

American Legal Education and Professional Despair

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Lawyers are among the most unhappy, least respected wealthy people in America.

Unhappy? At any given time, roughly 19 percent of lawyers suffer from depression, a rate almost triple that of the general population.¹ Lawyers are twice as likely to suffer from drinking problems, with 20 percent afflicted.² Numerous studies paint a picture of a profession besieged with high levels of stress, deep anxiety, high rates of suicide attempts, and deep discomfort with job choices.³

The anecdotes are equally vivid. An amusing animation describing the gap between the ideals of prospective law schools and the reality of law firm practice has soared to over a million YouTube views.⁴ The blogosphere is littered with popular websites dedicated to exposing the woes of the legal profession, and one can't attend any significant gathering of lawyers without hearing endless lamentations regarding work hours, purposelessness, and money.

¹Debra Cassens Weiss, "Lawyer Depression Comes Out of the Closet," *ABA Journal*, December 13, 2007, http://www.abajournal.com/news/article/lawyer_depression_comes_out_of_the_closet.

²Ibid.

³For a roundup of studies on depression, suicide, anxiety, and discontent within the legal profession, see Raymond P. Ward, "Depression, the Lawyers' Epidemic: How You Can Recognize the Signs," *Beyond the Underground* (blog), March 16, 2005, http://www.legalunderground.com/2005/03/lawyer_depressi.html.

⁴"So You Want to Go to Law School," YouTube animated video, 4:58, by David Kazzie and Xtrnormal.com, posted by "dwkazzie," October 10, 2010, <http://www.youtube.com/watch?v=nMvARY0IBLE>.

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But by some objective measures, all this wailing is almost absurdly misplaced. The Bureau of Labor Statistics put the 2009 mean annual wage for the nation's more than 550,000 lawyers at \$129,020—and that was in the midst of a recession. The mean wage topped \$150,000 in Washington, D.C., New York, California, and Delaware.⁵ If you asked untold millions of Americans if an annual salary exceeding \$120,000 would materially contribute to their well-being, they would answer with a resounding “yes.” For a large percentage of lawyers, however, this substantial slice of the economic pie doesn't come close to buying happiness.

There are, no doubt, many reasons for the morale crisis in the legal profession. After all, not many people like lawyers. In an annual Harris poll, law firms are in the bottom five institutions in public confidence (along with Congress, Wall Street, the press, and labor unions), with only 13 percent of the population expressing a great deal of confidence in the leaders of the legal profession. By contrast, military leaders inspire confidence in 59 percent of Americans.⁶

Further, many aspects of legal work are objectively stressful. Litigation is rife with conflict even in the most courteous jurisdictions, and trials are known to tax the endurance of even the most seasoned litigators. During my law firm days, we'd schedule vacations after large trials, knowing full well that we'd be utterly exhausted for days following the verdict (and inevitable post-trial motions).

Additionally, the type of people attracted to the legal profession may not be all that pleasant. At least one psychologist has noted that lawyers tend to be perfectionists and pessimists.⁷ This makes intuitive sense: perfectionists tend to do well in school, and they also possess the attention to detail necessary for good legal work, but pessimism is perfectionism's inevitable handmaiden. We can't be perfect, the system often fails, and constant exposure to the darker corners of humanity (after all, most people seek legal help only when something has gone wrong) leads to cynicism. As one veteran attorney told me my first week on the job, “The practice of law would be great...if it weren't for clients.”

⁵U.S. Department of Labor, Bureau of Labor Statistics, “Occupational Employment and Wages, May 2009, 23–1011 Lawyers,” Occupational Employment Statistics, <http://www.bls.gov/oes/current/oes231011.htm>.

⁶“Virtually No Change in Annual Harris Poll Confidence Index from Last Year: But Confidence in the White House Drops 9 Points,” Harris Interactive, News Room, March 9, 2010, <http://www.harrisinteractive.com/NewsRoom/HarrisPolls/tabid/447/ctl/ReadCustom%20Default/mid/1508/ArticleId/232/Default.aspx>.

⁷Lynn Johnson, “Stress Management,” *Utah State Bar Journal* (January/February 2003), http://www.utahbar.org/barjournal2000/html/january_february_2003_6.html.

Moreover, interacting with perfectionist pessimists can be difficult. In organizations, lawyers are often seen as hurdles to cross, not enablers in organizational success. “This will have to pass legal” becomes a statement of dread as lawyers rain on parades, scold clients for causing potential—no actual—problems, and generally act as the stereotypical schoolmarms of the present age, smacking with rulers anyone who strays beyond the lines.

But there’s another culprit in legal despair, another force working in the hearts of young lawyers-to-be, a force with outsized influence in their future success but with seemingly minimal awareness of their looming professional reality: law schools.

In no other professional school is there a starker gap between the profession as practiced and the profession as taught. Not only does law school fail to prepare students for their professional life, it often actually sets them up for defeat and disappointment. In short, law school promises more than it can deliver financially, professionally—and perhaps most critically—emotionally. If lawyers are on a path to despair and disappointment, law schools put them on that path and give them a hardy shove down the way.

Fuzzy Finances

First, the finances. On January 8, 2011, the *New York Times* published a lengthy story that represents in-depth mainstream reporting at its best. Called “Is Law School a Losing Game?” the article lays out in devastating detail the changing financial landscape of modern legal education.⁸ On the front end, costs are skyrocketing. The *U.S. News & World Report* law school rankings indicate that even tier 3 and tier 4 schools are charging as much as \$44,000 per year for tuition, with many schools charging well over \$30,000.⁹

But does this enormous outlay represent a good financial investment? Schools go to great lengths to assure students that it does. Employment statistics are massaged to exaggerate graduate success. These practices include:

- Counting *any* job as a successful placement, even if the job is outside the legal field. As the *Times* piece notes:

⁸David Segal, “Is Law School a Losing Game?” *New York Times*, January 8, 2011, <http://www.nytimes.com/2011/01/09/business/09law.html?pagewanted=1&ref=homepage&src=me>.

⁹“Best Law Schools: Ranked in 2010,” *U.S. News & World Report*, Education, <http://grad-schools.usnews>.

A law grad, for instance, counts as “employed after nine months” even if he or she has a job that doesn’t require a law degree. Waiting tables at Applebee’s? You’re employed. Stocking aisles at Home Depot? You’re working, too.¹⁰

- Basing job placement numbers entirely on self-reporting and omitting non-responsive graduates, a process which is inherently likely to skew numbers higher (“because graduates with high paying jobs are more likely to respond than people earning \$9 an hour at Radio Shack”).¹¹
- Hiring graduates as temporary workers—days in advance of the reporting deadlines for employment surveys.¹²

Given such transparently faulty methodology, it’s no surprise that at least one influential critic, William Henderson of Indiana University’s Maurer School of Law, calls it “Enron-type accounting.”¹³

But do students know of these methodological flaws? They do if they read the *New York Times* on January 8, 2011. Otherwise, students will have to do their homework and—above all—ignore the promotional materials published by their chosen schools.

But the mismatch between job promises and job realities is only a part of the financial picture. Large starting salaries feel considerably smaller when initial student loan payments come due, and recent law graduates quickly learn that—as with many professions—the truly large dollars go to but a select few. For many lawyers, attaining prosperity is a lifetime process and not the immediate (or even medium-term) consequence of their law school education.

But this is not the picture presented in law school. To the extent law students interact with financially struggling lawyers, they interact with the legal profession’s “virtuous poor,” the struggling, idealistic Legal Aid lawyers and activists who universally claim to have given up the untold riches that were just hanging before them—ripe for the plucking—to pursue social justice. Their professors certainly don’t struggle. A quick look at salary data shows that law professors are among the highest paid faculty in academe.¹⁴ And many

¹⁰Segal, “Law School Losing Game?”

¹¹Ibid.

¹²Ibid.

¹³Ibid.

¹⁴“Public University Salaries,” Databases, Collegiate Times, accessed February 22, 2011, <http://www.collegiatetimes.com/databases/salaries>.

supplement their income through generous consulting arrangements or high-priced hired-gun representation. Uniformly prosperous (tenured) professors—discussing their exotic outside legal interests as they teach perhaps two courses per semester—do not present students with anything approaching a realistic view of the legal profession.

Nor do their invited guests. Admittedly, my Harvard Law (as a student) and Cornell Law (as a lecturer) perspectives are skewed, but our in-class guest speakers presented a veritable who's who of prosperity, fame, and virtue. From mob lawyers (thank you, Prof. Dershowitz, for that particularly entertaining class) to federal judges to television talking head activists, the message was clear: Prosperity, and excitement, are yours for the taking.

Failure at the Core

This hype is, at some level, understandable, and it might even be excusable if law schools were preparing students for their looming professional challenge—their actual roles as lawyers, representing clients.

Here, law schools fail. Utterly. But not in the first year. That first year, law students have to learn a different mode of thinking and reading. Quite literally, they have to become fluent in “legalese,” a process for which the law school's typical case study method is well-suited. Students are introduced to legal concepts like consideration (in contracts), causation (in torts), or fee simple ownership (in property), not through textbook discussions of the concepts, but through reading actual historical court opinions adjudicating actual disputes. For the student used to dry textbook descriptions, it's eye-opening to see these concepts explained and amplified in the context of real-world conflict. Law students not only learn at least a small (but important) sliver of knowledge about the law, but how legal arguments are formed, argued, and decided.

So far, so good, but then students return for a second year, and the law school does it all again, but with different subjects. The first-year routine of property, torts, contracts, criminal law, and (sometimes) constitutional law becomes the second-year routine of corporations, secured transactions, advanced criminal procedure, and federal courts. Cases that took two hours to slog through the first year can be read in twenty minutes the second and scanned in ten minutes the third. That's not to say that students have

mastered the subjects—by no means, the subjects are too vast in scope. Instead, they’ve mastered the case study method. No more. No less.

But have they learned how to practice law? Certainly not. Whereas doctors go through preclinical and clinical phases of their education, teachers endure student teaching, and social workers and counselors often have a mandatory (and sometimes semester-long) “practicum” where they counsel actual clients, most law students can skip any clinical phase entirely. In other words, one can attend law school, graduate with honors, pass the bar, and “hang out the shingle” without ever interacting with a single client. To take one example, though a top school like Vanderbilt Law does offer a variety of clinical courses, it does not require *any* clinical credit to complete a degree and in fact caps the amount of clinical credit that *can* count towards a J.D.¹⁵ Such limits are not atypical.¹⁶

The consequences are not difficult to imagine. For those law students who choose—as I did initially—to pursue the “big firm” career track, the obligatory summer job is a legal Disneyland, a parade of expensive lunches, no-stakes busy work, and special events that, even in its most rigorous form, cannot compare to a “real job.” One of my summer jobs included an overnight trip to Chicago, outstanding tickets to a Cubs game at Wrigley Field, and a spectacular steak dinner at a fine Chicago eatery afterwards.

Just another day at the office.

Then comes the bracing reality of a first job. I’ll never forget the moment when a partner handed me stack upon stack of documents, asked me to review them thoroughly and “draft a complaint for breach of contract.” He might as well have asked me to redesign the Space Shuttle’s external fuel tank. I remember thinking, “After I read these documents, I can probably write five thousand words about how this transaction oppressed women and minorities, but I don’t have the slightest idea how to state a legal claim.

This was but my first brush with my own staggering incompetence—something that could (and should) have occurred in the “clinical” setting of a good law school education, when I was under the watchful eye of a clinical legal educator rather than the distracted gaze of a hard-charging junior partner while billing clients several hundred dollars per hour. For the young

¹⁵“Clinical Courses,” Clinical Legal Education, Vanderbilt University Law School, <http://law.vanderbilt.edu/academics/clinical-legal-education/clinical-courses/index.aspx>.

¹⁶See also Harvard Law School’s J.D. requirements: <http://www.law.harvard.edu/academics/handbook/rules-relating-to-law-school-studies/2010-2011-requirements-for-the-j.d.-degree-.html>.

lawyer, the real substance of a legal education most likely begins only after having spent more than \$100,000 on law school tuition.

Collateral Damages

As law schools hype their students' financial prospects while leaving them unprepared for the challenge of representing actual clients, it also does something more subtle and perhaps even more damaging—it deceives them about the ability of the practice of law to provide meaning and purpose to life.

Every year I speak to thousands of law students—at elite private schools, middle-tier universities, and flagship state institutions. While I was at Cornell Law, in addition to teaching law students I served on the admissions committee and reviewed hundreds of student applications. At my law firm, I was on the hiring committee and spent day after day in campus interviews, talking to one law student after another...after another.

Over the years I have been struck by students' seeming unshakeable faith that the legal profession is more than just a job, more than just a way to earn a paycheck: it's an avenue to a unique combination of social change and personal fulfillment. It's a way to do good and do well, while experiencing an intellectual challenge and the scintillating joy of a good scrap of good versus evil.

Beginning in the selection process, I watched, baffled, as colleagues consistently preferred idealistic students over more nakedly materialistic applicants. A professed desire to "pursue social justice" or "assist migrant farm workers" always trumped the goal to work for Goldman Sachs. "Not diverse enough," they'd say—even to aspiring African American investment bankers.

And once students arrive on campus, charismatic, engaged law professors push a vision of legal practice that views the hard work of the law firm with skepticism, extols pro bono work on behalf of the poor and imprisoned, and urges more prosperous students to donate to the virtuous few who choose the "public interest" over the crass commercialism of the law firm.

Even those students who do choose law firm life are urged to seek pro bono activities, demand lifestyle enhancements, and to treat the law firm—and the money that comes with it—as a means to an end, a necessary evil, a temporary stop before the more permanent, idealistic career home.

In 2010, I spoke to a large gathering of law students about career fulfillment. I asked for a show of hands of people who wanted to make a career in a large law firm. Not a single hand went up. Then I asked who

wanted ultimately to work for an activist or “public interest” organization. Every hand was raised. When I questioned the group about this preference, several students noted how they were consistently encouraged to explore public interest career paths, how law firm life was discussed against a backdrop of existential dread, and how they were told that the best legal life was the one spent “helping people,” and “seeking justice.”

Quite simply, it is difficult to conceive of a message more perfectly tailored to defeat expectations and foster depression. First, it’s a fact that the vast majority of legal jobs are not in the “public interest” as commonly defined.¹⁷ In other words, rather than prepare lawyers for the life they are likely to lead, law schools spend three years convincing students that something is inherently wrong with that life and that their energies and talents are best spent elsewhere.

Moreover, because law students have been walled off from the judicial system and from actual client representation, their understanding of the possibilities and, more importantly, the limits of the legal process is marginal at best. “Representing the poor” looks less like *Erin Brockovich* and more like helping one angry, ungrateful meth addict divorce an equally angry, less grateful meth dealer. “Seeking justice for the oppressed” becomes negotiating plea bargains on behalf of serial felons. And “defenders of fundamental freedoms” watch clients exercise those freedoms in ways that redefine the terms “inane,” “banal,” and “foolish.”

That’s not to say that public interest lawyers cannot accomplish important things—that they cannot at least make baby steps towards something approximating justice—but the gap between the vision of professional meaning advanced in law school and indescribably messy and frustrating reality could not be wider.

Suggestions for Reform

And so, here we are, with law students—many of them attending simply because they are graduating from college with few, if any, better options—shuffling through a legal education that is walled-off from the legal profession itself and creates in its students unrealistic expectations across the entire financial/professional/emotional spectrum. What’s to be done?

¹⁷See “Occupational Employment and Wages.”

Some suggestions for reform are radical, including persuasive arguments for a truly free market in legal services, which would end law schools' monopoly over legal education and essentially break bar associations.¹⁸ After all, the vast majority of legal matters are simple and easily handled by anyone with a modicum of intelligence and education (indeed, clients would often be shocked at the extent of legal work that is accomplished by legal assistants copying, pasting, or even drafting their own documents).

But such reforms are far off and would essentially occur over the dead body of the American Bar Association and every state bar association. More realistic, however, are a series of relatively modest reforms that could narrow the gap between students, law schools, and the legal profession.

First, let's begin with the truth. Employment and average salary numbers should be reported in the context of legal and non-legal employment, together with rates of response to employment surveys. An \$80,000 average starting salary is much less impressive if it is based on the report of forty-eight out of a hundred graduates.

Second, let's make legal education more closely match the preclinical/clinical model of medical education, or the student teaching requirements of education schools, where time in the classroom is necessarily followed by actual practice. The entire third year of law school could be replaced with clinical work across a broad spectrum of legal issues.

There is enormous value in standing in front of a judge for even the most routine motions or in learning how to interview real clients or in simply watching a case unfold over the course of an academic year. Medical students often speak of the value of watching the "course of the disease," and there is similar worth in watching the course of a case.

At Cornell Law, my core function was to introduce students to legal practice. And I did the best I could, taking a full academic year to show them how a case is researched, how a complaint is drafted, and even conducting role-played depositions (featuring—in one instance—my wife as a chain-smoking, tattoo-covered plaintiff suing a gun manufacturer after she "accidentally" shot her husband in a domestic dispute). The year culminated in summary judgment briefs and a mock oral argument. The course was like dipping their toes in water, but it was infinitely better than nothing.

¹⁸See George Leef, "The Case for a Free Market in Legal Services," CATO Institute, Policy Analysis, no. 322, October 9, 1998, http://www.cato.org/pub_display.php?pub_id=1181.

Third, even if students spend the vast bulk of their time in classrooms, individual professors can contribute to a more realistic view of the legal life by bringing to class not the mob lawyer with mesmerizing stories of defending men named “Shredder,” but a local divorce attorney who talks about howling mad soccer moms, a mid-level DA to discuss his hundredth consecutive plea bargain, or perhaps a young labor lawyer toiling over an employee grievance in the bowels of the state bureaucracy. In other words, introduce students to the five-year-old version of themselves.

If a primary source of human discontent is the gap between expectation and reality, then let’s narrow that gap. Law professors, help students realize that your life—the six-figure salary for two classes per semester and a law review article every year or so—looks nothing like what theirs will be, and that a career in law can’t fill the hole in their soul, no matter how exciting it may (or may not) become.

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