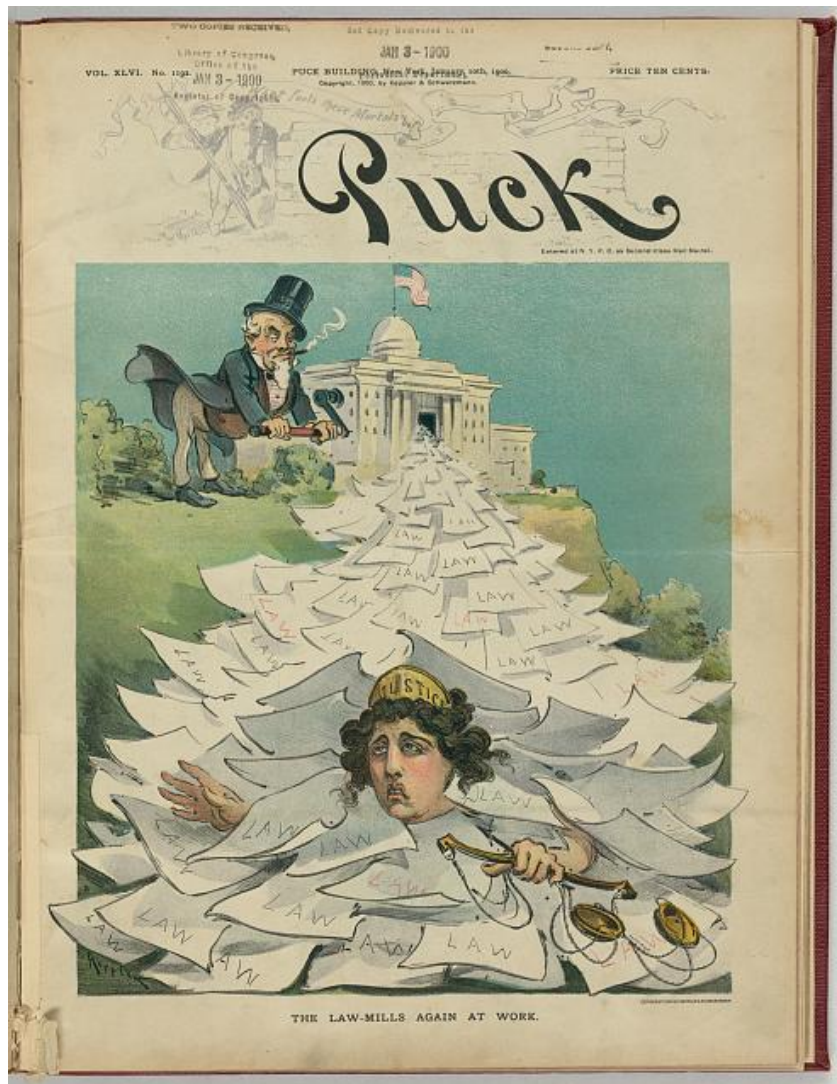


RADICAL TEACHER

A SOCIALIST, FEMINIST, AND ANTI-RACIST JOURNAL ON THE THEORY AND PRACTICE OF TEACHING

Candor and the Politics of Law Teaching

By Paul Campos



THE LAW-MILLS AGAIN AT WORK. ILLUSTRATION SHOWS "JUSTICE" HOLDING HER SCALES, BEING BURIED UNDER AN AVALANCHE OF PAPER LABELED "LAW" AS A "LEGISLATOR" AT THE TOP TURNS THE CRANK SPEWING LEGISLATION FROM THE U.S. CAPITOL. JAN. 10, 1900. ILLUS. UDO KEPPLER. COURTESY OF LIBRARY OF CONGRESS

This essay is about a particular type of candor that teachers owe their students, in one sector of what has become the business of contemporary American education. It is by necessity something of a personal statement, which flows out of the special circumstances facing teachers in the world of the American law school. Nevertheless, I hope something of what follows resonates with readers beyond that world.

I have taught at the University of Colorado's law school since 1990. A few years ago, I began to become concerned about what was – or more precisely, what was not – happening to many of our graduates. What was not happening was post-graduate employment in the legal profession. After hearing numerous anecdotes from former students about how bad the market had become for aspiring lawyers, I looked at statistics compiled by my school – statistics which at that time the school did not make available to the public – and was shocked by what they revealed.

Nine months after graduation, less than three of every five graduates in the classes of 2009 and 2010 were working as lawyers. One in every six graduates was completely unemployed. Nearly half of the 2010 class had educational debt from law school alone of more than \$100,000 (the graduates' other educational debt was unknown). The median salary of those graduates who had full-time jobs as lawyers and reported a salary – a group representing about one third of graduates – was \$51,000. Given their 16.5% unemployment rate, the real median salary for these graduating classes was no doubt far lower.

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These discoveries inspired me to begin researching what I came to understand as the crisis of the American law school. Over the past three years I have written extensively about this crisis in both the academic and popular press. I have argued that a combination of the skyrocketing price of attendance and increasingly bleak employment prospects for law graduates has made law school a bad investment for a large percentage of recent graduates, and that law schools should cut both tuition and enrollments drastically in response to this situation.¹

I have also argued that the long-standing practice of hiding or misrepresenting employment data, while at the same time radically raising tuition, has caused the contemporary law school world to take on some of the characteristics of a confidence game. In doing so I have sided self-consciously with the so-called "scam blog" movement: a loose collection of lawyers and other law school graduates who for the past several years have been publicizing the plight of the enormous number of recent graduates for whom the decision to attend law school has

turned out to be something between a serious mistake and a personal catastrophe.²

I have not been alone in this venture: in 2012, Brian Tamanaha published *Failing Law Schools*, which gave historical context to the argument that contemporary American law schools were now often in an exploitative relationship with their students.³ Other critics from inside the legal academy have also come forward, and, with the help of Law School Transparency – an organization founded by law students, which has successfully pressured the American Bar Association to force law schools to publish far more revealing employment information – the law school reform movement is changing the cultural conversation regarding legal education in America.⁴

I mention these details to give context to the peculiar circumstances in which law teachers now find ourselves, both within law school classrooms, and when dealing with law students and prospective law students in other venues. Those circumstances are a product of, above all, the commodification of American education in general, and of legal education in particular.

Specifically, I am using the word "crisis" to signal what in my view has become a qualitative shift in the struggles new law graduates now face. A generation ago, the cost of law school for most students was largely the opportunity cost of removing oneself from the labor market for three years. Average annual resident tuition at public law schools was less than three thousand dollars per year *in 2013 dollars*, while even the most expensive private law schools cost a quarter of what they do today, in current, inflation-adjusted dollars.

Meanwhile, jobs for attorneys were, relatively speaking, plentiful: ABA law schools awarded 17,000 law degrees in 1972, compared to 46,500 in 2013. While the cultural cliché that law school is a safe route to achieving or at least maintaining upper middle class status has always been somewhat exaggerated, I am calling the present situation a crisis to indicate that what once was an exaggeration has now become a dangerous myth.

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The price of law school has risen to levels that would have seemed inconceivable a generation ago – the three-year cost of attendance at some schools is now more than a quarter of a million dollars – while the law school transparency movement has revealed that nearly half of all current law graduates are failing to secure legal employment. And most entry-level lawyer jobs feature salaries and long-term prospects that make the average

cost of attendance seem like an extremely risky if not altogether dubious investment.⁵

Given these grim facts, law teachers now face a difficult conundrum. In a world in which university administrators increasingly speak in a manner that is hard to distinguish from the professional patois of business consultants – in which educational institutions are treated as “brands” to be “synergized” in the appropriate “target markets” and so forth – prudent law faculty will be tempted to suppress any impulse to engage in critical pedagogy regarding the nascent professional and personal crisis faced by so many of their students. They will instead keep, as it were, pushing the product.

Yet such prudence, while no doubt conducive to both professional advancement and personal happiness, requires a certain mortification of both the intellect and the capacity for moral action (Here we can recall Flaubert’s dictum that “to be stupid, selfish, and have good health are three requirements for happiness, though if stupidity is lacking, all is lost.”).⁶

In any case, the law school reform movement has acquired sufficient notoriety that it is becoming increasingly difficult for individual law teachers and law schools as institutions to employ silence and denial as either an unconscious psychological defense mechanism or a conscious business strategy. Indeed, in the contemporary American law school, the employment and debt crisis faced by our students is always present in every encounter with them, if only implicitly, and it is now an abrogation of professional responsibility not to address it at appropriate times.

What are such times? The most obvious answer is when law students ask law teachers direct questions regarding the subject. In my experience, this is more likely to take place during office hours or by email than in class itself; nevertheless, on some occasions over the past few years I have found questions about the crisis arising organically, as it were, during class discussion. (For example, in one class a discussion regarding how child support is a rare exception to the rule that debts can be discharged in bankruptcy led to questions as to why student loans constitute another such exception, which in turn sparked a broader discussion regarding the law school crisis as a whole).

Law teachers need to make clear that they are open to such discussions with students, whether in class or outside it. Failure to do so is likely to lead to undesirable forms of self-censorship on the part of students. For instance,

students who are considering dropping out of law school are likely to hesitate to raise this option with teachers who they believe will look down on them for even considering such a choice, even though in many cases dropping out is clearly the best decision for a particular student. (In the past two years several students, both at my law school and at others, have sought my opinion regarding this question, and in a couple of cases I told students quite bluntly that they should quit).

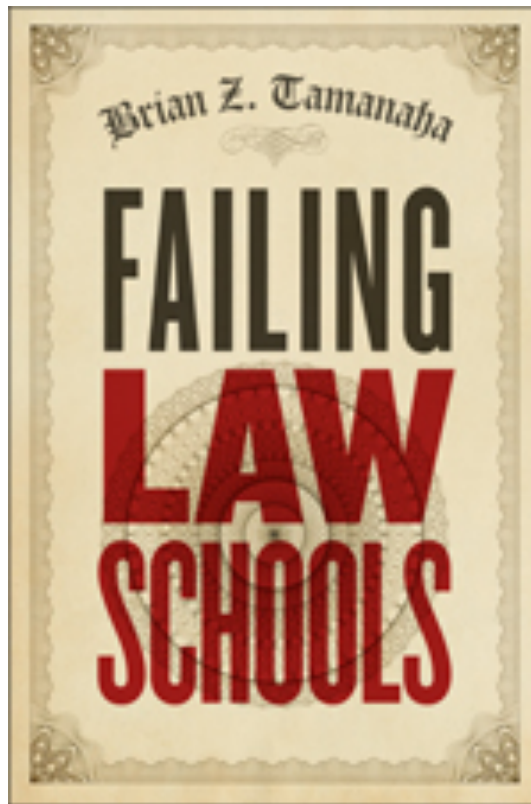
Of course to respond usefully to student concerns regarding the legal employment and educational debt crisis, law teachers must become knowledgeable about the dimensions of that crisis in the particular context of the institutions in which they teach. Indeed, when I began to investigate this subject three years ago, I was embarrassed to discover how little I knew about what was happening to our students after they graduated, and how much debt they were incurring to acquire their degrees.

And I was hardly alone in this regard: I soon discovered that many of my colleagues had no idea what tuition the law school was charging, and were genuinely shocked when they were told. (Their shock is partially explicable by the fact that, between 2001 and 2011, resident tuition at the law school rose from \$5,917 to \$31,114 per year, and that the faculty had essentially no role in the administrative processes which produced these increases).

Nor did the faculty have any real information regarding employment outcomes for our graduates, as the school’s administration saw to it that only fragmentary and misleading versions of the collected data were made available to teachers, students, and prospective students.

Thus the first step law teachers need to take if they wish to give useful guidance to their students is to understand the employment options actually available to graduates of their schools, and the costs law students are incurring to acquire their degrees. The law school reform movement has made it easier for law teachers to get this information, but acquiring it still requires an effort. It comes as no surprise that, in the increasingly commodified world of higher education, administrators are prone to be less than candid about such matters, as candor in this context is clearly bad for business. (Since 2010, applications to law school have declined from 88,000 to 59,500 per year, in no small part because of the efforts of the reform movement to increase transparency).⁷

Becoming familiar with the employment and debt crisis as it manifests itself among the graduates of one’s school



is not only a matter of studying various economic statistics, important as it is to do so. We also owe it to our students to engage in the sort of qualitative inquiry that will give us some hint of the emotional and psychological struggles of many of our graduates. (Below I will suggest some ways that law teachers can enrich quantitative knowledge with glimpses into the qualitative dimensions of the crisis).

Law teachers who make the necessary effort are likely to discover that they will then be in a position to give answers to inquisitive students about what is happening to their school's graduates that are often deeply troubling. Here I will focus on two aspects of the post-graduate landscape about which we should be especially candid with our students: the ongoing creation of a legal precariat, and the related issue of spoiled legal identity.

By the legal precariat, I mean that percentage of our graduates – at many law schools, an actual majority – who are unable to find real legal jobs. For these purposes, a real legal job can be defined as full-time, long-term employment requiring a law degree. In recent years, only about 25,000 of the 45,000 annual graduates of ABA-accredited law schools have found such jobs within nine months of graduation.⁸ What happens to the rest – both in the short and the longer term?

The contemporary employment market for new law graduates has taken on a distinctly neo-feudal flavor, in which a willingness to enter into one or more unpaid apprenticeships is becoming a pre-condition for obtaining a paying job. (On the other hand, medieval guilds generally required masters to house and feed their apprentices; new law graduates are not so lucky).

The answer to this crucial question, we should admit candidly, is that, in regard to longer-term outcomes, we know very little. What we do know is that, nine months after graduation, the 20,000 annual new members of the legal precariat include more than 5,000 completely unemployed law graduates, along with around 3,500 graduates in part-time jobs, 4,000 in temporary jobs, and more than 1,000 in jobs that were both part-time and temporary. More than 3,000 were in jobs that had nothing at all to do with a legal education.⁹ (My research into the kinds of jobs graduates who are listed by their alma maters as being in "business and industry" hold suggests that a shockingly large percentage of such jobs include things such as being a retail salesperson or a barista.)

We are also coming to realize that, for large numbers of our graduates, any chance of having a legal career turns on having both the willingness and the ability to work literally for free, for months and even years after graduation. The massive oversupply of law graduates relative to available legal jobs has produced a situation in

which many government and even some private employers are hiring new graduates into "jobs" that have a salary of zero. (For private employers, the legality of such arrangements is extremely questionable; otherwise they would be even more common). For example, United States Attorney offices across the country have for two years now been advertising "Special Assistant United States Attorney" positions. These jobs last one year, and generally include a requirement that the employee sign a contract acknowledging that he or she will not be eligible for a permanent position with the office for at least two years afterwards. The contract also makes clear that that the job is a "gratuitous service appointment" (this is legalese for "you will not be paid any salary").¹⁰

Similarly, in the fall of 2012 a Denver federal judge solicited applicants for a year-long clerkship in his chambers via a job notice which, in addition to stipulating that the clerk would be paid nothing, and could be fired at any time for any reason, asked that applicants "morally commit to the position for one year."¹¹

These are examples of how the contemporary employment market for new law graduates has taken on a distinctly neo-feudal flavor, in which a willingness to enter into one or more unpaid apprenticeships is becoming a pre-condition for obtaining a paying job. (On the other hand, medieval guilds generally required masters to house and feed their apprentices; new law graduates are not so lucky).

Other members of the legal precariat work for pay, but under conditions of employment typical of those endured by casual labor, even when that labor wears a white collar. These include wages that are so low relative to working hours that some graduates find themselves making less than the minimum wage (minimum wage restrictions do not apply to salaried members of professions), extreme employment instability, no fringe benefits, and the sense of powerlessness that comes from knowing that one can be replaced at any moment by someone equally qualified to do one's job, and even more desperate to collect its meager compensation.¹²

It should be unnecessary to point out that such a system both reinforces and strengthens class stratification. Children of privilege, who can rely on their families to pay the rent and the grocery bills during an awkward year or two while they work for little or literally no pay, in order to get their feet inside the proverbial doors, will end up in the real jobs that eventually appear behind those doors, while many less privileged graduates will have to abandon their dreams of a legal career altogether.

The enormous and constantly growing ranks of the legal precariat are full of people who must manage spoiled legal identities. In American culture, the virtual social identity of the lawyer is, generally speaking, of a member of a high-status profession, who does intellectually challenging and socially important work for considerable sums of money. Law graduates who find themselves failing to conform to some or all aspects of this identity must deal with the possibility, or the reality, of being stigmatized by

that failure in the eyes of what Erving Goffman calls "normals."¹³

Goffman describes three strategies for dealing with social stigma: passing, covering, and flaunting. Passing consists of successfully hiding the presence of the stigma; covering involves making the stigma less obtrusive, and therefore less disturbing to observers; flaunting is the act of emphasizing the stigmatized attributes in a way that protests and attempts to undermine the meaning observers give to it.

Note that when our graduates pass and cover, it makes it more difficult for law professors, who are in some ways the paradigmatic "normals" in the context of the legal employment and debt crisis (this status is more than a little ironic, given that law professors are rarely practicing lawyers), to appreciate the dimensions of that crisis. That is one reason why it is crucial for law teachers to enrich their statistical understanding of the crisis with qualitative knowledge.

Because our students and graduates who are managing spoiled legal identities are understandably hesitant to expose their stigmatized condition to us, law teachers have an obligation to seek out this sort of knowledge, disturbing as it often is. It would, I believe, be a pedagogically useful experience for law teachers to witness some of the pain and humiliation our students and graduates deal with, even via highly mediated contexts such as internet message boards.

Consider a few comments on a legal message board, following a post entitled "The Vale of Tears," which invites soon-to-graduate law students and recent graduates without legal jobs to share both job search tips and emotional coping strategies. Over the course of less than a year the post has garnered more than 3,000 responses. Note that all the quoted posts are from a single – fairly typical – evening:

My mom said I should just open a firm. The convo went like this: "You should just open your own practice." "And then what?" "Well, then you'll have a job." "Yeah, but how in the world will I get clients or know what I'm doing?" "Well once you open your firm you'll have clients." "How mom? How? Seriously, I can open a firm today. Here, it's open. Now what? No one knows who I am or cares about what I do. Do you want me to just sit by the phone and hope it rings? No one will show up." "Well, you have to get your name out there." "Oh, so you mean network? Yeah, I've heard that one before." "Well Sandy's son decided he is opening up his own firm so if he can do it you should be able to do it. My son is more talented than Jason." Yeah, this is what I deal with during every single phone call.

How do you guys deal with the shame and guilt? My dad keeps loaning me money, and it feels horrible.

I deal with it by being realistic and realizing that there is absolutely nothing more I can do. I sometimes stay up till like 9 pm looking for jobs and have probably sent out over 50 apps for listed positions that I qualify for, but in the end its a numbers game, and 50% of us will NOT find employment. I get really sick of explaining all this to my family though cause unless you're in it you don't understand the magnitude of what "the legal market sucks" means. My parents still always say "If you apply yourself and look hard enough you will land a great job".

My mom's like this. My dad's a retired commercial pilot, and he saw the job market for pilots implode while the number of student pilots still increased. He at least gets the hiring game, but he thinks that the mythical \$10 million judgment will allow me to retire.

So where do we find jobs then?

You apply to the posted ones along with the other 500 applicants who apply and hope the boss is having a good day when he looks over your resume. Otherwise, volunteer some places in hopes of making connections, developing skills and potentially getting an offer. If both of those don't work I guess doc review and washing dishes.

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Because of my work in this area, I regularly get messages from people struggling with the immense economic and emotional challenges the legal employment and debt crisis creates. Here is an email I received recounting what, in purely statistical terms, counts as a law school success story – a young woman from a modest socio-economic background who went to law school to pursue social justice by helping the poor, and who managed to get a real job as a lawyer doing just that. (Because many law students and graduates remain sincerely devoted to "cause" lawyering, and because such positions are becoming ever-rarer in a society that cares very little about providing access to the legal system for people with no money, acquiring a public interest law job is in many places becoming as or more difficult than getting a high-paying job with a large firm).

I grew up poor, but got good grades, was interested in social policy and figured, after acing the LSAT, that I would go to law school. I never had any experience working with the law, but I figured that you could do anything with a law degree and there would be no shortage of

challenging but rewarding work. I was 22 years old and thought a law degree would be a fine, conservative investment in my future. I felt that if I worked hard and got an education that at least I wouldn't be scraping to make ends meet and living off food stamps & welfare like my parents did. Needless to say, this plan got great applause from all quarters. I graduated from law school in 2005, with about \$150,000 of educational debt—half private debt, half federal debt & 5k of undergraduate debt. I was one of the “lucky” ones—I was only unemployed for about a year before finding a position with Legal Aid. I cannot afford to make my student loan payments and live. Moreover, my loans keep getting shuffled around to loan servicers who continue to raise my monthly payment amount (last month it was an “affordable” \$632 per month. Now it is \$889 per month because now I have 2 loan servicers, one for my private loans and one for my federal loans. I can't afford an income based repayment plan because such a plan does not take into account the \$632 per month payment my private loan holder is demanding and would double the amount I have to pay each month). I take home \$2300 in salary and \$500 in debt repayment assistance every month. After 6 years of paying on this debt, I have made no dent in the principal. My salary is currently frozen due to funding cutbacks, but even if we were fully funded and I was getting yearly incremental wage increases, there is no hope of making a living wage doing this work with the debt load I have. I have been looking for a better paying job for 3 years now. None exist in this state and I can't afford to relocate and buy a new professional wardrobe and take another bar exam and there aren't any jobs anywhere else anyway. The last several years have destroyed my credit and my home phone rings constantly with debt collection calls and every month I'm further in the red. I suspect that at this rate I will never be able to start a family or have a savings. I also suspect I will never have employment that is fulfilling and enjoyable or at least doesn't make me want to stab myself in the eye. Over the last 6 years, I have discovered that I hate our system of justice, our courts, our law and everyone remotely connected to them. I hate the actual work of being a lawyer and having to deal with other lawyers. Being chained to this computer and phone every day feels like torture. It has affected my physical and mental health negatively. I don't want to talk or interact with people, and the anger and rage I feel every day has swallowed up my sense of humor. It doesn't help that most of my clients are extremely vulnerable, mentally unstable and treated with the utmost contempt by every human being they come in contact with (including other poor people who assume that they are the deserving poor and everyone else is a malingering parasite). Luckily in our small office I can close the door and sob hysterically without

anyone much noticing. I feel terrible taking up a scarce job that someone else may be able to love and run with and really work the hell out of, while I hang on and avoid work as much as possible. The people I work for/with are the best people in the world and I feel like I'm taking advantage of them. But I don't feel like I have any choice but to keep going on due to the debt and lack of other employment options, especially options that would pay enough for me to make the debt payments I have to make and still be able to afford to keep a roof over my head. It doesn't help that a lot of my work is counseling clients who are about to become homeless for the first time in their life or are mired in homelessness. Their desperation and anxiety are seeping into me. Bankruptcy offers no hope of being able to start over with a clean slate. If I leave or lose this job, not only do I lose everything I have now (I guess a roof over my head, a vehicle and steady employment), but everything that I could get in the future—any wages will be severely garnished, no credit will ever be extended, no savings can ever be accumulated in a banking institution, tax returns will be intercepted and social security will be garnished. I've had elderly clients whose social security is being garnished for education debt that has increased 500% due to the age of the loan. It isn't pretty. At best I can live underground, off the books, and hope that I die young. If I could return my degree in exchange for having the remaining debt written off, I would do so in a heartbeat. The amount of contempt I feel for myself for getting in this situation is killing me. If I wasn't married to someone who would be destroyed by my death, I would probably commit suicide. I irrevocably screwed up my life at age 22 and I'm looking down a long dark hole that is the rest of my life. And my options keep going around and around in my head and they aren't getting any better. I just don't see any way forward. Is there any hope?

It is a good question. I am not a therapist or a priest; indeed, like most members of law faculties, I am a lawyer in only the most tenuous sense. I am, in other words, in many ways poorly qualified to deal with what many of my students are facing and will face. But that makes it all the more imperative that we law teachers come to know what we can about the legal employment and debt crisis, the growth of the legal precariat, and the social devastation being wrought by a system that ends up stigmatizing so many of the people who trusted us to help them find their way into the legal profession.

I will conclude with a few words for K-12 and college teachers who may be wondering what implications the crisis of the American law school has for any advice they might give their students regarding a career in law, and for law students regarding their role in the politics of this crisis. Teachers should, in my view, try to convey to their students who are interested in careers as lawyers that the field is currently fraught with both narrowly economic and

more broadly personal danger and that, in particular, the glamorous image of the profession propagated by mass media bears increasingly little relation to reality. College teachers ought to, in particular, emphasize the dangers of incurring heavy (and non-dischargeable) educational debts in the pursuit of a degree that qualifies people to join an increasingly saturated profession, and to be wary of optimism bias, confirmation bias, the sunk cost fallacy, and other psychological factors that have led so many recent college graduates to regret the decision to go to law school.

As for current law students, I have over the past couple of years been contacted by students at law schools across the country who want to protest constantly increasing tuition, misleading employment statistics, clueless or indifferent faculty, and other features of the contemporary American law school that threaten the long-term financial and emotional health of the next generation of lawyers and would-be lawyers. I tell these students to work within their schools, and with students at other law schools, toward building a protest movement. Such a movement will put legal academia, and the politicians who provide the no-questions-asked educational loans that fund the self-interested excesses of legal academia, on notice that the law school status quo is unacceptable.

Notes

- 1 Paul Campos, "The Crisis of the American Law School," *Michigan Journal of Law Reform* (Fall 2012); Paul Campos, "Self Congratulation and Scholarship," *UCLA Law Review Discourse* (March 2013); Paul Campos, "How Law Schools Completely Misrepresent Their Job Numbers," *The New Republic* (April 25, 2011); Paul Campos, "College Graduates Are in for a Rude Awakening," *Salon* (October 3, 2013).
- 2 Law School Truth Center, "A Brief History of So-Called Scamblogging: Where We Are and Where It's Going," *Outside the Law School Scam* (May 5, 2013).
- 3 Brian Tamanaha, *Failing Law Schools* (New York: Oxford University Press, 2012).
- 4 Law School Transparency maintains a web site that is an invaluable resource for prospective law students regarding the costs of law school and the employment outcomes for graduates of various schools.
- 5 See Campos, (Fall 2012) cited above.
- 6 Letter to Madame Louise Colet (August 13, 1846).
- 7 Ethan Bronner, "Law Schools' Applications Fall as Costs Rise and Jobs are Cut," *New York Times* (January 30, 2013).
- 8 See the statistics published annually by the National Association for Law Placement on its web site (www.nalp.org).
- 9 Ibid.
- 10 Joe Davidson, "Special Assistant U.S. Attorneys Work For Free," *Washington Post* (July 18, (2013).
- 11 Author, (November 21, 2012).
- 12 On the concept of a precariat generally, see Guy Standing, *The Precariat: The New Dangerous Class* (London: Bloomsbury Academic, 2011).
- 13 Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (New York: Touchstone, 1986).
- 14 Top Law Schools. http://www.top_law_schools.com/forums/index.php.



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