
PROFESSIONAL RESPONSIBILITY & LEGAL EDUCATION

ARE AMERICAN LAW SCHOOLS FAILING?

An Exchange Between Prof. Brian Tamanaha & Prof. Harold See

The Collapsing Economics of Legal Education

*Brian Z. Tamanaha**

Introduction

Many law schools around the country are facing painful financial distress. After enjoying flush times for going on two decades, the downturn has come with head-snapping swiftness and severity. In 2010, ABA accredited law schools collectively enrolled 52,500 students—the highest number ever.¹ Immediately thereafter, the number of applicants to law school went into free fall, declining by about 10,000 each year thereafter. Around 57,000 people will apply for seats in the entering class of 2013, down from a high of 100,000 applicants in 2004.²

To appreciate the implications of this decline, consider that every year in the past decade law schools have *accepted* 55,000 or more students (2012 data are currently unavailable). Not everyone who applies to law school can be admitted, needless to say, and every year several thousand people who are admitted choose not to matriculate. Extrapolating from recent patterns, it appears likely that law schools will enroll around 43,000 new students for the fall of 2013. Total enrollment has not been that low since 1999.³ Twenty additional law schools have been accredited since then, so the competition over students is fierce.

Many law schools are offering higher scholarship amounts deeper into the class to entice people to enroll. In past years typically only the top half of the entering class received scholarships, but now at some places bottom half students will get discounts as well. Even then, many law schools will fall short of their enrollment targets—there are simply not enough bodies to go around. Law schools in this position are losing revenue in two ways: fewer students in the seats and fewer dollars from each student.

It gets worse. Law school revenues run on three year cycles, each new class adding to the two previous classes. Recall that the entering class of 2010 was the largest ever at many law schools; following that banner year, at many schools enrollment fell in 2011, and fell yet again in 2012—with 2013 promising further declines. As a consequence, the highest-ever revenue supplied by the departing 2013 class (the bloated group that arrived in 2010) will be replaced by much lower revenue from the new entering class.

The severity of the situation can be seen through an illustration. Golden Gate's entering enrollment has fallen sharply: 320 (2010), to 229 (2011), to 185 (2012). Tuition and fees total \$42,000. Let's conservatively assume that Golden Gate nets \$20,000 from each student (discounted for scholarships), and assume that no students transfer out or drop out (both almost certainly do occur). Total revenue for academic year 2012-2013 (\$14,689,000) will fall by \$2.7 million in 2013-2014 even if Golden Gate miraculously manages to keep its enrollment from sliding any further. Assuming the same size entering class in 2014, revenue will drop by another \$880,000 the following year, before stabilizing. It will be hard to trim expenses to match this decline because a significant portion of law school costs are fixed.

The situation at Golden Gate is more challenging than at most law schools, but it is far from alone. Although financial information is not publicly available, it is likely that a sizable number of law schools are looking at million-plus dollar deficits ahead. Only the very top law schools need not worry because there are enough high quality students eager to fill their classes, but all the rest are looking at revenue shortfalls. Stand-alone law schools are especially vulnerable because they are susceptible to bond rating downgrades and have no deep-pocket university to help them through the adjustment period.

A sharp decline in applicants inevitably leads to a decline in the quality of law students, manifested in declining LSAT/GPA medians and rising acceptance rates. A decade ago, for the entering class of 2003, only 4 law schools accepted 50% or more of their applicants (the highest at 55.4%).⁴ Jump forward to 2011: 42 law schools accepted 50% or more of their applicants, broken down as follows: 29 schools accepted between 50% and 59%; 7 schools accepted between 60% and 69%; 5 schools accepted between 70% and 79%; one law school accepted 80.1%.⁵ Further deterioration followed in 2012: 82 law schools accepted 50% or more of their applicants—that's nearly double the previous year, amounting to about 40% of accredited law schools. Among these law schools, 43 accepted between 50% and 59% of applicants; 23 accepted between 60% and 69%; 13 law schools accepted between 70% and 79%; and 3 accepted more than 80%.⁶ At one law school, nine out of ten people who applied got in.

Here is another comparison to put the decline in perspective: A little more than half of the applicants who applied to law school in 2004 were accepted somewhere; in 2013, around seventy-five (and perhaps eighty) percent of the people who apply will be admitted somewhere. As law schools reach ever deeper into the applicant pool, they will admit students who should not be in law school. Applicants with low LSAT/GPA scores, in particular, have a higher risk of failing out and a higher risk of not passing the bar exam.

**Brian Tamanaha is the William Gardiner Hammond Professor of Law at the Washington University School of Law. His book Failing Law Schools is available at <http://www.amazon.com/Failing-Schools-Chicago-Series-Society/dp/0226923614>.*

I. HOW LEGAL EDUCATION ARRIVED AT THIS IMPASSE

My book *Failing Law Schools* details how law schools came to this fraught state. The core argument of my book is that the cost of a law degree exceeds the economic return obtained by a significant number of recent graduates. A few updated numbers on tuition, debt, jobs, and salaries will reveal the basic mismatch. (The situation has deteriorated since the writing of the book nearly two years ago.)

Annual tuition at about a dozen law schools now exceeds \$50,000 (Columbia topping the list at \$55,000), with many other law schools poised to follow. Adding another \$15,000 to \$20,000 in annual living expenses, the three year out-of-pocket cost of obtaining a law degree for students without substantial scholarships is around or above \$200,000 at dozens of law schools today.⁷

Tuition has risen to these astronomical heights in a relatively short period of time, although it has been going up for decades. In 2000, average tuition at private law schools was \$21,790; in 2011, it was \$39,184.⁸ Average tuition at public law schools also rose rapidly in this time span, going from \$7,790 to \$22,116.⁹ These increases occurred during a relatively low inflationary period.

The rapid run up of tuition produced a rapid increase in debt levels for law students, about 90% of whom borrow to finance their legal education. The average debt of private law school graduates went from \$70,147 in 2001 to \$124,950 in 2011; at public law schools over the same period, average debt increased from \$46,499 to \$75,728.¹⁰ Average debt levels for private law grads have gone up yearly by alarming amounts, rising from \$91,506 (2009), to \$106,249 (2010), to \$124,950 (2011).¹¹ Debt levels for the classes of 2012 and 2013 are undoubtedly much higher (data not yet released by the ABA). Bear in mind that these figures substantially understate the total average debt students carry on graduation day because they do not include undergraduate debt (average \$25,000) and they do not count interest accrued on debt while in law school, which can add thousands.

Law school tuition and law graduate debt have gone up at the same time that law grads have struggled through the worst market for legal employment in decades, with many failing to land lawyer jobs, with unprecedented numbers of graduates taking part-time jobs and temporary jobs, and with many earning relatively low salaries.¹² Only 54.9% of law graduates in 2011 had obtained long term full-time lawyer jobs within nine months of graduation; the success rate of 2012 grads improved slightly, to 56.2%.¹³ Median starting salary of 2011 graduates in private law jobs was only \$60,000.¹⁴

The job market looks to be challenging for years to come. The U.S. Bureau of Labor (BLS) statistics estimates about 22,000 lawyer openings annually through 2020 (counting departures and newly created jobs), at a time when law schools yearly put out over 40,000 new graduates.¹⁵ BLS outlook is blunt: "Competition should continue to be strong because more students are graduating from law school each year than there are [lawyer] jobs available."¹⁶

A few numbers on individual schools will expose the severity of the situation. The average student debt at the

fifteen most indebted law schools for the graduating class of 2012 is listed below (again, the figures exclude undergraduate debt and the interest accrued on the loans), followed by the percentage of the class in debt.¹⁷ After the dash, highlighted in bold is the percentage of the graduates at each law school who obtained long term full-time jobs as lawyers nine months after graduation.¹⁸

Thomas Jefferson	\$168,800 (98%)	28.8%
California Western	\$167,867 (89%)	43.8%
Phoenix	\$162,627 (97%)	43.6%
Northwestern	\$156,791 (82%)	76.3%
New York Law School	\$154,647 (83%)	39.6%
American	\$152,659 (77%)	38.9%
New York University	\$149,336 (81%)	91.1%
Southwestern	\$147,976 (79%)	44.1%
Georgetown	\$146,169 (78%)	73.3%
Whittier	\$143,536 (92%)	34.1%
Florida Coastal	\$143,111 (92%)	35.9%
John Marshall	\$142,587 (87%)	42.3%
Atlanta's John Marshall	\$142,515 (92%)	43.5%
Catholic	\$142,115 (85%)	36.6%
Loyola Marymount	\$141,936 (78%)	41.4%

At top law schools like Northwestern, Georgetown, and New York University, graduates also land attractive non-lawyer positions, so their success rate is higher than the percentages indicated above, but at lower ranked law schools this is far less often the case.

The underlying employment results at many law schools are sobering. Only 40 graduates out of 186 from Golden Gate (average debt \$137,484) landed long term full time jobs as lawyers.¹⁹ At Loyola Marymount (average debt \$141,936), only 170 out of 411 graduates landed long term full time jobs as lawyers. At American (average debt \$152,659), only 180 out of 463 graduates landed these jobs. New York Law School (average debt \$154,647) had a massive graduating class, totaling 601 JDs, of whom only 238 landed long term full time jobs as lawyers. Among the fortunate graduates from these four law school who landed lawyer jobs, furthermore, a sizeable percentage ended up in firms of 2 to 10 lawyers, typically earning salaries in the \$60,000 range—far beneath what is necessary to manage the standard monthly payment on the average debt.

Debt levels this high necessitate income well above \$100,000, which in recent years less than 15% of graduates nationwide have obtained. Struggling under a combination of high debt and salaries inadequate to service the debt, thousands of recent law graduates will have no choice but to enter Income Based Repayment (IBR), a federal debt relief program that assists graduates in financial distress. IBR saves graduates from defaulting by pegging monthly loan payments to a percentage of their salary, then forgiving the balance of the loan at the end of 20 years.

An expert on IBR, Professor Philip Schrag, has suggested that, given the problem of high debt and inadequate salaries, legal educators should see IBR as a "standard payment" mechanism for law students with average debt levels.²⁰ Schrag argues

that this is a good thing, an appropriate way to subsidize legal education, but it is stunning to hear that a government program created to alleviate financial distress is fast becoming a *standard* financing system for law graduates.

No wonder the number of applicants to law school is falling through the floor. Tuition is too high and debt is too high for the types of jobs many law graduates can reasonably expect to land. Job opportunities and economic return for graduates from top law schools are still attractive at current tuition levels. Graduates from affordably priced flagship state schools also stand to do well, carrying manageable debt levels, with a solid chance at landing a lawyer job. Students who obtain substantial scholarships should also do fine thanks to reduced debt. But outside these categories, students who attend law school expecting to take on debt above \$100,000 are rolling the dice on achieving positive results—with the odds stacked against them. People are turning away from law school in droves because for many the downside risks are unacceptably high.

II. REFORM TO THE FEDERAL LOAN PROGRAM

As with all markets, adjustments to the warped economics of legal education are in the works. The current decline in applicants is reducing the price for many law students via increasingly aggressive scholarship discounting. When every student gets a scholarship, tuition has gone down, even if not on the surface. The decline in applicants, if it continues, will also help lessen the oversupply of law graduates over time. Enrolling 40,000 will, after attrition, produce about 37,000 graduates; subtracting graduates who don't pass the bar or who don't want to practice law, the number of grads seeking lawyer jobs will come down another few thousand. That is still above the number of openings projected by BLS, but not by as much.

Leaving it to the market, however, cannot bring the necessary reforms because it is not a well-functioning market. The federal loan program and IBR prevent the operation of normal economic signaling and accountability.

The federal loan program distorts the market because it supplies up to the full cost of attendance (tuition and living) to any student admitted to any law school who asks for a loan with no limits and no evaluation of the likelihood of repayment. That is why a low ranked school like New York Law School can charge tuition at the same level as Harvard, notwithstanding that graduates of the latter secure excellent opportunities while many of the former are struggling. Private lenders would not loan \$154,647 (the average debt) to a NYLS student, and to students at schools like it, without demanding prohibitively high interest rates (or a federal guarantee) because the likelihood of non-payment would be too high.

IBR further distorts the market by effectively rendering the size of the debt irrelevant. Because monthly payments are calculated based on earnings, not on the amount owed, assuming the same income, the amount repaid over twenty years (when the balance is cancelled) will be the same whether a person owes \$150,000 or \$300,000.²¹

A number of law schools have begun to incorporate IBR into their admissions pitch to ease the concerns of prospective students reluctant to take on large debt. To offer just one

example, in a promotional podcast, California Western law professor Don Smythe asserts that “\$100,000 plus” debt should not worry prospective students because IBR, which he calls an “important public subsidy to all prospective law students,” insures low monthly payments and debt cancellation after 20 years.²² Dean Steve Smith adds, “And in a sense it is a safety net because whatever the principal is you’ve borrowed you are not going to go bankrupt; you should not be paying more than, now it is less than, 10 percent, of your adjusted gross income, your discretionary income, to repay loans. So that is a kind of safety net.”²³

Average debt for California Western’s 2012 graduating class was \$167,867; only 124 out of 283 graduates that year landed long term full time jobs as lawyers—the majority in positions that typically pay \$60,000 or less. A significant proportion of the class is destined for IBR. Without the existence of IBR to ease students’ concerns, schools like this would go under sooner because many prospective students would be frightened away by the high debt and poor results. IBR was intended to rescue grads who find themselves drowning in high debt, but some law schools, struggling for their own survival, are using the program to encourage students to jump into risky financial waters that will likely leave them floundering.

The federal loan program is essential to provide access to education, and IBR provides graduates in financial distress with much needed relief. Unfortunately, law schools have twisted these programs to our own ends. Unless and until these programs are reformed to include greater accountability, tuition at many law schools will be too high, debt will be too high, and the oversupply will continue.

Endnotes

1 See LSAC Volume Summary, at <http://www.lsac.org/lsacresources/data/lsac-volume-summary.asp>

2 *Id.*

3 See Enrollment and Degrees Awarded, 1963-2011, ABA Legal Education Statistics, at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf.

4 Law school acceptance rates are published in the US News Ranking. Acceptance rates for 2003 were published in Law School Rankings, Best Grad Schools, 2005 edition, US NEWS AND WORLD REPORT. The decline and its implications are spelled out in Brian Z. Tamanaha, The Visible Deterioration of Law School Quality, Balkinization, March 13, 2014, <http://balkin.blogspot.com/2013/03/the-visible-deterioration-of-law-school.html>

5 See Law School Rankings, Best Grad Schools, 2013 edition, US NEWS AND WORLD REP.

6 See Law School Rankings, Best Grad Schools, 2014 edition, US NEWS AND WORLD REP.

7 See ABA-LSAC OFFICIAL GUIDE, *supra* note 3. Many schools are priced at \$45,000 or more. Combined with living expenses around \$20,000, this results in a cost of attendance nearing or exceeding \$200,000.

8 See *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.

9 *Id.*

10 *Average Amount Borrowed for Law School 2001-2010*, AM. BAR ASS’N, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_

admissions_to_the_bar/statistics/avg_amnt_brwd.authcheckdam.pdf.

11 *Id.*

12 See James G. Leipold, *Truth or Dare: The New Employment Market*, NALP BULL. (Nat'l Ass'n for Law Placement, Washington, D.C.), Oct. 2012, at 1-3, available at <http://www.nalp.org/uploads/1012NALPBulletinExecDir.pdf>.

13 See Joe Palazzolo, *Law Grads Face Brutal Job Market*, WALL ST. J. (Jun. 25, 2012, 10:18 AM), http://online.wsj.com/article/SB10001424052702304458604577486623469958142.html?mod=rss_economy.

14 See *Employment for the Class of 2011—Selected Findings*, NAT'L ASS'N OF LAW PLACEMENT, <http://www.nalp.org/uploads/Classof2011SelectedFindings.pdf>.

15 See *Employment Projections, Table 1.7*, U.S. BUREAU OF LABOR STATISTICS, http://bls.gov/emp/ep_table_107.htm (last updated Feb. 1, 2012) (projecting 21,880 openings annually through 2020); Deborah Jones Merritt, *Labor Day, INSIDE THE LAW SCHOOL SCAM* (Sept. 1, 2012) <http://insidethelawschoolscam.blogspot.com/2012/09/labor-day.html>; Deborah Jones Merritt, *More Bad News from the BLS, INSIDE THE LAW SCHOOL SCAM* (Sept. 5, 2012), <http://insidethelawschoolscam.blogspot.com/2012/09/more-bad-news-from-bls.html>.

16 BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR, OCCUPATIONAL OUTLOOK HANDBOOK (2012-13 ed.), *Lawyers, Job Outlook*, available at <http://www.bls.gov/ooh/legal/lawyers.htm>

17 The debt and percentage in debt numbers are at *Whose Graduates Have the Most Debt?*, U.S. NEWS & WORLD REP., <http://grad-schools.usnews.rankings-and-reviews.com/best-graduate-schools/top-law-schools/grad-debt-rankings>.

18 These numbers are from the employment data compiled by Denver Law School, "Law Jobs: By the Numbers," Institute for the Advancement of the American Legal System, at <http://educatingtomorrowlawyers.du.edu/law-jobs/>. The search items selected were "Bar Passage Required," "Long Term," and Full Time." "Long term" counts at least one year in duration, including clerkships.

19 Employment results for law schools are available at "Individual School Summary Reports," ABA Section of Legal Education and Admissions to the Bar, <http://employmentsummary.abaquestionnaire.org/>

20 Phillip G. Schrag, *Brian Tamanaha's Misguided Missile*, GEO. J. LEGAL ETHICS (forthcoming 2013). For my response, see Brian Z. Tamanaha, *The Problems with Income Based Repayment, and the Charge of Elitism: Responses to Schrag and Chambliss*, Geo. J. Legal Ethics (forthcoming 2013).

21 One difference is that the balanced cancelled at 20 years is treated as a taxable benefit, so the tax bill of the person with the larger debt will be higher.

22 *Should I Go to Law School?*, *Law Review with Steve Smith* (Jan. 9, 2013), <http://lawreview.podbean.com/2013/01/09/should-i-go-to-law-school/>. See *id.*, at 20:30 (for the discussion of IBR and statement made by Don Smythe).

23 *Id.* at 22:50 (for the statement of Steve Smith).

Are American Law Schools Failing?

Harold See*

Professor Tamanaha tells us— as he more fully details in his book, Failing Law Schools (2012)— that in the past few years there has been a dramatic decline in law school applications and in law school enrollments. There has been a decline from 2010 to 2013 of nearly 25% in first-year enrollments.1 There is an implication that this decline is not temporary.2

I. LAW SCHOOLS

The occurrence and prospect of an extended decline in law school enrollments has profound implications for the modern law school. The late 20th-early 21st century law school model has been one of reduced teaching loads, enhanced administrative support, and the proliferation of faculty.3 Facing an apparently highly inelastic demand for legal education, law schools were able to increase both enrollment (quantity) and tuition (price);4 thereby, generating an increasing stream of income to the law schools that enabled them to support more faculty, each teaching fewer contact hours and fewer students, while paying higher salaries and hiring more administrators and support staff. Recently, however, with the number of potential law school applicants declining,5 and the demand for legal education apparently reflecting a measure of price elasticity—that is, the higher the price (tuition), the fewer prospective students will apply—there is a contraction of income into legal education to fund current faculty, staff, and general overhead.

As Professor Tamanaha demonstrates, many, apparently most, law schools have experienced significant reductions in enrollment in their entering classes. Some institutions that were considering starting law schools have deferred those plans;6 and, there has been the suggestion that some existing law schools may be forced to close.7 Smaller numbers means a reduction in tuition income.8 Moreover, because the same dollar value in scholarships and tuition waivers is likely to be awarded in a down market as in a law school boom,9 total law school income is likely to fall at a rate faster than enrollments decline. Absent substantial increases in outside income (which appear unlikely in today's economy), there is no choice but to abandon the move toward more faculty and staff, combined with reduced teaching loads.10

Even in the presence of federal funding, including virtually unlimited funding for student education loans,11 what seemed to be a limitless supply of law students has been dwindling. Absent a convincing, fact-based explanation for the decline, however, there is no reason to believe it will continue forever. The rationale commonly offered for the decline is that students enroll in law school to become lawyers who will earn a high rate of return on their investment in a legal education, and that the prospect for this high rate of return has greatly

diminished because changes in the legal profession have reduced the need for lawyers. Ethan Bronner offers:

Many of the reasons law jobs are disappearing are similar to those for disruptions in other knowledge-based professions, namely the growth of the Internet. Research is faster and easier, requiring fewer lawyers, and is being outsourced to less expensive locales, including West Virginia and overseas.12

Presumably, West Virginia lawyers are also American lawyers who can benefit from this same new technology to practice the same law in West Virginia that once was practiced only in cities like New York and Chicago. Moreover, while hiring at “major firms” might have declined,13 the Bureau of Labor Statistics (“BLS”) does not list attorneys as a declining occupation like “[f]armers and ranchers” or “sewing machine operators.” In fact, it states, “Employment of lawyers is expected to grow by 10% from 2010 to 2020, about as fast as the average for all occupations.”14

The authors of a BLS study projecting job openings between 2008 and 2018 noted that, “Although economic growth will create a substantial number of job openings . . . , the majority are expected to come from replacement needs.”15 It may be that fewer lawyers will choose to retire than is projected by the BLS economists;16 but, of course, it may also be that more lawyers will choose to retire. One thing, however, is certain: A choice not to retire is, given the human condition, always a temporary one that is subject to mortality. If there are fewer departures today, there will be more tomorrow.

One must wonder at the dissonance of blaming “the problem” on the lack of a need for lawyers. Isn't this the society that Alexis de Tocqueville described, where every social issue ends up, sooner or later, in a court of law? As one New York Times story reported:

“We have a significant mismatch between demand and supply,” said Gillian K. Hadfield, professor of law and economics at the University of Southern California. “It's not a problem of producing too many lawyers. Actually, we have an exploding demand for both ordinary folk lawyers and big corporate ones.”17

The assertion, then, is that lawyers are too expensive;18 but, if we are to give any credence to the interaction of supply and demand, the solution to lawyers being too expensive is more lawyers.19 In fact, we may have come very near opening up the gates to lawyers in the early 2000s, when existing law schools expanded their class sizes and new law schools were opened and accredited.20

The reaction to producing more lawyers to address the perceived need for legal services is this:

Law school defenders note that huge swaths of the country lack adequate and affordable access to lawyers, which suggests that the issue isn't oversupply so much as maldistribution. But when the numbers are crunched, studies find that most law students need to earn around \$65,000 a year to get the upper hand on their debt.

*Justice, Supreme Court of Alabama (Retired); Professor of Law, Belmont University College of Law

That kind of money is hard to earn hanging a shingle in rural Ohio or in public defenders' offices, the budgets of which are often being cut. As elusive, and inhospitable, as jobs in Big Law may be, they are one of the few ways for new grads to keep out of delinquency.²¹

But, the size of the salary needed to pay off a loan is largely irrelevant. If a recent law school graduate cannot earn "around \$65,000" with her/his law degree, what is the job the law graduate will take that will pay \$65,000? Is the next best alternative really to be a barista at Starbucks or to go on unemployment? Or, wouldn't we expect the young lawyer to bid down the cost of legal services for those who cannot afford "big-firm prices," so long as the return to the young lawyer remains higher than the next best alternative?²² This, of course, may mean temporary or part-time employment, or working long hours for small compensation while building up a practice.²³

If legal education is not worth the investment, then we would expect applications to decline and law schools to contract and to cut costs.²⁴ Market adjustments can be harsh. Some schools are reducing the real tuition paid.²⁵ And, law schools are feeling pressure to cut their costs.²⁶ Some have laid off staff and reduced faculty size.²⁷ Some are altering their curricula to make them more practice oriented,²⁸ or designing programs to reach new markets.²⁹ Others are considering such steps as offering a two-year J.D. program,³⁰ thereby reducing at least the opportunity cost of the time spent in school.

There are also at least two other options open to cash-strapped law students. If the cost of a legal education from an ABA-accredited law school is too high for the expected return, there are unaccredited law schools in at least four states, that will permit practice in those states;³¹ and it is still possible to "read the law"—qualifying through apprenticeship instead of attending three years of law school.³² Although these options have long existed, fewer students seem to be turning to them, suggesting that students and employers perceive some advantage to the legal education offered by ABA-accredited law schools.

II. LAW STUDENTS

Law schools are adjusting and changing. The professed concern, however, is not so much to save the modern model of the law school. There are two charges, which relate to law students: first, that law schools are turning out too many graduates; and, second, that law schools are perpetrating a kind of fraud on law students by suggesting that legal education will produce a return much greater than the cost of that education.

The first claim, that law schools are turning out "too many" graduates (lawyers), is difficult to evaluate, because it presumes, first, that there is a right number of law school graduates to be turned out, and, second, that it is the job of law schools, collectively, to turn out that "right" number. Taking the second issue first, the Sherman Antitrust Act, 15 U.S.C. §§ 1-7, embodies the general proposition that producers should not conspire to limit the quantity of their product supplied to the market, but that markets should be allowed to adjust based on the decisions of individual consumers and suppliers,³³ that is, in this case, prospective law students and individual law schools based on their individual markets.³⁴ In 1995, the Department

of Justice filed an antitrust complaint charging the American Bar Association with violating Section 1 of the Sherman Act by engaging in anticompetitive practices with respect to its accreditation of law schools.³⁵ The ABA entered into a consent decree. In 2006, the Justice Department petitioned that the ABA be held in civil contempt for "violating multiple provisions of a 1996 antitrust consent decree."³⁶ The ABA acknowledged those violations and agreed to reimburse the government for fees and costs of the Department of Justice investigation. Any suggestion that law schools should collude, expressly or covertly, to restrict law school enrollments requires a sufficient legislative justification for why the market for legal education should be treated differently from those for professional athletes, actors and musicians, teachers, salesmen, mechanics, and so on.³⁷

I recall, half a century ago, being cautioned by a guidance counselor that I should not consider going into law, because there were "too many" lawyers already. My research revealed that, in the most recent years then reported, there had been more law graduates than lawyer jobs. I went back in the statistics as far as I could, and discovered that as far back as I could find, there had been more law graduates than lawyer jobs. This does not distinguish the market for law-trained graduates from those, for example, for university-trained athletes, rock musicians, actors, or, for that matter, schoolteachers.³⁸

"Many [law school] 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."³⁹ This should be no surprise. The Kaplan Test Prep Survey disclosed that 23% of pre-law students surveyed wanted to use their law degree "to go into politics at some point," and 23% wanted it "for business purposes."⁴⁰ Of the 498 chief executive officers on the 2012 Fortune 500 list, 46 hold J.D. degrees.⁴¹ 55 of the 100 Senators in the U.S. Senate have law degrees.⁴² And, an array of well-known authors (John Grisham, Studs Terkel, Wallace Stevens), actors (Paul Robeson, Ozzie Nelson, William Sanderson), sports figures (Tony LaRussa, David Stern, Terry Bowden) and others (Otto Preminger, Howard Cosell, Stephen Pastis) have law degrees.⁴³

For other law school graduates, what attracted them to the law may not have been the prospect of a large monetary reward.⁴⁴ Some may consider a law degree a good thing to have in some so-called non-law job, or even in the absence of remunerative employment, for example, for helping the disadvantaged to secure their rights, protecting an endangered species, or looking after one's own family's interests:

In the early 1970s, the ABA created a Task Force on Professional Utilization to study what it called the 'oversupply of lawyers.' . . . The final report of the Task Force concluded that while not all graduates could find work in law firms (especially the most prestigious ones), they did find work. Graduates also went to work in non-legal and non-law-related jobs in business, industry, government, education, private associations, NGOs, and virtually every other conceivable work environment. . . . One might argue that if you are not going to practice law, why should you go to law school? The answer is that a legal education

provides training that will give you an advantage in the job market —both in getting the job and performing the job. What the Task Force discovered in the 1970s remains true today.⁴⁵

Lawyers are not trained, like unskilled laborers, simply to do today's job. They are trained to do an evolving job in a society steeped in laws and regulations. The practice of law today is not what it was in the 1980s; yet, many people trained in that era are at the apex of their profession today. Moreover, if law schools are to be held accountable for not foreseeing the decline in job openings that would hit, or continue—contrary to prior experience—three years after students started law school (three and a half to four years after they had applied), then law schools must also be held accountable to foresee any potential boom (if it is to materialize through economic growth, structural changes, or baby-boomer lawyers dropping like flies), and dramatically increase admissions to address that future unseen need. It is remarkable how well critics can see the recent past and foresee the continuation of that trend into the future.⁴⁶

The second claim is that law schools are perpetrating a fraud on prospective students, or at least misrepresenting the value of a legal education. There is no justification for putting out false information, and there are examples of misreporting;⁴⁷ but, it is disingenuous to assert as fact that a legal education is not worth the investment or, as noted, to imply that the only value of a legal education is to practice law or to reap a monetary reward substantially in excess of the total cost of that education.

Even if we were to accept the premise that the only legitimate interest in a law degree is monetary return, there is no reason to believe that three years' investment must produce an immediate profit. Recently, Michael Simkovic and Frank McIntyre analyzed the value of a law degree.⁴⁸ They find that, "given current tuition levels, the median and even 25th percentile annual earnings premiums justify enrollment", and they "estimate the mean pre-tax lifetime value of a law degree as \$1,000,000."⁴⁹ Thus, even accepting the implicit premise that the only, or at least the predominant, reason for attending law school is to secure a substantial monetary return on that investment, this apparently well-designed and conscientiously-carried-out study indicates that a law degree remains an excellent long-term investment.⁵⁰ At the very least, such a conclusion cannot be dismissed out of hand.

Moreover, Jonathan D. Glater observes that fewer people are applying to law school and the number of LSAT takers earning higher scores has declined disproportionately. He offers that this "means that an applicant who scores well may have a better shot of getting into a highly selective institution than in years past, and perhaps of getting a more generous aid package as a result of competition over students with high scores."⁵¹ Thus, now could be the ideal time to apply.

Even if we believe that it is unlikely the legal profession will ever again look as good as it has in the recent past, we may well question whether our judgment should be substituted for that of the investors in legal education themselves.⁵² As is noted above, some may be interested in more than, or other than, a financial return. And, some may disagree with our gloomy view of the future—a position that is not without analytical support.

Prospective law students have a number of sources of information about law schools. They can, of course, look at the information put out by the various schools. They can consult the annual *U.S. News and World Report* law school rankings. But these are far from all the sources that are available. *U.S. News* itself puts out a more detailed analysis.⁵³ The American Bar Association Section of Legal Education and the Law School Admission Council put out their own *ABA/LSAC Official Guide to ABA-Approved Law Schools* to help guide prospective law students in their choice of law school.⁵⁴ The Princeton Review publishes information and evaluations of law schools,⁵⁵ as do various others.⁵⁶ In addition to these sources, prospective students can search the internet, seek out lawyers in their communities or the communities or practice areas in which they are interested, or ask the advice of others who use or are familiar with lawyers or law schools.

There may be some question as to the level of sophistication of prospective law students, but it is hard to call them "unsophisticated consumers." They are college graduates who presumably can read and write. They are purchasing an expensive good. They have an extended period of time to consider the choice, and generally are not limited to a single school or even a single locality in making their choices. They have ample opportunity to consult others before making and finalizing their choices, and they can, if they choose, visit the law schools they are considering, observe their operation, and ask the consumers there for evaluations of the law school.

There have been at least a dozen lawsuits filed by law school graduates accusing their law schools of misleading them as to the prospects of employment.⁵⁷ One of these cases has been decided by a trial court. In *Gomez-Jimenez, et al, v. New York Law School*,⁵⁸ Justice Melvin L. Schweitzer of the New York Supreme Court evaluated the claims of nine New York Law School students that their law school had misrepresented its placement statistics. In deciding to dismiss the complaint, Justice Schweitzer concluded that the employment statistics were not "misleading in a material way for a reasonable consumer acting reasonably."⁵⁹ He held the law students to the standard of reasonable consumers acting reasonably.

All of this is not to say that better information could not be made available. *U.S. News* has taken steps to improve the information on which it relies, and the ABA is looking into changing reporting rules for law schools. Professor Tamanaha has questioned why law schools' entering class LSAT percentile scores and GPAs are not reported directly by the LSAC, instead of relying on the schools to report them.⁶⁰ Such steps could help students in making informed choices.

III. CONCLUSION

I agree with the principal point Professor Tamanaha makes in his essay, that the federal government's making low cost funds available to facilitate payment for law school has had the effect of increasing the cost of that education and the number of law school graduates. This has, in turn, contributed to the size of the recent economic adjustment in legal education. When additional money to purchase a product (legal education) is made cheaply available through government guarantees, low interest

rates, or the prospect of debt forgiveness, the effective demand for that product is increased. As a result, profits to the suppliers (law schools) are increased. It should be no surprise to anyone (with the possible exception of the federal government) that law schools, and universities in general,⁶¹ have reaped a significant share of the benefit of low-cost loans to students. These profits induced law schools to increase price (tuition) and enrollments, and attracted others into the market for legal education. When the value of the output dropped (because of its increased availability, and other factors including an economic downturn), the adjustment impacted the prior beneficiaries—law schools and recent graduates. However, I do not foresee that program disappearing anytime soon.

As to the general phenomenon that has generated so much recent attention—the present decline in law school enrollments—it appears to be more of a problem for those in legal education than it is for society at large. If lawyers are truly a vestige of times past, then enrollments will continue to decline. If not, we can expect the marketplace to call out new waves of students in the future.⁶²

Last February, Ethan Bronner reported on a public hearing held by the American Bar Association’s Task Force on the Future of Legal Education.⁶³ He reported that, “As the meeting ended, one task force member . . . summed it up. ‘The house is on fire,’ he said.” What strikes me about the article is that everyone seemed to have a solution: “reducing the core of law school to two years,” simplifying the bar examination, relaxing accrediting standards, training for “the equivalent of nurse practitioners,” setting up “law courses for students in other parts of the university,” offering “far more practical and closer ties to the legal profession,” more exposure to international issues, and “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.” Forgive me, but what is the problem these proposals will solve? As a former firefighter, I am reminded of the instruction that before knocking out windows and sending streams of water into the house to ruin whatever is inside, first locate the fire so that the water can be directed at the problem. Law schools are feeling pressure to adjust, and prospective students are being circumspect about the future of the profession. Isn’t the system really doing what it should? And, if there really is someone out there who foresaw all that has happened, whose problem would her or his solution have fixed?

Endnotes

1 American Bar Association, “ABA Section of Legal Education reports 2013 law school enrollment data,” www.americanbar.org/news/abaneews/aba-news-archives/2013/12/aba_section_of_legal.html (Dec. 17, 2013); also reported in Jennifer Smith, “First-Year Law School Enrollment At 1977 Levels,” *The Wall Street Journal* (Dec. 17, 2013).

2 See also Joe Palazzolo & Chelsea Phipps, *Law Journal: Law Schools Apply Brakes*, WALL ST. J., June 11, 2012, at B1 (“But Experts say that the planned reductions by at least 10 of the roughly 200 law schools accredited in the U.S., suggest a new reality is sinking in: The legal profession may never return to its precession prosperity. ‘This looks like it’s a big structural shift,’ says William Henderson, an Indiana University law professor who studies the market for law jobs. ‘Law schools don’t think this is going to bounce back.’”)

3 “For decades, law schools have invested in expensive but underutilized buildings, faculty and administrators all in pursuit of excellence as defined by their accrediting body, the American Bar Association.” Editorial Board, *Our Shrinking Law Schools*, WASH. POST (Feb. 3, 2013), http://articles.washingtonpost.com/2013-02-03/opinions/36728811_1_law-schools-higher-education-student-debt; see BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 39–68 (2012) (hereinafter “*Failing Law Schools*”).

4 Daniel McDermon, *Online Reaction: Law School Economics*, N.Y. TIMES (July 18, 2011), <http://bucks.blogs.nytimes.com/2011/07/18/online-reaction-law-school-economics/> (“In short, law schools have the power to raise prices and expand in ways that would make any company drool.”)

5 Professor Tamanaha estimates that there will be about 57,000 applicants this year, compared with the nearly 100,000 applicants in 2004 (citing Law School Admission Council, *LSAC Volume Summary*, available at <http://www.lsac.org/lsacresources/data/lsac-volume-summary.asp>).

6 See, e.g., Karen Sloan, *Delaware Delays Plans to Launch Law School – and It’s Not Alone*, NAT’L L.J. (May 9, 2011), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202493440036&Delaware_delays_plans_to_launch_law_school_8212_and_its_not_alone (“The university [of Delaware] is the latest in a string of colleges that have backed away from plans to open new law schools.”); ARLnow.com, *Plans for Arlington Law School Fall Through*, ARLnow (June 14, 2013), <http://www.arlnow.com/2013/06/14/plans-for-arlington-law-school-fall-through/> (“InfiLaw System, a Florida-based consortium of independent law schools that was planning to open the new school, now says that plans have fallen through, at least for now.”); Karen Sloan, *Louisiana Law School Delays Its Opening*, NAT’L L.J. (Aug. 16, 2011), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202511371391&Louisiana_law_school_delays_its_opening_planned_indiana_school_deflects_criticism_ (“The Judge Paul Pressler School of Law was slated to open in fall 2012 when the plans were announced last year. Now, administrators say the school won’t open until fall 2013.”) A later article in *The National Jurist*, stated that Louisiana College had announced that the Dean’s departure “may delay its intended fall 2013 opening date”. *Dean’s Departure from Louisiana College Pressler School of Law Could Mean Delay in Opening* (Sept. 20 2012), <http://www.nationaljurist.com/content/deans-departure-louisiana-college-pressler-school-law-could-mean-delay-opening>. A more recent visit to the College’s website gave no indication of a date when the law school might open.

7 Ethan Bronner, *Law Schools’ Applications Fall as Costs Rise and Jobs are Cut*, N.Y. TIMES (Jan. 30, 2013), www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html (“Brian Leiter of the University of Chicago Law School, who runs a blog on the topic, said he expected as many as 10 schools to close over the coming decade, and half to three-quarters of all schools to reduce class size, faculty and staff.”); Jennifer Smith, *A Crop of New Law Schools Opens Amid a Lawyer Glut*, WALL ST. J. (Jan. 31, 2013), <http://online.wsj.com/article/SB10001424127887323926104578276301888284108.html> (“Some experts predict that some schools will be forced to close if current enrollment trends continue.”).

8 “Paul Schiff Berman, dean of the George Washington University Law School, . . . hasn’t decided how many slots would be cut for the incoming class, but he estimates the reduction would cost the school about \$1 million.” Joe Palazzolo & Chelsea Phipps, *supra* note 2.

9 See, e.g., Bronner, *supra* note 7 (“Others, like the University of Illinois, have offered across-the-board tuition discounts to keep up enrollments.”), and Karen Sloan, *Seton Hall Hopes Tuition Discount Will Persuade Fence-Sitters*, NAT’L L.J. (Dec. 19, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202582101227&Seton_Hall_hopes_tuition_discount_will_persuade_fencesitters_ (“Seton Hall University School of Law has unveiled a tuition reduction program that will bring costs for qualifying students in line with that of its nearest competitor, Rutgers School of Law-Newark.”)

10 See Smith, *Amid Falling Enrollment, Law Schools Are Cutting Faculty*, WALL ST. J. (July 15, 2013), <http://online.wsj.com/article/SB10001424127887323664204578607810292433272.html> (“Law schools across the country are shedding faculty. . . . Having trimmed staff, some schools are offering buyouts and early-retirement packages to senior, tenured professors and canceling contracts with lower-level instructors, who have less job protection.”)

11 Brian Z. Tamanaha, *How to Make Law Schools Affordable*, N.Y. TIMES (June 1, 2012), <http://www.nytimes.com/2012/06/01/opinion/how-to-make-law->

school-affordable.html (“The reason that students have been able to pay such astronomical sums [\$30,000-\$50,000 in annual tuition] is that the federal government guaranteed student loans from private lenders, and now it supplies the loans itself with virtually no limits.”)

12 Bronner, *supra* note 7. Implicit in this explanation is the presumption that law is essentially the process of finding the answers to questions (analogous to calculating 2314×4529 : an electronic calculator makes this task easier and faster, thereby reducing the number of people necessary to make such calculations). Some legal questions are like this, and an electronic format allows such processes to be carried out more efficiently than the old paper format. But, lawyers have always been of more value for analyzing questions for which there are no simple answers (more like calculating the value of pi, which could go on forever with greater and greater specificity). New technology has served in large measure to allow a more thorough analysis of legal questions.

13 See Vanessa O’Connell, *Law Schools Push Recruiters*, WALL ST. J. (Aug. 12, 2011), <http://online.wsj.com/article/SB10001424053111904823804576500294234747806.html> (“Hiring at major firms peaked in 2007 before the onset of the financial crisis. Recruiting has dropped significantly, due to the recession as well as more lasting changes to the industry, including new technologies that enable law firm partners to do more work with less help from junior lawyers.”); Gary A. Munneke, *Race to the Finish Line: Legal Education, Jobs, and the Stuff Dreams Are Made of*, N.Y. ST. B.J., Feb. 2012, at 12 (“In the world of individual and small-business representation, smaller firms have not experienced the same shakeout that has impacted the large-firm market.”).

14 U.S. BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK (April 26, 2012), <http://www.bls.gov/ooh/legal/lawyers.htm#tab-6>

15 T. Allen Lacey & Benjamin Wright, *Occupational Employment Projections to 2018*, MONTHLY LAB. REV., Nov. 2009, at 97 (revised and reposted Dec. 22, 2010).

16 An article in the *New York Times* suggests that getting older lawyers to step down from their positions in major law firms may be difficult. Nelson D. Schwartz, *Easing Out the Gray-Haired. Or Not*, N.Y. TIMES (May 27, 2011), <http://www.nytimes.com/2011/05/28/business/economy/28worker.html>. And there are frequent citations to a purported 2010 AARP survey reporting that 80% of baby boomers intend to continue working. This statistic may or may not be accurate, but there apparently is no such survey. Email from Lisa Costello, AARP Research, to author (July 15, 2013, TIME EST)(on file with author) (“We’ve been asked repeatedly for this survey, but have been unable to find any such survey.”)

17 Bronner, *supra* note 7.

18 See, e.g., John J. Farmer Jr., *To Practice Law, Apprentice First*, N.Y. TIMES (Feb. 17, 2013) <http://www.nytimes.com/2013/02/18/opinion/to-practice-law-apprentice-first.html> (“Legal education has not so much failed the profession as mirrored it. Law schools have trained students for a profession that has left a huge part of the public unable to afford representation – especially the middle class – and at a cost that perpetuates the problem.”); George C. Harris & Derek F. Foran, *The Ethics of Middle-Class Access to Legal Services and What We Can Learn from the Medical Profession’s Shift to a Corporate Paradigm*, 70 FORDHAM L. REV. 775, 775 (2001) (“Recent empirical surveys by bar associations tend to confirm that middle-class Americans often lack access to affordable justice.”).

19 Clifford Winston, an economist and senior fellow at the Brookings Institution, and his co-authors would go further, proposing deregulation of the practice of law, which would, they argue, reduce the cost of legal services. CLIFFORD WINSTON ET AL., *FIRST THING WE DO, LET’S DEREGULATE ALL THE LAWYERS* (2011); see also Clifford Winston, *Are Law Schools and Bar Exams Necessary?*, N.Y. TIMES (Oct. 25, 2011), <http://www.nytimes.com/2011/10/25/opinion/are-law-schools-and-bar-exams-necessary.html>.

20 Professor Tamanaha discusses the growth in enrollments. See FAILING LAW SCHOOLS, *supra* note 3. From 2000 to 2010, 16 new law schools were accredited, a rate of accreditation not seen since the 1970s. See http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/by_year_approved.html. (From 2001 to 2013, 4 more were provisionally accredited.)

21 David Segal, *Is Law School a Losing Game?*, N.Y. TIMES (Jan. 9, 2011), <http://www.nytimes.com/2011/01/09/business/09law.html>.

22 Kendall Coffey, *Underserved Middle Class Could Sustain Underemployed Law Graduates*, NAT’L L.J. (Aug. 15, 2012), <http://www.law.com/jsp/nlj/>

PubArticleNLJ.jsp?id=1202567602357&Underserved_middle_class_could_sustain_underemployed_law_graduates&slreturn=20130706203241 (“The reality is that with prudent office economics, recent law graduates could earn decent compensation and launch successful practices, with the opportunity to continue to earn more.”); Tom Kirvan, *Law Firm Cited for Serving ‘Unmet Needs’ of Citizenry*, MOTION MAGAZINE (June 3, 2013), http://www.legalnews.com/motion/article.php?article_id=238 (reporting that Bert Whitehead IV has been recognized by the ABA for “matching the unmet legal needs of the middle class and those of moderate incomes with lawyers who provide affordable legal information, services, and representation.” The ABA stated that Whitehead delivers those services “in ways that are exemplary and replicable.”).

23 “As in the past, some recent law school graduates who have been unable to find permanent positions are turning to the growing number of temporary staffing firms that place attorneys in short-term jobs. This service allows companies to hire lawyers ‘as-needed’ and permits beginning lawyers to develop practical skills.” U.S. BUREAU OF LABOR STATISTICS, *supra* note 14.

24 See, e.g., Catherine Ho, *Law School Applications Fall for Third Straight Year*, WASH. POST, June 3, 2013 at A13 (Andrew Cornblatt, the dean of admissions at Georgetown University Law Center, is quoted saying, “I think this is the right-sizing. There’s this adjustment being made.”); Bronner, *supra* note 7 (“The students are doing the math,” said Michelle J. Anderson, dean of the City University of New York School of Law. “Most law schools are too expensive, the debt coming out is too high and the prospect of attaining a six-figure-income job is limited.”).

25 See Tamanaha, “The Collapsing Economics of Legal Education,” *infra* at [PAGE NUMBER]; see also, e.g., *id.* (“Others, like the University of Illinois, have offered across-the-board tuition discounts to keep up enrollments.”).

26 Jennifer Smith, *A Crop of New Law Schools Opens Amid a Lawyer Glut*, *supra* note 7 (“Existing schools are under pressure to cut costs.”).

27 See Ashby Jones & Jennifer Smith, *Amid Falling Enrollment, Law Schools Are Cutting Faculty*, WALL ST. J. (July 15, 2013), <http://online.wsj.com/article/SB10001424127887323664204578607810292433272.html> (“Law schools across the country are shedding faculty. . . . Having trimmed staff, some schools are offering buyouts and early-retirement packages to senior, tenured professors and canceling contracts with lower-level instructors, who have less job protection.”).

28 Ethan Bronner, *To Place Graduates, Law Schools Are Opening Firms*, N.Y. TIMES (Mar. 8, 2013), <http://www.nytimes.com/2013/03/08/education/law-schools-look-to-medical-education-model.html> (“All law schools, including the elites, are increasing skills training by adding clinics and externships.”); see also Patrick G. Lee, *Law Schools Get Practical: With the Tight Job Market, Course Emphasis Shifts From Textbooks to Skill Sets*, WALL ST. J. (July 11, 2011), <http://online.wsj.com/article/SB10001424052702304793504576434074172649718.html> (“Looking to attract employers’ attention, some law schools are throwing out decades of tradition by replacing textbook courses with classes that teach more practical skills.”); Daniel B. Rodriguez & Samuel Estreicher, *Make Law Schools Earn a Third Year*, N.Y. TIMES, (Jan. 18, 2013), at <http://www.nytimes.com/2013/01/18/opinion/practicing-law-should-not-mean-living-in-bankruptcy.html> (“In fact, that evolution is already going on, as many schools (including our own [Northwestern and NYU]) reimagine their third-year curriculums through externships, public service programs and courses that offer in-depth practical training.”).

29 Jennifer Smith & Ashby Jones, *More Often, Nonlawyers Try Taste of Law School*, WALL ST. J., May 20, 2013, at B1 (discussing one-year masters programs designed for foreign lawyers: “Barry Currier, the ABA’s managing director of accreditation and legal education, said more non-J.D. programs are popping up now for two reasons: They can generate revenue for schools, and they respond to market needs for people with specialized training.”).

30 Lincoln Caplan, *An Existential Crisis for Law Schools*, N.Y. TIMES (July 15, 2012), <http://www.nytimes.com/2012/07/15/opinion/sunday/an-existential-crisis-for-law-schools.html> (“[S]ome schools are earnestly considering two-year J.D. programs. . . .”)

31 Alabama, California, Massachusetts, and Tennessee. See National Conference of Bar Examiners and American Bar Association Section of Legal Education and Admissions to the Bar, *Comprehensive Guide to Bar Admissions* 8 (Erica Moeser and Claire Huismann, eds., 2013), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_comprehensive_guide_to_bar_admissions.authcheckdam.pdf.

32 G. Jeffrey MacDonald, *The Self-Made Lawyer*, CHRISTIAN SCI. MONITOR, (June 3, 2003), <http://www.csmonitor.com/2003/0603/p13s01-lecs.html> (“Only seven states – Vermont, New York, Washington, Virginia, California, Maine, and Wyoming – offer law office study as a road to the bar exam. . . . Correspondence study or learning law on-line have attracted more than 1,000 participants at a time, but only California, New Mexico, and Washington, DC, will administer the bar exam to someone with this training.”).

33 See *N. Pac. Ry. v. United States*, 356 U.S. 1, 4 (1958) (“The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.”).

34 Jordan Weissmann, *The Absolute Worst States for Job-Hunting Law-School Grads*, THE ATLANTIC (June 3, 2013), <http://www.theatlantic.com/business/archive/2013/06/the-absolute-worst-states-for-job-hunting-law-school-grads/276463/> (“[L]aw is in many ways still a geographically bound profession,” referring to data provided by Matt Leichter on his blog, Law School Tuition Bubble, demonstrating that the market for lawyers varies by State and region of the country).

35 Press Release, Department of Justice, Justice Department and A.B.A. Resolve Charges That The ABA’s Process for Accrediting Law Schools was Misused, (June 27, 1995) (on file with author); *United States v. A.B.A.*, Civil Action No. 95-1211 (D.D.C. June 27, 1995)(Competitive Impact Statement).

36 Department of Justice press release dated June 23, 2006.

37 This does not stop Marc Gans from calculating the number of jobs that require a J.D. degree, and proposing that the ABA should have stopped accrediting law schools in 1976, and limited class size for law schools already accredited at that time. Marc Gans, [Not a New Problem: How the State of the Legal Profession Has Been Secretly in Decline for Quite Some Time](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2173144), 33-34 (June 24, 2012), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2173144.

38 See Linda Darling-Hammond & Charles E. Ducommun, [Recruiting and Training Teachers: What Matters Most and What Can Government Do?](http://www.help.senate.gov/imo/media/doc/Darling-Hammond.pdf), The Forum for Education and Democracy at n.2, <http://www.help.senate.gov/imo/media/doc/Darling-Hammond.pdf> (“In California, for example, there are about 1.3 million credentialed teachers and about 280,000 teaching positions. Nationally, of the estimated 200,000 teachers hired annually, no more than 125,000 are hired from the new teacher pool; the remainder are individuals who are moving or returning to teaching from the reserve pool. The number of new teachers currently prepared each year – roughly 190,000 – is more than enough to satisfy this demand. Furthermore, despite shortfalls in some areas, the United States annually produces many more new teachers than its schools hire. Only about 70% of newly prepared teachers enter teaching jobs immediately after they graduate, and many report that they cannot find jobs.”)

39 Lawrence E. Mitchell, *Law School Is Worth the Money*, N.Y. TIMES (Nov. 29, 2012), <http://www.nytimes.com/2012/11/29/opinion/law-school-is-worth-the-money.html>.

40 Russell Shafer & 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>.

41 Menachem Wecker, *Where the Fortune 500 CEOs Went to Law School*, U.S. NEWS & WORLD REP. (June 26, 2012), <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/06/26/where-the-fortune-500-ceos-went-to-law-school>.

42 Jennifer Manning, Membership of the 112th Congress: A Profile, CRS Report for Congress, March 1, 2011.

43 See, e.g., Stacy Conradt, *30 Famous People With Law Degrees*, MENTAL_FLOSS (May 24, 2012), <http://mentalfloss.com/article/30760/30-famous-people-law-degrees>; *History’s Stealth Lawyers*, BLOOMBERG LAW, <http://about.bloomberglaw.com/videos/historys-stealth-lawyers/>; Terry Bowden, GOZIPS.COM (2013), http://www.gozipt.com/sports/fball/2013-14/coaches/bowden_terry; K. K. Thornton, *9 Famous Attorneys Who Do Not Practice Law*, YAHOO VOICES (Oct. 6, 2009), <http://voices.yahoo.com/9-famous-attorneys-not-practice-law-4545471.html>.

44 In a letter to the editor of the *New York Times*, Jeremy Haile wrote that whether law school is “worth the money” is the wrong question. “Instead, would-be law students should ask themselves what they hope to accomplish in life. . . . Though I live in a studio apartment and expect to be paying down school loans until middle age, I love what my legal education allows me to do.” N.Y. TIMES (Dec. 4, 2012). See also Segal, *supra* note 21, in which he discusses Michael Wallerstein’s financial plight (he terms it “financial hell”) that resulted, at least in part, from law school loans and a rough market for lawyers. Segal reports, “Mr. Wallerstein, for his part, is not complaining. Once you throw in the intangibles of having a J.D., he says, he is one of law schools’ satisfied customers. ‘It’s a prestige thing,’ he says. ‘I’m an attorney. All of my friends see me as a person they look up to. They understand I’m in a lot of debt, but I’ve done something they feel they could never do and the respect and admiration is important.”

45 Munneke, *supra* note 13; see also GARY A. MUNNEKE, WILLIAM D. HENSLEE & ELLEN S. WAYNE, *NONLEGAL CAREERS FOR LAWYERS* (5th ed. 2006).

46 We are all familiar with Thomas Malthus’s projection of mass starvation as population inexorably outpaces its ability to produce food. Many of us recall the coming ice age. And, there is the often recited, but I would guess apocryphal, story of the 1894 London Times’s prediction that with the growth of London and New York City, and the consequent need for horses, those cities would be buried in manure within 50 years. Sometimes simple extrapolations come true; often, they do not. See, more specifically, Ronald G. Ehrenberg, *An Economic Analysis of the Market for Law School Students*, (Nat’l Bureau of Economic Research, Working Paper No. 2602, 1998), available at <http://www.nber.org/papers/w2602> (“studies by economists of the labor market for lawyers suggest that it is dangerous to project trends.”)

47 The law schools at Villanova University and at the University of Illinois both have admitted to having reported inaccurate admissions data. See Martha Neil, *Villanova Says Inaccurate LSAT and GPA Data Were ‘Knowingly Reported’ to the ABA in Prior Years*, A.B.A. J. (Feb. 4, 2011), http://www.abajournal.com/news/article/new_villanova_law_dean/; Mark Hansen, *U. of Illinois Law School Admits to Six Years of False LSAT/GPA Data*, A.B.A. J. (Nov. 7, 2011), http://www.abajournal.com/news/article/illinois_law_admits_to_six_years_of_false_lsat_gpa_data/. Also, the ABA has reported that 13 schools mistakenly misreported average student debt figures, and corrected them. Mark Hansen, *Law Schools That Misreported Student Debt Figures to ABA, US News Are Identified*, A.B.A. J. (Aug. 9, 2012), http://www.abajournal.com/news/article/law_schools_misreported_student_debt_figures_to_aba_us_news/.

48 Michael Simkovic & Frank McIntyre, [The Economic Value of a Law Degree](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2270175) (May 18, 2013), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2270175.

49 *Id.* at 1. The study also finds, among other things, that: “Our data suggest that law degree holders are not immune to economic downturns, but they have continued to fare better in the recent downturn than bachelor’s degree holders without advanced degrees,” and that “the earnings premium [of the law degree] remains close to (and slightly above) the long-term historic average.” *Id.* at 32.

50 The authors calculate that “[t]he Internal Rate of Return at the median is 13 percent in real terms, or approximately 16 percent in nominal terms.” *Id.* at 41.

51 Jonathan D. Glater, *In Lean Times for Law Schools, an Opportunity*, N.Y. TIMES (Dec. 5, 2012), <http://dealbook.nytimes.com/2012/12/05/in-lean-times-for-law-schools-an-opportunity/>.

52 As Steven Greenberger, of the DePaul University College of Law, said: “I think they should have all the info, and the info should be accurate, but saying once they know that they shouldn’t be allowed to come, that’s predicated on the idea that students are really ignorant and don’t know what is best for them.” Segal, *supra* note 21.

53 See U.S. News & World Report, *Best Graduate Schools: Business, Education, Engineering, Health & Medicine, Law, Social Sciences, Sciences* (2014), available at http://www.usnews.com/usnews/store/grad_school_compass.htm?src=ad-gradcompass

54 See Law School Admission Council and American Bar Association Section

- of Legal Education, *ABA/LSAC Official Guide to ABA-Approved Law Schools*, (2013 ed.), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_official_guide_aba_approved_schools.authcheckdam.pdf
- 55 The Princeton Review, *The Best 168 Law Schools* (2013 ed., 2012) (hereinafter “The Best 168 Law Schools”).
- 56 See, e.g., BARRON’S, *GUIDE TO LAW SCHOOLS* (20th ed. 2012). There are also various law school rankings. E.g., Karen Sloan, *The Go-To Law Schools*, NAT’L L.J., available at http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202543436520&THE_GOTO_LAW_SCHOOLS; THE BEST 168 LAW SCHOOLS, *supra* note 54; SSRN TOP 350 U.S. LAW SCHOOLS (July 1, 2013), http://hq.ssrn.com/rankings/Ranking_Display.cfm?TMY_gID=2&TRN_gID=13; VAULT, BEST LAW SCHOOLS (2013), <http://www.vault.com/rankings-reviews/school-rankings/best-law-schools.aspx>; Brian Leiter, *Brian Leiter’s Law School Rankings* (2013), <http://www.leiterrankings.com/>; ABOVE THE LAW, *The ATL Top 50 Law School Rankings 2013*, (2013), <http://abovethelaw.com/careers/law-school-rankings/>.
- 57 Joe Palazzolo & Chelsea Phipps, *supra* note 2.
- 58 Gomez-Jimenez v. New York Law Sch., 36 Misc. 3d 230, 943 N.Y.S.2d 834 (Sup. Ct. 2012) *aff’d*, 103 A.D.3d 13, 956 N.Y.S.2d 54 (2012) *leave to appeal denied*, 20 N.Y.3d 1093, 987 N.E.2d 639 (2013).
- 59 *Id.* at 12. He went on to say that, “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.” Indeed, if they are considered “unsophisticated consumers” it is difficult to conceive what consumers are not unsophisticated.
- 60 FAILING LAW SCHOOLS *supra* note 3, at 76.
- 61 This same phenomenon has occurred in higher education in general. See, e.g., Editorial Board, *supra* note 3 (“[T]he law-school business model is an exaggerated version of all higher ed.”), and Hadley Malcolm, *Crushing Student Loan Debt Stymies Millennials*, THE TENNESSEAN, July 2, 2013 at 6A (“Rising tuition costs and an anemic job market are feeding this vicious cycle, as a generation with more student loan debt than any other is struggling to find its economic footing. . . . Millions of students are graduating into a slowly improving economy in which many still find themselves unemployed or underemployed.”).
- 62 There may be some modest signs of hope. Richard Lloyd, *Braving the Headwinds*, 50 AM. LAWYER, No. 12, 50 (Dec. 1, 2013) (“The overall impression is of a market where work flows remain depressed – although moving in the right direction. . .”).
- 63 Ethan Bronner, *A Call for Drastic Changes in Educating New Lawyers*, N.Y. TIMES (Feb. 10, 2013), <http://www.nytimes.com/2013/02/11/us/lawyers-call-for-drastic-change-in-educating-new-lawyers.html>.

