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The Destruction of Young Lawyers: Beyond One L

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Douglas Litowitz, *The Destruction of Young Lawyers: Beyond One L*

The Destruction of Young Lawyers:

Beyond One L

Douglas Litowitz



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Anyone who wishes to understand the legal crises that envelop the contemporary scene—in the cities, in the environment, in the courts, in the marketplace, in public services, in the corporate-government arenas and in Washington—should come to grips with the legal flow chart that begins with the law schools and ends with the law firms, particularly the large corporate law firms.

—Ralph Nader, in the *New Republic*

chapter one:
Unhappy Young
Lawyers

Lawyers are pathologically unhappy. The problem reached public consciousness about fifteen years ago with initial warnings that lawyers were experiencing mental health problems and “running from the law.”¹ In 1991, the American Bar Association acknowledged that the legal profession was at the “breaking point” due to an “emerging crisis in the quality of lawyers’ health and lives.”² By 1995, the chair of the ABA’s Committee on Professionalism admitted that lawyers were leaving the profession because it had become “a nasty business” and was “no longer fun.”³ By the mid-1990s, the *Wall Street Journal* was consulting psychoanalysts to figure out why lawyers had become “depressed, anxious, bored insomniacs,”⁴ and newspapers on both coasts were reporting that lawyers were “miserable with the legal life.”⁵ Books with ominous titles such as *The Betrayed Profession*, *Law versus Life*, and *The Lost Lawyer* started to appear.⁶ Even Justice Sandra Day O’Connor of the United States Supreme Court proclaimed that lawyers were becoming “a profoundly unhappy lot,” and that they were “dissatisfied with their professional lives.”⁷ When she attended the thirtieth anniversary of her Stanford law school class, she was shocked that the vast majority of alumni responded to a questionnaire by saying that they would not enter the profession if given another chance.⁸ And fellow Supreme Court justice Stephen Breyer noted that “lawyers increasingly describe their profession in negative terms” and have a “negative contemporary image” as hostile, narrow, and detached.⁹

These gloomy assessments come from the *mainstream* of the legal profession, not from an underground band of disgruntled outcasts. And the bad news is buttressed by a mountain of empirical data. It is now well established that public perception of lawyers is at an all-time low;¹⁰ lawyers are reporting record levels of dissatisfaction, substance abuse, and mental illness;¹¹ one-third of attorneys appear to be clinically depressed, alcoholic, or addicted to drugs;¹² and attorneys are reporting anxiety levels at least double (and perhaps up to five times greater than) those of the general population.¹³ For the first time in recent memory, a cottage industry has sprung up to help lawyers find ways to leave the profession,¹⁴ and indeed a recent survey by the *New York Law Journal* found that 40 percent of young associates at large firms plan to leave the profession.¹⁵ All of the available evidence—*anecdotal and statistical*—points to the inescapable conclusion that the legal profession makes young people unhappy, anxious, depressed, and desperate.

The problem is particularly acute for young lawyers, who shoulder most of the misery within the profession. Unlike their older counterparts, young lawyers cannot reminisce about the good old days when lawyers were “civil” and “professional.” In fact, young lawyers are morosely unhappy and pessimistic, often buried under a mountain of debt, and scraping to get jobs that offer very little long-term security yet require immense personal sacrifice. No matter how much complaining we hear from older lawyers, there is no question that younger lawyers have it worse.

Law is no longer a safe profession, either economically or psychologically, and the trouble starts very early, in the first days of law school. As we will see, most lawyers hate law school with a passion, for good reason, but they pay dearly for the experience. Law student debt now *averages* \$80,000 per student, the bulk of which consists of law school tuition, which has quadrupled in the last two decades.¹⁶ It is true that starting salaries for graduates of elite law schools can go up to \$150,000, but the sad truth is that the median income of a law school graduate is presently below \$60,000 and the path upward is slow and winding.¹⁷ That salary does not go very far in Chicago or Los Angeles (let alone in cities where housing costs are exorbitant, like New York or San Francisco), especially when carrying a massive debt load.¹⁸ When a recent graduate of Stanford Law School turned to prostitution to repay some of her \$300,000 debt, the dominant feeling among fellow students was not outrage but empathy.¹⁹

Although prior generations of young lawyers carried *some* debt, the amount is insignificant compared to the debt carried by recent law school graduates. And unlike recent graduates, prior generations could often bank on a decent-paying job upon graduation. In those days, even if a job with an established firm was not forthcoming, it was not unusual for a recent graduate to strike out on his own in a solo practice, a career path that is all but unthinkable nowadays, given the increase in start-up costs and the crushing burden of student loans. Many older lawyers tell stories about how they were able to earn a full year of law school tuition by doing construction work or waiting tables during the summers between their years at law school. Those days are gone. Nowadays, a full-time construction job would not pay for a month of law school. There is no choice other than to incur massive debt as a law student.

Debt has a powerfully conservative influence. It prevents law school graduates from taking lower-paying public interest positions that serve the interests of consumers and poor persons. According to the National Association of Public Interest Lawyers, "Few graduates can afford to go into public service helping low income people protect their most basic rights."²⁰ Indeed, a recent survey of law school graduates from 117 schools found that two-thirds of the respondents were so deeply in debt that they could not even consider a career in public service.²¹ This creates a disastrous choice: take a public interest job and default on your student loan, or take a law firm job representing powerful corporations you may not respect. This means that legions of law students are forced by simple economics to represent clients antagonistic to their sense of justice. There is ample money to be earned in representing big businesses, polluters, and white-collar criminals, but there is no money in representing consumers, crime victims, and the poor. Regardless of what law students would like to do in an ideal world, the current system forces them into jobs they resent.

All of this assumes that law graduates can obtain jobs in the first place,

which is no longer a certainty. Recent statistics on the job market are not encouraging, and the situation is getting worse. The data suggest that only a fraction of recent graduates find jobs relatively soon after graduation. The old practice of lining up a job prior to graduation is now limited to students at the “top-tier” schools and to those students at less prestigious schools who are in the top quarter of their class. At “second-tier” and “third-tier” schools, the majority of students do not have a job lined up prior to graduation.²² At these schools (that is, at the *majority* of law schools in America), the more likely scenario is that a student will graduate without a job, only to begin a grueling search for *any* legal job. Many recent graduates find themselves applying for any and all open positions, willing to take any legal job whatsoever in an effort to pay down their massive debt. Many recent graduates give up all hope for a paying job and either go back to school or provide free services in an “internship.” Still others take jobs as paralegals and law clerks.

Recent law school graduates will be entering a profession that is becoming grossly overcrowded. The ratio of general population to attorneys was 700 to 1 in 1951, 400 to 1 in 1971, 300 to 1 in 1991, and getting worse every year.²³ Overcrowding creates a shark tank of bitter fighting over a limited pool of clients, which means that it is virtually impossible for a new attorney to venture out into a solo practice and compete with established attorneys. The old practice of “hanging out a shingle” is an anachronism. In most cases, there are virtually no options available to the young lawyer except to take a job with a private law firm, if such a job can be found. If a law school graduate takes a position with a firm having fewer than twenty-five lawyers, she will be paid less than \$60,000, with a debt burden of nearly \$1,000 per month, and with an expectation of having to bill nearly 2,000 hours per year if she wants to succeed.²⁴ Do the math: if this lawyer spends 2,500 total hours at work, she is making less than \$20 per hour. That is a decent wage for a waitress at a nice restaurant, but it is far short of the lifestyle that most people associate with a professional degree.

Lawyers who are lucky enough to work in their chosen profession have to deal with the stark realization that the general public has a terribly low opinion of lawyers. A study commissioned by the American Bar Association found that lawyers had a mere 40 percent approval rating compared to 84 percent for teachers, 71 percent for doctors, and 79 percent for police officers; in fact, lawyers fared better than only two other professions—stockbrokers and politicians.²⁵ On the whole, lawyers are perceived as expensive, arrogant, aggressive, pretentious, and completely blind to any perspective beyond that which happens to favor their client at the moment. They are perceived as professional liars who are willing to take any position, however unethical or outrageous, so long as the client is willing to pay. To become a lawyer nowadays is to be simultaneously feared and despised.

To be sure, the public has always expressed a certain amount of distrust of and trepidation toward lawyers, extending all the way back to Plato’s

chastisement of “sophists” and Shakespearean characters who proclaim that we should “kill all the lawyers.” Yet nobody can deny that the public perception of lawyers has taken a nosedive since at least the mid-1970s, when President Nixon resigned from the California bar under threat of disbarment, after most of his cronies (including Liddy, Dean, Colson, and Agnew) were disbarred for their involvement in the Watergate scandal.²⁶ More recently, President Clinton was stripped of his right to appear before the United States Supreme Court (and accepted a five-year suspension in Arkansas), while Hillary Clinton’s law firm partner Webb Hubbell was disbarred after a conviction for fraud due to overbilling.

It is almost impossible to name a single public incident in the last two decades in which lawyers have generated good press for the profession. When the public hears the word “lawyer,” three things may come to mind: (1) a criminal case that turns into a fiasco when lawyers dream up fanciful defenses that have no basis in reality, which happened in the O. J. Simpson case and the Menendez brothers cases in the 1990s; (2) a corporate implosion exposing business lawyers for setting up a byzantine Ponzi scheme, such as the savings and loan fiasco or the Enron debacle; or (3) a political dispute that devolves into a partisan shouting match, such as the Clinton impeachment or the decision by the United States Supreme Court that awarded the presidency to George W. Bush. In the wake of the presidential melee following the 2000 election, a commentator from CNN summed up the perspective of most Americans: “The big losers in all of this, apart from the American people? I vote for the lawyers. They have exposed themselves for what they really are: a bunch of smooth-talking used car salesmen who can take any words and twist them around so that they mean exactly the opposite of what they were intended to mean or exactly the opposite of what they meant five minutes earlier.”²⁷ The willingness of lawyers to twist words into nonsense became quite clear when Alan Dershowitz, perhaps the most recognized lawyer in America, blatantly used statistics to lie in defense of his client, O. J. Simpson. At one point during the highly publicized trial, Dershowitz gave a public lecture in which he proclaimed that only one in a thousand battering husbands actually goes on to commit murder, suggesting a one-in-a-thousand chance that Simpson was guilty. He carefully left out a corollary statistic that was easily discovered by the press, namely that when a battered woman is murdered, the battering husband is the perpetrator in one-third to one-half of the cases.²⁸ After that farce of a trial, Dershowitz (a Harvard Law School professor, after all) turned to writing books and found himself accused of plagiarism—a charge against which he defended himself by blaming his research assistant for not checking original documents.²⁹ Another high-profile member of the Simpson team, F. Lee Bailey, was disbarred in Florida in 2001 and Massachusetts in 2002, and spent time in a federal detention center.³⁰

The televising of courtroom proceedings that began in the late 1980s,

largely at the initiative of cable television stations, was heralded as a democratizing step toward open government that would reveal lawyers as hard-working public servants. It did not work out that way. Instead, the high-profile cases coming out of California in the 1990s (the O. J. Simpson case, the Menendez brothers case, and the Rodney King case) showed that defense lawyers were willing to concoct all manner of groundless stories to absolve their clients of responsibility. The public disdain for how lawyers actually operate can be measured by the emergence of television shows with artificial courtroom scenarios from which lawyers are conspicuously absent, such as *Judge Judy*, *The People's Court*, and *Judge Hatchett*. The message of these shows is that lawyers must be kept out of the courtroom in order for justice to be rendered.

And yet while lawyers are highly visible in the news and on television, they are remote from the lives of ordinary people. Hourly rates of more than \$200 for simple matters, going up to \$400 for complex matters, guarantee that hardly anybody in the middle class can actually afford a lawyer. While O. J. Simpson, Claus von Bulow, and William Kennedy Smith can afford “dream team” lawyers such as Johnny Cochran, Alan Dershowitz, and Roy Black, most criminal defendants are given merely a cursory meeting with a low-paid, state-appointed lawyer, a few minutes before having to enter a plea in court. And while some lawyers will take cases on a contingency basis, the expenses of bringing a suit are so onerous that a lawyer will not take a case unless it is a slam-dunk winner, which means that ordinary injustice goes unremedied. For every toxic tort that is remedied along the lines of *A Civil Action*, there are scores of genuine tragedies that lawyers will not touch because the cost of bringing a suit against a large company runs into the hundreds of thousands of dollars.³¹ All of this adds up to a situation of public frustration with lawyers, who appear out of reach while at the same time increasingly unavoidable.

The image problem is not restricted to litigation attorneys; corporate lawyers working exclusively on business transactions are equally suspect. For good reason, they are perceived as preoccupied with cooking up schemes to protect management at the expense of workers, or drafting one-sided form contracts that consumers cannot possibly understand, the type thrust upon unsuspecting citizens at every car rental counter and appliance superstore. Corporate lawyers have been at the center of every major economic debacle of the last quarter century, from the savings and loan bailout that cost taxpayers billions, to the Enron scandal, in which lawyers set up innumerable subsidiary corporations in tax-free havens for the sole purpose of committing fraud and avoiding income tax (Enron, the seventh-largest corporation in America, paid no taxes for several years).³² When the scandal finally threatened to break open, Enron snapped into action and commissioned the law firm they had paid nearly \$30 million in the previous year, Houston-based Vinson & Elkins, to conduct an “independent” ethics review of the legal