INTRODUCTION

When I applied to law school in 1975, the nation was recovering from a severe and prolonged recession. Even so, I always assumed that I'd be able to make a comfortable living with a legal degree, although I didn't think that practicing law would make me rich. Three and a half years later, I became a new associate at one of the nation's largest law firms, Kirkland & Ellis. It had about 150 attorneys in two offices, Chicago and Washington, D.C. My annual salary was $25,000, which is $100,000 in 2012 dollars. There were rumors that some partners in large firms earned as much as ten or fifteen times that amount; by any measure, that was and is a lot of money.

The unlikely prospect of amassing great wealth wasn't what attracted me to the law. Rather, I saw it as a prestigious profession whose practitioners enjoyed personally satisfying careers in which they provided others with counsel, advice, judgment, and a unique set of skills. Mentors at my first and only law firm taught me to focus on a single result: high-quality work for clients. If I accomplished that goal, everything else would take care of itself.

Today, the business of law focuses law school deans and practitioners in big law firms on something else: maximizing immediate profits for their institutions. That has muddied the profession's mission and, even worse, set it on a course to become yet another object lesson in the perils of short-term thinking. Like the dot-com, real estate, and financial bubbles that preceded it, the lawyer bubble won't end well, either. But now is the time to consider its causes, stop its growth, and take steps that might soften the impact when it bursts.

The Lawyer Bubble is about much more than lawyers. It's about a mentality that has accompanied the corporatization of America's most important institutions, including the legal profession—a dramatic transformation that is still unfolding. Behind the change is a drive to boost current-year performance and profits at the expense of more enduring values for which there are no quantifiable measures. But omitting critical costs from the decision-making calculus doesn't make them any less important or their damaging consequences any less profound.

This book focuses on lawyers because I know them best. For more than thirty years, I've been a successful and generally satisfied one. I led what anyone would call a charmed life in the law. I grew up watching lawyers on television trying cases. As a real attorney, that's what I did, too. Neither of my parents attended college, but they assumed that any child who entered the legal profession would gain society's respect in ways they'd never achieved. For me, that turned out to be true as well. Then as now, most people assumed that the legal profession offered financial security and a way to climb out of the lower or middle class. Career satisfaction, upward mobility, social status, financial security—who could ask for more?

It was always a naive view, but today's rewards are far less certain. From start to finish, the profession now faces a largely self-inflicted crisis. Unfortunate trends began twenty-five years ago, accelerated as the new millennium approached, and continue to this day. The Great Recession worsened them.

As I've noted, this phenomenon isn't unique to the law. In fact, it afflicts many professions that people traditionally regarded as callings rather than just another job. Doctors find themselves at the mercy of nonmedical bean counters establishing incentive structures that determine how they treat their patients. Journalists become news marketers because corporate media owners see more profit in entertainment than in maintaining large news bureaus filled with investigative reporters. As professors sit through budget meetings while pondering their institutions' incentives toward writing grant proposals and away from educating students, they wonder what qualifies their colleges or universities as "not-for-profit." Pick almost any once proud profession—the great transformation is killing them all.

The legal profession has become a victim of these trends, resulting in a massive oversupply of lawyers, growing career dissatisfaction among practicing attorneys generally, and the increasing fragility of the prevailing big-law-firm business model in particular. At a moment when psychologists, sociologists, and even national leaders are beginning to recognize the importance of well-being and morale to health, worker productivity, and society as a whole, lawyers suffer from disproportionately high rates of depression, alcoholism, and substance abuse. Recent surveys report that six out of ten attorneys who have been practicing for ten years or more say they advise young people to avoid law school. As new attorneys scramble for spots in the nation's premier firms, some of those venerable legal establishments are failing and many others have more problems than they realize or are willing to admit.

This book focuses on two important segments of the legal profession: law schools, because they're points of entry for every would-be lawyer, and big law firms, because their combination of power, prestige, and wealth gives them a special role. Although attorneys working in law firms of more than 160 lawyers account for only 15 percent of practicing attorneys today, their influence is far greater than their numbers. For example, almost all law schools lure prospective students into their JD programs with promotional materials that cite six-figure starting salaries for new graduates, even though only some large law firms pay that kind of money and most schools have little chance of placing any of their graduates in those jobs. Another indicator of big firms' importance is the media attention they generate. The *New York Times*, the *Wall Street Journal*, *Bloomberg News*, Thomson Reuters, and many other news outlets employ reporters whose principal assignment is to cover large law firms and their partners. Sometimes those stories even make the front page.

THE LAWYER BUBBLE began to form when vital institutions—law schools and the American Bar Association (ABA)—abdicated their responsibilities in favor of misguided metrics and insularity. Law school deans are supposed to be the profession's gatekeepers, but far too many have ceded independent judgment in an effort to satisfy the mindless criteria underlying law school rankings, especially *U.S. News & World Report*'s annual list. Those rankings didn't exist until 1987; now they rule the law school world for both students and administrators. Flawed methodology infects each category—quality assessment, selectivity, placement, and resources. But with the acquiescence of the ABA, deans inflate their schools' rankings with incomplete and misleading information and encourage prospective students to pursue dreams that, for most of them, are impossible, all in the name of increasing applications, enrollments, and tuition revenues.

Vulnerable young people become convinced that anyone can succeed as a lawyer. Because much of their undergraduate audience consists of liberal arts majors who can't decide what to do next, law schools appear to be an attractive default option. Add a universal human affliction—confirmation bias—and the fit becomes too perfect: law schools tell prospective students what they want to hear, and sure enough, they hear it. The *U.S. News* rankings then tell them which schools to attend. Easy money for student loans fuels the entire system.

Meanwhile, the proliferation and growth of law schools offer a stark contrast to the shrinking job market. The number of JDs awarded annually grew from thirty-eight thousand in 2000 to more than forty-four thousand in 2011, but legal employment opportunities have trended in the opposite direction: nine months after graduation, only about half of the class of 2011 had secured long-term full-time work requiring a legal degree. Staggering educational debt burdens thousands of young attorneys who have no hope of getting the legal jobs that inspired them to incur those loans in the first place. Many of those lucky enough to find work in big law firms, traditionally the most envied segment of the profession, soon find themselves trapped in a hell of attorney dissatisfaction because the people running those firms now view their primary mission as perfecting a relatively new business model that prioritizes specially adapted metrics.

The big-law-firm analog to the *U.S. News* law school rankings had arrived a few years earlier when the *American Lawyer,* a publication that Yale Law School graduate Steven Brill founded, put out its first-ever list of the nation's fifty largest law firms, the Am Law 50. Even more important, it disclosed average equity partner earnings for each. Beginning with the magazine's inaugural issue in 1979, Brill had already begun reporting on the big money that some lawyers made. But the 1985 listing of the top firms—now referred to as "big law"—was a watershed event. A delicate subject that had been off-limits in polite company became a new, highly public basis for competition among lawyers, who are a fiercely competitive bunch. It hasn't brought out the best in us.

Of course, lawyers are only one example of our cultural obsession with rankings. The search for supposedly objective certainty through the illusory comfort of a numerical answer makes any list of the supposed "best" or "top" of just about anything attractive. From high school football teams to liberal arts colleges to hospitals and more, any ranking takes on a life of its own. It guides consumer behavior and creates incentives for those who run the ranked institutions. But an emphasis on near-term results—namely, the organization's immediately upcoming ranking—sacrifices enduring values.

The special role of the legal profession in our society made the impact of rankings particularly insidious. Big law became big business as a kind of arms race to the top of the new *Am Law* charts began. With the help of a new cottage industry—law firm management consultants—the prevailing business model for large law firms accelerated toward a handful of indicators that measure immediate results: billable hours, client billings, and associate-to-partner leverage ratios. Lost along the way to record equity partner profits were large elements of what once made the law a profession. To paraphrase the *American Lawyer*'s editor in chief, Aric Press, writing twenty-five years after the Am Law 50 first appeared, when the bonds of partnership are no stronger than last year's IRS Form K-1 income statement, the essential attributes of partnership become casualties.

The principal victims of this phenomenon have been those lawyers who become trapped in the culture of short-termism. That culture is especially rampant among the prestigious big firms, where, as a group, attorneys are the unhappiest. As growth itself became another key element of the strategy, increasing numbers of lawyers at larger and larger firms have become dissatisfied with their careers. As attention moved to current-year profits, the new model also led individual partners to jettison long-standing traditions of lifetime loyalty to a single firm in exchange for the promise of more money elsewhere—now. Among the two hundred largest firms in 2000, there were two thousand lateral partner moves; in 2011 there were almost twenty-five hundred (out of a total of approximately forty-five thousand equity and non-equity partners). Particularly among senior partners with large client billings, lateral movement among firms has become widespread; recruiting "stars" has become a central business strategy for many law firm leaders.

If you follow the legal profession, you may have heard recent rumblings of change. Legal observers have heralded what appeared to be a trend: the number of applicants to law schools has declined in the past two years. From 2010 to 2011 it dropped by almost 10 percent, "the steepest decline in at least ten years." Likewise, the Law School Admission Council reported that Law School Admission Test (LSAT) administrations for June 2011 had declined by more than 18 percent from a year previously—the highest percentage decline in twenty-four years. For the class entering in the fall of 2012, the number of law school applicants dropped another 14 percent, to sixty-eight thousand.

The popular explanation for these phenomena was that information about the profession's darker side, including the Great Recession's exacerbation of the attorney glut, was finally reaching prospective law students. Marginal candidates and those choosing law school by default must be opting out, some asserted. Viewed in that light, the numbers seemed to prove that the law school market was capable of self-correction.

Perhaps that analysis will turn out to be correct. But time may reveal that such views combined the effects of obfuscation with the triumph of hope over reality. The reported drop in law school applicants was a positive development, but the absolute number—sixty-eight thousand a year when the total number of new full-time jobs requiring a legal degree is twenty-five thousand a year and falling—remained absurdly high. In fact, the reduction in the number of LSAT takers in summer 2011 merely brought it back to 2008 levels. The onset of the Great Recession had driven more students to consider law school as a place to wait out reverberations from the economic collapse. The number of June 2009 and 2010 tests had surged to almost thirty-three thousand. To put that in historical perspective, the June 1987 testing session drew just under nineteen thousand students.

The bottom line is that when—as in 2012—almost seventy thousand students apply for fifty thousand first-year law student openings *each year*, but only half of those who are admitted will find full-time jobs requiring a legal degree, the market hasn't self-corrected. For full-time long-term jobs requiring bar passage, only a dozen schools reported employment rates exceeding 80 percent nine months after graduation. Considering the investment in money, time, and brainpower that law school requires (not to mention the promises that law schools make to prospective students), the present outcome is not acceptable and the foreseeable future offers little hope for meaningful improvement.

Sure, scandals occasionally bring the profession's darker side to the fore: a law school gets caught cheating on LSAT scores that it submits to the ABA and *U.S. News & World Report;* a newspaper article describes an unemployed attorney hobbled with six-figure debt and no prospects of ever repaying it; someone exposes a law firm that exaggerated revenue and profits numbers to help its *Am Law* ranking; a respected law firm spirals to a spectacular death; a seemingly successful attorney in a big firm commits suicide. Such episodes get headlines for a while, but the underlying culture that produces them survives and thrives.

The pages that follow expose the evolution of that culture. From law schools to the pinnacle of the profession at America's most prestigious law firms, unrestrained self-interest—let's call it greed—has taken key legal institutions to an unfortunate place. As leaders of the bar, especially law school deans and many managing partners of the nation's biggest law firms, focus on the near future, disastrous long-term consequences are becoming apparent. But there is hope. Those who attribute the current state of the legal profession to market forces beyond anyone's control are wrong. Human decisions created this mess; better human decisions can clean it up.

CHAPTER 1

TRACKING THE BUBBLE

In the spring of 1974—purely speculatively, I told myself—I took the Law School Admissions Test.
—Scott Turow, *One L: The Turbulent True Story of a First Year at Harvard Law School*

UNLIKE SCOTT TUROW, I always wanted to be a lawyer. Once I entered law school in 1976, it never occurred to me that using my JD to earn a living would be a significant challenge, or that my student loans from college and law school—roughly $50,000 in 2012 dollars—would be anything other than a minor inconvenience. I'd heard stories about unemployed lawyers driving taxicabs, but they were irrelevant to the life I'd planned. In that respect, I was similar to most of today's prelaw students, who are convinced that bad things happen only to someone else. The difference is that the current prospects for law graduates are far worse than my contemporaries' and mine ever were. Over the past two decades, the situation has deteriorated as student enrollments have grown to outpace the number of available new legal jobs by almost two to one. Deans who are determined to fill their classrooms have exploited prospective students who depend on federal student loan money to pay tuition. The result has been an unsustainable bubble.

Law school applicants continue to overwhelm the number of places available for them, ignoring data that on their face should propel most aspiring attorneys away from a legal career. As noted in the introduction, only about half of today's graduates can expect to find a full-time position requiring a legal degree. Meanwhile, law schools have grown in number and size to accommodate demand without regard to whether there will be jobs for their graduates. The first part of the equation—student demand—is the product of media images projecting the glamour of attorneys' lives, the perception that a legal degree ensures financial security, and law school's status as the traditional default option for students with no idea what to do with their lives. The second part of the equation—the increase in law school supply—was made possible by a revolutionary change in the method of legal education more than a century ago. It gave educators an easy way to transform law schools into profit centers for their universities. Decades later, student loans would provide the funding.

Today there's a lawyer for every 265 Americans—more than twice the per capita number in 1970—but for future attorneys, there won't be enough legal jobs for more than half of them. In 2008, the US Department of Labor's Bureau of Labor Statistics (BLS) estimated that for the ten-year period ending in 2018, the economy would produce an additional 98,500 legal jobs. In 2012, after the Great Recession decimated the market for attorneys, the BLS revised that estimate downward, to 73,600 openings from 2010 through 2020. Another prediction considered attrition in combination with the number of anticipated new attorneys on a state-by-state basis and concluded that through 2015 the number of new attorneys passing the bar exam would be more than twice the expected number of openings. Whichever of these statistics turns out to be closest, there's little doubt that law graduates are already feeling the crunch. Fewer than half of 2011 graduates found jobs in private practice. Nine months after graduation, only 55 percent held full-time, long-term positions requiring a legal degree.

Along with their degrees and dubious job prospects, 85 percent of 2010 graduates from ABA-accredited law schools carried debt, and the average debt load was almost $100,000. Average law school debt for the graduating class of 2011 broke six figures, and that number has been growing in tandem with unemployment rates for new graduates. Even if a career in law turns out to be the right path, the financial burden can be staggering. If the law ends up being the wrong path, then debt becomes the rock that Sisyphus had to push uphill for the rest of his life.

FOR MOST LAWYERS, the idea of pursuing a legal career comes early in life. One-third of respondents to a survey of recent applicants said that they had wanted to attend law school since childhood and, while still in high school, made the decision to apply after college. Another third made the decision as undergraduates, in either their freshman or sophomore year. One reason for this phenomenon is the media: popular images make a legal career look attractive to young people long before they get to college. Any middle school student who reads *To Kill a Mockingbird* (1960) or *Inherit the Wind* (1955) takes in an image of the admirable lawyer-statesman. Recent portrayals include the CBS hit series *The Good Wife*, which continues a legacy of noble lawyers in television dating back to *Perry Mason* and proceeding through *The Defenders*, *L.A. Law*, *Law & Order*, and others. Every week, an episode of *The Good Wife* focuses on junior associate Alicia Florrick, a single mom who was raising two teenagers by herself until her philandering husband, a former state's attorney, got out of jail near the end of the first season. Regularly she finds herself in tense courtroom scenes cross-examining key witnesses in high-stakes trials. While making a lot of money, she finds clever ways to unearth critical facts, reveal truth, and vindicate clients. Then she goes home every evening in time for dinner with her kids.

There are negative images out there, too, most notably in the work of John Grisham. For example, no pre-law student should want to emulate the crooked attorneys in *The Firm*, his 1991 best seller about lawyers who operate their enterprise as a front for the mob. But they also should be wary of identifying with the novel's protagonist, Mitch McDeere. He follows the very track to which most of them aspire: he graduates from a top law school and joins a high-paying law firm to earn big money. However, he gets swept away by the billable-hour culture, which deprives him of sleep and a home life, and his marriage deteriorates. These pressures, which nearly destroy him, are wholly apart from the underlying criminality that his firm's partners pursue.

Yet most pre-law students ignore the persistent warnings. Somehow those negative images can't compete with the positive ones. Psychologist Daniel Kahneman, who won a Nobel Prize in economics, may have a partial explanation. Kahneman researches and writes about a universal human characteristic: clinging to preconceived notions, even as contrary information and unambiguous data undermine them. The phenomenon is a variant of confirmation bias, the tendency to credit information that comports with established beliefs and jettison anything that doesn't.

In the context of the legal profession, most prelaw students think they'll be the exceptions—the traps that ensnare people like Mitch McDeere won't get them.

ANOTHER REASON that people become lawyers is to make money. But if prospective lawyers allow themselves to be dazzled by headlines about the wealthiest attorneys, such as the partner who recently left one big firm to join another where he'd earn a reported $5 million a year, they're making a mistake. Nine months after graduation, members of the law school class of 2009 fortunate enough to have *any* full-time job had a median salary of $72,000, comparable in buying power to the $50,000 median salary for new lawyers in 1990. That may not sound bad, but even that number is misleadingly high, as it masks a skewed income distribution. Each year 10 to 15 percent of graduates get jobs in big law firms, where the starting salary can be as high as $160,000. But those firms constitute only a tiny slice of the profession, and it's shrinking. Furthermore, the median salary has been falling. For all *law firms,* the median starting salary for the class of 2011 was $85,000; for all *lawyers* who graduated that year, it was $60,000 (a 17 percent drop compared to the $72,000 median starting salary for the class of 2009). Even those numbers overstate new graduates' financial reality for another reason: they're based solely on salary information for the 65 percent of graduates reported to be working full-time in a position lasting at least a year.

For most employed lawyers, the money gets better. The median annual income of all practicing lawyers in 2010 was $112,000—double that of all US households. The nagging problem is that the seemingly decent (but shrinking) payoff usually isn't sufficient to justify the enormous investment in time and money. Professor Herwig Schlunk of Vanderbilt University Law School calculates that for the vast majority of graduates, getting a legal degree will never yield a return equal to the financial cost of becoming a lawyer.

SOME PEOPLE GO to law school because it's the last resort of the liberal arts major who doesn't know what to do next. In that respect, the decision to enroll has long resulted from a process of elimination that proceeds something like this: being a member of a profession is the ultimate achievement, but medical school requires science-oriented interests and talents that don't fit most students in the humanities; postgraduate degrees in history, philosophy, English, and the social sciences are for future professors; business school is for those whose principal ambition is to make lots of money. That leaves law school, which offers students a three-year reprieve from the world while they pursue a noble course that presumably creates even more options. Sometimes that plan works out okay; for too many others, it leads to a place where dreams go to die.

Proof that law school is a default solution for the undecided lies everywhere, even in newspapers' sports pages. In the fall of 2011, twenty-six-year-old infielder Josh Satin made his major league debut for the New York Mets. An article about him included this line: "After graduating as a political science major from Cal, Satin was selected by the Mets in the sixth round of the 2008 draft. And like any number of 20-somethings with a liberal arts degree and nebulous career prospects, he kept law school applications at the ready."

ON THE SUPPLY SIDE of the lawyer bubble, some of the necessary conditions for its creation date to a nineteenth-century innovation in legal education—the case method. Credit for that development goes to former Harvard Law School dean Christopher Columbus Langdell. Prior to 1890, no other law school used the case method of instruction that he pioneered; today it's pervasive.

Langdell didn't set out to create what became an essential basis for the current mass production model of legal education. Rather, he was simply pursuing his penchant for thoroughness. He viewed the law as a science and believed that its ultimate truths could be discovered through the study of primary specimens, namely, the decisions of appellate court judges. Law students could divine general principles that, once mastered, would enable a graduate to practice anywhere. As Langdell saw it, differences in state law were inconsequential to the overall jurisprudential picture.

The large body of common law itself created a challenge for Langdell's approach. No student could read every reported decision going back to Blackstone's *Commentaries on the Laws of England*, an eighteenth-century treatise that first summarized the English common law as part of a unified system. For his Harvard contracts course, Langdell instead collected a selection of reported cases (there were more than two thousand at the time) from which an entire classroom of students could induce general legal principles.

The Langdell case method was a radical departure. Previously, prospective attorneys had learned the law from secondary sources as rules to memorize and skills to hone before engaging in one-on-one apprenticeships. For example, after a year of study consisting of the traditional lecture and drilling at the University of Michigan in the 1870s, Clarence Darrow received on-the-job legal training while working for an attorney in rural Ohio. He then proved his competence to a few lawyers before whom he literally sat to be examined for the bar. Darrow passed. A system that required students to learn specific legal rules and then receive training with practicing attorneys constrained the number of new lawyers admitted to the bar each year.

Langdell changed that model with what he regarded as a noble aim. Practical aspects—simply learning the rules—weren't the key. Instead, a true lawyer's most important work was to understand the governing principles so as to "be able to apply them with consistent facility and certainty to the ever-tangled skein of human affairs." One by-product of the approach was that large groups of students could receive simultaneous legal training from a handful of instructors. The system became an early building block in the current business model of legal education.

Langdell's new teaching protocol didn't create the current lawyer bubble, but it provided an essential foundation that facilitated the mass production of attorneys. From 1890 to 1916, the number of law schools doubled from 61 to 139, but the schools themselves became larger, so the number of law students increased fivefold—from 4,500 to almost 23,000. As recently as 1963, there were still only 135 law schools, but total JD enrollment had doubled to 47,000 students.

During the next decade, baby boomers made their way into higher education as the Vietnam War popularized three-year law school deferments from the draft. Enrollment doubled again to 100,000 by 1972, but there were still fewer than 150 law schools. As the last of the boomers made their way through law school, enrollment leveled off, hovering around 127,000 through the 1990s. On a per capita basis, the United States had 1.58 lawyers per 1,000 citizens in 1960; by 1980, the number had grown to 2.38 lawyers per 1,000. But that was only the beginning.

and individual choice, even deans at some of the best law schools avoided important disclosures, including meaningful employment and salary data for their recent graduates. After all, better information about the limited opportunities actually available to new attorneys might reduce student demand.

Of course, some of the widespread career dissatisfaction among attorneys is the fault of college students making shortsighted and unsound judgments about their future. But bad information shares the blame for what turned out to be a poor career choice for many of them. Law schools operating on the outer perimeter of candor to fill their classrooms worsened the problem. But without free-flowing student loan money for which law school deans never have to account, the entire system would look much different.

The law school business model permitted (and still permits) a perverse market response—increasing tuition in the face of declining demand for lawyers—for two reasons: student demand for law school still exceeds supply, and students have little difficulty borrowing whatever they need to cover the cost of a degree. For decades, lenders faced no risk of default because the federal government guaranteed the loans. Then in 2008, out of concern that the credit market freeze would leave insufficient financing for student loans, the government essentially took over most such lending directly. Two years later, it completed the transition from insuring all loans to issuing the vast majority of them. Meanwhile, revisions to the bankruptcy laws essentially bar students from ever discharging public or private educational debt. In its totality, the current regime insulates law schools from the problem of graduates who can't find jobs needed to repay their student loans, while giving schools no incentive to control tuition costs. Of the various parties involved—students, government, private lenders, and law schools—only the students and, to a growing extent under new income-based repayment programs discussed in Chapter 3, the federal treasury bear any significant risk that such borrowing might turn out to have been imprudent.

The combination of irresponsible lending and inadequate law school accountability has been deadly for many attorneys and the profession. It's a story of good intentions gone awry.

The origins of the government student loan program generally date to 1958, when Congress followed the recommendation of economist

Milton Friedman in creating a system of direct federal loans for higher education. When it expanded the program in 1965, existing federal budget accounting rules required booking direct student loans as total losses in the year made, regardless of whether they would be repaid in full with interest. But the rules also provided that a loan guarantee didn't count as a federal budget cost item—not a penny. At the urging of economists, Congress finally revised the budget rules in 1990, but the most important feature remained: federal guarantees of all private and public student loans.

For lenders, such guarantees mean no risk of nonrepayment because the government picks up the tab for any shortfall. For students, they mean the growth of another industry that will chase them forever: debt collectors. When someone defaults on a student loan, the government turns it over to private collection agencies. In 2011, the US Department of Education paid more than $1.4 billion to such companies. Summarizing that industry's attitude, a business consultant described his thoughts in 2011 as he watched Occupy protesters at New York University wearing T-shirts with the amounts of their student debt scribbled across the front: "I couldn't believe the accumulated wealth they represent—for our industry. It was lip-smacking." His article included a picture of some students in their T-shirts, including one with "the fine sum of $90,000" and another with "a really attractive $120,000." Another consultant suggested that student loans might be the accounts receivable industry's "new oil well." Something is terribly amiss in a society where policies and incentive structures make debt collection a growth business.

In addition to government guarantees, private lenders gained another layer of protection against losses from their student loan portfolios. As noted previously, today such debt almost always survives a young lawyer's bankruptcy filing. The cumulative impact of these policies is becoming clearer. As one recent graduate observed, a federally guaranteed student loan may be "the closest thing to debtor prison that there is on this earth."

It wasn't always so. In the early 1970s, the federal student loan program was still relatively new and the US Department of Health, Education, and Welfare sought to avoid any negative public image that might tarnish the young system. The agency proposed making government student loans nondischargeable in bankruptcy unless a borrower had been in default for at least five years or could prove "undue hardship." Enacted in 1976, the undue-hardship requirement placed student loans in the same category as child support, alimony, court restitution orders, criminal fines, and certain taxes. No data supported the suggestion of a student loan default problem, but anecdotal media reports of isolated abuse carried the day.

The concern was moral hazard—the fear that graduates on the verge of lucrative careers would avoid responsibility for the federal educational loans that had made those careers possible. But as the legislative history makes clear, the basis for such concerns was "more myth and media hype than reality." A lead editorial in the July 25, 2012, edition of the *Wall Street Journal* reveals the enduring power of that myth thirty-five years later: "After a surge in former students declaring bankruptcy to avoid repaying their loans, Congress acted to protect lenders beginning in 1977." That's simply not true. Although a House of Representatives report and analysis from the General Accounting Office had confirmed that abuse was "virtually non-existent," the provision found its way into the Bankruptcy Reform Act of 1978.

In 1990, Congress extended the requisite five-year default period, requiring a seven-year wait as a precondition to relief from educational debt. In 1997, the Bankruptcy Reform Commission found no evidence to support claims of earlier systematic abuse. Even so, in 1998 Congress amended the statute to provide that no amount of time would render federal educational debt dischargeable in bankruptcy. In 2005, Congress extended nondischargeabilty to private lenders as well, although, as Senator Dick Durbin asked in 2012, "How in the world did that provision get into the law? It was a mystery amendment. We can't find out who offered it." A fruitful place to begin the search might be with lobbyists for the banking industry.

Apart from the unwillingness of any legislator to claim responsibility for the now orphaned provision, there was little factual justification for it or the earlier revisions that eliminated bankruptcy relief from federal loans in the first place. Nonfederal loans accounted for only 7 percent of all student borrowing in the 2010–2011 academic year. Repeated legislative inquiry yielded no empirical evidence to validate stated fears about systemic abuse for either private or government loans. But now that the limitations are in place, some have theorized that returning even to pre-2005 rules could lead to a parade of horribles, including higher interest rates for all students, reduced affordability, and tighter credit requirements throughout the system.

Two recent examples of the undue-hardship requirement illustrate the daunting task facing a debtor who seeks relief from educational debt today. In May 2012, a sixty-three-year-old Maryland woman had more than $330,000 in school loans dating back to her enrollment at the University of Baltimore School of Law in 1992. She didn't graduate. Later, she received a master's degree from Towson University and a PhD from an unaccredited online school. The judge decided that the debtor's Asperger's syndrome qualified her for relief from student loan debt. Expecting that she could "ever break the grip of autism and meaningfully channel her energies toward tasks that are not in some way either dictated, or circumscribed, by the demands of her disorder would be to dream the impossible dream." Even the debtor's attorney expressed surprise that his client had succeeded in discharging her debt under the demanding undue-hardship standard.

In July 2012, a sixty-four-year-old woman who had worked on an assembly line earning $11 an hour until she received a layoff notice obtained discharge of loans she had first taken on in 1981, when she was thirty-three and enrolled in Canisius College. After pursuing a five-year partial repayment plan under Chapter 13 of the Bankruptcy Code, she'd whittled only $2,400 from her loan balance and still owed more than $56,000, most of which was accrued interest on her original $17,000 loan. The court concluded that the debtor was "at the end of her 'rope' at age sixty-four, facing job loss and no prospects other than Social Security," and ordered her loans discharged.

Such cases in which students get relief from burdensome student loan debt are unusual. In fact, the applicable legal standard for discharge isn't even consistent across the federal circuits. Some appellate courts require judges to predict the future and conclude, as a prerequisite to discharge, that a debtor will *never* be able to repay the loans—that is, the "certainty of hopelessness." One attorney described how he jokes about the absurdity of the standard: "What I say to the judge is that as long as we've got a lottery, there is no certainty of hopelessness. They smile, and then they rule against you."

More attorneys are finding themselves in plights similar to that of the thirty-four-year-old lawyer with more than $200,000 in school loans and a job that would never pay enough to retire them: "It's a noose around my neck that I see no way out of." It takes little imagination to foresee the domino effects as she and similarly situated others become unable to fund their children's higher education. The accumulating social costs over generations could haunt America for a long time.

AS A CONSEQUENCE of these dynamics, some not-so-funny things happen to many of those who choose law school for the wrong reasons—or for no particularly good reason. The promise of a secure future at a well-paying job is often illusory. The persistent problem of lawyer oversupply rose to crisis level, and the market for new talent has remained weak. Compounding the difficulties with which they began law school, newly minted, less-than-passionate, and deeply indebted lawyers are now having trouble finding the secure, well-paying, and exciting work they thought would be waiting for them when they graduated. For most of the nation's forty-four thousand annual graduates today, those positions were never there at all.

Because students rely on rankings to choose a school, such listings are now a critical element in the prevailing law school business model. *U.S. News & World Report* publishes what everyone regards as the gold standard. As a consequence, deans use its methodological criteria to run their institutions. Single-minded self-interest in selling a law school education—and the failure of colleges and law schools to offer a competing perspective that challenges students' assumptions about most lawyers' actual lives—has disserved many graduates and damaged the profession. But try telling that to deans who pander to the annual *U.S. News* rankings.

that a school's ranking was either very important or somewhat important in choosing where to apply. As a result, the profession's gatekeepers allow the superficial appeal of a few key metrics to displace their independent judgment. Those metrics are fatally flawed; prospective lawyers, law students, and the profession itself suffer the consequences.

It's easy to forget that the whole rankings system is relatively new. Somehow, prospective students and law schools managed to find each other long before *U.S. News* entered the scene. Well into the 1980s, pre-law students understood the general pecking order based principally on the difficulty of gaining admittance to each school. There were widely accepted groupings (e.g., Harvard, Yale, and Stanford have been the top three for a long time), but the precise order within any group depended on individual preferences and didn't seem particularly important. All of that gave way to a numbered list in 1987, when *U.S. News & World Report* first published its top twenty. By 2012, the magazine was ranking 195 ABA-accredited law schools, although it didn't publish numerical standings below number 145.

Outwardly, deans expressed disdain for the rankings. In 1997, virtually every law school dean—with the most notable exception being Northwestern's dean at the time, David Van Zandt—endorsed a statement condemning the *U.S. News* law school evaluations as counterproductive to reasoned thought and informed individual choice. Van Zandt dissented, ignoring the unfortunate fact that bad information can be worse than no information at all. His outlier position made him a self-styled maverick among law school deans. Even more important, it reflected an approach to running law schools that relied on measurement-driven criteria that make no sense and distort decisions.

In that respect, Van Zandt's greatest sin may have been candor. Most deans still say publicly that they despise the *U.S. News* lists, but their conduct says something else. Rankings of all kinds permeate law school websites. Whether the impact is on students' decision making or on deans' behavior, the *U.S. News* listing remains the mother of all misguided metrics.

As reliance on the *U.S. News* ranking system intensified, the perverse behavioral impact of its methodological criteria became more apparent. The *U.S. News* rankings consist of four components—quality assessment, selectivity, placement, and resources—each of which is subject to manipulation. Individually, deans focus on rankings as a way to sell their schools and thereby enhance short-term profits. Collectively, the result is a contest that increases student demand. Phillip J. Closius, then dean of the University of Baltimore School of Law, describes the phenomenon: "Millions of dollars [are] riding on students' decisions about where to go to law school, and that creates real institutional pressures."

Whatever else it may do, the frenzy over rankings has combined with most law schools' profit-maximizing business models to inflate the lawyer bubble. That the focus on the *U.S. News* list disserves students, law schools, and the profession becomes evident when analyzing the individual ranking components, almost all of which have produced scandals at some law schools. The one component that hasn't, quality assessment, should be considered a scandal in and of itself, both for the amount of weight it receives and for the total lack of rigor behind it.

QUALITY ASSESSMENT is the biggest contributor to a school's ranking, accounting for 40 percent of the total score. The category itself is a misnomer because it doesn't reflect quality at all. Rather, using statistically suspect samples of academics and practicing attorneys, it's a superficial and unreliable assessment of a school's reputation.

Twenty-five percent of every law school's total *U.S. News* score comes from responses to a survey that the magazine sends each year to four individuals at every ABA-accredited law school: the dean, the dean of academic affairs, the chair of faculty appointments, and the most recently tenured faculty member. They receive a list of the country's accredited law schools, along with a request to rate each—all 195 in 2012—on a scale from 1 to 5. The survey doesn't ask those responding if they've ever set foot on the campuses, met any of the faculty, or have any familiarity with the schools they're reviewing. Respondents have a "don't know" option, but *U.S. News* doesn't disclose how many people use it for particular schools on the list. After all, such meaningful information would undermine *U.S. News*'s reported response rate, which was 66 percent for the rankings published in 2011 and 63 percent for 2012.

The rest of the quality assessment component—accounting for 15 percent of the total *U.S. News* score—comes from a similar 1-to-5 survey that goes to unnamed "legal professionals, including the hiring partners

Not until the College of Law's 2005 annual report did the school—not Pless—explicitly adopt two new goals driven by the *U.S. News* rankings: increase the incoming class's median LSAT from 163 to 165 and raise its GPA from 3.42 to 3.5. When the following year's class median LSAT came in at 166, the law school's dean, Heidi Hurd, sang Pless's praises to her boss, the interim provost: "Had we been able to report this increase last year, holding all else equal, we would have moved from 26th to 20th in the *U.S. News* rankings."

Hurd's observation was misleading, as the school had actually *dropped* in rank. That's because the admissions office hadn't held "all else equal" to get its LSAT boost. Rather, it had sacrificed the average GPA of admitted students. The median GPA had plummeted to 3.32 and the school's overall *U.S. News* ranking declined to twenty-seventh. In May 2006, a new strategic plan noted that the admissions emphasis on LSAT scores had left it "with a GPA profile worse than any other top-50 school." So the school announced a new and even more ambitious goal: raising the incoming class median LSAT and GPA to 168 and 3.7 by 2011.

Once again, Hurd sought a big pay raise for Pless because, she said, he was "in the hiring sights of every dean in America who wants to improve student rankings." Why that should have been true is puzzling. The bump in the incoming students' average LSAT score had occurred because the school had accepted those with lower average GPAs. As a result, its overall rank had fallen. Nevertheless, his salary jumped to $98,000.

Not long thereafter, a handful of discrepancies between actual and reported GPA and LSAT data for the incoming class of 2011 (those who enrolled in 2008) marked the beginning of a "sustained pattern . . . that increased in practice and scope through the class of 2014." In October and November 2008, administrators debated which of several different LSAT/GPA combinations would raise the school's overall *U.S. News* ranking. Apparently rankings have become a subject of scholarly legal inquiry—at least insofar as some law professors and school administrators seek insight into how best to manipulate them. While teaching at another school, University of Illinois professor Robert Lawless had developed a methodology for determining how changes in various *U.S. News* factors affected a school's rank. When he shared it with his fellow

College of Law faculty members, they dubbed it the "Lawless Calculator." In November 2008, Lawless reported to interim dean Ralph Brubaker and associate dean for academic affairs Bruce Smith that an LSAT/GPA combination of 165/3.8 would produce a higher ranking than 167/3.6.

In February 2009, Bruce Smith became dean. One of his first major decisions was to set the school's combined LSAT/GPA goal for the incoming class of 2012. Should the median LSAT/GPA target be 165/3.8 or 166/3.7? In later remarks to the College of Law's Board of Visitors, Smith described how he resolved the issue: "I told Paul [Pless] to push the envelope, think outside the box, take some risk, do things differently . . . [and s]trive for a 166/3.8 . . . a level never attained before at [the College of Law] and, frankly, thought to be unattainable at such a large class size."

In other words, rather than choose between maximizing LSAT scores and maximizing GPA, he told Pless to "take some risk" and increase both. Surely Smith wasn't suggesting that his admissions dean falsify data, but when the person at the top of any law school issues a directive, subordinates ignore it at their peril. The targets became increasingly ambitious and unrealistic, and the dean knew it as he set them.

The university's outside investigators absolved Smith of any wrongdoing associated with Pless's misconduct. But a footnote in their final November 2011 report observed that Smith's management style "is goal-oriented and intense, and occasionally intimidating, and that it is not inconceivable that certain employees subordinate to him would be uncomfortable bringing bad news to him."

For the two years following Smith's 2009 directive, Pless didn't: "I haven't let a Dean down yet, and I don't plan on starting with you Boss," he'd assured Smith in April 2009. The median LSAT score and GPA for the school's accepted students showed continuing improvement, and Pless's salary jumped to $130,000 on the strength of Smith's glowing review. Indeed, Pless's exploding compensation at a public university in tough economic straits—especially for financially strapped Illinois—itself reveals much about the power of rankings and the discretionary clout that a dean exercises in allocating a law school's resources.

On August 22, 2011, Pless touted the class of 2014's median LSAT score (168) and GPA (3.81). The actual numbers, however, were 163 and 3.7. Those discrepancies may seem insignificant, but they are enormous in the *U.S. News* world; evidently the Lawless Calculator proves it. So do the College of Law's subsequent rankings, which plummeted when the truth caught up to them. The University of Illinois College of Law dropped twelve spots, to number thirty-five. But for a tip to the university's ethics office on August 26, 2011, the wrongdoing might have remained undiscovered for years more. As a penalty to the institution over which it wielded accreditation power, the ABA issued a public censure, imposed a $250,000 fine, and required a compliance monitor to check the school's data submissions for the next two years.

Villanova Law School endured a similar scandal based on false data that it submitted from 2002 to 2010. In response, the ABA issued a public censure noting that the school's conduct had been "reprehensible and damaging to prospective law school applicants," required an independent compliance monitor to verify admissions data submitted for the next two years, and mandated that the ABA sanctions letter remain on the school's website, also for two years. The correct numbers dropped Villanova's ranking from 67th to 84th in 2012, and it continued falling, to 101st place, in the 2013 *U.S. News* rankings, published in March 2012.

Most law school deans are too smart to engage in or approve such intentional misconduct. Instead, these creative attorneys find ways to take advantage of *U.S. News*'s methodological loopholes. For example, during David Van Zandt's final years as dean, Northwestern University School of Law's solicitation of transfer students became a high-profile example of institutional behavior that catered to *U.S. News* ranking criteria.

When it comes to LSATs, the *U.S. News* rule is simple: the LSAT scores of students transferring from another law school don't count in the incoming school's ranking. Exploiting that rule is easy: a school can bring in second-year students from elsewhere who have low LSAT scores and they won't adversely affect that component of the receiving school's selectivity rating, even as they bring in significant additional tuition revenue.

On a small scale, it's appropriate to give transfer applicants a second chance at a better school when an opening arises. As prospective first-year students, they may have performed poorly on the LSAT or not achieved undergraduate GPAs that reflected their full potential. An exemplary first-year performance can redeem a multitude of earlier sins. When utilized in that limited manner, the selective enrollment of transfer students may even have the salutary effect of undermining *U.S. News*'s undue emphasis on numbers in initial admissions decisions.

The problem arises when law schools recruit transfer students aggressively and in large numbers as a part of a strategy to expand tuition revenues while minimizing the adverse impact on the school's *U.S. News* ranking. For example, during the 2006–2007 academic year, Northwestern sent "conditional acceptances" to first-year students at other schools—students whom Northwestern had previously rejected when they'd applied as entering first-year students. Eventually, forty-three students transferred to Northwestern and increased the 238-member class by almost 20 percent. Collectively, the new additions contributed almost $2 million in tuition revenues (forty-three students times $43,000 in tuition) for that year and a similar amount for the year that followed. It was a win-win because the new tuition money arrived without reducing the LSAT scores that Northwestern reported to *U.S. News*.

The school might have taken a minor hit in the faculty/student ratio component of its *U.S. News* ranking (3 percent of its total score), but it would have been trivial compared to the negative LSAT component (12.5 percent) that it successfully bypassed. However low they were, the new transferees' scores didn't matter to the school's standing on that all-important list. Northwestern accepted even more transfers the following year, fifty-nine, but with Van Zandt's departure as dean shortly thereafter, the number subsequently dropped back into the thirties.

Van Zandt wasn't alone in implementing an aggressive transfer student strategy. According to schools' individual ABA reports for 2012, Columbia Law School admitted forty-six transfer students, Georgetown University Law Center brought in seventy-one, NYU's law school added fifty-six, and UCLA supplemented its class with forty transfers. As Loyola University of Chicago School of Law dean David Yellen observed, "If the *U.S. News* incentive went away tomorrow, transfer acceptance would drop."

At the time, Van Zandt defended his approach in straightforward business school jargon: "Chrysler and General Motors don't agree not to poach each other's customers." Such poaching increases the second- and third-year student enrollment at the receiving schools, enhancing

Underlying this admissions strategy is a basic flaw in the premise: high LSATs don't necessarily translate into good law school grades. In 2010, validity studies investigating the connection between LSAT scores and first-year grades at 189 law schools demonstrated a correlation coefficient range of 0.12 to 0.56, with a median of 0.36. (For context, 1.00 is a perfect positive correlation—that is, a high LSAT score would always correlate with high grades. A correlation coefficient of 0 implies no relationship at all between the two factors. A number between 0 and –1.0 suggests a negative relationship between the two factors under investigation.) For schools at the low end of the range (0.12), there is virtually no statistically significant relationship between LSATs and first-year grades. Even at the median of 0.36, the positive relationship is not particularly compelling; it's certainly not determinative. Of course, even strong correlation doesn't prove causation. Nevertheless, law school deans cling to performance on the LSAT as one of the single most important factors in admitting applicants and in awarding merit scholarship money.

The strategy of buying high LSAT scores inflicts collateral damage, too. Albany Law School dean Thomas F. Guernsey noted that such catering to the rankings has "strange and unintended consequences," such as reducing need-based financial aid by redirecting it to those who otherwise would go somewhere else. That is, some first-year students who didn't qualify for need-based financial aid got merit scholarships based on their LSATs. Without those scholarships, those students would have attended a higher-ranked school that offered them no money. Meanwhile, students at the lower-ranked school whose financial hardship warrants assistance suffer because the school's resources are finite. Once the money goes to those who don't need it, it's not available to those who do.

From 2005 to 2010, the number of law students receiving exclusively need-based scholarships declined by more than 3,000 (from 20,781 to 17,610) while the number receiving non-need-based scholarships increased by over 8,500 (from 31,265 to 39,845). Rising tuition costs pushed the aggregate dollar amounts up for both categories over that period. But non-need-based scholarship awards increased by $230 million (from $290 million to $520 million), dwarfing need-based scholarships, which went up by one-tenth of that amount—$23 million (from $120 million

CHAPTER 3
INADEQUATE RESPONSES

I gather change is afoot at some law schools,
but it's going to be very slow.
—Scott B. Connolly, partner in the Philadelphia-based law firm Drinker, Biddle & Reath, November 2011

WITH EVIDENCE of the growing lawyer bubble everywhere and the scope of its potential damage increasing daily, it's reasonable to ask whether any of the key players are responding appropriately to the crisis. The short answer is no. The American Bar Association's policies work with *U.S. News & World Report* rankings to deter educators otherwise inclined toward better policies, but those aren't the only obstacles to needed reform. Others include the academic tenure system, institutional inertia, the desires of students themselves, and federal legislation protecting the special interests that benefit from the bubble. Taken together, all of this constitutes a formidable barrier to necessary innovation. As a result, rather than pursue some of the more dramatic solutions to which this book will turn in Part III, most deans inclined toward any action at all find themselves hoping that the problems will go away, or at most tinkering at the edges.

Some of that tinkering is downright silly. In July 2010, Loyola Law School Los Angeles retroactively added 0.333 to every grade recorded in the last few years. At the time, at least ten other schools had "deliberately changed their grading systems to make them more lenient" since 2008. Schools across a wide range have used the tactic—including New York University, Georgetown, the University of Southern California, professors. Increasingly, schools are responding to the cry for practical training by employing adjuncts to supervise clinical work and teach practical courses, mostly for third-year law students. Subjects include trial practice, sports law, corporate reorganizations, and the like. Adjuncts provide another benefit: they're far less expensive than tenure-track professors, who typically consume about 80 percent of the faculty budget. But in the end, adjuncts are just that—adjuncts—and not central players in a law school's culture.

As a consequence, some tenured professors create daunting problems for deans trying to modernize law school curricula. For starters, most law professors have taken a similar path into academia. After graduating near the top of their law school classes, with the added credential of service on the school's law review, they went on to selective judicial clerkships. Some practiced for a year or two before returning to law schools as teachers. There are exceptions, but that's the traditional track to the classroom lectern. In fact, the trend toward interdisciplinary education in many law schools has resulted in recruiting professors who have both a JD and a PhD—that is, instructors who have spent even more time in the academic world and less time becoming familiar with the work that practicing lawyers actually perform.

Institutional inertia sets in when, understandably, faculty members without real-world experience resist demands from deans that they teach practical skills. At the time that these individuals chose to become law professors, practicing law wasn't a prerequisite. In fact, sometimes it was a disadvantage. One longtime lawyer and adjunct professor said that the stigma associated with actual experience "can be fatal, because the academy wants people who are not sullied by the practice of law. A lot of people who are good at big ideas, the people who teach at law school, think it is beneath them."

The career of United States Supreme Court associate justice Elena Kagan illustrates the problem. In 1995, she won tenure at the University of Chicago Law School. Four years later, she went to work as a senior adviser in the Clinton administration. When she left government in 1999, Kagan hoped to return to Chicago, but the invitation never came. The concern was that she hadn't produced a sufficient quantity of scholarly writing. Seizing an opportunity that the University of Chicago had missed, Harvard jumped into the breach and hired her. She rose to dean of that law school and then returned to government service as solicitor general of the United States in the Obama administration on her way to the nation's top court.

The University of Chicago's provost, Geoffrey Stone, had supported Kagan's reappointment there. He noted, "She was very disappointed. She'd gone from being adviser to the president to being basically unemployed—at least for the moment." Richard A. Epstein, a prominent libertarian and a longtime professor at the University of Chicago, offered his assessment: "Her papers were well-done, but they show exactly the same qualities of mind that prevent you from reaching the top ranks of academia." Devoted scholars, he continued, "take a small problem, make it smaller, break it into pieces, see if it will fit back together." A prolific writer and commentator since graduating from Yale Law School in 1968, Epstein's full-time work experience has been almost entirely academic.

To their credit, some deans have fought through institutional inertia, ABA accreditation criteria, and the constraints of the tenure system to make significant strides in providing students with more practical training. Many law schools now offer courses that help students develop skills such as interviewing clients, deposing witnesses, conducting court hearings, writing briefs, and negotiating with adversaries. The ability to handle such tasks competently will help them make a living if they hang out their own shingle.

For example, Stanford Law School has revamped its curriculum and expanded clinical opportunities. Washington and Lee University School of Law replaced lectures and seminars with "case-based simulations run by practicing lawyers." As dean, Elena Kagan turned Harvard's focus from the faculty to the students by dividing the class into smaller sections and updating the curriculum to consider globalization, teach alternative dispute resolution, and emphasize clinical programs. Indiana University Maurer School of Law teaches "project management" and "emotional intelligence." NYU offers courses in "negotiation" and "client counseling."

But there's a catch. As worthwhile as such initiatives may be, they should not offer false comfort to prospective lawyers who think that better job prospects will result. The sad truth is that the impact of such practical programs on the lawyer bubble is nil: none is making students more desirable to prospective employers. When asked whether current law school innovations will help new graduates get jobs, the recruiting committee chair of the large Washington, D.C.–based law firm Hogan Lovells said: "It could enhance the reputation of the law school . . . as places that will produce lawyers who have practical skills. As to the particular student when I'm interviewing them? It doesn't make much of a difference."

The same is true beyond the world of the big law firms: "There's no employer out there right now—not law firms, not the Department of Justice, not the ACLU—that [is] seeking out these graduates," Indiana University Maurer School of Law professor William Henderson observed. "These programs haven't affected hiring patterns. It's still all sorted out with credentials. It's based on the brand of the law school."

More emphasis on practical education may be valuable, but it's no solution to the lawyer bubble.

THE INCREASING COST of getting a law degree combined with law graduates' diminishing job prospects is forcing deans to demonstrate the value of the educational experience. In addition to complaints about outdated curricula, particular attention has turned to law school's third year, traditionally thought of as a waste of time. Many schools have expanded clinical programs in that year. But one radical innovation—compressing the time for legal study—is actually counterproductive.

For all of its faults, the first year of Socratic-method instruction in mandatory subjects trains students to think like lawyers. That is, students enhance their analytical skills, learn to distinguish relevant facts from irrelevant ones, develop the ability to construct and express a tight legal argument, and become familiar with the entirely new language of the law. Most first-year students find themselves tackling the experience in self-formed study groups, which often become petri dishes for paranoia.

The second year is more relaxed. The environment, teaching method, and language are no longer new. Professors who relied on intimidation and fear as teaching tools in dealing with first-year students adopt more positive forms of student engagement. The study groups that were a universal part of the first-year experience disappear, freeing up the time previously devoted to them. Students who studied for sixty hours a week during the first year find themselves getting by with forty in year two.

By year three, most students' principal aim is simply to get out of law school and get on with life. Class attendance drops; participation among those who show up is not particularly enthusiastic. In that context, clinical programs with the opportunity to work with real clients become a godsend.

Why does the third year of law school exist? Because almost all states require graduation from ABA-accredited schools, and related curriculum standards mandate course work consuming three traditional academic years. By the third year, the entire course of study is elective: students can take whatever they want. But law schools also make big money on the third year—one-third of all tuition revenues—so deans have no incentive to lobby for its elimination. Even so, the pressure from students to do something that shortens the duration of law school so as to reduce its cost has continued to build.

For example, in its 2008 long-range strategic plan, Northwestern's law school noted, "Almost everyone who participated in our focus groups [consisting of alumni, faculty, government attorneys, and leaders of big law firms] agreed that the third year of J.D. programs could be restructured to provide more value, and a significant number of participants believed that the third year could be eliminated entirely." Those views led Northwestern to become the first top law school offering an accelerated JD, joining a handful of less prominent schools with programs that move students through law school in two calendar years. That may sound like an improvement, but for participating students, it seems destined to make the overall law school experience worse while increasing the size of the lawyer bubble.

Once enrolled, Northwestern's accelerated students cram three years of academic work into two, starting with a Web-based course even before they arrive on campus and beginning full-time study in May. They continue into the fall and spring with the typically rigorous first-year academic schedule—*plus* an extra course throughout—as they compete with traditional second-year students in interviews for summer jobs. While contemplating the wisdom of such a regimen, ask any attorney what the rigorous first year of law school would have been like if another class had been added to the ordeal. For anyone on a two-year accelerated path, an already precious commodity—time during the first year to integrate experiences while contemplating one's place in a diverse and challenging profession—disappears.