



Training Lawyers for the Real World

Part Two

By Rachel J. Littman

In the previous issue of the *Journal*, I surveyed the current issues of and market pressures on the traditional model of educating and training new attorneys. Part Two highlights several law schools that are on the cutting edge of legal education reform and a handful of the law firms that are changing the way they manage the practice of law, particularly in how they train and integrate new attorneys into their client-driven operations. The article will conclude with some industry-wide calls to action and specific suggestions for re-thinking the legal education and employer models.

New and Innovative Models

Many law schools and law firms around the country have embodied forward-thinking methods of teaching and training lawyers. Others are starting to experiment – with positive results.

Law Schools

Several law schools have adopted new and innovative courses or are changing entire years of their legal education curriculum, partly driven by the Carnegie and McCrate reports. The ABA is currently considering integrating competency-based learning outcomes into its accreditation standards that more closely align with the skills necessary to practice law.¹ In the meantime, a few law schools across the country are at the forefront of innovative legal education designed to better align legal education with practice.

The City University of New York School of Law and the Northeastern University School of Law have been for decades the academic leaders in their approaches to legal education. CUNY (www.law.cuny.edu) unapologetically touts itself as “the premier public interest law school” and does a very good job recruiting, training and outputting to that model. For the past 40 years Northeastern (www.northeastern.edu/law) has integrated a unique

practical learning Cooperative Legal Education program into its curriculum.

Other, more traditional schools are starting to include more practical training. Washington and Lee University School of Law (<http://www.law.wlu.edu/thirdyear>) recently revamped its third-year curriculum to incorporate more “professional development through simulated and actual practice experiences.” The focus is on practical lawyering experiences, intensive skills training in litigation and transactional work, and required live-client externships or simulation practicum courses, all intended to simulate actual lawyering within an educational setting. The program recently completed the first year of its three-year optional phase-in, with nearly two-thirds of the third-year class opting into the new curriculum. The most popular and effective of the new specialized practicum courses are those that are taught collaboratively between a permanent member of the faculty and a practicing attorney. The students have expressed uniform satisfaction and excitement about having the benefit of a current practitioner on hand with the stability, reliability and consistency that comes with the presence of a full-time faculty member. Only two admissions recruiting years into the new curriculum, Washington and Lee has already seen anecdotal evidence of the positive effect of the program; the number of applications have increased more than 30% in each of the past two years.

Northwestern University School of Law has for several years required that first-year and LLM students attend a unique and creative “Lawyer as Problem Solver” workshop program during the January inter-session.²

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This inter-term course integrates hands-on learning experiences with group problem solving to develop the kinds of skills lawyers need to practice law in today's world. Being a high-ranked law school in the metropolitan legal

Large Law Firms

Large law firms have historically enjoyed the luxury of recruiting from the top law schools, taking on as many summer and first-year associates as their workload

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market of Chicago, Northwestern has been able to partner with such legal powerhouses as Jenner & Block LLP and Mayer Brown LLP. The school also offers a two-year accelerated JD program comprising five semesters and one summer off to work. Northwestern touts its program as economical, efficient, and part of the law school's overall plan to maximize "the long-term career success of its graduates and prepar[e] them for multi-job careers."³

Harvard Law School started a collaborative teaching program this past winter to teach smaller sections of first-year law students how to think about and solve problems for clients. The new Problem Solving Workshop is now a mandatory two-credit course for 1Ls during their winter term; it is intended to "bridge[] the gap between academic study and practical lawyering."⁴ Students work in groups and handle live client issues in a realistic time-pressured environment. Many of the instructors bring practicing attorneys into the classroom, exposing the students to highly accomplished, real-world problem solvers and lending a bit of gravitas to the academic forum. Like Northwestern, Harvard has positively leveraged its prestige and proximity to a major, urban legal market and collaborated with hiring partners at top law firms and general counsel of multinational corporations. The course has so far been mutually beneficial to students, the law school, visiting professors, adjuncts and practitioners.

Innovative teaching is also being encouraged at the individual professor level. Some law school professors come to the legal academy with a multi-disciplinary background, and they are often the first to look to other academic institutions – such as business schools – to integrate more practical aspects into their classrooms. For example, Prof. George J. Siedel of the Ross School of Business, University of Michigan, integrates business and law in the classroom using a method called the "Manager's Legal Plan," where he helps students learn and explain legal issues to clients in a way that makes sense to the client.⁵ Prof. Siedel emphasizes that, ultimately, the role of the lawyer is to help clients make decisions or counsel them on how to avoid legal problems, which translate in ways to help the client save money or avoid having to spend money. Other academics have echoed this point, noting that "lawyers who cannot provide non-legal insights . . . are likely to find that their phone rings less often."⁶

requires and reducing their summer classes or downsizing staff when workflow decreases. While complaints have always been made about the lack of usefulness and efficiency of junior associates, there was never a real need to change the system. Now with the current deep recession, some large firms (though not AmLaw top-tier firms) have taken the initiative to bolster their recruiting and training programs, and are even looking more broadly at their promotion tracks and client billing systems.

Howrey LLP (www.howrey.com), a global law firm, approaches attorney training in an individualized fashion. Heather Bock, Howrey's Chief Professional Development Officer, noted at the recent FutureEd conference⁷ that the firm was increasingly concerned about new lawyers who started practice with "an absence of soft skills" like team building and participation, management, and an understanding of how to influence others. The firm now focuses on hiring, training, promoting and compensating attorneys based on the same skills and core competencies they have identified as necessary to be successful at their firm to deliver the kinds of legal services their clients want. They use a variety of core competency training resources, like their unique online virtual "HowreyU" and individually created and monitored professional development plans. While the Howrey competencies and training methods work uniquely for their firm, they certainly represent one of the more dynamic methods of competency and skills focused approaches in the legal law firm world.

Orrick, Herrington & Sutcliffe LLP (www.orrick.com), a large, multi-national law firm, is one of the more progressively managed large firms in the industry, and one that effectively promotes and utilizes its attorney training system, particularly as they remain focused on client service. They were one of the first firms to officially embrace alternatives to the traditional partnership track, implementing what they call their "innovative talent model" to allow for merit-based promotion and customized professional development. The progression system is supported by the firm's specially developed training curriculum, one-on-one mentoring, and clear articulation of expectations and performance reviews. Orrick's commitment to individualized attorney training goes hand in hand with their push to innovate constantly with their clients. They, like many firms, are developing more cost-efficient ways

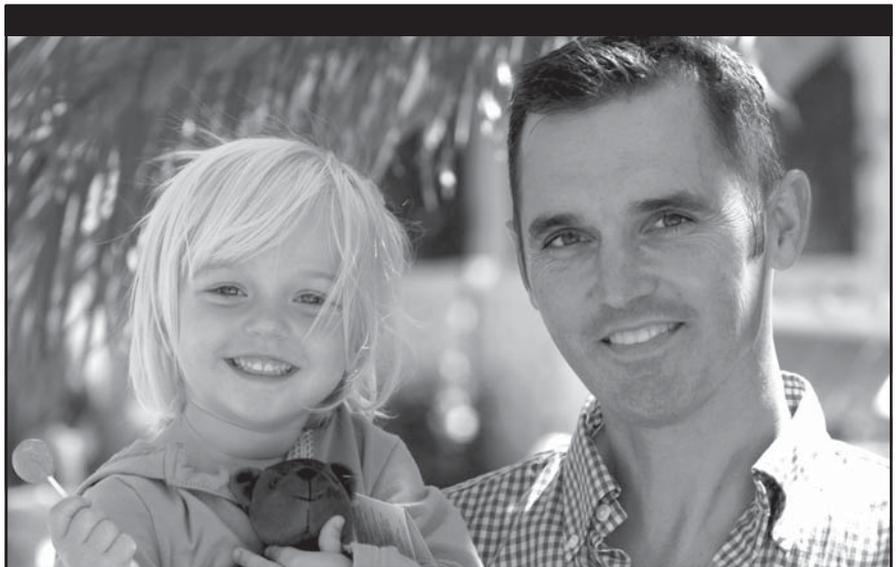
to serve the needs of their clients by unbundling some of the services that accompany complex commercial litigation and moving away from the hourly billing model. Orrick also recently announced they would no longer collect or report the profit per equity partner measurement used by law firm ranking surveys like The American Lawyer 100. It is Orrick's total commitment to innovative management and client service that makes their training and development programs so successful and integral to their mission and goals.

Last fall, Drinker Biddle & Reath LLP (www.drinkerbiddle.com), a national firm based in Philadelphia, implemented a new first-year associate, six-month training program, garnering much praise from the industry. Drinker Biddle acknowledged that it was responding to the Association of Corporate Counsel's Value Challenge (www.acc.com/valuechallenge) and direct client conversations about the need for Drinker Biddle attorneys to understand their clients' business and industry. The training program comprises three components: (1) a core curriculum course that all incoming associates must attend; (2) practice-specific, hands-on training with the groups the individual associates will be joining; and (3) what the firm deems the most important aspect, an "apprenticeship" in the practice group modeled on the way attorneys used to be trained (with an emphasis on observing and learning and asking questions). The first iteration of the program included 37 first-year associates spread among five of the firm's offices around the country. The firm is absorbing the costs of training the new associates while still paying them a respectable \$105,000 salary during the training period.

The creator and manager of the program, partner Kate Levering, explained that Drinker Biddle did not create the training program as a way to fill in any gaps from law school. The program was a practical and tactical investment. The firm was clearly committed to working with its intended incoming first-year class of attorneys rather than deferring them or rescinding their offers and decided to work with the graduates with a consideration of what kind of lawyers the firm needed them to be. The firm thought about how to use what students learned in law school and then build on those strengths and education. Drinker Biddle integrated

inter-disciplinary exercises to show the new attorneys how much cross-over there is among practice groups so they could get a better sense of the larger picture of legal practice. The philosophy the firm adopted for the training program is: "jump start the transition of bright, new law school graduates into the real world of practice." So far, the philosophy seems to be a success.

The feedback on the new Drinker Biddle program – from the participating new associates, partners and clients – has been very positive. The recent graduates were delighted to learn what law school did not teach them – how to practice in real life. Collateral positive consequences included the new associates feeling a real sense of place within the firm because it was willing to invest in them. Their confidence grew as did their class cohesion. The senior lawyers who helped teach and mentor tapped into their memories of what it was like to start their own legal careers under the guidance of senior lawyers. Those memories made the senior attorneys eager participants; they really wanted to invest back into the firm and help train the upcoming generation of attorneys. Many clients also participated in the program, seemingly grateful that



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their outside attorneys were responding to some of their needs and making an investment on their behalf.

Smaller Firms

The issue of new attorney training is relevant for all law firms, not just those with more than 500 attorneys. Many local firms have the advantage of hiring law students as law clerks throughout their law school tenure, which ensures a deeper and longer period of training at very little cost to the firm, as well as providing important help. The firms then use that pool of clerks as a feeder for their new associate ranks. Smaller firms are able to train junior associates rather efficiently by encouraging them to attend CLE classes with local bar associations (with whom the firms collaborate), requiring reading of specialized industry practice material, and otherwise spending a great deal of time individually editing and working on attorney written products.

Attorneys at smaller firms have more control over the kinds of attorneys they hire and train. More important, they can adjust their overall practice management strategies to keep in line with client needs. Keith M. Goldstein from Lavelle & Finn has tested a few ideas about how to ensure better and more efficient lawyers and legal services.

First: fixed fees. Mr. Goldstein and his partners have witnessed firsthand how a more efficient billing system forces attorneys, even junior associates, to price and work efficiently. Imposing a top-down overarching firm management principle causes inefficiencies in knowledge or skills to correct themselves. The system does require a great deal of oversight, but for the dedicated legal professional, it is enormously successful.

Second: change the culture of what and how students are taught in law school; teach them to understand business issues and business economics. In order to fix the lack of business readiness he had been witnessing in junior attorneys, Mr. Goldstein decided to collaborate with nearby Albany Law School and create a JD/MBA private equity course. He helps students analyze a business problem and teaches them to think like his clients. The course is quite technical and multi-disciplinary. He and his co-teacher bring real clients – business people from the industry – into the classroom. He works with students on a single case study – the leveraged buyout of a company. The students dissect the transaction from a financial viewpoint, learning all the business components to help deliver better legal advice. Mr. Goldstein has learned that when attorneys have a better understanding of the business deal and what really matters to the

clients, there is less over-billing and over-analyzing, and more efficient, valuable legal services are delivered to the client. An added benefit of Mr. Goldstein's proactive approach and involvement in a law school classroom is that he and his firm have a new group of students each year from which they can pick new attorneys, knowing that they will come to the firm with precisely the kind of business experience their practice requires.

Solutions

Law Schools

Each law school in this country needs to think critically about the kind of students it draws, how it trains them to become practicing lawyers, and the kinds of outputs they are producing, including the types and location of employers that hire their graduates. Law schools could certainly do a better job of identifying (or at least re-thinking), from the beginning, the core and range of competencies that law students need to develop during their time in legal education to enable them to enter the legal profession. In addition to the many suggestions and guidelines raised in the Carnegie and McCrate reports, law schools may wish to take a more proactive approach to mixing the theoretical with the practical.

- Require every student to engage in some kind of problem-solving course. Create more realistic issues and start to teach students to solve problems or produce deliverables within time and parameter limitations that more closely resemble real-world practice.
- Where possible, bring in outside practitioners or use more collaborative teaching and multi-disciplinary techniques. Incorporate better use of adjuncts. Engage alumni and retired attorneys who have a wealth of experience and knowledge and now have the patience and desire to help train the next generation of lawyers.
- If a school lacks the multi-disciplinary resources to supplement core legal education, consider developing, collaborating or outsourcing to executive education programs, much the same way business schools do. Law schools should try to partner with law firms or corporations who have the motivation and the resources to help train law students and new attorneys. Many of the skills taught in leadership management and other executive management courses really are considered core functions in the world in which many clients operate. If schools or law firms or corporate clients do not or cannot afford to create more practical training courses, the gaps can be filled by market innovators. For example, a recently formed company called LawyerSchool (www.thelawyerschool.com) offers specialized, short-term courses geared toward law students and recent grads to help them learn the practice skills they did not learn in law school.

- Re-think tenure requirements. It is no mystery that most academic scholarly output has little or no impact on actual legal practice or, for that matter, on the development of judicial common law. There is clear academic merit in shaping academic thinkers, but, like law schools themselves, not all academics should be teaching or writing or being judged on the same model. Institutionalize and memorialize and value the creative and innovative teaching methods that produce top-notch legal practitioners. Some members of law school faculties are better at teaching than others; some are better producers of scholarly works than others. Tenure and teaching systems should better recognize these different talents.
- Start putting pressure on the ABA and licensing authorities to allow accelerated legal studies (and I mean reduced credit requirements, not just the same number of credit hours jammed into two years), to begin during undergraduate education. New York Law School Dean Richard Matasar is one of the loudest proponents for these kinds of educational innovations. Many common law countries, like the United Kingdom, allow earlier, specialized legal studies mixed with on-the-job training (or “articling” as it is called) in an efficient and substantively sound process. Most law schools in this country are already affiliated with a university. Why not take more advantage of those resources and capitalize on their potential for legal studies?

Law Firms

Law firms are as unique as the attorneys who work there, yet there is a core range of practice management techniques that any law firm could implement to better train attorneys.

- Implement more training. For firms that are not large enough to have formal training and professional development programs, they can develop better localized training collaboration with local law schools or bar associations to develop a more comprehensive practice-based curriculum. Law schools are in a good position to train practitioners “how to teach” and to explore relationships where the practicing attorney teacher can take on at least one intern a year or summer. Another benefit to more localized training

at smaller firms, starting during law school, is that small firms can integrate law clerks into their practice, introducing them to as many clients and supervising attorney work styles as possible. Smaller law firms benefit from smooth billing relationships with clients because the partners emphasize to junior associates efficiency in working and articulating the time they record with an eye toward what it would look like in a final client bill.

- Absorb costs of training. Costs of training new attorneys should never be passed along to clients. Firms need to evaluate how much new attorney time they are writing off and consider other efficient uses of their time or keep new attorneys out of the billing system until they are able to produce at a certain level of proficiency and value to the client.
- Pay lower starting salaries. There is no real reason to pay new attorneys \$160,000 a year. For those firms that use summer programs, use them as a real competitive test and do not pay them the equivalent of a \$160,000 starting salary.
- Students undoubtedly have large law school loans, but the College Cost Reduction and Access Act and more realistic expectations about initial starting sala-



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ries will help incoming law students evaluate their financial needs and educational investment opportunities.

- Move to more of an apprenticeship training model. With Boomers retiring and the market still at a slow point, this is a perfect time to tap into institutional expertise to train incoming attorneys for the benefit of the employer and the clients.
- Take more clerks during the year. There is a great deal of untapped potential for term-time law clerks. Most law schools are eager to have students gain paying (or credit) experience, and many firms have found the year-round training and help to be low cost and efficient for them and their clients.
- Employers should utilize more comprehensive, core-competency-identifying and personality-based methods of interviewing to better highlight the kinds of skills and attributes they and their clients want in an attorney. That process should help winnow the pool of applicants down to attorneys who

needlessly and traditionally been overpaying licensed attorneys to do – like discovery, expert witness preparation, patent filing, and similar tasks.

Other Influential Organizations

The biggest outside influencers to the existing legal education model are the ABA and *U.S. News & World Report*. Running a close second are individual state bar examining and licensing authorities. The ABA is currently on the right path with the proposed changes to Standard 302, but that is only one step. If the ABA does not push in the direction of more experiential learning, law schools, employers and even students could pressure the ABA to allow law schools to move beyond the traditional core doctrinal courses. The ABA should also be thinking about greater flexibility in law school learning methodologies, including distance learning, the number of credits needed for residency requirements and ultimate graduation, and the number of practitioners and members of other disciplines allowed to teach in the classroom.

Large clients could also wield their influence and start to pressure the ABA to change the accreditation regulations to allow more flexibility in the law school model, like distance learning and greater use of non-tenured faculty.

are starting with the basic competencies needed for that particular employer's practice and client base, thus decreasing some of the need for on-the-job training. Once employers start demanding certain competencies, law schools will be forced to teach them.

Clients

A quick note about in-house counsel (the corporate clients). There are many opportunities for in-house lawyers to participate in mentoring programs. In addition to individual mentoring, in-house legal departments can ask their outside counsel for a secondee or hire more law students during the summer or school year or collaborate with a local law school for an externship or guest lecture program. Large clients could also wield their influence and start to pressure the ABA to change the accreditation regulations to allow more flexibility in the law school model, like distance learning and greater use of non-tenured faculty. They could also help push for a national bar examination and faster, more streamlined admissions processes. Closer to their bottom line, they have a big incentive to pressure state authorities to let non-attorneys officially provide the kind of work they need and have

There is certainly more room for state bar examining and licensing authorities and bar associations to be involved in how law students are trained. States could re-think the bar exam such that it tests more problem-solving skills and competencies. Before granting a license to practice law to a law school graduate, state licensing authorities should require some kind of apprenticeship or fellowship similar to what is done in the medical industry. Simple "bridge the gap" types of CLE courses are a bare minimum. Knowing that almost two-thirds of new lawyers in this country go to small firms that do not have the resources for formal training programs, local and state bar associations should have a more integrated approach to working with local employers to train new and experienced lawyers.

When adjustments are made to the top-tier firms' billing systems and salary structure, there will be less pressure on attorneys to spend all their time billing to clients. The average private practitioner, like any human in a capitalistic system, will naturally gravitate toward making the most return on his or her time investment. Remove or limit that incentive, the way some lockstep and fixed-fee-based firms have done, and there is more time and incentive to invest in human capital. Many of the UK firms

have been doing that. Orrick seems to have figured that out. While this does not put attorneys in the top revenue or profits categories, it is a trade-off that is essential to the future of the legal industry in this country.

The *U.S. News & World Report* ranking of law schools – and impending ranking of law firms – is the single most influential ranking system affecting the current state of the legal education market. The *American Lawyer* annual ranking of the top 200 law firms in the country is the most widely acknowledged indicator of law firm success. There are thousands of law firms in this country but only 200 law schools that are subject to the same ranking and influencing system. There are scores of articles criticizing and denouncing the *U.S. News* methodology.⁸ The U.S. General Accounting Office has even scorned the effect the rankings have on the costs of education.⁹ But they continue. Until all the law schools, or at least the top 25 to 50, refuse to submit their *U.S. News* questionnaire, the magazine has little incentive to cease its money-making annual venture, and every incentive for law schools to allocate resources in a manner that most benefits their ranking. If *U.S. News* refuses to abandon its annual survey, then it should at least take a more thoughtful approach to law school teaching competencies. *U.S. News's* current focus and weighting on such components as academic reputation, student-faculty ratio, and placement by nine months following graduation, encourages all law schools to drive toward the same model where none but the top 25 or so really excel. That is a wasteful and misguided system that unfortunately has a huge sway over prospective students, potential employers, and faculty appointments and publications. It is time to move away from that destructive and misleading system.

Conclusion

All members of the legal profession have an obligation to ensure ethical, competent, and efficient delivery of legal services to clients. “The education of the next generation of lawyers is critical to the future of our system of justice.”¹⁰ That call to action includes attorneys in all ranks and levels of practice and in all areas of legal services delivery, from direct representation in public interest organizations, like Legal Aid, to the small, local, suburban firm that provides basic corporate, T&E and matrimonial services to the average person, to the lowest associate on a team of attorneys on the nation’s largest trademark infringement litigation suit.

The consensus among practitioners and academics about the core competencies needed in future lawyers is this: The best lawyers and law students are and will be those who can master and explain to their clients the relevant substantive legal issues and rules, and who have an understanding of their clients’ business. “Business” may be in the traditional sense of pharmaceuticals, airplane engines and securities, or the business of life and

matters relating to buying a home or seeking an order of protection against an abusive spouse. Lawyers and law students must also learn to write clearly and concisely, on point, and in a time-restricted manner. They must be able to answer a given question or make a concrete recommendation that makes practical and realistic sense for the client. As one general counsel put it, most corporate clients “don’t have legal problems, we have business problems that require the involvement of lawyers.”¹¹ It is incumbent upon law professors and law school administrators to teach law students about the fields of practice and the skills and substantive legal knowledge necessary to provide related legal and other kinds of advice. Practitioners must also take it upon themselves to train new lawyers in whatever manner is best suited for the legal service provider and its clients, and in a way that does not increase costs to their clients. Even the clients who work as in-house attorneys in corporate legal departments and government agencies should be helping to devise solutions to ensure there are future generations of good lawyers around to help them and their issues. When everyone affiliated with the legal industry stops blaming everyone else, stops kowtowing to misguided external influences and commits to rethinking the current system of legal education and legal service, we will start to develop a better way to educate and train lawyers. ■

1. See Proposed Standard 302(b)(2)(iii), which would include a learning outcome competency standard of “a depth and breadth of other professional skills sufficient for effective, responsible and ethical participation in the legal profession.” ABA Section of Legal Education & Admissions to the Bar, Student Learning Outcomes Committee, available at <http://www.abanet.org/legaled>.
2. See <http://www.law.northwestern.edu/problemsolver>.
3. See <http://www.law.northwestern.edu/academics/ajd>.
4. See <http://www.law.harvard.edu/academics/registrar/winter-term/problem-solving-workshop.html>.
5. See George J. Siedel, *Using the Law for Competitive Advantage* (Jossey Bass 2002) and George J. Siedel, *The Sixth Strategy: Integrating the Law School and Business School Case Methods*, *The Law Teacher* 15, Fall 2008.
6. Thomas D. Morgan, “The Future Training of Lawyers: The ABA and the Law Schools,” March 1, 2010 version, p. 2 (prepared for the panel on Rethinking Legal Education and Training at the Conference on Law Firm Evolution: Brave New World or Business as Usual? Sponsored by the Georgetown Center for the Study of the Legal Profession) available at <http://www.law.georgetwon.edu/LegalProfession/documents/Morgan.pdf>.
7. The FutureEd Conference, jointly sponsored by Harvard Law School and New York Law School, was held in April at New York Law.
8. See, e.g., Theodore P. Seto, *Understanding the U.S. News Law School Rankings*, 60 *SMU L. Rev.* 493 (2007).
9. See United States Government Accountability Office Report to Congressional Committees, *Higher Education: Issues Related to Law School Cost and Access* (Oct. 2009), available at <http://www.gao.gov/new.items/d1020.pdf>.
10. Emily Spieler, Dean, Northeastern University School of Law, *Making Legal Education More Practical*, *Nat’l L.J.*, Feb. 22, 2010.
11. See comments from Chester Paul Beach, Jr., General Counsel of United Technologies, at the FutureEd Conference available at http://www.nyls.edu/centers/harlan_scholar_centers/institute_for_information_law_and_policy/events/futureed/.