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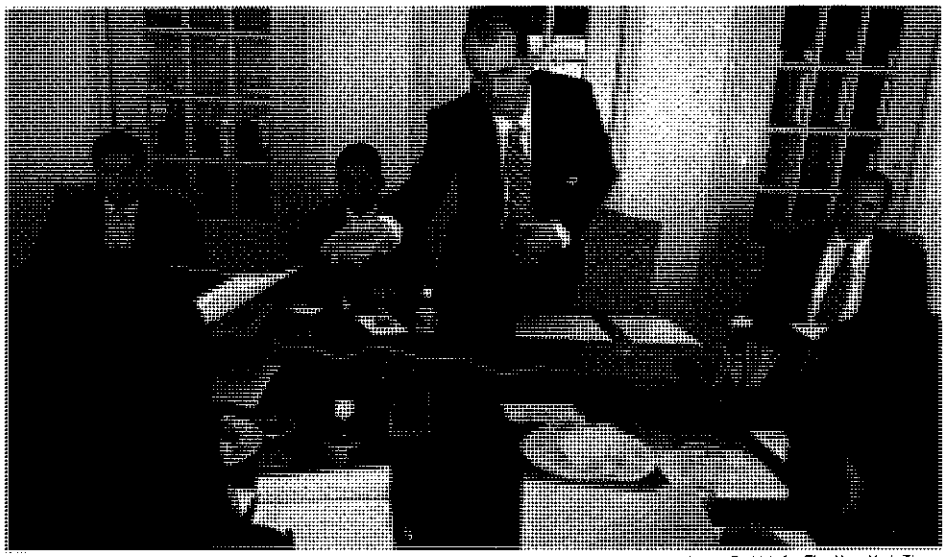
What They Don't Teach Law Students: Lawyering



Laura Pedrick for The New York Times

Drinker Biddle & Reath, a Philadelphia firm, trains its new associates to be lawyers. Here, Matthew McDonald, a partner, passes out instructions.

By DAVID SEGAL
Published: November 19, 2011

PHILADELPHIA — The lesson today — the ins and outs of closing a deal — seems lifted from Corporate Lawyering 101.

Josh Anderson for The New York Times

Updating is needed, says Edward Rubin, ex-dean of Vanderbilt Law.

A Possible New Curriculum
What do corporate clients wish associates were taught in law school?

- A better understanding of modern litigation practice, which is about gathering facts and knowing how to settle a case.
- Greater familiarity with transactions law, including how to draft, evaluate and challenge a contract.
- Deeper knowledge of regulatory law and the ability to respond to a regulatory inquiry or enforcement action.

"How do you get a merger done?" asks Scott B. Connolly, an attorney.

There is silence from three well-dressed people in their early 20s, sitting at a conference table in a downtown building here last month.

"What steps would you need to take to accomplish a merger?" Mr. Connolly prods.

After a pause, a participant gives it a shot: "You buy all the stock of one company. Is that what you need?"

"That's a stock acquisition," Mr. Connolly says. "The question is, when you close a merger, how does that deal get done?"

The answer — draft a certificate of merger and file it with the secretary of state — is part of a crash course in legal training. But the three people taking notes are not

Basic corporate legal skills, like how to perform due diligence.
- Writing skills. Partners at law firms say they spend a lot of time improving the writing of their first- and second-year associates.
- A stronger grasp of the evolving economics of legal practice, which will rely less on leveraging the time of new associates and more on entrepreneurship.

students. They are associates at a law firm called Drinker Biddle & Reath, hired to handle corporate transactions. And they have each spent three years and as much as $150,000 for a legal degree.

What they did not get, for all that time and money, was much practical training. Law schools have long emphasized the theoretical over the useful, with classes that are often overstuffed with antiquated distinctions, like the variety of property law in post-feudal England. Professors are rewarded for chin-stroking scholarship, like law review articles with titles like "A Future Foretold: Neo-Aristotelian Praise of Postmodern Legal Theory."

So, for decades, clients have essentially underwritten the training of new lawyers, paying as much as $300 an hour for the time of associates learning on the job. But the downturn in the economy, and long-running efforts to rethink legal fees, have prompted more and more of those clients to send a simple message to law firms: Teach new hires on your own dime.

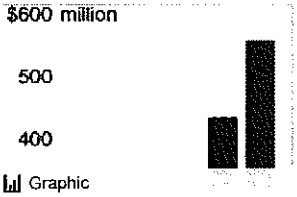
"The fundamental issue is that law schools are producing people who are not capable of being counselors," says Jeffrey W. Carr, the general counsel of FMC Technologies, a Houston company that makes oil drilling equipment. "They are lawyers in the sense that they have law degrees, but they aren't ready to be a provider of services."

Last year, a survey by American Lawyer found that 47 percent of law firms had a client say, in effect, "We don't want to see the names of first- or second-year associates on our bills." Other clients are demanding that law firms charge flat fees.

This has helped to hasten a historic decline in hiring. The legal services market has shrunk for three consecutive years, according to the Bureau of Labor Statistics. Altogether, the top 250 firms — which hired 27 percent of graduates from the top 50 law schools last year — have lost nearly 10,000 jobs since 2008, according to an April survey by The National Law Journal.

Law schools know all about the tough conditions that await graduates, and many have added or expanded programs that provide practical training through legal clinics. But almost all the cachet in legal academia goes to professors who produce law review articles, which gobbles up huge amounts of time and tuition money. The essential how-tos of daily practice are a subject that many in the faculty know nothing about — by design. One 2010 study of hiring at top-tier law schools since 2000 found that the median amount of practical experience was one year, and that nearly half of faculty members had never practiced law for a single day. If medical schools took the same approach, they'd be filled with professors who had never set foot in a hospital.

Multimedia



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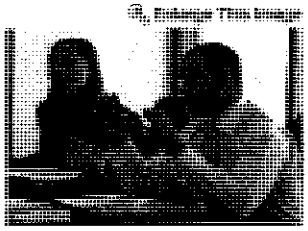

Laura Pedrick for The New York Times

MOOT COURT | At Drinker Biddle, Eric Kassab and Jennifer Kissiah, both first-year associates, in a training session. Law schools emphasize theoretical work, rather than lawyering.

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But sticking to the old syllabus has had little downside. The clients of law firms may be scaling back, but the clients of law schools — namely, students — are spending freely. Or rather, borrowing heavily. It is hard to imagine a 21-year-old without a steady income securing a private or federally guaranteed loan to buy a $150,000 house, but sums like tbat are still readily available for just about anyone who wants a doctor of jurisprudence degree. And while word of grievous job prospects is finally reaching undergraduates — there was an a 11.5 percent drop in applications this year — there were no empty seats in any of the 200 law schools in the country.

"I gather change is afoot at some law schools," Mr. Connolly says, "but it's going to be very slow."

So at Drinker Biddle, first-year associates spend four months getting a primer on corporate law. During this time, they work at a reduced salary and they are neither expected nor allowed to bill a client. It's good marketing for the firm and a novel experience for the trainees.

"What they taught us at this law firm is how to be a lawyer," says Dennis P. O'Reilly, who went through the program last year, and attended the George Washington University School of Law. "What they taught us at law school is how to graduate from law school."

Allergic to the Practical

Law schools' aversion to all things vocational has been much debated, both inside and outside the academy. But critics are fighting both tradition and the legal academy's peculiar set of neuroses.

"Law school has a kind of intellectual inferiority complex, and it's built into the idea of law school itself," says W. Bradley Wendel of the Cornell University Law School, a professor who has written about landing a law school teaching job. "People who teach at law school are part of a profession *and* part of a university. So we're always worried that other parts of the academy are going to look down on us and say: 'You're just a trade school, like those schools that advertise on late-night TV. You don't write dissertations. You don't write articles that nobody reads.' And the response of law school professors is to say: 'That's not true. We do all of that. We're scholars, just like you.' "

This trade-school anxiety can be traced back to the mid-19th century, when legal training was mostly technical and often taught in rented rooms that were unattached to institutions of higher education.

A lawyer named Christopher Langdell changed that when he was appointed dean of the Harvard Law School in 1870 and began to rebrand legal education. Mr. Langdell introduced "case method," which is the short answer to the question "What does law school teach you if not how to be a lawyer?" This approach cultivates a student's capacity to reason and all but ignores the particulars of practice.

Consider, for instance, Contracts, a first-year staple. It is one of many that originated in the Langdell era and endures today. In it, students will typically encounter such classics as Hadley v. Baxendale, an 1854 dispute about financial damages caused by the late delivery of a crankshaft to a British miller.

Here is what students will rarely encounter in Contracts: actual contracts, the sort that lawyers need to draft and file. Likewise, Criminal Law class is normally filled with case studies about common law crimes — like murder and theft — but hardly mentions plea bargaining, even though a vast majority of criminal cases are resolved by that method.

Defenders of the status quo say that law school is the wrong place to teach legal practice

because law is divided into countless niches and that mastering any of them can take years. This sort of instruction, they say, can be taught only in the context of an apprenticeship. And if newcomers in medicine, finance and other fields are trained, in large part, by their employers, why shouldn't tbe same be true in law?

But those pushing for more practical content aren't looking for a bunch of classes in legal minutiae, nor do they expect client-ready lawyers to march off their campus. Instead, they would like to see less bias against professional training and more classes tbat engage the law as it exists today.

"We should be teaching what is really going on in the legal system," says Edward L. Rubin, a professor and former dean at the Vanderbilt Law School, "not what was going on in the 1870s, when much of the legal curriculum was put in place."

During his tenure as dean, which began in 2005, Professor Rubin tried to update some of the school's mandatory classes. First, he held a series of focus-group discussions, meeting with law firms to find out what managing partners wished that their new hires had already been taught.

Eventually, these conversations led to a new first-year class, the Regulatory State, an introduction to federal administrative agencies, statutes and regulations. Vanderbilt also made changes to second- and third-year courses.

But there were limits. Professor Rubin failed to sell his faculty members on a retooled first-year Contracts class.

"Some members of the faculty got a little overstressed by all the change," Professor Rubin says. "Planning a new course, you have to move out of your comfort zone a little in terms of teaching. And there is always the fear that your school will wind up being seen as an oddball place."

Another problem he encountered: there are few incentives for law professors to excel at teacbing. It might earn them the admiration of students, but it won't win them any professional goodies, like tenure, a higher salary, prestige or competing offers from better schools. For those, a professor must publish law review articles, the ticket to punch for any upwardly mobile scholar.

There are more than 600 law reviews in tbe United States — Georgetown alone produces 11 — and they publish about 10,000 articles a year. Some of these articles are worthwbile and influential, and the best are cited by lawyers in arguments and by judges in court decisions. A study to be published in The Northwestern University Law Review found that in the last 61 years, the Supreme Court "has used legal scholarship" in about one-third of its decisions.

But citable law review articles are vastly outnumbered, it appears, by head-scratchers. "There is evidence that law review articles have left terra firma to soar into outer space," said the Supreme Court Justice Stephen G. Breyer in a 2008 speech.

Some articles are intra-academy tiffs that could interest only the combatants (like "What Is Wrong With Kamm's and Scanlon's Arguments Against Taurek" from The Journal of Ethics & Social Philosophy). Others fall under the category of highbrow edu-tainment, like a 2006 article in The Cardozo Law Review about the legal taboos of a well-known obscenity, the one-word title of which is unprintable in a family newspaper.

Still others crossbreed law and some other discipline, a variety of scholarship that seems to especially irk John G. Roberts Jr., chief justice of the United States. "Pick up a copy of any law review that you see," he said at a conference this summer, "and the first article is likely to be, you know, the influence of Immanuel Kant on evidentiary approaches in

18th-century Bulgaria, or something, which I'm sure was of great interest to the academic that wrote it, but isn't of much help to the bar."

In fact, many of these articles are not of much apparent help to anyone. A 2005 law review article found that around 40 percent of law review articles in the LexisNexis database had never been cited in cases or in other law review articles.

Of course, much of academia produces cryptic, narrowly cast and unread scholarship. But a pie chart of how law school tuition is actually spent would show an enormous slice for research and writing of law review articles.

How enormous? Last year, J.D., or juris doctor, students spent about $3.6 billion on tuition, according to American Bar Association figures, accounting for discounts through merit- and need-based aid. Given that about half of a law school's budget is spent on faculty salary and benefits, and that tenure-track faculty members consume about 80 percent of the faculty budget — and that such professors spend about 40 percent of their time producing scholarship — roughly one-sixth of that $3.6 billion subsidized faculty scholarship. That's more than $575 million.

Much of that comes from taxpayers in the form of federal student loans. Steven R. Smith, dean of the California Western School of Law, described this sum as "the equivalent of an involuntary fee" that students must pay to get a diploma. "It is not obvious that students are the ones who should be paying the cost of legal scholarship. They are generally borrowing the money to do this and they are the least able of all those in the profession to pay for it."

The Prestige Game

About half of all law school hiring begins at the Faculty Recruitment Conference, widely known as the meat market, held by the Association of American Law Schools. It is conducted every year at the Marriott in the Woodley Park neighborhood of Washington.

At this year's conference, in October, nearly 500 aspiring law professors turned up for interviews with 165 law schools. Like the draft of every professional sport, there are superstars here and for two days they were hotly pursued. At the top of the pile were former Supreme Court clerks. Just under them were candidates with both a J.D. and a Ph.D. in another discipline. Law schools, especially those in the upper echelons, have been smitten by Ph.D.-J.D.'s for more than a decade.

Ori J. Herstein, who studied philosophy in grad school and is a doctor in the science of law, says that "an economics Ph.D. is the most valuable," and that "the further away you get from the humanities tbe better."

Mr. Herstein was sitting in the Marriott lobby between interviews. Israeli-born and cheerful in a boyishly wonky way, he has a résumé that seems custom-built to tantalize law school recruiters. He has two degrees from Columbia, which, along with a handful of other elite schools — most notably Yale — has become a farm team for the credential-obsessed legal academy. He has already published a handful of law review articles with promisingly esoteric titles ("Historic Injustice and the Non-Identity Problem: The Limitations of the Subsequent-Wrong Solution and Towards a New Solution") and has submitted another that sounds perfectly inscrutable ("Why Nonexistent People Do Not Have Zero Well-Being but Rather No Well-Being").

This type of scholarship, and the cash that keeps the law review conveyor belt spinning, are defended by law school professors as a way to attract the best and brightest to teaching. It is also said to enhance the prestige and sophistication of the American legal system. "Students want renowned scholars to teach them, period," said Francis J. Mootz

III, a professor at the William S. Boyd School of Law at the University of Nevada and the author of "Neo-Aristotelian Praise of Postmodern Legal Theory. "They want to learn from the best and brightest."

It is true that a law school's reputation, and the value of its diplomas in the legal market, are almost entirely bound up in the amount and quality of the scholarship it produces. That's been especially so since the late '80s, when U.S. News and World Report started to rank law schools. The publisher's annual rankings all but define a school's standing iu the legal academy's firmament, and 40 percent of the U.S. News algorithm is based on a "quality assessment" survey by hundreds of lawyers, judges, deans and professors.

The problem is tbat with rare exceptions, all schools play the same scholarship-and-prestige game. Even professors in the lowest rungs churn out scholarship, and one of the first items of business for new schools is startiug a law review. The result is a kind of arms race, with articles playing the role of nukes and students payiug the bill.

Experience Unnecessary

Another appeal of Ori Herstein's résumé is what it's missing: many years of toiling in a law firm. It is widely believed that after lawyers have spent more than eight or nine years practicing, their chances of getting a tenure-track job at law school start to dwindle.

"Nobody wants to become a retirement home, or a place for washed-out lawyers," says Kevin R. Johnson, dean of the law school at the University of California, Davis, who came to the meat market with six positions to fill.

This might seem a paradox — experienced people need not apply — but the academy views seasoned pros with a certain suspicion. In fact, a number of veterans of legal practice who failed to land tenure-track jobs say that experience was a stigma they could not beat.

"It can be fatal, because the academy wants people who are not sullied by the practice of law," said a lougtime lawyer and adjunct professor, who did not want to be identified because his remarks might alienate colleagues. "A lot of people who are good at big ideas, the people who teach at law school, think it is beneath them."

The exceptions are those who teach legal clinics, which are programs where students learn to counsel clients (usually poor), draft documents and even litigate, all under faculty supervision. Legal clinics are a growing presence on nearly every campus, and many — like Washington University's Law School iu St. Louis and the CUNY School of Law in Queens — get high marks for quality and participation.

But a lot of these programs struggle with a kind of second-class status. Many are staffed, in whole or in part, by teachers who are not voting members of the faculty, and the programs are often modest. A soon-to-be released study of clinical programs by the Center for the Study of Applied Legal Education found that only 3 percent of law schools required clinical training.

"There has been au explosion in interest in clinical law programs," says David Santacroce, president of the center, "but the growth parallels an explosion in the total number of law students so we haven't reached anything close to the saturation point yet. The majority of law studeuts still graduate without any clinical experience."

While most of law schools' professoriate still happily dwell in the uppermost floors of the ivory tower, the view from the ground for new graduates is growing uglier. It's not just that the market is now awash with castoffs from Big Law, and that clients can now retain graduates from elite schools and pay them $25 or $50 an hour, on contract. The nature of legal work itself is evolving, and the days when corporations buy billable hours,

instead of results, are numbered.

To succeed in this environment, graduates will need entrepreneurial skills, management ability and some expertise in landing clients. They will need to know less about Contracts and more about contracts.

"Where do these students go?" says Michael Roster, a former chairman of the Association of Corporate Counsel and a lecturer at the University of Southern California Gould School of Law. "There are virtually no openings. They can't hang a shingle aud start on their own. Many of them are now asking their schools, 'Why didn't you teach me how to practice law?' "

This article has been revised to reflect the following correction:

Correction: November 22, 2011

An article on Sunday about the emphasis on theoretical over practical learning in law schools misidentified a first-year course about common law crimes. It is Criminal Law, not Criminal Procedure.

A version of this article appeared in print on November 20, 2011, on page A1 of the New York edition with the headline: What They Don't Teach Law Students: Lawyering

July 16, 2011

Law School Economics: Ka-Ching!

By DAVID SEGAL

WITH apologies to show business, there's no business like the business of law school.

The basic rules of a market economy — even golden oldies, like a link between supply and demand — just don't apply.

Legal diplomas have such allure that law schools have been able to jack up tuition four times faster than the soaring cost of college. And many law schools have added students to their incoming classes — a step that, for them, means almost pure profits — even during the worst recession in the legal profession's history.

It is one of the academy's open secrets: law schools toss off so much cash they are sometimes required to hand over as much as 30 percent of their revenue to universities, to subsidize less profitable fields.

In short, law schools have the power to raise prices and expand in ways that would make any company drool. And when a business has that power, it is apparently difficult to resist.

How difficult? For a sense, take a look at the strange case of New York Law School and its dean, Richard A. Matasar. For more than a decade, Mr. Matasar has been one of the legal academy's most dogged and scolding critics, and he has repeatedly urged professors and fellow deans to rethink the basics of the law school business model and put the interests of students first.

"What I've said to people in giving talks like this in the past is, we should be ashamed of ourselves," Mr. Matasar said at a 2009 meeting of the Association of American Law Schools. He ended with a challenge: If a law school can't help its students achieve their goals, "we should shut the damn place down."

Given his scathing critiques, you might expect that during Mr. Matasar's 11 years as dean, he has reshaped New York Law School to conform with his reformist agenda. But he hasn't. Instead, the school seems to be benefitting from many of legal education's assorted perversities.

N.Y.L.S. is ranked in the bottom third of all law schools in the country, but with tuition and fees now set at $47,800 a year, it charges more than Harvard. It increased the size of the class that arrived in the fall of 2009 by an astounding 30 percent, even as hiring in the legal profession imploded. It reported in the most recent US News & World Report rankings that the median starting salary of its graduates was the same as for those of the best schools in the nation — even though most of its graduates, in fact, find work at less than half that amount.

Mr. Matasar declined to be interviewed for this article, though he agreed to answer questions e-mailed through a public relations representative.

Asked if there was a contradiction between his stand against expanding class sizes and the growth of the student population at N.Y.L.S., Mr. Matasar wrote: "The answer is that we exist in a market. When there is demand for education, we, like other law schools, respond."

This is a story about the law school market, a singular creature of American capitalism, one that is so durable it seems utterly impervious to change. Why? The career of Richard Matasar offers some answers. His long-time and seemingly sincere ambition is to "radically disrupt our traditional approach to legal education," as it says on his N.Y.L.S. Web page. But even he, it seems, is engaged in the same competition for dollars and students that consumes just about everyone with a financial and reputational stake in this business.

"The broken economic model Matasar describes appears to be his own template," wrote Brian Z. Tamanaha, a professor at Washington University Law School in St. Louis, in a blog posting about Mr. Matasar last year. "Are his increasingly vocal criticisms of legal academia an unspoken mea culpa?"

A PRIVATE, stand-alone institution located in the TriBeCa neighborhood of downtown Manhattan, New York Law School was founded in 1891 and counts Justice John Marshall Harlan among its most famous graduates. The school — which is not to be confused with New York University School of Law — is housed in a gleaming new 235,000-square-foot building at the corner of West Broadway and Leonard Street.

That building puts N.Y.L.S. in the middle of a nationwide trend: the law school construction boom. As other industries close offices and downsize plants, the manufacturing base behind the doctor of jurisprudence keeps growing. Fordham Law School in New York recently broke ground on a $250 million, 22-story building. The University of Baltimore School of Law and the University of Michigan Law School are both working on buildings that cost more that $100 million. Marquette University Law School in Wisconsin has just finished its own $85 million project. A bunch of other schools have built multimillion dollar additions.

N.Y.L.S. has participated in another national law school trend: the growth in the number of enrollees. Last year, law schools across the country matriculated 49,700 students, according to the Law School Admission Council, the largest number in history, and 7,000 more students than in 2001. N.Y.L.S. grew at an even faster clip. In 2000, the year Mr. Matasar took over, the school had a total of 1,326 full- and-part-time students. By 2009, the figure had risen to 1,596.

The jump seems to contradict one of Mr. Matasar's core tenets.

"Can class size be increased without damaging quality?" he asked in a 1996 Florida Law Review article. "Can class size be increased without assurances that jobs will be available for the increased number of graduates? Can class size be increased without also providing more staff, faculty, books and service? Increase class size? No!"

Did Mr. Matasar change his mind? In an e-mail, he cited the unpredictability of yield rates, which is the percent of students who accept an offer of admission. There was more than one year of yield surprises under Mr. Matasar, the largest of which came in 2009, when the incoming class leapt by 171 students.

It was a very profitable surprise, worth about $6.7 million in gross revenue. Mr. Matasar would not discuss the added costs of teaching what became known at the school as "the bulge class." But faculty members, some of whom were offered the chance to take on additional courses, estimate that, at most, the school had to spend about $500,000 more that year on teaching.

This windfall, it turns out, was perfectly timed. Because as all those students were signing up for their first year at N.Y.L.S., a little-noticed drama was unfolding that involved the financing for that brand-new building.

THREE years earlier, in 2006, the school had floated $135 million worth of bonds to finance construction of the new building, at 185 West Broadway. At the time, Moody's rated the bonds A3, placing them squarely in the "come and get 'em" category for investors. The rating reflected N.Y.L.S.'s strong balance sheet and the quality of its management, Moody's said.

Equally important, N.Y.L.S. was — and is — in a very lucrative business. Like business schools and some high-profile athletic programs, law schools subsidize other fields in universities that can't pay their own way.

"If my president were to say 'We'll never take more than 10 percent of your revenue,' I'd say 'God bless you,' and we'd never have to talk again," says Lawrence E. Mitchell, the incoming

dean of the Case Western Reserve University School of Law in Cleveland. "But having just come from a two-day meeting of new and current deans organized by the American Bar Association, I can tell you that some law schools pay 25 or even 30 percent."

Among deans, the money surrendered to the administration is known informally as "the tax." Even in the midst of a merciless legal downturn, the tax still pumps huge sums into universities, in part because the price of a law degree continues to climb.

From 1989 to 2009, when college tuition rose by 71 percent, law school tuition shot up 317 percent.

There are many reasons for this ever-climbing sticker price, but the most bizarre comes courtesy of the highly influential US News rankings. Part of the US News algorithm is a figure called expenditures per student, which is essentially the sum that a school spends on teacher salaries, libraries and other education expenses, divided by the number of students.

Though it accounts for just 9.75 percent of the algorithm, it gives law schools a strong incentive to keep prices high. Forget about looking for cost efficiencies. The more that law schools charge their students, and the more they spend to educate them, the better they fare in the US News rankings.

"I once joked with my dean that there is a certain amount of money that we could drag into the middle of the school's quadrangle and burn," said John F. Duffy, a George Washington School of Law professor, "and when the flames died down, we'd be a Top 10 school. As long as the point of the bonfire was to teach our students. Perhaps what we could teach them is the idiocy in the US News rankings."

For years, it made economic sense for smart, ambitious 22-year-olds to pay the escalating price for a legal diploma. Law schools have had a monopolist's hold on the keys to corporate lawyerdom, which pays graduates six-figure salaries.

But borrowing $150,000 or more is now a vastly riskier proposition given the scarcity of Big Law jobs. Of course, that scarcity hasn't been priced into the cost of law school. How come? In part, it's because schools have managed to convey the impression that those jobs aren't very scarce.

For instance, although N.Y.L.S. is ranked No. 135 out of the roughly 200 schools in the US News survey, it asserts in figures provided to the publisher that nine months after graduation, the median private-sector salary of alums who graduated in 2009 — which is the

class featured in the most recent US News annual law school issue — was $160,000. That is exactly the same figure cited by Yale and Harvard, the top law schools in the country.

Mr. Matasar stood by that number, but acknowledged that it did not give a complete picture of the prospects for N.Y.L.S. grads. He noted that the school takes the over-and-above step of posting more granular salary data on its Web site.

"In these materials and in our conversations with students and applicants," he wrote, "we explicitly tell them that most graduates find work in small to medium firms at salaries between $35,000 and $75,000."

Determining exactly how many graduates make even those relatively modest salaries isn't easy. The information posted online by N.Y.L.S. about the class of 2010 says that only 26 percent of those employed reported their salaries. The nearly 300 students who reported being employed but said nothing about their salaries — who knows?

Like all other law schools, N.Y.L.S. collects this job information without anyone else looking at the raw data or double checking the math. Which gets to another dimension of the law school business that other companies might envy: a lack of independent auditing, at least when it comes to these crucial employment stats. It's kind of like makers of breakfast cereal reporting the nutrition levels of their products, without worrying that anyone will actually count the calories.

THOUGH astoundingly resilient as businesses, law schools have always had a glaring liability: they generally sell just one product, legal diplomas. This lack of diversification means that if enrollment drops, a school's balance sheet will suffer.

Like all stand-alone institutions, N.Y.L.S. is even more dependent on student tuition than those attached to universities, and Moody's highlighted this fact in its 2006 appraisal of the school's bonds. Under a section about potential "challenges" that could lead to a downgrade, Moody's cited "significant and sustained deterioration of student market position."

A downgrade would be expensive for the school because it would mark the bonds as riskier, which would force the school to pay higher interest rates in the future.

In May of 2009, a month before the official end of the recession, Moody's issued a new report and suddenly, a downgrade seemed like a real possibility. One problem was that applications to the school for the upcoming class of 2009, Moody's reported, were down 28 percent compared with the volume the year before. The rating agency changed its outlook on

the bonds from "stable" to "negative," which is bond-speak for "If current trends continue, a downgrade is coming."

But just three months later, the enrollment scare was over. In the fall of 2009, the incoming class was N.Y.L.S.'s largest ever — 736 students. (Only one law school in the country, Thomas M. Cooley in Michigan, matriculated a greater number.)

Some faculty members were happy to enhance their salaries by teaching another course. Others were appalled at what the super-sized class would mean for students.

"At a school like New York Law, which is toward the bottom of the pecking order, it's long been difficult for our students to find high-paying jobs," said Randolph N. Jonakait, a professor at N.Y.L.S. and a frequent critic of Mr. Matasar's. "Adding more than 100 students to an incoming class harms their employments prospects. It's always been tough for our graduates. Now it's tougher."

Was Mr. Matasar more worried about bond ratings than the fortunes of his new students? Several faculty members said, and he confirmed, that the bonds were part of discussions about the financial health of the school in 2009.

"However," Mr. Matasar wrote, "N.Y.L.S. never promised (nor needed to promise) anyone that it would increase enrollment to meet debt service obligations." The size of the 2009 class, he went on, was "unplanned," again referring to a surprise in yield.

But given that interest in graduate school typically spikes during economic slumps, wasn't a sharp rise in yield foreseeable? It was to N.Y.L.S.'s rivals. There are about 40 other schools in what US News has long categorized as its third tier, and the average increase in class size at those schools in 2009 was just 6 percent. (At 10 of those schools, enrollment declined.) That is dwarfed by the 30 percent uptick at N.Y.L.S.

Whether Mr. Matasar had bond ratings in mind at the time, Moody's liked what it saw. In August of 2010, the company issued a new report that included news of the 736-student class, which was described, in the classic understated style of bond reporting, as "particularly large." The Moody's outlook for the N.Y.L.S. bonds changed once again — this time from negative to stable.

THE incoming class of 2009 won't hit the job market until next year, but if the experience of recent N.Y.L.S. graduates is an indication, many of them are in for a lengthy hunt. Mr. Matasar offered an inventory of N.Y.L.S.'s career services office, which he says includes 15

employees and provides development and mentoring programs and oversees a series of networking events.

There are those, he wrote, "who rave about the career services office." But he added that a recent poll of law schools found that a little more than half of third-year students were unsatisfied with the job search help. "We have a similar experience," he wrote.

Among the unsatisfied is Katherine Greenier, of N.Y.L.S.'s class of 2010. As she neared graduation, she organized an informational meeting for students interested in public-interest law, the kind of get-together she thought the career services office should have offered. To her amazement, a rep from that office showed up, took a seat and asked questions.

"She was asking about the process, like how you go about applying for public-interest fellowships," Ms. Greenier says. "Things that you would have hoped she already knew."

Ms. Greenier, who wound up with a job at the American Civil Liberties Union in Richmond, Va., ultimately decided that the school had what she called a "factory feel."

The size of the incoming class of 2009 only sharpened that conclusion.

"There were people wondering, why did the school take on this many people in a job market this terrible?" she asked. "How many of these folks are going to find jobs? And what does it say about the school?"

IN April, Mr. Matasar stood in a lecture hall on the third floor at N.Y.L.S. and delivered the keynote at Future Ed, the third of three conferences about legal education that he'd helped organize, in partnership with Harvard Law School. A few dozen professors and deans were in attendance as he argued for a more student-centric approach to education.

"The focus shifts from us — we the faculty, we the administration, we the permanent employees of the school — to those we serve, our students," he said. "Things are seen through a lens that says 'What will this do for the students?' "

Nearly all the people who have worked with Mr. Matasar say he means what he says about reforming legal education. N.Y.L.S. professors recall meetings where he urged the faculty to be more responsive to students — to return calls faster, meet more often, whatever would help.

"He put a huge, beautiful student dining area in the top floor of that new building," says Tanina Rostain, a former N.Y.L.S. professor, now at Georgetown University Law Center.

"But it doesn't have a faculty lounge. We were a little nonplussed, but it was clear that the students were Rick's priority."

How does one square that priority with the inexorable rise of N.Y.L.S.'s tuition, its population growth, its eyebrow-arching job data?

The question has puzzled more than a few academics and has produced a variety of theories. Perhaps the most compelling is that as both a crusader and a dean, Mr. Matasar has conflicting, even incompatible missions. The crusader thinks that law school costs too much. The dean has to raise the price of tuition or get murdered in the US News rankings. The crusader worries about the future of all those unemployed graduates. The dean has interest payments to make on a gorgeous new building.

"I'm 100 percent convinced that Matasar believes in his reformist agenda," says Paul F. Campos, a professor at the University of Colorado at Boulder School of Law and a Future Ed attendee. "But all reformers discover that they can't change a system by themselves. And by trying to survive in the current structure, he has ended up participating in the perpetuation of its most indefensible elements."

The tale of Mr. Matasar's career is not primarily about a gap between words and actions. Rather, it is a measure of how all-consuming competition in the legal academy has become, and how unlikely it is that the system will be reformed from within.

To be clear, there is little about the way N.Y.L.S. operates that is drastically different from other American law schools. What's happened there is, for the most part, standard operating procedure. What sets N.Y.L.S. apart is that it is managed by a man who has criticized many of the standards and much of the procedure.

In fact, Mr. Matasar has been quoted about wanting to upend legal education for so long it is impossible to believe he is doesn't mean it. But he can't act unilaterally. And what industry has ever decided that for the good of its customers, it ought to charge less money, or shrink?

"My salary," Mr. Campos said, "is paid by the current structure, which is in many ways deceptive and unjust to a point that verges on fraud. But as a law professor, I understand that what is good for me is that the structure stay the way it is."

DECRYING a business and benefitting from it at the same time — it puts you in a tough spot, Mr. Campos said, and one he speculated is even tougher for a dean. But it is not a spot that Mr. Matasar will be in for much longer.

Several weeks ago, Mr. Matasar sent an e-mail to his faculty stating that he would step down in the next academic year. He was considering a few different job options, he explained, all of them "outside of legal education."

For Law Schools, a Price to Play the A.B.A.'s Way

Patrick Murphy-Racey for The New York Times

Pete DeBusk, who founded a medical device company, DeRoyal Industries, is the main benefactor of Lincoln Memorial University. "A lot of people talk about Appalachia," he says, "but how many people do anything for it?"

By DAVID SEGAL
Published: December 17, 2011 121 Comments

KNOXVILLE, Tenn.

THE library at the Duncan School of Law may look like nothing more than 4,000 hardbacks in a medium-size room, but it is actually a high-tech experiment in cost containment. Most of its resources are online, and staples like Wright & Miller's Federal Practice and Procedure — $3,596 for the multivolume set — are not here.

"We have a core collection," says Sydney Beckman, the school's dean, "and if someone needs something else, we provide it."

Duncan, which opened two years ago, has 187 enrollees, all of whom have wagered that this library — and everything else about the school — is up to scratch. Because before these students can practice in every state, Duucan needs the seal of approval of the American Bar Association, the government-anointed regulator of law schools.

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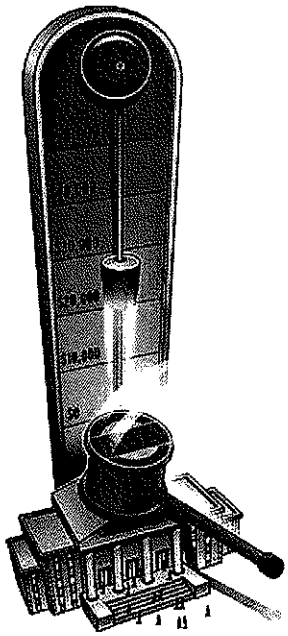

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Sydney Beckman is the dean of the Duncan School of Law.

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The Duncan School of Law, part of Lincoln Memorial University, is seeking provisional accreditation from the American Bar Association.

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John Van Beekum for The New York Times

Keri-Ann Baker, in Boynton Beach, Fla., said her student loan debt determined many aspects of her life.

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That means complying with a long list of standards that shape the composition of the faculty, the library and dozens of other particulars. The basic blueprint was established by elite institutions more than a century ago, and according to critics, it all but prohibits the law-school equivalent of the Honda Civic — a low-cost model that delivers.

Instead, virtually every one of the country's 200 A.B.A.-accredited schools, from the lowliest to the most prestigious, has to build a Cadillac, or at least come close. Duncan's library costs $750,000 a year to maintain — a bargain when compared with competitors.

Is it Cadillac enough for the A.B.A.?

"We'll see," Mr. Beckman says.

The debate about legal education has focused on tuition costs in the stratospheric layers of the law-school world. But what of the ground floor? Duncan hopes to draw students from economically distressed parts of the country, including the Appalachian Mountains of Tennessee, and sincere efforts have been made to keep overhead to a minimum.

But tuition here is still $28,664 a year. Witb living expenses and various fees, the student handbook warns, the total price tag for a year runs $50,000.

The reason, according to Pete DeBusk, a retired businessman and the school's main benefactor, is the A.B.A. standards. Without them, he says, Duncan could have cut its tuition in half, maybe by two-thirds.

"The rules, the regulations," Mr. DeBusk moans, recalling the day he first met with officials of the A.B.A. four years ago. "Massive. Just massive. 'We've got this standard, we've got that standard' — and the standards don't ever stop. I realized then that I'd bitten off a big bite, O.K.? And I'm still chewing on it!"

Anyone willing to invest $175,000 on a legal education, and hoping to earn a pile of money at a corporate firm, has plenty of options. But let's say that your ambition is to make a modest living, perhaps in an area that is struggling. Or that you'd rather not enter your mid-20s lashed to a six-figure loan.

If you want a diploma blessed by the A.B.A. — and you don't have rich parents, a plum scholarship or an in-state public law school with lots of taxpayer support — you are pretty much out of luck. And that is not just a problem for would-be attorneys. The lack of affordable law school


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Tad Wintermeyer rents space for his practice at Chattanooga Metropolitan Airport.

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options, scholars say, helps explain why so many Americans don't hire lawyers.

"People like to say there are too many lawyers," says Prof. Andrew Morriss of the University of Alabama School of Law. "There are too many lawyers who charge $300 an hour. There aren't too many lawyers who will handle a divorce at a reasonable rate, or handle a bankruptcy at a reasonable rate. But there is no way to be that lawyer and service $150,000 worth of debt."

This helps explain a paradox: the United States churns out roughly 45,000 lawyers a year, but survey after survey finds enormous unmet need for legal services, particularly in low- and middle-income communities. This year, the World Justice Project put the United States dead last among 11 high-income countries in providing access to civil justice.

It's not just that many lawyers are prohibitively expensive. It is that when it comes to legal expertise, there are not a lot of cheaper alternatives — not in the United States, anyway. Britain, on the other hand, has a long menu of options, including a tier of professionals called legal executives, who are licensed after getting the equivalent of a community college degree. Counsel is also available from nonlawyers at a variety of nonprofits. And you can buy a simple divorce over the Iuternet for a set fee, or pay for customized legal advice, online or by phone.

"In the U.S., people and businesses have only one place to go for all their legal help — lawyers who graduated from an A.B.A.-approved law school and who follow mostly A.B.A. rules about how they run their practice," says Gillian Hadfield, a professor at the Gould School of Law of the University of Southern California. "Everyone else who offers legal advice is engaged in the unauthorized practice of law."

To understand why Americans have one option for legal counsel, and why even start-up law schools are so expensive, yon need to understand the varions roles played by the A.B.A., say Ms. Hadfield and others.

With nearly 400,000 members and a staff of 939, the A.B.A. is the pre-eminent association of the profession. It also drafts and amends the Model Rules of Professional Conduct, which have been adopted by every state except California. Then there is the A.B.A.'s gatekeeper role in law school education, through its Section of Legal Education and Admissions to the Bar.

Detractors contend that these responsibilities allow the A.B.A. to behave like a guild — limiting competition and keeping the cost of legal edncation excessively high.

In 1995, those accusations were leveled by the Department of Justice in an antitrust suit that charged that A.B.A. standards had artificially inflated faculty salaries. The A.B.A. signed a consent decree, agreeing to a number of strictures intended to pry the process out of the hands of legal academics and end the fixing of salaries

Since then, the cost of law school tuition has soared, though at the high end, those prices are not the fault of the A.B.A. They are attributable to the prestige race prompted by U.S.

News & World Report's rankings of law schools, along with the wide availability of student loans.

What the A.B.A. can be blamed for, says George B. Shepherd, a professor at the Emory University School of Law, are exorbitant prices even at those schools that aspire to affordability. That, he maintains, is all about accreditation.

Consider business schools, Mr. Shepherd says.

If your dream is to work at Goldman Sachs, "you can go to Harvard Business School and spend a couple hundred thousand dollars, in tuition and forgone earnings," he says. "If you just want to move up the management ranks at Macy's, you can take part-time evening classes and spend $10,000 for a degree. The part-time school may not be accredited, but this gets to the difference — state law says you can become an attorney ouly if you attend an accredited law school. There's no law that says you ueed to attend an accredited business school in order to practice business."

Professor Shepherd says aspiring lawyers should have the same choices as aspiring executives and managers. Others say the case against the A.B.A.'s standards is that they are one-size-fits-all and overly rigid, which drives up the cost of both a diploma and of legal services.

A result is an expensive quandary for potential clients, says Professor Morriss of the University of Alabama. "Maybe you need a plumber," he says. "But you have to hire a brain surgeon."

Members of the A.B.A. Section say the point of the standards is not to raise the cost of law school, or to limit competition. The point is to ensure that lawyers are well trained and that the public gets quality legal services.

"It's pretty basic, and more or less the accreditation function that you'll see for any profession," says John O'Brien, chairman of the Section and dean of the New England School of Law. "You want to make certain that a school that is nationally approved is providing students with what they have a right to receive in terms of education. And at the other end you want to protect the public and make certain that graduates who offer themselves as qualified lawyers know what they're doing."

Mr. O'Brien goes on to offer a mental exercise for deans. "Look at the standards and ask: 'What is it that the A.B.A. requires that I wouldn't be doing anyway?' The answer is precious little, if anything."

IN early November, Mr. DeBusk and Mr. Beckman met in a lobby of the Duncan School of Law to offer a tour of the premises.

Mr. Beckman, the dean, was preparing for a hearing, set for Dec. 2, before Mr. O'Brien's council, to determine whether provisional accreditation would be granted to Duncan.

Provisional accreditation is an intermediate step on the way to full accreditation, and a school can apply for it only after it has been operating for at least a year. For this reason, accreditation isn't just expensive, it's also risky.

In the case of other professional schools, he says, "you go to the accreditors before you open your doors, and they work with you from the beginning. And if you're not in compliance, they will tell you. The A.B.A. says you can't even apply for accreditation until you've completed your first year. That's a huge difference."

Duncan, as it happens, does not need the A.B.A.'s imprimatur. Tennessee is one of the few states that allow graduates of law schools that have only state or regional

accreditation to sit for the bar. But to Duncan's backers, A.B.A. approval is considered crucial.

The school is part of Mr. DeBusk's alma mater, Lincoln Memorial University, and just the latest of many philanthropic projects that he hopes will turn L.M.U. into what he calls "a little Duke." That means appealing to applicants beyond Tennessee, including those in the Appalachians of Kentucky, where he grew up, in a Landola trailer home.

Mr. DeBusk earned a fortune through a medical device company he founded, DeRoyal Industries. Now, he says, he would like to spend the rest of his life and much of his wealth elevating others in the region.

"A lot of people talk about Appalachia," he says, "but how many people do anything for it?"

Duncan's largest single cost is its faculty, which, as with most A.B.A.-accredited law schools, consumes about half its total budget. This is the only expense that Mr. Beckman declines to detail, other than to say that he has three adjuncts and 16 full-time professors. Adjuncts are basically part-timers and far less expensive. But the A.B.A. prohibits an adjuncts-only faculty by requiring that full-time faculty teach a major portion of the entire curriculum. The standards don't come right out and state that tenure must be offered, but that is strongly implied. It's also implied that these professors get time to produce scholarship, such as law review articles. This is expensive. It obligates schools to give researching professors lower teaching loads and hire yet more instructors to cover all the classes that students need.

The more you look at a law school's ledgers, the more life in the legal academy seems a sweet deal. And it's been getting sweeter. Course loads have shrunk in the last couple of decades; the pay scale is high and has been rising. Median salaries are in the $120,000-to-$150,000 range, but superstars can earn $300,000 or more and the best of the best get pretty special housing deals. Over the summer, the New York University School of Law spent $5.6 million on two apartments in the West Village. A spokesman for the school said it had yet to determine whether the units would be combined and who would live there.

"It's a wonderful life," says Nancy Rapoport, a professor at the Boyd School of Law at the University of Nevada, Las Vegas, and author of an article for the Indiana Law Journal, "Eating Our Cake and Having It Too: Why Real Change Is So Difficult in Law Schools."

"You've got a lot of happy law professors, who don't want to change anything," Ms. Rapoport said. "They may not realize how precarious legal education is, and the legal market is, right now. That's human nature. Everything is going well. Let's keep it the way it is."

The argument for high salaries has always been that law professors could earn even more money at a law firm. As for tenure, one oft-cited reason for requiring it is that the most sought-after talent demands it, putting a school that doesn't offer tenure at a disadvantage.

"I need to get the best teachers out there," says Mr. O'Brien, the council chairman, "and the fact of the matter is that in order to do that, to compete for top-quality faculty, I have to offer tenure."

That said, Mr. O'Brien pointed out that the tenure requirement was under review and had been hotly debated for at least a dozen years. What is under consideration is nothing more than giving schools the option of not offering tenure. To David E. Van Zandt, former dean of the Northwestern University School of Law and now president of the New

School, this is evidence that the legal academy remains strikingly impervious to change.

"The standards are a damper on innovation," Mr. Van Zandt said. "They are a very powerful force and they are controlled by legal insiders, particularly faculty. And if they can control the regulations so that it benefits them, why not? They are no different than any other interest group out there."

Since the consent decree, the A.B.A. has required that a majority of members on accreditation-related committees be something other than law school faculty members. On Mr. O'Brien's council, for instance, 10 of the 21 members are either professors or deans. Most of the rest are lawyers or judges.

A.B.A. critics have long argued that faculty members, even if technically a minority, hold the most sway on accreditation-related committees because they care most about the committees' rulings. And whatever safeguards keep the bar association's Section on Legal Education independent and separate, it is still dominated by A.B.A. members.

"Let's suppose I wanted to start a newspaper in New York City," Mr. Beckman, the dean at Duncan, says. "But to get permission I need to go before a council, and The New York Times is sitting on that council. If I get permission, that means advertisers and resources are potentially going to detract from The Times. Well, there are a finite number of people applying to law school, and applications have been declining. The fact that other law schools get to decide whether we are accredited seems a little bit like a conflict of interest."

Mr. O'Brien maintains that the accreditation-related committees are scrupulously fair.

"I think the council that I sit on, and the Standards Review Committee that weighs all this, are legitimately trying to figure out what is best for legal education," he says. "I don't think they are looking to feather the nest of faculty. I have a lot of faith in the people on these committees. These are people with tremendous integrity."

THE A.B.A. won its role in legal education after a messy battle that began early in the 20th century. At the time, dozens of profit-making night schools were springing up, offering a more practical curriculum at a fraction of the tuition charged by established schools. From 1890 to 1930, the number of law schools tripled, and most of the increase came from night schools, according to Mr. Shepherd of Emory University and William G. Shepherd, authors of "Scholarly Restraints? A.B.A. Accreditation and Legal Education."

To say that these night schools and their graduates appalled the A.B.A.'s core membership hardly captures the horror. Thousands of new lawyers were suddenly flowing into the market, many of them poor immigrants. Some of these night-school graduates were accused of incompetence, though notably those accusations came from the legal establishment, both in the field and in academia. The dean of Yale described night schools as a "rank weed" and urged their closure.

The A.B.A. spent more than 30 years working toward that goal. In its way stood a formidable obstacle named Gleason Archer. A native of Maine who started as a cook for lumberjacks, Mr. Archer founded the Suffolk Law School in Boston, and by 1928 it was one of the largest law schools in the world, with 4,000 enrollees.

"Opportunity's open door" was Suffolk's motto. The school catered to middle- and lower-class men who worked during the day.

"I'd run up Beacon Hill in my overalls with greasy hands," wrote George Fingold, a Suffolk graduate who served as attorney general of Massachusetts in the 1950s. "I'd wash and change into clean clothes and then run to class. For me, Suffolk Law was my last hope to make something of myself."

The A.B.A. made little headway against night schools, and for years its list of approved institutions was all but ignored — until the Depression. With legal work evaporating, it wasn't hard to persuade those scraping by in the profession that it was time to curtail production of new competitors.

By 1935, the A.B.A., with an assist from the Association of American Law Schools, had persuaded nine states to adopt rules that required a degree from an approved law school. In the next six years, 32 more states followed. Victory for the A.B.A. was complete when the G.I. Bill mandated that federal loans for returning soldiers could be used only at A.B.A.-approved law schools.

In 1952, the federal government designated the A.B.A. as the official accrediting body of law schools. By then, dozens of unaccredited schools had already closed. Suffolk was nearly one of them. The school almost failed during World War II, and in 1948 its board yielded to the inevitable and fired Gleason Archer. A decade later, Suffolk was granted A.B.A. accreditation.

Mr. Archer's vision of low-cost legal education did not vanish. It lives on in places like the Nashville School of Law, a night school that started as the Nashville Y.M.C.A. Night Law School in 1911. Nashville's graduates are not recruited by large corporate firms. Most will remain in Tennessee, because only a few states deem a diploma from a school that lacks A.B.A. accreditation as a ticket to practice.

But tuition costs $21,000 — in total, for all four years it takes to complete the degree. The reasons? Nobody has tenure. There are no full-time professors. The library costs $65,000 a year.

"Our mission from Day 1," says Virginia M. Townzen, associate dean, "was to provide a quality, affordable education to those who might not otherwise be able to attend law school."

The graduates get high marks from local judges, including Lawrence H. Puckett of the 10th Judicial District of Tennessee. "Some of our more outstanding practitioners have come through the Nashville School," he said. "Many of the teacbers are judges that I know, and I'm sure they are excellent instructors. But I think it's also the quality of students. They persevere while also holding down a job. That speaks highly of their character."

One receut Nashville graduate is Tad Wintermeyer, who was a 26-year-old pilot and airplane mechanic when he enrolled in 2005. His monthly cost for tuition "was like an expensive utility bill," he says. In 2009, he left with a J.D. and no debt. He took judicial appointments as a public defender, which paid about $25,000 his first year of practice.

"Almost all of my clients were indigent, or low income, or on some kind of government assistance," he says. "It was incredibly rewarding work."

More recently, he started his own practice, renting a $300-a-month space at Chattanooga Metropolitan Airport. Some of his clients now pay his standard $150-an-hour fee, and he does free legal work for veterans of the Iraq and Afghanistan wars, whom he has met through his role as a judge advocate general iu the Fourth Regiment of the Tennessee State Guard.

"I would not be able to make the significant contribution of my time to pro bono legal service and as a voluuteer member of the State Guard," he wrote in an e-mail, "if I had to worry about a mountain of school debt hanging over me."

What Mr. Wintermeyer has given np in prestige, interstate mobility and income, he says,

he has gained in peace of mind, not to mention the freedom to donate his time. There are, of course, thousands of graduates of A.B.A.-accredited schools who are every bit as satisfied with their degrees.

But compare Mr. Wintermeyer's circumstances with those of Keri-Ann Baker, who graduated from the Loyola University School of Law in Chicago in 2004. Tuition was about $33,000 a year, Ms. Baker says, and she left with $200,000 in loans — about half spent on tuition, the other half on books, fees and living expenses. She quickly abandoned her long-held ambition to become a prosecutor because the pay in the Florida county where she and her husband settled was $42,000 a year. She now earns $90,000 a year at a midsize corporate firm. It is barely enough money.

"Right now, loans control every aspect of my life," she said. "Where I practice, the number of children I'll have, where I live, the type of house I can live in. I honestly believe I'll be a grandparent before I pay off my loans. I have yet to make even a dent in them."

THIS has been a difficult year for the A.B.A. It has been peppered with insistent letters by members of Congress — most notably Senators Barbara Boxer, Democrat of California, and Charles E. Grassley, Republican of Iowa — over a number of accusations of failings. Among the contentions is that the organization has not done enough to prevent law schools from overstating the current job prospects of graduates.

The A.B.A. has lobbed back lengthy and detailed letters to Capitol Hill, which appear to have done little to lower the temperature. Threats of Congressional hearings have surfaced iu the news media.

In this volley of correspondence, the A.B.A. has noted that it would be an antitrust violation to cap or limit the number of law schools. That is true, but it suggests that the debate about legal education is focused in the wrong place. What ails the law school market isn't a lack of regulation, says Clifford Winston, a senior fellow at the Brookings Institution and co-author of a book, "First Thing We Do, Let's Deregulate All the Lawyers." He says it's the near-total absence of competition.

"The A.B.A. is a powerful group that has a strong status-quo bias," he says. "Getting them to turn things around is obviously quite difficult because they're looking out for their own interests."

Still, Ms. Hadfield at U.S.C. calls herself an optimist. She thinks federal and state governments could set up other accrediting agencies and licensing bodies to oversee training and licensing of other types of legal providers. (In England, eight different bodies license legal services.)

Her vision isn't a free-for-all, where anyone can hang a shingle; it is a range of options that would entail an array of educational degrees and a broad spectrum of prices and formats for legal services.

"The more we talk about this," she says, "the more we can dislodge the idea that the highest value is to provide a state bar licensed lawyer from an A.B.A.-accredited school to everyone who needs legal help."

ON Dec. 2, Mr. Beckman and six colleagues from Duncan traveled to a hotel in San Juan, P.R., where the A.B.A. held its latest council meeting. The school had 15 minutes at a hearing to offer its arguments for provisional accreditation.

"This is just a pet peeve," Mr. Beckman said last week, "but there is all this talk about the cost of legal education, and they make us fly to Puerto Rico and meet at the Ritz-Carlton?"

After his presentation, Mr. Beckman and others answered a number of questions, including a few about the job market for lawyers in east Tennessee. This bothered Mr. Beckman hecause, for antitrust reasons, employment prospects are not part of the A.B.A.'s standards. He pointed that out to the council.

"They didn't really respond," he says.

Nor did they hint at whether they would give Duncan a thumbs-up. In the past, law schools have learned a few days after their hearings. But siuce Dec. 2, there has been nothing. "The last thing we heard — and they didn't mean this to be rude or anything — was at the end of the meeting in Puerto Rico," Mr. Beckman says. "They said, 'You can let yourselves out.' "

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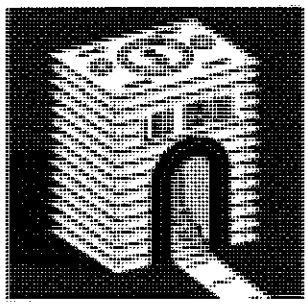
The Economics of Law School

BY STEVEN M. DAVIDOFF


Harry Campbell

Law schools have come under fire during these tough economic times, with critics saying that they leave too many graduates in debt, chasing too few employment opportunities. But it could be worse. Consider the plight of veterinarians.

The average tuition and expenses for a veterinary degree at a private school has doubled in the last 10 years to over $200,000, well above the typical cost of law school. Yet their pay remains moribund at an average of $66,469 — much less than lawyers.

But unlike law schools, veterinary school is not regularly being called a scam or bubble. In fact, applications to veterinary schools were up about 2 percent last year.

Meanwhile, the number of applicants to law school is down 13.7 percent for this year's class after a 10 percent drop from 2011, according to the Law Students Admissions Council.

Perhaps today's youth are more eager to defend animals than people. Or maybe lawyers are better at voicing their dissatisfaction.

Regardless, the trend away from law schools has prompted much discussion about what structural changes may be needed. Should law schools charge less? Should they strip down their programs? Should they abandon their collegiate ivory towers in favor of a trade-school approach by having "real world" lawyers teach practical skills?

None of these solutions, however, are likely to improve the economics of law school.

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I believe that law students do need more training in practical skills, but a focus on that is probably only going to make law school more expensive.

A single law professor can easily teach 70 students in one contracts law class, but a clinical professor is limited to six to 10 people a class. If reducing costs is the goal, then more clinical education will only increase it.

A second alternative is to pay professors less, or replace them with practitioners who would also be paid less. The average senior law professor who is not at a top-ranked school makes $130,000 to $150,000 according to a survey by the Society of American Law Teachers. It's a nice salary, but certainly not comparable to what a law firm partner earns.

This year, the law school at Ohio State University, where I teach, hired a former editor in chief of The Michigan Law Review and a Supreme Court clerk. Both could be paid far more in the private sector, where the hiring bonus alone for a Supreme Court clerk can be $280,000. If the salaries for their positions are even further reduced to make Ohio State's law school cheaper, they are likely to be replaced by less qualified people.

For this reason, good practitioners are likely to be even more expensive than law professors. After all, the average partner at a big law firm can make well over a million dollars a year.

So what if universities hire less qualified, lower-paid practitioners instead, you may ask? Well, quality matters.

U.S. News & World Report lists 15 law schools where tuition is currently less than $15,000 a year. CUNY School of Law, in New York City, has an in-state tuition of $12,090 and is ranked in the third tier by U.S. News. But there is not a flight of applications to these lower-cost schools from higher-paying ones. Instead, students still flock to top-tier schools with the highest-quality professors. In 2011, CUNY's applications were down from the year before.

Creating less expensive law schools with less-qualified staff may give graduates a degree, but that may not better qualify them for jobs. This points to another inherent problem with critiques of law schools — all are lumped together. This points to another inherent problem with critiques of law schools — all are lumped together.

There is, however, a qualitative difference between the top 15 law schools and the rest. These elite schools charge sky-high tuition that can exceed $50,000 a year. But graduates have a good chance of securing a coveted job with a starting salary of $165,000 a year — a salary that is likely to improve as the economy does. For a 26-year-old, that's certainly good money. Duke, for instance, which was No. 11 on the U.S. News rankings, said its graduates had a 95 percent employment rate last year, with an average private sector salary of $160,000.

There may be valid criticism about lower-ranked law schools, particularly those U.S. News places in the third and fourth tier. Such private schools often charge significant tuition but do not obtain the same employment outcomes. The question is whether changes can be made to lower their costs, and whether this will lead to better opportunities for their graduates.

The problem of law school is one that is ubiquitous to higher education — the current model is inherently expensive but even today, lower-priced alternatives don't seem to meet the standards or be desired by many students.

It is here where revolutionary technologies like online learning may come into play. If it becomes accepted that many basics like contracts law can be easily

taught by one professor online to thousands of students, then a law school can charge a lot less. But this is still mostly a theoretical change embraced by those outside academia that has yet to sweep universities. Even with one online course, some local presence will be needed to facilitate learning, particularly if there is skills training involved.

It may not be simple enough to just pin the blame on the costs of law school education. For 2011 law school graduates, as of nine months after graduation, only 65.4 percent were employed in jobs requiring passage of the bar. And law schools should learn to be more innovative, as other types of graduate programs are doing.

Law schools have also hurt themselves badly by failing to fully disclose certain statistics, including their employment rates. It is clear that the number of lawyers in the United States will fall as fewer people apply to law school. But this trend will probably shrink enrollment, not decrease the number of schools over all.

In the longer term, the question is whether there will be a recovery in law jobs as the economy heals. There is hope that will be the case. One study has found that the average lawyer will earn about $4 million — or twice as much as someone with a bachelor's degree — over their lifetime of employment. In addition, law school provides a general education that is useful in other areas. Both presidential candidates have law degrees, as do the chief executives of a substantial number of companies in the Standard & Poor's 500-stock index.

A hard look at reform appears to be a worthy goal, but any changes should consider whether they will actually reduce costs, and provide something students want. The problem of law school is thus the problem that all schools of higher education, even veterinary school, face.

Steven M. Davidoff, writing as The Deal Professor, is a commentator for DealBook on the world of mergers and acquisitions.

A version of this article appeared in print on [illegible] of the New York edition with the headline: The Economics of Law School.

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Task Force on the Future of Legal Education
Initial Charge

The Task Force will study the key challenges facing the delivery of legal services and the provision of legal education in the United States, such as:

- The impact of economic trends on the rising cost of legal education and declining legal employment prospects
- Innovations, methods and advocacy efforts by state and local bar associations and other groups to reduce the cost of legal education, improve practical skills training, match new lawyers with job opportunities, and provide student loan debt relief
- The impact of structural changes in law practice to the nature of lawyer work and the number and distribution of attorneys in the bar

The Task Force will make recommendations on how the ABA and the legal profession can best address these issues.[1]

[1] The ABA Section of Legal Education & Admissions to the Bar Council and its Accreditation Committee are recognized by the U.S. Department of Education (DOE) as the national accrediting agency for programs leading to the J.D. In this function, they are separate and independent of the ABA, as required by DOE regulations. Consequently, the Task Force may only make recommendations to the ABA Section of Legal Education & Admissions to the Bar Council and its Accreditation Committee.

Questions to Guide Subcommittee Work

1. Subcommittee on Costs and Economics of Legal Education:

What problems does the ***cost of legal educatio***n cause or promote for the following:

- Prospective law students
- Current students
- Recent graduates
- Law school faculty and staff
- Universities of which law schools are part
- The legal profession
- Clients
- Society at large.

What actions or plans can be undertaken (a) immediately or (b) over the next 5 years by or involving:

- Law schools and the universities of which they are part
- The ABA
- Other professional organizations
- Bar admissions organizations
- State governments
- Federal government units

to remedy these problems?

2. Subcommittee on Delivery of Legal Education and Its Regulation:

What is (or should be) the ***functions and goals of U.S. law schools*** in the next 25 years?

How should this affect:

- The missions of individual law schools
- The nature and demographics of students served
- The nature of programs of legal education
- Relationships of law schools with universities
- Relationships of law schools with the legal profession
- The cost and availability of legal services
- The demographics of the legal profession
- Law school finance
- The nature and role of the law faculty
- Law school accreditation.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MICHAEL ERIC HEDLUND,

Plaintiff,

v.

THE EDUCATIONAL RESOURCES INSTITUTE, INC. and PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY,

Defendants.

Civil No. 11-6281-AA
OPINION AND ORDER

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AIKEN, Chief Judge:

Defendant Pennsylvania Higher Education Assistance Agency ("PHEAA") appeals from the decision of the bankruptcy court, which partially discharged government-insured student loans held by plaintiff-appellee Michael Hedlund ("Hedlund"). The bankruptcy court held that full repayment of the loans would cause Hedlund an "undue hardship" within the meaning of 11 U.S.C. § 523(a)(8). It therefore discharged all amounts that Hedlund owed to PHEAA in excess of $32,080. For the reasons set forth below, the bankruptcy court's decision is reversed.

BACKGROUND[1]

Hedlund obtained a bachelor of science degree in business administration from the University of Oregon in 1992 and a law degree from Willamette University in 1997. Excerpt of Record ("ER") 86, 406. He financed law school by obtaining federal Stafford student loans totaling $85,245.87. ER 34, 408. Interest accrues on the loans at a rate of 4.22% per annum. ER 34.

Hedlund's father and brother are attorneys in Klamath Falls,

[1] On remand in 2010, the bankruptcy court gave the parties an opportunity to reopen the record; both parties objected. ER 340-343. As such, the facts are set forth as they existed on the record at the time that Hedlund filed for bankruptcy in 2003 and, accordingly, are relayed in the present tense.

Oregon, where Hedlund resides. ER 133, 138, 173. Hedlund obtained a position with the District Attorney's office in Klamath Falls after graduating from law school; he planned on staying at the District Attorney's office for a couple of years and then working at his father's firm. ER 143, 407. Hedlund, however, was unable to pass the bar exam, despite sitting for the test twice, once in 1997, and again in 1998. ER 143, 407. On the morning of the third scheduled bar exam in 1999, Hedlund locked his keys in the car and never made it to the test. ER 144, 407. He has no plans to retake the exam. ER 144.

Because he was unable to practice law, Hedlund filed for and received several extensions of his loan obligation. ER 409. His loans went into repayment status in January 1999; at that time, Hedlund submitted an application for loan consolidation. Id. While his application was being processed, Hedlund was instructed by PHEAA "not to worry if he got notices that his payments were late." Id. After receiving several such notices, Hedlund checked on the status of his application, only to be informed that his application had not been received; further, because he was not current on his payments, he could not re-apply for consolidation. Id. Hedlund chose not to apply for the William D. Ford Income Contingent Repayment Program ("ICRP"), believing he did not qualify for that program. ER 170, 193-94.

In 1999, Hedlund obtained a job as a juvenile counselor at the Klamath County Juvenile Department. ER 133, 407. Despite attaining full-time employment, Hedlund did not make the requisite

$800 per month payments to PHEAA. ER 310, 410. In fact, he made only one payment on his debt prior to filing for bankruptcy: in September 1999, Hedlund advanced $954.72 to PHEAA using the proceeds of a $5000 inheritance. ER 34, 191, 410. Subsequently, Hedlund made a one-time payment offer to PHEAA of $5000, in exchange for more favorable loan terms and waiver of certain assessed fees; PHEAA declined this offer. ER 410.

In 2000, Hedlund got married. ER 408. In 2001, Hedlund and his wife had their first child. Id. Hedlund's spouse works at a flower shop, one day per week for six hours, earning $8.50 per hour. ER 88, 309, 408. Mrs. Hedlund has the potential to work more but chooses not to because she prefers to stay at home with their daughter. ER 153, 309, 408.

In January 2002, after over two years of nonpayment, PHEAA administratively garnished Hedlund's wages at $258 per month, ultimately collecting $4,272.52. ER 34, 191, 410. In the spring of 2003, a second student loan creditor garnished more than $1000 from Hedlund's bank account. ER 410.

Unable to simultaneously manage both garnishments, on May 7, 2003, Hedlund filed a petition for relief under Chapter 7 of the Bankruptcy Code. ER 48-49, 410. On June 16, 2003, Hedlund filed an adversary proceeding against PHEAA and the Educational Resources Institute, Inc.[2], seeking discharge of his student loan obligations

[2] The Educational Resources Institute, Inc. settled with Hedlund prior to trial in 2003; accordingly, they are not a party to this appeal.

pursuant to 11 U.S.C. § 523(a)(8). ER 1-3, 48-49. At that time, Hedlund was thirty-three years old, married, with one dependent child; he was healthy, had no physical or mental disabilities, and had no drug or alcohol addictions. ER 172. His annual income was $40,320. ER 71, 309, 413.

Prior to trial, PHEAA offered Hedlund his choice of three different repayment plans, all designed to reduce his monthly payments. ER 34, 42, 191-92, 411. Each reamortization offer was over a thirty year term, with monthly payments varying between $307 and $446 per month[3]. ER 42, 311. Hedlund rejected these offers. ER 34, 191-92, 411.

Applying Brunner[4], the bankruptcy court partially discharged Hedlund's debt to the extent it exceeded $30,000. ER 8-19. PHEAA appealed to the Bankruptcy Appeals Panel ("BAP"), which reversed the bankruptcy court's decision and found Hedlund able to repay his debt. ER 29-32, 307-25.

Hedlund then appealed to the Ninth Circuit, which vacated the BAP's judgment and remanded the case to the bankruptcy court "to reconsider all of the evidence in light of the Brunner test, and to make more complete findings on each of the three factors under the Brunner test so as to facilitate appellate review of whether

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[3] Option 1: $417.67 per month for 359 months plus one payment of $414.79; option 2: $307.43 per month for 24 months, $432.56 per month for 335 months, and one payment of $430.88; option 3: $307.43 per month for 24 months, $374.11 per month for 36 months, $446.11 for 299 months, and one payment of $444.31.

[4] Brunner v. N.Y. State Higher Educ. Servs. Corp. (In re Brunner), 831 F.2d 395, 396 (2d Cir. 1987).

Hedlund has met the 'undue hardship' requirement of § 523(a)(8)." ER 327. On October 20, 2010, the parties reargued this case before Bankruptcy Judge Radcliffe, who also presided over the initial trial. ER 329-55. Judge Radcliffe passed away before issuing his findings; accordingly, the case was then reassigned to Judge Brandt[5]. ER 356-396.

Bankruptcy Judge Brandt issued his ruling on May 19, 2011; his opinion was virtually identical to Judge Radcliffe's, except that, consistent with the Ninth Circuit's remand order, Judge Brandt made additional findings. ER 400-34. As such, Judge Brandt held that Hedlund met all three of the Brunner elements and therefore was entitled to discharge approximately $55,000 of his indebtedness to PHEAA. ER 397, 445-46. PHEAA now appeals the bankruptcy court's decision. ER 442-447. The appeal initially proceeded before the BAP, but Hedlund filed a timely election to have it proceed before this Court. ER 447.

STANDARD OF REVIEW

On appeal from the Bankruptcy Court, the U.S. District Court independently reviews findings of fact for clear error, while conclusions of law are reviewed de novo. Schwarzkopf v. Briones (In re Schwarzkopf), 626 F.3d 1032, 1035 (9th Cir. 2010). Mixed questions of law and fact, such as the proper application of the legal standard in determining whether a student loan is dischargeable, are also reviewed de novo. Educ. Credit Mgmt. Corp.

[5] Judge Brandt is in recall status for the United States Bankruptcy Court in the Western District of Washington.

v. DeGroot, 339 B.R. 201, 214-15 (Bankr.D.Or. 2006) (citing Rifino v. United States (In re Rifino), 245 F.3d 1083, 1087 (9th Cir. 2001)).

DISCUSSION

PHEAA argues on appeal that the bankruptcy court erred in ruling that a healthy thirty-three year old making $40,320 per year, married with one child, with an undergraduate degree in business administration and a juris doctorate, with no physical or mental disabilities, and with the potential to increase his household income and to decrease his expenses, is entitled to discharge approximately $55,000 of his student loans as an undue hardship under 11 U.S.C. § 523(a)(8).

I. Student Debt Overview

Before reaching the substantive merits of PHEAA's appeal, I will address a preliminary matter of great importance to today's student-debtors. Students with advanced degrees, specifically juris doctorates, are facing a quagmire. The law school milieu has changed drastically in the past two decades; universities admit more students, education costs continue to increase, and post-graduate positions remain scarce. As such, it would be remiss for this Court to address Hedlund's attempt to discharge his law school debt without first putting these changes into context. The Court, however, is mindful of the fact that when Hedlund graduated in 1997, these issues were not yet implicated to the degree that they are today.

Attending law school was a guaranteed way to ensure financial

stability. For current graduates, however, this is no longer true, due in large part to the high cost of law school tuition. Forbes magazine reports that, from 1989 to 2009, the average cost of college tuition increased by 71%; in the same amount of time, the cost of law school tuition increased 317%. In addition, law school tuition has risen at twice the rate of inflation and at four times the rate of wage growth. Accordingly, with the exception of the independently wealthy, students must take out loans in order to finance their degrees.

While the exact amount of debt that a student must incur in order to obtain a law degree depends on a number of factors, the current national estimate is $100,000. Despite the relatively low cost of living, Oregon's students face a similar amount of debt upon graduation. Based on U.S. News and World Report's 2010 census, the average Lewis and Clark law student graduated with $105,928 in debt, the average University of Oregon law student graduated with $91,353 in debt, and the average Willamette University law student graduated with $91,347 in debt.

While the cost of law school is, alone, problematic, making matters worse is the post-graduate job market; the probability of employment upon graduation, especially at a reasonably well-paying job, is low. Despite reports that the economy is improving, the number of entry-level associate positions continues to shrink. By 2009, law students, even from top-tier law schools, were competing for half as many openings as the year before. As a result, the New York Times deemed 2009 "the most wrenching job search season in

over 50 years."

Job prospects are not likely to improve in the immediate future. In fact, for the class of 2011, there are even fewer employment opportunities, as those graduates must compete against unemployed graduates from previous years for the same limited number of entry-level positions. For example, in 2010, there were 382,828 applicants for clerkship positions with 874 federal judges, each of whom hires one to three clerks per year. The New York Times attributed the overwhelming abundance of candidates to the fact that "more graduates [from previous years] are also competing for (and getting) these positions." The most recent statistics indicate that, through the year 2018, there will only be 25,000 openings for the law schools' 45,000 new graduates each year.

Further, salaries continue to drop. The National Association for Law Placement reported in its 2010 Associate Salary Survey that, in the private sector, annual compensation again declined for first year associates; the "overall median first-year salary was $115,000, and ranged from $72,000 in firms of 2-25 lawyers to $117,500 in firms of 501-700 lawyers, and $160,000 in firms of more than 700 lawyers." In the public sector, starting salaries were drastically less, beginning at around $45,000.

While seemingly high, the overall national median is in no way representative of Oregon, due in part to the fact that the majority of Oregon firms are small to mid-sized, with less than twenty-five attorneys. However, even Oregon's largest firms compensate their new hires at a much lower rate; first year associates at firms such

as Lane Powell or Tonkon Torp are typically offered between $80,000 and $95,000 per year.

Accordingly, new Oregon attorneys should expect to be paid substantially less than the salaries reported in the 2010 Associate Salary Survey. In 2010, the median private sector starting salary was $58,571 for Willamette University College of Law graduates, $62,562 for University of Oregon School of Law graduates, and $83,000 for Lewis and Clark Law School graduates. Oregon's 2010 median public sector starting salary, however, was consistent with the national average.

As such, because Oregon law school graduates cannot expect six-figures, even those lucky enough to secure salaried positions still face an unmanageable amount of debt. The prospects of repaying these loans are far bleaker for those that do not find immediate employment, as these students remain responsible for making staggering monthly repayments[6]. As a result, many are forced to consolidate their loans or reorganize pursuant to the ICRP or a similar income-based repayment plan. While lowering monthly payments, these plans extend the loan term to twenty-five years, at the end of which any reaming balance is discharged. Any amounts discharged at the end of the loan term, however, may result in tax liability. Regardless, this is the best option for a number of students to repay their loans, and the best chance lenders and the government have of being repaid.

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[6] Assuming $100,000 of debt at an interest rate of 7%, graduates are liable for payments of around $1200 per month.

Nevertheless, the foregoing discussion reveals that the current higher education system has become untenable and unsustainable; as a result, increasing numbers of students will be forced to file for bankruptcy. As such, the student loan issue is one that extends beyond the outcome of this decision and will continue unabated until it is addressed at a systemic level. Bearing this in mind, the Court now turns to the issue of whether Hedlund's student loans are dischargeable[7].

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[7] Section I is based on the following sources: U.S. News & World Report, Willamette Law School Overview, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/willamette-university-collins-03136; U.S. News & World Report, University of Oregon Law School Overview, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/university-of-oregon-03135; U.S. News & World Report, Lewis and Clark Law School Overview, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/lewis--clark-college-northwestern-03134; U.S. News & World Report, Best Grad Debt Programs, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/grad-debt-rankings; National Association for Law Placement, 2010 Associate Salary Survey, http://www.nalp.org/uploads/PressReleases/2010NALPSalPressRelease.pdf; Gerry Shih, Downturn Dims Prospects Even At Top Law Schools, N.Y. Times, August 25, 2009, available at http://www.nytimes.com/2009/08/26/business/26lawyers.html?pagewanted=1&ref=lawschools; David Segal, Law School Economics: Ka-Ching!, N.Y. Times, July 16, 2011, available at http://www.nytimes.com/2011/07/17/business/law-school-economics-job-market-weakens-tuition-rises.html?pagewanted=1&_r=1&sq=law%20school%20economics&st=cse&scp=2; Kathy Kristof, The Great College Hoax, Forbes Magazine, February 2, 2009, available at http://www.forbes.com/forbes/2009/0202/060.html; Catherine Rampell, Judges Compete For Law Clerks on a Lawless Terrain, N.Y. Times, September 23, 2011, available at http://www.nytimes.com/2011/09/24/business/judges-compete-for-law-clerks-on-a-lawless-terrain.html?pagewanted=1&_r=1&ref=lawschools; Martindale-Hubbell, Portland Law Firm Listings, http://www.martindale.com/corporate-law/s-oregon/Portland-law-firms.htm; Find Law, Firm Salaries & Other Statistics, http://www.infirmation.com/shared/insider/payscale.tcl?state=OR; Elie Mystal, The Student-Loan Racket: Now in One Easy-to-Understand Graphic, Above the Law (Sept. 3, 2010),

II. Analysis

Student loan debt obligations are presumptively nondischargeable in bankruptcy absent a showing of "undue hardship" derived through an adversary proceeding. See 11 U.S.C. § 523(a)(8). To determine whether excepting student debt from discharge will impose an undue hardship, the Ninth Circuit applies the three-part test first enunciated in Brunner. See Pena v. United Student Aid Funds, Inc. (In re Pena), 155 F.3d 1108, 1111-12 (9th Cir. 1998) (adopting the Brunner test).

Under Brunner, the debtor must prove that: 1) he cannot maintain, based on current income and expenses, a "minimal" standard of living for himself and his dependents if required to repay the loans; 2) additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period; and 3) the debtor has made good faith efforts to repay the loans. Id. at 1111; Brunner, 831 F.2d at 396. "[T]he burden of proving undue hardship is on the debtor, and the debtor must prove all three elements before discharge can be granted." Rifino, 245 F.3d at 1087-88 (citation omitted).

If, however, the debtor can establish all three prongs, the court may exercise its equitable authority to partially discharge that portion of the student loan that the debtor could not repay without imposing an undue hardship. Saxman v. Educ. Credit Mgmt.

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http://abovethelaw.com/2010/09/the-student-loan-racket-now-in-one-easy-to-understand-graphic/; Stanley Fish, The Bad News Law Schools, N.Y. Times, Feb. 20, 2012, available at http://opinionator.blogs.nytimes.com/2012/02/20/the-bad-news-law-schools/.

Corp. (In re Saxman), 325 F.3d 1168, 1174-75 (9th Cir. 2003).

A. Minimal Standard of Living

The first prong of the Brunner test requires Hedlund to establish that he could not maintain, based on his current income and expenses, a minimal standard of living if he were required to repay PHEAA. Id. at 1173; see also Rifino, 245 F.3d at 1088. More than "simply tight finances" and "temporary financial adversity" must be demonstrated; however, a showing of "utter hopelessness" is not required. Rifino, 245 F.3d at 1088.

Rather, determining what constitutes a minimal standard of living for each individual debtor requires a case-by-case assessment; "the test is whether it would be 'unconscionable to require the debtor to take steps to earn more income or reduce [his] expenses' in order to make payments under a given repayment schedule." Carnduff v. U.S. Dep't of Educ. (In re Carnduff), 367 B.R. 120, 127 (9th Cir. BAP 2007) (quoting Pa. Higher Educ. Assistance Agency v. Birrane (In re Birrane), 287 B.R. 490, 495 (9th Cir. BAP 2002); and United Student Aid Funds, Inc. v. Nascimento (In re Nascimento), 241 B.R. 440, 445 (9th Cir. BAP 1999)).

In analyzing the first element, the bankruptcy court determined that Hedlund "had maximized his income"[8] and that it

[8] The Court agrees with Hedlund that a debtor is not ordinarily required to prove maximization of income as part of the first Brunner prong. Educ. Credit Mgmt. Corp. v. Mason (In

would be "unconscionable" to require him to work more than forty hours per week. ER 413, 415. Nevertheless, the bankruptcy court resolved that "it would be reasonable and not unconscionable to require Ms. Hedlund to work three days rather than one day per week, particularly in light of the availability of free child care from grandparents." ER 416. The court also found that Hedlund could reduce his monthly expenses by slightly abating his recreation, clothing, and child care budgets. ER 417-19.

After factoring in these income and cost adjustments, the court concluded that Hedlund had a monthly surplus of $465, which is insufficient to make the requisite monthly loan payments. ER 419. Accordingly, the bankruptcy court held that Hedlund fulfilled the first Brunner prong. Id.

On appeal, PHEAA contends that the court incorrectly applied the legal standard under this prong of Brunner because Hedlund failed to minimize his expenses. Specifically, PHEAA contends that the bankruptcy court erred by rejecting the BAP's analysis, which held that Hedlund's cable, internet, cell phones, gym membership, and new car payments were all luxury items that "warrant adjustment, as a debtor who would show 'undue hardship' must 'adjust [his] lifestyle to allow [him] to make payment on [his]

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re Mason), 464 F.3d 878, 882 n.3 (9th Cir. 2006). Because the Ninth Circuit expressly directed the bankruptcy court to assess whether, in regard to the first element, "Hedlund could increase his income by taking on a part-time job or [by] his wife working part time," this Court finds that it was not improper for Judge Brandt to make such findings on remand. ER 327. Further, if making such a determination was error, it was harmless, since the bankruptcy court found that Hedlund met his burden in regard to the first Brunner prong.

student loan." ER 315 (quoting Nascimento, 241 B.R. at 446). By reducing or eliminating some of these non-essential costs, PHEAA asserts that Hedlund could add approximately $600 per month to his available funds, which, combined with the additional income generated by his wife, yields more than enough to make full payments on the student debt. ER 316.

Even though PHEAA contends that it is challenging the bankruptcy court's application of the proper legal standard, the calculation of cost reductions is factual in nature and, as such, "'is a matter properly left to the discretion of the bankruptcy court.'" Mason, 464 F.3d at 882 (quoting Pena, 155 F.3d at 1112). Accordingly, this Court cannot disturb those findings unless clearly erroneous. See, e.g., Biranne, 287 B.R. at 496.

A finding is clearly erroneous when, although there is evidence to support it, the reviewing court "is left with the definite and firm conviction that a mistake has been committed"; regardless, this standard "does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently." Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 573 (1985) (citations and internal quotations omitted). Rather, if the lower court's "account of the evidence is plausible in light of the record viewed in its entirety," the reviewing court may not reverse. Id. at 574.

If permitted to revisit this element anew, this Court would agree with the BAP's analysis and further decrease Hedlund's

expenses by eliminating items which it construes as immoderate. For example, Hedlund expends $150 per month on transportation, even though he, his spouse, and extended family live in Klamath Falls and he resides slightly over a mile from his place of work. ER 366. As such, this cost is excessive in light of the circumstances. In addition, this Court, like the BAP, observes that leasing a new car, especially when Hedlund owns outright a functioning 1990 Chevy Blazer, is not a necessary expenditure. Further, Hedlund's fixed-line telephone is superfluous given that both he and his wife have cell phones. ER 72.

Regardless, this determination falls within the bankruptcy court's sole discretion. Here, the court found that, because the car that Hedlund owned outright was "not sufficiently reliable for out of town trips, . . . I don't think that one could reasonably require a family not to have one non-luxury vehicle for reliable transportation." ER 417-18. As such, the court considered the new car, which costs $354 per month, as reasonably necessary to maintain a minimal standard of living. ER 418. This is a plausible interpretation of the evidence. However, there were no specific findings on the record regarding the other disputed expenses. Nevertheless, at trial and the rehearings, Hedlund presented evidence regarding the amounts of various expenditures; presumably the bankruptcy court heard and considered this evidence when making its finding regarding the first prong of the Brunner test.

In addition, the Ninth Circuit has declined to find clear

error where the bankruptcy court determined that a debtor's standard of living would fall below a minimal level if required to repay her student loans, even though her budget included cable television, a new car, and private schooling for her child. See, e.g., Rifino, 245 F.3d at 1088. As such, "a bankruptcy court's refusal to decline a discharge because of these expenses, may not be 'necessarily clearly erroneous.'" Biranne, 287 B.R. at 496 (citations omitted). Therefore, based on the record, this Court cannot find that the bankruptcy court committed clear error when applying the first prong of the Brunner test.

B. Additional Circumstances

The second prong of the Brunner test requires Hedlund to prove that "additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans." Brunner, 831 F.2d at 396. The Ninth Circuit recently clarified that a "debtor does not have a separate burden to prove 'additional circumstances,' beyond the inability to pay presently or in the future." Educ. Credit Mgmt. Corp. v. Nys (In re Nys), 446 F.3d 938, 945 (9th Cir. 2006). Rather, the court must "presume that the debtor's income will increase to a point where [he] can make payments and maintain a minimal standard of living; however, the debtor may rebut that presumption" by introducing evidence "indicating that [his] income cannot reasonably be expected to increase and that [his] inability to make payments will likely persist." Id. at 946.

In order to determine whether additional circumstances are

present, the bankruptcy court "may look to [the following] unexhaustive list" of factors:

> 1) serious mental or physical disability of the debtor or the debtor's dependents which prevents employment or advancement; 2) the debtor's obligations to care for dependents; 3) lack of, or severely limited education; 4) poor quality of education; 5) lack of usable or marketable job skills; 6) underemployment; 7) maximized income potential in the chosen educational field, and no other more lucrative job skills; 8) limited number of years remaining in [the debtor's] work life to allow payment of the loan; 9) age or other factors that prevent retraining or relocation as a means for payment of the loan; 10) lack of assets, whether or not exempt, which could be used to pay the loan; 11) potentially increasing expenses that outweigh any potential appreciation in the value of the debtor's assets and/or likely increases in the debtor's income; 12) lack of better financial options elsewhere.

Id. at 947 (the "Nys factors").

In addressing the second prong, the bankruptcy court analyzed the Nys factors and found that Hedlund's lack of usable or marketable job skills, namely his "lack of admission to the bar," his inability to substantially increase his income over the loan repayment term or to relocate, the absence of current assets, and likelihood that expenses will increase because he wants to have more children, were additional circumstances indicating that Hedlund's financial circumstances would not improve for a significant period of time. ER 421-24. Accordingly, the court held that Hedlund "rebutted the presumption that his income will increase or his expenses decrease to a point where he could make, without undue hardship, the full payment on the PHEAA debt." ER 424.

PHEAA argues that the bankruptcy court erred because under

Ninth Circuit precedent, "young, well-educated debtors like Hedlund . . . are not entitled to give up so easily at the taxpayer's expense." Appellant's Opening Br. 10 (citing Mason, 464 F.3d at 885 and Biranne, 287 B.R. at 497). Rather, PHEAA contends that Hedlund failed to demonstrate "insurmountable barriers" indicating that his current financial state will persist, as he has the ability to retake the bar exam again or find additional part-time employment and is only thirty-three years old. Appellant's Opening Br. 9. As such, PHEAA contends that the bankruptcy court erroneously applied the legal standard under the second Brunner prong. Thus, the Court reviews this matter de novo. See, e.g., Biranne, 287 B.R. at 497.

Despite PHEAA's assertion to the contrary, the debtor is not required to establish "insurmountable barriers" in regard to the second prong; instead, he must merely establish an inability to "maintain a minimum standard of living now and in the future if forced to repay [the] student loans." Nys, 446 F.3d at 946. Here, Hedlund has met this burden. Accepting that Hedlund is currently unable to maintain a minimal standard of living and make full monthly loan repayments, there is nothing in the record which suggests that these circumstances will not persist indefinitely.

As the bankruptcy court noted, neither Hedlund nor his spouse own any significant assets. ER 408. Hedlund has maximized his income in his position with the county, which is relatively high-paying for the area. ER 423. Moreover, there are only three possible promotions in his department and "the earliest that one of

those would be expected to be available was eight years out." Id. Any salary increases gained by relocating would be offset by increased costs of living, especially considering that Hedlund rents a two-bedroom duplex from his parents below market rate. Id. Finally, while it is possible that Hedlund could successfully retake the bar exam and become a licensed attorney, there is no guarantee that he could make more money as such, at least for a significant portion of the repayment period while remaining in the Klamath Falls area.

This Court agrees with PHEAA that Hedlund could increase his monthly surplus by increasing his wife's work hours and decreasing expenses; however, as discussed above, Hedlund remains unable to make full monthly repayments even with these adjustments. Thus, Hedlund's youth, education, and good health do not change the fact that, even working full-time at a well-paying position, he is incapable of fully repaying his loans and will remain as such for a significant portion of the repayment period. Therefore, the bankruptcy court did not err in regard to the second Brunner element.

C. Good Faith

The third and final prong of the Brunner test requires Hedlund to affirmatively demonstrate a good faith effort to repay student loans. See Pena, 155 F.3d at 1114. "'Good faith is measured by the debtor's efforts to obtain employment, maximize income, and minimize expenses.'" Mason, 464 F.3d at 884 (quoting Birrane, 287 B.R. at 499). Courts also consider "'[a] debtor's effort-or lack

thereof-to negotiate a repayment plan,' although a history of making or not making payments is, by itself, not dispositive." Id. (quoting Birrane, 287 B.R. at 499-500). In any event, "[t]he debtor may not willfully or negligently cause his own default, but rather his condition must result from factors beyond his reasonable control." Birrane, 287 B.R. at 500 (citation and internal quotation omitted).

Every court that has addressed this prong in this case found it to be the most troublesome, including the Ninth Circuit which stated that the BAP's ruling against Hedlund on the issue of good faith was "not without justification." ER 18, 319, 327. This Court agrees and reiterates Judge Radcliffe's assertion that Hedlund's case is "fairly close" in regard to the third Brunner element. ER 18.

In analyzing the third prong, the bankruptcy court concluded that Hedlund exhibited good faith because he: 1) maximized his income; 2) did not challenge administrative garnishments of $258 per month for sixteen months; 3) did not file for bankruptcy until four years after his loans became due; 4) attempted to negotiate for lower monthly payments; and 5) offered to make a one-time payment of $5000, which PHEAA refused. ER 425-26.

Further, the bankruptcy court found that Hedlund's refusal to participate in alternative repayment plans "was not dispositive on the issue of good faith," especially since "he did attempt to negotiate consolidation and lower payments, but was first stymied by a lost application." ER 427. In regard to PHEAA's three

repayment plans, all of which are over a thirty year term, the court stated that "accepting any of those offers would have had [Hedlund] paying on his student loans into his mid 60's. His refusal to obligate himself long past when his child or children would hopefully have had a chance to go to college themselves does not seem to me to obviate good faith." ER 427-28. In regard to the ICRP, under which Hedlund's loan obligation would be paid over a twenty-five year term, the bankruptcy court found that this was not a "feasible" option because "the ICRP simply is going to substitute a nondischargeable tax debt based on loan forgiveness for the student loan debt." ER 428.

PHEAA challenges this finding on appeal, arguing that Hedlund has not shown good faith based on his failure to maximize his income by retaking the bar exam or obtaining additional work, his total lack of voluntary payments beyond a one-time payment of approximately $950 in 1999, and his blanket refusal to renegotiate his loans. Specifically, regarding the bankruptcy court's rejection of PHEAA's three consolidations offers and the ICRP, PHEAA asserts that the court's "rul[ing] that repayment plans must either provide for minimum payments, or only have a short term, or both, and have no possible future tax consequences . . . [is] a remarkable conclusion. No Ninth Circuit case so holds." Appellant's Reply Br. 6.

In other words, PHEAA does not dispute the factual findings, but rather contends that the bankruptcy court incorrectly applied the legal standard under the third Brunner prong when it determined

that Hedlund made a good faith effort to repay his student loans. In support of its argument, PHEAA cites to Biranne and Mason. See Appellant's Opening Br. 7-8; Appellant's Reply Br. 6-8. Accordingly, this Court reviews the bankruptcy court's conclusion de novo. See, e.g., Biranne, 287 B.R. at 500-01.

i. Obtaining Employment, Maximizing Income, and Minimizing Expenses

It is undisputed that Hedlund obtained full-time, steady employment and that he has maximized his earning potential for that position. Further, the record reveals that this is the highest paying position that he could obtain based on his skills and education; Hedlund applied for, but did not get, two higher paying jobs in the Klamath Falls area. ER 414. In addition, an uncontroverted occupational expert testified that, even though Hedlund was willing to relocate, there were no jobs in the region which would result in greater overall earnings once the increased costs of living were factored in. ER 414-15.

While the Court agrees with PHEAA that taking on a part-time job would increase Hedlund's monthly income, it refuses to engage in a line drawing exercise regarding how many hours of weekly labor are required to denote good faith. Thus, while there was no evidence that Hedlund explored the possibility of part-time work, his failure to obtain a second job does not necessarily indicate a lack of good faith, especially as Hedlund is also a father and, as such, has parenting responsibilities to tend to on his nights and weekends.

Hedlund, however, is capable of augmenting his monthly income through increasing his wife's work to more than six hours per week. This situation would impose no additional costs, since both sets of grandparents live nearby and are "excited and delighted" to provide free childcare. ER 309, 416. As such, by Mrs. Hedlund working only twelve additional hours per week, Hedlund's monthly surplus would increase by nearly $350.

In regard to the bar exam, PHEAA asserts that "failure to pass the bar exam is not a sufficient reason for the discharge of student loans." Mason, 464 F.3d at 885. While this Court agrees with PHEAA's contention as a general proposition, the failure to pass the bar exam is not necessarily indicative of a lack of good faith. Unlike the debtor in Mason, Hedlund sat for and failed the bar exam more than one time; in fact, he failed it twice and registered and studied for it a third time. The Court presumes that each of these attempts were genuine. As such, Hedlund's lack of success with the bar exam does not evidence an absence of good faith.

Further, it is questionable whether Hedlund could make more as a licensed attorney. The 2010 census reveals that Willamette University College of Law graduates had a starting salary of $58,571. Those who work in the public sector, such as at the District Attorney's office or for the county, made $44,000. Based on these statistics, and accounting for inflation, as well as the fact that attorneys in smaller markets are generally compensated at lower rates, it is unlikely that Hedlund would be making

significantly more money as an attorney in Klamath Falls than as a juvenile counselor. Accordingly, Hedlund's ability to maximize his income by taking the bar exam again is uncertain and, as such, his failure to do so is not determinative on the issue of good faith.

As discussed above, Hedlund has failed to fully minimize his expenses. Therefore, while Hedlund has obtained steady employment, this Court finds that he has not used his best efforts to maximize his income or minimize his expenses. The Court's inquiry, however, does not end there.

ii. Negotiation of a Repayment Plan and Voluntary Payments

Good faith is also measured by "'[a] debtor's effort-or lack thereof-to negotiate a repayment plan,' although a history of making or not making payments is, by itself, not dispositive." Mason, 464 F.3d at 884 (quoting Birrane, 287 B.R. at 499-500).

It is undisputed that, prior to filing for bankruptcy, Hedlund was not capable of making full monthly payments. Further, there is some evidence that Hedlund made minimal efforts to negotiate repayment of his student debt. Specifically, in January 1999, Hedlund submitted an application for loan consolidation with PHEAA, which was ultimately denied because he was not current on his payments. In addition, Hedlund made a one-time payment offer to PHEAA of $5000.

Nevertheless, this Court finds Hedlund's lack of voluntary payments problematic. While not dispositive, a debtor's payment history is a relevant consideration. Id. Here, Hedlund made one

voluntary payment in over four years[9]. By his own admission, however, he was capable of making limited monthly contributions. ER 328. Whether PHEAA would have accepted partial payments is unclear; however, there is no evidence that Hedlund even explored this option. Such circumstances do not bear positively on Hedlund's good faith efforts.

What this Court finds even more vexatious, however, is Hedlund's lack of effort in attempting to negotiate a repayment plan. Courts within this Circuit have found a lack of good faith based largely on a debtor's failure to apply for the ICRP or refusal to negotiate an alternative repayment plan. See In re Chapelle, 328 B.R. 565, 573-74 (Bankr.C.D.Cal. 2005); DeGroot, 339 B.R. at 214-15.

Here, there is some ambiguity in the record regarding whether Hedlund is qualified for the ICRP. ER 427. Regardless, Hedlund did not apply, even though he was aware of this option; further, there was no evidence that he had any discussions with PHEAA regarding the ICRP. Thus, the Court finds that Hedlund's efforts to renegotiate his debt under the ICRP were less than diligent.

Moreover, the record does not establish that Hedlund took any additional steps to negotiate an alternative repayment plan directly with PHEAA. While he did make a singular offer of $5000, the amount proposed represents less than six percent of the original loan amount and, therefore, it is no surprise that it was

[9] While not germane to these proceedings, it should be noted that, in the nearly nine years since filing for bankruptcy, Hedlund has not made a single payment to PHEAA. ER 392.

rejected, especially since Hedlund was also seeking more favorable loan terms and the waiver of assessed fees in exchange. The Court wonders why, after PHEAA declined his offer, Hedlund did not use these funds to go ahead and make over six months of regularly scheduled payments.

Further, Hedlund rejected PHEAA's three alternative repayment plans. A "debtor's obligation to make 'good faith' efforts to repay [his] education loans is not extinguished with the filing of an adversary proceeding in bankruptcy." Biranne, 287 B.R. at 500 (citation omitted). The repayment plans are between $49 to $188 more per month than PHEAA's administrative garnishment, which Hedlund admitted that he could afford, and all are less than the $465 per month surplus that Judge Brandt assessed in regard to the first Brunner element. ER 382. Even though PHEAA made its offer right before trial, it stipulated that these alternatives are still available. ER 34. There is no evidence that Hedlund had any discussions with PHEAA regarding these options at any point during these proceedings.

As such, the record reveals that Hedlund ceased any efforts to renegotiate a repayment schedule which would accommodate his means even though one was available. The fact that PHEAA's plans would require Hedlund "to obligate himself long past when his child or children would hopefully have had a chance to go to college" is irrelevant. ER 428. As discussed in section I, that the loan term must be extended, sometimes upwards of twenty-five to thirty years, in order to reduce monthly payments on a debt is a commonplace, if

not unfortunate, economic reality shouldered by thousands of students in circumstances similar to or worse than Hedlund's.

In reviewing the third Brunner element de novo to determine whether Hedlund affirmatively and in good faith attempted to repay his loans, this Court analyzed a number of factors, including Hedlund's efforts to obtain employment, maximize income, minimize expenses, and to negotiate an alternative repayment plan, as well as his history of voluntary payments.

While this Court is dismayed by the circumstances faced by the majority of today's law school graduates, Hedlund's case is distinguishable. He graduated in 1997, which was a period of great prosperity and rapid economic growth for the United States. Thus, even without passing the bar exam, Hedlund was able to obtain relatively high-paying, steady employment. Further, Hedlund and his wife chose to be a single-income family, which is a lifestyle that few today can afford, especially when free child care is available. Therefore, Hedlund's financial circumstances are, in part, a by-product of his life choices rather than market forces.

More importantly, however, Hedlund has not met his burden of proof; the Court finds that the evidence he presented does not add up to an affirmative demonstration of good faith. Hedlund not only neglected to maximize his income, minimize his living expenses, and make voluntary payments, but he has also failed to take any steps toward renegotiating an alternative repayment plan. These factors are not beyond his reasonable control. As such, the bankruptcy court erred as a matter of law in finding that Hedlund met the

third Brunner prong.

CONCLUSION

For the reasons set forth above, the bankruptcy court's order discharging Hedlund's student loan debt is REVERSED; Hedlund's full debt, in the amount of $85,245.87, is hereby REINSTATED. Accordingly, PHEAA's request for oral argument is DENIED as unnecessary.

PHEAA stipulates that its reorganization options remain available in the event that Hedlund's debt is nondischargeable; as such, the Court recommends that Hedlund reconsider these options in light of this opinion.

IT IS SO ORDERED.

Dated this 5th day of March 2012.

Ann Aiken
United States District Judge

August 7, 2012 Tuesday 08:13 PM GMT

SECTION: BUSINESS NEWS

LENGTH: 1256 words

HEADLINE: Tough choices for law schools amid jobs crisis

BYLINE: By JOSH LEDERMAN, Associated Press

DATELINE: WASHINGTON

BODY:

A few months after finishing college, Angela Achen sat in a hospital waiting room and took stock of her assets: A degree in art history, a knack for women's studies and almost no marketable job skills.

She asked her father, who doctors told her was in his final hours, whether he had any last wishes.

He paused, thinking deeply, then smiled and said three words: "Be a lawyer."

"I think he said it because he knew it was something that would make me happy," Achen said.

So Achen enrolled at the University of Minnesota Law School, encouraged by the school's statistics on graduates' salaries and hungry for a career in international business. But as graduation neared, she sought job advice from her professors and from practicing lawyers.

Extend your studies another few years, they urged her, or volunteer for a nonprofit. Anything but look for a job.

"The advice I got from all of them was don't even bother applying to law firms right now, because you're just wasting your time," said Achen, now 30. "They're not hiring."

New data released by the American Bar Association in June revealed that barely half of those who graduated in law school in 2011 found fulltime jobs as lawyers within nine months of graduation. A separate survey from the National Association for Law Placement in June found the overall employment rate last year was the lowest in 16 years.

Although the crisis has been brewing for about a decade, marked by a sudden jump in demand for law school seats,

the warning signs until recently had largely been brushed aside, dismissed as another unfortunate symptom of the so-called "jobless recovery" that has left numerous industries in shambles.

The most obvious solution a reboot of the system to match supply with demand was off the table.

Now school officials, industry leaders and even U.S. senators are sounding the alarm, and considering drastic steps that under other circumstances might be deemed draconian.

"It is not a blip. It is not temporary. It is a permanent, structural shift," said Frank Wu, the dean of the University of California's Hastings law school in San Francisco, which is cutting its incoming class by 20 percent.

Last year, 425 students made up the freshman class at Hastings. This year, the target is 330 students. Out of a payroll of 275, the school eliminated 21 positions through layoffs, buyouts and attrition, and reduced another 10 workers to part time. No faculty were let go, said Wu.

"This is a wrenching, hard decision to make. We're sacrificing to reduce our class size," he said.

Some insist the government needs to stop issuing loans to every student who is admitted to law school. But such proposals inevitably lead to questions about the wisdom of letting the government pick winners and losers and whether denying loans would give wealthier students an unfair advantage.

Others argue the ABA needs to relax its standards for law school accreditation, which require rigid faculty ratios, expansive libraries and other features that drive up the cost of a legal education. Fewer regulations would make room, they say, for lower-cost schools whose graduates could work for reduced rates and still afford to pay off their debt, which averaged almost $125,000 last year for graduates of private law schools.

Barry Currier, the ABA's interim consultant on legal education, rejected the notion that the standards are too high, calling them the basis for what graduates need to successfully enter the profession. He said there's room within the standards for schools to offer different price points.

By far the loudest call has been for increased transparency, so that students can accurately assess whether it's smart to drop such a large sum on a law degree. The need for sunshine, proponents argue, has multiplied over the past decade as the statistics students rely on have deviated further and further from reality.

Here's what happened:

Around the turn of the millennium, the competition for law school seats spiked, just as tuition costs were also on the rise. But demand for lawyers didn't keep up with supply, a gap that only widened when the recession hit in 2007. With fewer Americans able to shell out hundreds of dollars an hour for legal help, many turned to low-cost options, such as the Internet and legal clinics, and away from the private firms where graduates seek jobs.

The bleak reality was a rude awakening for students who had relied on school statistics to weigh the risks and benefits of going to law school. Job placement figures didn't differentiate between those who had scored jobs as lawyers and those who were working at Starbucks.

And salary figures were averaged, meaning they didn't reflect what on a chart would look like a double-humped camel: A lot of people earning next to nothing, some earning six figures and almost nobody in the middle.

Students caught on and law school applications started decreasing, a shift that amplified the problem rather than solving it. Some schools, anxious that accepting students with lower scores and grades would undercut their rankings, started to entice top applicants with generous scholarships, which in turn drove up tuition costs for everyone else.

Other schools took a more novel, if not distorted, approach: paying their own graduates to volunteer for a year at nonprofits, government agencies and public-interest firms, thereby inflating their own job-placement rates.

The University of Virginia, a top-ranked law school, hired 17 percent of its 377 graduates in 2011. The school has a 95 percent rate of fulltime employment in positions requiring bar admission. Subtract those graduates whose salaries are being paid by their alma mater, and it drops to 78 percent.

"It's a Ponzi scheme, in almost a literal sense," said Paul Campos, who teaches at the University of Colorado Law School in Boulder. "You're taking money from current students and paying it to unemployed graduates."

The furor over misleading statistics prompted a number of class-action lawsuits by graduates against their alma maters. It also spurred action by two senators: Republican Chuck Grassley of Iowa and Democrat Barbara Boxer of California, who both pressured the ABA last year to provide better information about jobs, loan default rates and salaries.

"It's sort of a truth-in-advertising approach," Grassley told The Associated Press. "Not to make a decision that some law needs to be changed, but transparency, and let the consumer be fully acquainted with what the situation is."

The ABA relented on most counts, and for the first time this year broke down the types of jobs that graduates are receiving. But the ABA declined to make school-specific salary information available, citing the difficulty in obtaining reliable data. Schools can report their own figures on their websites and many do but there's little accountability.

"It's still kind of the wild, wild West when it comes to salaries," said Kyle McEntree of the group Law School Transparency.

With her freshly printed diploma in hand and no job prospects in sight, Achen hopped a flight last summer from Minnesota to Florida, where she moved back into her childhood home in Pensacola. From that same home she launched a one-woman law firm, where she handles any case that comes across her desk: wills, landlord-tenant disputes and alimony.

She averages about $1,000 per month.

"There are many days when I eat oatmeal for breakfast, lunch and dinner," Achen said. "But oatmeal is cheap and it's healthy, so I'll do it."

Reach Josh Lederman on Twitter at http://twitter.com/joshledermanAP

LOAD-DATE: August 8, 2012

THE CRISIS OF THE AMERICAN LAW SCHOOL

Paul Campos*

The economist Herbert Stein once remarked that if something cannot go on forever, it will stop. Over the past four decades, the cost of legal education in America has seemed to belie this aphorism: it has gone up relentlessly. Private law school tuition increased by a factor of four in real, inflation-adjusted terms between 1971 and 2011, while resident tuition at public law schools has nearly quadrupled in real terms over just the past two decades. Meanwhile, for more than thirty years, the percentage of the American economy devoted to legal services has been shrinking. In 1978 the legal sector accounted for 2.01 percent of the nation's GDP: by 2009 that figure had shrunk to 1.37 percent—a 32 percent decrease. These two trends are not mutually sustainable. If the cost of becoming a lawyer continues to rise while the economic advantage conferred by a law degree continues to fall, then eventually both the market for new lawyers and for admission to law school will crash. In the early years of the 21st century, this abstract theoretical observation has begun to be confirmed by concrete events. The ongoing contraction in the employment market for new lawyers has combined with the continuing increase in the cost of legal education to produce what has begun to be recognized as a genuine crisis for both law schools and the legal profession

Introduction

I generally did well in law school—I was one of the students who "got it." I graduated with honors, honor society, journal etc., and I managed to land an associate position at a large regional firm in the same city. Though I had fully intended to work for a non-profit or a legal services-type organization, my debt load prevented it, and I felt I had to take a job at a firm. I worked for just over a year and was laid off in late 2009. Since losing my job it has been a downward spiral.

Though I am incredibly grateful for what I have, I cannot help but wish for more: I have a J.D. with honors, an LL.M. from the top tax school in the country, and meaningful work experience. Yet, I cannot land a full-time, permanent job. I am lucky to have health insurance, but I have no time off. No sick time. My work situation is flexible (I can come in late/leave early for an appointment, etc.), but I only get paid for the hours I work. I am extremely grateful that it is unlikely I will default on my loans—thus far, I have been able to manage my nearly $250,000 debt with Income-Based Repayment and unemployment forbearance.

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I know that I am better off than a lot of these younger lawyers. That I qualified for unemployment is huge. I get job interviews. I can afford the apartment I share with my friend. I have a great resume. I am an excellent researcher and writer. I rarely go to bed hungry anymore. I just have to be patient. As soon as the economy picks up I'll get a permanent job. Right . . . ?

I am discouraged. I'm humiliated and demoralized. Worse yet, I am not challenged on a daily basis. I've resigned myself to the fact that I will never have a career. I won't have retirement savings. I will be living paycheck-to-paycheck for the next few years. I will continue to be immune to the rejection letters I receive in response to the litany of resumes and cover letters I send out daily (if I even receive indication that my resume was received). I will be just another number in this generation of lawyers who will fall by the wayside.

—Excerpted from a letter from a 2007 law school graduate to the author, dated August 23, 2011.

The economist Herbert Stein once remarked that if something cannot go on forever, it will stop.[1] Over the past four decades, the cost of legal education in America has seemed to belie this aphorism: it has gone up relentlessly. Private law school tuition increased by a factor of four in real (inflation-adjusted) terms between 1971 and 2011,[2] while resident tuition at public law schools has nearly quadrupled in real terms over the past two decades.[3] Meanwhile, for more than thirty years, the percentage of the American economy devoted to legal services has been shrinking. In 1978 the legal sector accounted for 2.01 percent of the nation's GDP. By 2009, that figure had shrunk to 1.37 percent—a 32 percent decrease.[4]

These two trends are not mutually sustainable. If the cost of becoming a lawyer continues to rise while the economic advantage

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1. Herbert Stein, *Herb Stein's Unfamiliar Quotations*, SLATE (May 16, 1997, 3:30 AM), http://www.slate.com/articles/business/it_seems_to_me/1997/05/herb_steins_unfamiliar_quotations.html; *see also* William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble: How Long Will It Last if Law Grads Can't Pay the Bills?*, 98 A.B.A. J. 30 (2012).

2. Data extrapolated from Harvard and Columbia Law School tuition data. *See infra* Part I. Many law schools appear to have historically set tuition based on the practices of other law schools. *See* Brian Tamanaha, *The Responsibility of Yale Law School for the Rise of Law School Tuition Nationwide—and What It Can Do to Help*, BALKINIZATION (Nov. 21, 2011), http://balkin.blogspot.com/2011/11/responsibility-of-yale-law-school-for.html.

3. Figures for private and public law school tuition are taken from American Bar Association reports. *See generally* AM. BAR ASS'N, LAW SCHOOL TUITION 1985–2011, *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_tuition.authcheckdam.pdf (last visited Aug. 29, 2012). Throughout this Article, I adjust nominal dollar figures for inflation based on a standard CPI calculator, found here: http://146.142.4.24/cgi-bin/cpicalc.pl.

4. Matt Leichter, *A Profession in Decline: BEA Legal Sector Data (1977–)*, THE L. SCH. TUITION BUBBLE, http://lawschooltuitionbubble.wordpress.com/original-research-updated/

conferred by a law degree continues to fall, then eventually both the markets for new lawyers and for admission to law school will crash. In the early years of the 21st century, this abstract theoretical observation has been confirmed by concrete events. The ongoing contraction in the employment market for new lawyers has combined with the continuing increase in the cost of legal education to produce what many now recognize as a genuine crisis for both law schools and the legal profession.

Part I of this Article describes the increase in the cost of American legal education over the past four decades. Part II explains some of the most important factors that have driven that increase. Part III explores the consequences of the increased cost for recent law graduates and current law students in the context of the changing employment market for lawyers. Part IV summarizes the situation and considers what sorts of immediate and long-term changes are likely to take place in the structure of what I argue has become a fundamentally unsustainable institution: the contemporary American law school.

PART I: THE RISE OF AN UNSUSTAINABLE MODEL OF LEGAL EDUCATION

When I enrolled in the University of Michigan Law School in the fall of 1986, first-year tuition for Michigan residents was $4,420.[5] Adjusting for inflation, this was the equivalent of just over $9,000 in 2011. I would have paid only $800 if I had enrolled at the law school fifteen years earlier[6]—the equivalent of $4,443 in 2011 dollars. From the present perspective, that seems like quite a bargain: in 2012–2013 resident tuition for first-year law students at Michigan was $48,012.[7] Remarkably, over the past four decades the real, inflation-adjusted cost of resident tuition at Michigan's law school has increased more than ten-fold.[8] Over the same period, non-resident tuition has increased in real terms by a factor of "only" 4.4 to $49,740.

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a-profession-in-decline/ (last visited Aug. 29, 2012). Leichter cites Bureau of Economic Analysis (BEA) data in the article. *See Industry Data*, U.S. DEP'T OF COMMERCE, http://bea.gov/iTable/index_industry.cfm (last visited Aug. 29, 2012).

5. *See University of Michigan Law School Tuition 1950–2009*, THE UNIV. OF MICH. L. SCH., http://www.law.umich.edu/historyandtraditions/students/Documents/Law_School_Tuition_History.pdf (last visited Aug. 29, 2012).

6. *See id.*

7. *See 2012–2013 Law School Tuition Rates*, L. SCH. TUITION RATES, http://www.law.umich.edu/currentstudents/financialaid/Pages/tuition.aspx (last visited Aug. 29, 2012).

8. *See supra* note 5 (calculation based on tuition increases since the 1970s).

In this regard, Michigan's law school is far from unique. The University of Colorado Law School, where I teach, charged $975 in tuition to state residents thirty years ago (the equivalent of $2,413 in 2011 dollars) and charges more than $31,000 today.[9] As a matter of economic reality, public legal education in America is ceasing to exist. Many public law schools now charge more in resident tuition than even the most expensive private schools charged just a few years ago—this despite the fact that private law school tuition has also skyrocketed over the course of the last generation.[10] Although the rise in private law school tuition is disturbing, the gradual elimination of any apparent political commitment to legal education as a public good is perhaps even more troubling.

I will present historical tuition data in 2011 dollars so that readers may see the extent to which the cost of going to law school has changed in real economic terms. Below is the change in the tuition and fees charged by Harvard Law School over the course of the past four decades:

- 1971: $12,386
- 1981: $15,862
- 1991: $27,207
- 2001: $35,817
- 2012: $50,880

Over the past four decades, Harvard's tuition has more than quadrupled in inflation-adjusted terms and has nearly doubled in the past two decades.[11]

Below is the median resident tuition at ABA-accredited public law schools, again in 2011 dollars:[12]

- 1985: $3,746
- 1995: $7,201
- 2005: $13,944
- 2011: $19,788

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9. Historical tuition figures for the University of Colorado are based on the school's catalogue (on file with author).

10. *See infra* note 12 and accompanying text.

11. For tuition data from 1971 to 2001, see HARVARD UNIV., HARVARD LAW SCHOOL CATALOGUE 1970–1971, *available at* http://pds.lib.harvard.edu/pds/view/8508871. Tuition data for 2012 is taken from the Law School website. *See Student Financial Services: Student Budget*, HARVARD L. SCH., http://www.law.harvard.edu/current/sfs/basics/cost/budget.html (last visited Aug. 29, 2012).

12. *See* AM. BAR ASS'N, *supra* note 3. I have adjusted the nominal dollar figures cited in the table for inflation. *See also* John A. Sebert, *The Cost and Financing of Legal Education*, 52 J. LEGAL EDUC. 516 (2002) (nominal dollar figures have been adjusted for inflation).

Finally, here are the median tuition rates over time for private law schools:[13]

- 1985: $15,438
- 1995: $24,988
- 2005: $33,021
- 2011: $39,496

Since the mid-1980s, private law school tuition has increased by 155.8 percent in real, inflation-adjusted terms, while public law school resident tuition has increased by an astounding 428.2 percent over inflation.[14] The growth of resident tuition at individual public law schools over just the past fifteen years is breathtaking (again, all figures are in constant 2011 dollars): Minnesota Law School's tuition has increased from $11,890 to $35,000, Ohio State Law School's from $5,860 to $27,800, Texas Law School's from $5,340 to $27,748, and Illinois Law School's from $7,225 to $40,600.[15] Recently, the University of California-Berkeley Boalt School of Law became the first public law school to charge a resident tuition of more than $50,000,[16] but several more seem sure to follow.[17] According to one projection, tuition at nearly a dozen law schools will be over $70,000 per year by the end of the decade.[18]

To understand what these numbers mean for the cost of the American legal education for the average American family, consider the University of Michigan Law School, by some measures the nation's most elite public law school. Recall that in 1971, annual resident tuition was $4,443 in 2011 dollars.[19] In that year, median household income in America was $49,709 in 2011 dollars.[20] One year's resident tuition at what was then, and remains now, one of

13. *See* AM. BAR ASS'N, *supra* note 3.

14. *See id.*

15. *Law School Rankings by Tuition*, INTERNET LEGAL RES. GRP., http://www.ilrg.com/schools/tuition/ (last visited Aug. 29, 2012). Again, I have adjusted the nominal figures for inflation. 2011–2012 data is taken from each law school's website.

16. *Fees & Cost of Attendance*, BERKELEY L., UNIV. OF CAL., http://www.law.berkeley.edu/6943.htm (last visited Aug. 29, 2012).

17. *See* Karen Sloan, *Tuition Is Still Growing*, NAT'L L.J. (Aug. 20, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202567898209&Tuition_is_still_growing&slreturn=20120728213533 (stating that average resident tuition at public law schools rose by 6 percent).

18. Matt Leichter, *Private Law School Tuition Projections*, THE L. SCH. TUITION BUBBLE, http://lawschooltuitionbubble.wordpress.com/original-research-updated/tuition-projections/ (last visited Aug. 29, 2012).

19. *See supra* text accompanying note 6.

20. *See Historical Income Tables: Households*, U.S. CENSUS BUREAU, http://www.census.gov/hhes/www/income/data/historical/household/index.html (last visited Aug. 9, 2012).

the nation's pre-eminent law schools cost about one month's pre-tax income for the average American household.

In 2011, median household income in America was $49,909, almost exactly what it was forty years ago after adjusting for inflation.[21] But now the average American household would need to spend slightly less than an entire year's worth of pre-tax income to pay for a year's resident tuition at Michigan Law School. Below is the change over time in the percentage of pre-tax annual income that the median American household would have to pay for resident tuition at Michigan:

- 1970: 7.9 percent
- 1980: 11.3 percent
- 1990: 22.8 percent
- 2000: 49.3 percent
- 2011: 93.8 percent[22]

Over this time span, during which median household income saw essentially no net growth, the nation's real, inflation-adjusted gross domestic product more than tripled, and more than doubled in per capita terms.[23] America is, overall, three times richer than it was forty years ago. But the cost of attending law school has increased by a factor of four at elite private law schools and by a factor of more than ten for resident students at one of the nation's most elite public law schools. The estimated total cost of attendance for most law schools is now more than $150,000 and has topped $200,000 at many of them.[24] Meanwhile, the average American family enjoys only about $17 more per month in income in real terms than it did four decades ago.

Law school tuition increases have occurred within the larger context of the rising cost of a college education in America. Although undergraduate tuition has not risen nearly as fast as the cost of law

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21. Robert Pear, *Recession Officially Over, U.S. Incomes Kept Falling*, N.Y. TIMES, Oct. 9, 2011, http://www.nytimes.com/2011/10/10/us/recession-officially-over-us-incomes-kept-falling.html.

22. I calculated these percentages by comparing tuition figures to the median household income in the relevant year, as reported by the Census. *See* INTERNET LEGAL RES. GRP., *supra* note 15.

23. *What Was the U.S. GDP Then?*, MEASURING WORTH, http://measuringworth.com/usgdp/ (last visited Aug. 29, 2012).

24. For example, George Washington Law School estimates that the annual cost of attendance for the 2011–12 academic year—including tuition, fees, and nine months of cost of living expenses—is $74,400. *See Tuition & Estimated Costs*, THE GEORGE WASHINGTON UNIV., http://www.law.gwu.edu/Admissions/tuition/Pages/default.aspx (last visited Aug. 29, 2012). The total cost of a law degree at many public law schools now exceeds what an average private law school education cost just a few years ago.

school, undergraduate tuition has increased far faster than inflation over the past generation,[25] and almost all law schools require that applicants complete a four-year undergraduate degree before enrolling.[26] Family incomes have stagnated for most Americans over the course of the last generation, and many families have had to debt-finance their children's college educations.[27] Many students thus enter law school already carrying significant educational debt. According to one estimate, the average amount of educational debt carried by indebted graduates of four-year colleges was nearly $25,000.[28]

A legal education was easily within the financial reach of the American middle class a generation ago and was a realistic career option for people of more modest socio-economic backgrounds. It is now an enormously expensive investment. Given how the employment market for people with law degrees has changed over the same period, that investment has become a remarkably risky gamble. How did this happen?

PART II: CENTRAL FEATURES OF A FAILING MODEL

This section discusses several factors that have contributed to the increasing cost of legal education: drastic declines in student-faculty ratios, large increases in faculty compensation, the creation and development of clinical legal education, the expansion of administrative staffs, and expensive capital construction projects. A generation ago, the typical American law school featured large classes, rare to non-existent clinical programs, a high tenure-track faculty-to-student ratio, significant numbers of inexpensive adjunct instructors, no laboratory equipment, and a generally unprepossessing physical plant.[29] Even at many elite universities, the law faculty had

25. *Law School Tuition Soars*, N.Y. TIMES (July 17, 2011), http://www.nytimes.com/imagepages/2011/07/17/business/17legalGraphic.html?ref=business.

26. *What Education or Type of Degree is Needed to Be a Lawyer?*, EDUC. PORTAL, http://education-portal.com/education_needed_to_be_a_lawyer.html (last visited Aug. 29, 2012).

27. *See supra* notes 20–23 and accompanying text.

28. This figure is based on graduates of four-year colleges who graduated in the 2007–2008 academic year. With tuition increases continuing to outrun inflation, the most current figures are undoubtedly higher in real dollar as well as nominal terms. *See National Postsecondary Student Aid Study*, NAT'L CTR. FOR EDUC. STATISTICS, http://nces.ed.gov/surveys/npsas/undergraduate.asp (last visited Aug. 29, 2012). Approximately two-thirds of college graduates incur undergraduate debt. *See* Andrew Martin & Andrew W. Lehren, *A Generation Hobbled by the Soaring Cost of College*, N.Y. TIMES, May 12, 2012, http://www.nytimes.com/2012/05/13/business/student-loans-weighing-down-a-generation-with-heavy-debt.html?pagewanted=all.

29. *See generally* BRIAN TAMANAHA, FAILING LAW SCHOOLS (forthcoming 2012).

comparatively little academic ambition or pretension: at most law schools, faculty members who regularly published scholarship after completing an often-cursory tenure process were very much the exception rather than the rule.[30]

Given this environment, law school faculty often had relatively heavy teaching loads: five to six classes a year was normal at most schools, while teaching four classes per year at a few elite schools was a luxury of such privileged positions.[31] At almost all schools, administrative support for both the tenure-track faculty and the student body was minimal. Faculty were expected to contribute significantly to tasks such as admissions and financial aid, while students looking for job opportunities were expected to consult a bulletin board rather than the contemporary career services office.[32]

A. Student-Faculty Ratios

Over the past thirty years, and particularly over the past fifteen, this situation has altered dramatically. Consider what has happened to student-faculty ratios. Currently, an ABA-accredited law school's student-faculty ratio is calculated as follows: each full-time tenure-track member counts as one faculty position, while faculty members who teach full-time but are not on the tenure track (as is often the case with clinical professors and legal research and writing professors) each count as seven-tenths of a position. Adjunct professors count as one-fifth of a position.[33] Non-tenure track faculty may not account for more than 20 percent of a school's student-faculty ratio for the purposes of accreditation. Under the current accreditation standards, "[a] ratio of 20:1 or less presumptively indicates that a law school complies with the Standards," while "[a] ratio of 30:1 or more presumptively indicates that a law school does not." Ratios

30. *See* Richard A. Posner, *Legal Scholarship Today*, 115 HARV. L. REV. 1314, 1320 (2002).

31. *See* TAMANAHA, *supra* note 29 at 39–53.

32. I can attest to much of this change first-hand, even though I have been a legal academic "only" since 1990. A glance at the personnel listings in law school catalogues and in the AALS Directory of Law Teachers will confirm the enormous growth in the number of administrative personnel at American law schools over the course of the last generation. *See AALS Directory of Law Teachers*, ASS'N OF AM. LAW SCHS., http://www.aals.org/services_directory.php (last visited Aug. 29, 2012).

33. *See* AM. BAR ASS'N, A.B.A. STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2012–2013 30 (2012), *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf.

between 20:1 and 30:1 create no presumption one way or the other.[34]

The stated purpose of these ratios is to maintain educational standards. In practice, they maintain barriers to entry to low-cost competitor law schools and protect the privileges of current tenure-track faculty at ABA-accredited schools, by insulating them from potential lower-cost competition. The idea that a law school with a student-faculty ratio of 30:1 presumptively fails to provide a minimally adequate legal education to its students is, within even the narrowest of historical contexts, problematic. As recently as 1978, the average student-faculty ratio at ABA-accredited law schools was 29:1; nearly half of all such schools would have been out of compliance with the current accreditation standards.[35]

In fact, faculty-to-student ratios have dropped dramatically at law schools, not merely since 1978 but over the past decade. For example, Harvard's ratio fell from 21.6:1 in 1998 (i.e., Harvard Law School's student-faculty ratio fourteen years ago was not even presumptively adequate under the ABA's current standards) to 10.3:1 in 2008. Stanford Law School's ratio fell even more drastically, from 18.3:1 to 8.3:1, while the University of Chicago Law School's went from 19.1:1 to 10.3:1.[36] This pattern was not confined to elite schools, in part because schools further down the law school hierarchy tend to imitate elite schools. During this same period, for example, Emory Law School's student-faculty ratio declined from 19.1:1 to 10.8:1, Seton Hall Law School's declined from 26:1 to 15.5:1, and Widener Law School's declined from 24.8:1 to 13.7:1.[37] And ratios are continuing to drop. in the spring of 2012, Dean Larry Kramer announced that as part of Stanford's ongoing efforts to protect and improve its ranking (Stanford moved from third to second in the U.S. News and World Report Law School Rankings in 2012), the school was going to expand its tenure-track faculty by 25 percent.[38] Overall, average student-faculty ratios at ABA-accredited schools

34. *See* AM. BAR ASS'N, A.B.A STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2012–2013 31 (2012), *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf.

35. *Law School Faculties 40% Larger Than Ten Years Ago*, THE NAT'L JURIST (Mar. 9, 2010, 10:00 PM), http://www.nationaljurist.com/content/law-school-faculties-40-larger-10-years-ago.

36. By 2011 Stanford's student-faculty ratio had declined to 7.8 to 1, and Chicago's had fallen to 8.1 to 1. Harvard's had risen to 12.2 to 1. *See Law School Admission Council Official Guide to Law Schools*, LAW SCH. ADMISSION COUNCIL, http://www.lsac.org/jd/default.asp (last visited Aug. 29, 2012).

37. *Id.*

38. Larry Kramer, Dean, Stanford Law School, Address at Stanford Town Hall Meeting (Feb. 2012) (information provided by attendees).

were cut in half between the late 1970s and the early years of the 21st century, going from 29:1 to 14.7:1.[39]

What consequences has this enormous increase in the number of law school faculty had for legal education? First, there has been no proportional decline in the size of law school classes. Large lecture sections are still the staple of American legal education. Instead, the primary effect of this change has been to reduce the teaching loads of faculty, particularly tenure-track faculty. Almost all "top tier" schools, meaning the top fifty law schools as ranked by *U.S. News & World Report*, have moved to a formal three-course teaching load for tenure-track faculty, while at the most elite schools, generous research leave and sabbatical policies make the functional teaching load closer to two classes per academic year.[40] Meanwhile a number of lower-ranked schools are also adopting three-course teaching loads, at least for more "productive" faculty, i.e., those who publish more law review articles.[41]

Thus over the course of the last four decades, American law schools have moved from a system in which faculty at a few elite law schools taught four classes per year, while faculty at other schools taught five or six, to a system in which those numbers have been reduced by nearly 50 percent at elite schools and by nearly as much at many non-elite schools as well.[42] As detailed below, this change has played a considerable role in driving up the cost of legal education. Before turning to the specific financial consequences of this change, we should not overlook the enormous increase in spending on faculty compensation at law schools, which has been dedicated to goals other than improving the classroom experience of law students.

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39. *See supra* note 35.

40. Gordon Smith, *Law Professor Teaching Loads*, CONGLOMERATE BLOG (Apr. 12, 2005), http://www.theconglomerate.org/2005/04/law_professor_t.html. As for the functional teaching loads at elite law schools, I was informed by David Van Zandt, Dean of Northwestern Law School, in the fall of 1996 that the average teaching load at the school over a multi-year period was seven credit hours per year, i.e., two classes. Other conversations in November of 1996 with members of similarly ranked law schools confirm that this has become a common de facto teaching schedule, at least as a matter of informal practice.

41. In the fall of 2011, a faculty member at a law school ranked close to number 100 (that is the midpoint) in the *U.S. News and World Report* rankings told me that the dean had announced that the school was moving to a standard three-course teaching load. The faculty member noted that, despite the combination of skyrocketing tuition costs and dire job prospects for the school's most recent graduates, this announcement encountered no objections.

42. *See* TAMANAHA, *supra* note 29.

B. Faculty Compensation

Law schools have greatly increased the size of their faculties to ensure that individual faculty could teach less. And they have likely made this change so that their faculties could publish more law review articles. With regard to this goal, American law schools have enjoyed spectacular success. A survey of the legal academic literature reveals that professors at American law schools published approximately 1,650 law review articles in 1970 and nearly 10,000 in 2010.[43] Over that time, the total number of tenure-track law professors has roughly doubled, while the per capita publication rate of law review articles per professor has nearly tripled, resulting in this approximately six-fold increase in the size of the annual law review literature.[44]

This explosion in publication rates has naturally required a huge increase in the venues for legal academic writing. Forty years ago, very few law schools published more than one law journal, and some did not publish any at all. In 2010 the Current Index to Legal Periodicals catalogued 616 law journals, while omitting a number of venues in which legal academic publications appear.[45]

How much has all this cost? Cutting student-faculty ratios by 50 percent would, holding everything else constant, double the portion of law school budgets dedicated to faculty compensation. But everything else has not remained constant. Individual law school faculty compensation has increased dramatically over the course of the past generation. Precise numbers on this question are difficult to obtain for a variety of reasons. At private law schools, salary figures are confidential. Even at public schools, overall compensation packages now can include a number of features beyond base salary—such as so-called summer research money (it is generally known in legal academia that this has become a de facto salary supplement at most schools), subsidized housing, low-interest loans,

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43. *See Current Index to Legal Periodicals*, UNIV. OF WASH. SCH. OF LAW, http://lib.law.washington.edu/cilp/cilp.html (last visited Aug. 29, 2012). I derived these figures by examining statistically representative samples of both the Current Index to Legal Periodicals and individual volumes of particular law reviews. Specifically, I examined thirty randomly selected pages from the Index in both 1970 and 2010 and noted the total number of law review articles that they catalogued. I then extrapolated this number to the Index as a whole. I double-checked this estimate by examining the annual volumes of twelve representative law reviews in each year, noting how many articles these reviews published, and extrapolated on the basis of that figure.

44. *See* ASS'N OF AM. LAW SCHS., *supra* note 32. The number of tenure-track law faculty is based on surveys of the 1970–71, 1990–91, and 2010–11 volumes of the annual Association of American Law Schools Directory of Law Teachers.

45. *See supra* note 43.

and retention bonuses—that can be hard to calculate. Still, the general pattern is clear: At elite law schools, compensation for tenure-track faculty has roughly doubled in real terms over the course of the past thirty years. At non-elite schools, the increase in compensation levels has varied, but given that almost all increased spending at law schools is set by the rules of a positional game created by law school rankings, in which non-elites attempt to imitate elite schools to the extent possible, it is probable that faculty compensation all across legal academia has increased sharply over the past three decades.

As for specific numbers, we can begin with Chief Justice John Roberts's observation that salaries for federal judges are now "about half" the salaries for senior faculty at elite law schools.[46] At the time Roberts made his comments in a report to Congress, in which he was pleading for higher pay for the federal judiciary, federal district and circuit court judges were paid $169,000 and $179,000 respectively, while senior faculty at elite schools likely earned around $350,000.[47]

A survey of faculty compensation at high-ranked public law schools confirms that the Chief Justice's estimate is not an exaggeration and may even be an understatement. For instance, at the University of Texas Law School, a lawsuit brought by a faculty member revealed not only the compensation packages of the law school's faculty but also how deceptive the available public records regarding faculty salaries can be.[48]

According to a searchable Internet database of University of Texas employee salaries, the salaries of Texas's law school faculty (excluding administrative salaries) in 2010-2011 ranged from $135,000 to $272,404.[49] The actual numbers, as revealed by the lawsuit, were in many cases nearly 50 percent higher. The public records do not include summer research money, which for most faculty was equivalent to one-third of their base salaries.[50] Nor do they include retention bonus money, structured in the form of "forgivable loans," given by the dean to twenty-five faculty members (and, more problematically, to himself—a fact that when made

46. *See* Linda Greenhouse, *Chief Justice Advocates Higher Pay for Judiciary*, N.Y. TIMES, Jan. 1, 2007, http://www.nytimes.com/2007/01/01/us/01scotus.html.

47. *See id.*

48. The relevant documents can be viewed at http://d2o6nd3dubbyr6.cloudfront.net/media/documents/ut_law_school_open_records.pdf (last visited Aug. 29, 2012).

49. *See School of Law Salaries at the University of Texas at Austin*, THE TEX. TRIB., http://www.texastribune.org/library/data/government-employee-salaries/the-university-of-texas-at-austin/departments/school-of-law/17771/?page=1 (last visited Aug. 29, 2012).

50. *See supra* notes 48–49.

public forced his resignation).[51] The result was that much of the law school's senior faculty was making between $320,000 and $410,000 in 2010—with the top half of that range being higher than Chief Justice Roberts's estimate for top schools.

Data from other top public law schools reveal somewhat lower compensation packages than those given to faculty at Texas, although this might be in part because the financial data is less comprehensive than that which would be uncovered by litigation. Nor does the total listed compensation, at Texas or elsewhere, include deferred benefits, such as employer contributions to pension plans, which, based on my knowledge of several representative schools, is likely equivalent at many schools to one-tenth of a faculty member's salary. Still, searching an online University of California database reveals that in 2010, fifteen law professors in the University of California system had base salaries and summer research support amounting to at least $308,000, with a high of $360,000.[52] Bearing in mind that the half-dozen highest-ranked law schools, including those with the largest private endowments, are all private institutions, these schools may be paying their faculty at least as much as Texas is paying its professors, especially considering how much higher the cost of living is in Cambridge, Chicago, and New York than in Austin.[53]

Though, in general, the higher a school is ranked the higher the salary scale for its faculty, the $300,000+ compensation packages paid to professors at elite and sub-elite institutions have a ripple effect throughout legal academia, as lower-ranked schools fight to hold onto their most productive faculty.[54] For instance, three years ago the fifteen highest-paid faculty members of the University of Illinois College of Law made between $203,000 and $293,000 in

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51. *See National Jurist: Dean Sager's $4.65 Million in Forgivable Loans to Law Profs 'Ripped Apart' Texas Faculty*, TAX PROF. BLOG (Feb. 21, 2012), http://taxprof.typepad.com/taxprof_blog/2012/02/national-jurist-.html.

52. *See University of California Data Analysis—Browse UC Salary Data*, UNIV. OF CAL. DATA ANALYSIS, http://ucpay.globl.org/index.php?campus=&name=&title=!PROFESSOR-LAW+SCHOOL+SCALE&base=&overtime=&extra=&gross=&year=2010&s=gross (last visited Aug. 30, 2012). This index lists only compensation from the university system and not from private endowments, so it may represent a significant understatement of the total number of professors receiving compensation packages of at least $300,000.

53. TAMANAHA, *supra* note 29 at 49 ("If Texas professors are compensated at this level, given the nature of the market it is likely many professors at top five law schools are in the $300,000–$400,000 range, with some earning more.").

54. Again, despite the variety of tasks legal academics perform in the course of their professional duties, "productivity" in legal academia is measured almost exclusively by how many law review articles a faculty member publishes, especially in what are considered prominent venues. *See supra* note 41 and accompanying text.

base salary alone, not counting summer research money.[55] And a perusal of IRS Form 990, which requires non-profit organizations to list the compensation packages of their highest paid officers and employees, reveals that professorial salaries in the $300,000 range are far from rare, even at second- and third-tier schools.[56] In his forthcoming book, *Failing Law Schools*, Brian Tamanaha, a law professor at Washington University in St. Louis and former dean of St. John's Law School, estimates that faculty compensation packages of over $200,000, excluding benefits, are now commonplace for full-time professors at a wide variety of schools.[57]

Historical data regarding law professor salaries are harder to come by. Returning to Chief Justice Roberts's complaint regarding judicial salaries, the Chief Justice revealed that senior professors at Harvard Law School were paid $28,000 in 1969, which is $171,000 in 2011 dollars.[58] This suggests, in light of the data presented above, that Harvard Law School faculty salaries have more than doubled in real terms since then. In order to analyze this question in a more systematic fashion, I compared the salaries of the University of Michigan Law School faculty in 1981 to those of the same faculty in 2011. The base salary of the tenure-track faculty in 1981 ranged from $31,000 to $67,000, i.e., from $77,000 to $165,000 in 2011 dollars.[59] The base salary of the tenure-track faculty in 2011 ranged

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55. *See University of Illinois Public Salaries*, COLLEGIATE TIMES, http://www.collegiatetimes.com/databases/salaries/university-of-illinois-2009?dept=Law (last visited Aug. 29, 2012). Summer research stipend amounts are available at the SALT salary survey. *See* Society of American Law Teachers, *2011–12 SALT Salary Survey*, SALT EQUALIZER (2012), *available at* http://www.saltlaw.org/userfiles/SALT%20salary%20survey%202012.pdf. Summer research stipends vary enormously between schools, so their absence from public data bases that record official faculty compensation poses a serious barrier to comparing salaries even between public law schools. These stipends are usually either a percentage of a faculty member's base salary, or a flat figure for all faculty members who receive them. I have found current summer research stipends ranging from $8,000 to $93,000.

56. Form 990 disclosures can be found by searching for a particular school at *990 Finder*, FOUND. CTR., http://foundationcenter.org/findfunders/990finder/ (last visited Aug. 29, 2012).

57. *See* TAMANAHA, *supra* note 29, at 48 *passim*. At my school, approximately half of the tenured faculty receives annual compensation packages, in base salary and summer support, exceeding $200,000. According to a recent report submitted by the Law School to the University of Colorado's central administration, the Law School's compensation structure lags behind that of many of our "peer schools" (defined as law schools at "flagship" state universities) (data from an internal Law School document on file with author).

58. *See* Linda Greenhouse, *Chief Justice Advocates Higher Pay for Judiciary*, N.Y. TIMES, Jan. 1, 2007, http://www.nytimes.com/2007/01/01/us/01scotus.html.

59. Base salary data is available in the archives of the Bentley Historical Library at the University of Michigan. In 1981, the law school paid faculty members who received summer stipends equivalent to approximately one-sixth of their base salaries, i.e., slightly more in

from $162,000 to $294,000.[60] In 2011, faculty summer research support was 15 percent of base salary, meaning that the functional base salary of the faculty actually ranged from $186,000 to $338,000.[61] Remarkably, a brand-new tenure-track assistant professor at Michigan makes nearly as much, in real dollars, as what the highest-paid member of the faculty made thirty years earlier. Even more remarkably, this brand new professor makes more than the dean of the law school made in 1981. The law school's dean was paid $164,510, in 2011 dollars, in 1981. In 2011, the dean was paid $457,964.[62]

These figures reinforce Chief Justice Roberts's estimate that direct faculty compensation at top law schools has roughly doubled over the course of the last generation. But pecuniary compensation is only part of the story. As we have seen, teaching loads have shrunk significantly over this same time frame.[63] Nor have we explored one of the most important changes to the structure of law school teaching over the course of the last generation: the transformation of clinical legal education from a marginal feature of a few legal academic institutions into a central, well-funded enterprise at most law schools.

C. The Birth of the Clinic

The birth and expansion of legal aid clinics in law schools has had three effects on American legal education: it has increased the amount of practically-oriented legal education some students receive; it has allowed traditional tenure-track faculty to rationalize paying relatively little attention to actual legal practice; and it has played a role in driving up the cost of legal education. Complaints that law school teaches students nothing about practice are hardly

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percentage terms than the 15 percent of base salary current faculty members receive (although from a far smaller base). I am indebted to Professor Edward Cooper for the information on how summer money was calculated in 1981, which was provided to me in a conversation on March 25, 2012.

60. *See Department Results for* 2012, UMSALARY.INFO, http://www.umsalary.info/deptsearch.php?Dept=Law%20School&Year=0&Campus=1 (last visited Aug. 10, 2012).

61. *See id.*

62. *See id.*

63. *See supra* note 40 and accompanying text. It is worth noting that grading exams—perhaps the most unpleasant task that those who perform this remarkably pleasant job are required to do—has also become far easier over the course of the last ten to fifteen years. Gone are the days when the leisure of the theory class was interrupted by the burden of having to decipher the panicked scrawls of hundreds of students, spread across thousands of pages of blue books. Indeed today some professors employ computer technology to grade multiple choice exams, thus eliminating a few dozen of the most painful of the few hundred hours per year a legal academic is formally required to dedicate to his or her job.

new.[64] Legal aid clinics were, among other things, originally a response to those complaints.[65] In this regard, they have had some effect, but whether that effect has been to make law school graduates more practice-ready than they would have been otherwise is debatable.

The clinical legal experience no doubt helps participating students have a better understanding of some forms of legal practice. Most law students, however, complete their legal educations without having participated in a clinic.[66] This fact raises a question: what effect does the availability of clinical legal education have on what goes on in the traditional, "doctrinal" classroom? If the effect is to make doctrinal legal education even less practical than it would otherwise be—because the doctrinal faculty believes, either consciously or otherwise, that students learn the nuts and bolts of legal practice in clinical classes (which, in fact, most law students never take)—then, paradoxically, clinical legal education may have a net effect of making legal education as a whole less practical than ever for the average student.

This becomes a particularly pressing issue when one considers the expense of clinical legal education. Since instructor-participant ratios must be very low, and clinics require significant administrative support, they cost a lot of money.[67] Yet, in response to regular complaints from the legal profession that law school is too "theoretical," law schools continue to expand their clinical programs, without much in the way of evidence regarding whether the costs they incur are justified by the results they produce in regard to producing "practice-ready" graduates.[68]

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64. *See, e.g.*, Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 595–96 (1982). Kennedy treats the claim that law students "learn[ ] nothing about practice" as completely self-evident. *See id.*

65. *See* David Barnhizer, *The University Ideal and Clinical Legal Education*, 35 N.Y.L. SCH. L. REV. 87, 88 (1990).

66. *See* Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 78 (2009) ("[T]he 2007 *C.S.A.L.E. Report* found that 32% of law students participated in live client law school clinics.").

67. *See* Erwin Chemerinsky, *Rethinking Legal Education*, 43 HARV. C.R.-C.L. L. REV. 595, 595 (2008).

68. *See, e.g.*, AMERICAN BAR ASSOCIATION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM (MACCRATE REPORT) (1992); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007). Note that by "too theoretical" critics generally mean "too doctrinal," which is certainly a contestable characterization of how genuinely theoretical—or edifying—the traditional doctrinal law school classroom actually is. *See* Kennedy, *supra* note 64.

D. New Buildings Full of People

The birth of the clinic is just one example of how many of what used to be the job responsibilities of tenure-track faculty have been off-loaded to new classes of law school employees. A generation ago, classes in legal research and writing, to the extent that they were taught at all, were typically taught by the tenure-track faculty, rather than by full-time faculty members hired for that specific purpose.[69] Outside of the classroom, the administrative duties of law professors have declined considerably. No longer are professors, whether at elite or non-elite law schools, expected to do the heavy lifting in the admissions office or in distributing financial aid or in regard to all the functions now outsourced to career services personnel, fundraising officers, public relations specialists, alumni liaisons, and the like. As noted above, all these changes in regard to the nature of a legal academic's workload have likely taken place for the primary purpose of allowing law faculty to publish far more law journal articles than they did a generation ago—and publish they have.[70]

Of course, this outsourcing has itself incurred considerable extra expense: law school administrative staffs have grown at a far faster pace than even the rapidly expanding tenure-track faculties of schools accredited by the ABA.[71] The number of full-time administrators who also teach—deans, librarians, and other law school personnel—more than tripled from 1998 to 2008, increasing from 528 to 1,659.[72] And although there are no national statistics on how much administrative staffs in general have grown, comparing a typical law school catalogue from even ten or fifteen years ago to the current version will likely reveal massive growth in the institution's administrative apparatus.

The explosion in the number of law school faculty and administrative staff, both in absolute terms and relative to student enrollment, is both a cause and a consequence of the veritable mania for

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69. As recently as twenty-five years ago, when I was a first-year law student at a resource-rich institution, legal research and writing classes at Michigan Law School were taught by third-year law students to first year students, rather than by legal research and writing faculty.

70. A law professor who read a law review article every day of the year would spend 28 years reading the law review literature published by professors at American law schools in 2010 alone.

71. *See* TAMAHANA, supra note 29, at 126–28.

72. *See* THE NAT'L JURIST, *supra* note 35. Keep in mind that the "deans" referred to in this statistic do not include the dean of the law school. While a generation ago it was not unusual for a law school's dean to teach at least one class per year, such double duty would be considered wholly unreasonable in an age when a law school dean's job has come to be dominated by constant fundraising and the attendant frequent flyer miles.

capital construction projects that has gripped higher education in general, and law schools in particular, over the past generation.[73] In recent years, numerous law schools have built new main buildings or expanded existing facilities, even when they already possessed impressive, even magnificent physical plants.[74] Law school building campaigns are often classic examples of conspicuous consumption at the social-institutional, rather than at the individual, level: School A builds a fancy new building, and as a result School B discovers that it "needs" a new building too, in order to keep up with the academic Joneses.[75]

Admittedly, building campaigns are generally funded via some combination of private money, a university's general fund, and, at public schools, tax dollars. But when such efforts fall short, part of the direct cost could potentially be transferred to law students. Another complicating factor is that to some extent, money is, as law students learn to say, fungible: a dollar spent on the physical plant is, to a degree, a dollar that isn't going to be spent on something else, such as holding down tuition increases.[76] In addition it seems quite odd to be pumping ever-greater sums into bricks and mortar, given changes in information technology that enable education to take place outside of a $100 million structure.[77] This point applies with special force to law libraries, which grow ever-more pharaonic even as the practice of law becomes less book-based, and as, if my

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73. *See, e.g.*, *Law School Dedicates New Building*, HARV. GAZETTE, Apr. 23, 2012, http://news.harvard.edu/gazette/story/2012/04/law-school-dedicates-new-building/. Michigan Law School is in the process of completing a $102 million building to supplement the superb Oxbridge-style quadrangle that houses the institution. *See Law School Building Project: A New Legal Landscape*, UNIV. OF MICH. LAW SCH., http://www.law.umich.edu/buildingproject/Pages/home.aspx (last visited Aug. 30, 2012). Harvard recently added a 250,000-square-foot structure to its law school campus. *See* HARV. GAXETTE, *supra.*

74. *See, e.g.*, sources cited at note 72, *supra.*

75. One can see this same process taking place all over the university, as schools build posh dorms and amenities like recreation centers, to compete for students who generally don't realize that they, their families, or both are purchasing such amenities at far too high a price. This phenomenon has been referred to as an "amenities race." *See* Kyle Stokes, *In College Dorms and Dining, How Nice Is Too Nice?*, ST. IMPACT (Aug. 18, 2011, 2:54 PM), http://stateimpact.npr.org/indiana/2011/08/18/in-college-dorms-and-dining-how-nice-is-too-nice/.

76. The law school at which I teach began constructing a new building at a time when the same sum of money necessary to build it could have generated an income stream that would have provided full-tuition scholarships for half the student body.

77. Consider, for example, the remarkably successful initiative undertaken recently by faculty at Stanford to offer free online courses in Computer Science. *See* Steve Henn, *Stanford Takes Online Schooling to the Next Academic Level*, NAT'L PUB. RADIO (Jan. 23, 2012, 5:14 PM), http://www.npr.org/blogs/alltechconsidered/2012/01/23/145645472/stanford-takes-online-schooling-to-the-next-academic-level.

own observations are accurate, law students find it less and less necessary or desirable to use these literary labyrinths even as opulent study spaces.

A more insidious complication is likely obvious to anyone who has ever bought a house that was somewhat bigger and fancier than one's previous residence. Such purchasers feel impelled by something akin to a social gravitational force to fill their new houses up with things they would not have bought if they did not have all that new space to fill. The same thing happens in academia: an institution sinks enormous capital, both literally and metaphorically, into getting an impressive new building with much more space than was available in what *in retrospect* becomes its intolerably inadequate prior facilities, and as if by magic all sorts of new "centers" and "groups" and, most of all, administrative personnel appear almost overnight.[78]

E. Other Drivers of Increased Costs

Decreased student to faculty ratios, increased faculty compensation, legal aid clinics, legal writing programs, greatly expanded administrative staffs, and newer, more expensive facilities are not the only reasons why the cost of law school has skyrocketed over the course of the past generation. Higher starting salaries at large law firms were correlated with increased demand for legal education in the first half of the previous decade.[79] At public law schools, reductions in state subsidies have played a role (Note, however, that if, for example a law school doubles its operating budget, while state

78. It is not as if none of these additions have educational value. For example, all other things being equal, it is no doubt desirable to have six career services persons housed in a suite of nice new offices, doing what they can to help students and graduates get jobs. The problem, of course, is that all other things are never equal. When I started teaching twenty-one years ago, my law school's career services department consisted of one part-time employee who had a desk in the admissions office. Coming as I did from the resplendent environs of the elite law school where I had so recently been a student, this seemed on one level rather absurd. On quite another level, resident tuition was literally one-tenth of what it is today. The point is that, as always, the question needs to be not "does this expenditure improve the quality of what the law school is doing" (whatever that may be), but rather, "does it do so at a reasonable cost?" Because of the dysfunctional way that legal education is priced and paid for, this question is rarely asked as often or as insistently as it ought to be by those who are in the best position to affect the answer.

79. Law school applications rose from about seventy-five thousand in 2000 to nearly one hundred thousand in 2004. *See LSAC Volume Summary*, LAW SCH. ADMISSION COUNCIL, http://www.lsac.org/LSACResources/Data/LSAC-volume-summary.asp (last visited Aug. 30, 2012). Between 1997 and 2006, the "going rate" (the salary paid to new associates by the top New York law firms) went from $116,000 to $160,000 in constant dollars.

subsidies to the school increase at a lower rate, this may be characterized by the school as a "cut" in state support.) Law schools spend more on self-promotion and advertising than ever before.[80] And at some universities, the central administration continues to treat the law school as a revenue source for cross-subsidization (a so-called "cash cow"), although there is little indication that this percentage has increased in recent years.

Underlying this financial arms race is the ever-present rationale that refusing to spend yet more money on faculty, administration, physical plant, self-promotional efforts, and so forth is not an option in the constant struggle to enhance, or at least sustain, a school's *U.S. News* ranking. Indeed, the rankings directly reward inefficiency, as the ranking formula treats expenditures per student as proxies for educational quality.[81] This rationale has created a negative-sum positional game, where one school's gain is always some other school's loss. It has also exacerbated the classic collective action problem that describes the economics of today's law schools: no school wants to pay the short-term price for bucking a system that in the long term is not sustainable for the enterprise as a whole.

Nevertheless, while in the long term law schools will pay the price for being unable to break free from the vicious cycle of having to constantly increase revenue merely to stay in the same place relative to their competitors, at present that price is being borne most directly by law school graduates, who year after year pay more and more for an educational credential whose real value has been declining for some time now.[82] What are the practical consequences of creating a system of legal education in which most students must now pay somewhere between $150,000 to $250,000 in direct costs, as well as incurring significant opportunity costs, to become eligible

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80. This has given birth to the ubiquitous phenomenon of so-called "law porn": glossy publications that law schools mail out by the thousands to other law faculties, law firms, and the media, in an attempt to bolster their reputations and thereby positively affect their ranking in the *U.S. News* formula. For a skeptical look at the effectiveness of these efforts, see David Bernstein, *Ineffective "Law Porn,"* THE VOLOKH CONSPIRACY (Sept. 27, 2012, 8:04 PM), http://volokh.com/2010/09/27/ineffective-law-porn/.

81. *See* Robert Morse & Sam Flanigan, *Methodology: Law School Rankings*, U.S. NEWS & WORLD REP. (Mar. 12, 2012), http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/03/12/methodology-law-school-rankings (explaining the methodology employed in the rankings). Expenditures per student account for just under 10 percent of a school's overall ranking. Student-faculty ratio accounts for another 3 percent, while the total number of books in the law library accounts for three-quarters of 1 percent. In other words if School A and School B are identical in all respects except that School A spends more money to achieve exactly the same results, School A will be ranked higher than School B.

82. *See infra* Part III.

to sit for the bar exam in the jurisdiction in which they wish to practice? The answer to that question reveals the scope of the crisis that is now overtaking American legal education.

PART III: CONSEQUENCES FOR RECENT GRADUATES

Law school now costs too much for two reasons: there aren't enough jobs for lawyers, especially new lawyers, and too many of the legal jobs that do exist do not pay enough to justify incurring the cost of a legal education. This combination of circumstances is a product of both long-term changes in the market for the providers of legal services and the way law students finance their legal education. The result has been the creation of a class of deeply indebted, underemployed law school graduates.[83] A common response of law schools to this situation has been denial.[84] But, as the extent of the collapse in the market for new law graduates becomes apparent, denial is slowly giving way to recognition. This section will first outline the employment and salary situation for recent law graduates. It will then review some of the economic and social consequences for those graduates of entering a hyper-saturated legal market while carrying unprecedented levels of educational loan debt. Finally, it will touch on the employment and under-employment situation for recent graduates of the nation's elite law schools.[85]

A. Employment and Salary Outcomes for Recent Law School Graduates

How many recent graduates of American law schools manage to obtain real legal jobs? Of this group, how many are able to make enough money from the practice of law to justify the cost of obtaining a law degree? Answering these questions requires looking critically at the statistics reported by law schools to the National Association for Law Placement (NALP) and the American Bar

83. For a stark glimpse into the world of marginalized lawyers and law graduates, see *Law Forum*, JD UNDERGROUND, http://www.jdunderground.com/all/ (last visited Aug. 30, 2012).

84. For instance, a literature search through LexisNexis reveals that the phrase "law graduate debt" occurs in exactly one law review article published in the last five years, and that the relationship between student debt and the cost of law school has gotten almost no attention in the legal academic literature to this point.

85. The situation for elite law school graduates is particularly telling, because if significant numbers of such graduates are having trouble securing acceptable employment outcomes, this has dire implications for law school graduates as a whole—the vast majority of whom, of course, do not attend elite schools.

Association (ABA). These statistics have many limitations, perhaps the most glaring of which is that they provide no information on what law school graduates are doing even two years after graduation, let alone further down the line.[86] Instead, they provide a snapshot of what the members of a national graduating class are doing nine months after completing law school. To answer the question of how good of a return graduates are getting on their investment, we would need much better data than we have regarding medium- and long-term career outcomes. Still, even with their limitations, the NALP and ABA data can be analyzed in useful ways.

My analysis is based on the following heuristic: a real legal job consists of full-time, non-temporary employment that requires a law degree. The economic value of a law degree is largely a product of the fact that a law degree from an ABA-accredited law school is a prerequisite for admission to the bar in the vast majority of American jurisdictions. Although some law graduates will acquire jobs for which a law degree was not required, but which still added marginal value to the applicant's resume, this category appears to include a small percentage of all law graduates.[87] A law degree can impede acquiring non-legal jobs.[88] Indeed, even aside from the cost of acquiring a law degree, it is unclear whether the degree benefits, on average, those graduates who do not acquire legal jobs. Similarly, it is safe to assume that very few people spend $150,000 to $250,000 in order to qualify for part-time or temporary work.

These principles permit a basic estimate of the core employment rate—that is, the percentage of law graduates who had real legal jobs nine months after graduation—for the national law school class of 2011 (the most recent year for which national statistics are available). We can then compare those numbers to those of national classes over the previous decade, before taking a generation-long perspective, in an attempt to discern what changes are happening in the market for the providers of legal services.

In June 2012, NALP reported that 60 percent of 2011 graduates whose employment status was known nine months after graduation

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86. A glimpse of what is happening to the long-term earning potential of attorneys is provided by a survey conducted by the Alabama Bar Association, which reveals that the percentage of attorneys in the state making at least $200,000 and $100,000 per year (in 2009 dollars) fell by half between 1985 and 2009, and that 23 percent of attorneys with active licenses were making less than $25,000 in 2009. *See* ALA. STATE BAR, ECONOMIC SURVEY OF LAWYERS IN ALABAMA (2010), *available at* http://www.alabar.org/media/news/images/0404 2012_Economic-SurveyofLawyersinAlabama2010Report.pdf.

87. *See generally* NALP *Class of 2010 Graduate Salary Data*, ABA SECTION ON LEGAL EDUC., http://employmentsummary.abaquestionnaire.org/nalp.aspx (last visited Nov. 8, 2012).

88. *See, e.g.*, Elie Mystal, *What 'Can't' You Do with a Law Degree?*, ABOVETHELAW (Jan. 19, 2012), http://abovethelaw.com/2012/01/what-cant-you-do-with-a-law-degree/.

were working in full-time positions requiring bar admission.[89] (The employment status of approximately 7 percent of graduates remained unknown.)[90] Shortly thereafter, the ABA, bowing to pressure to make more data on employment outcomes public, released detailed data for the class of 2011.[91] These data revealed that nine months after graduation, only 55.2 percent of graduates whose employment status was known were employed in full-time, long-term positions requiring bar admission.[92]

Yet these figures only begin to tell the story of the extent to which recent law school graduates are struggling. Consider some of the types of jobs that the NALP and ABA surveys count as part of the core employment rate, that is, full-time, long-term employment requiring a law degree:

(1) *Clerkships.* Judicial clerkships make up an ambiguous category of post-graduation outcomes. Traditionally, Article III clerkships have been considered a prestigious waystation on the road to more permanent employment. On the other end of the spectrum, state district court clerkships tend to be truly temporary positions, which leave those in them scrambling to find legal work afterwards. At all but a few schools, the large majority of judicial clerkships are state and local rather than federal, and the majority of state clerkships are with district courts.[93] Categorizing the latter as long-term positions is both unrealistic and misleading.

(2) *Positions funded by law schools.* Another particularly notable subcategory of dubious "long-term" positions comprises those funded by law schools themselves, which provided some of their otherwise unemployed graduates with "full-time, long-term employment requiring bar admission during the NALP nine-month, post-graduation reporting period." The June 2012 ABA data reveals that this practice is becoming quite common, particularly at many of the

89. *See* NAT'L ASS'N FOR LAW PLACEMENT, EMPLOYMENT FOR THE CLASS OF 2011—SELECTED FINDINGS 3 (2012), *available at* http://www.nalp.org/uploads/Classof2011SelectedFindings.pdf.

90. *Id.*

91. *See Employment Summary Report*, A.B.A. SEC. OF LEGAL EDUC., http://employmentsummary.abaquestionnaire.org/ (last visited Aug. 30, 2012).

92. "Long-term" employment in this data set is defined as all employment that does not have a definite term of employment of less than one year.

93. For example, 22 of the 29 graduates of the University of Colorado's 2011 class who obtained judicial clerkships were in state and local positions, and 15 of the latter were in district rather than appellate court positions (data on file with the author).

highest-ranked schools. In addition, many schools funded short-term jobs—positions lasting less than one year—for their graduates.

The following high-ranked schools funded a significant number of what the schools reported as long-term, full-time, bar-admission-required jobs held by their 2011 graduates nine months after graduation:

- Yale: 22 of 205 graduates
- Harvard: 33 of 583 graduates
- Columbia: 38 of 456 graduates
- Chicago: 24 of 203 graduates
- NYU: 56 of 466 graduates
- Virginia: 64 of 377 graduates
- George Washington: 80 of 518 graduates[94]

Several other high-ranked schools, by contrast, funded large numbers of what the schools reported as short-term, full-time; short-term, part-time; or long-term, part-time positions requiring bar admission for graduates, which those graduates held as of February 15, 2012. These jobs thus improved the schools' overall nine-month after-graduation employment rate but not the schools' core employment rate, which includes only full-time, "long-term," bar-required positions. Schools with these sorts of positions include:

- Cornell: 26 of 201 graduates held short-term, full-time, law school-funded jobs;
- Georgetown: 58 of 644 graduates were in short-term, full-time, law school-funded jobs, while 19 were in long-term, full-time, law school-funded positions;
- UCLA: 55 short-term, part-time positions, eight short-term, full-time positions, and one long-term, full-time position out of 344 graduates;
- Vanderbilt: 31 long-term, part-time positions out of 198 graduates;
- Notre Dame: 41 short-term, full-time positions and two long-term, full-time positions out of 190 graduates;
- Boston University: 50 short-term, part-time and 10 short-term, full-time positions out of 273 graduates;

94. *See supra* note 91.

- Fordham: 41 part-time, short-term, 12 full-time, short-term, and 4 full-time, long-term law school-funded positions out of 428 graduates.[95]

While such programs can be defended as attempts to deal with the genuine employment crisis facing graduates, they can also be criticized as attempts to game a school's overall graduate employment rate. This applies especially to programs whose existence was not revealed before the release of the ABA data.

(3) *Jobs that feature nominal or non-existent salaries.* Recently several U.S. Attorney offices around the country made news in the legal press by offering the opportunity to work in year-long Special Assistant U.S. Attorney positions. It turned out that the word "Special" in the job title referred to the fact that these full-time positions, which required applicants to have at the very least a law degree and bar membership, were completely unpaid.[96]

This is merely a particularly striking example of a practice that has arisen among government and non-profit organizations, employers that can avoid the legal requirement to pay employees at least what would otherwise be the legal minimum wage. With law schools churning out tens of thousands of un- or under-employed graduates every year, employers are discovering that it is becoming possible to hire employees to perform full-time legal work without actually paying them for it. How widespread this practice is remains unknown, but the large number of graduates who report they are doing "internships" and "clerkships" for employers suggests that this innovation in legal employer-employee relations may not be rare.

(4) *Unsustainable self-employment.* The fourth category comprises possibly unsustainable forms of self-employment. 42.9 percent of 2011 graduates who listed themselves as employed by firms were with firms of two to ten attorneys, while another 6 percent described themselves as in solo

95. *See id.*

96. *See Special Assistant United States Attorney*, U.S. DEP'T OF JUSTICE, http://www.justice.gov/oarm/jobs/11wdvasausa-01an.htm (last visited Aug. 30, 2012). Remarkably, one such position required at least three and preferably five years of practice experience. *See also* Christopher Danzig, *The DOJ Wants You, Experienced Attorneys—to Work for Free*, ABOVE THE L. (Jan. 26, 2012, 12:20 PM), http://abovethelaw.com/tag/special-assistant-united-states-attorney/.

> practice.[97] Some of the former jobs were genuine, if generally low-paying, associate positions with stable law firms. Others consisted of nominally paid "clerkships" or so-called eat-what-you-kill arrangements, in which a firm offers office space to a graduate in return for a percentage of whatever business the graduate manages to drum up. Yet others consisted of a couple of new grads opening a law office and trying to make a go of it, in a hyper-saturated market in which they likely have almost no idea what they are doing, because neither the most basic mechanics of practicing law nor any of the aspects of running one's own small business were covered during the course of their legal education.[98] (These disadvantages apply with special force to the approximately 1,059 members of the class of 2011 who attempted to start solo practices.)

If we eliminate state district court clerkships and law school-funded positions from the core employment rate made up of those holding full-time long-term jobs requiring bar passage, then the percentage of graduates of the class of 2011 who can be said to have held real legal jobs nine months after graduation falls well below 50 percent.[99] We can only speculate regarding how many full-time, putatively long-term positions feature either nominal or non-existent salaries or otherwise consist of forms of unsustainable self-employment. It seems doubtful, though, that when all is said and done, much more than one-third of the graduates of ABA-accredited law schools in 2011 had what we are defining—and, more to the point, what they would have considered from an ex ante perspective—as real legal jobs.[100]

We have not yet touched on what must be a crucial consideration in any analysis of this type, which is how much the salaried law jobs that do exist after law school actually pay. Here, the NALP data are seriously incomplete, but in a way that nevertheless allows us to draw certain conclusions regarding the data NALP reported, which

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97. *See* NAT'L ASS'N FOR LAW PLACEMENT, *supra* note 89.

98. The percentage of very small firm jobs listed by recent graduates fall into each of these categories remains unknown. That some graduates fall into each is clear from my extensive correspondence with recent graduates regarding their employment situations.

99. Only 58 percent of 2010 ABA law school graduates had a full-time position requiring a law degree nine months after graduation. But 26 percent of all jobs taken by these graduates (including non-legal jobs) were temporary positions. *See supra* note 89.

100. To put it another way, a real legal job can be defined as a job that a typical prospective law student would have considered a minimally satisfactory employment outcome as a consequence of the decision to enroll in law school.

covers only 41.9 percent of the class of 2011.[101] The significance of the missing data can be gleaned by examining the widely varying reporting rates for different job categories. For example, salaries were reported for 93.2 percent of graduates who reported employment with firms of more than 500 attorneys.[102] Meanwhile salaries were reported for just 40.7 percent of graduates who reported employment with firms of two to ten attorneys. And naturally no salaries were reported for the 14.3 percent of the class that was not employed at all. In short, reporting rates tended to be very high for graduates with high-paying work and low for graduates with low-paying jobs.[103]

Given this pattern, one can draw certain fairly reliable conclusions about the salaries graduates of the class of 2011 received nine months into their nascent legal careers. NALP reported a median salary of $60,000 for the 41.9 percent of graduates of the class for whom it had salary data. This means that 20.95 percent of the class was reported to be making a salary of $60,000 or more. The true figure is probably higher, but how much higher?[104] Because salary reporting rates are so much higher among graduates with well-paying jobs, it seems improbable that more than one quarter of the class of 2011 was making $60,000 or more nine months after graduation. This conclusion can also be extrapolated from the so-called bimodal salary distribution in salaries paid to recent law graduates. As Professor William Henderson's analysis of the data indicates, there are actually very few entry-level legal jobs that pay moderately more than the median reported salary.[105] A very large number of entry-level legal jobs pay between $35,000 and $60,000 per year,

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101. *See* NAT'L ASS'N FOR LAW PLACEMENT, *supra* note 89.

102. *See id.*

103. When reporting salaries, schools do not rely solely on self-reporting by graduates. NALP encourages schools to use a variety of sources of information, such as publicly known starting salaries at law firms and other employers, to determine graduates' salaries when these are not reported by the graduates themselves. One consequence of this is that a graduate with a high-paying job is far more likely to have his or her salary recorded even without the graduate's cooperation.

104. "Probably," because it isn't completely clear that the number of unreported salaries of $63,000 or more outnumbers the number of misreported salaries that were reported as being this high but in fact were not. When I audited the employment and salary data for the University of Colorado's class of 2010, I found several inaccuracies in regard to employment status that all tended to overstate the graduate's employment situation. That is, I found graduates who were working part-time described as working full-time, and graduates in short-term positions described as being in long-term positions. I was unable to check the accuracy of reported salary data.

105. *See* William Henderson, *Distribution of 2006 Starting Salaries: Best Graphic Chart of the Year*, EMPIRICAL LEGAL STUD. (Sept. 4, 2007, 3:29 PM), http://www.elsblog.org/the_empirical_legal_studi/2007/09/distribution-of.html.

while a smaller number pay the six-figure salaries that big firms offer to starting associates. We know the reporting rates for six-figure salaries are very high, and that there are comparatively few jobs that pay in the high five figures. In short, it seems unlikely that many graduates are making more than the reported median but having their salaries go unreported.[106]

Roughly speaking, we can estimate that perhaps 15 percent of contemporary law graduates are securing high-paying, entry-level legal jobs, and another 25 percent are getting legal jobs that pay in the mid five figures, while a solid majority of graduates are unable to secure full-time, genuinely long-term legal employment within a year of graduation. The consequences for recent graduates of this overall employment and salary situation, given the skyrocketing cost of obtaining a law degree, are dire.

B. Debts that No Honest Man Can Pay

Nearly nine out of ten current law students borrow money to attend law school.[107] Two years ago, the federal government revamped federal support for educational lending by removing government guarantees for private educational loans and replacing such loans with a system of expanded direct lending from the federal government. Federal loans to attend law school currently carry interest rates of 6.8 percent for the first $20,500 borrowed per year, and 7.9 percent for any amount beyond that.[108] Unlike almost any other form of debt, educational loans are nearly impossible to discharge in bankruptcy.[109] What this means, in practice, is that American taxpayers are now the direct guarantors of the approximately

106. This is all the more true given the very strong practical incentives law schools have to discover and report all the high-salaried jobs their graduates have acquired. Of course the incentives run very much the other way with regard to discovering and reporting low salaries.

107. The percentage of 2008 law school graduates who took out educational loans to pay law school expenses was 88.6 percent. *See* JULIE MARGETTA MORGAN, CENTER FOR AM. PROGRESS, *What Can We Learn from Law School?* 8 (2011), *available at* http://www.americanprogress.org/issues/2011/12/pdf/legal_education.pdf.

108. *See GradPlus Loan for Grad Students*, GRADLOANS.COM, http://www.gradloans.com/graduate-plus-loan/ (last visited Aug. 11, 2012); *Graduate Stafford Student Loans*, GRADLOANS.COM, http://www.gradloans.com/stafford_loan/ (last visited Aug. 11, 2012).

109. *See* Madeleine Patton & Brandon Howard, Student Gallery, *Reducing the Life Sentence of Student Loans*, 31 AM. BANKR. INST. J. 48, 48 (2012) (noting that over the past two decades, student loans have become "nearly impossible to discharge in bankruptcy," subject to a narrowly construed hardship exception).

$4.375 billion per year of relatively high-interest federal debt that law students borrow to attend law school.[110]

How much is this per graduate? The median law school-related debt for indebted graduates of the 191 law schools who reported data for the class of 2011 (four schools did not report) was $105,028, a 5.84 percent increase from 2010's figure of $99,236.[111] This happens to be almost exactly the percentage by which tuition went up for the national class of 2011 relative to the class of 2010, and indicates the extent to which law school tuition is now so high that tuition increases will be close to 100 percent debt-financed by the nearly 90 percent of graduates who take on law school debt.[112]

Note that these figures *do not include interest accrued on these loans*. Interest accrues on educational loans from the date of issue, and this has a significant effect on the borrower's loan balance. Indeed, if a student does not pay down interest accrued on law school loans over the course of law school, then a student who borrows $125,000 in principal (this was the average borrowed by 2011 graduates of private law schools) will have a $142,500 loan balance six months after graduation, when the first loan payment comes due. This in turn suggests that the published data on law school debt understate the true levels by close to 15 percent.

Keep in mind that these figures omit other educational debt. As far as I have been able to discover, most law schools do not collect any data on how much educational debt the students they admit have already incurred, but average undergraduate debt among college graduates with debt is estimated to have been nearly $25,000 in 2011.[113] Although this figure omits the typically higher debt loads of graduates of increasingly common for-profit colleges, it is likely that the vast majority of law schools featured median educational debt for 2011 graduates well into six figures.[114] Furthermore, given ongoing law school tuition increases, current law students are certain to incur significantly more debt than the graduating class of 2011.

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110. Approximately 125,000 law students are currently borrowing an average of about $35,000 per year to attend ABA-accredited law schools. The average amount borrowed and the total number of students are extrapolated from the 2011 ABA graduate debt data published by *U.S. News & World Report*. *See infra* note 111.

111. *See Whose Graduates Have the Most Debt?*, U.S. NEWS & WORLD REP., http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/grad-debt-rankings (last visited Aug. 30, 2012).

112. *See* Matt Leichter, *The Law School Tuition Bubble: Tuition Increases Law School-by-Law School from 2005 to 2011, Part 1*, THE L. SCH. TUITION BUBBLE (Jan. 24, 2011), http://lawschooltuitionbubble.wordpress.com/2011/01/24/the-law-school-tuition-bubble-tuition-increases-law-school-by-law-school-from-2005-to-2011-part-1/.

113. *See supra* note 28 and accompanying text.

114. *See supra* note 89 and accompanying text.

Even if tuition were frozen at all law schools in 2012 and 2013, current 1Ls would still pay on average about $22,000 more in total tuition than did the class of 2011.[115] Indeed, we can estimate conservatively that the average law student in the graduating class of 2014 who graduates with educational debt will have approximately $165,000 of such debt—almost all of it at interest rates between 6.8 and 7.9 percent.

Servicing this sort of debt requires a fairly high income. A ten-year repayment plan on a $150,000 loan balance will require payments of $1774 per month, i.e., more than $21,000 per year. This will almost surely be an impossible debt burden for the 75 to 80 percent of current law graduates who will be earning below the "median" NALP-reported salary of $60,000 pre-tax dollars, except for those who are getting significant financial help from a spouse or other family members.[116] Those who are earning near the high end of this range may be able to pay off their educational debt in a legally timely manner by refinancing their loans to twenty-five-year terms, which is becoming a common practice among law graduates. Even so, they will still be dealing with a monthly payment of $1,100—and total payments, with interest, of $330,000, which many will not have completed when their own children are in college.[117] And even a twenty-five-year repayment plan will be of no use to the large number of recent graduates making considerably less than mid-five figure salaries, or who are completely unemployed. Nor will it be useful to those making the "median" (in reality the seventy-fifth to eightieth percentile) salary but who have $200,000, $250,000, or even $300,000 in educational debt, as thousands do now, and even more will in the near future.

Even for the "winners" in the law school investment game—the approximately 15 percent of law students who acquire jobs upon graduation that pay six-figure starting salaries—that game remains fraught with financial peril. Few graduates who join big law firms

115. This number can be derived by comparing tuition levels in 2011–2012 to those over the previous three years and assuming that tuition remains the same for the class of 2014 for the duration of its members' law school attendance.

116. Recall that the median salary as reported by NALP is drawn from a group that includes only 41.9 percent of all law graduates, meaning that barely one in five law graduates were reported to have salaries at or above the median.

117. *See Beta Georgetown Law Prospective Student Financial Planning Calculator*, GEORGETOWN LAW, http://www.law.georgetown.edu/admissions-financial-aid/office-of-financial-aid/loader.cfm?csModule=security/getfile&pageid=61621 (last visited Oct. 1, 2012) (providing a useful tool for calculating the consequences of various debt levels). This calculator illustrates how fully debt-financing a legal education will result in debt loads, six months after graduation, nearly 20 percent higher than the principal debt incurred over the course of law school. For example a student who borrows $200,000 over the course of law school will have, at present interest rates, around $234,000 in debt in the fall following graduation.

become partners.[118] If they acquire reasonably high-paying positions upon departure, or if they live very frugally during their years with the firm and manage to pay down a large portion of their debt, then their gamble will have paid off, at least in pecuniary terms.[119]

Yet changes in the market for such high-paying big firm positions appear to be making this an increasingly risky wager—not merely in terms of acquiring such a job in the first place but also in terms of holding onto it long enough or having a good enough exit option, or both, to make the initial acquisition ultimately worthwhile.[120] Indeed, a pair of recent papers by law professors—one of whom is currently a law school dean—conclude that a law degree is, under present circumstances, likely to be a significantly negative net investment for a large majority of those who acquire one.[121]

Those law school graduates—quite possibly an actual majority—who cannot pay their debts in a timely manner, even if those debts were refinanced to traditional mortgage-length terms, are faced with few options. Except under extraordinary circumstances, their debts cannot be discharged in bankruptcy, which means they will either eventually default on them or, if they are eligible, enter the federal government's Income-Based Repayment program (IBR). IBR allows debtors to make reduced payments equal to 15 percent of whatever portion of their adjusted gross income is 150 percent above the federal poverty line.[122] Interest due that is not paid by the debtor accrues but is not capitalized. After twenty-five years[123]—

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118. According to NALP, 77 percent of associates leave the firm they joined after graduation within five years. *See Law Practice: Up, Out or Over*, A.B.A. L. PRAC. ARCHIVE, #160 (2006–2010).

119. The non-pecuniary (i.e., psychic) benefits and costs of legal education comprise a subject beyond the scope of this Article. Suffice it to say that this is a complex topic, as it seems clear that such benefits and costs are both considerable. On the one hand a legal career has significant status value for many people beyond its monetary rewards; on the other, both the monetary rewards and status value must be weighed against the body of evidence suggesting that lawyers are unusually unhappy, depressed, and prone to substance abuse and suicide when compared to other professionals. On the latter set of issues, see Patrick Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 874–81 (1999).

120. Some observers believe that the recent downturn in big-firm hiring is a sign of a structural rather than a cyclical change in the employment market for lawyers, and that both law firms and law schools need to accommodate themselves to a world in which technology and outsourcing will continue to transfer work that was formerly done by junior associates at large American law firms to other, more economical entities.

121. *See* Jim Chen, *A Degree of Practical Wisdom: The Ratio of Educational Debt to Income as a Basic Measurement of Law School Graduates' Economic Viability*, 38 WM. MITCHELL L. REV. 1185 (2012); Herwig J. Schlunk, *Mamas 2011: Is a Law Degree a Good Investment Today?* (Vand. Law & Econ., Working Paper No. 11-42, 2011).

122. *See Federal Student Aid*, U.S. DEP'T OF EDUC., http://studentaid.ed.gov/PORTALSWebApp/students/english/IBRPlan.jsp (last visited Aug. 30, 2012).

123. *See id.*

twenty years for loans originating after 2012[124]—any remaining principal is forgiven, although under present IRS rules the forgiven debt is treated as income to the debtor.[125] For certain government loans, the Public Service Loan Forgiveness Program (PSLF) allows a debtor's debt to be discharged after 120 on-time reduced rate payments if the debtor is working for a government or non-profit employer.[126]

While preferable to default, the disadvantages of IBR and PSLF are significant. The debtor's debt grows for as long as the debtor remains eligible. This means that the debtor has a large unsecured debt on his or her credit report, which will make it difficult to obtain consumer credit. If the debtor secures a high enough-paying job to no longer be eligible for IBR, the debtor must start making payments on the whole amount. Most problematic of all, the IBR program creates no contractual rights for those who take advantage of it: as a legal matter the program could be eliminated at any time, leaving those dependent on it with enormous amounts of non-dischargeable debt.

In sum, the present cost of legal education creates debt loads for law students that bear no reasonable relation to the employment prospects many of those students will have upon graduation. And this is no longer merely a problem at lower-ranked law schools. The combination of increasing educational costs and flat or actually decreasing numbers of high-paying legal jobs, in an economy where the cost of legal services is coming under more and more pressure from the forces of economic rationalization, has created a situation in which many graduates of even very highly ranked schools find themselves struggling to secure the kinds of jobs they would have considered minimally acceptable when they enrolled. (Keep in mind that such people often paid $200,000 or more in direct costs, as well as incurring significant opportunity costs, to obtain law degrees from prestigious institutions).

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124. *See We Can't Wait: Obama Administration to Lower Student Loan Payments for Millions of Borrower*s, THE WHITE HOUSE, http://www.whitehouse.gov/the-press-office/2011/10/25/we-cant-wait-obama-administration-lower-student-loan-payments-millions-b (last visited Nov. 18, 2012).

125. *See, e.g.*, INTERNAL REVENUE SERV., 2008 REPORT TO CONGRESS 391 (2009), available at http://www.irs.gov/pub/irs-utl/08_tas_arc_lr_6.pdf.

126. See Public Service Loan Forgiveness, FEDERAL STUDENT AID, http://www.studentaid.ed.gov/repay-loans/forgiveness-cancellation/charts/public-service (last visited Nov. 18, 2012).

C. Current Employment Outcomes for Graduates of Elite Law Schools

How many current students at highly-ranked law schools are likely to secure what they would have considered a good, or at least acceptable, first legal job upon graduation before they enrolled?[127] One way to answer this question is to determine outcomes that prospective elite law school students would likely consider unacceptable from an ex ante perspective. Although, of course, these will vary by individual, it is possible to make general estimates about the sorts of post-graduate outcomes that would lead to buyer's remorse on the part of people who are considering investing several hundred thousand dollars in direct and opportunity costs in order to attend a top law school.

For the purpose of analysis, let us assume the following post-graduate outcomes, as recorded by the annual NALP survey, would be considered unacceptable by most prospective elite law school students:

(1) Unemployment (or employment status not known);
(2) A law school-funded position;
(3) Further graduate study;
(4) Academia;
(5) A position with a very small law firm (ten or fewer attorneys) or as a solo practitioner;
(6) A state or local clerkship; and
(7) A position in "business and industry."

That (1) and (2) are generally bad outcomes requires no explanation. Further graduate study—which most often means enrollment in an LL.M. program—is, for law school graduates, often a consequence of being unable to obtain suitable employment. On NALP forms, "academia" tends to mean a low-paying and generally temporary position within an academic institution, rather than a tenure-track job, or a so-called visiting assistant professorship, which can serve as a prelude to the former.[128] Positions with very small law firms generally feature most of the major disadvantages of entry-level associate big firm work, such as long hours and boring

127. For many graduates, the first job they acquire after graduation plays a particularly significant role in their overall career path, since certain types of prestigious legal work (for example, employment with a national law firm or a federal judicial clerkship) tend to have a strong effect on a graduate's subsequent career prospects.

128. To minimize the possibility of double-counting undesirable outcomes, I am assuming all jobs listed under "academia" are law school-funded positions.

tasks, without the compensation of a large paycheck.[129] State and local clerkships are rarely considered desirable positions by elite law school graduates, who appear to have only begun taking such positions recently. On NALP surveys, "business and industry" usually signifies, with occasional exceptions, low-paying non-legal employment.[130]

Of course all these generalizations are subject to individual exceptions. For example, a graduate is occasionally unemployed by choice. Some small law firm jobs are with high-paying boutiques. A state appellate court clerkship can be a desirable position. A position in "business and industry" might feature a six-figure salary with an international consulting firm. On the other hand, the proposed method of analysis assumes that all jobs with firms of more than ten attorneys, all federal clerkships, all government jobs, and all public interest positions are without exception desirable outcomes for graduates, which will also not be true in some individual cases. The point of the method is not to make individual judgments but to provide a basic estimate in the aggregate regarding the present likelihood of desirable and undesirable outcomes for graduates of these schools.

Based on the above definitions, here are estimates of what percentage of the graduating classes of 2011 at the nation's twenty highest-ranked law schools had undesirable employment outcomes as of February 15, 2012:[131]

- Yale: 18.4 percent

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129. The median salary for 2011 graduates who joined such firms and reported their salaries was $50,000 (among firms with two to ten attorneys). The true median was probably quite a bit lower, as only 40 percent of such graduates reported a salary. *See Class of 2011 National Summary Report*, NAT'L ASSOC. OF L. PLACEMENT (July 2012), http://www.nalp.org/uploads/natlsummchart_classof2011.pdf.

130. Because in a typical year approximately 3 percent of graduates of Yale, Stanford, and Harvard Law Schools take high-paying "business and industry" positions with consulting firms and the like, I am assuming that a similar proportion of the graduates of the other schools listed here enjoyed desirable outcomes when they were listed as taking jobs in "business and industry." For schools outside the very top tier, this is almost certainly an overly optimistic estimate. (This 3 percent figure is an estimate based on the individual job placements for people in business and industry reported by Harvard, Yale and Stanford law schools.)

131. For the purposes of this analysis, very small law firms are defined as firms of ten or fewer attorneys. For example, Columbia lists 456 graduates in its 2011 class. Nine months after graduation, eleven were unemployed or in graduate school. Thirty-eight were in law school-funded jobs. Three were listed as being in academia, which I assume for the purpose of analysis are law school-funded positions, and which I therefore did not add to the numerator. Eight were with very small law firms, twenty-four were in business or industry (I am assuming fourteen of these positions—3 percent of 456—represented desirable outcomes), and six had state or local clerkships. *See Employment Statistics*, COLUM. L. SCH., http://www.law.columbia.edu/careers/employment-statistics (last visited Nov. 8, 2012).

- Stanford: 7.9 percent
- Harvard: 17.9 percent
- Columbia: 16.0 percent
- Chicago: 23.6 percent
- NYU: 23.6 percent
- Penn: 17.0 percent
- Berkeley: 19.2 percent
- Duke: 22.5 percent
- Michigan: 26.5 percent
- Virginia: 28.1 percent
- Northwestern: 22.8 percent
- Cornell: 28.8 percent
- Georgetown: 31.3 percent
- Vanderbilt: 34.9 percent
- Texas: 42.0 percent
- UCLA: 47.0 percent
- USC: 42.9 percent
- George Washington: 44.3 percent
- Minnesota: 66.3 percent

These statistics reflect the current situation for graduates of the nation's highest-ranked law schools. They in turn suggest that, at the ninety percent of ABA law schools ranked lower than those listed above, a large majority of graduates are failing to obtain outcomes that justify the direct and opportunity costs that graduates incurred in the course of getting their law degrees. If this is indeed the case, it follows that the current model of legal education in the United States is on an unsustainable path, and that maintaining the status quo is not a long-term option for legal academia.

PART IV: THE VALUE OF LAW DEGREES AND PROSPECTS FOR REFORM

Legal education in America now features costs that are not justified by the return on investment that law graduates can reasonably expect from their degrees. This appears to be the case for a significant majority of graduates at most law schools and large minorities of graduates at even very elite institutions.[132] In other words, the net present value of most law degrees being earned today is negative.

132. A common rule of thumb used by analysts of educational debt is that a degree that requires the graduate to take on no more debt than the annual salary of the graduate's first postgraduate job is a good investment, while a degree that requires 50 percent more debt is problematic, and one which requires twice as much debt as the graduate's initial salary is likely to be a poor investment. With average educational debt among law graduates now well

What can be done to alter an equation that cannot be sustained in the long run? This section examines the prospects for a significant increase in the value of law degrees. It then considers some short-term and longer-term reforms for dealing with the crisis of the American law school.

A. Will Law Degrees Become More Valuable?

One possibility is that the return on investment graduates can expect from law degrees will improve significantly. This seems unlikely for a number of reasons. First, contrary to claims that what appears to be the unsustainable cost structure of legal education is only a temporary anomaly, produced by the downturn in large firm entry-level hiring in the wake of the recession of 2007–2008, there is a great deal of evidence that, for more than two decades now, long-term structural changes in the market for the providers of legal services have been eroding the expected return on law degrees. As a percentage of gross domestic product, the legal services sector in America has contracted by nearly one-third since the late 1970s.[133] These long-term changes were reflected in hiring statistics for new law graduates well before the recent recession.

Here are the percentages of graduates of ABA-accredited law schools who, according to the annual NALP survey, were employed in full-time positions requiring a law degree nine months after graduation in each year since 2001:

- 2001: 68.3 percent
- 2002: 67.0 percent
- 2003: 65.5 percent
- 2004: 65.1 percent
- 2005: 66.7 percent
- 2006: 68.3 percent
- 2007: 70.7 percent
- 2008: 67.2 percent
- 2009: 62.5 percent
- 2010: 59.9 percent
- 2011: 57.9 percent[134]

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into six figures, and no more than one in seven law graduates obtaining six-figure starting salary jobs, very few law schools are currently producing even marginally acceptable outcomes for their graduates.

133. *See supra* note 4 and accompanying text.

134. *See Employment Market for Law School Graduates Wavers*, NAT'L ASS'N FOR LAW PLACEMENT (July 2010), http://www.nalp.org/july10trendsgradempl. Prior to 2001, NALP used a

Note that these percentages include temporary positions, including those positions created by law schools for their otherwise unemployed graduates.[135] They also exclude from the denominator the roughly 2 percent of students from each national class whose status was unknown. In other words, even using an extremely generous definition of what constitutes obtaining a legal job, fully one-third of ABA law school graduates were not obtaining the jobs they had hoped to receive on entering law school before the recent recession.

Almost every long-term trend in the employment market for graduates of American law schools points toward the elimination of jobs, especially entry-level jobs for lawyers. Technology and outsourcing are the two most obvious structural factors that help explain a 33 percent functional unemployment rate among graduates of ABA law schools, even before the recent downturn.[136] In addition, the question of the extent to which large law firms will return to something like the hiring patterns of five years ago, though much discussed by the media and elite law schools, is largely irrelevant to the vast majority of law school graduates. Historically speaking, 90 percent of law schools send less than 20 percent of their graduates to such firms (and 80 percent of law schools have a history of sending less than 10 percent of their graduates to large firms).[137]

Further evidence that law degrees are unlikely to become more valuable going forward can be found in the projections of the Bureau for Labor Statistics (BLS), the federal agency charged with the task of predicting likely demand in various industries in the coming years. In its latest projections, the BLS predicts that there will be approximately 801,800 jobs for lawyers in America in 2020, up from 728,200 in 2010.[138] The BLS sees the American economy adding 73,800 more legal jobs over the course of the present decade from

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different method of calculation, which makes earlier figures not directly comparable. Note that these are "nested" statistics, in that the percentage given for graduates employed in full-time positions requiring a law degree is actually the percentage of the subset of graduates who are employed nine months after graduation, not of all graduates. I have recalculated the percentages to reflect the larger cohort.

135. *See supra* note 85 and accompanying text.

136. For a perceptive analysis of these long-term trends, see RICHARD SUSSKIND, THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES (2009).

137. It is true that the question of whether, for example, 73 percent (as in 2007) or 51.5 percent (as in 2011) of Columbia Law graduates are getting big firm jobs is of some relevance to graduates of non-elite law schools, in that the lower number means such graduates will be competing with many more graduates of elite law schools for non-elite positions.

138. These projections are based on what economists technically call "a full employment economy" in the target year of 2020, which is to say an economy unaffected by any possible recessionary effects at that point.

the effects of economic growth, while the agency projects 138,400 currently existing jobs will be occupied not by the attorneys who occupy them now but by people who are either not yet attorneys or attorneys who at the beginning of the decade were not employed in legal positions.[139] Overall, the BLS projects that 212,000 people who did not have jobs as attorneys in 2010 will have such jobs in 2020.[140]

Consider what these numbers mean for law graduates. If we assume that every legal job that becomes available per the BLS projections between 2011 and 2020 that is not filled by an already-employed lawyer is filled by people who graduate from ABA-accredited law schools during those years, and if we further stipulate that the total number of graduates of such schools remains the same on average over the course of the decade (approximately 44,500 per year), then we can project that 47.6 percent of graduates of ABA-accredited law schools over the course of this decade will get legal jobs.[141] This estimate is certainly too high, since some portion of the 212,000 legal jobs that become available over the course of the decade per the BLS projection will be filled by people who graduated from law school prior to 2010 but were unemployed as attorneys in 2010.[142] An even more daunting projection is provided by Matt Leichter, who has calculated the thirty-five-year degree rate—that is, the total number of degrees conferred over the approximate length of a successful professional career—of ABA-accredited law schools and compared it to the comparable rate for accredited medical and dental schools. The results are startling: Leichter finds that while the total number of degrees conferred over the past thirty-five years by medical and dental schools closely tracks the number of doctors and dentists currently working in the United States according to Bureau of Labor Statistics (BLS) estimates, the comparable ratio for law degrees and practicing attorneys is almost two to one.[143]

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139. *See Employment Projections*, U.S. DEP'T OF LABOR (Mar. 29, 2012), http://bls.gov/emp/.

140. *See id.*

141. This of course does not mean that 48 percent of law graduates will be employed continuously as lawyers over this period. Assume that Associate A graduates in 2012, is hired by a firm, is laid off in 2015, and is then replaced by Associate B, who graduated in 2015. Assume further that Associate A does not get another legal job. Per the calculation method we are employing here the "legal employment rate" for these two graduates over the course of the decade was 100 percent, since both got legal jobs after not previously being employed as attorneys at the beginning of the decade.

142. The assumption that ABA-accredited law schools will not expand over the course of the decade may also be optimistic, given historical trends.

143. This method projects that by the end of the decade, the thirty-five-year degree conferral total for ABA-accredited law schools will be slightly more than 1.6 million—exactly twice the BLS projection regarding the total number of attorneys expected to be employed in

In short, it would seem quite optimistic to predict that, assuming anything like the status quo in American legal education is maintained, the expected economic value of law degrees will remain relatively stable over the foreseeable future, as opposed to deteriorating further.[144] Expecting that value to grow seems unrealistic.

B. Possible Responses to the Crisis of the American Law School

If the long-term value of a law degree can at best be expected to remain stable, then the actual return on future law degrees can only be improved by reducing the cost of obtaining such degrees. If anything resembling the current system of legal education in America is going to be sustainable as a long-term enterprise, then as a matter of basic economics, the cost of becoming a lawyer within that system must be reduced significantly. It is not going to be possible to continue to maintain a social system in which forty-five thousand people are convinced every year to take on, and then allowed by the American taxpayer to incur, an average of $150,000 of high-interest, non-dischargeable educational debt in the pursuit of approximately twenty-one thousand legal jobs,[145] the majority of which will not pay enough to allow graduates to fully service that debt even over a long time horizon. The system might collapse because of reduced demand for law school admissions as potential law students better understand the economics of legal education and the legal profession, because the political system refuses to continue to provide unlimited debt-financing of educational credentials that cost far more than they are worth, or, most likely, because

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America at that time. *See* Matt Leichter, *BLS Updates Its 2020 Employment Projections: For Law Students, It's Very Bad*, THE LAW SCH. TUITION BUBBLE (Mar. 3, 2012), http://lawschooltuitionbubble.wordpress.com/2012/03/12/bls-updates-its-2020-employment-projections-for-law-students-its-very-bad/. And it is worth noting that not all attorneys working in the United States are graduates of ABA-accredited schools: unaccredited law schools produce several thousand graduates every year, some of whom obtain legal jobs in those jurisdictions, most notably California, that do not require a degree from an ABA-accredited school as a prerequisite for taking the jurisdiction's bar examination. In addition, an unknown number of lawyers trained outside of the United States practice within American jurisdictions.

144. It is sometimes argued that in an extremely complex, globalized economy, the demand for legal services will rise. The difficulty with this line of argument is that it conflates increasing demand for legal services with increasing demand for the services of new graduates of accredited American law schools. In sum, this is equivalent to someone in 1975 arguing that the sharply increasing global demand for automobiles over the next generation would increase the demand for—and the wages of—members of the United Autoworkers Union.

145. *See supra* note 140 and accompanying text.

of a combination of these factors. Ultimately the status quo cannot be maintained.[146] I will first consider reforms that could lead to the preservation of the basic structure of much of the current system. Then I will consider some more radical alternatives.

The most fundamental structural feature of the status quo in American legal education is that aspiring lawyers must generally invest in seven years of higher education in order to obtain a law license.[147] If that structure is to be maintained going forward, the educational debt graduates incur must be reduced significantly, while the long-term deterioration in the value of possessing a law license must be at least be slowed, if not stopped or reversed. Advancing toward these goals is in no way a mysterious process: average law school tuition must be slashed at least to the levels of two or three decades ago, while the number of graduates produced by American law schools must be reduced significantly. Cutting tuition does not require any sort of intellectual or technological breakthrough; the factors that have driven tuition up so drastically are both well understood and in no way unalterable. Reducing the number of law school graduates is even less complex. It is becoming obvious that a good number of the law schools that now exist in America will need to close in the coming years, while quite a few others will need to become a good deal smaller.

Tuition can be reduced drastically through the simple expedient of returning to the cost structures that existed at law schools until quite recently. Unless one wishes to defend the improbable proposition that the legal education received by the majority of attorneys practicing in America today was unacceptably inadequate, there is no reason why student/faculty ratios at law schools cannot be returned to the levels of thirty years ago. Nor is there any reason to believe that legal academics must be paid twice as much in real terms as they were a generation ago or that some dire consequence would arise from expecting law professors to teach five classes per

146. In this regard, it is perhaps noteworthy that in his 2012 State of the Union address, President Obama "put colleges and universities on notice" that they risked losing access to federal loan money if they continued to raise tuition rates. *See* Kayla Webley, *Obama Wants to Force Colleges to Reduce Tuition, But at What Cost?*, TIME SWAMPLAND (Jan. 30, 2012), http://swampland.time.com/2012/01/30/obama-wants-to-force-colleges-to-reduce-tuition-but-at-what-cost/.

147. From a comparative legal perspective, this is a highly unusual requirement. In the vast majority of legal systems, including the vast majority of legal systems in the developed world, becoming eligible to practice law requires far less formal education. *See infra* note 161.

year rather than three.[148] In addition, the ABA's accreditation regime needs to be relaxed to allow schools to employ larger numbers of adjunct faculty, given that competent adjunct faculty serve the valuable role of holding educational costs down, while conveying useful information to law students regarding the actual practice of law.[149]

Significant reductions in the size of tenure-track faculties should be accompanied by similar reductions in the size of administrative staffs, which have grown at a much faster rate than faculties over the course of the last generation.[150] Again, there is no reason why faculty cannot resume most if not all of the administrative duties that have been outsourced in recent years to staff, in the name of increasing the number of law review articles published every year. The expenses associated with clinical legal education can be reduced through greater use of well-designed externship programs, which allow students to obtain many of the same benefits at a radically reduced cost.

Many other opportunities for cost savings with little or no sacrifice of educational quality will likely present themselves in a world in which law schools face a choice between reducing their expenditures and ceasing to exist. As legal practice continues to move away from requiring lawyers to consult books of any sort, the millions of dollars per year that the typical law school expends on maintaining a comprehensive law library could be reduced to a more rational level of expenditure. Indeed, avoiding further wasteful expenditures on luxurious physical plant upgrades, which have had little function beyond allowing legal academia to consume conspicuously in the context of a negative-sum reputational ratings game, would itself save law schools vast sums of money.[151] Similarly, as it becomes evident that the current cost structure of legal education is unsustainable, the central administrations of universities will necessarily

148. It is true this might lead to a reduction of the rate of legal academic publication to that which existed a generation ago. Whether a radical reduction in the cost of legal education ought to be purchased at the cost of seeing only five thousand law review articles published per year, rather than the ten thousand being published at present, is a question that does not, under the circumstances, seem too difficult to answer.

149. Under the current ABA rules, there is nothing barring a school from employing a tenure track faculty made up exclusively of people who have never practiced law, or indeed even obtained law degrees (several dozen current faculty at elite law schools do not have law degrees of any kind), but there are strict limits regarding the number of practicing lawyers who will be allowed to teach law school classes.

150. *See supra* notes 21–66 and accompanying text.

151. Many of these reforms are applicable to undergraduate education as well. Reducing the cost of obtaining an undergraduate degree is a larger social reform that will, among many other things, help rationalize the cost of postgraduate education.

reduce the extent to which they treat law school tuition as a source of revenue that cross-subsidizes other university programs.[152]

It is even possible that drastic cuts in the cost of legal education will lend strength to arguments that this education is a public good, which at least at public institutions ought to receive a higher measure of direct tax subsidization. Such arguments are far more likely to succeed in the wake of genuine reform efforts than they are in the current context of out-of-control expenditures, which have been dedicated in no small part to making the lives of law professors and legal administrators more pleasant.

In sum, a series of straightforward reforms, undertaken over the course of the next decade, could reduce the operational costs of law school drastically to levels that would allow tuition to return to where it was, in real terms, in the 1970s and 1980s.[153] This would be a crucial step toward making the economic benefit of a legal education once again reasonably relate to its cost.

Another crucial step depends on cultivating a widespread realization that the cost of legal education is only part of the long-term crisis facing the American legal profession. An equally key element of that equation is that ABA-accredited law schools have for years been graduating at least twice as many law students as there are legal jobs for them. Returning American legal education to a sustainable long-term model requires reducing that ratio. Given the enormous surplus of graduates produced by ABA-accredited law schools over the course of the last generation and the growth prospects—or rather the lack of such prospects—for the legal profession over the course of the foreseeable future, it hardly seems hyperbolic to suggest that such schools ought to be producing half as many graduates as they currently do. As transparency increases regarding the actual career outcomes obtained by law graduates in recent years, and as the political system becomes increasingly aware that taxpayers guarantee the cost of law degrees (which have negative economic value), some law schools seem certain to close while others will become smaller.[154]

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152. The extent to which universities use law school revenues to cross-subsidize other programs appears to vary radically between institutions. My own research indicates the proportions range from as high as 45 percent to situations in which the central university actually subsidizes the law school.

153. It is true some of these reforms would be more difficult to implement quickly than others. On the other hand, the pace of reform can be remarkably brisk under the right sort of pressure. *Cf.* SAMUEL JOHNSON, THE CONVICT'S ADDRESS TO HIS UNHAPPY BRETHREN (1777) ("Depend upon it, sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully.").

154. Many law graduates have discovered that, if they are unable to obtain jobs as attorneys, a law degree can have negative value even without regard to the direct costs involved in

As painful as this outcome will be for many of the current employees of such schools, there can be little doubt that the net social effect from the reduction of American law schools will be positive. The current system produces, conservatively speaking, twenty thousand to twenty-five thousand law graduates annually who will not be able to service their educational debts. This system exists because of the combined effects of social inertia and market distortions that are produced by the continuing availability of loans that have no reasonable prospect of being repaid in anything like a timely or complete manner.

For those who wish to preserve something of the status quo in legal education, a combination of greatly reduced operating costs and significantly fewer law graduates offers the best hope for such an outcome. No one can predict the extent to which the ongoing crisis of the American legal profession will allow for a pace of reform that will maintain the current structure of legal education in some significant part. If law schools slash their operating costs and produce far fewer graduates, it might be the case that in a generation from now, a license to practice law will still require three years of postgraduate attendance at institutions that resemble existing schools. But the question whether this will happen differs from whether this outcome represents the best road to reform.

The two main alternatives to a less expensive, smaller version of the status quo are to either reduce the postgraduate component of legal education in America or to eliminate it altogether. The first approach would involve going back to a law school model that predominated in much of America a century ago, when many law schools offered two-year programs.[155] This changed when the ABA and the AALS waged a successful campaign to make the three-year postgraduate model of legal education a legal prerequisite in almost all jurisdictions for bar admission.[156] This campaign was waged in the name of quality control but included significant elements of class, ethnic, and religious bias.[157]

In the subsequent decades, the three-year law school model seems to have remained in place—like so many other aspects of

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acquiring it. *See, e.g.*, *supra* note 88. This is a product of the fact that a law degree can disqualify applicants from jobs they could obtain prior to getting a law degree, as for a variety of reasons, many non-legal employers are hesitant to hire law graduates. Indeed, this effect applies not only to non-legal employers: former paralegals have discovered they can no longer work in their former field after they have graduated from law school. *See, e.g.*, *J.D. to Paralegal?*, JD UNDERGROUND, http://www.jdunderground.com/paralegal/thread.php?threadId=28082 (last visited Nov. 17, 2012).

155. *See generally* TAMANAHA, *supra* note 29.

156. *See generally id.*

157. *See generally id.*

legal education in America—largely as a function of inertia, rather than from any demonstration that the benefits of a third year of law school justify its cost. Complaints from both law students and legal educators that the third year is unnecessary have been commonplace since the earliest days of the requirement.[158] At a recent national conference on legal reform, no one among a group of more than one hundred legal academics was willing to defend the proposition that the third year of law school represented a justifiable investment of time and money for contemporary law students.[159]

Given its dubious origins and its questionable cost/benefit ratio, getting rid of the third year of law school would be a sensible alteration of the legal academic status quo. Some schools are already making de facto moves in this direction, such as replacing or supplementing the third year classroom experience with one- or two-semester externship programs that partially or completely transform the third year into a quasi-apprenticeship experience. The great advantage of such programs from the economic perspective of law schools is that they maintain a three-year tuition requirement even as they move toward eliminating the third year classroom component entirely. Naturally, any meaningful reform in this direction must eliminate the tuition requirement, not merely the third classroom year.

Though such a reform would, holding everything else constant, reduce both the direct cost and opportunity cost of law school by one-third, it would also increase the rate at which law graduates were being produced by a similar proportion. Thus, while reducing law school by one year would be beneficial to new graduates in regard to the upfront cost of becoming a lawyer, it would, all other things being equal, have a marginally negative effect on the long-term economic value of a law degree for both those graduates and, more problematically, for lawyers who graduated under the old three-year system.

A more radical reform would involve eliminating the postgraduate education prerequisite for the practice of law altogether. There is no inherent reason why a single institutional entity called "law school" needs to be both a three-year extension of a college graduate's liberal education and a vocational training ground for future

158. *See, e.g.*, Mitu Gulati, Richard Sander & Robert Sockloskie, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235, 242 (2001).

159. This question was posed to the audience at the opening session of the Future Ed conference hosted jointly by Harvard Law School and New York Law School over three sessions between the fall of 2010 and the fall of 2011.

attorneys. This more comprehensive approach to reform assumes that learning to think deeply about law is a skill and habit that future lawyers should be given every chance to acquire as undergraduate students studying law as a subject of concentration in a general liberal arts degree program. It further assumes that postgraduate legal education *for future lawyers* should consist of vocational training that takes place in explicitly vocational contexts such as supervised apprenticeship and externship programs.[160] This resembles the structure of legal education in just about every other country in the world.[161]

So where does this leave the various law schools that in recent years have self-consciously adopted a graduate school model of education with varying success? In the context of such a comprehensive reform of American legal education, there would be room in both the academic and legal hierarchy for a certain number of such graduate schools of law. They would have two ongoing purposes: training the next generation of legal academics[162] and providing a mechanism for further social sorting, which could be employed by those high-status legal institutions that wished to focus their hiring efforts on people who had enough time and money to spend a great deal of both pursuing formal education beyond their undergraduate years.[163] What such programs would not do is provide anything that would be a *prerequisite for acquiring a license to practice law.*

Such a fundamental change in the structure of American legal education is not likely to happen soon. On the other hand, the

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160. For a recent proposal along these lines, co-authored by a Northwestern University law professor and an attorney at the prominent firm of Kirkland & Ellis, see John O. McGinnis & Russell Mangas, *First Thing We Do, Let's Kill All the Law Schools*, WALL ST. J. (Jan. 17, 2012), http://online.wsj.com/article/SB10001424052970204632204577128443306853890.html.

161. *See* Nuno Garoupa & Thomas S. Ulen, *The Market for Legal Innovation: Law and Economics in Europe and the United States*, 59 ALA. L. REV. 1555, 1592 (2008) ("Except for a few countries (Japan and the Republic of Korea) that are currently revising their legal education systems to look more like that in the United States, most lawyers in the world receive their legal education by taking law as their undergraduate major.").

162. Almost all these graduate students will go on to teach in undergraduate programs rather than in what we now think of as "law schools," which under this model would mostly cease to exist.

163. An obvious objection to this kind of reform is that it would produce a two-track system of legal education: one for ordinary lawyers, consisting of an undergraduate education with an emphasis on law followed by a vocational apprenticeship, and one for "elite" lawyers, featuring several more years of post-graduate education. The reply to this objection is that as a functional matter, we already have a profoundly hierarchical system of legal education, with just a handful of schools producing the large majority of elite lawyers. The main difference between the new system and the status quo is that, under the status quo, a non-elite legal education is on average nearly as expensive to obtain as its elite cousin.

longer that law schools refuse to acknowledge that they are producing far too many graduates at far too high a cost, the more likely some sort of radical reform will become.[164]

CONCLUSION

The status quo in American legal education has become unsustainable. For many years now, the cost of law school has climbed relentlessly, while the long-term value of a law degree has deteriorated. By the summer of 2012, there were numerous signs that the inevitable economic and social crisis caused by the simultaneous continuation of these two trends was finally at legal academia's doorstep. These signs included a wave of prominent stories in the nation's print and electronic media questioning the value of law degrees, several class action lawsuits filed against law schools for allegedly fraudulent recruitment practices aimed at prospective students, and, most tellingly, a drastic plunge in the number of people applying to law school.[165] Indeed, in the 2012-2013 academic year, American law schools are likely to collect—possibly for the first time—less tuition revenue than they did in the previous academic year.[166] In America today, the idea that law school is a safe and sensible investment in a person's future seems to be moving rapidly

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164. Radical reform would come very quickly if law students were suddenly limited to being able to borrow no more money to attend law school than they could be reasonably expected to pay back given their future employment prospects.

165. Between 2010 and 2012, the number of applicants to ABA-accredited schools fell from 87,900 to approximately 67,700 (the latter number is an estimate of the final total based on the number of applicants through June 1st—a date at which historically more than 97 percent of applicants within a particular admissions cycle had applied). *See Easing Law School Admission*, LSAC, http://www.lsac.org/Members/Data/current-volume.asp (last visited Nov. 15, 2012). In response, one "top tier" law school announced that it planned to reduce the size of its entering class by 20 percent and to make this reduction permanent. *See Staff Reorganization: Overview*, UNIV. OF CAL. HASTINGS COLL. OF THE LAW (Mar. 19, 2012), http://www.uchastings.edu/faculty-administration/chancellor-dean/letters/3-19-12a.html. Many other schools are apparently preparing to bring in smaller classes as well, even while maintaining previous levels of "scholarships"—that is, tuition discounts—for incoming students. For prominent examples of media coverage regarding the declining value of law degrees, see Nathan Koppel, *Law School Loses Its Allure as Jobs at Firms Are Scarce*, WALL ST. J., Mar. 17, 2011, http://online.wsj.com/article/SB10001424052748704396504576204692878631986.html; David Segal, *Is Law School a Losing Game?* N.Y. TIMES, Jan. 8, 2011, http://www.nytimes.com/2011/01/09/business/09law.html?pagewanted=all; *CBS Evening News: Even Lawyers Struggle to Find Jobs These Days* (CBS television broadcast Mar. 8, 2012). For information about the lawsuits, see Matthew Shaer, *Law Schools Sued for Lying About Lawyering*, N.Y. MAG. (Feb. 1, 2012, 12:53 PM), http://nymag.com/daily/intel/2012/02/law-schools-sued-for-lying-about-lawyering.html.

166. *See* Matt Leichter, *U.S. News Data Show 2011 May Be Beginning of End for Law School Tuition Bubble*, THE AM. L. DAILY (Mar. 19, 2012, 4:31 PM), http://amlawdaily.typepad.com/

from the status of conventional wisdom to yet another debunked myth regarding how spending money on higher education is almost axiomatically a wise thing to do.

If American legal education is to exist in anything like its present form, then law schools must become much less expensive and produce far fewer graduates than they do now. If law schools fail to undertake significant reforms in these directions, then more radical reforms will be thrust upon them by irresistible economic, political, and social forces. Whether the future of legal education will be determined by serious internally driven reforms or radical externally imposed changes is an open question, as is which outcome would most benefit the legal system and society as a whole. What is not in question is that major changes are coming to American legal education. After all, if something cannot go on forever, it will stop.

amlawdaily/2012/03/us-news-data-show-2011-may-be-beginning-of-end-for-law-school-tuition-bubble.html.

THE CHRONICLE
of Higher Education

November 5, 2012

America's Longest-Serving Law Dean Defends the Value of a Law Degree

By Katherine Mangan

Rudy Hasl, the longest-serving law dean in America, is stepping down June 30 as dean and president of Thomas Jefferson School of Law, in San Diego. Mr. Hasl, who is 70, has spent 32 years overseeing law schools at Thomas Jefferson and at Saint Louis, St. John's, and Seattle Universities.

WHAT I LEARNED

He has held leadership positions in the American Bar Association, the Association of American Law Schools, and the Law School Admission Council. Mr. Hasl leaves at a time of intense scrutiny of law schools' curricula and high price, and amid questions about the employment prospects of graduates. Here's his story, as told to Katherine Mangan.

This has been a tumultuous period for law schools. It's not that we haven't gone through similar periods. It's just that the trough is a little bit deeper and the issues are a little more difficult than they were in previous times when we reached those bottoming-out periods.

There's been a great deal of coverage in the national press that has underestimated the value of a law degree and caused potential applicants to question whether they should make the investment in a legal education.

I remind students that what law schools are providing is a set of skills that are valued in our society and that will ultimately lead to a meaningful employment opportunity. To try to measure that by what job you have on graduation, or even nine months later, doesn't make sense.

I tell students you're investing in something that provides you the ability to shape your career. That could be in business, in the

political arena, or in traditional law-firm settings. I was a classics major, and there's no market directly for someone in classics, but it's a foundational training that hopefully makes one better at analyzing problems and articulating a position.

The legal profession has been slow to respond to the increasing demand for diversity. Students of color made up 10 to 12 percent of the student body when I arrived here, at Thomas Jefferson School of Law, in 2005, and they're a little over a third of our student body today. For me it's an important social issue that we produce individuals who can work within their communities to provide service and develop leadership. We've tried to create an overall culture at the school that's welcoming to people of color. Our faculty and staff are diverse, and we're quite intentional about our outreach efforts and working with ethnic bar associations and others. I'm optimistic that we're producing graduates who will be quite attractive to firms and have a great future ahead of them.

Having been a dean for as long as I have, I've been able to see full career spans—people who start out, build their practices, and then retire. The happiest moments I've had are with people whose lives I've been able to touch and transform.

Avoiding law school in droves

Karen Sloan

The National Law Journal

01-28-2013

Nearly everyone in legal education expected the number of law school applicants to fall off this academic year. But they weren't prepared for this.

As of mid-January, 27,891 people had applied for seats in American Bar Association-accredited law schools. That represented a 20 percent decline since last year (and 2012 was hardly a banner year itself, as the number of applicants fell by nearly 14 percent.) If the trend holds through the final months of the admission cycle, law schools would see a 38 percent crash since their peak in 2010.

"I am surprised by the extent of the decline," said University of St. Thomas School of Law professor Jerome Organ, who has been tracking law school enrollment and economic trends. "I had anticipated a decline, but possibly a more moderate decline than the last two years."

It looks like one for the record books: Upon seeing the application figures from the Law School Admission Council (LSAC), Ohio State University Michael E. Moritz College of Law professor Deborah Jones Merritt decided to research the last time U.S. law schools had attracted such a small applicant pool. She couldn't find records before 1983, but at no time during the past 30 years had the applicant totals slipped below 60,000. (There were 175 ABA-accredited law schools during the early 1980s; there now are 201.)

"I was pretty surprised when I looked back and saw the prospective applicant levels would bring us back to 1983," Merritt said. "There's a general sense people have that applications are cyclical, but I don't see any way for a quick rebound here."

It appears that the drop in applicants this year will be steeper than during the two previous years. At the present rate, between 53,000 and 54,000 applicants will vie for places in ABA-accredited schools this year, down from 68,000 in 2012.

Organ attributed the situation in part to the ABA's release last spring of detailed graduate employment statistics broken down by school. They showed that only 55 percent of 2011 law graduates had found permanent, full-time jobs that required bar passage within nine months. That may have persuaded some would-be law students to reconsider, he said.

"It's become clear that there is no chance of redemption for this cycle," said Sarah Zearfoss, senior assistant dean for admissions, financial aid and career planning at the University of Michigan Law School. "The December LSAT sitting is already over and there is no reason to think that there will be a larger-than-normal February sitting."

February is the last opportunity for prospective applicants to take the Law School Admission Test in time to meet this year's application deadlines. During the December sitting, nearly 16 percent fewer people took the test compared with 2011. Merritt said that most prospective law school applicants were starting their undergraduate educations during the Great Recession, as large firms were shedding associates and even partners in shocking numbers. That turmoil shattered the perception of the legal profession as a low-risk and lucrative career path. "I would be surprised to see applications go up again, unless there are major changes in the legal industry," Merritt said.

Just four law schools thus far have seen increases in applications, whereas 82 have seen declines of 30 percent or more, according to the LSAC. Another 62 schools have seen declines of between 20 and 29 percent, and 32 schools experienced declines of between 10 and 19 percent. The LSAC data do not identify which schools fall into those categories.These declines have not been evenly distributed throughout the country. Law schools in New England have seen a relatively modest 14 percent reduction, whereas the Northwest, Mountain West, Midwest and Great Lakes regions have seen declines of 22 percent or more.

Fifteen of the 31 schools polled by the Midwest Alliance for Law School Admissions said their applications were down by 28 percent or more. Only one school has experienced an application volume within 5 percent of last year's total to date. The poll was confidential and did not report the admissions numbers for individual law schools.

Merritt said employment data provided by the nonprofit group Law School Transparency may have underscored that most law schools place graduates in jobs locally, encouraging prospective students to apply where they ultimately want to practice. Regions with major legal hubs may be more attractive now, she said.

The dearth of applications has become a touchy subject for admissions officers, Zearfoss said. "You almost don't want to ask other admissions deans about their numbers," she said. "It's delicate." In fact, a number of law school deans did not respond or declined to discuss their application figures.

LIMITED OPTIONS

Law schools basically have two options at this point, Organ said. They can reach deeper into their applicant pools and take students with lower academic credentials, risking their *U.S. News and World Report* ranking; or accept smaller classes by continuing to insist on higher LSAT scores and undergraduate grade-point averages — both of which are weighted heavily in the magazine's law school rankings.

Most schools will probably decide upon a combination of approaches, according to a survey of incoming class sizes and the academic credentials of this year's crop of students at *U.S. News*' top 100 schools, as reported on their websites. (The survey was conducted by officials at a law school who requested not to be identified, citing sensitivities about tracking competitor schools). About two-thirds of those schools are bringing in smaller classes this fall, and approximately half reported lower median LSAT scores.

The situation means admissions officials can't rely on traditional formulas for hitting their enrollment goals, Organ said. "It's a really fluid marketplace. The people you used to admit with a 162 LSAT score may not be there, because they got into a school 10 spots above you in the *U.S. News* rankings. The top schools may be down a little on their profiles, but they're still taking the top chunk of the applicant pool, and there are fewer people left for everyone else down the chain."

Michigan State University College of Law expects about 2,750 applications this year, down by 28 percent from last year, said assistant dean for admissions and financial aid Charles Roboski. The school plans to reduce its incoming class by as much as 10 percent, and will accept a larger percentage of applicants this year to hit its goal of 280 new students.

"I believe that we'll see more activity in the summer months as schools go to their wait lists, with the ripple effect that this has, and as schools make decisions regarding their classes," Roboski said.

Law schools face an even more pressing problem than merely filling their classes, said Washington University in St. Louis Law School professor Brian Tamanaha. He is the author of *Failing Law Schools*, a scathing critique of legal education in this country.

"The class of 2010 was really the peak enrollment year, and that class graduates this spring," Tamanaha said. "Although we had smaller entering classes in 2011 and 2012, having that larger class helped fill out enrollment. When that large class is replaced by a much smaller new class this fall, the cumulative effect will be quite significant."

Schools will need to make up for those lost tuition payments. Several have already cut staff, and faculty could be next. "Now we're going to see some program cuts," Tamanaha said. "Our situation will change quite dramatically."

Karen Sloan can be contacted at ksloan@alm.com.

The Daily Record (Baltimore, MD)

July 24, 2012 Tuesday

SECTION: NEWS

LENGTH: 221 words

HEADLINE: Federal judge in Michigan dismisses employment numbers lawsuit

BYLINE: Kristi Tousignant

BODY:

It's not looking good for law school students suing their alma maters for misrepresenting post-graduation employment numbers.

Since employment for law school graduates started to slide with the downturn of the economy, a number of class-action suits have popped up around the country as students claim schools skewed graduates' employment numbers to attract new students.

The latest setback for these kinds of cases came last week when a federal judge in Michigan dismissed a case brought against the Thomas M. Cooley Law School by 12 graduates. The judge rejected claims of fraud, saying the employment numbers were confusing and unclear but not fraudulent. The judge also said the school did not violate the Michigan Consumer Protection Act, since the act doesn't protect the purchase of an education.

A similar case was dismissed in New York in March, but there are 12 other fraud class-action suits against law schools pending across the country.

The news comes in the wake of new employment numbers for law schools released last month. The statistics were divided by the type of employment for the first time this year. Nationwide, 83 percent found employment, but only 55 percent were permanent jobs that required bar admission. (At both Maryland law schools, around 47 percent found permanent jobs with bar admission required.)

LOAD-DATE: July 31, 2012

52 of 525 DOCUMENTS

Connecticut Law Tribune

September 10, 2012 Monday

SECTION: CLOSING ARGUMENTS; Pg. 33 Vol. 38 No. 37

LENGTH: 324 words

HEADLINE: Mentoring - While It Shill Matters;
Editorial Board

BODY:

T he grim prospects of today's law school graduates are all too familiar - inability to pay loans, frustration in job searches and alleged deception by some law schools on employment prospects after graduation. While discussions on a "duty to mentor" young lawyers by established members of the bar are healthy, we believe the entire concept of mentoring deserves re-evaluation as to when the process is most effective.

We propose an entirely new approach. Discussions concerning mentoring invariably assume that newly admitted lawyers deserve attention. They certainly do. However, this sweeps the overarching problem under the rug - a staggering over-abundance of lawyers in the United States. There are simply too many admitted attorneys, and not enough work to sustain them. Accordingly, the mentoring process should start before college students apply to law school. It should begin, at the very latest, before LSATs are taken, early in an undergraduate student's junior year of college.

Many college students select law school as a diversion - "I'll try this, since I have no other plans." Many college students are drawn to the idea of becoming an attorney. The glorification of the profession by television has had an inestimable effect on students barely past their teens. Few of these prospective law school applicants are exposed to the daily grind of our profession - digging through piles of documents, dealing with difficult clients, summarizing data - the

day-to-day chores that practicing attorneys endure. Mentoring at the college level should go beyond superficial "pre-law" advising (primarily done by personnel not legally trained). It should involve experienced volunteer lawyers capable of asking and answering questions that matter.

If even a modest percentage of wavering students are diverted into more promising careers, the prospects for genuinelyqualified, committed law school applicants will be considerably advanced.

LOAD-DATE: September 10, 2012

CNNMoney
A Service of CNN, Fortune & Money

Does law school have a future?

December 18, 2012: 9:26 AM ET

As fewer students apply for and enroll in the nation's law schools, some are calling for significant changes to the legal education system to match a changing job market.

By Elizabeth G. Olson

NYU Law has revamped its third-year curriculum in an attempt to respond to changing law student needs.

FORTUNE -- Students are opting out of the law school entrance exam in significant numbers as they confront a scarcity of law jobs and the prospect of staggering debt loads. While some law schools are trimming back class sizes and tinkering with curriculum, most are forging ahead, and some are even expanding.

There is talk among law schools of teaching more practical skills, focusing on narrower, but enduring, legal specialties like bankruptcy, and even lopping off the third year of law school. But others are saying legal education's survival will come by way of radical new models like modular teaching, which would use part-time professors for defined periods, or lawyer academies, which are more like trade schools readying attorneys to practice immediately after graduating.

These are two possibilities outlined in the **current issue of the Michigan Journal of Law Reform**, by Kyle McEntee and two co-authors from Law School Transparency, a group founded in 2009 to make the law school admissions process more open and job placement numbers clear.

"Right now, schools are dabbling in what to do," says McEntee, "but the issue is already at crisis proportion. We have to start thinking about new options and new systems. Tinkering is not enough."

Inside the law school earnings machine

So far, about half of the nation's 200 law schools are cutting back the size of their entering classes, and many are handing out more student financial aid, which effectively lowers tuition. But the powerful economic reality is that law schools are big business, with tuition high enough that students graduate with an average of more than $100,000 each in debt.

MORE: Grand Canyon Education: A for-profit school that makes money

Salaries are a major factor, with some law professors at elite or large law schools earning in excess of $350,000 to $400,000 annually. These sums significantly outpace other legal remuneration, except for the 10% in the upper ranks at top law firms.

But law school deans insist, almost uniformly, that the tuition rates are worth it, arguing that the law degree will hold its value over a period of years. And few deans, also law professors themselves, want to meddle with a proven earning machine or trigger alumni wrath by devaluing the professional degree.

"It's a powerful juggernaut that has momentum of its own," says Brian Tamanaha, a Washington University School of Law professor and author of *Failing Law Schools*. Readily available student loans, lock-step accreditation processes, and national law school rankings also have helped create a one-size-fits-all law school system that does not suit the majority of students, he concludes.

Tamanaha says that the American Bar Association accreditation system has excessively encouraged a "scholarly model" where handsomely paid professors teach few courses so they have time to write law journal articles or conduct research.

That model may work well for top-tier schools but, Tamanaha argues, it's too expensive for students preparing for careers in public service, pro bono, or similar attorney positions.

Can the legal fat be trimmed?

One solution, he says, is for professors to teach more courses each academic year to cut back on law school salary budgets. Other schools could rely more on part-time professors and offer two-year degrees to shave the overall tuition bill.

Several prestigious law schools have targeted the third year for overhaul, including New York University's School of Law which, in October, agreed to open the third year of study to international experience, or work in a specialized area like environmental or antitrust law. Another cadre of students could choose to focus on specialties like patent or tax law.

Washington and Lee Law School adopted a revamped third year approach, so students can work at law clinics or internships at outside locations. Stanford Law School also broadened its third-year curriculum for students to earn joint degrees with other university departments.

McEntee, however, says that by using adjunct professors, who are typically practicing attorneys, teaching a course over a defined period of time, students could get the benefit of expertise and lower costs. Adjunct professors "don't have the time to commit to something long-term," he says.

Another alternative, he outlines in his journal article, would be to develop law schools modeled after American military academies such as West Point. Students would receive a core liberal arts undergraduate education with a focus on preparing for law practice, says McEntee.

MORE: "Entrepreneurs are crazy" and that's a good thing

"Its unlikely," he concedes, "that many existing law schools would adopt this practice. It would probably work better for new schools."

Diminishing interest, skittish applicants

As some law schools consider or adopt new models, students grow increasingly skittish about law school. The number taking the law school admissions test in October 2012 was down by 16.4% from the previous year, hitting its lowest level since 1999, according to figures from the Law School Admissions Council released in November.

So far, 51% of law schools have cut the size of their entering classes, according to a November survey of law school admissions officers by Kaplan Test Prep, the education and career services provider. Two-thirds said they did so because of a weak legal job market, and more schools anticipate trimming back again in the future.

These law schools are following in the footsteps of the University of California Hastings College of Law, which announced last spring that it would reduce its admitted student pool by 20%. Hastings' dean, Frank Wu, noted at the time that there are "too many law schools and there are too many law students and we need to do something about that."

Kaplan also found that 47% of law schools have increased the amount of financial aid they are giving to students for the current school year, a sign to Paul Campos, a University of Colorado law professor who writes the "Inside the Law School Scam" blog, that law schools are lowering their entry standards.

Campos, who tracks law school statistics, says the total number of law school applicants for the current academic year, is one-third lower than the number in the 2003-2004 academic year.

Law school enrollment is down by about 15% from 2010, which was a record high with nearly 52,500 students signing up for classes. This academic year, the number was 45,000 full- and part-time students, according to the ABA.

"This isn't sustainable," warns Campos. "There is a zealous faith in American culture that higher education always pays for itself, but it's like the subprime mortgage scandal without securitization. When people realize it's a worthless degree, the system is going to collapse."

MORE: Mary Barra: GM's next CEO?

The legal field's problems have been growing for some time, according to a review of law school employment data from the National Association of Law Placement, which found that two out of three of the approximately 1.4 million law school graduates over the past 25 years have found full-time jobs requiring juris doctor degrees.

Even so, the ABA has provisionally approved the creation of even more law schools, including the University of California-Irvine School of Law and the University of Massachusetts Law School-Dartmouth, according to the bar association's website.

Like it or not, law schools may have to up their game if they are going to overcome the objections of their own disgruntled graduates. Earlier this month, a judge in San Diego refused to dismiss a lawsuit by four Thomas Jefferson School of Law graduates who claimed they enrolled on the basis of misleading job placement data. The school will need to explain how it came up with its numbers.

THE NATIONAL LAW JOURNAL

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ABA standards stand in the way of law school reform

Kyle McEntee

The National Law Journal

07-31-2012

The ABA's law school accreditation standards require law schools to be the equivalent of a luxury car when an affordable, utilitarian model could do.

"I don't buy that at all." That's John O'Brien, dean of New England Law and chair of the Council of the ABA Section of Legal Education and Admissions to the Bar, responding directly to the car analogy on NPR last week. O'Brien is the latest ABA leader to deny the need for the ABA to seriously analyze how its accreditation standards affect evolution into, and creation of, more affordable law schools.

O'Brien pointed to the 2009 U.S. Government Accounting Office report on law school affordability, which places significant blame on U.S. News for escalating costs over the past few decades. In particular, O'Brien noted that the "expenditures per student" component of the rankings rewards schools that show no fiscal restraint.

He is not wrong that law schools have allowed U.S. News to dictate significant administrative decisions, but this observation is as much a red herring as it is an excuse. Historical tuition growth has little to do with whether the ABA standards are a barrier to affordable legal education in the future. Parsing blame helps clear the conscience, and it's easier to point fingers than to take responsibility for forging change. But now is the time for solutions, not suspect analysis from the ivory tower.

In November 2011, Law School Transparency asked the Standards Review Committee to review regulatory barriers preventing law schools from adapting low-cost models. After this request was ignored, we asked O'Brien and the council in May 2012 to look into how the accreditation standards prevent low-cost alternatives and could be adopted to allow other models to emerge.

Again, it seems we asked too much of the ABA.

There are other ways to deliver a quality legal education. Or there would be, if the ABA would allow them to exist. Instead of discounting the effect of the standards on cost reform, the council must acknowledge how some of the standards encumber law school evolution. Some examples:

To reduce teaching expenses, a school may wish to change the composition of its faculty. (Or, in the case of a new school,

have a substantially different faculty composition than the traditional ABA law school.) In other words, schools may want to find other ways to ensure a sound legal education than through a scholarship-focused faculty. But under Standard 402 and its equally binding interpretations, nontenure-track faculty members, including adjuncts, legal writing instructors and clinicians, are second-class citizens. The standards use a student-to-faculty ratio to determine whether a school meets the goals of its educational program through a weighted computation. Each tenure-track scholar counts once; all other teachers count as a fraction of one, but may only account for 20 percent of the teachers included in the ratio computation.

To reduce the opportunity costs of attendance, a school may wish to compress its J.D. program from the standard 33 months. One method would be to double or triple student course loads. Although it would be significantly more intensive than the current 12 to 13 hours of class time per week, students in other professional programs, such as dental students, thrive on an average of 36 to 40 hours per week of instruction. Even if a school meets every other instructional requirement, Standard 304 prohibits schools from granting a J.D. unless the course of study is at least 24 months.

To reduce library expenses, which averaged $1.2 million last year at ABA law schools and topped out at more than $3.5 million, a school may wish to rely primarily on electronic resources and not have a physical library at all. Standard 601, however, dictates that the library is a central fixture of the ABA-approved law school. Interpretation 601-1 explicitly construes this rule to mean that a school cannot simply "arrang[e] for students and faculty to have access to other law libraries within the region, or [only provide] electronic access." Interpretation 606-5 micromanages library content and Standard 603 requires tenure for the library director except under extraordinary circumstances.

The council meets this week to discuss serious issues facing legal education. This opportunity for O'Brien and the council to do more than protect the broken status quo will be telling. Much of the change necessary at U.S. law schools is not possible without modifying the accreditation standards. The ABA needs to use this power to usher in more affordable legal education.

Kyle McEntee is executive director of Law School Transparency.

Shepard to lead legal education task force

Marilyn Odendahl August 29, 2012

In announcing the formation of a special commission to examine legal education, the American Bar Association acknowledged both the growing controversy surrounding law schools and the need to consider a new approach in the classroom.

The mission of the Task Force on the Future of Legal Education will be to review and make recommendations on the state of legal education and its responsiveness to the legal market. Former ABA President William T. Robinson III provided an outline of the reasons for taking a closer look at how students are prepared for careers as lawyers.

Shepard

"The growing public attention to the cost of a law school education, the uncertain job prospects for law school graduates and the delivery of legal services in a changing market warrant substantial examination and analysis by the ABA and the legal profession," he stated in a press release.

Two Hoosiers will have key roles on the task force. Retired Indiana Chief Justice Randall Shepard has been tapped to chair the group, and Jay Conison, dean of Valparaiso University Law School, will serve as the task force reporter. Other members are academics, practicing attorneys and judges from across the United States.

"I think what we might be able to do is identify the best trends and answer the question if any barriers exist to innovation," Shepard said.

Change necessary

While the economic recession has fueled much of the concerns over legal education, Conison noted that law schools were thinking about how to prepare students more effectively for the practice of law well before 2008. Schools were already shifting to such teaching methods as more skills training, more clinical experience, a more problem-oriented approach and group learning.

Shepard agreed, saying law schools are better preparing students both in the understanding of doctrine as well as in giving more practical experience than they did a generation ago. Indeed, the opportunity for hands-on experience has expanded enormously in the last 50 years.

"I think, in general, the stronger the clinical experience is, the more likely it is that a lawyer will get up to speed faster when she is out in daily practice," Shepard said. "It shortens the learning curve."

The ABA's "A Survey of Law School Curricula: 2002-2010," released in 2012, echoed Conison and Shepard, finding that law schools have been responding to the tight job market and economic downturn. In addition, a "wholesale curricular review" has induced experimentation and brought

change that has resulted in new programs and experiential learning along with greater emphasis on writing across the curriculum.

However, Kyle McEntee, executive director of the nonprofit legal education policy organization Law School Transparency, still sees law schools being put at risk if they do not change. As the federal government gets weary of law students not paying back their student loans, he foresees Congress ceasing to offer assistance to those individuals going to law school.

“It sounds crazy,” McEntee, a licensed attorney, said, “but it’s going to get to the point where taxpayers are tired of paying $5 billion to $6 billion a year” for law school student loans.

Under pressure

Much of the anxiety, anger and fear surrounding legal education is coming from the uncertain economy as well as the pressures law schools are increasingly under, Conison said. These pressures arise from a number of issues including a student body that learns differently and has different needs, a growth in the number of foreign students matriculating, and a rise in the emphasis on international law.

To help people outside the legal community better understand legal education, Conison writes a blog about law schools on The Huffington Post. The general public has an interest in legal education because of the role the lawyers hold in society, he said, but reacting without understanding the complexity of legal education could hamper law schools, and by extension the legal profession, in the long run.

For example, curtailing law school enrollment, he said, could possibly create a shortage of attorneys 15 years from now.

A key way to improve the quality of education, McEntee said, is for law schools to rely more on adjunct faculty. These individuals would bring practical knowledge into the classroom, teaching what the students need to know to be good lawyers.

The traditional law school model based on tenured faculty doing scholarship research is contributing to raising the cost of tuition and is providing the most benefit to the scholars instead of the students, he said. Instead, legal education should be focused on the people who are in the classroom and the people who will be served by the future lawyers.

“We’re not anti-intellectual,” he said, noting there’s a huge value in scholarship and expansion of knowledge, but the question is how much should students and taxpayers fund.

Task force agenda

Shepard expects a “huge part” of the task force’s work will examine what legal education should comprise.

In his position as executive in residence at the Indiana University Public Policy Institute, Shepard sees an opportunity to collaborate with his colleagues in the institute and in the

ABA Task Force on the Future of Legal Education members

Randall T. Shepard (chair), former Indiana chief justice and current executive in residence at Indiana University's Public Policy Institute

Paulette Brown, Edwards Wildman Palmer LLP, Madison, N.J.

Richard P. Campbell, Campbell Edwards & Conroy P.C., Boston, and president, Massachusetts Bar Association

Ronald D. Castille, chief justice, Pennsylvania Supreme Court

Jay Conison, dean, Valparaiso University Law School (task force reporter)

Michael P. Downey, Armstrong Teasdale LLP, St. Louis

Christine M. Durham, justice, Utah Supreme Court

Joseph D. Harbaugh, professor and dean emeritus, Nova Southeastern University Shepard Broad Law Center

Kevin R. Johnson, Enforcement and Litigation Division, National Credit Union Administration

Paula Littlewood, executive director, Washington State Bar Association

Thomas W. Lyons III, Strauss Factor Laing & Lyons, Providence, R.I.

Margaret H. Marshall, chief justice (ret.), Massachusetts Supreme Judicial Court

Leo Paul Martinez, professor, University of California Hastings College of the Law

Nancy Hardin Rogers, professor emeritus, Ohio State University College of Law

Maritza Sáenz Ryan, head of the Department of Law, U.S. Military Academy

James A. Wynn Jr., judge, U.S. Court of Appeals, 4th Circuit

Jolene A. Yee, associate general counsel, E. & J. Gallo Winery, Modesto, Calif.

David Yellen, dean, Loyola University Chicago School of Law

In addition, two representatives of the ABA's Young Lawyers Division will be named to the task force.

Robert H. McKinney School of Law, as well as possibly call upon the law students for help with research.

Conison also sees the work of the task force as very important and possibly having a significant and positive impact on clinical and skills education, law schools and the legal profession.

"I think if the committee does its work, does a good job and puts out thoughtful recommendations, we will have the potential to make a great impact," Conison said.

Conversely, McEntee argued that the task force should not focus on the "nitty-gritty" of what is taught in the classroom. It should address the issue of cost and look for ways to encourage schools to innovate which, in turn, will lead into the substance of legal education.

The task force is expected to conclude its work in 2014, but Shepard hopes the committee can finish in less than two years. As for how the final recommendations will be received, Shepard has set an ambitious mark.

He wants the task force's findings to have an impact much like the one that followed the release of 1992's "The Report of the Task Force on Law School and the Profession: Narrowing the Gap," commonly know as "The MacCrate Report." This study, Shepard said, provided the impetus for more hands-on training in law schools and helped spark continuing legal education for practicing lawyers.

"If we do that well," he said, "I'll declare victory."•

2 of 4 DOCUMENTS

The Legal Intelligencer

January 23, 2013 Wednesday

SECTION: NATIONAL NEWS; Pg. 4 Vol. 247 No. 15

LENGTH: 1029 words

HEADLINE: Law School Two-Year Option Intrigues N.Y. Top Judge

BYLINE: KAREN SLOAN The National Law Journal

BODY:

A proposal to allow students to take the New York bar exam after two years of law school has piqued the interest of the state's top judge.

New York Court of Appeals Chief Judge Jonathan Lippman stopped short of formally endorsing the idea when it was taken out for a public airing January 18 at New York University School of Law. But he told the more than 100 gathered legal educators, practitioners and judges that the concept deserves serious study.

"I don't think there is anyone on a law school faculty or on the bench who would say, 'This is crazy,'" said Lippman, who oversees the state's court system. "[This] proposal challenges all of us involved in legal education to, whatever the length of law school, look at how we can do better."

Rising law graduate debt and "the lousy job market" have brought legal education to a crossroads, Lippman said. "I don't know the answer, but I can say that we want to hear more. This is a fascinating subject."

The concept of doing away with the third year of law school, or at least making it optional, has been around for decades but has never gone much beyond discussion. NYU law professor Samuel Estreicher recently revisited the topic in an academic article titled, "The Roosevelt-Cardozo Way: The Case for Bar Eligibility After Two Years of Law School," in

the New York University Journal of Legislation and Public Policy. (The title refers to President Franklin Delano Roosevelt and U.S. Supreme Court Justice Benjamin Cardozo, both of whom studied the law at a time when two years was the norm.)

Estreicher argues that making the third year optional would reduce the cost of attendance by one-third, while giving law schools incentive to experiment with their third year curricula. If students don't see value in that final year, they could take the bar exam instead and law schools would surrender the final year of tuition.

"This is not about the fate of the third year; this is about choice," Estreicher said. "Law students shouldn't have the force of the state saying, 'You've got to complete a third year.' Let's not make it a one-size-fits-all."

Under Estreicher's proposal, students who take the bar exam after two years would not obtain a J.D., but would be eligible for a bar card. (The American Bar Association's law school accreditation standards require students to complete at least 83 credits; Estreicher would establish New York bar exam eligibility upon the completion of 60 credits.)

Some practitioners and legal educators at the meeting liked Estreicher's proposal in theory but doubted that many students would pursue the option. Washington University in St. Louis School of Law professor Brian Tamanaha said many students would skip the 3L year, which would create huge financial losses for law schools. "Law schools will respond in ways intended to produce more revenue," he warned, possibly bringing in large 1L classes to make up for lost revenue.

St. John's University School of Law professor John Barrett noted that only a handful of people take advantage of New York's law apprentice program, which allows candidates to sit for the bar exam after one year of law school plus several years of a closely supervised legal apprenticeship.

"Two years might well be enough law school, and it certainly would reduce the cost for students," Barrett said. "I'm skeptical that it would be much utilized, and thus it's a lowrisk proposal."

Some legal educators warned that the twoyear option would create a stratified bar, with two-year students going on to serve lowerincome clients and the three-year group taking higher-paying law firm jobs. Large firms might prove reluctant, they argue, to hire students who lack a J.D.

Zachary Fasman, a partner in Paul Hastings' employment law department, described a mixed reaction from colleagues on that point. However, firms might hire twoyear lawyers as apprentices, he said, paying them less than first-year associates and billing for their work at lower rates. As it stands, firms already spend considerable time and money training associates who have spent three years in law school.

"That would be great," Fasman said. "That's a win-win if I ever heard one."

Some legal academics have wondered how much sense Estreicher's proposal makes when employers are demanding more practical skills and real-world experience of recent graduates. However, University of Tennessee College of Law professor Joy Radice argued that the option would help break down the wall between traditional doctrinal classes and practical skills courses. The latter typically are relegated to the second or third years.

Audience members weighed in both for and against idea. Aikta Wahi, a 2011 NYU law graduate, said that the small firms and public interest organizations she wanted to work for lacked the time or resources to train new attorneys. Spending two years in school followed by a third year of real-world training with little or no pay might have made her more marketable, she said.

NYU law professor Stephen Gillers urged Lippman to proceed with caution, but Verizon Communications Inc. General Counsel Randal Milch saw danger in delay. "Analysis paralysis is our worst enemy here," he said. "If we are going to overanalyze, we're never going to figure this out. In my opinion, we have to move and see what happens."

University of Arkansas School of Law professor Stephen Sheppard thought the panel was stacked with supporters of the two-year option. He argued in a letter to Lippman that the 3L year allows students to take advanced courses and participate in extracurricular activities, including law journals. "Market pressures and a race to the bottom in legal preparation would erode what consumer protection for clients the law degree now assures," he wrote.

New York Court of Appeals Judge Victoria Graffeo told the audience that she wants to hear more. "We are very pleased to be here and I think it's a most interesting discussion, she said. "There is more we need to look at and investigate."

Tania Karas, a staff reporter for Legal affiliate New York Law Journal, contributed to this article. Karen Sloan is a reporter for The National Law Journal, a Legal affiliate based in New York.

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January 7, 2013
HUFF POST COLLEGE

The Problem With Law School

Posted: 12/06/2012 12:09 pm

The November 29 *New York Times* editorial by Case Western law school dean Lawrence E. Mitchell ("Law School Is Worth the Money") reminds us why people relentlessly criticize law schools. The piece misleads readers and shamelessly disregards why critics stand up for students. The "relentless attacks," Dean Mitchell says, require "a bit of perspective." He is absolutely right.

Law schools have lied and cheated to compete for new students and higher rankings. Schools publish misleading salaries and employment rates, despite possessing internal reports that eviscerate the advertised statistics. Until recently even diligent prospective students found themselves facing an information asymmetry. These actions are easy fodder for reform advocates because deceptive behavior is so widespread. In response the American Bar Association -- the accreditor of U.S. law schools -- has strengthened disclosure requirements, ramped up enforcement mechanisms and soon will audit data to start holding law schools accountable.

Put mildly, American law schools have deserved the "relentless attacks" -- usually in tone, always in substance.

Dean Mitchell wants to take the long view. Forget that when law school started for this May's graduating class, ABA-approved schools enrolled 52,500 students, or that from 2007 through 2011 an average of just 27,200 graduates had full-time legal jobs within nine months of graduation. Overlook that tuition continues to increase, despite years of warnings that tuition hikes at rates far exceeding inflation are unsustainable and unfair.

The Bureau of Labor Statistics shows that the crunch for lawyer jobs continues to worsen. It projects 21,880 new lawyer jobs per year through 2020, in part because the legal profession is undergoing substantial structural change. Globalization, technological improvements, and a growing market for non-lawyer legal services contribute to a weakened entry-level market for fresh graduates. Nevertheless, the law school crisis is not solely a function of oversupply.

The long view, as advocated by Dean Mitchell, instructs prospective students to consider the investment over a 40- to 50-year period. Unfortunately, statistical support for this view is lacking. He focuses on the average lawyer, which ignores the thousands of graduates each year who never practice law. The truth is that we know very little about the long-term prospects of law school graduates. Graduates may have wonderful analytical tools from legal education, but debt is more predictable than how they will use their heightened faculties.

What we do know is that prospective law students are reticent about investing their savings or graduating with six figures of debt because of the short-term economic return. Within nine months of graduation, just 21.6 percent of 2011 law school graduates reported making at least $60,000. Educators need to more acutely appreciate their obligation to every enrollee, and not just focus on the warm success stories.

If a student debt-finances the entire cost of their legal education at Dean Mitchell's

school today, she will owe a cool quarter of a million dollars by the time her first payment is due. Forty-six-point-three percent of the school's class of 2011 had full-time professional jobs (legal or not) lasting at least one year; 20 percent of the class made at least $70,000. Not even 10 percent of the class made more than the average amount borrowed ($98,900), let alone the actual debt figures after interest accumulates during school and opportunity costs. As these facts seep into the marketplace, it is no wonder Case Western's enrollment is down 35 percent over the last two years.

The law, conceived broadly, plays an important role in our democratic society. Law school stakeholders like Dean Mitchell, and his many vocal supporters on the deans-only listserv, jeopardize the important function that legal education should continue to play in the United States. To do so, law schools need a makeover: the product is not attractive to prospective students, employers or clients.

Disbelief from legal educators is expected, as well as in their best interest. Passion from educators about the work they do is desirable, but disbelief about the structural issues facing law schools holds reform back immensely. Clinging to the traditional model of delivering legal education is a mistake that precludes schools from getting ahead of the curve. The damage, then, will be far greater than the damage caused by those shedding light on how bad things have become at American law schools.

The New York Times

November 28, 2012

Law School Is Worth the Money

By LAWRENCE E. MITCHELL

I'M a law dean, and I'm proud. And I think it's time to stop the nonsense. After two years of almost relentless attacks on law schools, a bit of perspective would be nice.

For at least two years, the popular press, bloggers and a few sensationalist law professors have turned American law schools into the new investment banks. We entice bright young students into our academic clutches. Succubus-like, when we've taken what we want from them, we return them to the mean and barren streets to fend for themselves.

The hysteria has masked some important realities and created an environment in which some of the brightest potential lawyers are, largely irrationally, forgoing the possibility of a rich, rewarding and, yes, profitable, career.

The starting point is the job market. It's bad. It's bad in many industries. "Bad," in law, means that most students will have trouble finding a first job, especially at law firms. But a little historical perspective will reveal that the law job market has been bad — very bad — before. To take the most recent low before this era, in 1998, 55 percent of law graduates started in law firms. In 2011, that number was 50 percent. A 9 percent decline from a previous low during the worst economic conditions in decades hardly seems catastrophic. And this statistic ignores the other jobs lawyers do.

Even so, the focus on first jobs is misplaced. We educate students for a career likely to span 40 to 50 years. The world is guaranteed to change in unpredictable ways, but that reality doesn't keep us from planning our lives. Moreover, the career for which we educate students, done through the medium of the law, is a career in leadership and creative problem solving. Many graduates will find that their legal educations give them the skills to find rich and rewarding lives in business, politics, government, finance, the nonprofit sector, the arts, education and more.

What else will these thousands of students who have been discouraged from attending law school do? Where will they find a more fulfilling career? They're not all going to be doctors or investment bankers, nor should they. Looking purely at the economics, in 2011, the median starting salary for practicing lawyers was $61,500; the mean salary for all practicing lawyers was $130,490, compared with $176,550 for corporate chief executives, $189,210 for internists and $79,300 for architects. This average includes many lawyers who graduated into really bad job markets. And the United States Bureau of Labor Statistics reports projected growth in lawyers' jobs from 2010 to 2020 at 10 percent, "about as fast as the average for all occupations."

It's true, and a problem, that tuition has increased. One report shows that tuition at private schools

increased about 160 percent from 1985 to 2011. Private medical school tuition increased only 63 percent during that period. But, in 1985, medical school already cost four times more than law school. And starting salaries for law graduates have increased by 125 percent over that period.

Debt, too, is a problem. The average student at a private law school graduates with $125,000 in debt. But the average lawyer's annual salary exceeds that number. You'd consider a home mortgage at that ratio to be pretty sweet.

Investment in tuition is for a lifelong career, not a first job. There are many ways to realize a satisfactory return on this investment. Even practicing law appears to have paid off over the long term.

The graying of baby-boom lawyers creates opportunities. As more senior lawyers retire, jobs will open, even in the unlikely case that the law business doesn't expand with an improving economy. More opportunity will open to women and minorities, too. As with any industry in transition, changes in the delivery of legal services create opportunities as well as challenges. Creative, innovative and entrepreneurial lawyers will find ways to capitalize on this.

The overwrought atmosphere has created irrationalities that prevent talented students from realizing their ambitions. Last spring we accepted an excellent student with a generous financial-aid package that left her with the need to borrow only $5,000 a year. She told us that she thought it would be "irresponsible" to borrow the money. She didn't attend any law school. I think that was extremely shortsighted, but this prevailing attitude discourages bright students from attending law school.

We could do things better, and every law school with which I'm familiar is looking to address its problems. In the meantime, the one-sided analysis is inflicting significant damage, not only on law schools but also on a society that may well soon find itself bereft of its best and brightest lawyers.

Lawrence E. Mitchell is dean of Case Western Reserve University's law school.

Law School Survival Manual: From LSAT to Bar Exam

This blog is a companion to our book, *Law School Survival Manual: From LSAT to Bar Exam*, which is designed to help you survive every part of the law school process, from choosing a school through graduating and taking the bar.

THURSDAY, NOVEMBER 29, 2012

Is Dean Lawrence Mitchell right about law schools?

In a New York Times op-ed piece (here), Dean Lawrence Mitchell of Case Western Reserve makes the case that law school is a good investment. I know that a lot of my colleague deans loved the op-ed, but I found myself very uneasy while (and after) reading it. And my reasons for my unease are precisely why what I'm about to say will alienate many fellow law deans.*

Sure, law school can give people a great education, even if law graduates find themselves working in non-law jobs. Any good graduate program that helps students develop their analytical, research, and communication skills will be a plus for all sorts of jobs.

But most legal education is expensive, and students who are borrowing thousands of dollars of non-dischargeable debt need to think clearly about whether they'll be able to pay off that debt upon graduation. I'm guessing that most law students are not particularly comforted by the idea that they'll find jobs eventually, over a 40-50 year span. Therefore, Dean Mitchell's suggestion that "[t]he focus on first jobs is misplaced[; because we] educate students for a career likely to span 40 to 50 years" fails to consider the very real fear that many recent graduates have about making ends meet when their loans first kick in.

What this op-ed represents, at least to me, is confirmation bias. Confirmation bias is a powerful phenomenon. For those who want to suggest that law school is always a good idea, they can focus on the fact that many law graduates do get good (or at least decent) jobs and that applications to law school haven't dried up yet. On the other hand, applications to law school have been dropping. Bad job market + non-dischargeable debt = decline in applications. That's no coincidence. Potential law students are starting to do some basic arithmetic. If you want to work against the natural confirmation bias that law deans probably have, see, e.g., here and here.

We can spend a lot of time congratulating each other on the idea that law school can produce well-educated people, or we could pay attention to some very disturbing trends. Those trends include the bimodal distribution of law salaries, the changes in law firm economics (see here, here, and here, for starters), and--frankly--the changes in law school economics. I didn't see Dean Mitchell's op-ed address those issues, but to be fair, an op-ed is likely not the right forum in which to address them.

I believe that legal education can be a wonderful thing, and I believe that law is an honorable profession. I'm proud of the legal education that Boyd Law provides to its students, of the legal research that our faculty does, and of the service we provide to our community. But just as the phrase "thinking like a lawyer" grates on my nerves because it implies that no other profession teaches top-notch analytical skills, the idea that legal education is important because it's the best

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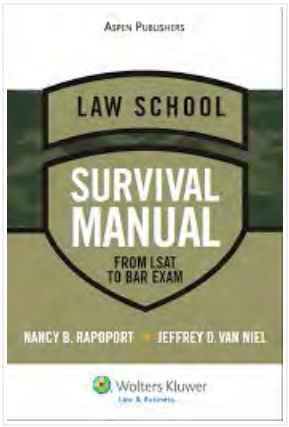

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way of teaching how to reason and communicate is dangerously naive.

That's why you won't see me posting Dean Mitchell's op-ed on our law school's website. Maybe I can now add "and persona non grata" to my Interim Dean title.

* Now that I'm Interim Dean, I need to mention that these views are mine alone, and not those of the law school or of UNLV (even though you probably already figured that out).

UPDATE (11/30/12): For a more fun way of saying the same thing, see LawProfBlog's post (here).

UPDATE (12/2/12): And for a way more erudite way of saying it, see The Faculty Lounge's post (here).

Posted by Nancy Rapoport at 3:39 PM

Recommend this on Google

Labels: Advice for 1Ls, Advice for incoming 1Ls, Advice for upper-level students, Jobs, Other blogs, Why go to law school

12 comments:

Scott Unger December 1, 2012 6:08 AM

Dean Mitchell wouldn't survive 10 minutes of cross examination. Ironically, I did not learn how to cross examin a witness until after I graduated law school.

The law school rankings could help if they factored the cost of legal education into their equation. Wise law school Deans would do everything they could to keep costs of a legal education in check. They would begin by eliminating idiotic programs which no one other than academics cares about. More energy would be placed on raising money for law school scholarships as opposed to building funds

Good for you for not standing on the sideline cheering Dean Mitchell and drinking his Kool Aid.

Reply

Concerned Citizen December 1, 2012 2:34 PM

Professor and Dean (a.i.) Rapoport - I'd be surprised if such a mild (almost milquetoast (not intended to be insulting)) critique would make of you a persona non grata amongst the law dean set.

Still, I think it is very important that you, a dean (even if a.i. ;-)), should write any critique of Dean Mitchell's advertisement (oops, `scuse me, "Op-Ed"). I suppose that may make of you an unpopular dean with the other deans who are celebrating Mitchell's piece.

As for being proud of Boyd - you do a heck of a lot better job when it comes to employment outcomes for your graduates than does Larry at CW. And you do it for almost $100,000 less in total COA than does Larry.

Anyway - thank you for writing this. I do think it's important that a Dean and movie star step up to the plate and make mention that the emperor is underdressed.

Reply

Anonymous December 1, 2012 5:04 PM

This discussion about 40-50 year career is entirely misguided. Except for self-interested law school academics, everyone knows that if you can't find a job in law within 9 months to a year out of law school, you basically are damaged goods. No firm is going to hire you now; and certainly no firm is going to hire you in 40 years. There's a whole generation of law graduates that are SOL since they never obtained the experience. Even with experience, the longevity of a lawyer in private practice is not good. For example, your salary becomes too high and the partners replace you with cheap fresh meat. All these academics are just trying to delude prospective students and keep the gravy train rolling. Too bad it won't be much longer before all the b.s. comes to a grinding halt. I applaud Nancy for having some semblance of dignity and revealing the true story even though it may not be the story that benefits her livelihood.

Reply

Anonymous December 2, 2012 5:15 AM

Shouldn't law schools be lobbying to make the loans dischargeable in bankruptcy?

The students and youngest lawyers can't. They don't want to be called losers or have potential employers nix their CVs because a Google search revealed activism.

But, if the federal funding of student loans continues, the law schools would still be paid up front, regardless of whethere the student declares BK in five, ten or more years.

Reply

Replies

Nancy Rapoport December 2, 2012 5:46 AM

Anonymous--I agree that law schools should work w/Congress to make the loans dischargeable, but I don't agree that students and youngest lawyers should be afraid of speaking up. I would hope that we're not raising a generation of law-trained people who are afraid of advocacy--or of the repercussions of speaking up for things about which they're passionate.

Jeff VanNiel December 2, 2012 6:06 AM

I disagree with the concept of discharging student loans.

I represented several private universitites in Ohio in the late 80s, when student loans were dischargable. My clients lent money directly to their students for undergrad and graduate school. I listened to my clients talk of the dramtic financial problems that were created when large percentages of grantuating classes walked down to the courts and flushed the loan debt the day after graduating.

The moral hazard of discharging student loans needs to be considered.

Personally, I would prefer one-to-one year service for loan trade-off. Whereby a student or graduate would perform military, government (state, local, or federal), or other charitable service (peace corps) in exchange for having their loans forgiven.

Reply

Anonymous December 2, 2012 7:58 AM

NR -- People are not afraid of advocacy, but they are terrified of saying something which could harm their employment chances.

With hundreds of resumes per advertised opening, firms can reject people for any perceived shortcoming. If you make the cut for a possible interview, they will Google your name, and blog posts or interviews about student loan bankruptcy discharges will cause concern solely because of the topic. It's irrational, but people presume that any young person advocating for BK discharge must be an irresponsible, lazy wastrel.

The tight job market is creating an age of hyper-conformity.

The students and young lawyers

Reply

Replies

Nancy Rapoport December 2, 2012 8:09 AM

Anonymous--it's possible that you're right, but when I visit with folks at firms, they tell me that they're Googling for serious judgment issues (drunk pix and the like). Not one of them has told me that speaking up would be a problem. It's possible that they're just not mentioning that, but it's also possible that they don't care about whether their associates speak up on important issues. And because networking is the name of the game, associates who don't get their names "out there" in the world are actually at a disadvantage.

Reply

Anonymous December 2, 2012 8:10 AM

JVN -- Your argument proves too much, as all lenders are financially harmed when borrowers do not pay. Lenders should adjust for that fact through their interest rates and underwriting decisions. And perhaps institutions of higher education should stick with what they know and stay out of the banking business.

I would think that your burden would be to establish why student loans out of almost all other consumer debt are treated differently. The issuing banks are harmed every time someone defaults on a credit card, regardless of whether the card was used to pay for health care or for gambling. In those cases, BK protection exists. Why not for student loans?

Your service idea seems unworkable. An entire corps of managers would need be hired to find something for these people to do and then to manage them. In any job, it takes a few years to learn the ropes, and under your program that's exactly when they would leave. Meanwhile, the Bankruptcy Courts exist, and their people and procedures are already in place; all that needs to be done is a change in the statutes. But your service proposal raises the same overriding question: Why should student loan discharges be treated so differently?

Reply

Nancy Rapoport December 2, 2012 9:13 AM

I'll let Jeff speak for himself, but there are other types of debt that are also non-dischargeable, so it's inaccurate to suggest that student loans are the only types of debt that have discharge issues. For a list, see here: http://www.law.cornell.edu/uscode/text/11/523.

Reply

Jeff VanNiel December 2, 2012 12:19 PM

The burden is on the graduate to get a job in one of these areas. I'm not remotely saying that we should create jobs for them. I'm saying if they are willing to take what is normally considered a low paying job then maybe we, as a society, should give them a break on their student loans. Of course with the current austerity moves and reducing the size of government to cut the budget, that leaves fewer options, except the military or possibly the peace corps.

I don't buy the idea that such a proposed program is flawed simply because lots of folks will leave immediately upon fulfilling their "obligation" and getting the last of their loans forgiven. We already have a revolving door population, where few people stay in their jobs more than 4 or 5 years before moving onto something else. That is certainly true of most law firms and the military now.

At present the law is clear. It was changed (in part) to stop the abuses noted in my earlier post. The burden falls on the folks who want to see the law changed to explain why the rampant abuse that happened before is not likely to happen again. That might happen, maybe not - in the meantime they are nondischargable.

Reply

Concerned Citizen December 2, 2012 7:02 PM

Anonymous at 08:10, "I would think that your burden would be to establish why student loans out of almost all other consumer debt are treated differently. "

Are there other consumer debts that may be discharged in bk for which there is no thing which may be repossessed by the creditor or their successor?

Reply

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The Legal Intelligencer

October 25, 2012 Thursday

SECTION: NATIONAL NEWS; Pg. 4 Vol. 246 No. 82

LENGTH: 502 words

HEADLINE: Ex-Staffer Says She Had to Pad School's Job Stats

BYLINE: KAREN SLOAN The National Law Journal

BODY:

A former assistant career services dean at the Thomas Jefferson School of Law has filed a declaration in a class action against the institution in which she acknowledges padding graduate employment statistics in 2006.

Karen Grant said in a sworn statement in August that she counted recent graduates as employed if they had worked in any capacity since graduation. She blamed pressure by her supervisor to improve the school's jobs statistics.

Law schools are only supposed to report graduates as employed if they have a job nine months following graduation, according to American Bar Association rules.

"I was to ask first if they were currently employed," she said. "If the graduate indicated he or she was not currently employed, I would then inquire whether he or she was employed at any time after graduation. If the graduate indicated he or she was employed at any time after graduation (even though currently unemployed), I was instructed to record the graduate as 'employed'" for the record.

Law School Transparency, an organization that argues for law school reform, first reported the declaration Tuesday.

Anna Alaburda, a 2008 Thomas Jefferson graduate, kicked off a wave of litigation alleging fraud by law schools in May

2011, when she sued her alma mater on behalf of herself and other graduates. A trio of lawyers in New York subsequently filed similar suits against an additional 14 law schools around the country. Judges have dismissed three of those cases.

Alaburda's suit survived an initial motion to dismiss and now is in discovery. The two sides are due in court on November 16 for a discovery hearing.

Grant's declaration is not a smoking gun, Thomas Jefferson Law Dean Rudy Hasl said when asked about the statement. He reiterated the school's position that it did nothing wrong.

"This is the action of a counsel desperate to find any hook to create embarrassment for Thomas Jefferson," Hasl said.

Alaburda's attorney, Brian Procel of Los Angeles firm Miller Barondess, did not immediately respond to calls for comment.

Hasl declined to discuss Grant's employment at the law school, citing confidentiality of personnel records. He did say that Grant's allegation is untrue and will be answered in court.

According to her statement, Grant worked in the law school's career services office between September 2006 and September 2007 under former career services director Laura Weseley. Tracking graduate job statistics was part of her job, she said.

Weseley repeatedly pressured her to record the statistics other than as dictated by the ABA, she said.

"I expressed my concern at the time that it did not seem right to update graduates' employment data only if the graduate became employed, but not if they became unemployed," Grant said.

Grant said that Weseley responded to her concerns by saying that "everybody does it." Weseley criticized her, she said, for "not caring" about the school's postgraduation rate.

Karen Sloan is a reporter for The National Law Journal, a Legal affiliate based in New York.

LOAD-DATE: October 25, 2012

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The Legal Intelligencer

December 24, 2012 Monday

SECTION: NATIONAL NEWS; Pg. 4 Vol. 246 No. 122

LENGTH: 766 words

HEADLINE: New York Law School Wins Dismissal of Suit Over Job Figures

BYLINE: BRENDAN PIERSON New York Law Journal

BODY:

Although criticizing New York Law School for being "less than candid," a New York appeals panel December 20 affirmed the dismissal of a class action lawsuit accusing the school of misleading potential students about its graduates' success in finding legal jobs.

The plaintiffs, a group of New York Law School graduates, allege they were misled about their post-graduation job prospects by statistics put out by the school suggesting that a large majority of its graduates found full-time employment as lawyers. The numbers included people who had part-time jobs or jobs that did not require a law degree, and the reported salary data was based on a small, self-selected group.

The school's new dean, Anthony Crowell, has since made public all data the school provides to the American Bar Association and to rankings publishers.

The suit included claims for violating New York's General Business Law, fraud and negligent misrepresentation. It was one of 14 similar suits filed against lower-ranked law schools around the country by attorneys Jesse Strauss and David Anziska, and is the first to be decided at the appellate level.

In March, Manhattan Supreme Court Justice Melvin Schweitzer dismissed the case, ruling that potential law students

are "a sophisticated subset of education consumers" who can interpret the data provided by the school for themselves.

Writing for a unanimous panel of the Appellate Division, First Department, in Gomez-Jimenez v. New York Law School, Justice Rolando Acosta criticized the school's marketing and said he "does not necessarily agree" that would-be law students are "particularly sophisticated in making career or business decisions." Nonetheless, he affirmed the lower court's conclusion.

Acosta wrote that while there is "no question that the type of employment information published by defendant (and other law schools) during the relevant period likely left some consumers with an incomplete, if not false, impression of the schools' job placement success, Supreme Court correctly held that this statistical gamesmanship, which the ABA has since repudiated in its revised disclosure guidelines, does not give rise to a cognizable claim under" the General Business Law.

Essentially, Acosta said, while New York Law School's statements may have been incomplete, they were not false.

"First, with respect to the employment data, defendant made no express representations as to whether the work was full-time or part-time," he said. "Second, with respect to the salary data, defendant disclosed that the representations were based on small samples of self-reporting graduates. While we are troubled by the unquestionably less than candid and incomplete nature of defendant's disclosures, a party does not violate [the General Business Law] by simply publishing truthful information and allowing consumers to make their own assumptions about the nature of the information."

Acosta further wrote that the school could not be liable for fraudulent concealment "because plaintiffs have not alleged any special relationship or fiduciary obligation requiring a duty of full and complete disclosure from defendants to its prospective students."

Despite rejecting the plaintiff's claims, Acosta ended the opinion by saying he was "not unsympathetic to plaintiffs' concerns," and emphasizing that "the practice of law is a noble profession that takes pride in its high ethical standards."

He added, "Indeed, in order to join and continue to enjoy the privilege of being an active member of the legal profession, every prospective and active member of the profession is called upon to demonstrate candor and honesty."

Justices David Friedman, Sheila Abdus-Salaam, Sallie Manzanet-Daniels and Nelson Roman joined the opinion.

"We're very pleased with the decision," said Venable partner Michael Volpe, counsel to the school. "The legal claims lacked merit."

"The true measure of a legal education is over the course of a career, and any graduate of any law school would have to evaluate the value of their education after years, not just a few months," added Volpe, a 1990 graduate of New York Law School.

Strauss, the attorney for the plaintiffs, said his clients would likely seek leave to appeal.

"The First Department is just wrong on the law," he said. "The fact that they basically found that the employment reports were less than candid and incomplete cannot, as a matter of law, mean that there's no GBL claim."

Strauss said the last section of the opinion amounted to no more than "wagging a finger."

Brendan Pierson is a reporter for the New York Law Journal, a Legal affiliate.

LOAD-DATE: December 24, 2012

Redeeming a Lost Generation: "The Year of Law School Litigation" and the Future of the Law School Transparency Movement

ANDREW S. MURPHY*

> What we have here is powder keg, and if law schools don't solve this problem, there will be a day when . . . some plaintiff's lawyer[] shows up and says, "This looks like illegal deception."[1]

INTRODUCTION

For years, law professors,[2] journalists,[3] bloggers,[4] and even the American Bar Association (ABA)[5] have warned prospective law students about the declining

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* J.D. Candidate, 2013, Indiana University Maurer School of Law. Thanks to the staff of the Indiana Law Journal for all of their work throughout the editing process.

1. David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at BU1 [hereinafter Segal, *Is Law School a Losing Game?*] (quoting Professor William Henderson). Professor Henderson's prediction appeared in the first of several much-discussed articles by Segal about the state of American legal education. *See, e.g.*, David Segal, *Behind the Curve*, N.Y. TIMES, May 1, 2011, at BU1 [hereinafter Segal, *Behind the Curve*]; David Segal, *Law School Economics: Ka-Ching!*, N.Y. TIMES, July 17, 2011, at BU1 [hereinafter Segal, *Law School Economics*]; David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1. Segal's articles have been well received by many with an interest in American legal education, but some have criticized the articles for lacking nuance. Dean David Yellen of Loyola University Chicago School of Law has even described the articles as "despicable." *See* David Lat, *Law School Accreditation: What Is To Be Done?*, ABOVE THE L. (Nov. 13, 2011, 3:22 PM), http://abovethelaw.com/2011/11/law-school-accreditation-what-is-to-be-done/.

2. *See, e.g.*, BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS 136–144 (2012); Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y.L. SCH. L. REV. 465, 496 (2004) ("The golden era of American legal education is drawing to a close. Loans will be more closely monitored. Family resources will be tested. Fewer opportunities will be available. Salaries will be depressed. Greater numbers of graduates will compete for fewer slots in the market."); Herwig Schlunk, *Mamas Don't Let Your Babies Grow Up to Be . . . Lawyers* 10–14 (Vand. L. & Econ., Working Paper No. 09-29, 2009), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1497044 (arguing that, due to opportunity cost, going to law school can be a poor economic investment even for some students who do well at elite law schools); Andrew P. Morriss & William D. Henderson, *The New Math of Legal Education*, YOUNG LAW., July 2008, at 1 ("The current trends in tuition and starting salaries at large firms are unsustainable in the long term. In the short term, these trends are leaving more and more law school graduates worse off economically than if they had never attended law school."). *But see, e.g.*, Cynthia E. Nance, *The Value of a Law Degree*, 96 IOWA L. REV. 1629 (2011) (arguing that the relative affordability of public law schools makes a law degree from such an institution a good value).

3. *See, e.g.*, Karen Sloan, *Going to Law School? Proceed With Caution*, NAT'L L.J. (Dec. 14, 2009), http://www.law.com/jsp/pa/PubArticlePA.jsp?id=1202436393903&slreturn=20120823114029 ("[T]he rising cost of legal education and the dearth of jobs available to new graduates is

value proposition of attending law school in the United States. However, until relatively recently, those admonitions seemed to fall mostly on deaf ears. Even as law school tuition grew more expensive[6] and legal employment became harder to find,[7] students continued to flock to law schools in ever-increasing numbers.[8] Indeed, because "[l]aw school has traditionally been thought of as a safe harbor in a poor economy,"[9] applications to law schools actually *increased* during the recent recession,[10] even as the nation's largest law firms shed almost 10,000 attorney positions.[11]

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prompting more people to urge prospective law students to think twice before they write their first tuition check.").

4. *See* Lucille A. Jewel, *You're Doing it Wrong: How the Anti-Law School Scam Blogging Movement Can Shape the Legal Profession*, 12 MINN J.L. SCI. & TECH. 239, 263–64 (2011) ("The law school scam blogging movement is a community of mostly lower-tier law school graduates who . . . argue that law schools 'scammed' them into borrowing excessive sums of money to attend law school by painting . . . a picture that does not accurately reflect the placement and salary statistics for a school's graduates.").

5. *See* ABA COMM'N ON THE IMPACT OF THE ECON. CRISES ON THE PROFESSION AND LEGAL NEEDS, THE VALUE PROPOSITION OF ATTENDING LAW SCHOOL 1 (2009) ("Far too many law students expect that earning a law degree will solve their financial problems for life. In reality, however, attending law school can become a financial burden for law students who fail to consider carefully the financial implications of their decision.").

6. *See* ABA Section of Legal Educ. & Admissions to the Bar, *Law School Tuition 1985–2011*, AM. BAR ASS'N, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_tuition.authcheckdam.pdf. During the last three decades, the cost of law school tuition at both public and private law schools has gone up at between double and triple the general rate of inflation. Maimon Schwarzschild, *The Ethics and Economics of American Legal Education Today*, 17 J. CONTEMP. LEGAL ISSUES 3, 5 (2008). However, more than half of all students receive some form of discount on the published tuition price. William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble: How Long Will It Last if Law Grads Can't Pay Bills?*, A.B.A. J. (Jan. 1, 2012, 6:20AM), http://www.abajournal.com/magazine/article/the_law_school_bubble_how_long_will_it_last_if_law_grads_cant_pay_bills/.

7. For example, across the country, there were about twice as many people who passed the bar in 2009 as there were job openings for lawyers. Catherine Rampell, *The Lawyer Surplus, State by State*, N.Y. TIMES ECONOMIX BLOG (June 27, 2011, 11:35 AM), http://economix.blogs.nytimes.com/2011/06/27/the-lawyer-surplus-state-by-state/?partner=rss&emc=rss.

8. *See* ABA Section of Legal Educ. & Admissions to the Bar, *Enrollment and Degrees Awarded 1963–2011*, AM. BAR ASS'N, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf.

9. TAMANAHA, *supra* note 2, at 136.

10. *See LSAC Volume Summary*, LSAC.ORG, http://www.lsac.org/LSACResources/Data/LSAC-volume-summary.asp. However, the correlation between rising unemployment and rising law school applications was much weaker during this recession than in previous ones. TAMANAHA, *supra* note 2, at 160–61.

11. David Brown, *The NLJ 250: Editor's Note*, NAT'L L.J. (Apr. 25, 2011), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202546887393. The Great Recession clearly had a very negative effect on the legal employment market, but the legal profession has also undergone a "paradigm shift," which means that although current law students can

Recently, law school graduates have faced the worst entry-level legal employment market in half a century,[12] and while many of these graduates have nevertheless managed to secure good positions, others have not been so fortunate. For thousands of unemployed and underemployed recent law school graduates—especially those who had to borrow heavily to pay for law school—the decision to go to law school has proved financially disastrous.[13] Many in this "Lost Generation" of law students may never enjoy the opportunity to practice law in a meaningful way, much less obtain any significant return on the time and (usually borrowed) money they invested in their legal education.[14]

Given the vast discrepancy between the employment prospects these students anticipated and the employment opportunities they actually enjoy, many feel that their law schools misled them about the economic value of the education those schools provide.[15] Believing their alma maters have caused them legally cognizable injuries, alumni of at least fifteen law schools have even filed purported class-action lawsuits seeking tens of millions of dollars in damages for those alleged injuries.[16] Although the true significance of these lawsuits cannot be fully appreciated at this time, the lawsuits have already contributed to the goals of the law school transparency movement, and those with an interest in legal education will certainly follow the lawsuits with great interest. This Note will explore the impact of this new type of class-action litigation by focusing primarily on three lawsuits that were filed in 2011—*Alaburda v. Thomas Jefferson School of Law*,[17] *Gomez-Jimenez v. New York Law School*,[18] and *MacDonald v. Thomas M. Cooley Law School*.[19] Specifically, this Note argues that class-action lawsuits against individual law schools might usefully supplement other potential methods for persuading law schools to heed the calls for increased transparency, and will continue to serve a purpose even if the legal education industry adopts—or is made to adopt—additional reform in that area.

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hope for improvement in the legal employment market, the "golden age" of BigLaw hiring is likely over. William D. Henderson & Rachel M. Zahorsky, *Law Job Stagnation May Have Started Before the Recession—And It May Be a Sign of Lasting Change*, A.B.A. J. (July 1, 2011, 4:40 AM), http://www.abajournal.com/magazine/article/paradigm_shift/.

12. James G. Leipold, *The Changing Legal Employment Market for New Law School Graduates*, B. EXAMINER, Nov. 2010, at 6, 6.

13. *See supra* notes 6–8 and accompanying text.

14. The term "Lost Generation" has been used by some to refer to the law school classes of 2008, 2009, and 2010. *E.g.*, Lindsey Skerrett, *The Lost Generation*, JD RISING (May 31, 2011), http://minnlawyer.com/jdr/2011/05/31/the-lost-generation/.

15. *E.g.*, Leslie Kwoh, *Irate Law School Grads Say They Were Misled About Job Prospects*, STAR-LEDGER (Aug. 15, 2010, 9:30 AM), http://www.nj.com/business/index.ssf/2010/08/irate_law_school_grads_say_the.html ("As they enter the worst job market in decades, many young would-be lawyers are turning on their alma maters, blaming their quandary on high tuitions, lax accreditation standards and misleading job placement figures.").

16. *See infra* notes 102–148 and accompanying text.

17. Complaint, Alaburda v. Thomas Jefferson Sch. of Law, No. 37-2011-00091898-CU-FR-CTL, 2011 WL 2109327 (Cal. Super. Ct. May 26, 2011).

18. Gomez-Jimenez v. New York Law Sch., 943 N.Y.S.2d 834 (N.Y. Sup. Ct. 2012).

19. MacDonald v. Thomas M. Cooley Law Sch., No. 11-cv-831, 2012 WL 2994107 (W.D. Mich. July 20, 2012).

This Note is divided into four Parts. Part I briefly describes why, despite recent ABA reforms, there is still a need for law schools to be more transparent about the employment outcomes of their recent graduates. Part II describes a few methods by which law schools may be pressured to improve their transparency in this area if the ABA fails to take additional action in a timely fashion. With the context provided by Parts I and II, Part III uses the three above-mentioned cases, along with several others that were filed in 2012, to explore the special role this relatively novel type of class-action litigation may come to fill within the broader law school transparency movement. Some of the immediate effects of the lawsuits are discussed in Part IV.

I. THE LAW SCHOOL TRANSPARENCY PROBLEM

With the benefit of hindsight, many recent law school graduates can now see clearly that their decision to go to law school was a mistake.[20] While some of these graduates certainly could have—and should have—anticipated that law school might be a poor investment,[21] others probably could not have realized *ex ante* just how financially ruinous their decision to go to law school would ultimately prove to be. For example, it would have been quite difficult for someone who applied to law schools in 2005 to anticipate how weak the entry-level legal employment market would be when she graduated in 2009.[22] On the other hand, someone who started law school in 2008 or 2009 would have had more of an opportunity to observe the signs of weakness in the legal employment market before deciding to pursue a legal education.

Although some of the blame for the dire financial position in which many recent law school graduates find themselves "surely rests with law students and graduates who did not perform their due diligence before deciding whether to attend law school[, a] good portion of the blame . . . rests squarely on the shoulders of law schools and their lack of transparency in representing the state of the legal market."[23] "Many law schools all but explicitly promise[d] that, within a few

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20. Twenty-one percent of law students regret their decision to go to law school. LEXISNEXIS, STATE OF THE LEGAL INDUSTRY SURVEY, 29 (2009), *available at* http://www.lexisnexis.com/document/State_of_the_Legal_Industry_Survey_Findings.pdf. Because recent graduates are confronted with the harsh realities of the legal employment market more directly than current law students are, the percentage of recent graduates who regret going to law school is presumably higher.

21. Moira Herbst, *Lawsuits Against Law Schools Weak: Legal Ed Experts*, THOMSON REUTERS (Feb. 26, 2012), http://newsandinsight.thomsonreuters.com/New_York/News/2012/02_-_February/Lawsuits_against_law_schools_weak__legal_ed_experts/ (quoting Professor Mark Gergen) ("'People going to bottom-tier law schools ought to know that they won't go like hot cakes on the job market.' . . . But that doesn't mean you're allowed to exploit their vulnerability.").

22. *See supra* note 12 and accompanying text.

23. Daniel S. Harawa, Note, *A Numbers Game: The Ethicality of Law School Reporting Practices*, 24 GEO. J. LEGAL ETHICS 607, 607 (2011). It is true that law schools are not the only institutions of higher education that have been accused of misrepresenting the employment opportunities available to graduates. *E.g.*, Mark C. Taylor, *Reform the PhD*

months of graduation, practically all of their graduates [would] obtain jobs as lawyers," even though the realities of the legal employment market often meant that less than half of those students would obtain full-time legal positions.[24] Dissatisfied "customers" of such law schools might be faulted for taking that school-specific information at face value, but belated admonitions of *caveat emptor* are not particularly helpful to students who have already borrowed hundreds of thousands of dollars to obtain a degree that has proven to be of little economic value to them.[25]

Of course, there are those who believe—not unreasonably, perhaps—that prospective law students *should* be able to take at face value the information law schools provide regarding the employment outcomes of their recent graduates.[26] One would certainly hope that prospective law students would be savvy enough to see through some law schools' efforts to obfuscate their employment statistics, but one might also hope that law school administrators and ABA officials would take it upon themselves to ensure that naïve would-be lawyers are provided with *all* of the information they need to make an informed decision about whether and where to attend law school. After all, practicing lawyers are prohibited from making misleading statements about their services, even when the statements are technically truthful.[27] Is seems reasonable to expect law school administrators—many of whom are or have been members of the bar—to be

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System or Close It Down, 472 NATURE 261 (2011) ("In many fields, [the American Ph.D. system] creates only a cruel fantasy of future employment that promotes the self-interest of faculty members at the expense of students. The reality is that there are very few jobs for people who might have spent up to 12 years on their degrees."). However, even assuming *arguendo* that Ph.D. programs mislead prospective students about the value of their degrees to the same extent that law schools do (an unlikely proposition given the extremely aggressive marketing practices employed by many law schools), that would merely mean that reform is needed in both areas, not that there is not a transparency problem in the legal education industry.

24. Paul Campos, *Served: How Law Schools Completely Misrepresent Their Job Numbers*, NEW REPUBLIC (Apr. 25, 2011, 12:00 AM), http://www.tnr.com/article/87251/law-school-employment-harvard-yale-georgetown?page=0,0.

25. *Compare* MacDonald v. Thomas M. Cooley Law Sch., No. 11-cv-831, 2012 WL 2994107, at *11 (W.D. Mich. July 20, 2012) ("The bottom line is that the statistics provided by Cooley and other law schools in a format required by the ABA were so vague and incomplete as to be meaningless and could not reasonably be relied upon. But, as put in the phrase we lawyers learn early in law school—*caveat emptor*."), *with* Paul Campos, *Caveat Emptor and Law School Employment Numbers*, INSIDE L. SCH. SCAM (Sept. 11, 2011), http://insidethelawschoolscam.blogspot.com/2011/09/caveat-emptor-and-law-school-employment.html ("To anyone who has taken the time to investigate the subject, it's obvious that the standard practices of law schools regarding their employment numbers fail" to satisfy "[t]he nasty old common law doctrine of caveat emptor.").

26. *See, e.g.*, William D. Henderson & Andrew P. Morriss, *How the Rankings Arms Race Has Undercut Morality*, NAT'L JURIST, Mar. 2011, at 8, 9; Campos, *supra* note 25; Herbst, *supra* note 21.

27. *E.g.*, MODEL RULES OF PROF'L CONDUCT R. 7.1 ("A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, *or omits a fact necessary to make the statement considered as a whole not materially misleading*.") (emphasis added).

equally cautious about the claims they make regarding the economic value of the education their schools provide.

Unfortunately, it has become increasingly clear in recent years that the employment statistics reported by many law schools—even if truthful in a technical sense—have nevertheless painted an unrealistically positive picture of the legal employment market. Various commentators have identified numerous problems with the way law schools report their employment statistics,[28] but much of the criticism law schools have received in this area has centered around two major problems: (1) the employment statistics law schools provided to prospective students were, until recently, "so vague and incomplete as to be meaningless"[29]; and (2) these statistics have been, and continue to be, based on unaudited reports compiled by the law schools themselves.

A. "Employment" ≠ "Gainful Employment"

The most obvious problem with the employment statistics law schools provide to prospective law students is the fact that, for many years (this recently changed),[30] the ABA allowed law schools to count graduates doing almost any kind of work—including part-time work, temporary work, and non-legal work—as "employed" for purposes of their published employment rates.[31] Thus, graduates who worked part-time at Starbucks were considered just as "employed" as graduates who made six-figure salaries working at large law firms, [32] even though prospective law students generally attend law school expecting to obtain full-time work for which a law degree is required or preferred, and generally need to find such a job in order to be able to service their student loans after graduation.

Similarly, for many years, law schools were able to further inflate their employment statistics by offering graduates low-paying temporary positions funded by the law schools themselves so otherwise jobless graduates would be considered "employed" for purposes of the school's employment statistics.[33] For example, Washington and Lee University School of Law reported that 89.4% of its 2010

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28. *See generally* Kyle P. McEntee & Patrick J. Lynch, *A Way Forward: Transparency at American Law Schools*, 32 PACE L. REV. 1 (2012).

29. *Thomas M. Cooley Law Sch.*, 2012 WL 2994107, at *11.

30. *See infra* notes 48–57 and accompanying text.

31. Amended Complaint at 25–27, Gomez-Jimenez v. New York Law School, 943 N.Y.S.2d 834 (N.Y. Sup. Ct. Nov. 21, 2011) (No. 652226/2011), Doc. No. 10 [hereinafter NYLS Complaint]; *Thomas M. Cooley Law Sch.*, 2012 WL 2994107, at *6.

32. This practice is even more indefensible in light of the fact that, for many years, the National Association of Law Placement has collected comprehensive employment statistics from most law schools. *See* NYLS Complaint at 26. That data was used by NALP to compile aggregate statistical information about the employment outcomes of graduates of all ABA-approved law schools, but law schools were not required to release that information to the public. *Id; see also infra* notes 48–50 and accompanying text.

33. Bernie Burk, *A Stunning But Largely Unnoticed Anomaly in Recent Employment Outcomes Data Suggests That Things May Be Even Worse Out There Than We Imagined*, FACULTY LOUNGE (Mar. 19, 2012, 10:27 PM), http://www.thefacultylounge.org/2012/03/a-stunning-but-largely-unnoticed-anomaly-in-recent-employment-outcomes-data-suggests-that-things-may.html.

graduates were employed at graduation despite the fact that 46.3% of those counted as "employed" at graduation were actually employed as "Post-Grad Fellows" by the law school.[34] Although Washington and Lee did disclose on its website the number of its students receiving these temporary positions[35] (something law schools with similar programs have not always done),[36] the 89.4% figure—without caveats—is what the school reported to *U.S. News*.[37] Considering that less than half of the 2010 Washington and Lee class had actually managed to secure permanent employment by graduation,[38] it seems relatively clear that, at least in this instance, the employment data Washington and Lee reported to *U.S. News* painted an unrealistically positive picture of the employment opportunities available to recent graduates of that law school. Thus, prospective law students who relied primarily on *U.S. News* for information about potential law schools might have grossly underestimated just how difficult it would be for them to secure gainful employment after law school.

B. Unaudited, Self-Reported Surveys Are Inherently Unreliable

The second major problem with the way law schools have been reporting their employment data stems from the fact that the data is necessarily based on self-reported surveys of recent graduates.[39] Because law schools need only report information from graduates who willingly return the surveys, law schools' employment statistics—especially their salary statistics—are often based on unrepresentative samples of recent graduates.[40] For example, based on a sampling

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34. WASH. & LEE UNIV. SCH. OF LAW, *Employment Statistics for the Class of 2010*, http://law.wlu.edu/deptimages/Admissions/FINAL%20Statistical%20Report%20Class%20of%202010-9%20Month.pdf (figures exclude graduates seeking advanced degrees rather than employment).

35. *Id.*

36. *See* Bernie Burk, *Employment Outcomes II: What We Know About School-Funded Temporary "Bridge" Positions At First-Tier Law Schools*, FACULTY LOUNGE (Mar. 28, 2012, 2:37 PM), http://www.thefacultylounge.org/2012/03/employment-outcomes-ii-what-we-know-about-school-funded-temporary-bridge-positions-at-first-tier-law.html.

37. *See* Robert Morse & Sam Flanigan, *Methodology: Law School Rankings*, U.S. NEWS & WORLD REPORT (Mar. 12, 2012), http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/03/12/methodology-law-school-rankings. Although *U.S. News* plans to follow the ABA in requiring law schools to report more "granula[ted]" employment data in the future, it did not do so for its most recent rankings. *Id.*

38. *See* WASH. & LEE UNIV. SCH. OF LAW, *supra* note 34.

39. Law schools must report "the placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs, gathered from such sources as alumni surveys, student satisfaction surveys, . . . or other relevant sources." 20 U.S.C. § 1092(a)(1)(R) (Supp. IV 2011).

40. TAMANAHA, *supra* note 2, at 146–47. Further, until relatively recently, *U.S. News & World Report* counted as employed twenty-five percent of those graduates whose employment status was unknown. Bob Morse, *ABA May Revise Law School Job Reporting*, U.S. NEWS & WORLD REP. (Mar. 17, 2011), http://www.usnews.com/education/blogs/college-rankings-blog/2011/03/17/aba-may-revise-law-school-job-reporting. This provided law schools with a disincentive to seek employment

of just 22% of its 2010 graduates, New York Law School (NYLS) reported that the average starting salary for its graduates in private practice is $107,343.[41] However, because alums in high paying jobs are more likely to receive and respond to salary surveys than are the unemployed and underemployed, the true average salary earned by graduates of NYLS's 2010 graduating class was likely significantly lower than the reported average.[42]

NYLS is by no means the only law school to boast of high salaries based on relatively small samples of its recent graduates. Indeed, in the 2012 *U.S. News* law school rankings, nearly seventy law schools posted salary figures taken from half or fewer of their graduates with full-time jobs in the private sector, with four schools using salary figures taken from just five to ten percent of those graduates.[43] While one might expect that such low response rates merely reflect the sensitive nature of the surveys, the fact that some law schools, including some lower-ranked law schools, are able to obtain salary information from most of their recent graduates indicates that law schools clearly could obtain salary information from their graduates if the law schools made obtaining that information a priority.[44] Further, the fact that a number of law schools already collect at least some employment data from virtually all of their graduates suggests that collecting salary information from recent graduates would probably not require a significant expenditure of additional institutional resources.[45]

As the foregoing discussion suggests, even if law school administrators had followed the ABA's reporting guidelines scrupulously, the employment statistics they reported would have exaggerated the success recent alums have had obtaining gainful employment. Obviously, the problem would be much worse if law school administrators actually reported factually inaccurate data. Unfortunately, because the employment data law schools report is not independently audited, it would be

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information from those graduates they suspected of being unemployed. Henderson & Morriss, *supra* note 26, at 9.

41. *See* NYLS Complaint, *supra* note 31, at 21–22. For additional examples, *see* TAMANAHA, *supra* note 2, at 146–54; *see also* Leipold, *supra* note 12, at 11 for a discussion of how the bimodal distribution of entry-level legal salaries may also cause students to overestimate what starting salary they are likely to earn upon graduation.

42. *See* NYLS Complaint, *supra* note 31, at 24–25.

43. TAMANAHA, *supra* note 2, at 146–47.

44. *Id*. at 147–49 (explaining that although there is generally a strong correlation between a law school's *U.S. News* ranking and the percentage of its graduates who report their full-time private-sector salaries, "[a] number of lower-ranked schools have relatively high response rates: Texas Southern (97 percent); Charlotte (86 percent); and La Verne (85 percent).").

45. For example, the Indiana University Maurer School of Law managed to obtain information regarding the employment status of all but one of the 195 members of its 2011 graduating class, yet only collected salary information for seventy-three of those graduates. NAT'L ASS'N FOR LAW PLACEMENT, INDIANA UNIVERSITY MAURER SCHOOL OF LAW-BLOOMINGTON: CLASS OF 2011 SUMMARY REPORT (2012), *available at* http://www.law.indiana.edu/careers/reports/doc/nalp_2011.pdf. Presumably, the institutional resources involved in encouraging graduates to be more forthcoming about their salary information are relatively small compared to the institutional resources required to distribute and process the employment surveys themselves.

extremely difficult to catch a law school in the act of falsifying its data.[46] The fact that some law school administrators have already exhibited a willingness to falsify the data they report to the ABA thus provides a compelling reason to maintain a healthy skepticism about the accuracy of the already misleading employment statistics.[47]

C. Recent ABA Reforms

Fortunately, the ABA has finally begun to respond to demands for it to require law schools to make their employment statistics more useful to prospective students. In the past, most law schools reported detailed placement information to the National Association of Law Placement (NALP), but only reported basic (and relatively unhelpful) placement data to the ABA and the public.[48] Under pressure, some law schools eventually began to release their NALP reports to the public,[49] but law schools were never required to release those reports and NALP only ever released the information reported by law schools in aggregate form.[50] This unsatisfactory state of affairs began to change when the ABA's Questionnaire Committee announced in July 2011 that it would begin requiring law schools to "unbundle" their placement statistics and report those statistics directly to the ABA.[51] Specifically, the Committee announced:

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46. *See* Letter from Barbara Boxer, U.S. Senator, to Stephen N. Zack, President of the Am. Bar Ass'n (May 20, 2011), *available at* http://www.lawschooltransparency.com/Boxer-ABA_Letter_May_2011.pdf. The ABA may impose penalties on law schools that intentionally report fraudulent data, see *Report to the House of Delegates*, A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR 4, but the lack of any mechanism for independently verifying the data law schools report makes the deterrent value of such penalties questionable.

47. *See infra* note 73. A number of schools have also admitted to accidentally misreporting various figures. For example, several law schools—including Barry University School of Law, University of Kansas School of Law, and Rutgers School of Law (Camden)—have admitted to reporting that their students graduate with a lower level of average indebtedness than they actually do. Chelsea Phipps, *Reports of Our (Low) Debt Have Been Greatly Exaggerated*, WALL. ST. J. L. BLOG (Aug. 8, 2012, 3:20 PM), http://blogs.wsj.com/law/2012/08/08/law-schools-misreported-debt-figures-to-us-news-aba/. While there has not yet been any indication that these figures were intentionally misreported, some commentators have expressed skepticism as to whether the misrepresentations were truly the result of "honest mistakes." *See, e.g.*, Staci Zaretsky, *Law Schools Misreport Debt Figures to the ABA; To No One's Shock, the ABA Does Nothing*, ABOVE THE L. (Aug. 9, 2012, 12:21 PM), http://abovethelaw.com/2012/08/law-schools-misreport-debt-figures-to-the-aba-to-no-ones-shock-the-aba-does-nothing/.

48. *NALP and the ABA Must Compromise*, L. SCH. TRANPSARENCY (Aug. 3, 2011, 7:28 PM), http://www.lawschooltransparency.com/2011/08/nalp-and-the-aba-must-compromise/.

49. *See infra* notes 93–94 and accompanying text.

50. *NALP and the ABA Must Compromise*, *supra* note 48.

51. Memorandum from Hulett H. Askew, Consultant on Legal Education, and Arthur R. Gaudio, Chair, Questionnaire Committee, to Law School Deans and Career Services Officers 1 (July 27, 2011), *available at* http://www.lawschooltransparency.com/documents/2011-07-27-AskewGaudio-to-LawSchools.pdf.

> the 2011 Annual Questionnaire will request from law schools information on their graduates' employment status, employment types, and employment locations. It will also request information on whether a graduate's employment is long-term or short-term. Finally, it will ask how many, if any, positions held by their graduates are funded by the law school or university.[52]

In addition, the Committee announced that it would collect salary information from each of the law schools and report the "the 25th, median, and 75th percentile salaries of jobs obtained in the various types in each state and region" in the *Official Guide to ABA Law Schools*.[53]

The ABA's House of Delegates made further progress towards improving law school transparency as recently as August 2012 when it approved changes to Standard 509, the rule that describes the consumer information law schools must report to remain accredited by the ABA.[54] For the most part, the changes brought Standard 509 in line with the changes already made by the Questionnaire Committee.[55] However, the revised Standard 509 also requires law schools to disclose their scholarship retention rates and the sample size upon which their salary surveys are based.[56] Given all of the criticism law schools have received over their lack of transparency in these two areas,[57] these relatively minor changes represent a significant improvement over the status quo.

Unfortunately, these much-needed reforms come far too late to be of any benefit to the thousands of recent graduates who have little to show for their three years in law school except six-figures worth of non-dischargeable student loans. Additionally, the ABA—so far—has rejected calls for it to force law school administrators to disclose the salary data the ABA collects from each law school,[58] and seems to have largely ignored requests that it start requiring law schools to have their employment statistics independently audited. The ABA's Task Force on the Future of Legal Education might eventually recommend such reforms, but the task force is not expected to complete its work until 2014.[59] Given that the ABA

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52. *Id.* at 1–2.

53. *Id.* at 2.

54. *ABA House of Delegates Approves Standard 509 and Rule 16*, L. SCH. TRANSPARENCY (Aug. 6, 2012, 2:59 PM), http://www.lawschooltransparency.com/category/american-bar-association/aba-watch/.

55. Karen Sloan, *ABA Backs Off Making Law Schools Report Graduates' Salaries*, NAT'L L.J. (Mar. 19, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202546229913&slreturn=20120723155436.

56. A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR, *supra* note 46, at 3.

57. *See infra* note 96; *supra* 38–42 and accompanying text.

58. Sloan *supra* note 55. The chief problem with the ABA's current approach (i.e. reporting aggregated salary data for each state) is that "[w]ithout the school-specific salary reporting, there is no way for prospective law students to differentiate between the graduate salaries of lower and higher-ranking law schools in any given state."

59. *ABA President Names Task Force on the Future of Legal Education*, ABA NOW (July 31, 2012), http://www.abanow.org/2012/07/aba-president-names-task-force-on-the-future-of-legal-education/.

has already taken some basic steps to improve law school transparency,[60] there is good reason to believe that the ABA will wait until after the task force releases its findings before implementing any additional reforms designed to improve law school transparency.

D. A Caveat: Transparency Has Its Limits

Of course, a lack of transparency regarding the employment outcomes of recent graduates is by no means the only problem facing the legal education industry today.[61] Indeed, it must be admitted that increased transparency alone probably would not deter some law students from making poor decisions about where and whether to attend law school.[62] For example, better information likely would not prevent some students from grossly overestimating their chances of maintaining their grade-contingent scholarships[63] or securing high-paying work at a large law firm,[64] and many prospective law students would probably continue to attach far too much importance to the *U.S. News* law school rankings.[65] Nevertheless, even if

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60. *See supra* notes 51–56 and accompanying text.

61. *See generally* TAMANAHA, *supra* note 2.

62. Sloan, *supra* note 3 (quoting Professor William Henderson) ("Even if [law schools] communicated the realities [of the legal employment market] in a statistically valid way to prospective students, some of them still won't process that information.").

63. *Compare* Segal, *Behind the Curve*, *supra* note 1 (arguing that law schools do a poor job of warning students about how difficult it will be for them to earn the grades necessary to maintain their grade-contingent scholarships), *with* Saul Levmore, *The Rage Over Conditional Scholarships*, UNIV. CHI. FACULTY BLOG (May 16, 2011, 3:32 PM), http://uchicagolaw.typepad.com/faculty/2011/05/the-rage-over-conditional-scholarships.html (explaining that, in the author's opinion, grade-contingent scholarships "[do] not so much set out to fool customers as [try] to deal with the problem of transfers"). Whether or not offering grade-contingent scholarship should be characterized as a "bait and switch" tactic, as Segal suggests, losing a grade-contingent scholarship can significantly alter the value proposition of attending law school, especially if it comes as a surprise to the person losing it. In any event, the ABA now requires law schools to disclose more information about scholarship retention rates than it once did. *See supra* note 56 and accompanying text.

64. According to Dean Gary Roberts of the Indiana University Robert H. McKinney School of Law, "[m]any law students are like high school basketball players" who "all think they'll play for the NBA when they graduate." Rebecca Berfanger, *Law Schools Discuss Loans, Jobs*, IND. LAW. (Feb. 2, 2011), http://www.theindianalawyer.com/article?articleId=25665. Consequently, according to Dean Roberts, "[i]f you're a law student and think you'll make $140,000 right out of law school, you're an idiot." *Id.*

65. In a recent poll of prospective law students, 32% said that a law school's ranking is the most critical factor in their decision about where to go to school, compared with 8% percent who considered a law school's job placement statistics to be the most important factor. Russell Schaffer & Carina Wong, *Kaplan Test Prep Survey: Despite an Uncertain Employment Landscape, Law School Applicants Still Consider School Rankings Far More Important than Job Placement Rates When Deciding Where to Apply* (June 19, 2012), http://press.kaptest.com/press-releases/kaplan-test-prep-survey-despite-an-uncertain-employment-landscape-law-school-applicants-still-consider-school-rankings-far-more-important-than-job-placement-rates-when-deciding-where-to-apply. *But see Shocked About*

some law students would not make good use of more accurate employment data, it is highly desirable that accurate employment data be collected anyway. At least some prospective law students would make good use of the additional information,[66] and policymakers will need access to the information if they are to address the various other problems confronting the legal education industry today.[67]

II. SOME RECENT EFFORTS TO SOLVE THE LAW SCHOOL TRANSPARENCY PROBLEM

The most obvious solution to the law school transparency problem is, of course, for the ABA to use its accrediting authority to force law schools to provide comprehensive, independently verified information about the employment outcomes of their recent graduates. Unfortunately, while recently enacted ABA reforms have closed some of the loopholes that had allowed law schools to count almost all of their graduates as "employed" regardless of how many of those graduates were actually able to secure gainful legal employment, the ABA has so far proven unwilling to require law schools to report detailed salary information or to have their employment statistics independently audited.[68]

Reasonable minds may disagree as to whether these additional reforms are desirable,[69] but assuming that it is desirable for law schools to provide more

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Kaplan's Survey Results? New Information Comes to Light, L. SCH. TRANSPARENCY (Dec. 3, 2010, 12:04 PM), http://www.lawschooltransparency.com/2010/12/shocked-about-kaplans-survey-results-new-information-comes-to-light/ (explaining various reasons why an earlier edition of the poll may have overstated the emphasis prospective students attach to the rankings).

66. Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 618 (2010) ("With more accurate information, the market should then take over as students who wish to succeed in the job market gravitate to those schools most able to facilitate their success.").

67. For example, brutally honest information about the true state of the legal employment market might convince the Education Department "to force law schools to demonstrate, as a condition of receiving federal loan money, a minimum threshold of employability and income upon graduation." Henderson & Zahorsky, *supra* note 6.

68. *See supra* notes 58–59 and accompanying text.

69. Some argue that salary surveys should not be required because low response rates might make them misleading. Karen Sloan, *ABA Backs Off Making Law Schools Report Graduates' Salaries*, NAT'L L.J. (Mar. 19, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202546229913&slreturn=20120716083955. This is certainly a legitimate concern, but its seems that the better course would be to make a concerted effort to increase the response rates, not to simply deprive prospective law students of information they will need to determine whether it makes good economic sense for them to attend law school. Some law schools have also cited privacy concerns as a reason not to provide detailed salary information to the public. *Initial Request Responses*, L. SCH. TRANSPARENCY (Sept. 14, 2010, 12:01 AM), http://www.lawschooltransparency.com/2010/09/initial-request-responses/ (quoting administrators from various law schools). However, some schools have chosen to voluntarily release salary information that is quite detailed. *E.g.*, *Comprehensive Employment Statistics*, UNIV. OF MICH. L. SCH., http://www.law.umich.edu/careers/classstats/Pages/employmentstats.aspx. This suggests that efforts to increase transparency in this area need not compromise the privacy of recent graduates.

comprehensive and more reliable information about the employment outcomes of their recent graduates, how can law schools be made to do this if the ABA is unwilling to take further steps to increase law school transparency? This Part highlights a few additional ways in which law schools could be further pressured to improve transparency in the relatively near future.[70] Specifically, it addresses (A) the influence of *U.S. News*, (B) the voluntary efforts some law schools are taking to increase their own transparency, (C) the advocacy efforts of organizations like Law School Transparency, and (D) the possibility of action by Congress or the Department of Education.

A. U.S. News & World Report

For better or worse, *U.S. News*, a for-profit magazine that has often been accused of exacerbating the problems in the American legal education system,[71] probably has almost as much power as the ABA itself to solve the law school transparency problem. Law schools face tremendous pressure to improve their *U.S. News* ranking,[72] and many will go to great lengths to do so, regardless of whether or not their efforts will improve the quality of the education they provide.[73]

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70. This Part is by no means an exhaustive list of all of the possible methods for solving the law school transparency problems. *See, e.g.*, Morgan Cloud & George Shepherd, *Law Deans in Jail* (Emory Legal Studies Research Paper No. 12-199, 2012), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1990746 (discussing the potential for action by the Department of Justice); Joel F. Murray, *Professional Dishonesty: Do U.S. Law Schools That Report False or Misleading Employment Statistics Violate Consumer Protection Laws?*, 15 J. CONSUMER & COM. L. 97 (2012) (discussing the potential for action by the Federal Trade Commission).

71. *See, e.g.*, TAMANAHA, *supra* note 2, at 78 ("When called to account for their conduct, legal educators point the finger at the *US News* ranking system."); *see generally* Kyle P. McEntee & Derek M. Tokaz, *Take This Job and Count It*, 2 J.L. 309 (2012).

72. Daniel J.H. Greenwood, *Market Irrationality in the Law School "Arms Race,"* HUFFINGTON POST (May 6, 2011, 5:57 PM), http://www.huffingtonpost.com/daniel-j-h-greenwood/market-irrationality-in-t_b_856400.html ("Any school that dares to ignore the [*U.S. News*] rankings risks a death spiral of rapidly departing employers, students and faculty, leading to lower ranking and even more problems."). Nancy Rapoport, the former dean of the University of Houston Law Center, even claims that the law school's decline in the ranking provided the final push for her resignation as the school's dean. Leigh Jones, *Law School Deans Feel the Heat from Ranking*, NAT'L L.J. (May 1, 2006), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=900005452512&Law_school_deans_feel_the_heat_from_ranking.

73. See Jeffrey Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 IND. L.J. 229, 232–42 (2006) for a discussion on the sometimes bizarre incentives the *U.S. News* rankings create for providers of legal education. For example, "a law school could literally burn a huge sum of money and, as long as the flames were meant to teach something to the students—the craziness of the U.S. News algorithm, perhaps?—the school would benefit in the rankings." *Answers to Reader Questions About Law School*, N.Y. TIMES ECONOMIX BLOG (Dec. 20, 2011, 11:08 AM), http://economix.blogs.nytimes.com/2011/12/20/answers-to-reader-questions-about-law-school/. That law school administrators act with those incentives in mind was evidenced by a recent report that concluded the *U.S. News* law school ranking, not the ABA

Because job placement rates factor significantly into a law school's ranking,[74] and because law schools that do not massage their employment statistics will find themselves at a competitive disadvantage vis-à-vis those law schools that do, *U.S. News*—until recently—provided law school administrators with a disincentive to provide comprehensive data about the employment outcomes of their recent graduates.[75] Fortunately, *U.S. News*'s editors now seem to agree that there is a need for increased law school transparency.[76] The magazine has already changed its methodology in the attempt to provide a more realistic portrait of the current job market for new J.D. graduates,[77] and plans to incorporate a recent ABA reform (i.e. the requirement that law schools "reveal such key stats as how many graduates had jobs that are full time or part time, short term or long term, and that actually require the J.D. degree") into its methodology for future rankings.[78]

These changes represent an improvement over the methodology used in previous versions of the ranking, but *U.S. News* could probably push law schools to provide even more comprehensive and reliable information about the employment outcomes of their recent graduates if the magazine chose to do so. Given the great lengths to which law school administrators will go to improve their *U.S. News* ranking, it is likely that law schools would, for example, provide detailed salary information or agree to have their employment statistics independently verified if doing so were a prerequisite for inclusion in future editions of the ranking.[79]

Accreditation standards, has largely driven the rising cost of American legal education. *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-20, HIGHER EDUCATION: ISSUES RELATED TO LAW SCHOOL COST AND ACCESS 25 (2009). Indeed, some law school administrators have even proved willing to engage in fraudulent activity to better their *U.S. News* ranking. For example, Villanova University School of Law has been censured by the ABA for reporting inaccurate admissions. Letter from Hulett H. Askew, Consultant on Legal Educ. to the ABA, to Peter M. Donohue, President, Villanova Univ., and John Y. Gotanda, Dean, Villanova Univ. Sch. of Law (Aug. 12, 2011). The University of Illinois has also admitted to similar misconduct. JONES DAY & DUFF & PHELPS, UNIVERSITY OF ILLINOIS COLLEGE OF LAW CLASS PROFILE REPORTING 2–5 (2011).

74. *See* Robert Morse & Sam Flanigan, *Methodology: Law School Rankings*, U.S. NEWS & WORLD REP. (Mar. 12, 2012), http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/03/12/methodology-law-school-rankings (explaining that various indices of "placement success" are weighted by .20 in formula the magazine uses to compile its rankings).

75. *See* Cass R. Sunstein, *Ranking Law Schools: A Market Test?*, 81 IND. L.J. 25, 27 (2006) ("[M]any schools would prefer not to have to manipulate these factors, but the current system of ranking strongly pressures them to do so. If schools do not engage in manipulation, but their competitors do, then they will lose students—and eventually much else as well.").

76. *See* Bob Morse, *U.S. News Urges Law School Deans to Improve Employment Data*, U.S. NEWS & WORLD REP. (March 9, 2011), http://www.usnews.com/education/blogs/college-rankings-blog/2011/03/09/us-news-urges-law-school-deans-to-improve-employment-data.

77. *See* Morse & Flanigan, *supra* note 74 ("For the second year in row, . . . employment rates are figured solely based on the number of grads working at that point in time full or part time in a legal or non-legal job divided by the total number of J.D. graduates.").

78. *Id.*; *see also supra* notes 48–53 and accompanying text.

79. After all, some law schools have even radically reduced the numbers of part-time students they accept in apparent response to changes in the ranking's methodology. *See*

However, even though *U.S. News* probably has the power to unilaterally demand more robust data from law schools, the magazine's rankings guru, Bob Morse, has indicated that the magazine would prefer for the ABA—the organization actually charged with regulating law schools—to take a leadership role in this area.[80]

Furthermore, *U.S. News* has little incentive to promote reform in this area. *U.S. News* is in the business of selling magazines, and it would almost certainly sell fewer copies of its annual law school guide if it did anything that might discourage prospective students from attending law school.[81] To be sure, *U.S. News* may need to change its methodology somewhat from time to time in order to maintain its perceived legitimacy,[82] but it is simply unrealistic to expect *U.S. News* to use its influence to spearhead a permanent solution to the law school transparency problem.

B. Voluntary Self-Imposed Reform

Law schools could, of course, disclose more information than what the ABA requires regarding the employment outcomes achieved by recent graduates, and

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TAMANAHA, *supra* note 2, at 87–88 (describing how the George Washington and Brooklyn law schools greatly reduced their part-time classes once enrolling large numbers of part-time students was no longer beneficial to their *U.S. News* rankings). If law schools are willing to make such drastic changes at *U.S. News'* behest, it seems reasonable to expect that they would also be willing to comply with relatively simple reporting requirements.

80. Segal, *Is Law School a Losing Game?*, *supra* note 1 (quoting Bob Morse) ("And what about U.S. News? The editors could, but won't unilaterally demand better data from law schools. 'Do we have the power to do that? Yes, I think we do,' said Robert Morse, who oversees the law school rankings. 'But . . . it would be awkward if U.S. News imposed [a new standard] by itself. It would be preferable if the A.B.A. took a leadership role in this.'").

81. *See, e.g.*, Elie Mystal, *Most Schools Would Like Law School Transparency to Just Go Away*, ABOVE THE L. (Sept. 14, 2010, 2:16 PM), http://www.abovethelaw.com/2010/09/most-schools-would-like-law-school-transparency-to-just-go-away/ ("What possible reason does U.S. News have to ask more detailed questions about employment statistics? So it can tacitly admit it has been part of the problem all along? So more people read it and think . . . 'I shouldn't go to law school,' which does nothing but hurt the (for-profit) magazine's newsstand sales and circulation? U.S. News will *never* stand up to law schools and force them to stop inflating their employment numbers, not so long as the magazine's business managers want to keep people thinking about going to law school.") (emphasis in original).

82. *U.S. News* has significant power over law schools because "students choosing between law schools attach preeminent weight to the ranking," at least in part, because top law firms hire heavily from highly ranked law schools. TAMANAHA, *supra* note 2, at 79. Presumably, if prospective students and hiring partners at top law firms were to agree that the rankings were materially flawed, they would cease to attach as much importance to the rankings. Consequently, *U.S. News* might have to change its methodology from time to time based on the opinions of these two groups. On the other hand, the fact that many legal educators believe the ranking to be flawed is seemingly irrelevant. "Legal educators endlessly gripe that the *US News* ranking is bunk, poking holes in every aspect of its construction and methodology," yet these complaints have no apparent effect on their behavior because "the ranking creates its own reality." *Id.* at 79–80.

some law schools have already started to do that.[83] Such efforts could potentially put pressure on other law schools to do the same. When comparing similarly ranked law schools, some prospective law students would be expected to draw adverse inferences against schools that were less forthright than their peers regarding the employment outcomes of their recent graduates.[84] As more law schools voluntarily publish comprehensive employment statistics on their websites, or provide that information to third parties like Law School Transparency,[85] holdouts would probably feel increasing pressure to do the same.

Although law schools that have taken initiative in this area are pushing the rest of the legal education industry in the right direction, such efforts alone are unlikely to solve the law school transparency problem. That is because a significant number of prospective students care a great deal more about a law school's ranking than they do about its employment statistics.[86] Thus, to the extent that providing better employment data was incompatible with maintaining a strong *U.S. News* rank, the pressure law school administrators experience to maintain their school's ranking would probably outweigh any peer pressure they would experience to provide better employment data.

More importantly, efforts by law schools to voluntarily improve their transparency have concentrated mostly on the types of reforms the ABA recently implemented, such as distinguishing between full-time employment and part-time employment. While some law schools do provide salary information about their recent graduates,[87] even schools recognized for their transparency efforts continue to produce salary statistics based on information collected from relatively small percentages of their graduating classes.[88] Similarly, there have been few efforts to address the concern that the data law schools report is not independently verified.

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83. For an evaluation of the transparency of each accredited law school's website, see *Transparency Index*, L. SCH. TRANSPARENCY, http://www.lawschooltransparency.com/reform/projects/transparency-index/.

84. *See* David Lat, *The University of Chicago Law School Offers Detailed Employment Data; Will Other Schools Follow Suit?*, ABOVE THE L. (Dec. 14, 2011, 10:19 AM), http://abovethelaw.com/2011/12/the-university-of-chicago-law-school-offers-detailed-employment-data-will-other-schools-follow-suit/.

85. *See infra* Part II.C.

86. *See supra* note 82 and accompanying text.

87. *See Transparency Index*, *supra* note 83.

88. For example, the University of Michigan Law School was recently voted the most honest law school in America in an *Above the Law* reader poll, Elie Mystal, *ATL March Madness (2012): Michigan Is the Most Honest Law School*, ABOVE THE L. (Apr. 2, 2012, 6:03 PM), http://www.abovethelaw.com/2012/04/atl-march-madness-2012-michigan-is-the-most-honest-law-school/, and yet the percentage of graduates responding to the law school's salary survey actually declined over recent years from 84% for the class of 2009 to only 60% for the class of 2011. *Comprehensive Employment Statistics*, *supra* note 69. While Michigan's response rates compare favorably with the national average (65% for the class of 2010 compared to the national average of 58% for the same year), *id.*, they do not compare favorably with, for example, the 98.56% response rate achieved by Harvard Law School (also for the class of 2010). *Employment Statistics*, HARVARD L. SCH., http://www.law.harvard.edu/current/careers/ocs/employment-statistics/index.html. Of course, most graduates of an elite law school like Michigan are probably able to secure high-

While it is conceivable that law schools that have been relatively forthcoming about their employment statistics might turn their attention to these additional reforms now that the ABA has begun requiring all law schools to disaggregate their employment statistics, it seems relatively unlikely that law schools would implement these additional reforms on their own. Whereas earlier reforms merely required law schools to publicize information they were, for the most part, already collecting,[89] many additional reforms (e.g. having employment data audited by a third party) would require the schools to incur some additional expense. Thus, it is somewhat unlikely that enough law schools would take initiative in this area that other schools would experience pressure to do the same.

C. Law School Transparency

Law School Transparency (LST) is a Tennessee nonprofit that has been at the forefront of the law school transparency movement. Its advocacy efforts have been influential in raising awareness about the problem of law school transparency,[90] and its website is one of the best sources for comprehensive information and breaking news on the subject.[91] Further, after some initial resistance, it appears that at least some law schools are beginning to take LST's message seriously. In 2010, the organization sent letters to every ABA-approved law school seeking very detailed employment statistics, but no law school provided the information LST requested.[92] However, in late 2011, LST sent a second round of letters in which it asked law school administrators to merely release the detailed employment statistics the schools had already reported to NALP for the class of 2010.[93] Over fifty schools complied with this second request, either by sending the information to LST directly or by making the information available on their websites.[94]

Although the positive response LST received to its second request is encouraging, the fact remains that the overwhelming majority of American law schools are still withholding the data LST requested. Thus, while pressure from organizations like LST may have persuaded some law schools to release more

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paying jobs if they desire to go into private practice, but a sample of only 60% of a law school's graduating class might be quite unrepresentative at a law school that has a more difficult time placing graduates in good positions.

89. *See* NYLS Complaint, *supra* note 31, at 26; *supra* notes 48–53 and accompanying text.

90. *See, e.g.*, McEntee & Lynch, *supra* note 28; McEntee & Tokaz, *supra* note 71.

91. *See* L. SCH. TRANSPARENCY, http://www.lawschooltransparency.com/.

92. Karen Sloan, *Law School Transparency Hopes the Second Time's the Charm on Data*, NAT'L L.J. (Dec. 15, 2011), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202535790371&Law_School_Transparency_hopes_the_second_times_the_charm_on_data&slreturn=1.

93. *LST Requests Class of 2010 Employment Information from Law Schools*, L. SCH. TRANSPARENCY (Dec. 14, 2011, 2:20 PM), http://www.lawschooltransparency.com/2011/12/lst-requests-class-of-2010-employment-information-from-law-schools/. For LST's most recent data request, see *LST Requests Class of 2011 NALP Reports*, L. SCH. TRANSPARENCY (June 28, 2012, 3:21 PM), http://www.lawschooltransparency.com/2012/06/lst-requests-class-of-2011-nalp-reports/.

94. *Class of 2010 NALP Report Database*, L. SCH. TRANSPARENCY, http://www.lawschooltransparency.com/clearinghouse/2010-nalp-report-database/.

detailed employment statistics than what the ABA requires those schools to disclose, LST lacks any authority to force compliance with its requests. Consequently, about three-fourths of ABA-approved law schools are still ignoring those requests.[95]

D. Congress and/or the Department of Education

Given the interest of at least a few members of Congress—including Sen. Barbara Boxer, Sen. Tom Coburn, and Sen. Charles Grassley—in the law school transparency problem,[96] one possible (though somewhat extreme) solution to the problem would involve Congress or the Department of Education stripping the ABA of its accrediting authority and giving that authority to some other organization that would implement the reforms the ABA is either unable or unwilling to impose on law schools. While unlikely, such drastic action is not completely implausible because the ABA has long been criticized for using its accrediting authority in an "arbitrary and capricious" manner,[97] and the National Advisory Committee on Institutional Quality and Integrity recently found that the ABA was not in compliance with seventeen regulations applicable to the use of its accrediting authority.[98] A similar, less drastic option would be for the Department

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95. There are currently 201 ABA-approved law schools that confer J.D. degrees. *ABA-Approved Law Schools*, AM. BAR ASS'N, http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html.

96. *See, e.g.*, Ashby Jones, *Lawmakers Probe Date From Law Schools*, WALL ST. J. Nov. 14, 2011, at A5 (stating that unnamed U.S. senators are "strongly considering" the possibility of holding hearings on the state of American legal education); Letter from Barbara Boxer, U.S. Senator, to Stephen N. Zack, President, Am. Bar Ass'n, (May 20, 2011) (commenting on the need for independent oversight in the collection of employment data, easy access to employment information by students, and additional transparency regarding merit-based scholarship retention rates), *available at* http://www.lawschooltransparency.com/Boxer-ABA_Letter_May_2011.pdf.; Letter from Tom A. Coburn & Barbara Boxer, U.S. Senators, to Kathleen Tighe, Inspector Gen., U.S. Dep't of Educ. (Oct. 13, 2011), *available at* http://www.lawschooltransparency.com/documents/2011-10-13-Coburn-and-Boxer-to-Dept-of-Education-IG.pdf (asking the Inspector General to answer six questions regarding the cost and effectiveness of law school education over the last ten years); Letter from Charles E. Grassley, U.S. Senator, to Stephen N. Zack, President, Am. Bar Ass'n (July 11, 2011), *available at* http://www.lawschooltransparency.com/documents/2011-07-11-Grassley-to-ABA.pdf (asking thirty-one questions about the retention of merit-based scholarships and the ABA's accreditation process).

97. *See, e.g.*, Mathew D. Staver & Anita L. Staver, *Lifting the Veil: An Exposé on the American Bar Association's Arbitrary and Capricious Accreditation Process*, 49 WAYNE L. REV. 1 (2003). In late 2011, the ABA was sued by Lincoln Memorial University Duncan School of Law after the ABA denied the law school provisional accreditation. *See* Complaint, Lincoln Mem'l Univ. Duncan Sch. of Law v. Am. Bar Ass'n, No. 3:11-cv-608 (E.D. Tenn. 2011). The lawsuit illustrates the difficult position in which the ABA finds itself: it has been widely criticized for not imposing more stringent accreditation standards on law schools, but if it does, it risks being sued for violating antitrust laws.

98. NAT'L ADVISORY COMM. ON INST'AL QUALITY AND INTEGRITY, REPORT OF THE JUNE

of Education to require law schools to demonstrate, as a condition of receiving federally guaranteed student loans, that their graduates enjoy a certain minimum level of employment success upon graduation.[99]

While it is certainly possible that Congress (or the Department of Education at Congress' behest) could take action that would require law schools to be more transparent about the employment outcomes of their recent graduates, the possibility of such action seems very remote. By requiring law schools to report more comprehensive employment statistics and to disclose information about their scholarship retention rates, the ABA has already addressed many of the concerns expressed by members of Congress.[100] True, the ABA has so far largely ignored some other concerns the senators expressed (e.g. the fact that the employment data is not independently audited), but the fact that the ABA has finally begun to address the law school transparency problem makes the need for congressional action less pressing than it might have otherwise been. Further, congressional action will necessarily be a long time coming, if it comes at all,[101] so those with an interest in promoting law school transparency would therefore be wise to pursue other potential avenues of reform while waiting on Congress to take up the issue.

III. CLASS-ACTION LAWSUITS AS A SOLUTION TO THE LAW SCHOOL TRANSPARENCY PROBLEM

On May 26, 2011, Anna Alaburda, a 2008 honors graduate of Thomas Jefferson School of Law (TJSL), sued the law school in California state court on behalf of a purported class comprised of as many as 2300 recent graduates and current TJSL students,[102] claiming:

8–10 MEETING 14 (2011), *available at* http://www2.ed.gov/about/bdscomm/list/naciqi-dir/spring-2011-report.pdf.

99. Henderson & Zahorsky, *supra* note 6. Another less severe solution would be to allow the ABA to retain its accreditation authority, but require law schools to submit annual reports directly to the Department of Education. This was the approach advocated by a coalition of the presidents of fifty-five individual law school Student Bar Associations. *See SBA President Coalition Endorses Ideas Behind New Bill*, L. SCH. TRANSPARENCY (May 18, 2011, 8:15 AM), http://www.lawschooltransparency.com/2011/05/sba-president-coalition-endorses-ideas-behind-new-bill/. However, some commentators believe such a drastic approach to be premature. *See id.*

100. *Compare supra* notes 48–57 and accompanying text, *with supra* note 96 and accompanying text.

101. At the end of 2011, there were rumors that the U.S. Senate Committee on Commerce, Science, and Transportation would hold hearings on law schools during 2012. Karen Sloan, *The Year the Chickens Came Home to Roost*, NAT'L L.J. (Dec. 26, 2011), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202536517436&slreturn=20120716121336. As of August 15, 2012, however, no congressional committee had formally announced its intention to conduct hearings on the subject of law school reform. Thus, there is good reason to suspect that members of Congress will wait until after the ABA's Task Force on the Future of Legal Education completes its work before Congress itself begins any formal investigation into the subject. *See supra* note 59. The task force is not expected to release its findings until 2014. *See id.*

102. *See* Third Amended Complaint at 7, Alaburda v. Thomas Jefferson Sch. of Law, No. 37-2011-00091898-CU-FR-CTL (Cal. Super. Ct. Sept. 15, 2011) [hereinafter TJSL

> TJSL is more concerned with raking in millions of dollars in tuition and fees than educating and training its students. The disservice TJSL is doing to its students and society generally is readily apparent. Many TJSL graduates will never be offered work as attorneys or otherwise be in a position to profit from their law school education. And they will be forced to repay hundreds of thousands of dollars in school loans that are nearly impossible to discharge, even in bankruptcy.[103]

The lawsuit pleaded several causes of action—including intentional fraud, negligent misrepresentation, and various unfair business practices—arising from the law school's publication of allegedly misleading employment statistics and sought compensatory damages and restitution in excess of $50 million, plus punitive damages and injunctive relief.[104]

Although TJSL was the first law school to be sued by recent graduates because of its misleading employment statistics,[105] it certainly will not be the last. Similar lawsuits have already been filed against NYLS,[106] Thomas M. Cooley Law School ("Cooley"),[107] and several other law schools.[108] So far, these lawsuits have met with mixed reactions by the courts, but they have at least raised the possibility that class-action litigation could be used to help solve the law school transparency problem. This Part discusses this new type of litigation by first providing background information about the lawsuits, including precedent for them. It then discusses some possible objections that Plaintiffs in the lawsuits will have to overcome if their claims are to succeed.

Complaint]. Applicable statutes of limitation will limit the potential class sizes of such lawsuits. *See* Order Regarding Rulings at Oral Argument, Macdonald v. Thomas M. Cooley Law Sch., No. 1:11-cv-831, at 4 (W.D. Mich. June 7, 2012), ECF No. 51. Because the class members could have arguably relied upon any fraudulent statements in deciding to stay enrolled in the law school, the appropriate point at which to start counting for purposes of applicable statutes of limitation is probably the beginning of each student's last semester of law school (the last point at which they could have decided to stop paying Cooley additional tuition monies). *See id.* Of course, applicable statutes of limitation would limit the damages some otherwise eligible class members could claim. *See id.*

103. TJSL Complaint, *supra* note 102, at 2.

104. *See id.* at 9–17.

105. *Alaburda* was the first class-action lawsuit filed against a law school for alleged misrepresentation about its employment statistics, but it was not the first time a law school was sued for allegedly misrepresenting the value of its degrees. *See, e.g.*, Rodi v. S. New England Sch. of Law, 532 F.3d 11 (1st Cir. 2008) (affirming the district court's grant of summary judgment for the defendants). Rodi claimed he was misled about the school's accreditation status by letters from the school's dean, and raised claims similar to those raised by Alaburda. The court found that Rodi did not rely on the statements, and that even if he did, his reliance was unreasonable. *Id.* at 17. It is worth noting, however, that the court had previously held that Rodi's lawsuit stated valid claims under Massachusetts law. Rodi v. S. New England Sch. of Law, 389 F.3d 5 (1st Cir. 2004).

106. Gomez-Jimenez v. New York Law Sch., 943 N.Y.S.2d 834 (N.Y. Sup. Ct. 2012).

107. MacDonald v. Thomas M. Cooley Law Sch., No. 11-cv-831, 2012 WL 2994107 (W.D. Mich. July 20, 2012).

108. *See infra* notes 136–47 and accompanying text.

A. "The Year of Law School Litigation"

According to the NYLS and Cooley complaints, "false and fraudulent representations and omissions are endemic in the law school industry, as nearly every school to a certain degree blatantly manipulates their employment data to make themselves more attractive to prospective students."[109] Given this allegation, it is unsurprising that additional lawsuits followed relatively quickly after Anna Alaburda filed her lawsuit against TJSL on May 26, 2011. On August 10, 2011, attorneys from the Kurzon Strauss law firm filed purported class-action lawsuits on behalf of NYLS and Cooley's graduates and current students.[110] These attorneys—particularly David Anziska and Jesse Strauss (who now operate their own law firms)[111]—have been at the forefront of the law school lawsuits ever since.[112]

1. The Lawsuits Against NYLS & Cooley

Like Alaburda's complaint against TJSL, the complaints filed against NYLS and Cooley accused the law schools of fraud,[113] negligent misrepresentation,[114] and various unfair business practices.[115] Indeed, the three complaints were quite similar to each other in many respects, as Cooley noted in its Brief in Support of Motion to Dismiss.[116] As with the TJLS complaint, the gist of both the NYLS and Cooley

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109. Amended Class Action Complaint at 4, *Thomas M. Cooley Law Sch.*, No. 11-cv-831 (W.D. Mich. Nov. 9, 2011) ECF No. 22 [hereinafter Cooley Complaint]; NYLS Complaint, *supra* note 31, at 5.

110. Class Action Complaint, *Thomas M. Cooley Law Sch.*, No. 11-cv-831, ECF No. 1; Class Action Complaint, *New York Law Sch.*, 943 N.Y.S.2d 834, Doc. No. 1.

111. In the fall of 2011, the Kurzon Strauss law firm dissolved and was replaced by two separate firms operated by former partners, Jeff Kurzon and Jesse Strauss. *See* KURZON LLP, http://kurzon.com/; STRAUSS L. PLLC, http://strausslawpllc.com/. Around the same time, David Anziska apparently started his own law firm. *See* L. OFFICES DAVID ANZISKA, http://www.anziskalaw.com/Home_Page.html.

112. Various other attorneys are involved in the lawsuits as well. *See* Staci Zaretsky, *Twelve More Law Schools Slapped with Class Action Lawsuits Over Employment Data*, ABOVE THE L. (Feb. 1, 2012, 2:53 PM), http://www.abovethelaw.com/2012/02/twelve-more-law-schools-slapped-with-class-action-lawsuits-over-employment-data/.

113. Cooley Complaint, *supra* note 109, at 56–60; TJSL Complaint, *supra* note 102, at 11–14; NYLS Complaint, *supra* note 31, at 53–56.

114. Cooley Complaint, *supra* note 109, at 60–63; TJSL Complaint, *supra* note 102, at 15; NYLS Complaint, *supra* note 31, at 56–59.

115. Cooley Complaint, *supra* note 109, at 54–56 (violations of the Michigan Consumer Protection Act); TJSL Complaint, *supra* note 102, at 9–11, 15–16 (violations of the California Unfair Competition Law, False Advertising Act, and Consumer Legal Remedies Act); NYLS Complaint, *supra* note 31, at 50–53 (violations of the New York Deceptive Acts and Practices Law).

116. Brief in Support of Defendant Thomas M. Cooley Law School's Motion to Dismiss at 4, MacDonald v. Thomas M. Cooley Law Sch., No. 11-cv-831 (W.D. Mich. Oct. 20, 2011), ECF No. 18 [hereinafter Cooley's Motion to Dismiss] ("[T]he two Kurzon complaints repeat the same allegations from the Thomas Jefferson complaint . . . [a]nd each Kurzon

complaints was that the plaintiffs were "naïve, relatively unsophisticated consumers"[117] who justifiably relied on misleading or inaccurate employment statistics in making their decision to attend law school.[118] The relief requested in the NYLS and Cooley complaints was similar to that requested in the TJLS complaint as well,[119] but given that all of the lawsuits seek to remedy "a systemic, ongoing fraud that is ubiquitous in the legal education industry,"[120] some similarity among the lawsuits was probably unavoidable.

It appears that one of the primary reasons the Kurzon Strauss attorneys targeted NYLS and Cooley for their first lawsuits is the fact that the schools are, in the words of those attorneys, veritable "JD factories."[121] To the extent this is a fair characterization of the two law schools, it is especially true of Cooley. Indeed, with approximately 4000 students at five campuses across Michigan and Florida,[122] being the largest law school in the country is actually one of Cooley's stated goals.[123] Given this goal, it is relatively unsurprising that Cooley also happens to be the least selective ABA-approved law school by a considerable margin: its eighty-three percent acceptance rate is nearly fifteen percentage points higher than the second least selective school.[124]

These factors alone made Cooley a good target for a lawsuit, but Cooley is also unusually aggressive compared with its peers in the way it markets itself to prospective law students. For example, although *U.S. News* ranks Cooley in the bottom tier of law schools,[125] Cooley's founder, Thomas Brennan, and its current dean, Don DeLuc, publish their own annual ranking of law schools in which they

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complaint is a copy-and-paste job of the other—no fewer than 77 paragraphs of the complaints are nearly identical save the swapping of school names.").

117. Cooley Complaint, *supra* note 109, at 39; NYLS Complaint, *supra* note 31, at 34.

118. *See* Cooley Complaint, *supra* note 109, at 58, 61; NYLS Complaint, *supra* note 31, at 54, 57–58.

119. *Compare* Cooley Complaint, *supra* note 109, at 63–64, *and* NYLS Complaint, *supra* note 31, at 59–60, *with* TJLS Complaint *supra* note 102, at 16–17. While all three complaints request injunctive relief to order the law schools to change their marketing practices, injunctive relief is discussed at greater length in the Cooley and NYLS complaints.

120. Cooley Complaint, *supra* note 109, at 1; NYLS Complaint, *supra* note 31, at 1. Future would-be plaintiffs might want to consider avoiding the use of such sweeping rhetoric. For example, Cooley seized upon that quote to argue (unsuccessfully) that the plaintiffs' claims should be dismissed for failing to join the ABA and NALP as parties even though the plaintiffs never actually requested that the court rewrite the ABA and NALP reporting standards. S*ee* Cooley's Motion to Dismiss, *supra* note 116, at 12–17; *infra* Part III.C.2.

121. *Class Actions as a Tool of Social Change*, L. SCH. TRANSPARENCY (Aug. 10, 2011, 2:47 PM), http://www.lawschooltransparency.com/2011/08/class-actions-as-a-tool-of-social-change/.

122. *See* Cooley Complaint, *supra* note 109, at 23.

123. BOARD OF DIRECTORS, THOMAS M. COOLEY LAW SCH., THOMAS M. COOLEY LAW SCHOOL'S STRATEGIC PLAN FOR TWENTY-FIRST CENTURY LEGAL EDUCATION 4 (2009).

124. Cooley Complaint, *supra* note 109, at 23–24. Cooley also boasts the lowest mean LSAT score (146) and mean undergraduate GPA (2.99) of any ABA-approved law school. *Id.* at 24.

125. *Id.* at 35.

recently ranked Cooley as the second-best law school in the country.[126] Presumably, Cooley's ranking is designed to make the law school appear more attractive to prospective students, but the ranking has been widely criticized by the broader legal community.[127] Nevertheless, Brennan and DeLuc—who incidentally earned $370,000 and $523,213, respectively, in 2009[128]—continue to publish the ranking year after year, no doubt to the chagrin of many Cooley alums.

While NYLS enjoys a somewhat better reputation than Cooley,[129] NYLS is also more expensive than Cooley. During the 2012–2013 academic year, NYLS charged $49,225 in tuition and fees,[130] making it about as expensive as several elite law schools.[131] Especially in light of the large surplus of lawyers produced annually by

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126. *See* THOMAS E. BRENNAN & DON LEDUC, JUDGING THE LAW SCHOOLS 1 (12th ed. 2010): *available at* http://www.cooley.edu/rankings/_docs/Judging_12th_Ed_2010.pdf.

127. *See, e.g.*, Brian Leiter, Commentary, *How to Rank Law Schools*, 81 IND. L.J. 47, 51–52 (2006) ("[T]he bizarre Thomas M. Cooley law school rankings . . . contain no useful information and are uniformly ignored by students, faculty, and in most discussions of rankings."); Dora R. Bertram, *Annotated Bibliography: Ranking of Law Schools by* U.S. News & World Report 7 (Wash. Univ. St. Louis Sch. Law Legal Studies Research Paper Series, Paper No. 10-08-03, 2010), *available at* http://ssrn.com/abstract=1658653 ("[The Cooley ranking has been] [w]idely discredited and viewed as an alternative [to the *U.S. News* ranking] with the sole purpose of ranking the Thomas M. Cooley Law School highly."); Elie Mystal, *Latest Cooley Law School Rankings Achieve New Heights of Intellectual Dishonesty*, ABOVE THE L. (Feb. 8, 2011, 6:23 PM), http://abovethelaw.com/2011/02/latest-cooley-law-school-rankings-achieve-new-heights-of-intellectual-dishonesty/ ("Cooley is not the second-best law school in America and even the Cooley people responsible for putting together this list know it. You have to make your own decisions about what such intellectual dishonesty says about the people who made this list.").

128. Cooley Complaint, *supra* note 109, at 6.

129. For example, it is ranked in the third-tier by *U.S. News*. *See Best Law Schools: New York Law School*, U.S. NEWS & WORLD REPORT, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/new-york-law-school-03109. Additionally, in stark contrast to Cooley's administration, Richard A. Matasar, who was until recently NYLS' dean, "has been one of the legal academy's most dogged and scolding critics, and he has repeatedly urged professors and fellow deans to rethink the basics of the law school business model and put the interests of students first." Segal, *Law School Economics*, *supra* note 1. Segal believes the "strange case" of Richard Matasar illustrates why the legal education system probably cannot be reformed from within. *Id.* Whether or not Segal's analysis is correct, the high-profile article (which also suggested that NYLS drastically increased its enrollment primarily to maintain its AAA Moody's credit rating) did not paint a very flattering picture of the school. Consequently, the article may explain why NYLS was among one of the first law schools to be targeted for a lawsuit.

130. *Tuition and Financial Aid*, N.Y. L. SCH., http://www.nyls.edu/prospective_students/tuition_and_financial_aid.

131. *See, e.g.*, *Annual Cost of Attendance Budget*, U. VA. SCH. L., http://www.law.virginia.edu/html/prospectives/finaid/tuition.htm ($51,400 for nonresident tuition and fees); *Estimated Budget*, U. TEX. SCH. LAW, http://www.utexas.edu/law/finaid/costs/ ($49,244 for nonresident tuition and fees); *2012–2013 Tuition Fees per Semester*, GEO. U. L. CENTER., http://www.law.georgetown.edu/campus-services/student-accounts//upload/2012-13-GU-Law-Tuition-Fees-posting.pdf ($48,835 for tuition and fees).

the Empire State,[132] the value proposition of attending NYLS is probably as questionable as the value proposition of attending Cooley. Thus, it is little wonder that the Kurzon Strauss law firm was able to find several NYLS alums willing to serve as named plaintiffs.

2. More Lawsuits & Rumors of Lawsuits

On October 5, 2011, David Anziska and Jesse Strauss, the lead attorneys in the lawsuits against NYLS and Cooley, announced plans to sue fifteen additional law schools when they found at least three alumni from each school willing to serve as named plaintiffs.[133] At that time, they expressed a strong belief that "by the end of 2012, almost every [law] school in the nation will be sued."[134] For their part, the attorneys said they hoped to make 2012 "the year of law school litigation" by suing "as many law schools" as possible, with the ultimate goal of eventually forcing "a global settlement through the ABA."[135]

On February 1, 2012, the lawyers followed through on their earlier threats by filing purported class-action lawsuits against an additional twelve law schools—including Albany Law School of Union University,[136] Brooklyn Law School,[137] Maurice A. Deane School of Law at Hofstra University,[138] Florida Coastal Law School,[139] Illinois Institute of Technology Chicago-Kent College of Law,[140] DePaul University College of Law,[141] The John Marshall Law School,[142]

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132. The state of New York is projected to need only 2100 new lawyers each year through 2015, but 9787 people passed the New York state bar exam in 2009. *See* Rampell, *supra* note 7.

133. *See* Karen Sloan, *Another 15 Law Schools Targeted Over Jobs Data*, NAT'L L.J. (Oct. 5, 2011), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202517930210&slreturn=20121003092042. According to Anziska and Strauss, they targeted these specific schools "either because alumni or students approached them with concerns, or because the postgraduate job data they have reported to the American Bar Association were 'implausible.'" *Id.*

134. *Id.*

135. Staci Zaretsky, *Calling All Disgruntled Law School Graduates: Will You Ring in the New Year by Suing Your School*, ABOVE THE L. (Dec. 14, 2011, 4:02 PM), http://abovethelaw.com/2011/12/calling-all-disgruntled-law-school-graduates-will-you-ring-in-the-new-year-by-suing-your-school/ (quoting David Anziska).

136. Class Action Complaint, Austin v. Albany Law Sch. of Union Univ., No. A00014/2012 (N.Y. Sup. Ct. Feb. 1, 2012), ECF No. 1.

137. Amended Class Action Complaint, Bevelacqua v. Brooklyn Law Sch., No. 500175/2012 (N.Y. Sup. Ct. May 17, 2012), ECF No. 18 (originally filed Feb. 1, 2012).

138. Class Action Complaint, Richins v. Hofstra Univ., No. 12-cv-01110 (E.D.N.Y. Mar. 6, 2012), *removed from* No. 600138 (N.Y. Sup. Ct. Feb. 1, 2012).

139. Complaint, Casey v. Florida Coastal Sch. of Law, Inc., No. 12-cv-20785-MGC (S.D. Fla. Feb. 27, 2012), *removed from* No. 12-03990-CA-40 (Fla. Cir. Ct. Feb. 1, 2012).

140. Class Action Complaint, Evans v. Illinois Inst. of Tech., No. 12-CH-03522 (Ill. Cir. Ct. Feb. 1, 2012).

141. First Amended Class Action Complaint, Phillips v. DePaul Univ., No. 12-cv-1791 (N.D. Ill. Apr. 6, 2012), ECF No. 16, *removed from* No. 12-CH-03523 (Ill. Cir. Ct. Feb. 1, 2012). This case was eventually remanded back to the state court, *see* Memorandum Order,

California Western School of Law,[143] Southwestern Law School,[144] Golden Gate University School of Law,[145] University of San Francisco School of Law,[146] and Widener University School of Law.[147] According to Anziska and Strauss, they targeted these specific schools "either because alumni or students approached them with concerns, or because the postgraduate job data they have reported to the American Bar Association were 'implausible.'"[148]

As the February 2012 round of lawsuits illustrates, law schools that are private, expensive, and poorly ranked are particularly likely to be targeted for class-action lawsuits because alumni of such schools are particularly likely to be dissatisfied with the economic value of their legal education.[149] Nevertheless, more highly ranked law schools are not necessarily immune to this type of litigation.[150] On March 14, 2012, Anziska and Strauss announced plans to sue an additional twenty law schools in ten states, including two top-50 schools and eight top-100 schools.[151]

Phillips v. DePaul Univ., No. 12-cv-1791 (N.D. Ill. Apr. 24, 2012), ECF No. 19, which ultimately dismissed the lawsuit for reasons similar to those discussed in the dismissals of the Cooley and NYLS cases. *Compare* Memorandum and Order, Phillips v. DePaul Univ., No. 12-CH-03523 (Ill. Cir. Ct. Sept. 11, 2012), *with infra* notes 170–205 and accompanying text.

142. Class Action Complaint, Johnson v. John Marshall Law Sch., No. 12-CH-03494 (Ill. Cir. Ct. Feb. 1, 2012).

143. Class Action Complaint, Chaves v. Cal. W. Sch. of Law, No. 37-2012-D0091627-CU-BT-CTL (Cal. Super. Ct. Feb. 1, 2012).

144. Class Action Complaint, Derby v. Sw. Law Sch., No. BC478133 (Cal. Super. Ct. Feb. 1, 2012).

145. First Amended Class Action Complaint, Arring v. Golden Gate Univ., No. CGC-12-517837 (Cal. Super. Ct. May 4, 2012) (originally filed Feb. 1, 2012).

146. First Amended Class Action Complaint, Hallock v. Univ. S.F., No. CGC-12-517861 (Cal. Super. Ct. May 4, 2012) (originally filed Feb. 1, 2012).

147. Amended Class Action Complaint, Harnish v. Widener Univ. Sch. of Law, No. 12-cv-608 (D.N.J. Apr. 27, 2012), ECF No. 8 (originally filed Feb. 1, 2012).

148. Sloan, *supra* note 133.

149. *See Breaking: Class Action Suit Filed Against Thomas Jefferson School of Law*, L. SCH. TRANSPARENCY (May 27, 2011, 3:01 AM), http://www.lawschooltransparency.com/2011/05/breaking-class-action-suit-filed-against-thomas-jefferson-school-of-law/.

150. *See* Brief in Opposition to Defendant's Motion to Dismiss at 11 n.5, MacDonald v. Thomas M. Cooley Law Sch., No. 1:11-cv-831 (W.D. Mich. Dec. 22, 2011), ECF No. 37 ("Because most law schools report deceptive and misleading employment data, almost every law school in the nation is vulnerable to a suit such as this.").

151. *See* Karen Sloan, *Plaintiffs' Firms Target Another 20 Law Schools, Alleging Fraud*, NAT'L L.J. (Mar. 14, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202545575181&Graduates_target_another__law_schools_alleging_fraud&slreturn=20120719142504. The following law schools were those targeted for lawsuits by the announcement: Pepperdine University School of Law; American University Washington College of Law; Catholic University of America Columbus School of Law; Chapman University School of Law; Loyola Law School, Los Angeles; Loyola University Chicago School of Law; University of Miami School of Law; New England School of Law; Pace Law School; Roger Williams University School of Law; Saint Louis University School of Law; St. John's University School of Law; St. Thomas University School of Law, Miami; Seattle University School of Law; Stetson University

While the attorneys failed to sue any of the schools by Memorial Day 2012, as was their stated goal,[152] the announcement at least raises the possibility that additional lawsuits against these or other law schools may be forthcoming.

3. Early Opinions on the Lawsuits

Of course, whether or not additional lawsuits will be forthcoming may depend in no small part on how the first fifteen lawsuits are resolved. While it is impossible to predict whether any of the pending cases will ultimately result in a judgment or settlement, early rulings indicate that at least some of the cases have a chance of avoiding summary disposition. In March 2012, the judge hearing the case against TJSL informed the law school that its demurrer "was not well-taken,"[153] and in July 2012, the judge hearing the cases against Golden Gate University School of Law and San Francisco University School of Law overruled the demurrers the two schools had filed in their respective lawsuits.[154]

On the other hand, the judges hearing the cases against NYLS and Cooley have granted motions dismissing those two lawsuits.[155] While obviously disappointing to the plaintiffs and attorneys involved in the lawsuits, the decision did not exactly come as a surprise. At least according to a statement Anziska and Strauss issued *after* the case against NYLS had been dismissed, the attorneys "always expected for many of [the] issues to ultimately be resolved on an appellate level."[156] To that

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College of Law; Syracuse University College of Law; Valparaiso University School of Law; Western New England University School of Law; Whittier Law School; and Yeshiva University Benjamin N. Cardozo School of Law. *Id.*

152. *Id.*

153. *See* Staci Zaretsky, *Breaking: Thomas Jefferson School of Law's Motion to Dismiss DENIED—And Twenty More Law Schools to Be Sued*, ABOVE THE L. (Mar. 14, 2012 2:42 PM), http://www.abovethelaw.com/2012/03/twenty-more-law-schools-targeted-for-class-action-lawsuits/ (quoting Brian Procel, attorney for plaintiff Anna Alaburda). After the case entered into discovery, a former Assistant Director at TJSL's Career Services Office came forward alleging that her supervisors instructed her to use various methods to artificially inflate TJSL's employment statistics. *See* Declaration of Karen Grant, Alaburda v. Thomas Jefferson Sch. of Law, No. 37-2011-00091898-CU-FR-CTL (Cal. Super. Ct. Oct. 18, 2012). If these allegations are true, "TJSL could face sanctions from the American Bar Association as severe as losing accreditation." *Breaking: Ex-CSO Assistant Director from Thomas Jefferson Admits to Fraud, Alleges Deliberate Scheme by Law School*, L. SCH. TRANSPARENCY (Oct. 23, 2012, 10:00 AM), http://www.lawschooltransparency.com/2012/10/ex-cso-assistant-director-from-tjls-admits-to-fraud/. For its part, TJSL has officially denied the allegations. *Litigation Update*, T. JEFFERSON SCH. L. (Oct. 25, 2012), http://www.tjsl.edu/news-media/2012/7835.

154. Order Overruling Demurrer to First Amended Complaint, Arring v. Golden Gate Univ., No. CGC-12-517837 (Cal. Super. Ct. July 19, 2012); Order Overruling Demurrer to First Amended Complaint, Hallock v. Univ. S.F., No. CGC-12-517861 (Cal. Super. Ct. July 19, 2012).

155. *See* MacDonald v. Thomas M. Cooley Law Sch., No. 1:11-cv-831, 2012 WL 2994107 (W.D. Mich. July 20, 2012); Gomez-Jimenez v. N. Y. Law Sch., 943 N.Y.S.2d 834 (N.Y. Sup. Ct. 2012). The lawsuit against DePaul University has also been dismissed. *See supra* note 141.

156. Staci Zaretsky, *Breaking: Class Action Lawsuit Against New York Law School Dismissed*, ABOVE THE L. (Mar. 21, 2012 12:12 PM),

end, the two have already filed appeals of both the NYLS and Cooley decisions with the New York Supreme Court's Appellate Division and the Sixth Circuit Court of Appeals, respectively.[157] Given the procedural posture of the cases, the plaintiffs could win at the appellate level and yet ultimately lose on remand. It will, however, be interesting to see whether the appeals courts are any more sympathetic to the plaintiffs' claims than the trial courts were initially.

B. Precedent for the Lawsuits

Alaburda v. Thomas Jefferson School of Law was a groundbreaking case, but there is some precedent for this type of litigation.[158] For example, the California Culinary Academy (CCA) recently agreed pay $40 million to settle class-action lawsuits brought by graduates who accused the school of exaggerating its employment rates, prestige, and selectivity.[159] Per the terms of a consolidated settlement, which was given final approval in April 2012 by the San Francisco Superior Court,[160] the 8500 class members are each potentially eligible to receive thousands of dollars in tuition rebates.[161] CCA also agreed to change its recruiting practices and improve its disclosures to prospective students, although the settlement did not require CCA or its publicly traded parent company, Career Education Corporation ("Career Education"), to admit to any wrongdoing.[162] According to a Career Education spokesman, the company agreed to settle the lawsuits because "they were too expensive to litigate and distracting to employees."[163]

Unsurprisingly, the success of the CCA case has helped generate interest for additional class-actions against for-profit institutions of higher education.[164] While

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http://abovethelaw.com/2012/03/breaking-class-action-lawsuit-against-new-york-law-school-dismissed/.

157. Notice of Appeal, *Thomas M. Cooley Law Sch.*, 2012 WL 2994107, ECF No. 57; Notice of Appeal, *N.Y. Law Sch.*, 943 N.Y.S.2d 834, return to checkDoc. No. 24.

158. *See generally* Amanda Harmon Cooley, *The Need for Legal Reform of the For-Profit Educational Industry*, 79 TENN. L. REV. 515, 538–540 (2012); Joseph Sipley, Note, *For-Profit Education and Federal Funding: Bad Outcomes for Students and Taxpayers*, 64 RUTGERS L. REV. 267, 287–88 (2011).

159. *See* Order Regarding Preliminary Approval of Class Action Settlement and Class Notice, Ex. 1, at 6–7, Amador v. California Culinary Acad., No. CGC-07-467710 (Cal. Super. Ct. Mar. 20, 2011).

160. *See* Order Granting Final Approval of Class Action Settlement and Granting Plaintiff's Motion for Attorney's Fees and Costs at 3, Amador v. California Culinary Acad., No. CGC-07-467710 (Cal. Super. Ct. Apr. 18, 2011).

161. *See* Order Regarding Preliminary Approval of Class Action Settlement and Class Notice, Ex. 1, at 9–11, *California Culinary Acad.*, No. CGC-07-467710.

162. *See id.* Ex. 1, at 9.

163. Terence Chea, *Culinary Schools Grades Claim They Were Ripped Off*, NBCNEWS.COM (Sept. 4, 2011, 5:35 PM), www.msnbc.msn.com/id/44393771/ns/us_news-life/t/culinary-school-grads-claim-they-were-ripped/%20#.UDEYSqkpMWF.

164. *See, e.g.*, Class Action Complaint, Kimble v. Rhodes Coll., No. 3:10-cv-05786-EMC (N.D. Cal. Dec. 20, 2010) (a purported class action brought on behalf of graduates of Everest College alleging, among other things, that the college misrepresented its job placement rates to prospective students).

there may be important factual and legal differences between the CCA case and the law school lawsuits, the CCA case provides a model for how a settlement between a law school and its graduates might be structured. It should also make some law school administrators—particularly those at law schools based in California—somewhat nervous about the prospect of having to defend a similar lawsuit.

Of course, the most obviously relevant precedent for the law school lawsuits is the law school lawsuits themselves. Unsurprisingly, law school defendants have been quick to offer the orders dismissing the NYLS and Cooley cases as supplemental authority supporting their own motions to dismiss.[165] However, because the cases raise claims that sound in state law, which will necessarily vary from jurisdiction to jurisdiction, these early cases will not be directly precedential to many subsequent cases.[166] Certainly, judges in subsequent lawsuits may look to these two cases for persuasive authority on some of the issues raised in the lawsuits, but the mere fact that some of the purported class-action lawsuits against law schools have been dismissed does not mean that defendants in subsequent lawsuits will not still have to vigorously defend themselves.[167]

C. Some Possible Objections to the Lawsuits

Because each of the class-action lawsuits against law schools raises claims that sound in state law, and because law schools in many different states have now been targeted for lawsuits,[168] it is not feasible (within the space provided for this Note) to analyze the merits of all of the various claims and defenses parties litigating such lawsuits might raise. However, the plaintiffs in each of the lawsuits accuse their alma maters of the same basic wrongdoing, so this Part describes a few—but by no means all—potential objections one might raise against any of the lawsuits. While plaintiffs in these lawsuits could also lose on more technical grounds,[169] they will certainly need to convince the courts to side with them on each of these potential objections if their claims are to ultimately succeed.

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165. *See, e.g.*, Notice of Filing Supplemental Authority in Support of Motion to Dismiss the Complaint, Casey v. Fla. Coastal Sch. of Law, Inc., No. 1:12-cv-20785-MGC (S.D. Fla. Mar. 22, 2012), ECF No. 10 (offering a copy of the order dismissing the NYLS case).

166. *See* Peter Lattman, *9 Graduates Lose Case Against New York Law School*, N.Y. TIMES DEALBOOK (Mar. 22, 2012, 7:59 PM), http://dealbook.nytimes.com/2012/03/22/9-graduates-lose-case-against-new-york-law-school/?ref=business. Perhaps for this reason, the order dismissing the lawsuit against DePaul University does not even cite the NYLS and Cooley cases. Memorandum and Order, Phillips v. DePaul Univ., No. 12-CH-03523 (Ill. Cir. Ct. Sept. 11, 2012).

167. However, if many additional cases are summarily dismissed, it is less likely that potential plaintiffs would file similar suits in the future.

168. *See supra* notes 102–147 and accompanying text.

169. *See, e.g.*, Opinion Granting Cooley's Motion to Dismiss at 9, MacDonald v. Thomas M. Cooley Law Sch., No. 1:11-cv-831, 2012 WL 2994107 (W.D. Mich. July 20, 2012), ECF No. 54 (holding that the Complaint does not allege a claim under the Michigan Consumer Protection Act because the plaintiffs purchased Cooley's legal education "primarily for [a] business or commercial [purpose]").

1. Have ABA Reforms Have Rendered the Lawsuit Moot?

When the ABA was doing nothing about the law school transparency problem and individual law schools—with the ABA's blessing—were offering prospective students employment statistics that were "so vague and incomplete as to be meaningless,"[170] class-action lawsuits against individual law schools were seen by some as a potential way to solve the law school transparency problem.[171] However, in light of recent ABA reforms, which may have been motivated in part by the lawsuits themselves,[172] the idea of using the lawsuits as a vehicle for social change may have lost some of its appeal. Nevertheless, the ABA has not yet completely solved the law school transparency problem,[173] so the lawsuits may still have a role to play in helping solve that problem.

This is particularly true as it relates to a problem the ABA is currently ignoring—the fact that law school employment statistics are currently based on unaudited reports compiled by the law schools themselves. In an early interview regarding the lawsuits, David Anziska said:

> [A]ll law schools must have their employment data audited. There can be no more self-reporting of unaudited employment data released to the public. *Over my dead body*, this has to happen, because the incentive to cheat is too great. All law schools must be forced to have their employment data independently verified. I will *not* sign off on an agreement that does not have that in it. *Period*. It *will not* happen.[174]

Although attorneys working on other cases may feel differently about the relative importance of requiring law schools to have their employment data independently verified, Anziska's comments indicate that increased transparency will likely be a component of any settlement agreement between law schools and their alumni, at least as long as law school transparency remains a problem.

Additionally, the ABA reforms are necessarily forward looking. The ABA is not going to create an *ex post facto* rule that punishes law schools for making statements that actually complied with the ABA's previous (inadequate) reporting requirements. However, state courts can punish law schools for making those same statements if they were made in violation of state law.[175] Thus, unlike ABA reforms, class-action litigation has the potential to punish law schools for their prior

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170. Opinion Granting Cooley's Motion to Dismiss at *20, Thomas M. Cooley Law School, 2012 WL 2994107, ECF No. 54.

171. *See, e.g.*, *Class Actions as a Tool of Social Change*, *supra* note 121.

172. *See* Sloan, *supra* note 133.

173. *See supra* note 58 and accompanying text.

174. Staci Zaretsky, *Fifteen More Law Schools to Be Hit with Class Action Lawsuits Over Post-Grad Employment Rates*, ABOVE THE L. (Oct. 5, 2011, 2:50 PM), http://abovethelaw.com/2011/10/fifteen-more-law-schools-to-be-hit-with-class-action-lawsuits-over-post-grad-employment-rates/ (quoting David Anziska) (emphasis in original).

175. *See* Order Regarding Rules At Oral Argument at 3, MacDonald v. Thomas M. Cooley Law Sch., No. 1:11-cv-831 (W.D. Mich. June 7, 2012), ECF No. 51 ("Neither field preemption nor express preemption prevents Plaintiffs from raising their claims, all of which are based on state law.").

bad acts and to compensate plaintiffs who may have been injured by those bad acts, making it a potentially useful supplement to ABA reforms in this area.

2. Are the ABA and NALP Necessary Parties to the Lawsuits?

Given that Anziska and Strauss ultimately wish to "force a global settlement through the ABA,"[176] why did they not sue the ABA to begin with? They say it is because the plaintiffs paid their tuition money to the law schools, not the ABA, and because the attorneys wanted to initially "hit the primary tortfeasors and bad actors."[177] Nevertheless, defendants in some of the lawsuits have argued that because the plaintiffs seek a system-wide remedy, the ABA and NALP are necessary parties to the lawsuits. [178]

While it is certainly understandable why defendants would make this argument, it is not a particularly convincing one. Even Judge Quist, who ultimately granted Cooley's motion to dismiss,[179] disagreed with Cooley on this particular issue, explaining:

> Even though Plaintiff's goal may be to fix systemic problems in law school employment data reporting, that goal is not what they seek to accomplish with *this particular lawsuit*. Plaintiffs seek damages and equitable relief solely from Cooley and its agents. . . . Along with damages, Plaintiffs seek an injunction that would require Cooley to report more accurate employment data. *The ABA's and NALP's standards are a floor, not a ceiling*. Cooley could provide prospective and current students with data that contains more information than the employment statistics required by the ABA and NALP, while at the same time complying with the ABA's and NALP's requirements.[180]

Even though the plaintiffs' attorneys who brought the lawsuits did so as part of their plan to sue enough schools to force a "global settlement through the ABA,"[181] none of the lawsuits request relief from the ABA or NALP. Thus, there is no apparent reason to believe that either organization should be considered a necessary party to any of the lawsuits.

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176. *See supra* note 135 and accompanying text.

177. Zaretsky, *supra* note 135.

178. *See* Cooley's Motion to Dismiss at 6–7, *supra* note 116.

179. *See* Opinion Granting Cooley's Motion to Dismiss, MacDonald v. Thomas M. Cooley Law Sch., No. 1:11-cv-831, 2012 WL 2994107 (W.D. Mich. July 20, 2012), ECF No. 54.

180. Order Regarding Rules At Oral Argument at 2, *Thomas M. Cooley Law Sch.*, No. 1:11-cv-831, ECF No. 51 (emphasis added) (citations omitted). The phrase "[t]he ABA's and NALP's standards are a floor, not a ceiling" was subsequently stricken from the opinion at Cooley's request, *see* Order, MacDonald v. Thomas M. Cooley Law Sch., No. 1:11-cv-831 (W.D. Mich. June 20, 2012), ECF No. 53, but the sentiment and reasoning of the opinion still imply as much.

181. *See supra* note 135 and accompanying text.

3. Did the Law Schools Actually Make Any False Statements?

Perhaps the biggest problem with the law school lawsuits is the fact that many of the representations of which the plaintiffs complain were not objectively false. For example, although it is probably true that the "percentage of graduates employed" statistics law schools provided to prospective students were somewhat misleading (because they did not differentiate between part-time, full-time, legal, and nonlegal jobs), even the plaintiffs in these lawsuits must acknowledge that the defendants never actually claimed that their "percentage of graduates employed" statistics only counted full-time legal jobs.[182] Thus, to the extent the plaintiffs might have been misled by the statistics, it is because the plaintiffs themselves misinterpreted the statistics, not because the statistics were factually inaccurate.[183]

On the other hand, it could be argued that the context in which the allegedly fraudulent employment statistics were disclosed (i.e. in materials designed to attract and retain students) implied that the employment statistics referred to "jobs for which a [legal] education is [required or preferred] and . . . not . . . for which a [legal] education is irrelevant or of minimal utility."[184] According to this view, which Judge Kahn acknowledged in his orders overruling the University of San Francisco School of Law ("San Francisco") and Golden Gate University School of Law ("Golden Gate") demurrers,[185] that the employment statistics might be factually accurate "is 'truthiness' in the technical sense that lawyers are infamous for, but [not] honest."[186] Thus, even though the plaintiffs in these lawsuits have been unable to produce any evidence that the law schools published employment statistics that were factually untrue, Judge Khan's orders suggest that summary disposition of the lawsuits might be inappropriate.

4. Did the Plaintiffs Reasonably Rely on Any False Statements?

While reasonable minds might disagree about whether or not prospective law students are sophisticated consumers,[187] the plaintiffs in these lawsuits might have a

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182. *See* MacDonald v. Thomas M. Cooley Law Sch., No. 11-cv-831, 2012 WL 2994107, at *6 (W.D. Mich. July 20, 2012).

183. *See id.*

184. Order Overruling Demurrer to First Amended Complaint at 2, Arring v. Golden Gate Univ., No. CGC-12-517837 (Cal. Super. Ct. July 19, 2012) [hereinafter Order on Golden Gate Demurrer].

185. *Id.*; Order Overruling Demurrer to First Amended Complaint at 2, Hallock v. Univ. of S. F., No. CGC-12-517861 (Cal. Super. Ct. July 19, 2012) [hereinafter Order on San Francisco Demurrer]. To be clear, Judge Kahn refused to grant the defendants demurrers because he recognized this possibility, not because he endorsed it himself at that time. *Id.*

186. TAMANAHA, *supra* note 2, at 74.

187. *Compare* Gomez-Jimenez v. New York Law Sch., 943 N.Y.S.2d 834, 843 (N.Y. Sup. Ct. 2012) ("By anyone's definition, reasonable consumers—college graduates—seriously considering law schools are a sophisticated subset of education consumers, capable of sifting through data and weighing alternatives before making a decision regarding their post-college options, such as applying for professional school.") *with Thomas M. Cooley Law Sch.*, 2012 WL 2994107, at *10 ("This Court does not necessarily agree that college graduates are particularly sophisticated in making career or business decisions. Sometimes

difficult time demonstrating that they reasonably relied on any fraudulent statements made by the defendants. For example, the *Cooley* plaintiffs claimed "Cooley's statistics are at odds with the employment statistics reported by NALP because, despite Cooley's lenient admission standards and bottom-tier ranking, Cooley's statistics suggest that it had a higher placement rate than 40 percent of the nation's law schools."[188] However, because such "basic deductive reasoning" provides a reason to question Cooley's published employment statistics, Cooley was able to argue—successfully—that the plaintiffs could not have reasonably relied on those employment statistics.[189]

Similarly, many of the law schools "advertised employment rates that exceeded their bar pass rates, which implies that not all the jobs were lawyer jobs."[190] Because bar admission is a prerequisite to practice law, some of the defendants have argued that "any reasonable reader would immediately recognize" that the "employed nine months after graduation" statistic must include non-lawyer positions.[191] Although it seems questionable whether *any* reasonable reader would have *immediately* put two and two together, it cannot be denied that "[s]keptical prospective students who conducted a diligent investigation into the employment numbers would have realized that something didn't add up."[192]

These arguments managed to convince the judges hearing the NYLS and Cooley cases that the plaintiffs in those cases could not have reasonably relied on any misrepresentations the defendants may have made, but Judge Kahn explicitly rejected such arguments in overruling demurrers filed in the above-mentioned San Francisco and Golden Gate cases.[193] After noting that "California case law establishes that ordinarily the issue of whether a statement is likely to deceive a reasonable consumer is a question of fact," the judge held that the issue of whether the employment statistics would have misled reasonable consumers was "simply not amenable to resolution on a demurrer and must await factual development by the parties."[194] Thus, even if the fraud claims made by the plaintiffs' in the various law school lawsuits ultimately fail due to the unreasonableness of any reliance on their part, the cases may nevertheless avoid summary disposition. On the other hand, the need for "factual development by the parties" might also provide the defendants with a basis for arguing that the lawsuits should not be certified as class actions or coordinated with related lawsuits.[195]

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hope and dreams triumph over experience and common sense.").

188. *Thomas M. Cooley Law Sch.*, 2012 WL 2994107, at *2.

189. *Id.* at *6.

190. TAMANAHA, *supra* note 2, at 74.

191. Memorandum of Points and Authorities in Support of Defendant Thomas Jefferson School of Law's Demurrer to Plaintiff's First Amended Complaint at 2, Alaburda v. Thomas Jefferson Sch. of Law, No. 37-2011-00091898-CU-FR-CTL (Cal. Super. Ct. July 18, 2011) (citation omitted).

192. TAMANAHA, *supra* note 2, at 74.

193. *See* Order on Golden Gate Demurrer, *supra* note 184, at 2; Order on San Francisco Demurrer, *supra* note 185, at 2.

194. Order on Golden Gate Demurrer, *supra* note 184, at 2; Order on San Francisco Demurrer, *supra* note 185, at 2.

195. *See, e.g.*, Case Management Statement, Attachment, at 1, Arring v. Golden Gate Univ., No. CGC-12-517837 (Cal. Super. Ct. June 21, 2012) ("[A]s individual issues of fact and law predominate over any common issues, Plaintiffs' claims are inappropriate for class

5. Are the Damages the Plaintiffs Allege Are Too Remote and/or Speculative?

Even if the plaintiffs in the lawsuits could establish that the law schools made fraudulent statements regarding their employment rates and that the plaintiffs reasonably relied on those fraudulent statements when deciding to enroll and remain enrolled at those law schools, the plaintiffs may have a difficult time establishing exactly how they were injured by those fraudulent statements. For example, after struggling for about a year to find work despite sending out "tens" of resumes, Alexandra Gomez-Jimenez (one of the named plaintiffs in the case against NYLS) eventually secured a full-time legal position and now has a "thriving" immigration practice at her own firm in Manhattan.[196] Consequently, one could debate whether Ms. Gomez-Jimenez has been injured at all. For someone who went to the eighth-best law school[197] in the most saturated legal employment market in the country[198] and still managed to find a job in a terrible entry-level legal employment market[199] despite not being particularly aggressive in her job search, she seems to have done pretty well for herself. To be sure, some of the named plaintiffs in the lawsuits are more sympathetic figures than Ms. Gomez-Jimenez,[200] but some of the plaintiffs may not seem particularly deserving of damages at all.

To avoid this problem, the plaintiffs suggest that the correct measure of their damages is the "difference between a degree where a high-paying, full-time, permanent job was highly likely and a degree where full-time permanent legal employment at any salary, let alone a high salary, is scarce."[201] While such a valuation may be inherently speculative,[202] using it is especially problematic in light of the fact that most of the named plaintiffs in the lawsuits graduated during or immediately after the Great Recession, which decimated the entry-level legal employment market.[203] Thus, even if the law schools had not made any misrepresentations regarding their employment statistics, many of these students likely would have been disappointed with the bleak employment prospects awaiting them at graduation.[204]

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treatment."); *id*. at 4 ("[Golden Gate] will oppose Plaintiffs' Petition [to Coordinate] as there is no reason to coordinate these matters. There are four separate groups of plaintiffs alleging separate and independent harm against four unrelated law schools. There is no overlap of facts or witnesses in the cases, and they should each be litigated in their respective forums.").

196. *See* NYLS Complaint, *supra* note 31, at 8–9.

197. Based on the current *U.S. News* rankings of the New York City area law schools, that is. *See Best Law Schools*, *supra* note 129.

198. *See* Rampell, *supra* note 7.

199. *See supra* note 12 and accompanying text.

200. For example, despite passing the New York Bar Exam and graduating in the top-15% of her class, Chloe Gilgan had to work as a saleswoman at a department store while she was unable to find legal employment for fourteen months. She then found work as a legal secretary, but does not currently work as an attorney. *See* NYLS Complaint, *supra* note 31, at 16–17.

201. *See* Gomez-Jimenez v. New York Law Sch., 943 N.Y.S.2d 834, 847 (N.Y. Sup. Ct. 2012).

202. *See id.* at 850.

203. *See id.* at 851.

204. *See id.*

For these reasons, Judge Melvin Schweitzer, the judge hearing the case against NYLS declined to "engage in [the] naked speculation" required to adopt the plaintiff's proposed measure of damages.[205] Although it is certainly possible that other judges will disagree with Judge Schweitzer's opinion that the damages alleged by plaintiffs in similar lawsuits are too remote and speculative to justify relief, Judge Schwitzer's opinion does "exemplify the adage that not every ailment afflicting society may be redressed by a lawsuit."[206] It also suggests that plaintiffs in other lawsuits may want to try to offer a more concrete method for valuating their damages. Otherwise, there is a good chance that other judges will look to Judge Schwitzer's opinion as persuasive authority on this issue.[207]

IV. THE EFFECT OF THE LAWSUITS ON THE LAW SCHOOL TRANSPARENCY PROBLEM

The most obvious result these cases have had is to increase interest in this type of litigation, as the relatively quick proliferation these lawsuits demonstrates. If just one of the early cases is able to avoid summary disposition, the specter of such litigation would become a very real threat to other vulnerable law schools, and one would expect interest in additional litigation against law schools to increase significantly.[208] Because law school administrators would obviously like to avoid having their schools literally put on trial, the lawsuits could provide law schools with a powerful incentive to increase transparency voluntarily. True, elite and state-run law schools may not have as much reason to fear being sued by dissatisfied alumni as lower-ranked and for-profit law schools do, but the lawsuits have probably contributed to some law schools' decisions to heed the calls for increased transparency.

Even if a law school need not fear a lawsuit, the lawsuits have demonstrated that there is a strong demand for better information about the employment outcomes of recent law school graduates. Like the *New York Times* articles by David Segal and the advocacy efforts of Law School Transparency, the lawsuits have helped raise awareness among prospective law students about the declining value proposition of attending law school, especially the value proposition of attending the law schools that have been sued or targeted for lawsuits.[209] It is now virtually impossible for prospective law students who do any amount of research about these law schools to avoid stumbling upon information about the lawsuits,[210] and if the knowledge that

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205. *Id.*

206. *Id.* at 854.

207. *See supra* notes 201–205 and accompanying text.

208. *See* John Bronsteen, *Against Summary Judgment*, 75 GEO. WASH. L. REV. 522, 528 (2007).

209. For example, due to declining interest from prospective students, Cooley's 2011 entering class was almost twenty-seven percent smaller than its entering class the previous year, while its 2012 was about fifteen percent smaller than its 2011 class. *See* Matthew Miller, *Cooley Law Enrollment Falls Amid Skepticism*, LANSING ST. J. (Aug. 19, 2012, 12:59 AM), http://www.lansingstatejournal.com/interactive/article/20120819/NEWS01/308190102/Cooley-Law-enrollment-falls-amid-skepticism?nclick_check=1.

210. For example, a Google search for the phrase "Thomas Jefferson School of Law"

dissatisfied graduates have sued a particular law school because of their bleak employment prospects does not make prospective students think twice about borrowing tens or hundreds of thousands of dollars to attend that school, what will?

Because the lawsuits have tarnished the reputations of the schools that have been targeted by lawsuits, the lawsuits may have a negative effect on the financial stability of those schools. For example, in January 2012, Moody's Investors Service revised its outlook for NYLS from "stable" to "negative," citing "recent enrollment volatility and uncertainty surrounding the outcome of a recent lawsuit and its potential impact on the school's market position and longer-term student demand."[211] The following month, Moody's issued a report characterizing such lawsuits as "credit negative."[212] Moody's, which "maintains credit ratings for eight of the fifteen schools that had been sued" as of February 2012, noted that "standalone" law schools "are more likely to suffer negative effects from the lawsuits than [are law schools] that are a part of . . . larger universit[ies]."[213] Interestingly, even though the lawsuit against NYLS has been dismissed, Moody's has not been quick to revise its outlook for the law school.[214] Despite NYLS's victory in court, it is still possible that the court's opinion will be vacated on

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produces an article about the lawsuits within the first page of search results. Similarly, because law schools have felt compelled to explain to prospective students and others why they believe the suits do not have merit, some schools have even posted information about the lawsuits on their websites. *See, e.g.*, *New York Law School Files Motion to Dismiss Lawsuit*, N.Y. L. SCH. (Oct. 13, 2011), http://www.nyls.edu/news_and_events/motion_to_dismiss_lawsuit; *Career Development at IIT Chicago-Kent: Frequently Asked Questions*, IIT CHICAGO-KENT C. OF L. (2012), http:www.kentlaw.iit.edu/career-preparation/career-services/prospective-students/career-development-faq.

Consequently, even prospective law students who receive all of their information about the schools from the schools themselves can still discover that the schools have been sued.

211. Faiza Mawjee, *Moody's Affirms A3 Underlying Rating on New York Law School's Series 2006A, B-1 and B-2 Bonds; Outlook Revised to Negative from Stable*, MOODY'S INVESTOR SERVICE, (Jan 27, 2012), http://www.moodys.com/research/MOODYS-AFFIRMS-A3-UNDERLYING-RATING-ON-NEW-YORK-LAW-SCHOOLS--PR_236275. This change in outlook presumably came as a great disappointment to NYLS, which seems to care a great deal about its credit rating. For example, NYLS administrators had the school's credit rating in mind when they chose to increase the size of NYLS's 2009 class by thirty percent over the previous year (compared to the national average of six percent). *See* Segal, *Law School Economics*, *supra* note 1, at PAGE. The decision came just a few months after Moody's had changed its outlook on the law school's bonds from "stable" to "negative," noting that applications to the law school were down twenty-eight percent over the previous year. *Id.* In response to this "particularly large" class size, Moody's again revised its outlook on NYLS' bonds—this time changing it back to "stable." *Id.*

212. Moira Herbst, *Fraud Suits Against Law Schools "Credit Negative": Moody's*, THOMSON REUTERS (Feb. 10, 2012), http://newsandinsight.thomsonreuters.com/Legal/News/2012/02_-_February/Fraud_suits_against_law_schools__credit_negative___Moody_s/.

213. *Id.*

214. NYLS' Motion to Dismiss was granted on March 21, 2012, *see* Gomez-Jimenez v. New York Law Sch., 943 N.Y.S.2d 834, 857 (N.Y. Sup. Ct. 2012), but as of November 13, 2012, Moody's had not revised its outlook for the law school.

appeal, and—perhaps more importantly—it is too early to tell what impact the negative publicity generated by the lawsuits have had on longer-term student demand. Thus, even if other schools succeed in having the cases that have been filed against them dismissed relatively quickly, the reputational harm inflicted by the lawsuits may far outlast the lawsuits themselves.

Perhaps the most important effect the lawsuits have had is to convince the ABA and law schools to take the law school transparency movement seriously.[215] Anna Alaburda's groundbreaking lawsuit preceded both recent ABA reforms[216] and decision of many law schools to voluntarily disclose their NALP data.[217] Of course, the lawsuit was filed during a time in which the legal education industry was being heavily criticized by mainstream media[218] and several U.S. Senators.[219] No doubt this criticism also played a role in helping convince the ABA and individual law schools to do something about the law school transparency problem. However, the prospect of additional litigation certainly gave legal educators a strong incentive to take steps towards solving the law school transparency problem sooner rather than later.

CONCLUSION

Whether or not law schools are to blame for the precarious financial position in which many recent law school graduates find themselves, it is getting harder and harder to deny that the value proposition of attending law school has declined significantly in recent years.[220] Prospective students now have more information than ever to use in deciding whether attending a particular law school is a good choice for them, yet law schools could certainly do more to ensure that prospective students are fully informed about the costs and risks of investing in a legal education. Given the high cost of pursuing a legal education today, it is particularly important that prospective law students have access to reliable, school-specific information about the salaries earned by recent graduates.

Some law schools have started to voluntarily provide more comprehensive and reliable employment statistics, but many law schools are unlikely to follow their lead unless they are pressured to do so. One potential source of such pressure is the specter of class-action lawsuits. Even if such lawsuits are unlikely to result in large awards for plaintiffs, defending such lawsuits can be expensive, and will necessarily tarnish a law school's reputation. This will in turn hinder the law school's ability to attract new students, and may even endanger the law school's financial stability.

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215. *See id.* at 855.

216. *See supra* notes 51–57, 102–104 and accompanying text.

217. *See supra* notes 93–94, 102–104 and accompanying text.

218. *See supra* notes 1–3 and accompanying text.

219. *See supra* note 96 and accompanying text.

220. Lat, *supra* note 1 ("With every new lawsuit filed against a school, every new newspaper article or blog post about the dangers of going to law school, and every new call by a senator for an investigation into law school employment reporting, it becomes that much harder for a law student entering the system today to claim that she was duped about the value proposition of legal education.").

Furthermore, unlike exclusively forward-looking methods for resolving the law school transparency problem, class-action lawsuits can also be used to punish law schools for their prior bad acts and to compensate the victims of those acts. Thus, even if the ABA takes immediate, sweeping action in response to calls for additional reforms to the way law schools report their employment statistics, the threat many law schools face from this new type of class-action litigation will not dissipate entirely until any applicable statute of limitations run their course. While the likelihood of future lawsuits will depend in no small part on how early cases are resolved, law school administrators would be wise to take immediate preventative measures to make sure their schools are not targeted for lawsuits next. If a small decline in a law school's *U.S. News* ranking is enough to send the school into a "death spiral of rapidly departing employers, students and faculty,"[221] what effect might the prospect—even the faint prospect—of being forced to settle an eight figure lawsuit have on the future of a law school?

221. *See supra* notes 72 and accompanying text.

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N.Y.U. Law Plans Overhaul of Students' Third Year

By PETER LATTMAN

There is an old saying that in the first year of law school they scare you to death; in the second year, they work you to death; and in the third year, they bore you to death.

The usefulness of the third year of study ranks high among the growing chorus of complaints - which includes soaring tuition and a glutted job market - about law schools.

New York University School of Law is now trying to address those questions about the utility of the third year. On Wednesday, the school is expected to announce an overhaul of its curriculum, with an emphasis on the final two semesters.

The move comes as law schools are being criticized for failing to keep up with transformations in the legal profession, and their graduates face dimming employment prospects and mounting student loans.

N.Y.U. Law's changes are built around several themes, including a focus on foreign study and specialized concentrations. Some students could spend their final semester studying in Shanghai or Buenos Aires. Others might work at the Environmental Protection Agency in Washington, or the Federal Trade Commission. Another group, perhaps, will complete a rigorous one-year concentration in patent law, or focused course work in tax.

"There are perennial complaints about the third year of law school being a waste of time," said Brian Z. Tamanaha, a law professor at Washington University and the author of the recently published book "Failing Law Schools" (University of Chicago Press). "It is important that an elite law school like N.Y.U. is making these changes because the top schools set the model for the rest of legal academia."

N.Y.U. Law is the latest law school to alter its academic program significantly. Stanford Law School recently completed comprehensive changes to its third-year curriculum, with a focus on allowing students to pursue joint degrees. Washington and Lee University School of Law scrapped its traditional third-year curriculum in 2009, replacing it with a mix of clinics and outside internships.

"There is a growing disconnect between what law schools are offering and what the marketplace is demanding in the 21st century," said Evan R. Chesler, the presiding partner of the law firm Cravath, Swaine & Moore and a trustee of N.Y.U. Law. "The changes we're rolling out seek to address that."

There has been much debate in the legal academy over the necessity of a third year. Many students take advantage of clinical course work, but the traditional third year of study is largely filled by elective courses. While classes like "Nietzsche and the Law" and "Voting, Game Theory and the Law" might be intellectually broadening, law schools and their students are beginning to question whether, at $51,150 a year, a hodgepodge of electives provides sufficient value.

"One of the well-known facts about law school is it never took three years to do what we are doing; it took maybe two years at most, maybe a year-and-a-half," Larry Kramer, the former dean of Stanford Law School, said in a 2010 speech.

Yet no one expects law schools to become two-year programs any time soon. For one thing, law schools are huge profit centers for universities, which are reluctant to give up precious tuition dollars. What is more, American Bar Association rules require three years of full-time study to obtain a law degree. Several law schools, including Northwestern University School of Law, offer two-year programs, but they cram three years of course work - and tuition - into two.

N.Y.U. Law's new curriculum plan is highlighted by experience outside of the school's Greenwich Village campus. While the school has dabbled in foreign study, it is now redoubling its focus on international and cross-border legal practice. N.Y.U. Law is preparing to send as many as 75 students to partner law schools in Buenos Aires, Shanghai and Paris, where the students will study the legal systems and the languages of those regions. With the ever-increasing influence of government and the regulatory state in private legal matters, N.Y.U. Law will also offer students a full semester of study, combined with an internship, in Washington.

Another key initiative gives students the chance to build a specialty. Called "professional pathways," the program will offer eight focused areas of instruction, including criminal law and academia.

None of these programs will be mandatory, as students can still choose a conventional course load. But Richard L. Revesz, the dean of N.Y.U. Law, said that he hoped the students would take advantage of the new offerings.

"The third year of law school has never had a clear mission, and these steps now give us that," Mr. Revesz said. "Students will not maximize their final year here if they just take a random set of courses."

N.Y.U. Law's moves illustrate the continuing evolution of the legal education model. Until the late 19th century, most lawyers - like Abraham Lincoln - were trained through the old-fashioned apprenticeship method. But for the last hundred years, law school classrooms have been dominated by the case method of instruction, which trains law students by having them read court cases and questioning them via the Socratic method.

Now, in an era of globalization and specialization, law schools are acknowledging the inadequacy of the traditional approach.

"Training lawyers to think like lawyers was once law schools' entire mission," said Mr. Chesler, the N.Y.U trustee and Cravath presiding partner. "That doesn't work anymore."

The reworking of N.Y.U.'s curriculum is the result of recommendations made by a strategy committee of alumni formed in May 2011 by Mr. Revesz. Mr. Chesler was chairman of the 12-person committee, which included Randal S. Milch, the general counsel of Verizon Communications; Eric M. Roth, a partner at Wachtell, Lipton, Rosen & Katz; and Sara E. Moss, the top lawyer at Estée Lauder.

"The group that came up with these new measures is comprised of leading lawyers who are creating the market to hire our students," Mr. Revesz said. "Perhaps more than any of the substantive changes, I'm most proud of who has recommended them."

Behind the revamp is a recognition that the job market has become markedly worse since the financial crisis, even for students at well-regarded law schools like N.Y.U. The country's largest law firms are hiring 40 percent fewer lawyers than they were five years ago, according to a new study from the National Association for Law Placement. Reflecting the shrinking job market, the number of people taking the law school admission test has fallen by nearly 25 percent in the last two years.

"The social compact that you attend an elite law school and get a high-paying job has started to erode," said William D. Henderson, a law professor at Indiana University who studies the legal industry. "Law schools must change, and while it's great to hear about this news about N.Y.U., they have lots of resources and money. The greater sense of urgency lies with the lower-tier schools."

Careers

Nine-Month Job Stats Don’t Measure Value of Law Degree, Retiring Dean Says

Posted Nov 7, 2012 5:59 AM CST
By Debra Cassens Weiss

The news media is underestimating the value of a law degree, according to America’s longest-serving law dean.

You can’t measure the value of a law degree by your job at graduation, or even your job nine months later, according to Rudy Hasl, who will retire in June as dean of Thomas Jefferson School of Law in San Diego. Hasl has served as a law dean for 32 years in positions at four different schools, making him the longest-serving U.S. law dean. He outlined his views for the Chronicle of Higher Education.

The negative news coverage has caused potential law school applicants to question whether they should invest in a legal education, Hasl said. The recent period has been “tumultuous” for law schools, he said, and the issues are “a little more difficult” than previous bottoming-out periods. But he still sees merit in a law degree.

“I remind students that what law schools are providing is a set of skills that are valued in our society and that will ultimately lead to a meaningful employment opportunity,” Hasl said. “That could be in business, in the political arena, or in traditional law-firm settings. I was a classics major, and there's no market directly for someone in classics, but it's a foundational training that hopefully makes one better at analyzing problems and articulating a position."

Hasl’s school was recently in the news when a former assistant career services director there said her supervisor pressured her to inflate job statistics for 2006 grads. Hasl told the ABA Journal the allegations are a "crock of crap” and school data submitted to the ABA was accurate.

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HEADLINE: An Existential Crisis For Law Schools

BYLINE: By LINCOLN CAPLAN

BODY:

July is the cruelest month for recent law school graduates. State bar exams next week are make-or-break affairs, determining how many will be allowed to practice law. Those exams once set a graduate on the path to a lifelong career. Not anymore. A huge number of new graduates, if lucky enough to find work, will not be employed in legal jobs that require passing the bar.

Only 55 percent of 43,735 graduates in 2011 had a law-related job nine months after graduation, said William Henderson of the Indiana University Maurer School of Law, who analyzed recent data from the American Bar Association. Twenty-eight percent were unemployed or underemployed. And at the 20 law schools with the highest employment, 83 percent of graduates were working as lawyers. At the bottom 20, it was a dismal 31 percent.

These numbers are far worse than jobs data going back a generation and should be a deep embarrassment to law schools, which have been churning out more graduates than the economy can employ, indulging themselves in copious revenues that higher tuitions and bigger classes bring in. A growing list of deans acknowledge that legal education is facing an existential crisis, but the transformation to a more sustainable model will be difficult and messy.

The number of law office jobs began to decline in 2004, well before the recession. And demand for new lawyers isn't expected to grow much even when the economy recovers. Outsourcing of legal work to places like India and greater efficiencies made possible by smarter software to search documents for evidence, for example, are allowing firms to cut the positions of multitudes of low-end lawyers. In 2009, twice as many people passed bar exams as there were legal openings -- a level of oversupply that may hold up for years. There is, of course, tremendous need for lawyers to serve the poor and middle class, but scant dollars to pay them.

Law schools have hustled to compensate for these shifts by trying to make it look as if their graduates are more marketable, even hiring them as research assistants to offer temporary employment. But those strategies won't fix legal education, particularly when students are starting to see that a high-priced degree, financed by mountains of loans, may

never pay off. The number of people taking law school admissions tests fell 24 percent in the last two years, to the lowest level in a decade. Law schools will be crushed if they don't remake themselves, said Frank Wu, dean of Hastings College of the Law at the University of California in San Francisco. "This is Detroit in the 1970s: change or die."

Hastings, for example, is reducing the number of its J.D. students by 20 percent in the next three years. It trimmed staff jobs to cut costs, and it increased the teaching load of each faculty member by 20 percent to reduce the need for adjunct professors, among other reasons. But Mr. Wu says the school has no plans to cut the size of its full-time faculty or its compensation or tuition -- and tuition is an unavoidable problem.

Brian Tamanaha reports in "Failing Law Schools" that in-state annual tuition at public law schools rose to an average of $18,472 in 2009 from $2,006 in 1985, and tuition at private law schools increased to $35,743 from $7,526.

A lot of money went to raising faculty salaries. With salary and summer pay, the average now is likely close to $170,000 -- and some law professors make $350,000 or more.

As tuition has soared, so has student debt. Nearly 9 out of 10 graduates have sizable debt, with $98,500 the average for the class of 2010, or about $1,200 a month in loan payments over 10 years. Most schools and many students have banked on students' being able to pay back enormous loans with ample salaries, but that flawed model is irretrievably broken.

It will be hard for any school to alter its cost structure without making substantial changes to its faculty and pay, though some schools are earnestly considering two-year J.D. programs and beginning to experiment with more virtual learning in selected courses. Course-sharing among law schools in lecture courses is another cost-saving option.

But in some ways the crisis of law schools goes well beyond the unsustainable economics. Their missions have become muddled, with a widening gap between their lofty claims about the profession's civic responsibility and their failure to train lawyers for public service or provide them with sufficient preparation for practical work.

Some schools are trying to break out of this dead end. Boston's Suffolk University Law School is planning to focus on the justice gap by preparing more students to serve the middle class and poor. At Washington and Lee School of Law in Virginia, the third year is now devoted to practical training. Others have increased courses in negotiation, counseling and other skills. The A.B.A., which accredits law schools, could help by allowing much more experimentation and differentiation among schools -- and by being much more skeptical of diploma mills.

This crisis makes it easy to forget that the law attracts pragmatic types, able to handle changed circumstances. And in fact, huge law firms, hot areas of practice and outsized salaries at top firms are fairly recent developments. Law schools need to be pragmatic, too, finding ways to ensure that graduates can afford to take jobs where the salary is less important than the impact.

URL: http://www.nytimes.com

GRAPHIC: CHART: What 2011 Law Grads Are Doing (or Not) (Sources: American Bar Association
Prof. William D. Henderson, Indiana University Maurer School of Law)

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OregonLive.com
Everything Oregon

Oregon judge blasts law schools for burdening graduates with oppressive debt

Published: Friday, August 10, 2012, 4:12 PM Updated: Monday, August 13, 2012, 9:10 AM

By Jeff Manning, The Oregonian

steakpinball/flickr

Law school grads are walking out of the classroom with huge debts and fewer job prospects.

Considering college or law school?

Ann Aiken, U.S. District Court of Oregon chief judge, has some strong words of warning.

In an extraordinary March 5 opinion, Aiken departed from the particulars of a student debt collections case to rip the U.S. higher education system in general and the nation's law schools specifically for burdening a generation of graduates with oppressive debt.

"Students with advanced degrees, specifically juris doctorates, are facing a quagmire," Aiken wrote. "Attending law school was a guaranteed way to ensure financial stability. For current graduates, however, this is no longer true, due in large part to the high cost of law school tuition."

To cover those ever-escalating tuition, graduates commonly borrow $100,000 or more these days, after which many promptly borrow another $15,000 to see them through a bar exam review course and the necessary months of study.

Aiken's opinion comes amid growing national concern about how the U.S. is funding its higher education system. Even as Oregon makes it an official goal that 40 percent of the state's populace get a college or advanced degree, graduates are emerging with enormous, life-changing student loan debt.

The picture is particularly bleak for professions like the law, architecture and teaching that require an expensive graduate degree and yet offer limited opportunities. The Oregonian on Sunday published a package of stories on the travails of new lawyers and the new debtor-class being created by the country's higher ed system.

First-year lawyer jobs are few and far between. Aiken noted that in 2010, 382,828 applicants sought less than 2,700 clerkships with federal judges.

Aiken included her four-page rant in an opinion in the case of Michael Hedlund, of Klamath Falls, has fought for nine years to get some or all of his law school student loans legally discharged. Aiken reversed a lower-court ruling allowing Hedlund to

Diminished expectations

Read out occasional series on

discharge about $50,000 of his $85,000 in law school debt.

Hedlund attended Willamette University Law School in Salem in the late 1990s. He failed to pass the bar in two tries and gave up altogether after inadvertently locking himself out of his car while enroute to his third attempt.

today's economy:

Law school grads lost in debt

Law schools revenues soar as supply exceeds demand

He works as a probation officer in Klamath County's juvenile department.

"I wasn't ever trying to get out of paying the loans," Hedlund said Wednesday. "I was trying to get something I can afford."

He claims that he his lenders refused his request to modify loan terms and insisted that he make the $1,000-a-month payment at a time when he making $2,000 a month and supporting a family. He filed for bankruptcy after a creditor raided his bank account, he said.

Bankruptcy is normally not a refuge for college borrowers. Years ago, lenders convinced Congress to carve out a special exemption for student loans, making them one of the few kinds of debt that cannot be discharged in bankruptcy.

Only borrowers who can prove extreme personal hardship can get bankruptcy relief, which is exactly what Hedlund did.

Hedlund's case shows the indignities awaiting delinquent student loan borrowers. Lenders have garnished his wages. They argued in court that he's a free-spender because he paid for both a cell phone and a traditional land-line telephone. His lenders also complained he's not done enough to boost his own income, noting that his wife works just one day a week in a florist's shop.

Some judges have sided with Hedlund over the course of his marathon legal battle. Others, Aiken among them, have sided with his lenders.

Hedlund vows to fight on. He's appealed Aiken's ruling to the U.S. 9th Circuit Court of Appeals.

Aiken, meanwhile, predicted cases like Hedlund's will become increasingly common.

-- Jeff Manning

The Legal Intelligencer

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New Push to Make 3L Year Optional Begins

The third year of law school has long been a punching bag for critics who argue it's a waste of time and drives up the costs of a law degree, but there have been few serious attempts to do anything about it. Until now.

Karen Sloan

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The third year of law school has long been a punching bag for critics who argue it's a waste of time and drives up the costs of a law degree, but there have been few serious attempts to do anything about it. Until now.

Legal educators and top New York state court officials will gather on January 18 to discuss whether to allow candidates to sit for the New York state bar examination after just two years in law school. The idea was floated by Samuel Estreicher, a professor at New York University School of Law, who believes skyrocketing law school tuition and diminishing job prospects for new lawyers have created a climate favorable to reform.

"People have been asking for years: 'Do we really need a third year of law school?' " said Estreicher, co-director of NYU's Institute of Judicial Administration. "I'm simply proposing that we give students a choice to stay for three years or leave after two. The economic downturn is a big part of it."

He believes additional states would follow suit if New York adopted a two-year option. The proposal may prove a tough sell to the legal academy at large, however, which has blocked previous attempts to drop the third-year requirement.

"It's unlikely that the way to prepare our students for a toughened competition, global and otherwise, is to assure they are less fully educated than their predecessors of the past 75 years," said University of North Carolina School of Law professor Gene Nichol. He argues that law schools need to find other ways to reduce student costs — for example, by reducing faculty salaries and increasing teaching loads.

Estreicher laid out his proposal in an article, "The Roosevelt-Cardozo Way: The Case for Bar Eligibility After Two Years of Law School," in the *New York University Journal of Legislation and Public Policy*. (The title refers to President Franklin Delano Roosevelt and U.S. Supreme Court Justice Benjamin Cardozo, both of whom obtained their law degrees when two years was the norm.)He described two benefits to the two-year option, not least that the cost of becoming a lawyer would be reduced by one-third and that, with lower student loan debt, graduates would be in a better position to take lower-paying jobs representing low-income clients. Second, an optional 3L year would give schools incentives to create third-year curricula of more use to students, he wrote; if students saw no real benefit to the 3L curriculum, they would sit for the bar exam instead.

'WASTING PEOPLE'S MONEY'

Between 1882 to 1911, New York allowed candidates to sit for the bar exam after only two years of law school. By 1905, the Association of American Law Schools (AALS) had mandated that member schools adopt three-year curricula. However,

during the 1970s, separate reports funded by the Carnegie Commission on Higher Education and the Ford Foundation supported the option of two-year law schools.

"We both concluded that law school should be two years because we were wasting people's money," said Duke Law School professor Paul Carrington, who wrote the Ford Foundation report. "The law professors objected to it. There will be the same interests this time around, but we have really let the price get out of control. That's a major difference."

Trying to convince the American Bar Association's Section of Legal Education and Admissions to the Bar or the AALS — both run by legal educators with a financial stake in the 3L year — is a losing strategy, Estreicher said. He hopes for a friendlier hearing from New York's highest legal tribunal, the Court of Appeals. Chief Judge Jonathan Lippman, who oversees the state's court system and who recently instituted a 50-hour pro bono requirement for admittees to the bar, and Associate Judge Victoria Graffeo are slated to attend the January 18 meeting.

"I don't know what will happen with this, but there is enough interest from some of the decision-makers to come to the meeting and hear more," Estreicher said. "I've received a lot of interest from academics, as well."

Washington University in St. Louis School of Law professor Brian Tamanaha is among those academics. Law schools need the flexibility to experiment with different models, Tamanaha argued in his 2012 book, *Failing Law Schools*.

Judge José Cabranes of the U.S. Court of Appeals for the Second Circuit endorsed a two-year legal education in a 2012 speech before the AALS, but suggested that a third year could be spent apprenticing with practicing attorneys or in law school clinics. Cabranes acknowledged that such a change would hurt law schools' bottom lines. Estreicher did not include an apprenticeship component in his proposal because he thought it unlikely that enough legal employers would take on students, he said.

The Arizona Supreme Court has been tinkering with bar-exam timing; in December, it approved a pilot program allowing law students to take the test during February of their 3L year. However, the students must be close to completing the full, three-year curriculum.

Unless the ABA changes its accreditation standards, New York students who opt to take the bar instead of completing their 3L years would not receive juris doctor degrees. (The ABA requires completion of 83 credit hours for a J.D. A handful of schools offer accelerated, two-year J.D. programs, but students still must meet the 83-credit minimum.)

Convincing the New York Court of Appeals would require significant support from practicing attorneys and professional organizations, Estreicher acknowledged. Practicing attorneys tend to be receptive to the idea because many recall their 3L years as worthless, he said.

Verizon Communications Inc. general counsel Randal Milch counts himself among that number. "I couldn't wait to get out of law school. I absolutely would have taken the two-year option," said Milch, who will moderate the discussion on January 18. "I think it's important for upper-tier schools like NYU, which has gifted students and high placement rates, to be the ones leading this charge." Several New York law deans said they welcomed the discussion but questioned the plan's feasibility and whether it actually would help students. "I think this proposal reflects that everything is on the table right now in terms of rethinking the existing law school curriculum," said Nicholas Allard of Brooklyn Law School. "It also reflects the need to ensure that law school is relevant." Brooklyn Law is exploring a two-year accelerated program that would award J.D. degrees, he said.

WHAT DO EMPLOYERS WANT?

Patricia Salkin, dean of Touro College Jacob D. Fuchsberg Law Center, fears the two-year option wouldn't satisfy legal employers' demands for practice-ready attorneys. "If students spend the first and second years taking core courses, when are they going to develop the practical skills that firms say they want?" she said. "And for the students, will the firms hire someone with only two years of law school, even if they pass the bar?"

The answer to that question, at least for the law firms, judges and federal agencies that tend to hire a large chunk of NYU graduates, is likely no, said dean Richard Revesz. He predicted that few NYU students would be interested in the two-year option. "I'm not a fan of the proposal," he said. "I think it would not be beneficial, but I'm interested in hearing a lot of viewpoints." Revesz said he is skeptical that a two-year option would be an added incentive for schools to revamp curriculum, given that many — including NYU — have already changed their 3L curricula or are weighing such reforms.

Outside of New York, Northwestern University School of Law dean Daniel Rodriguez agreed that large law firms were unlikely to hire lawyers with only two years of legal education, but said the flexibility might make sense for students pursuing nonlaw firm jobs.

"I'm intrigued by the idea," Rodriguez said. "It's encouraging that there is some open-mindedness among those in a position to effect change. The spirit of the debate, driven by economic factors, strikes me as a good thing. If now is not the time to have this discussion, then when?"

Karen Sloan *is a reporter for* The National Law Journal*, a* Legal *affiliate based in New York.*

Chicago Tribune

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HEADLINE: Joblessness, debt mount for recent law school grads

BYLINE: Ameet Sachdev

BODY:

Alexis Silsbe graduated in the top 20 percent of her 2011 class from a Chicago law school and hoped to get a job in public service.

More than a year later she is working as a contract lawyer in St. Louis reviewing documents, a job she secured only 10 weeks ago. Earning $20 an hour, Silsbe, 27, is struggling to make ends meet because she has more than $100,000 in student loans from law school.

"This is not what I went to law school for," she said.

The Great Recession has wreaked havoc on the job market for law school graduates, but newly released data from the American Bar Association paints a bleaker picture about entry-level employment than previously thought. Slightly more than half of the Class of 2011 -- 55 percent -- had found full-time, permanent jobs as lawyers nine months after graduation.

It was the worst job market in more than 30 years, according to the National Association for Law Placement. The employment outlook wasn't looking much better for the Class of 2012, but official figures won't be released until next year.

For many 2011 graduates of Illinois law schools the job market was dismal. DePaul, IIT Chicago-Kent, John Marshall, Northern Illinois, Loyola and the University of Illinois did not meet the national average of 55 percent full-time employment.

Full-time, long-term employment in a legal job is obviously the best possible outcome of attending law school. Graduates who don't land lawyer jobs generally earn less than those who do. But this is the first time the ABA has required law schools to break out that figure when reporting job statistics to the association, which regulates legal

education.

Previously, schools could aggregate their job data to include all employment, whether it was full-time or part-time, long-term or short-term, and required a law degree or didn't. That led to reporting employment rates well above 90 percent for the last decade even if some of the graduates were working as baristas at Starbucks.

Schools aggressively marketed their rosy representations of the entry-level job market to attract legions of new students. Tuition began to rise to where even mediocre schools could charge more than $40,000.

The recession hit lawyers hard. Large law firms that pay the highest salaries shed thousands of jobs and are recruiting fewer graduates. Companies are closely watching their costs and are more willing to outsource legal work to India and other low-cost locales.

Yet law schools continue to churn out more than 40,000 graduates a year despite a contraction in the job market. The imbalance has opened law schools and the bar association to greater scrutiny. Some recent graduates have filed lawsuits against schools, alleging that the schools fraudulently misrepresented their employment data.

Criticism also is coming from within the profession. Brian Tamanaha, a professor at the Washington University School of Law in St. Louis, has published a scathing book about legal education called "Failing Law Schools."

He argues that there's a mismatch between the cost of legal education and the economic return. The average debt of 2011 graduates of private law schools was nearly $125,000, Tamanaha said, citing ABA statistics.

"The fact that only about 1 out of 2 graduates is getting a job as a lawyer is bad enough," Tamanaha said in an interview. "But the situation is worse than that. Many who do obtain jobs don't earn enough to make their monthly payments on their debts."

Silsbe passed up a full scholarship at another law school to attend IIT Chicago-Kent in 2008 because she said she thought she would have a better shot at landing a job. While there were troubling signs in the economy at the time she enrolled, not even the smartest economists predicted that the housing market would collapse and the unemployment rate would soar to more than 10 percent.

"I did expect, based on their employment statistics, that I would be able to find a comfortable job to make my loan payments and pay my bills," she said.

Silsbe worked hard and made the staff of the selective Chicago-Kent Law Review, which publishes scholarly articles. But when she graduated she did not have full-time work. She found an internship with a Cook County circuit judge for six months, and the law school paid her a stipend.

Her income was so small last year that Silsbe said she didn't have to make monthly payments on her federal loans. Most federal student loans allows participants to set up payment plans based on what they earn.

She moved to St. Louis in January and began doing trust litigation for a small law office as she kept looking for a full-time job. Now she's doing document review.

Silsbe is one of four recent Kent graduates who sued the law school in February. The law school has said it believes the suit has no merit and declined further comment.

"It's frustrating that the opportunities that were promised aren't there," Silsbe said. "I really want to have a job where I can use my legal skills to help people."

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GRAPHIC: Photo: Alexis Silsbe, 27, graduated from law school at IIT Chicago-Kent last year. She only recently landed a contract law job making $20 an hour and has more than $100,000 in loan debt. WHITNEY CURTIS/PHOTO FOR THE TRIBUNE
Graphic: Nice work if you can get it
The recession has taken its toll on 2011 law school graduates. Just 55 percent of them nationwide found full-time, permanent work in a job market the National Association for Law Placement calls the worst in more than 30 years. Several law schools in Illinois were below even the national rate.
PERCENTAGE OF 2011 GRADS FROM ILLINOIS SCHOOLS WHO FOUND JOBS
Long-term, full-time jobs as lawyers within nine months
SOURCE: Law School Transparency
TRIBUNE
- See microfilm for complete graphic
Photo(s) Graphic(s)

LOAD-DATE: June 22, 2012

Villanova University School of Law

Strategic Plan

2012-2017

In times of disruptive change, those with vision step forward to shape the path of transformation, to seize new opportunities, and to lead.

At Villanova Law, we are stepping forward.

Introduction

This document outlines a bold and relevant vision for our future.

The plan is "bold" because it breaks new ground, bringing together emerging ideas from across legal education with our own fresh thinking.

The plan is "relevant" because it directly addresses the striking challenges Villanova and other law schools across the nation are now facing. Legal education in the United States is in the midst of a perfect storm. Against the backdrop of national economic stagnation, law schools have seen dramatic declines in applications, a drumbeat of negative coverage in the media, and diminishing career prospects for graduates. By recent estimates, 45,000 U.S. law school graduates compete each year for 25,000 jobs in the legal profession.

When this storm passes, legal education will be forever changed. At Villanova, we are moving to take charge of our future. We are seizing opportunities to better prepare our students for this environment.

This Strategic Plan addresses every aspect of our mission and operation—from the applicants we strive to enroll to the varying degree options we offer to the preparation we provide for employment and achievement after graduation. It examines the School's mission rooted in the University's Catholic and Augustinian identity and initiatives to strengthen diversity within our community.

Achieving the initiatives outlined in this Strategic Plan will make Villanova Law a stronger and more prestigious institution by:

- providing cutting-edge legal education for our students, which will both broaden and deepen their perspective and understanding of the law and its global reach;

- preparing our graduates to compete for a wider array of professional opportunities over the course of their careers;

- ensuring that our faculty's legal and interdisciplinary scholarship is highlighted and made accessible to our students and the wider scholarly community; and

- creating a distinctive curriculum with incomparable co-curricular programming, which will set Villanova apart in a highly competitive market.

This Strategic Plan grew from a thorough and inclusive process. It is the result of the dedicated efforts of five faculty working groups—each tasked with a specific area of focus informed by views gathered from all constituencies of the Law School: Admissions and Enrollment, Catholic and Augustinian Identity and Community, Curricular Innovation, Diversity, and Student Formation.

The Plan presents the vision these groups have set forth, along with many of the action steps needed to realize this vision. It documents an on-going process that will be implemented over the next five years.

Throughout the development of this plan, we carefully evaluated the critical issue of cost. We have reached the conclusion that while we cannot reduce Villanova's tuition, we can hold the line—guaranteeing the members of each new class that the rate they pay upon entering will apply over their three full years while enrolled. In addition, we will strive to increase our investment in scholarships and student support at a faster rate than future tuition increases.

The strength of this Strategic Plan is that it reflects the vision and effort of many interested people who have approached the task with complete openness to new possibilities. In that spirit, we invite you to share your ideas and reactions with us as we move forward.

A lot of work lies ahead, yet we have confidence that our efforts will yield great results for Villanova Law.

THE PILLARS OF THE PLAN

I. Reforming and Strengthening Our Curriculum

We will redesign major elements of the academic experience to align the knowledge, practical skills, and values we teach with the evolving demands of professional practice.

For too long, changes in the legal industry have outpaced innovation in legal education. Yes, law schools have augmented the clinical experiences they offer and tweaked electives, but at Villanova, as elsewhere, the heart of the Juris Doctorate program looks much as it did decades ago.

We teach the core skills of legal analysis quite well, but we increasingly recognize that our students still need more. We acknowledge that:

- employers expect our graduates to arrive on the job practice-ready;
- writing continues to be a foundational skill that pervades every aspect of legal practice;
- lawyers find themselves working not as independent specialists, but as members of multidisciplinary business teams; and
- the skills of running a legal business—marketing, management, and client relations—have proven to be decisively important.

Building on the work of legal educators nationwide and on the feedback from our alumni and prospective employers, we have identified the competencies we believe are most important—the skills our graduates need to thrive in the profession, not only, as is so often stressed, on their first day on the job, but over the course of their successful and evolving careers.

These competencies range from intellectual and cognitive abilities to organizational skills to strengths of character. For example, employers are seeking candidates who can easily switch from practical judgment to strategic planning to diligence and adaptability.

In particular, business literacy has emerged as a critical priority. We realize that today's lawyers require an understanding of the methods and vocabulary of the businesses with whom they frequently work. Fluency in the language of business

will enable lawyers to be truly effective in today's professional environment and will yield a full range of future career paths.

The set of competencies we have identified is broad, balanced, and impressive. In truth, however, lists like these have been circulating for some time. Our chance to take a bold step forward will come with our execution and implementation.

We are working to reverse-engineer our curriculum to address each identified competency. We intend to "tag" every course, clinic, and co-curricular activity with the competencies best associated with each area. Where we see gaps, we will create new offerings. Where we see skills and strengths that cannot be taught through casebooks and lectures, we will innovate—through simulations, group work, or with projects that extend beyond the classroom.

For students, the most striking changes will come in the second and third years. An educational experience that was once seen as an eclectic assembly of courses will become more substantive and engaging and part of a clear, coherent progression. A pervasive emphasis on legal writing will move beyond the first year course in legal writing and be part of every semester of a student's legal education.

We believe that the result of these changes will be a deeper and broader student experience—a richer intellectual exploration and professional preparation.

Select Initiatives

- Tag all courses and co-curricular experiences with the competencies they develop.
- Create an individualized portfolio system through which students can track and demonstrate their acquired competencies.
- Develop new learning opportunities to fill gaps where competencies have not yet been addressed.
- Require six semesters of legal writing.

We are moving beyond the fundamental skills of legal analysis by expanding our teaching to all of the competencies that the profession now requires.

II. Moving to a New Level in Experiential Learning

We will build upon one of Villanova's distinguishing strengths—enriching and expanding students' opportunities to learn through clinics, externships, and service.

For many Villanova Law students, the chance to gain experience in real practice settings stands out as a highlight of their education. Students complete externships with local district attorneys, public defenders, judges, and government agencies. They work in our internationally recognized clinics: the Tax Clinic, Asylum Clinic, Farmworkers Clinic, and Civil Justice Clinic. They dedicate themselves to community service through award-winning programs such as Lawyering Together, through which students partner with area attorneys on pro bono projects. Through public service, we honor and advance our mission as a Catholic and Augustinian institution.

Through this Strategic Plan, we will expand and enrich each of these opportunities. We will create a greater breadth of opportunities, add depth to these experiences, and make them a part of *every* Villanova student's legal education.

This decision is driven by recognizing the many advantages experiential learning offers:

- it connects legal theory with real-world practice;
- it supports our work in student formation—helping future lawyers find areas of specialization where they will thrive; and
- it provides our students with impressive experiences for their résumés, helps them establish professional contacts and often leads to job offers.

Experiential learning is the best way to cultivate many of the key competencies we have determined are essential for our graduates. When our task is to teach contracts or criminal procedure, we can draw on effective classroom methods. The same, however, is not always true when we speak of diligence, professional judgment and demeanor, adaptability, or an understanding of what it means to own and stand behind one's legal work. These are strengths that become meaningful only in the context of practice.

Recognizing the full value of externships, clinical work, and service, we intend that each Villanova Law student will now have the benefit of an intensive practice experience in a wide range of settings.

This will mean expanding and deepening the opportunities available. An "intensive" experience will go well beyond a three-credit externship involving 12 hours of work per week. Instead, students will work at least half-time for a semester—allowing them to take on far more significant responsibilities.

These experiences will take place during the spring semester of the second year and/or fall of the third year. This timing allows the practice experience to build on prior coursework and build toward electives in the final semester. Our expectation is that these experiential semesters will become a milestone during our students' Villanova legal education.

Select Initiatives:

- Expand externship opportunities to include placements beyond the Greater Philadelphia region, including international opportunities such as through the Rome Summer Program.

- Add opportunities with law firms, corporate counsel offices, and other for-profit settings in addition to strengthening the opportunities in non-profit and government settings.

- Add new cutting-edge clinical courses, such as the pilot health law clinic, and explore establishing other new clinics.

- Add externship opportunities with Catholic organizations such as Augustinian Defenders of the Rights of the Poor or the Good Shepherd Mediation Program.

We are moving beyond the traditional externship program to providing full-time and meaningful immersions in legal practice.

III. Cultivating a Signature Strength in Student Formation

We will assist Villanova Law students in finding their places in the legal profession and in preparing themselves for success and fulfillment.

The process of student formation has always been a part of a legal education at Villanova. We have never simply sought to teach a set of skills and body of knowledge, but instead to nurture our students in their holistic development, a goal at the heart of our Catholic and Augustinian education.

As we move forward with this Strategic Plan, our aim will be to approach student formation more thoroughly and intentionally than ever before—to put programs in place that will ensure that each student is well supported in a process of growth and self-discovery.

We have identified a number of promising initiatives to contribute to a focus on student formation:

- Change the nature of assessment in our classes, moving away from a single end-of-term exam to more useful periodic evaluation and feedback;
- Make faculty-student retreats a regular part of our calendar, which will provide a chance for reflection, discussion, and vocational discernment;
- Augment our advising program, providing students with both a faculty advisor and an advisor drawn from the ranks of the active bar; and
- Expand programming and offerings in our Career Strategy office.

Our aims in student formation are integrally connected to the other pillars of the Strategic Plan. As we develop a competency-based curriculum and a system through which students will choose courses to meet their competency requirements and track their portfolio of skills, we will empower them also to plan and measure their personal development.

As we expand experiential learning, immersing *all* students in practice environments, we will provide them with outstanding opportunities to learn about themselves and the law, thereby discovering areas of practice that fit their

strengths, which will confirm or change career decisions on the basis of direct experience.

As we make service a more central part of the experience, we will offer students more chances to find meaning in their legal work and to see how their life in the law can have a greater impact and yield satisfaction.

As we reimagine our curriculum, we will create opportunities for students to customize their educations as never before. As we explore joint degree programs and certificates, we will provide the chance to earn specialized credentials. And we envision the sequence of courses spanning a student's full JD experience with the goal of creating a much clearer progression from first year to graduation.

We want all students to have the chance to define a set of goals that will reflect their strengths and then to plan a program of study that will uniquely advance these goals.

Select Initiatives

- Make formative assessment and feedback central to each class.
- Support the moral and ethical formation of our students through new Career Strategy and Student Affairs programming.
- Implement regular faculty-student retreats.
- Expand opportunities for our commitment to service, including week-long service periods during semester breaks.

We are moving beyond a narrow definition of student success to focus on personal formation, guiding each JD candidate in finding and preparing for a vocation in the law.

IV. Finding New Ways of Enrolling Future Leaders

We will challenge the dominant measures of the law school applicant, seeking more powerful predictors of those who will excel at Villanova and in the profession.

For decades, Villanova has made its reputation as a source of leaders in and beyond the legal profession. From managing partners of firms across the City of Philadelphia to bar association presidents to a United States senator, state and federal judges, and a Pennsylvania governor, our alumni have made their mark.

Credit for this success can be traced back to the Law School's founding dean and his early colleagues, who actively sought out leadership potential in the students they recruited, seeking out not only valedictorians and Phi Beta Kappas, but also team captains, class presidents, and returning veterans.

As we think strategically about the alumni we want to send before the bar in the decades to come, we propose a return to this earlier admissions philosophy. We will evaluate candidates more holistically. We will also implement evidence-based admissions practices, applying data on the full range of factors that predict future success, both while in school at Villanova and in passing the bar.

The following data yields useful insights:

- Nationally, LSAT scores and undergraduate GPAs are mainly predictive of grades in the first year of law school and *not* predictive of achievement in professional careers;

- Our students, even those whose LSAT scores and undergraduate GPAs fall below our medians, pass the bar at extremely high rates;

- Reliance on the LSAT severely undermines our efforts to enroll a student body that is diverse in race, gender, ethnicity, and culture;

- Factors such as prior work experience, military service, and years out of college all correlate positively with bar pass rates and successful employment outcomes.

Together, these facts tell us that there are strong candidates in the applicant pool we will overlook if we focus exclusively on the LSAT and GPA. We need to improve our assessment of non-cognitive factors and should consider the value of life experiences in addition to an undergraduate degree. Along with leadership experience and potential, we should consider business and talent management, cultural competence, and public service.

Taking these steps will directly support our focus on competency-based education, helping us to enroll more students with strengths in areas ranging from collaboration to project management and goal-setting. It will also support our drive to increase diversity of all forms.

For years, law schools have focused more and more narrowly on LSAT scores and undergraduate GPAs in their admissions policies, because these numbers factor so heavily in calculations of national rankings. Attitudes are beginning to shift, however, and ranking formulas are under review with other qualitative factors, including diversity. By redefining our policies now, Villanova will help to redefine the admissions process.

Select Initiatives

- Improve the assessment of non-cognitive factors in the application process.
- Add in-person interviews as an admissions tool in select cases.
- Shape evidence-based recruitment policies, which look at the qualities of applicants who go on to perform well at Villanova and pass the bar at high rates.
- Track additional data over time to spot factors correlated with employment success and long-term achievement.

We will move beyond the current admissions process by applying an understanding of all the factors that make people successful as law students and lawyers.

V. Opening New Pathways into the School and the Profession

We will think creatively about the ways we admit students and structure their program of study, building new pipelines and removing old obstacles.

As we look across legal education and the legal industry, we see a landscape of sweeping change. The world in which our graduates now make their way is radically different from just a few short years ago. Competition for traditional positions is fierce, and the need for each newly minted JD to differentiate himself or herself in the marketplace is pressing. Meanwhile, law school applications across the nation are trending downward—most likely a direct reaction to the state of the job market.

Clearly, it is time to think imaginatively and pragmatically about new ways of reaching out to students and new ways of preparing them for what comes after law school. We see three promising directions for innovation:

- Develop joint admissions agreements and other special options to attract students we might otherwise not reach;
- Offer an accelerated degree to certain students with substantial prior career experience; and
- Create programs to help our students specialize more extensively, moving to the top in a competitive job market.

As we consider joint admissions agreements, alternatives include creating accelerated 3/3 bachelor's/JD programs with select undergraduate partner schools. These would offer the chance to earn both undergraduate and law degrees in six years (without shortening their time at VLS) and would appeal to academically talented students. We will also explore LSAT waiver agreements with feeder schools that graduate students with a demonstrated record of success at Villanova.

A logical start would be an offering in conjunction with Villanova's undergraduate Honors Program. We would then expand to include other sources of prospective students, including institutions with highly diverse enrollments.

A second promising possibility for expanding the pool of candidates considering Villanova is an accelerated degree: a five-semester program in which students with post-baccalaureate professional experience could earn additional credits through week-long modular courses at the end of regular semesters. This option would be in full compliance with ABA standards and offer an attractive choice for those looking to save tuition and time away from their careers.

Our third area of innovation focuses on new opportunities for degree specialization. We already offer a joint JD/MBA, JD/LL.M in Tax, JD/LL.M in International Study, and JD/MPA (Master of Public Administration). Our first priority is to take a rigorous look at the cost and time to complete each of these programs, ensuring that they offer an attractive value proposition, and then evaluate how to market them appropriately to prospective students.

We will then look to new opportunities—including more flexible certificate programs such as a program in Environmental Law in conjunction with Villanova's College of Engineering or a program in Health Law drawing on the resources of the College of Nursing.

By helping more of our students augment their JD with new interdisciplinary strengths, we can redefine the law degree and expand the possibilities our graduates can pursue.

Select Initiatives

- Make it easier to apply through early action and early decision programs, selective use of fee waivers and a streamlined process for transfer students.

- Develop accelerated 3/3 admissions programs with partner schools, including those with diverse enrollments.

- Strengthen regional connections and relationships with local feeder schools.

- Market the Villanova University School of Law more actively and skillfully – from consistent brand messaging to video production and social media to highlighting faculty scholarship and other achievements in our extended community.

We are moving beyond the boundaries of conventional legal careers, creating new options and opportunities for students seeking a future in the law.

VI. Strengthening Our Community and Our Commitment to Villanova's Catholic and Augustinian Mission

As we move forward, we will continue to honor our roots by being a diverse and inclusive community and by drawing strength and inspiration from our Catholic and Augustinian mission.

The Law School's Catholic and Augustinian identity is at the heart of this School, starting with our conception of the law itself—the understanding that the law is not simply about the manipulation of rules but is a fundamentally humanistic endeavor.

As educators, we embrace our responsibility not merely to confer legal competency, but to guide the students in our care by promoting their holistic development. We celebrate service, and, through our clinics, address challenges integrally related to the ideals of social justice. We have always defined ourselves as a community of inclusion—welcoming students of all backgrounds from our founding.

As we look to the future, we are committed to build upon the strengths that set this community apart:

- Find the best ways of reflecting our Catholic and Augustinian identity in our work;
- Affirm the mutual respect and concern that should guide all of our interactions; and
- Increase the diversity of our intellectual community, ensuring that people of all backgrounds and faiths feel welcome.

The initiatives through which we advance these goals will span a broad range: from exploring the creation of a Center on Law and Religion to strengthening feeder school relationships that will bring us more diverse students; from adding electives on Catholic teaching and the law to creating a new clinic focusing on adoption.

Among the ideas that have come forward related to diversity is the recommendation that we greatly intensify our recruitment of international students, with the goal of increasing the total international enrollment in our JD program. As we look to foster competencies such as a global outlook and inter-cultural understanding among all our students, this is clearly a valuable priority.

Many dimensions of this strategic plan interrelate, and many connect back to ideals rooted in our Catholic and Augustinian tradition—from the decision to expand service opportunities and to focus more intensively on student formation, to the proposal that we adopt more holistic admissions criteria.

We will continue to align our progress with the ideals on which the school was founded. As we negotiate the challenges that will inevitably arise, we will do so through the open dialog and the spirit of collegiality that have always been a core strength of this scholarly community.

Select Initiatives

- Add elective courses that examine the law and the legal profession from the perspective of Villanova's Catholic and Augustinian mission.
- Explore creation of a Center on Law and Religion.
- Foster an appreciation and understanding of our Catholic and Augustinian identity among faculty, staff, and students.
- Ensure that Villanova is welcoming to those of all backgrounds and faiths.
- Strengthen international student recruitment.
- Adjust the application to help identify and recruit academically-talented students with a demonstrated financial need.

We are moving beyond a time when our mission and our community were taken for granted and will work intentionally to foster our mission and support one another.

VII. Supporting Faculty Innovations

We will build on existing faculty strengths in teaching and research while promoting a diverse and dynamic intellectual environment and supporting faculty in devising, developing, and implementing innovations in legal education.

Villanova's law faculty will play a central role in implementing much of this Strategic Plan. Members of the faculty already are committed to outstanding teaching and scholarship, while the excellent legal writing, research, and clinical faculty's deep experience with skills-based teaching already provides some of the enhanced skills teaching that this Strategic Plan contemplates. Together we provide a solid foundation for this effort. Still, the initiatives envisioned by this Strategic Plan will require the faculty to:

- Incorporate the teaching of new lawyering skills in existing courses;
- Design and introduce new non-traditional courses; and
- Take on greater responsibilities in the professional formation of our students.

As we move forward with the implementation of the Strategic Plan, we will need to approach faculty development in a systematic and effective way. We will provide, through various mechanisms, opportunities for faculty members to maintain and acquire the skills necessary to teach a program of legal education that meets the ambitious aspirations of this Strategic Plan, such as:

- Workshops on innovative teaching methods;
- Grants to support faculty efforts to create new teaching materials or to explore and develop new skills; and
- Procedures for rewarding successful efforts to develop the skills necessary to teach the broader range of competencies that the more powerful curriculum and enhanced opportunities for experiential learning will require.

Increased collaboration and cross-training among faculty will allow us to build on and broaden existing individual strengths resulting in a faculty with a more systematically diverse set of abilities.

We will not turn away from our commitment to fostering and supporting excellence in traditional teaching and research. Our students will continue to need to be taught basic legal concepts and how to think and express themselves like lawyers. Our goal, rather, is to enlarge the range of knowledge, values, and skills that students acquire at Villanova. To do this, we will recruit and retain inventive teacher-scholars and support a dynamic intellectual environment that strengthens our core programs as well as our curricular innovations. At the same time, we will explore means by which to support faculty in acquiring skills to implement other pillars of the Strategic Plan.

Select Initiatives

- Enhance efforts to recruit, retain and support the best teacher-scholars, including furthering faculty diversity, providing additional endowed chairs, and recognizing and rewarding a broader range of achievements.

- Provide support (financial and otherwise) for the development and implementation of innovative teaching modes and learning experiences.

- Expand service in the community as an opportunity for professional development for faculty and students alike.

- Capitalize on our new building's robust academic technology infrastructure, including developing faculty skills for conducting online distance education programs.

- Increase opportunities and resources for faculty to enhance their scholarship and teaching.

We are moving beyond the traditional model of a law professor to build a faculty at the leading edge of law teaching and mentoring.

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HEADLINE: How law school became a bad deal

BYLINE: Charles Lane

BODY:

In "Broadway Danny Rose," Woody Allen plays a theatrical agent forever looking on the bright side of his clients' sorry careers. Don't worry, he tells a washed-up lounge singer, "you're the kinda guy that will always make a beautiful dollar in this business." For the past generation or so, Danny Rose's optimism also applied to anyone with a law degree. Lawyering might be disappointingly tedious, but at least it was remunerative enough to justify investing thousands of dollars in tuition. Heck, a law degree even opened doors in business and journalism.

Thousands of liberal arts BAs grew up on those assumptions. "Everyone is pre-law," journalist Michael Kinsley quipped, "until the day they enter medical school." A JD himself, Kinsley knew whereof he spoke.

Alas, the economic benefits of a legal education are no longer certain. According to a recent report in the Wall Street Journal, only 55 percent of the 44,000-member law school class of 2011 landed a legal job within nine months of graduation. Twelve percent had found other professional employment. Meanwhile, the average law grad carried $100,000 in student-loan debt.

Far from guaranteeing a "beautiful dollar," law school looks increasingly like a bad deal - even, for some, a rip-off.

The mismatch between law school's promised benefits and its actual costs is the subject of no fewer than 12 pending lawsuits by unhappy graduates - and of Brian Z. Tamanaha's remarkable new book, "Failing Law Schools." Tamanaha's critique amounts to what lawyers call a "statement against interest." A legal academic, he has nothing to gain by making it. But, like a defendant's admissions of wrongdoing, Tamanaha's arguments gain credibility not only because they reflect first-hand knowledge but also because they are not self-serving.

In part, the declining fortunes of newly minted JDs reflect the generally sluggish U.S. economy. But, as Tamanaha argues, lower demand for lawyers at big corporate firms - the ones that pay the most - probably reflects permanent structural shifts in the market for legal services.

The real issue is that a high-paying job has become the only kind a law grad can afford to accept. Why? As Tamanaha explains, law schools have spent the past quarter-century jacking up their tuition, from an average of $2,400 per year at public institutions in 1987 to $18,500 in 2009; the corresponding figures at private law schools are $8,900 and $35,750. These increases far outstripped inflation. No wonder 90 percent of law students borrow money that in many cases can be repaid only by working in corporate law or the equivalent.

And why have law schools raised tuition? Because accreditation by the guild-like American Bar Association hinges on expensive inputs such as big libraries and high faculty salaries. The ABA accreditors, drawn from the ranks of legal academia, favor research as well, which means that law schools must not only pay their professors plenty but limit the amount of time they spend teaching.

Pernicious, too, is the influence of rankings by U.S. News & World Report, which are crucial to attracting tuition-paying students - and which depend heavily on schools' reputations among faculty members. Unsurprisingly, schools boost their reputations by hiring star professors and giving them plenty of time to write rather than teach, thus exacerbating the high personnel costs that drive tuition higher.

Some law schools have actually faked admissions data to boost their rankings. The ABA recently imposed a $250,000 fine on the University of Illinois College of Law for reporting six years' worth of inflated test scores and grades through 2011. Villanova has been censured by the ABA, though not fined.

A degree from Harvard or Yale, expensive though it may be, is still a ticket to lucrative employment. The problem is that the vast majority of students attend the vast majority of other law schools. Of the 201 ABA-accredited schools, only 12 reported that 80 percent of their 2011 graduates had landed full-time, long-term legal jobs, according to the Wall Street Journal. At almost two dozen less-prestigious schools, fewer than 40 percent of graduates had secured such jobs.

"Many law professors at many law schools across the country are selling a degree to their students that they would not recommend to people close to them," Tamanaha writes. He also accuses them of lying about it: Some schools have been caught luring students with inflated post-graduation employment statistics.

If you think those claims sting, consider Tamanaha's argument that law school effectively transfers money from students to relatively well-to-do professors, via student-loan debt - much of which is ultimately guaranteed by federal taxpayers who are generally not as well-off as the typical law professor.

Law school faculties are also bastions of liberal politics, and this irony is not lost on Tamanaha, who accuses the professoriate of not only enriching itself but also erecting de facto barriers to upward social mobility and true public-service law practice, all in the name of "academic freedom" and other abstractions.

Tamanaha argues that most law schools should emphasize lower-cost practical training, perhaps in fewer than the three years of study that are standard now. The resulting lawyers would serve the mundane but vital needs of ordinary people, a surprisingly large number of whom cannot afford representation even though they are not indigent. It would be an honorable calling and a decent living.

Tamanaha's message - that law schools fail to fulfill this social purpose and that their failure is due to their selfishness and myopia - may not go over well in faculty lounges. But it is an important one nonetheless.

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FAILING LAW SCHOOLS

By Brian Z. Tamanaha

Univ. of Chicago. 235 pp. $25

LOAD-DATE: August 5, 2012

The Washington Post

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Will law school students have jobs after they graduate?

By Elizabeth Lesly Stevens, Published: October 31 | Updated: Thursday, November 1, 8:00 AM

Erwin Chemerinsky is a noted constitutional law scholar who has devoted his career to legal education. He is also the founding dean of the law school at the University of California at Irvine. Chemerinsky's new school opened in 2009, amid the financial crisis and a related — and perhaps permanent — sharp constriction in the job market for new lawyers.

Though the University of California has four well-established law schools, Chemerinsky says UC-Irvine's program fills an unmet need. Irvine, he says, "puts far more emphasis on preparing students to be lawyers at the highest level of the profession than perhaps other law schools."

To do that, Irvine needed top-flight facilities and professors. Price, seemingly, is no object. UC-Irvine, a public university, offers the second-most-expensive legal education in the country. At more than $77,000 a year including living expenses for out-of-state students, a JD from Irvine tops the bill from Harvard, Yale or Stanford. Only the University of California at Berkeley, at almost $78,000, costs more.

Chemerinsky seems untroubled by this, arguing in an interview that Irvine is no more expensive than Stanford or the University of Southern California, really. He highlights the success of his first class of 56 students, which graduated in May. Nearly 80 percent have already found full-time jobs as lawyers. Excellence costs, he says, and, by implication, excellence pays.

"If we are not going to be subsidized by the state" at previous levels, Chemerinsky says, "and we are going to be a top-quality law school, there is not an alternative in terms of what it is going to cost. Everybody wishes it would be less expensive. But there is not a way to do it without compromising quality."

There are a few other recent statistics that Chemerinsky and his colleagues at the nation's law schools — a disproportionate number of which are in or near Washington — might want to bring into sharper focus.

In 2011, more than 44,000 students graduated from the 200-odd U.S. law schools accredited by the American Bar Association. Nine months after graduation, only a bit more than half had found full-time jobs as lawyers.

The U.S. Bureau of Labor Statistics forecasts 73,600 new lawyer jobs from 2010 to 2020. But just three years into that decade, about 132,757 new lawyers have hit the job market.

While not every new JD seeks employment as a lawyer, it is safe to say that planning to work as an attorney is not rare among law students. But perhaps it should be. Data from the National Association of Legal Career Professionals indicate that since 2010, about 75,000 new law grads have found full-time jobs

as lawyers.

So, in theory, all of the BLS-forecasted job openings through 2020 have already been filled, and 59,157 new lawyers are still looking for “real” law jobs.

Yes, of course some of the JD graduates this year and in the years to come will find high-paying, partner-track jobs at big firms and elsewhere. But the scale of the imbalance over a decade gives some indication of just how tough it is — and will be — as armies of newly minted JDs rise every year. By 2020, about 300,000 additional grads will join those 59,157 in a hunt for jobs that, statistically, are not to be found.

Though law-school enrollments have dipped slightly, these institutions have tenured faculty to pay and often luxe facilities to maintain. Washington is home to several schools with particularly large enrollments (as reported by the ABA for 2011-2012): Georgetown, at 2,216, is the nation’s largest law school; George Washington University, at 1,629, is fifth; and American University, at 1,323, is 10th.

AU is even in growth mode, as it undergoes a $130 million expansion to an eight-acre complex near the Tenleytown Metro station. The new facilities would enable the school to drastically increase enrollment, but AU plays that down, perhaps mindful that 35 percent of its 2011 class had found full-time lawyer jobs nine months after graduation.

The expansion “does not mean that we are compelled to have 2,000 students,” says AU law spokeswoman Franki Fitterer. “At present time we are not planning to increase the JD program.”

Law students can borrow today — often with federally guaranteed loans — the full cost of tuition and expenses, and worry later about repaying what could total $237,000 for a UC-Irvine-level education.

For years, the return on investment made sense, as a law degree from a respected but not stellar school seemed to promise a long, fairly lucrative career, with more modest loans paid off in a 10-year span. But things changed as tuitions rose sharply and employment and compensation lagged. Federal tuition-repayment plans adjusted for low-earning lawyers now stretch to 25 years. If the loan is not paid off at the 25-year mark, the balance is forgiven, and the taxpayers eat the loss.

“I’m not sure how well-thought-out a lot of decisions [to invest in law school] are, in all candor,” says Mark Medice, national program director for Peer Monitor, a Thomson Reuters unit that tracks hiring and compensation data at large law firms, which traditionally have offered the highest-paying jobs to new lawyers. The market for new lawyers is so weak, says Medice, who himself has a JD and an MBA, that the return on investment is questionable for those at all but the most elite law schools. “If you have to pay $100,000 to do it, is it worth it?” he wonders. “Arguably, no.”

Besides, most law schools offer such a broad overview that legal education is “generic” and lacks utility, Medice continues. While most law schools now claim some sort of clinical or practical training, the broader trends may demand more fundamental reform.

Perhaps the structure of the entire system needs to change, with number of JDs graduating each year declining drastically. Medice envisions a new model, built around year-long, hyper-specific skills — such as discovery, regulatory matters and litigation support — that would quickly and relatively cheaply train students for the kinds of legal jobs that are available.

Though down-market compared with the Harvard Law world depicted in the 1973movie “Paper Chase,” this trade-school model “could really benefit the industry in a cost-effective way,” Medice says.

Meanwhile, hundreds of thousands of law students are being trained for a profession that no longer has room for most of them.

“It is hard to describe the misery we are generating,” says Paul Campos, who has taught at University of Colorado Law School since 1990. “We close our eyes to an entire generation of people we are selling a bill of goods to. We have talked ourselves into believing that what we are doing is defensible, and it’s not.

"It is not defensible to charge people $200,000 for a degree which is worse than worthless. We have a systemic catastrophe on our hands."

Campos blames the federal loan program, which he says issues loans to cover any amount of tuition, to any number of law students, with no regard for post-academic realities. In his Law School Tuition Bubble blog, 2008 Marquette University JD Matt Leichter, who writes frequently for AmLaw Daily, estimates that 2010 law school graduates took on $3.6 billion in loans, and that students over the next decade (for whom there are statistically zero jobs) will borrow $53 billion.

"If the federal government applied any actuarial standards, half the law schools would shut down tomorrow," Campos says. "The whole thing is a basically a giant subsidy machine run for the benefit of legal education."

Campos says his crisis of confidence in his industry reached a tipping point in May 2010, when "one of my all-time favorite students committed suicide a year to the day after he graduated. He was a very, very thoughtful and gifted young guy; and the long and the short of it, he couldn't find a job.

"It was a triggering event for me. I started doing some nitty-gritty research into how many people were getting jobs, what kind of jobs and what level of debt. And I was genuinely shocked."

About a year after his student's death, Campos launched a blog, Inside the Law School Scam, and he published a book in the same vein in September, not long after Washington University law professor Brian Tamanaha's well-received "Failing Law Schools."

This is not a crisis of the elites. The exceptional, those graduating at the top of their law school classes at Stanford, Yale or Harvard will, as ever, do just fine. And choosing to attend a third- or fourth-tier law program, which can have tuition on par with the most-expensive elite schools, has long been seen as a dicey proposition.

Given that, perhaps Chemerinsky is brilliant in his bid to create a Yale of the West. If the middle is now doomed, the bottom has always been doomed, and only the elite are likely to weather the storm, then join the elite.

But if UC-Irvine Law ends up being just another respected middle-of-the-pack academy, its graduates, who will soon number 200 a year, will join the crisis already affecting the students of mid-tier schools.

Consider this: Of the 576 who graduated George Washington University this year, 20 percent — 112 — are employed as lawyers only because GWU pays them $15 an hour, up to $525 each week, to do volunteer work. The average indebtedness of GWU's class of 2011 was $127,360. Trying to adjust, the school trimmed first-year enrollment this fall by 16 percent, to 400.

As these grand colliding forces play out, the future may be ripe for what Peer Monitor's Medice envisioned: low-cost, bare-bones law programs that act more like trade schools.

The law school at the University of the District of Columbia seems to be working in that vein. It is not fancy, housed as it is in a newly renovated but far from swank building on upper Connecticut Avenue. It is not even ranked on an overall basis by U.S. News, though UDC's curriculum requiring hundreds of hours of hands-on training does rank 10th on U.S. News's list of top clinical programs in the country.

An embarrassingly low percentage — just 20.5 percent — of its 2011 graduates are reported as employed nine months post-graduation in full-time jobs requiring a JD. A hyper-practical law degree from UDC is hardly a sure thing.

But it doesn't pretend to be, and perhaps that is what is rather refreshing about it. UDC Law's dean, Shelley Broderick, is a wry, unpretentious former criminal defense attorney who paid her way through Georgetown Law with loans and the proceeds of her job as a Teamster working on the Trans-Alaska pipeline.

Here is her pitch, delivered on a break from packing her own moving boxes, as she wore a work shirt and

flip-flops one afternoon in September: “It’s affordable, it’s accessible, its curriculum is laser-focused on the kinds of jobs we are trying to prepare you for. We don’t invite people to come here suggesting [they will] get jobs in the big firms. That is not who we are. If you want to be a public interest lawyer, public service lawyer, public policy lawyer, in private practice in a small firm, this is perfect for you. Because you can do this in an affordable way and find work that you are trained to do, educated to do. We can’t all be Yale.”

UDC is dirt-cheap, as law schools go. It charges D.C. residents $10,620 a year (with living expenses, UDC costs $41,630; $52,750 for nonresidents).

And Broderick seems to make her pitch with clear eyes and clear conscience.

Could Broderick make the same pitch if UDC cost $70,000 a year? Would “excellence” justify those costs?

“I couldn’t do it,” Broderick says. “There are not jobs where you can pay that back in a reasonable amount of time for the vast majority of people who go to law school. I couldn’t do it, because it is a lie.”

Elizabeth Lesly Stevens last wrote for the Magazine about the historic Carter’s Grove estate in Virginia. To comment on this story, send e-mail to wpmagazine@washpost.com.

A Call for Drastic Changes in Educating New Lawyers

Rex C. Curry for The New York Times

Laurel G. Bellows, the president of the American Bar Association, at the group's midyear meeting over the weekend in Dallas.

By ETHAN BRONNER
Published: February 10, 2013

DALLAS — Faced with profound and seemingly irreversible shifts, the legal profession is contemplating radical changes to its educational system, including cutting the curriculum, requiring far more on-the-ground training and licensing technicians who are not full lawyers.

The proposals are a result of numerous factors, including a sharp drop in law school applications, the outsourcing of research over the Internet, a glut of underemployed and indebted law school graduates and a high percentage of the legal needs of Americans going unmet.

"There is almost universal agreement that the current system is broken," said Thomas W. Lyons III, a Rhode Island lawyer and a member of the American Bar Association's Task Force on the Future of Legal Education, which gathered here over the weekend for a public hearing at the association's midyear meeting.

While a few schools are freezing tuition and others are increasing hands-on learning, critics are increasingly

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saying that the legal academy cannot solve its own problems, partly because of the vested interests of tenured professors tied to an antiquated system. Effective solutions, they insist, will have to be imposed from the outside.

Since law schools are regulated by state courts, that means convincing top state judges of the necessity of major change.

At the task force's hearing, where lawyers and students gave testimony, most said the time was ripe for that change.

Many recommended reducing the core of law school to two years from three to cut costs. Others suggested that college juniors should be encouraged to go directly to law school, the bar exam should be simplified, accreditation standards should be relaxed to allow for more experiential learning, and states should establish training for the legal equivalent of nurse practitioners.

The task force was set up last summer and was given 24 months to issue its recommendations. But its chairman, Randall T. Shepard, a former chief justice of the Indiana Supreme Court, said a sense of crisis was driving the group to do so this fall.

Over the years, bar associations and foundations have called for similar changes, with limited impact. But leaders in the legal profession say that this time is different.

"We are going to look at everything from scratch," Laurel G. Bellows, a Chicago lawyer and the president of the American Bar Association, said in an interview. "We have to keep everything on the table."

Paula Littlewood, a task force member and the executive director of the Washington State Bar Association, put it this way to her colleagues: "There's a time for incremental change and a time for bold change. This is the time for bold change."

Hers is one state that is not waiting. It has established a board to create a program for limited-license legal technicians, the first in the country. Within a year, the board is expected to lay out the educational and professional framework for the technicians. They will have more training and responsibility than paralegals but will not appear in court or negotiate on their clients' behalf.

"The consuming public cannot afford lawyers, and the profession needs to figure that out and own it," Ms. Littlewood said. "Our hope is to provide more access. The second point is that you have these folks out there doing unauthorized practice, which is harming the public. The hope is to bring them under the tent."

Elsewhere in the country, law schools are trying to deal with declining popularity in a range of ways. The University of Akron Law School in Ohio has frozen its tuition and virtually ended its out-of-state surcharge. At the University of Oregon, Michael Moffitt, the law school's dean, has started clinics on nonprofit groups, environmental policy and probate mediation. He has also set up law courses for students in other parts of the university, which brings revenue to the law school.

"The problem is that we have been selling only one product," Mr. Moffitt said. "But if you are getting a business degree, you need to know about contract law. City planners need to know about land-use law. So we at Oregon are educating not just J.D. students.

"Demand is through the roof," he added. "I feel like I am living a business school case study."

Nicholas W. Allard, who became the dean of Brooklyn Law School in New York last summer after a career in government and private practice, said that in the past, graduates of elite schools arrived at major law firms with little knowledge of the actual practice of law. As a result, corporations hiring those firms felt that their large hourly bills were in effect going to train those graduates, who were assigned some of their work. Mr. Allard said those corporations are no longer willing to do that.

As a result, he said, law schools need to have far more practical training and closer ties to the legal profession. That has led a number of schools to choose deans from within the profession, like Mr. Allard, rather than from academia.

He also said legal practice had a growing global component that needed to be addressed. “Some international exposure is being looked at for the first year in many places,” Mr. Allard said. “Whether you have a shingle up in Park Slope or in Maine, you are going to have some need for an appreciation of international legal issues.”

One group that came under frequent attack at the meeting here was tenured law school professors, who were criticized as having high pay, low productivity and a remote relationship with the practice of law. Robert L. Weinberg, a retired founding partner of the Washington law firm Williams & Connolly and a lecturer at George Washington University Law School, said that instead of restricting the number of adjunct lecturers like himself, law schools ought to greatly increase them because they bring real-world examples to students.

Jim Chen, a professor of law at the University of Louisville and a former dean of its law school, said that to reduce law school from three years to two would mean that, in turn, tenured professors, whom he called the biggest expense for law schools, would have to take a one-third cut in pay. But, Mr. Chen said, they would never accept that, and the impetus for change would have to come from State Supreme Courts.

Derek M. Tokaz, the research director of Law School Transparency, a legal education policy group that seeks to guide some of the changes, told the gathering that drastic changes were needed in student loans and accreditation. Rather than start with the number of required classroom minutes or student-teacher ratio, Mr. Tokaz said, what students need to know upon graduation should be agreed upon first.

As the meeting ended, one task force member, Michael P. Downey of St. Louis, summed it up. “The house is on fire,” he said. “We don’t want a report that sits on a shelf.”

A version of this article appeared in print on February 11, 2013, on page A11 of the New York edition with the headline: A Call for Drastic Changes in Educating New Lawyers.

Flights of Winged Majesty

Op-Ed: The Change Upon Christ's Rock

Middle-Class Afghans Haunted by Future

has turned into a prop for a campaign against women and gays.

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A Dignified Ending for an Ugly Story

Law School Sues Over California Bar Passage Mandate

BY KAREN SLOAN
The National Law Journal

A rule that requires state-accredited law schools in California to maintain bar passage rates of at least 40 percent has prompted a federal lawsuit.

The Southern California Institute of Law filed suit February 4 against 22 sitting and former members of the Committee of Bar Examiners of the State Bar of California in the U.S. District Court for the Central District of California. It alleged that the recently adopted bar-passage minimum — and the committee's authority to oversee state-accredited law schools in the first place — are unconstitutional.

The law school claimed that the committee violated its own internal procedures in adopting the rule, and accused committee members of waging a vendetta against it.

The school's 42-page complaint detailed alleged free-speech and due-process violations, but the main focus was the bar passage rule. Adopted in December, it applies to a cumulative bar-passage rate over five years and is retroactive. Previously, the committee considered bar passage rates, but did not set out a minimum. Schools that don't meet the 40-percent standard this year would receive notices of noncompliance, and by 2016, noncompliant schools could face probation and loss of their state accreditation.

Shortly after adoption of the rule, the committee's chairman, Sean McCoy, told *The California Bar Journal* that the change was intended to help the panel gauge the quality of the education at state-accredited schools and clarify its expectations. A representative of the state bar declined to comment on the pending lawsuit.

The rule was opposed by administrators at many of the 18 California-accredited law schools, which had a cumulative pass rate of 32 percent for first-time takers on the July 2012 bar exam and 11 percent for repeaters.

Southern California Institute Dean Stanislaus Pulle declined to comment, beyond saying, "We live in a nation of laws."

The school, which offers only a part-time night program at campuses in Santa Barbara, Calif., and Ventura, Calif., claimed in its complaint that the rule is unfair because many of its students are older, working parents of moderate financial means who may lack access to pricey bar-exam prep courses. The rule would force the school to "narrow its admissions gate" and alter its curriculum focus on bar exam preparation, according to the complaint.

"This new standard is a wooden test that fails to take into account the school's mission, the nature of its student body, the quality of its faculty and the academic program, its efforts to maximize students' chances of success on the bar exam, or other factors

Bar continues on 8

Bar

continued from 4

considered historically during the reaccreditation process," the complaint reads.

The school also objected that it could suffer for bar passage rates established before it knew it would have to meet the threshold. The 40-percent figure was picked arbitrarily, without any proof that a school's bar passage rate is a reflection of the quality of its educational program, the complaint said.

Finally, in an allegation that could prove sweeping should the court agree, the school challenged the committee's regulatory authority. The panel operates on behalf of the California Supreme Court, but it should be up to the legislative and executive branches to set out accreditation standards, the school alleged.

"The legislature provided no policy guidelines and gave no directions for the implementation of such policies," the complaint reads. "By acting in violation of state constitutional prohibitions against judicial and quasi-judicial rule-making, defendants acted without legal authority."

The complaint includes allegations that several people involved with the committee have attempted to thwart the school's ability to obtain a curriculum waiver and have tried to oust Pulle from his position by introducing a mandate that only U.S.-trained attorneys may serve as law deans. Pulle was educated in the United Kingdom.

The law school seeks an injunction against the enforcement of the new bar passage rule plus damages.

Karen Sloan is a reporter for The National Law Journal, *a* Legal *affiliate based in New York.* •

Rule 1.1: Competence

Client-Lawyer Relationship

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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Rule 5.1: Responsibilities of a Partner or Supervisory Lawyer

Law Firms And Associations

Rule 5.1 Responsibilities Of Partners,Managers, And Supervisory Lawyers

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

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