continues to Drop, and Experts Disagree on Whether the Bottom Is in Sight*, A.B.A. J., Mar. 2015, at 64) (reporting that law school enrollment fell in 2014 for the fourth straight year).

6. See, e.g., Jennifer Smith, *U.S. Law School Enrollments Fall*, WALL ST. J. ONLINE (Dec. 17, 2013, 7:41 PM ET), <http://online.wsj.com/news/articles/SB10001424052702304858104579264730376317914> (suggesting that the lack of legal jobs is steering potential law students away from a law degree).

7. See, e.g., *Power Flush: Thomas M. Cooley Law School and the University of La Verne College of Law Experience the Biggest-Ass Drops in Enrollment-by Percentage-Since 2010*, THIRD TIER REALITY BLOG (Feb. 20, 2014), <http://thirdtierreality.blogspot.com/2014/02/power-flush-thomas-m-cooley-law-school.html>.

8. See, e.g., Robert J. Rhee, *On Legal Education and Reform: One View Formed from Diverse Perspectives*, 70 MD. L. REV. 310, 312-14 (2011) (calling for stronger ties between the legal academy and the practicing bar to better prepare law students for the realities of practice).

II. THE “OLD NORMAL”

Countless scholars have written about the role of law schools in educating students.⁹ Historically, the role of law schools was described as preparing men and women for the practice of law.¹⁰ Legal education began with lawyers-in-training apprenticing at the feet of an experienced lawyer.¹¹ In the late 1700s, students began to learn the law in classrooms through formalized curricula and trained instructors of the law. George Wythe was the first American law professor, selected by Thomas Jefferson and other leaders at The College of William and Mary, to train lawyers in an institutional setting.¹² Wythe enjoyed great success as an academic, and his more noteworthy students included John Marshall and James Monroe.¹³ Many years passed between Professor Wythe’s classroom-based legal instruction and any modification of his model. Though Wythe formalized legal education, his approach was not a pedagogical *method*, and almost a century passed before one was introduced.

In 1870, Christopher Columbus Langdell further transformed legal education by introducing the case-method and Socratic dialog to the study of law, while he was the law dean at Harvard University.¹⁴ By all accounts, Dean Langdell’s system of having students read appellate cases that had been collected into a “casebook” for easy reading was a novel organizational proposition.¹⁵ Moreover, Langdell regarded the study of law as a scientific discipline that could not only educate students but also shape future law by helping law students discover essential principles and doctrines.¹⁶

9. See generally, e.g., Benjamin V. Madison III, *The Emperor Has No Clothes, But Does Anyone Really Care? How Law Schools Are Failing to Develop Students’ Professional Identities and Practical Judgment*, 27 REGENT U. L. REV. (forthcoming 2015); Jerome M. Organ, *Legal Education and the Legal Profession: Convergence or Divergence?*, 38 OHIO N.U. L. REV. 885 (2012); Judith W. Wegner, *Reframing Legal Education’s “Wicked Problems”*, 61 RUTGERS L. REV. 867 (2009).

10. See, e.g., Kristin Booth Glen, *Deaning for Whom? Means and Ends in Legal Education*, 31 SEATTLE U. L. REV. 739, 745 (2008) (“[L]aw schools not only owe students the best possible education and preparation for practice, but that they also owe it to, and should take explicit notice of, the client base those students will serve.”).

11. See, e.g., LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 238-41 (3d ed. 2005) (chronicling the early history of legal education); Bernadette T. Feeley, *Examining the Use of For-Profit Placements in Law School Externship Programs*, 14 CLINICAL L. REV. 37, 38-40 (2007) (chronicling the history of experiential education in the legal profession). See also generally Lynne A. Battaglia, “Where Is Justice?” *An Exploration of Beginnings*, 42 U. BALT. L.F. 1 (2011) (chronicling the history of women lawyers in Maryland).

12. See *A Biography of George Wythe, 1726-1806*, AMERICAN HISTORY: FROM REVOLUTION TO RECONSTRUCTION AND BEYOND, <http://www.let.rug.nl/usa/biographies/george-wythe/> (last visited June 29, 2015).

13. *Id.*

14. See BRUCE A. KIMBALL, *THE INCEPTION OF MODERN PROFESSIONAL EDUCATION: C.C. LANGDELL, 1806-1926*, at 141-45 (2009).

15. For a helpful review of the Langdell narrative, see Jennifer S. Taub, *Unpopular Contracts and Why They Matter: Burying Langdell and Enlivening Students*, 88 WASH. L. REV. 1427, 1442-46 (2013).

16. See *id.* at 1443.

Surprisingly, not much has changed since Langdell. Sure, law schools have converted some two-semester, first-year courses into one-semester, four-credit courses, but the pedagogical approach that most law schools have employed still involves reading appellate cases and guiding students through an organized set of legal principles that, hopefully, inclines them to think and reason in a style similar to the way in which most appellate judges write. This process has been most commonly called “thinking like a lawyer.”¹⁷

As law schools have examined their curricula in recent years (perhaps because the American Bar Association requires them to do so for accreditation purposes),¹⁸ few institutions have been bold enough to depart from the Langdellian model in extraordinary ways. The David A. Clarke School of Law, at the University of the District of Columbia, requires all students, including first-year students, to participate in legal clinics.¹⁹ Yale Law School permits its first-year students to appear in court on behalf of real clients.²⁰ At the College of William and Mary Marshall Wythe School of Law, all first-year students are divided into “law firms,” which are led by writing professors and practitioners, who work together to teach lawyering skills over the first two years.²¹ At Northeastern University, the granddaddy of experiential education,²² all students must complete four co-ops, equaling one year of practical education, as a condition of graduation.²³ Overall, however, few schools have taken bold steps to reimagine the first-year curriculum and the same is true, to a certain extent, for upper-level courses.

Even on a smaller scale, law schools are not keeping pace with the demands of our colleagues in the practicing bar. All over America, bar associations and others have expressed concern about civility within the profession.²⁴ There are

17. For a more complete discussion of teaching law students to think like lawyers, see Brian H. Bix, *Contract Texts, Contract Teaching, Contract Law: Comment on Lawrence Cunningham, Contracts in the Real World*, 88 WASH. L. REV. 1251 (2013); Larry A. DiMatteo, *Contract Stories: Importance of Contextual Approach to Law*, 88 WASH. L. REV. 1287 (2013); Nancy Rapoport, *Is “Thinking Like A Lawyer” Really What We Want to Teach?*, 1 J. ASS’N LEGAL WRITING DIRECTORS 91 (2002), available at <http://www.alwd.org/wp-content/uploads/2013/03/pdf/Rapoport.pdf>.

18. ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 302 includes Interpretation 302-8, which provides, “A law school shall engage in periodic review of its curriculum to ensure that it prepares the school’s graduates to participate effectively and responsibly in the legal profession.”

19. See *Introduction to Clinical Programs*, U. D.C. DAVID A. CLARKE SCH. L., <http://www.law.udc.edu/?page=ClinicIntro> (last visited June 29, 2015).

20. See *Clinics & Experiential Learning*, YALE L. SCH., <http://www.law.yale.edu/academics/clinicalopportunities.htm> (last visited June 29, 2015).

21. See Brian Kelley, *Law School Launches New Program*, C. WILLIAM & MARY (Jan. 9, 2013), <http://www.wm.edu/news/stories/2013/law-school-launches-new-program123.php>.

22. For a helpful explanation of experiential legal education, see David I.C. Thomson, *Defining Experiential Legal Education*, 1 J. EXPERIENTIAL LEARNING 1 (2015), <http://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?article=1002&context=jel>.

23. See *The Incomparable Co-op: Four Full-time Work Experiences. Countless Opportunities*, NORTHEASTERN U. SCH. L., <http://www.northeastern.edu/law/experience/co-op/index.html> (last visited June 29, 2015).

24. See, e.g., Helen W. Gunnarsson, *Uncivil Action*, 98 ILL. B.J. 408 (2010) (discussing how attorneys should respond to uncivil behavior directed toward them by other attorneys); Jennifer

innumerable continuing education programs on ethics, professionalism, sensitivity, and other related topics. Despite the number of courses in this broad area, the concern that the legal profession lacks civility continues to grow.²⁵ Law schools should be leading the way with regard to ethics and professionalism training. Most of our students do not enter law school knowing what is “good” lawyer behavior and what is “bad” lawyer behavior, and we have the first opportunity to help them truly understand the difference. Unfortunately, the curricula at most law schools still does not include a course focused on ethics, professionalism, or civility until the second year, after students have all been out working in their first summer jobs or externships!²⁶

While some academics might bristle at the notion of “teaching” ethics, preferring some organic method to expose lawyers-in-training to what it means to be ethical, it is possible for students to be introduced to fundamental ethical tenets. For example, a former student of mine was unaware that she could not talk about confidential communications she had with a client during her summer externship after her externship had ended. Another student did not completely grasp the concept of candor to the tribunal because he did not believe that he would have to disclose to a court every circumstantial legal authority that was contrary to the argument that he was presenting to the court. There are numerous other examples that can be “taught” prior to sending students into the workplace, even as a summer intern.

Smith, *Lawyers Behaving Badly Get a Dressing Down from Civility Cops*, WALL ST. J. ONLINE (last updated Jan. 27, 2013, 10:35 PM ET), <http://www.wsj.com/articles/SB1000142412788732353980457826373309255320>; Elie Mystal, *Judge-Ordered Remedial Civility Classes = The New Killing It*, ABOVE THE LAW (Sept. 2, 2011, 1:54 PM), <http://abovethelaw.com/2011/09/judge-ordered-remedial-civility-classes-the-new-killing-it/>.

25. See, e.g., Melissa S. Hung, Comment, *A Non-Trivial Pursuit: The California Attorney Guidelines of Civility and Professionalism*, 48 SANTA CLARA L. REV. 1127, 1128-29 (2008) (describing the State Bar of California’s apparent need to promulgate “Attorney Guidelines of Civility and Professionalism” to combat perceived declines in attorney professional interaction with one another and in the eyes of the public); Raymond M. Ripple, Note, *Learning Outside the Fire: The Need for Civility Instruction in Law School*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 359, 276 (2001) (calling for civility instruction in law school); Brooks A. Suttle, Comment, *Reframing “Professionalism”: An Integral View of Lawyering’s Lofty Ideals*, 61 EMORY L.J. 161, 165 (2011) (relying on Integral Theory to evaluate the “professionalism crisis” within the legal profession).

26. There are a few notable exceptions. See, e.g., *Requirements for JD Degree*, INDIANA TECH L. SCH., <http://law.indianatech.edu/academics/curriculum/first-year/> (last visited June 29, 2015) (including first-year professionalism course requirement); *Course Descriptions: First Year Curriculum*, MERCER U. L., <http://www2.law.mercer.edu/courses/index.cfm?blockid=1> (last visited June 29, 2015) (same); *Fall 2014-SIU School of Law Class Schedule-First Year*, S. ILL. U. SCH. L., http://www.law.siu.edu/_common/documents/calendar/fa14-11.pdf (last visited June 29, 2015) (same); *Doctor of Jurisprudence (JD)*, IND. U. BLOOMINGTON MAURER SCH. L. <http://www.law.indiana.edu/degrees/jd/requirements/index.shtml> (last visited June 29, 2015); *Course Catalog*, U. NOTRE DAME L. SCH., <http://law.nd.edu/academics/curriculum> (last visited June 29, 2014). For an interesting discussion of ethics education in the first-year curriculum, see Stephen McG. Bundy, *Ethics Education in the First Year: An Experiment*, 58 L. & CONTEMP. PROBS. 19 (1996). See also Lawrence K. Hellman, *The Effects of Law Office Work on the Formation of Law Students’ Professional Values: Observation, Explanation, Optimization*, 4 GEO. J. LEGAL ETHICS 537 (1991).

The law school “old normal” has become a hindrance to the legal profession. Lawyers and judges expect students to be more “practice ready” or “client ready,” but law school curricula have not changed fast enough to satisfy the bench and bar. Additionally, law schools continue to place rising 2Ls in summer work experiences with minimal grounding in the rules of ethics of our profession. More and more, employers are imploring the legal academy to educate students in new and different ways, so that they are more “practice ready.”²⁷ Encouraging law schools to embrace change can be daunting, but today’s realities leave no other choice.²⁸

III. INNOVATION IN LEGAL EDUCATION

Significant change is coming to legal education, and it will likely occur at a pace that will be very uncomfortable for most deans and faculty. Declining enrollments and shrinking budgets will require law schools to innovate or disappear. There are not enough qualified applicants to fill all of the open seats among ABA-accredited law schools, and schools will have to act quickly to distinguish their programs if they want to survive. Faculty governance, however, often means committee meetings and discussions over long periods of time before changes are implemented. Many will resist; to be honest, the depth and breadth of change in legal education over the past 100 years has not been revolutionary ... or even evolutionary. “A snail’s pace” seems *apropos*. If ever there was a case study for “if it ain’t broke don’t fix it,” law schools are the best examples.

Applying the term “new normal” to law school deans and to legal education may actually be a misnomer in this day and age. The traditionally slow rate of change in academia *writ large* has been accelerating, primarily because of disruptive technologies used to deliver education in new ways.²⁹ Slow change,

27. For example, in its 2014 Final Report, the ABA Task Force on the Future of Legal Education recommends:

Prevailing law faculty culture, and the prevailing faculty structure in a law school, reflect the model of a law school as primarily an academic enterprise, delivering public value. This entrenched culture and structure has promoted declining classroom teaching loads and a high level of focus on traditional legal scholarship.

....

The Task Force recommends that universities and law faculties move to reconfigure the faculty role and promote change in faculty culture, so as to support whatever choices law schools make to adapt to the changing environment in legal education.

ABA TASK FORCE ON THE FUTURE OF LEGAL EDUCATION, FINAL REPORT 27-28 (2014).

28. See, for example, the comments of University of Houston law dean, Raymond Nimmer, discussing the urgency with which law schools must begin to act to keep pace with changing demands from the practicing bar. *Texas Law School Deans Discuss the Future of the Law School Curriculum*, 69 TEX. B.J. 764, 766 (2006).

29. Increasingly, curricula are being developed for distance education and delivery systems unbounded by time. See, e.g., Steve Kolowich, *Legal Education and the Web*, INSIDE HIGHER ED (May 8, 2012), <https://www.insidehighered.com/news/2012/05/08/washington-u-law-school-offer-fully-online-degree> (profiling Washington University Law School’s full-online-degree program).

however, remains the norm in most of today’s law schools. Clinging to past education practices provides a defensive safety net for tenured law school faculty. A few high-profile faculty and deans are speaking out in favor of change, but good intention is nothing without action.³⁰ Sadly, continuing to maintain the status quo is not only limiting legal education, it is also harmful to the profession of law.

Author Clayton M. Christensen cites to changing technology as one of the factors that could threaten an existing law school, even one with a stellar reputation.³¹ He challenges businesses—although his theories could certainly be applied to educational institutions—to abandon traditional business practices. Christensen creates two categories of technology—sustaining and disruptive—and he repeatedly asserts that large business entities are designed to work with sustaining technology, but they should embrace disruptive technology.³² To Christensen, sustaining technology is the tried-and-true method of slowly modifying existing technology to suit business’ and customers’ needs.³³ Disruptive technology, on the other hand, is like a new cell phone that is introduced quickly, perhaps to a limited market, and does not have all of the bugs worked out.³⁴ Christensen asserts that corporate America can benefit from embracing disruptive technologies as well as sustaining technologies and that waiting for an idea (technology) to be perfect before launching it may be the difference between a corporation surviving and disappearing.³⁵

In the higher education world, there are a number of innovations that law schools have been slow to embrace. MOOCs, or massive open online courses, have become popular vehicles to deliver instruction.³⁶ Most are offered at no charge and often are not recognized by colleges and universities as credit-earning.³⁷ Law school deans and faculty have said nary a word about MOOCs, in

30. See, e.g., Peter C. Alexander, *Indiana Tech Law School: Preparing Students for Success in Law, Leadership, and Life* (Apr. 11, 2013) (unpublished manuscript), available at <http://ssrn.com/abstract=2273219>; Bradley T. Borden & Robert J. Rhee, *The Law School Firm*, 63 S.C. L. REV. 1 (2011) (advocating for the creation of law school law firms to better connect law school education and law practice).

31. See generally CLAYTON M. CHRISTENSEN, *THE INNOVATOR’S DILEMMA: THE REVOLUTIONARY BOOK THAT WILL CHANGE THE WAY YOU DO BUSINESS* (Harper Bus. 2011) (2003).

32. *Id.* at xviii-xxix.

33. *Id.*

34. *Id.* See also MALCOLM GLADWELL, *DAVID AND GOLIATH: UNDERDOGS, MISFITS, AND THE ART OF BATTLING GIANTS* (2013).

35. CHRISTENSEN, *supra* note 31, at xxiv-xxvi.

36. For more information about MOOCs, see *Massive Open Online Course (MOOC)*, EDUCAUSE, www.educause.edu/library/massive-open-online-course-mooc (last visited June 29, 2015), and *7 Things You Should Know About MOOCs II*, EDUCAUSE LEARNING INITIATIVE (June 11, 2013), <https://net.educause.edu/ir/library/pdf/ELI7097.pdf>.

37. See Chris Parr, *Moocs Are Free—But for How Much Longer?*, TIMES HIGHER EDUC. (Aug. 21, 2014), <https://www.timeshighereducation.co.uk/news/moocs-are-free-but-for-how-much-longer/2015204.article> (explaining MOOCs have been provided at no cost). See also Kathryn Masterson, *Giving MOOCs Some Credit*, AM. COUNCIL ON EDUC. (May 1, 2013),

part because we do not fully understand them, but also because they do not comport with our current way of delivering legal education. Law is not alone; business schools have also questioned whether MOOCs are appropriate delivery models.³⁸

MOOCs may have a place in legal education, however. Law students might be encouraged or required to complete some of their academic training via MOOCs, perhaps in the same way as online continuing legal education (“CLE”) courses are delivered to attorneys who need to complete a certain number of CLE hours in order to maintain their licenses. MOOCs might supplement classroom instruction and free up teacher time, so a faculty member is not teaching a rather narrow or esoteric topic to three or four students. Perhaps the students can receive the same instruction by enrolling in a MOOC that has been created by a law professor on the very subject in which they are interested. MOOCs might also facilitate much-needed innovation in more traditional law school courses. For example, the “flipped classroom” concept can be useful in conjunction with MOOCs that test a student’s basic knowledge before that student comes to class.³⁹

One reason “outside of the box” ideas are resisted by law school deans is because the American Bar Association (“ABA”) standards for accreditation do not permit a lot of room for experimentation. The ABA counts minutes of instruction and limits the number of hours of credit-bearing coursework that can be completed outside of the classroom.⁴⁰ Similarly, the accreditation rules limit the number of credit hours that can be delivered to students by individuals other than the full-time faculty.⁴¹ Query whether MOOCs would be considered by the ABA to be coursework or extra-curricular. Until we know more about them, MOOCs just do not fit comfortably within the existing accreditation paradigm.

The ABA does have a mechanism by which law schools may experiment, however. Schools may seek waivers from accreditation standards to try innovative things; that is how two-year law programs were born.⁴² The process to approve “experiments” is not always simple and straightforward, and law schools may not have resources or time to devote to seeking approval of an

<http://www.acenet.edu/the-presidency/columns-and-features/Pages/Giving-MOOCs-Some-Credit.aspx> (describing MOOCs as non-credit bearing).

38. See Cory Weinberg, *Far from a Threat, MOOCs Could Help Solve the B-School*, BLOOMBERG BUS. WK. (June 4, 2014, 10:04 AM), <http://www.businessweek.com/articles/2014-06-03/far-from-a-threat-moocs-could-help-solve-the-b-school-diversity-problem> (explaining that business schools are reluctant to embrace MOOCs because of a fear that they will reduce enrollment and revenue, but also noting that free, online courses like MOOCs may reduce the educational costs to students of color and thereby increase enrollment in business schools).

39. For a helpful explanation of a “flipped classroom,” see Cynthia J. Brame, *Flipping the Classroom*, VANDERBILT U. CENTER FOR TEACHING, <http://cft.vanderbilt.edu/guides-sub-pages/flipping-the-classroom/> (last visited June 29, 2015).

40. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 304(b) (2013-14), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter4.authcheckdam.pdf.

41. *Id.* at Standard 402.

42. *Id.* at Standard 802.

innovative approach. More relaxation of the ABA’s regulatory authority will have to occur before true innovation will take place in legal education.

IV. REIMAGINING THE LAW SCHOOL DEAN

The law school dean is a key player in the effort to reshape legal education. There are actually a number of participants within legal education who have responsibility for training law students, including but not limited to registrars, associate deans, and faculty members. However, the dean is the person who most often sets the direction of a law school and who serves as the head cheerleader, steering all of a school’s constituencies in one direction. The challenge is that, as legal education changes, so must the role of the dean.

In the new normal, law school deans must be as comfortable in a business environment as they are in an academic environment. Deans must be attuned to changing market pressures and forces as never before. More importantly, deans must embrace the new reality in which legal education finds itself.

Professor William Henderson and Dean Andrew Morriss assert that the legal academy has to wake up and accept that the legal marketplace has fundamentally changed; moreover, the change is not temporary.⁴³ These astute authors, who are as well versed in the field of business as they are in law, insist that legal education has not traditionally paid any attention to the concepts that could dramatically improve the business side of law school, e.g., efficiency, emergent strategies, and entrepreneurship.⁴⁴

Prior to discussing a new list of expectations of law school deans, there must be some recognition of longstanding rules that still apply today. Higher education consultant Dr. Gary Krahenbuhl encapsulated the basic tenets of deaning in two “rules to live by.”⁴⁵ Krahenbuhl stresses that deans must “maximize good” and “operate on the basis of principles.”⁴⁶

When writing about maximizing good, Krahenbuhl posits that deans must try to pursue courses of action that accomplish “the most good,”⁴⁷ which is more challenging than it sounds. Often deans must weigh options presented to them in terms of their value to the person presenting the option, other people within the academic unit, the students, the effect of the option on the university, and, perhaps, the world beyond the campus. Successful deans have a big-picture perspective, and they use their wide field of vision to balance the needs of several constituency groups before deciding how best to proceed on any initiative.⁴⁸ The

43. Andrew P. Morriss & William D. Henderson, *Lawyers and Law School Reform*, 100 ILL. B.J. 414, 414 (2012), available at <https://www.isba.org/ibj/2012/08/lawyersandlawschoolreform>.

44. *Id.* at 415.

45. GARY S. KRAHENBUHL, *BUILDING THE ACADEMIC DEANSHIP: STRATEGIES FOR SUCCESS* 36 (2004)

46. *Id.* at 36-37.

47. *Id.* at 36.

48. For instance, most legal academics agree that University of California-Irvine’s law school dean, Erwin Chemerinsky, and Drexel University’s Thomas R. Kline School of Law dean, Roger Dennis, are visionary leaders who have had remarkable success leading new law schools to accreditation. Both deans have had to develop frameworks from which law school programs were

need for that kind of clarity of thought and level-headed decision-making will always be important and necessary.

Likewise, Krahenbuhl's admonition that deans should "operate on the basis of principles" remains vitally important for successful deaning, even today.⁴⁹ He calls upon deans to discipline themselves to be fair and consistent when responding to requests for the dean to make a decision. For example, a dean who is asked to give a faculty member extra professional development funds, so that the faculty member can accept an unplanned invitation to speak at a conference within the professor's discipline, should be decided, not on the basis of the dean's relationship with this particular professor, but rather because the dean believes that flying the school flag in this manner and/or the importance of sharing the scholar's research justifies the grant of additional funds. If guided by the latter reasoning, the dean should then have no basis to deny other, similarly situated faculty members the same opportunity should another request be raised.

Traditional leadership principles, like those espoused by Dr. Krahenbuhl, have not disappeared in the era of the "new normal." Indeed, those tenets are very important to successful deaning. Being "fair and balanced" as a leader—and being *perceived* as being fair and balanced—should collectively serve as a baseline expectation of all deans, notwithstanding the current usage of the phrase.⁵⁰

The expectation of deans to succeed today is much more complicated than focusing on just the two important rules put forth by Dr. Krahenbuhl. For one reason, law school competition is fierce and, second, there are many more factors in play when a school is trying to achieve "success." The number of ABA-accredited schools has exploded in the past 20 years and, until 2005, there was a steady increase in the number of students attending law school.⁵¹ At the same time, most law schools were trying to emulate Harvard or Yale or some other elite institution.⁵² As a result, "law schools increased their student bodies, ... expanded faculties and reduced teaching loads, introduced ever-expanding

created and both have had to lead faculty and staff through the morass of ABA regulations in order to become fully accredited.

49. KRAHENBUHL, *supra* note 45, at 37.

50. In 1995, Fox News registered "fair and balanced" as a marketing slogan for its news broadcasts, but that tag line was met with considerable criticism from those who believed that the news agency was neither fair nor balanced, but that it broadcast information from a pointedly conservative viewpoint. See *Context of '1995: Fox News Registers 'Fair and Balanced' Slogan, Authors Claim Disproportionately Presents Conservative Viewpoints'*, HISTORY COMMONS, <http://www.historycommons.org/context.jsp?item=a0708foxfairbalanced> (last visited June 29, 2015).

51. According to data published by the Law School Admission Council, there were 98,700 people applying to ABA-accredited schools in the fall of 2004, but that number dwindled to just 59,400 in 2013. See *End-of-Year Summary: ABA (Applicants, Applications, Admissions), LSATS, Credential Assembly Service*, LSAC, <http://www.lsac.org/lscresources/data/lscac-volume-summary> (last visited June 29, 2015).

52. See Nancy B. Rapoport, *Changing the Modal Law School: Rethinking U.S. Legal Education in (Most) Schools*, 116 PENN ST. L. REV. 1119, 1123 (2012) ("Even the *U.S. News & World Report* rankings rank every ABA-accredited law school in the U.S. across one set of variables. Those rankings tend to reward schools that approximate Yale").

curricula with greater emphasis on academic subjects and less on practice-oriented courses.”⁵³ Little attention was paid to creating unique, innovative law school programs that could transform the ways in which professors teach and students learn.

Within the past 10 years, the rate of curricular change has increased and more schools have started to modify their programs. Even as changes started to occur, many schools purported to make changes to their curricula in an effort to become more “practice ready”⁵⁴ or “client ready,”⁵⁵ but those changes have been often felt at the margins and did not transform an entire law school community. A quick survey of law school websites reveals that there are more clinics and externships available to students today, but there does not appear to be much in the way of integrated skills training. One does not read about curricula filled with lawyering skills exercises and ethics training attached to each or most courses. Without an across-the-board infusion of skills training, there is no way to ensure that all students are exposed to the skills that the bench and bar expect.

Creating “practice ready” law graduates is only one facet of curriculum reform that schools must embrace. They must also respond to criticisms that law schools cost too much and that there are not enough jobs to accommodate all of the law school graduates.⁵⁶ Another significant and persistent criticism is that a “professional” program, like law, one that purports to train students for the legal “profession,” has all but abandoned vocational instruction in favor of theory because of ivory-tower ignorance about what lawyers actually do.⁵⁷ Attorneys Grace Liu and John Fitzgerald state the question more succinctly when they write, “The legal degree, a J.D., is a professional degree. When did a professional education system become so divorced from the profession it supports?”⁵⁸

53. Morriss & Henderson, *supra* note 43, at 415.

54. See, e.g., *Practice Ready*, CATHOLIC U. AM. COLUMBUS SCH. L., <http://www.law.edu/PracticeReady.cfm> (last reviewed June 18, 2014); *Chicago’s Practice-Ready Law School*, JOHN MARSHALL L. SCH., <http://www.jmls.edu/imready> (last visited June 29, 2015); *Experiential Learning*, U. DENVER STURM C.L., <http://www.law.du.edu/index.php/academics/experiential-learning> (last visited June 29, 2015).

55. See C-K Editor, *Weekly Faculty in the News, 1/23/14*, IIT CHICAGO-KENT FACULTY BLOG (Jan. 23, 2014), <http://blogs.kentlaw.iit.edu/faculty/2014/01/23/weekly-faculty-in-the-news-1-23-14/>.

56. See generally, e.g., STEVEN J. HARPER, *LAWYER BUBBLE: A PROFESSION IN CRISIS* (2013) (criticizing how law schools operate and recruit students); PAUL CAMPOS, *DON’T GO TO LAW SCHOOL (UNLESS): A LAW PROFESSOR’S INSIDE GUIDE TO MAXIMIZING OPPORTUNITY AND MINIMIZING RISK* (2012) (guiding prospective law students through the law-school-selection process); BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (2012) (explaining why the current law school model is unsustainable).

57. See, e.g., *A Conversation with Chief Justice Roberts* (C-SPAN cable broadcast June 25, 2011), available at <http://www.c-spanvideo.org/program/FourthCi>. But see Will Rhee, *Law and Practice*, 9 LEGAL COMM. & RHETORIC: JALWD 273, 275 (2012) (calling the theory-practice divide “a false dichotomy”).

58. Grace I. Liu & John M. Fitzgerald, *Train Lawyers, Not Legal Scholars*, CHRON. HIGHER EDUC. (Jan. 28, 2014), http://chronicle.com/blogs/conversation/2014/01/28/train-lawyers-not-legal-scholars/?cid=at&utm_source=at&utm_medium=en.

Within the past 10 years, many law schools have slowly begun to respond to the criticism that legal education bears little relationship to the actual legal profession. Schools have introduced “skills and values” educational components into their curricula, including the addition of legal clinics and additional externship opportunities. These changes come at a cost, however, because skills education is expensive.⁵⁹

Responding to the “new normal” is complicated and not without consequences. First, someone has to lead the effort, to steer the ship that is a law school, in a new direction. That individual is almost always the dean, the chief executive officer of the unit. Moreover, it is nearly impossible for the average dean to lead the academic organization, serve as the “face” of the institution to external constituencies, be attentive to emergent opportunities, maintain a respectable home life, satisfy a demanding central university administration, and pay attention to the business aspects of a law school.⁶⁰

Motivational speaker and storyteller Thomas Dismukes challenges leaders to work as hard at finding balance in life as we do to run our businesses.⁶¹ Dismukes is well respected as an author of the best-selling book, *A Leader's FOCUS*, and he is a highly regarded expert on leadership theory.⁶² He asserts that successful leaders lead with “5 Hs”: Head, Heart, Hands, Health, and Habit.⁶³ These leaders make the most of every second that they have available and following Dismukes's prescription requires a completely different alignment of priorities for a law school dean. Further exploration of each of Dismukes's five leadership characteristics is helpful.

1. *Head*

Dismukes directs leaders to lead with “vision, values, empathy, and unity,” but he adds that great leaders also “lead with passion, encouragement, and motivation.”⁶⁴ Law faculty are reporting that they are teaching students who

59. See, e.g., ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 130-31 (2007).

The demands of experiential teaching are different from non-experiential teaching, and schools should take care to ensure that student-faculty ratios, caseloads in in-house clinics, and the overall obligations of experiential teachers are conducive to achieving the educational and programmatic goals of their courses. One must balance the need to give students meaningful experiences against the risk of overloading students or teachers and interfering with their abilities to achieve the educational goals of their courses.

Id. at 179 (citing AALS/ABA GUIDELINES FOR CLINICAL LEGAL EDUCATION 24-25 (1980)).

60. For a compelling exposition of why the average tenure for law deans is relatively short, see generally Paul D. Carrington, *Afterword: Why Deans Quit*, 1987 DUKE L.J. 342.

61. See generally THOMAS DISMUKES, A LEADER'S FOCUS: FINDING THE BALANCE THAT DETERMINES PERSONAL AND PROFESSIONAL SUCCESS (2012).

62. See *Thomas Dismukes: Biography*, SPEAKERMATCH, <http://www.speakermatch.com/profile/ThomasDismukes> (last visited June 29, 2015).

63. DISMUKES, *supra* note 61, at 50-52.

64. *Id.* at 50.

struggle more with grammar, analytical reasoning, and “soft skills,” such as time-management and business etiquette.⁶⁵

Law deans who seek to be regarded as great leaders must come to grips with the changing face of the law student, and they must help faculty realize that the students they are teaching are very different today. Most faculty members nostalgically recall learning the law at the feet of great legal minds in 50-minute lectures with one final exam either at the end of the semester or at the end of the year. Students, today, come to us over-stimulated in their everyday lives and they may even regard faculty members as “pals” or “buddies” rather than fonts of wisdom and insight.⁶⁶ Faculty members have to design new methods of instruction and create new pathways for students to learn.⁶⁷ Deans have to lead that charge. Deans must make funds available for faculty members to learn how people learn and how to teach the current generation of students. Faculty scholarship lunches and colloquia are important and are a time-honored tradition within law schools, but much more attention must be given to teaching workshops in order to better equip faculty members to teach to a wide variety of learning styles.⁶⁸

Deans are more likely than other members of the law school community to have access to the important issues of the day facing higher education and law schools because of subscriptions to the *Chronicle of Higher Education* and the ABA Deans’ Listserv. Those outlets can and should provide deans with research and detailed information that can be shared with faculty members to help them better engage students. Cascading communication⁶⁹ from the dean’s suite to the faculty might lead to teaching workshops that improve the faculty’s collective instructional quality or increased attendance at workshops focusing on issues facing legal education. Deans do not have to have all of the answers, but they have to create environments that motivate faculty members to teach in new ways.

65. See, e.g., Meredith Heagney, *The Big Impact of “Soft Skills,”* THE RECORD ONLINE (Fall 2013), available at <http://www.law.uchicago.edu/alumni/magazine/fall13/keystone> (describing the University of Chicago Law School’s Keystone Professionalism and Leadership Program, which helps law students develop stronger soft skills). See also Brittany Stringfellow Otey, *Millennials, Technology and Professional Responsibility: Training a New Generation in Technological Professionalism*, 37 J. LEGAL PROF. 199, 227 (2013) (calling for soft-skills education for the Millennial generation).

66. See, e.g., Kathy Lund Dean, *Help! My Students Want to Friend Me! Boundaries, Relationships and the “Yuck” Factor in Professor-Student Interactions*, THE ETHICIST BLOG (May 31, 2012), <http://ethicist.aom.org/2012/05/help-my-students-want-to-friend-me-boundaries-relationships-and-the-yuck-factor-in-professor-student-interactions> (advocating for the need for boundaries between faculty and students).

67. For a list of classroom innovations, see Nancy Levit et al., *Innovative Teaching Techniques—Collected Ideas* (Dec. 1, 2010), available at <http://ssrn.com/abstract=1727376>.

68. Most experts recognize seven learning styles. They are: visual, aural, verbal, kinesthetic, logical, social, and solitary. See *Overview of Learning Styles*, LEARNING-STYLES-ONLINE.COM, <http://www.learning-styles-online.com/overview> (last visited June 29, 2015).

69. “Cascading communication” is a process used regularly in business to ensure that decisions and other important information are passed from the executive suite through every level of the chain of command. See *Cascading Communication Process*, U.S. FISH & WILDLIFE SERV., <http://www.fws.gov/southeast/shc/pdf/CascadingComms.pdf> (last visited June 29, 2015) (explaining “cascading communication”).

Information-sharing should be an integral part of a dean's vision for his or her law school.

Lifelong exposure to technology has made it difficult for students to feel engaged when a professor merely lectures.⁷⁰ These "digital natives"⁷¹ like to use technology all of the time. "Digital immigrants," however, did not grow up using technology all of their lives; they adapted to a life where technology controls much of how we behave.⁷² Deans, nearly all of whom are digital immigrants, must help bridge the gap between the faculty (also more likely to be digital immigrants) and the students, who are largely digital natives. Again, deans may not know how to bring faculty comfort with technology up to the same level as student comfort, but deans have access to resources that can assist. Articles and monographs are regularly published about the use of technology in the classroom. Deans should be reading and clipping those articles to share with their colleagues. Faculty members should be encouraged to attend workshops and conferences that improve teaching with technology. Deans have to use their unique positions to link helpful information to faculty need for instructional resources.

B. Heart

Leading with heart is really a call to servant leadership. Dismukes says, "When one puts the needs of others first, the reward, satisfaction, and returns on that 'investment' is [sic] exponentially compounded."⁷³ Too often, academics lose focus and think our jobs are about cloistering ourselves and writing law review articles on rather esoteric topics like hermeneutics or semiotics because we hope that second-year law students at top law schools will select articles on those topics for inclusion in their journals. While it is true that scholarship is an important part of what we do—and scholarship can complement our teaching—deans can help direct (or redirect) some faculty members to scholarly endeavors that include students in ways that reinforce their lawyering skills.⁷⁴ The same is true for deans and others in academic leadership positions.⁷⁵

70. See generally Jennifer M. Brill & Chad Galloway, *Perils and Promises: University Instructors' Integration of Technology in Classroom-Based Practices*, 38 BRIT. J. EDUC. TECH. 95 (2007) (reporting research findings that revealed the positive influence of technology on teaching and learning).

71. Speaker, leader, and game designer Marc Prensky defines "digital natives" as a generation that is very comfortable with technology because it has grown up with technology since birth and "digital immigrants" as those who have learned to adapt to the new technology-driven world. See Marc Prensky, *Digital Natives, Digital Immigrants*, ON THE HORIZON, Oct. 2001, at 1, 3, available at <http://www.marcprensky.com/writing/Prensky%20-%20Digital%20Natives,%20Digital%20Immigrants%20-%20Part1.pdf>.

72. *Id.*

73. DISMUKES, *supra* note 61, at 50.

74. For example, at Indiana Tech Law School, the Lawyering Skills faculty members have worked with first-year law students to research amicus briefs before the Indiana and U.S. Supreme Courts. In one case, the Indiana Supreme Court held in favor of the position advocated by the professors in their brief and specifically thanked the professors for their assistance. See generally *Wilson v. State*, 5 N.E. 3d 759, 762 (Ind. 2014) ("We thank the Public Defender of Indiana, and

Deans must convey the image of a law school in its most complete sense. A law school is a learning laboratory, one in which faculty and students can collaborate and where new knowledge is shared between all constituencies. This re-imagining is essential to begin a discussion about the kinds of activities that an institution values; moreover, that conversation can lead to real and meaningful changes in not only the curriculum but also in promotion and tenure standards, merit raises, and post-tenure expectations. Writing for the sake of writing has a place, but not in a law school; a law school is not a think-tank. Writing to two or three colleagues in a very narrow sub-specialty is exciting, but the benefit of such an endeavor cannot possibly be the greatest benefit to the students or to the law school.⁷⁶ Query, therefore, whether scholarship focused on esoteric topics is the best use of a faculty member’s time and talent.

Discussions about how to teach, what to teach, or what to write about are all very sensitive issues, and faculty members quickly attach to such conversations accusations that academic freedom is being attacked.⁷⁷ Those concerns notwithstanding, deans have to summon the courage to incline faculty members to create greater synergies between their scholarship and the teaching of lawyering skills so that both are relevant to each other. Deans must also encourage faculty members to collaborate with students to improve the students’ research and writing skills, providing them with practical application of the legal principles that they are learning. Perhaps merit funds (to the extent that they exist) could be used to incentivize faculty-student collaboration that enhances the students’ lawyering skills?

Creating an environment where healthy faculty dialog about the mission and purpose of teaching and scholarship is encouraged is no doubt exhausting work, but it is necessary in the new normal. Law school applications have plummeted, and they may not return to the levels seen as recently as five or six year ago. Law schools can no longer afford to offer curricula that are so broad that full professors and endowed chairs teach two or three students some obscure area of law. Likewise, the legal academy cannot afford intellectual silos in which faculty separate themselves from their students once class has ended. There is

Professors Charles MacLean, James Berles, and Adam Lamparello (collectively, ‘the Amicus Professors’) of the Indiana Tech Law School in Fort Wayne, for responding and providing their additional insights.”).

75. Former Medtronic CEO, Bill George, and his co-author, Peter Sims, challenge individuals who seek leadership positions to ask themselves two important questions: “‘What motivates me to lead’ and ‘What is the purpose of my leadership?’” BILL GEORGE & PETER SIMS, *TRUE NORTH* 28 (2007). The pair urges leaders to focus on “inner satisfaction” and to work hard to stay grounded. *Id.* at 29.

76. Some colleagues may bristle at the notion of measuring scholarship by its impact on or benefit to students and law school communities. The adoption of this “standard,” however, is not intended just to provoke; it is, after all, why law professors have jobs. We are expected to educate students and to create communities that will foster student learning.

77. “People may be inhibited from doing their best work if they fear offending outside forces, such as politicians or donors, or inside authorities, such as trustees or senior administrators. Without academic freedom, our society would lose professors’ best inventions, scholarship, and creative products.” ANN FRANKE, *ACADEMIC FREEDOM PRIMER* 2-3 (2011), available at <http://agb.org/sites/agb.org/files/u1525/Academic%20Freedom%20Primer.pdf>.

real value to the students, and the entire law school community, when teaching and learning take place everywhere.

3. *Hands*

To lead with hands is to lead by example.⁷⁸ Law school deans should model good faculty behavior. They should teach, write, and serve in the same way that they ask their faculty members to perform, albeit with a lower expectation of productivity. While no one expects that a dean will teach a four-course load, every dean can and should teach at least one course per year. After all, interacting with students in the classroom is an important part of why most of us entered the legal academy in the first place. Additionally, many deans report, including the author, that they gather their best “intelligence” about the state of the law school or university from the students they teach because the students in their classes are likely to have the greatest comfort level with their “teacher-dean.” The students are more apt to share the institutional joys and concerns with that person than they would any other faculty member.

Regarding service, deans need to share committee work with their colleagues. Serve on a faculty committee, as a faculty member, not *ex officio* as the dean. Chair a committee on occasion and be reminded how much work it can be to shepherd an idea through the faculty governance process. Lead faculty by reminding them that you are a faculty member as well and that you understand what it means to be a faculty member. Those leadership examples will be long lasting and very helpful to colleagues in the long run.

In addition, deans, and all law-trained members of the legal academy should engage in some pro bono activity, if possible. We are learned legal professionals, with virtually unlimited resources available to us;⁷⁹ why shouldn't we use our gifts to benefit those less fortunate than ourselves?

Producing scholarship is more difficult. Deans have challenging jobs, demanding enormous amounts of time and energy, and the one thing that interferes with the core functions of being dean is spending enormous amounts of time and energy on scholarship. Even with the acknowledgement that it is difficult to produce scholarship, deans must do it. We have unique perspectives and often have untested ideas that we need to share somehow and with someone. Our faculty colleagues are not always the best subjects with whom to share a new idea because some people regard ideas shared by a dean as an edict. We need pushback and genuine questioning of our proposals, just like all faculty scholars. Scholarship that involves the sharing of new knowledge and testing of proposals is helpful not only to the author-dean but also to the legal community.⁸⁰

78. DISMUKES, *supra* note 61, at 51.

79. “Unlimited resources” refers to the rich library collections, access to Westlaw and LEXIS, and assistance from trained professional reference librarians, among other things, that are available to academics.

80. It is healthy for a law school to build a culture where the dean can share his or her work with colleagues within their own schools and receive constructive feedback. Deans need to work to create a safe space for scholarly dialogue within a school, and the dean has to work hard to create

Deans cannot be expected to write law review articles and book chapters and books. Some do and that is an incredible achievement.⁸¹ More often than not, our schedules allow for us to write essay-length pieces, and that is okay.⁸² Sometimes fewer words may convey an idea better, because it is short and to the point; people may be more likely to read it.

Deans can make other important scholarly contributions beyond writing. An intrepid dean could lead the faculty through the development of incentives and policies that promote a scholarship of teaching. Such scholarship would focus on the rigorous assessment of student learning gains and competency. It would also involve interdisciplinary work with education researchers, and it would likely have a serious empirical component. The dean is in the best position to encourage experimentation in teaching, and then the faculty member(s) could measure and report the results. A few legal scholars are engaged in this type of work, and this type of activity is one possible avenue to building synergy between scholarship and teaching.⁸³

4. Health

Dismukes calls for greater focus on personal health in order to improve personal performance. He asserts, “The greater the individuals’ level of fitness, the greater their mental, emotional, and physical performance.”⁸⁴ Law deans have demanding jobs, and focus on one’s mental and physical health is not always at the top of the list of things to which deans pay attention.⁸⁵ At a minimum, deans must be mindful that faculty and staff members also have demanding jobs and that stress can undermine the effectiveness of an enterprise. Everyone needs stress relief to be their most productive selves.

“Mental health breaks” are one very important tool for an organization to employ, and deans must ensure that the members of their units, including them, have meaningful opportunities to recharge their batteries. Faculty schedules typically mirror student schedules, so there are built-in breaks that are usually

this space, sharing drafts and getting critiques without appearing to be issuing edicts. Mainly, deans have to show that they have thick skin and welcome critical comments.

81. See, for example, the scholarship of Dean Erwin Chemerinsky (University of California–Irvine School of Law), JoAnne Epps (Temple University Beasley School of Law), and Harold J. Krent (IIT Chicago-Kent College of Law).

82. See generally, e.g., Phoebe A. Haddon, *Has the Roberts Court Plurality’s Colorblind Rhetoric Finally Broken Brown’s Promise?*, 90 DENV. U. L. REV. 1251 (2013) (writing a powerful but essay-length piece about the U.S. Supreme Court’s decision in *Keyes v. School District No. 1*, 413 U.S. 189 (1973), and its continuing significance).

83. See, e.g., GERRY HESS, MICHAEL HUNTER SCHWARTZ, & SOPHIE SPARROW, *ASSESSMENT: A COMPREHENSIVE GUIDEBOOK FOR LAW SCHOOLS* (2014).

84. DISMUKES, *supra* note 61, at 51.

85. See generally Nancy B. Rapoport, *Decanal Haiku*, 37 U. TOL. L. REV. 131 (2005) (using clever prose to describe all of the stresses on law deans, but concluding that it is all worth it). See also Robert K. Walsh, *Advice from the New Deans Boot Camp*, 34 U. TOL. L. REV. 185, 191 (2002) (acknowledging that there are stressful parts of a dean’s job); Cynthia L. Fountaine, *Stepping In: The Unique Challenges Faced by Interim Law Deans*, 40 U. TOL. L. REV. 343, 346 (2009) (describing the stress inherent in the transition from the last “permanent” dean to an interim).

available to the instructors. Staff members, however, work in the “business side of the house” and often have only a few vacation days or personal days available to them. Deans have to protect members of the team from burnout or from working so far behind the scenes that they have no sense of connection with the students. They must be educated to think of themselves as a participant in each student’s education by teaching or reinforcing interpersonal skills and by modeling professionalism and accountability whenever possible. To ensure that the staff members are operating at their best, deans must encourage them to use vacation time and to spend time away from the institution. We all need it, and our students deserve it.⁸⁶

Faculty and staff retreats can also be useful tools to help colleagues get to know one another in a less formal environment. Going off campus, or even to an unfamiliar building across campus, can change the manner and/or method of interpersonal communications within a team. Once “in retreat,” the dean should use the time that everyone is together to help colleagues learn more about each other as well as to tackle strategic planning, crisis management, or whatever matter is on the agenda. There needs to be a mixture of fun and work, however.

All the retreats and faculty-staff interactions in the world cannot substitute for finding time for one’s own self, however. Faculty, staff, and even the dean, have to create personal time to shut out the pressures of work and family and to focus on their individual needs.⁸⁷ Some leaders jog or do yoga; others listen to music, meditate, watch television, or read. Everyone needs to find some outlet on a regular basis in order to find their center and to prepare for the next day’s challenges. Take vacations! Not only does the dean need the time away, but the staff who surround the dean often need the dean to be away. Sometimes, an office may be energized from something as simple as removing the daily presence of the boss for a few days.

No matter what challenges deans face in their jobs, they cannot be nearly as effective in the role of the dean if they are not of sound mind and body. Every dean must take time to look out for himself or herself because, at the end of the day, no one else is doing that for us, and we have to be in our best health in order to carry out our duties successfully.

E. Habit

Good leaders “lead[] through their habits.”⁸⁸ The best leaders get things done, and they do so with dispatch.⁸⁹ In the new normal, life moves quicker.

86. Chris Blank, *What Are the Benefits of Taking a Vacation?*, USA TODAY ONLINE, <http://traveltips.usatoday.com/benefits-taking-vacation-1755.html> (last visited June 29, 2015) (“According to the 2009 International Vacation Deprivation Study, ... more than 30 percent of Americans did not use all their vacation days. One of the major reasons Americans leave vacation days unused is the fear of losing their jobs, according to CNN. However, vacations are beneficial, not only to workers, but to their companies and to the American economy as well.”).

87. GEORGE & SIMS, *supra* note 75, at 144-45 (advocating that finding time for one’s self enables authentic leaders to remain grounded).

88. DISMUKES, *supra* note 61, at 52.

Our students come to us having lived with “instant everything.” Our faculty and staff regularly multi-task (with varying degrees of success) to try and accomplish all of the goals they must meet each day. To a certain extent, there is not a lot of time for deliberation or extended explorations of ideas and opportunities. Decisions have to be arrived at very fast, and, after a reasonable amount of time, weak decisions must be abandoned.

Law schools and, perhaps, universities, must move quicker to respond to market changes and to capture new opportunities. Motivational speaker Ken Futch suggests that “[p]erceptions are seldom changed with words, but rather with demonstrated behaviors.”⁹⁰ He is correct. Too often, good ideas or emerging strategies are swallowed up in protracted committee meetings and faculty deliberations. A long, deliberative process can result in a great opportunity evaporating or being seized upon by another law school.⁹¹

In his best-selling book, *The Innovator’s Dilemma*, author Clayton Christensen describes “good companies” as those that have a high ability to “innovate and execute.”⁹² Viewing law schools as “companies,” for a moment, helps to illustrate how far deans must be willing to travel in the new normal to lead successful institutions. Traits such as innovation and execution are not present in good companies by accident. Innovation requires, in part, an ability to take risks and not be afraid of failure. Execution mandates that a leader be able to make a decision. Neither innovation nor execution is a typical characteristic of a law school dean. As a result, deans need to create positive incentives for innovation so that people are willing to try AND to fail.

Deans are, by and large, academics who have been called upon to lead other academics; they are not business leaders who have been hired to oversee other academics. When deans are selected, the announcements do not normally tout their extensive business acumen or their MBA degrees; most are selected because of their legal academic pedigree, their scholarly achievements, and/or their

89. Brent Gleeson, *4 Ways for Leaders to Make a Decision*, FORBES (Nov. 7, 2012, 6:19 PM), <http://www.forbes.com/sites/brentgleeson/2012/11/07/4-ways-for-leaders-to-make-a-decision> (“[B]usiness owners, executives and managers must master the ability to make good decisions quickly in order to keep the business moving forward.”).

90. KEN FUTCH, TAKE YOUR BEST SHOT: TURNING SITUATIONS INTO OPPORTUNITIES 164 (2005).

91. At Indiana Tech, curricular and programmatic decisions rarely take long periods of time to propose, investigate, and implement; it is rare that such decisions would require more than a few months to fully implement. Rather than refer all such academic matters to a faculty senate committee, the university president assigns to a few key people the responsibility of shepherding ideas to completion. As a result, Indiana Tech enjoys a reputation as a school with an academic program that is nimble and responsive to the needs of its students and the employers who employ them. See, e.g., INDEPENDENT COLLEGES OF INDIANA, 2014-15 GUIDEBOOK 19, available at http://c.ymcdn.com/sites/www.icindiana.org/resource/resmgr/PDFs/Guidebook_14-15_pdf.pdf (“Indiana Tech frequently reviews academic programs to ensure that the university offers contemporary degrees with significant career potential. Recently developed programs include fashion marketing and management, software engineering, energy engineering, and computer security and investigation.”).

92. CHRISTENSEN, *supra* note 31, at xi.

general reputation within the legal academy.⁹³ As long-time citizens of colleges and universities, however, deans are also acutely sensitive to the political realities of their jobs; consequently, they are constantly balancing the direction in which they would like to take their law schools against the interests of a host of stakeholders. University administrators and/or boards of trustees often have one view of the direction a law school should take (ever mindful of the cost of running a law school and the public relations positives and negatives that law schools often represent), while faculty and students may desire to take on important (occasionally unpopular) causes.⁹⁴ Similarly, alumni often have fond memories of professor “X” or of a particular course, and the thought of new students not sharing their experiences is sometimes unacceptable. Balancing the interests of competing and converging interest groups often calls for thoughtful deliberation and consultation with people holding many different perspectives, but the decision-making must occur more quickly.

Law deans prefer to give faculty committees (which often include administrators and students) opportunities to have input into important decisions that will bind the law school in general or some significant portion of the operation. Shared governance, which is expected by the ABA and the Association of American Law Schools, is important to the successful operation of law schools, and deans are typically mindful of the need to be inclusive as the leader of law school. However, shared governance takes time and, in the new normal, time is the enemy.

As difficult as it might be to accept, Clayton Christensen asserts that disruptive strategies mean that leaders have to position themselves to make “huge, long, and risky bets” in order to achieve huge success.⁹⁵ Moreover, leaders have to be able to recognize failing bets quickly and move to a different strategy. Legal education, and the legal profession in general, is not accustomed to “huge, long, and risky bets.” Our profession expects calm, time for reflection, and a certain amount of distance between the lawyer and a client’s problem. Rapid decision-making is not consistent with the view of an attorney as a wise and learned counselor.

This Essay is not calling for wholesale abandonment of reflection and caution; however, in training the next generation of lawyers and legal professionals, the educators have to be willing and able to make quicker decisions and to be more sensitive to emerging strategies and more responsive to

93. “Law schools look for deans who are all things to all people. Virtually everyone wants a skilled administrator, a great and proven fund-raiser, a *super-star scholar* (the most frequently sacrificed aspiration in a dean), a leader committed to his or her institution, and much more.” Kevin R. Johnson, *Deciding to Become a Dean*, 31 SEATTLE U. L. REV. 813, 815 (2008) (emphasis added).

94. For example, Tulane University’s environmental law clinic often finds itself representing clients whose interests may be adverse to popular will or governmental interests. “Clinic student and supervising attorneys litigate environmental ‘citizen suits’ to abate industrial pollution, appeal permits for environmental pollution or destruction of wetlands, challenge agency regulations that fall short of legislative mandates, and prod agencies to perform statutory duties.” See *Tulane Environmental Law Clinic*, TULANE U., <http://www.tulane.edu/~telc/> (last visited June 29, 2015).

95. CHRISTENSEN, *supra* note 31, at 180.

the needs of profession. Regular training of faculty and staff to enable them to be faster decision-makers will have to occur in the new normal if legal education is going to have any chance to keep pace with the rapid rates of change in business and industry.

V. CONCLUSION

Legal education is at a crossroads. The once-reliable flood of pre-law students seems to have slowed to a trickle. To adjust for the change, educators—law school deans in particular—must lead in new ways. The judiciary and the practicing bar are demanding that law students be trained more efficiently and more effectively to enable them to better represent their future clients. Students view themselves as consumers who want value-added educational experiences for the ever-increasing tuitions that they must pay.

In recent years, law schools have begun to move away from the educational model developed by Dean Christopher Columbus Langdell, and lawyering skills have gained a foothold in curricula all over the country. More work must be done, however, because not every institution embraces a shift toward practical training.⁹⁶ Deans must reorient faculty and staff to become faster decision-makers, and deans must lead differently.

Law school deans must be business-savvy and conversant in the language of business and industry. They must be ready to implement new strategies and tactics. In addition, deans and the university presidents to whom they report cannot be afraid to fail at some initiatives. The law schools that will thrive in the new normal will be those that are nimble, not shackled to past practices and past thinking, but also able to plan for law students to go out into a professional setting that may not even exist yet.

The challenges for legal education are great, and law school deans feel the full weight of the pressure to succeed most of all. Law schools conducting dean searches will also have to consider the new normal when seeking their next leaders. Finding a nationally celebrated scholar may not be the best criterion by which to judge whether someone is best able to lead a law school in the new normal. To be sure, having a well-respected scholar at the helm is not a negative, but this author suggests that one's scholarly pedigree should be far down the list of essential qualifications that a law school dean must possess.

Law schools will need a new type of leader in order to survive in the new normal. That person must have a strong grounding in the practice of law, the ability to create relationships with the practicing bar, and excellent leadership skills. That person must lead his or her colleagues to think outside of the box when providing instruction to law students. That person must command the respect of all of a law school's constituent groups and not by virtue of carrying

96. See, e.g., David Lat, *Yale Law Says: Practical Training Is for Little People*, ABOVE THE LAW (Apr. 7, 2014, 4:32 PM), <http://abovethelaw.com/2014/04/yale-law-says-practical-training-is-for-little-people/> (“When people say we need more practical education in law school, I think, sure, if you are at number 20 it matters.... Yale Law School will do what it wants.”).

the title “Dean;” s/he must lead comprehensively, through “Head, Heart, Hands, Health, and Habit.”

Deans who will lead institutions in the new normal will be harder for search committees to identify, because the standard checklist of qualifications no longer suffices; however, schools that are fortunate enough to hire those innovative and talented deans will be rewarded. They will have the best chance to train law students effectively and to prepare them to serve their future clients in a quickly changing legal market and in a quickly changing world.