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FOR BRIAN M. MAESHIRO
"Uncle Bo"

PREFACE

Law schools today give the impression they are thriving. Many have magnificent facilities with state-of-the-art technology. Their resources are the envy of every department in the university. Law professors are among the best paid in the academy, with sparkling credentials, and are sought after not just as leading academic and legal figures but also as public intellectuals, as consultants, and for important state and federal government positions. The first decade of the twenty-first century has been a golden age of plenty for law schools.

Yet law schools are failing abjectly in multiple ways.

Annual tuition at over a half-dozen law schools topped $50,000 in 2011, with a dozen more poised to follow. After adding living expenses, the out-of-pocket cost of obtaining a law degree at these schools reaches $200,000. Nearly 90 percent of law students borrow to finance their legal education, with the average law school debt of graduates approaching $100,000. Many law graduates cannot find jobs as lawyers, enduring the worst market for legal employment in decades. Paying no heed to the adverse job market, law schools increased their enrollment in 2009 and 2010, which will send more graduates scrambling for scarce jobs three years hence.

A series of public revelations about widespread distortions and dubious activities damaged the credibility of law schools in 2011. Law schools across the country were advertising sky-high employment rates and triple-digit salaries for recent graduates when the reality was far different. They were criticized for offering scholarships to lure students who were unaware of the significant chance they would forfeit the scholarship after the first year. Two well-respected law schools admitted that they had falsely

reported Law School Admission Test (LSAT) scores and grade-point averages (GPAs) to the American Bar Association.

Proud and dignified institutions that have long held themselves out as the conscience of the legal profession, law schools across the country have been engaging in disreputable practices. When called to account for these actions, law schools protest that they are just following the rules. They suggest that unhappy graduates should take responsibility for their poor decisions to incur such high debt. They universally place the blame for inflated employment numbers on the *US News* ranking, as if a magazine was responsible for their conduct. Elite law schools distance themselves from the worst offenders, conveniently ignoring that they too engage in questionable actions, merely to a lesser extent. Law schools at every level have been failing their ethical responsibilities, while pointing the finger at others.

In this book, I explore how law schools have arrived at this sorry state and the implications of this sad condition for the present and future. At the root of these problems is the way law schools today are chasing after prestige and revenue without attention to the consequences. The enviable resources law schools enjoy relative to their poor neighbors in economics and English departments are the riches obtained in the chase.

The economic model of law schools is broken. The cost of a legal education today is substantially out of proportion to the economic opportunities obtained by the majority of graduates. There are a few winners—graduates who secure well-paying jobs in corporate law firms—while a significant number end up with mountainous debt they will suffer under for decades with little to show for it. Law students in the anxiety-ridden job-hunting season speak enviously of classmates who won the "lottery." A lottery the job market has become.

Law school has always had winners and losers in job prospects among graduates. The difference today is that the enormous run up in tuition of the past three decades, and the student debt this produces, imposes a severe penalty on losers that did not exist in past generations. Formerly, a law graduate who entered the low-earning sector of the profession, or who did not land a job as a lawyer to begin with, or who never wanted to be a lawyer but planned to use the degree in other ways could still make a go of it financially. With the $100,000 debt common among law graduates

today, that is much harder to do. The median starting salary of 2010 law graduates was $63,000—not enough to manage a debt that size.

The system of legal education is failing when a significant proportion of law graduates nationwide find themselves in financial hardship. Several dozen individual law schools, furthermore, are failing in the specific sense that a substantial bulk of their graduates suffer financial hardship. These law schools pile up casualties year after year among students who walk through their doors. If normal economic signals were operating, schools that fail to serve the interests of most of their students would not survive because people would stop enrolling. These law schools, however, are kept afloat by students making poor judgments to attend (encouraged by misleading job information from schools), while the federal government obligingly supplies the funds to support their folly.

Exposing the disconnect between the cost of a legal education and the economic return it brings and finding ways to fix it are the goals of this book. Various factors contribute to the problematic economic situation in complex, intersecting ways. The regulation of law schools, the work environment of law professors, the competitive pressures on law schools, the limited information available to prospective students, and the way law school is financed through federal loans are critical pieces.

The prologue begins with a brief account of the circumstances surrounding my interim deanship over a dozen years ago at St. John's University School of Law. It is difficult for outsiders to appreciate the unique workplace of professors. Telling this story allows me to convey vividly the dynamics at play. In part 1, I reveal how legal educators have utilized regulatory mechanisms time and again to further their own interests. I go on, in part 2, to describe what law professors do and how much we get paid and explain why the practicing bar and judges complain that law professors are out of touch and do a poor job of training lawyers. I explain why law schools are under the iron grip of *US News* ranking in part 3 and elaborate on the detrimental developments this has brought to legal academia. In part 4, I home in on tuition, debt, and the economic return on a legal education; I identify problematic features in our economic operation and offer proposals for improving the situation.

This is not a standard academic exegesis. I mix narrative with detailed facts and figures, description with occasional prescriptive commentary,

hard information with grounded speculation about unknowns. Based on current trends, I make a number of projections about the short-term future for law schools and for the legal market.

What I write in these pages will affront many of my fellow legal educators. I reveal the ways in which we have repeatedly worked our self-interest into accreditation standards, from unnecessarily requiring three years of law school to writing special provisions to boost our compensation. We teach less and get paid more than other professors, and we earn more than most lawyers, yet we still complain about being underpaid relative to lawyers. I question the amount of money that goes into academic research. I challenge the efforts of clinicians to use accreditation standards to get job protection, and I question the economic efficiency of clinical programs. I identify schools that have dismal rates of success among graduates in landing jobs as lawyers, and I identify schools that publish highly unreliable salary numbers. I specify a set of characteristics of law schools that prospective students should be wary of attending. I argue that law schools extract as much money as they can by hiking tuition and enrollment, while leaving students to bear the risk, in the first instance, and taxpayers thereafter. And I propose changes to accreditation standards and the federal loan system that, if enacted, would drastically alter the situation of law schools.

This book challenges fundamental economic aspects of the operation of law schools, although I do not go deeply into pedagogical issues. What got us into this position is our hunger for revenue and chase for prestige. Some of what I write is intended to warn law schools about the coming financial crunch they will face from a continued fall in applicants and increasing attrition after the first year from students who drop out or transfer to other schools. Schools in a precarious position that do not alter their operation may literally fail, unable to bring in sufficient revenue to cover their expenses.

I do not believe law schools will reform themselves unless forced to. The situation is too comfortable and our interests too vested in the status quo. Thus one aim in writing this book is to reach beyond legal educators to prospective students and their parents, to external regulators, and to members of Congress to expose the depth of our problems and provide information that will facilitate better-informed decisions about how to re-

spond. The federal loan program, though well intended, has devastating consequences for many students. Depending on a mix of considerations I will elaborate, for many thousands of prospective students it might be prudent to forgo law school at current prices.

Law schools, finally, are failing society. While raising tuition to astronomical heights, law schools have slashed need-based financial aid, thereby erecting a huge financial entry barrier to the legal profession. Increasing numbers of middle class and poor will be dissuaded from pursuing a legal career by the frighteningly large price tag. The future complexion and legitimacy of our legal system is at stake.

ACKNOWLEDGMENTS

In May 2006, I wrote my first blog post on the skewed economics of legal education, "A Peculiar Fairness Issue Brewing in Law Schools," on the group blog *Balkinization*. The post discussed spiraling law school tuition, the questionable economic return for many law graduates, and the dubious financial arrangement we create through merit scholarships "in which the students most likely to make the least money end up subsidizing the legal education of the students most likely to make the most money." I wrote more than two dozen *Balkinization* posts on various problems in legal academia in ensuing years, raising questions about the cost of interdisciplinary studies, expressing concerns about the increasing debt burden on law graduates, and exposing our industry-wide use of misleading employment statistics, among other topics. In a June 2010 post, "Wake Up, Fellow Law Professors, to the Casualties of our Enterprise," I spoke bluntly for the first time about the need for legal educators to take greater responsibility for the situation. I thank Fernando Rodriguez for jarring me out of my usual understated style of academic discourse to write more candidly and forcefully about these issues. This book elaborates on the same themes and is written in the spirit of that post.

Without the extraordinary assistance of Jeffrey Blackwood, this book could not have been completed in a timely fashion—thanks for always coming through, Jeff! I also thank John M. Conley, Bill Henderson, and Deborah Jones Merritt for their detailed critical feedback on the entire manuscript. Their comments improved the book in large and small ways. I thank my colleagues at Washington University School of Law for feedback at a faculty workshop on several chapters. I owe particular thanks

to Peter Joy and Robert Kuehn. Long-time leaders in clinical legal education, Bob and Peter disagree with several of my positions, yet they have been unfailingly helpful. My law school dean, Kent Syverud, the incoming chair of the ABA Section on Legal Education and Admissions to the Bar, has steadfastly supported this project, notwithstanding my criticisms of the ABA and the potentially embarrassing things I say about law schools (including my own). Thank you, Kent, for encouraging me to remain true to the project. I also thank Paul Kirgis, David McGowen, and Jeff Sovern for their comments on early drafts. I thank Matt Leichter for his excellent work in pulling together essential statistics on legal business and legal academia. I thank Jolijt Tamanaha for preparing several possible designs for the book cover. I thank Kathie C. Molyneaux for helping me acquire background material from numerous sources. I thank Yvonne Zipter for her superb work editing the manuscript. I thank my editor, John Tryneski, for his enthusiastic support for this book and his helpful comments on the first draft.

To John Q. Barrett I owe special thanks. We started in legal academia as rookies together and forged a bond through our joint struggles. Years ago, at a critical time, John encouraged me to do what had to be done—he did the same again when I embarked on writing this book despite my reservations. Finally, I thank Honorata for everything. This book is dedicated to Brian M. Maeshiro. We met when we were eleven years old as opponents in a judo match (although our memories differ on who won that day). We became life-long Okinawan brothers, hanging out in high school, spending summers together, and traveling parts of the world. Thanks for the good times, Bo.

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PROLOGUE

A Law School in Crisis (Circa 1997)

A raucous celebration outside faculty offices greeted me as I stepped off the elevator. It was early December 1997. Drawn by the commotion, I walked over. Two senior colleagues, a third joining them as I arrived, had plastic cups in hand, each with a shot of whiskey, raised in a toast, accompanied by laughter. The dean is done, I was told. His resignation was in our faculty boxes.

A tersely worded memo from the university president, Donald Harrington, announced that he had accepted Dean Rudy Hasl's resignation, effective at the end of the school year. President Harrington thanked Hasl for his contribution to the law school and announced that an immediate search would begin to find a new dean. Devoid of the obligatory flattery that adorns such announcements, the message of the memo was that Hasl had been fired, and good riddance.

Taking a seat at my desk, I immediately wrote to President Harrington:

> Permit me to briefly introduce myself. I am an untenured member of the faculty, and have been at St. John's for two-and-a-half years. . . .
>
> I do not question the appropriateness of the resignation of Dean Hasl. His position as leader of the faculty had become untenable. Nevertheless, the most serious problem we have at the law school is a grossly underperforming faculty. Several of the leaders of the drive to remove Dean Hasl are, in my opinion, among the worst offenders. My concern was—and remains—that the success of their initiative would be interpreted by them as confirmation that they could not be made to work harder for the school . . .

> It is crucial to our future that you send a strong signal to the faculty that the departure of Dean Hasl does not mean the end of efforts to improve the performance of the faculty. I urge you to make such a signal explicit, unequivocal, and soon. The final paragraph in your memo announcing Dean Hasl's resignation fell short of what is needed.

As I typed out these impetuous words, the faculty members I was referring to were carrying on in the hall. I showed a draft of the memo to a close colleague, encouraging him to talk me out of it, but he argued that it *had* to be sent.

The next day I was summoned to the president's office.

Father Harrington (a Vincentian priest) welcomed me into his office with a disarming smile and asked me to tell him what was going on at the law school. We were in a disastrous slide, I said. The law school had dropped a tier in the *US News* rankings the year before (as irate alumni donors regularly reminded him). In a belated attempt to improve our standing, Dean Hasl had begun prodding the faculty to do more. Many faculty members were hardly present in the building, coming in only to teach, leaving immediately thereafter. When they did stay on the premises, their office doors frequently were closed—an implicit "don't bother me" sign to students. Many faculty members were producing little if any scholarship; many hadn't written in years. A few had legal practices on the side—so busy that their "full-time" professor position had become their side job. A number were in semiretirement, though not officially. One appeared to have a drinking problem. Who knows what the others were doing. Out of a faculty of forty-five, perhaps a dozen were producing at a high quality as teachers and scholars. Student morale was low, sunk in a collective depression induced by the drop in rankings. Our fall from the third to the fourth tier in the rankings (out of five tiers at the time) led to an immediate drop in the quantity and quality of applications, which resulted, the following year, in a two-point reduction in median LSAT scores. A downward spiral of student qualifications loomed ahead. A proud institution with many accomplished graduates in New York, including two former governors and several sitting judges on the highest court, St. John's might take decades to recover.

It would be a mistake, I urged Father Harrington, to immediately hire a permanent dean to replace Hasl. Deans cannot continue in office against the wishes of the bulk of the faculty—that's what spelled his demise. What we needed was an interim dean who would clean house and raise the level of performance, giving the next dean a better chance to succeed.

Three months later I became the interim dean.

Drastic measures were called for because St. John's then was mired in a state of dysfunction. Although the situation was by no means representative of law schools generally, it merits retelling because what transpired there illustrates the lack of accountability law professors enjoy and the excesses that can result, and it reveals crucial dynamics that operate within law schools. The story can be told because St. John's today bears no resemblance to the place then: it is vastly transformed, with a dynamic dean and a critical mass of talented, hard-working faculty.

At a faculty meeting early that March, Dean Hasl announced that I had been appointed interim dean by the president (a closely held secret until that moment). The silence that greeted my name hung in the air as I walked to the podium. No one imagined that an untenured recent hire would be the one. I began: "Father Harrington asked me to be dean because he thought I was the person best able to bring us through this period of change. . . . What we are about to embark upon will be painful and difficult, and will require all of us to work harder—every one of us." My speech laid out three "nonnegotiable" points:

> First, we all have to work. This is a full-time job. We have an obligation to work at least forty hours a week on matters directly related to our responsibilities to the institution. . . .
>
> The second nonnegotiable point is that we are here to serve the students. They are the ones who pay our salaries. Our obligation is not just to teach them in the classroom, but also to answer their questions, to offer help when necessary, to serve as mentors, to write letters of recommendation, and more. To satisfy this obligation we must be here physically, in the building, and we must be welcoming to the students. Our doors must be open to them.

> The final nonnegotiable point is that this is an academic institution, which by its nature requires that we are all teachers and scholars. We are in the business of conveying knowledge and teaching people to think. . . . That does not mean, however, that we cannot discuss different ways of living up to these requirements. We each have strengths in different areas.

It must seem ridiculous that a dean would lecture a faculty on the necessity to spend more time at the office, to work forty hours a week, to provide more services to the students, and to live up to our dual role as teachers and scholars. Things had gotten that bad.

The problems that St. John's confronted fifteen years ago are not unique. One can walk through the faculty corridors of many law schools and find lots of closed doors hiding unoccupied offices. Friday is an especially quiet day in faculty halls. The *only* thing we must do is show up to teach classes. On the list of great things about being a law professor, the freedom to decide whether or when to be at work (outside of scheduled classes) is at the top. We do what we want, when we want to, and no one—including the dean—tells us what to do. Some professors spend little time at school because they work more efficiently on scholarship at home. Some prefer to avoid the hassle of the daily commute. (Several law professors I know live in a different city, traveling to work by train or airplane.). A few go to an office where they carry on a legal practice in association with a firm. Whatever the individual reasons, getting the faculty to be present and available for colleagues and students can be trying. It's hard to create an intellectual community, or a community of any kind, when many people are not around much of the time.

These *are* full-time jobs, typically based on nine-month periods. The majority of law professors teach an average of six hours a week (per semester) for twenty-eight weeks a year; we also put in several hours of preparation per class (another eight to ten hours a week), perhaps two hours or so a week meeting with students and writing letters of recommendation, an unpleasant week or two each semester grading, and some committee service. A few professors give occasional talks at other schools, or at conferences, or serve on bar committees. When you add it all up and spread it out over nine months, that leaves a generous dollop of compensated