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Lawyers and Spoiled Identity

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# Lawyers and Spoiled Identity

**Paul Campos***

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## Introduction

In his book *Stigma: Notes on the Management of Spoiled Identity*, the sociologist Erving Goffman distinguishes between virtual social identity and actual social identity.¹ A person’s virtual social identity is made up of those attributes that are assumed by others to be a normal part of one’s make-up, given who one is assumed to be. When a gap between one’s virtual and actual social identity becomes known to others, and this gap is socially discrediting, the person in such a situation becomes stigmatized in the eyes of what Goffman calls

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* Professor of Law, University of Colorado. I am grateful to many law students, graduates, lawyers, and colleagues for sharing their insights about, and experiences with, stigma in the legal profession. © 2014, Paul Campos.

“normals”—that is, those who do not, in this particular context, suffer from a gap between their virtual and actual social identities.²

Goffman’s subtitle emphasizes that stigmatized people have spoiled identities. Spoiled identities are products of the gap between social expectations and social reality: to the extent we fail to possess those attributes which observers expect us to have, given our virtual social identities, social life becomes fraught with disappointment and tension. This disappointment and tension must be managed by both the stigmatized and the normals, who must endure their mutual recognition of the absence of the attributes the stigmatized were expected to have.

Goffman argues that stigmatized attributes come in two categories: the discreditable and the discredited.³ Discreditable attributes can be hidden, while discredited attributes cannot (of course, an attribute can move from one category to the other depending on the social context). The potentially stigmatized can deal with their condition by passing; that is, by successfully hiding their stigma. Or, they can cover, by making the stigmatized attribute less obtrusive to observers likely to find it disturbing. Finally, the stigmatized can flaunt their stigmatized status, by emphasizing it in such a way as to signal that they reject the social meaning normals give to it.⁴

For instance, in a social context in which same-sex sexual orientation is stigmatizing, a gay person can pass by remaining closeted. He can cover by, for example, engaging in no public displays of affection with his partner, or perhaps by getting married to his partner in jurisdictions that allow this. Or he can flaunt: he can overtly politicize his sexual orientation in a manner captured by the activist slogan, “we’re here, we’re queer, get used to it.”⁵

What does all this have to do with lawyers? 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. Over the course of the last generation, increasing numbers of people with law degrees have found themselves unable to conform to some or all aspects of this identity. For example, their actual social identities may include doing intellectually vacuous work of questionable or negative social value for low pay. Indeed, in recent years, significant numbers of law school graduates have found themselves unable to practice law at all. By some estimates,

². Id. at 5. ("[A]n individual who might have been received easily in ordinary social intercourse possesses a trait that can obtrude itself upon attention and turn those of us whom he meets away from him, breaking the claim that his other attributes have on us. He possesses a stigma, an undesired differentness from what we had anticipated. We and those who do not depart negatively from the particular expectations at issue I shall call the normals.").
³. Id. at 41.
⁴. Id. at 73.
⁵. For an analysis of these strategies in the context of various civil rights struggles, see generally KENJI YOSHINO, COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS (2007).
650,000 Americans of working age who have law degrees are not practicing law (in comparison to 728,000 such people who are in legal practice of some sort). This latter ratio is getting worse all the time, which in turn exacerbates the problems of practicing lawyers, who become trapped in jobs they hate, knowing that it is extraordinarily easy to wash out of the legal profession altogether. Meanwhile, the current demographics of the legal profession suggest that at least half of all new law graduates will not have real legal careers.

These difficult economic circumstances have produced a generation of lawyers and law graduates who are both miserable in their work and financially stressed—conditions that lead to depression, substance abuse, and suicide rates higher than those found in any other profession. In other words, an enormous percentage of the 1.5 million or so Americans who have law degrees from ABA-accredited schools are struggling with the burden of a spoiled identity, and the stigma that marks it. Lawyers or law graduates in this situation can, to a point and depending on their audience, pass: they can represent their work as intellectually challenging and socially valuable, and they can present themselves as well paid. They can cover: they can lessen the discomfort “normals” (especially other lawyers) feel at the sight of their stigmatized condition, by employing various strategies designed to minimize its obtrusiveness. Or, they can flaunt by embracing their stigmatized status, and rejecting the meaning society ascribes to it.

The stigma of a spoiled identity haunts lawyers at all levels of the profession: It can be found among, for example, small firm lawyers (derisively referred to by some in the profession as practicing “shitlaw”), many of whom have to struggle constantly to collect small fees while engaging in low-level criminal representation, processing divorces involving middle class families, handling civil litigation one level up from small claims court, and the like. It appears among associates at big law firms, who work extraordinarily long hours, often at clerical tasks that could be performed by paralegals, secretaries, or even machines. These tasks are billed out to clients at a rate of hundreds of dollars per hour, before these associates are replaced by fresh crops of law school graduates.

It can be found among the armies of lawyers doing temporary contract work, who piece together a semblance of a living—and the mirage of a career—by moving from short-term project to short-term project. These attorneys are often getting paid by the hour, for doing no more than hitting F5 on a computer

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6. See Paul Campos, *The Crisis of the American Law School*, 46 Mich. J. L. Ref. 177, 212 (2012) (providing an estimate of how many people are currently practicing law in the United States). ABA law schools have granted approximately 1.5 million J.D. degrees over the past forty years. Id.
7. Id. at 214. See also infra note 68 and accompanying text.
thousands of times per day. It appears among law firm partners who suddenly find themselves “de-equitized,” or out of work altogether at mid-career—an increasingly common occurrence—because they do not have a big enough book of business to satisfy the firm’s managing board. It is seen among government and public interest lawyers, who have dedicated their lives to working for the poor and marginalized, only to discover that cuts in public support for such work have eliminated their positions, despite having spent a decade or two making a mid-five figure salary while working 60 hours per week. It is evident among law school graduates who discover that, rather than enhancing their resume, a JD degree stigmatizes them in the eyes of non-legal employers, because, among other reasons, such employers fear that job candidates with law degrees will flee for what the employers assume are well-paying, high status legal jobs at the first opportunity.

The stigma of a spoiled identity haunts legal practice, but it is found most powerfully outside it. This stigma appears in a particularly devastating form among the rapidly increasing number of law school graduates working in low-status, low-paid, non-legal jobs, or who are completely unemployed, while trying to manage enormous amounts of non-dischargeable high interest educational debt. Every year, tens of thousands of recent and not-so-recent law graduates come to realize that, despite dedicating many years of their lives and hundreds of thousands of dollars to attempting to enter our profession, they will never have real careers as attorneys.

The goal of this article is to help play some role in breaking the silence that still surrounds so much of the contemporary crisis of the American legal profession. That silence is a product of the understandable desire of lawyers and law graduates to escape the stigma of a spoiled identity: of not wanting to have one’s supposed membership in a high-status, well-paying, intellectually challenging, and socially valuable profession, discredited.

The pursuit of that desire helps explain why the catastrophe that has been overtaking the American legal profession for decades now has remained relatively hidden. It is the silence of people who been taught to believe the

13. Over the past few years, slightly more than half of all ABA law school graduates have acquired full-time, long-term employment requiring bar admission—that is, jobs as lawyers, liberally construed—within nine months of graduation. See Recent Graduates, NALP, http://www.nalp.org/recentgraduates (last visited Oct. 17, 2014).
structural failure of the American legal profession is their own individual failure. That belief generates the internalized shame that has allowed law schools to get away with publishing deeply misleading statistics about how many of their graduates were actually well-paid members of the legal profession, or indeed members of the profession at all.\textsuperscript{14} And that belief, and the silence it engenders, allows legal academics to remain, ironically, among the relatively few normals in the legal profession—to be among that pronounced minority of people with law degrees whose own perception of their actual social identity does not stand in marked contradiction to the virtual, and increasingly fictitious, social identity (high-status, well-paid, intellectually challenged, socially valuable) of the American lawyer.\textsuperscript{15} But that silence is beginning to be broken.\textsuperscript{16}

This article has three parts. Part I will explore the virtual social identity of the American lawyer, especially in regard to how this identity is conceptualized by legal academics, who play a crucial—and, as we shall see, in some ways perverse—role in the cultural construction of that identity. Part II will give us a glimpse, via their own words, into the lives of lawyers and law graduates who are dealing, to greater and lesser extents, with the problem of a spoiled identity, and it will consider the various strategies lawyers and law graduates employ to manage the social tension generated by those identities. Part III will consider some specific suggestions for reforming legal academia in ways that would ameliorate the problems created by the increasingly vast gap between the virtual and actual legal identities of law school graduates.

\section*{I. Virtual Identities}

For several generations now law in America has been considered, along with medicine, the exemplar of a high-status profession. A 2008 article in the Style section of the \textit{New York Times}—i.e., the journalistic Ground Zero for sociological researches into the obsessions of the nation’s upper classes—chronicled the anxieties generated among doctors and lawyers by a perception that their callings might be slipping in status in a world full of internet whiz kids and hedge fund billionaires:

Make no mistake, law and medicine—the most elite of the traditional professions—have always been demanding. But they were also unquestionably prestigious. Sure, bankers made big money and professors held impressive degrees. But in the days when a successful career was built on a number of

\begin{itemize}
\item \textsuperscript{14} On the practice of law schools publishing misleading employment figures in order to boost enrollment numbers, see generally \textsc{Brian Tamanaha}, \textit{Failing Law Schools} (2012).
\item \textsuperscript{15} Given that most legal academics are lawyers in only the very loosest sense of the word, this is more than a little ironic.
\end{itemize}
tacitly recognized pillars—outsized pay, long-term security, impressive schooling and authority over grave matters—doctors and lawyers were perched atop them all.\(^\text{17}\)

And while lawyer jokes remain ubiquitous,\(^\text{18}\) the cultural stereotype of lawyers as well-paid people doing intellectually challenging, socially important, and even glamorous work continues to be replicated in countless movies, television shows, novels, and journalistic profiles.

As academics, law professors might be expected to paint a more socially realistic portrait of the American legal profession than that purveyed by the creators of Atticus Finch and Ally McBeal. Yet, if anything, the cultural stereotypes of lawyers and the legal profession, which emanate from our law schools, are often even more unrealistic than the creations of novelists and filmmakers.

Consider this remarkable passage at the conclusion of Ronald Dworkin’s magisterial book, *Law’s Empire:*

> What is law? Now I offer a different kind of answer. Law is not exhausted by any catalogue of rules or principles, each with its own dominion over some discrete theater of behavior. Nor by any roster of officials and their powers each over part of our lives. Law’s empire is defined by attitude, not territory or process or power . . . . [I]t is an interpretive, self-reflective attitude addressed to politics in the broadest sense. It is a protestant attitude that makes each citizen responsible for imagining what his society’s public commitments to principle are, and what these commitments require in new circumstances . . . [L]aw’s attitude is constructive: it aims, in the interpretive spirit, to lay principle over practice to show the best route to a better future, keeping the right faith with the past. It is, finally, a fraternal attitude, an expression of how we are united in community though divided in project, interest, and conviction. *That is, anyway, what law is for us:* for the people we want to be and the community we aim to have.\(^\text{19}\)

While the Hollywood version of law—replete with good-looking people in expensive clothes making loads of money while arguing in court about fascinating disputes—is deeply unrealistic, at least it feels loosely connected to the actual world of legal practice, where the desire for money, power, and recognition is as prevalent as it is in other areas of social life. By contrast, in Dworkin’s account, legal practice seems to have been untethered from worldly considerations altogether, and has floated off into the intellectual ether of an erudite philosophy seminar.

The vision of law as a practice Dworkin presents, while unusually eloquent, is

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otherwise a familiar one within American law school classrooms. Consider this passage regarding a controversial Supreme Court opinion:

The Joint Opinion sees in the citizen a capacity for responsible tension and growth, [and sees] in the process of law—especially in the work of the [Supreme] Court—a source of education for itself and the polity . . . [T]he conversation to which the Joint Opinion is committed is the direct descendent of that to which Socrates was committed, which he would rather die than damage, the conversation that assumes that Athens, or America, is a moral actor with a moral career, capable of justice or injustice.\(^\text{20}\)

Again, this is not, in the context of legal academic visions of law, an unusual description of what a sociologist or political scientist would be more likely to describe as the bureaucratic work product of government officials and their clerks, and not a Socratic dialogue between the Supreme Court and the American people. Indeed, anyone who has spent much time inside an American law school will recognize that accounts of the operations of the legal system which would sound fantastically grandiose to an ordinary lawyer are presented by legal academics as literal descriptions of the work legal actors do.

A primary cause of the legal academic tendency to idealize the nature of legal practice is that a strikingly large share of the average student’s legal education is spent studying the work product of appellate courts, especially as it touches on important and controversial matters of public policy. Indeed, it sometimes seems that legal education in this country proceeds on the assumption that most lawyers spend their workdays preparing to argue fundamental questions of constitutional law before the Supreme Court.\(^\text{21}\)

In a similar vein, legal academics often argue that law school is not primarily a vocational training program, but rather an experience designed to prepare people to be society’s leaders. Here is the reply of a law professor to objections that law students pay too much to subsidize legal scholarship, which does nothing to help them learn to practice law:

The demand for intense, imaginative intellectual engagement has been integral to the high quality of legal education. We are not producing plumbers and bookkeepers, we are producing the leaders of our Society whose primary ability is the strength of their intellects.\(^\text{22}\)


\(^{21}\) Cogent criticisms of this focus have been emanating from law schools and elsewhere for nearly a century, with—to this point—limited effect. For a famous early example, see generally Karl Llewellyn, A Realistic Jurisprudence—The Next Step, 30 COLUM. L. REV. 431 (1930).

And here is another professor, objecting to arguments that legal education should not cost so much, and should be focused primarily on preparing people for legal practice:

Law school is not a trade school. In that narrow model, a legal education would prepare students for one single thing: a job as a lawyer. But people go to law school, pay tuition and graduate to become many things: educators, business leaders, politicians and, yes, attorneys. Shortening the curriculum to cut costs mistakenly assumes that one model fits for everyone. Law school is more than test preparation and rote memorization. It should emphasize educated citizenship... It prepares people to become leaders in our society, which makes it imperative that they be rigorously trained as thinkers.23

Law schools also place a very heavy rhetorical emphasis on the idea that being a lawyer means being committed to not only protecting the narrow interests of one’s clients, but to advancing the public interest, and promoting social justice, broadly construed. And many students enter the law school world eager to hear this message. They enroll in law school wanting to “make a difference” to their communities, by using their professional status to pursue social justice in some way, whether through electoral politics, or litigation, or other avenues for advancing the public interest through the legal system. This vision of what it means to be a lawyer is captured well by Duncan Kennedy, in the course of an essay devoted to demonstrating that the structure of both legal education and the legal profession makes such aspirations deeply unrealistic:

A surprisingly large number of law students go to law school secretly wishing that being a lawyer could turn out to be something more, something more socially constructive than just doing a highly respectable job. There is the fantasy of playing the role an earlier generation associated with Brandeis: the role of service through law, carried out with superb technical competence and also with a deep belief that in its essence law is a progressive force, however much it may be distorted by the actual arrangements of capitalism.24

The extent to which law schools encourage what Kennedy characterizes as a “fantasy” is illustrated by the White House’s Champions of Change program (“a weekly initiative to highlight Americans who are making an impact in their communities and helping our country rise to meet the many challenges of the 21st century”), which in October of 2011 featured strikingly similar statements from


86 law schools on the official White House web site, explaining their profound "commitment to public service."25

Beyond making effusive statements about their commitment to public service, numerous law schools maintain formal programs in social justice and human rights law, as well as running legal aid clinics focused on public-regarding legal representation. For example, the University of San Francisco School of Law informs prospective students that:

The noted public interest law program at USF includes a certificate option, public interest internships, an annual social justice retreat, the Law In Motion Service Program, as well as many other service-oriented activities. Numerous law school centers and clinics allow students to pursue public interest objectives, such as the Child Advocacy Clinic, Employment Law Clinic, and the Center for Law and Ethics. All students may enroll in the numerous social justice courses offered by the USF School of Law, such as Elder Law, Predatory Lending Law, and Race Law and Policy. Students may earn a Public Interest Law Certificate through a combination of course work, practical experience, and community service. Students who complete the certificate program work extensively in public interest and government organizations, in addition to volunteering at community organizations. The annual Trina Grillo Public Interest and Social Justice Law Retreat provides a foundation for students' public interest ambitions and offers professional networking opportunities. The Law In Motion Service Program provides opportunities for the law school community to reflect on issues of social justice through organized events, such as serving meals at St. Anthony's Foundation Dining Room, hosting an annual Halloween Fair for local elementary school students, and providing tax filing assistance to low-income individuals.26

Law students are told regularly that aspiring to the highest ideals of the legal profession means caring about things other than financial reward, and that students should consider pursuing public-regarding work, rather than merely taking the highest-paying jobs available to them. For example, a professor who endowed an annual lecture on the theme of public service put it this way:

In establishing the special lecture program, Professor Treusch said, "We believe efforts like this are much needed now, when our profession has been challenged to justify its ethical base. We want to stress to our students that the practice of law is not just a money-making venture, but a profession and a service."


“At Southwestern,” Professor Treusch said, “we encourage our students to elect careers in public interest, or as an alternative, dedicate a part of their practice to public service.”\[27\]

A particularly striking example of this line of thought can be found in a 2011 commencement speech by a law professor, who told the assembled graduates that they ought to pay less attention to material concerns:

Emory University law professor Sara Stadler thinks law grads need to stop coveting high-paying jobs that just aren’t available. And she said so in a commencement speech earlier this month. “Get over it,” Stadler told law grads. “The one thing standing in the way of happiness for many people is a sense of entitlement.” The Fulton County Daily Report covered the speech. Stadler said many law grads don’t have jobs or didn’t get the job they wanted, and she wished she could change that, according to the story. But that doesn’t mean opportunities for happiness are lacking. “You might have to move to Nebraska,” Stadler said. “You might have to join a small firm where they don’t make the big bucks. You might also have to learn to be a giver, and not a taker . . . . Givers tend to be happy people, on the whole. Takers are never satisfied. I want you to be satisfied with your professional lives. That’s why I do this for a living. To look back later and say . . . look at the people I helped.”\[28\]

Finally, if aspiring lawyers should fail to become leaders of society, or should they decide that six figures of educational debt make it necessary to be takers rather than givers, law schools continue to assure law students that at the very least they will have well-paying careers within a socially prestigious profession (I was told by a student recently that, when grades were distributed at the beginning of the spring semester, a professor consoled his first-year students with the old law school chestnut that, while A students become professors and B students become judges, C students become rich. This was at a school where nearly half of all graduates are not securing jobs as attorneys within nine months of graduation).\[29\]

In sum, the descriptions of what being a lawyer is about that law schools present to law students tend to feature the following characteristics: (1) a focus on the most elite legal institutions and actors, which are often described in highly idealized terms; (2) a belief that legal education does not merely credential students to practice a hypothetically lucrative profession, but also prepares people to be society’s leaders, often by doing things other than practicing law (“educators, business leaders, politicians”); (3) a rhetorical, and in some cases

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29. Personal communication with author (Jan. 12, 2013).
programmatic, commitment to the idea that the practice of law ought to involve advancing the public interest and pursuing social justice, and a related tendency to advise students to pursue career goals other than material gain; and (4) an assumption that law graduates routinely face a choice between pursuing social justice and being highly-paid.

As we shall see, while the virtual social identity of lawyers constructed by popular culture is unrealistic, that propagated within law schools is if anything even more detached from the economic and social realities of the contemporary legal profession, especially as those realities are experienced by more recent law graduates. But before turning to the actual social identities of contemporary lawyers and law graduates, let us consider what structural factors lead law schools to reproduce such an unrealistic picture of what it means to be a lawyer in America today.

I suggest that three inter-related demographic factors help create the startling disjunction between the virtual social identities of American lawyers, especially as those identities are conceptualized and reproduced by the contemporary legal academy, and the actual social identities of lawyers and other law graduates. These are: the failure of legal academics to take into account how much the market for legal services has changed since they were in law school; the relatively little time most law professors spent practicing law, and the narrow range of legal practice reflected in their careers; and the extent to which the graduates of a handful of schools dominate faculty hiring.30

A. DEMOGRAPHICS OF LAW FACULTIES

The large majority of current law professors graduated from law school more than twenty years ago. For example, a recent study found that three quarters of all tenured law faculty are at least fifty years old; since most law graduates are less than thirty at the time of graduation, it seems clear that law school faculty who attended law school after the early 1990s still represent a small subset of legal academics.31 This fact goes some way toward explaining why legal academics tend to maintain a vision of the legal profession that often bears little relation to the economic and social reality to which their current students will soon be exposed.

The last twenty years have featured a striking contraction of the legal services sector, in relation to the rest of the American economy. Data from the federal government’s Bureau of Economic Analysis reveal that in 1989, the legal sector’s share of the nation’s total gross domestic product totaled $157.48 billion (in 2005

30. See infra notes 31–50 and accompanying text.
dollars). In 2011, the legal sector accounted for $156.14 billion of the nation’s GDP (again in constant 2005 dollars). Over this same time period, United States GDP increased by 68.8 percent in real dollars. In other words, as a relative percentage of the economy as a whole, the legal sector shrank by 41 percent during this time.

This contraction is all the more striking if we consider the increase in the rate at which ABA-accredited law schools have been graduating people with law degrees. Between 1989 and 2011 the number of annual graduates from ABA law schools increased by 24 percent. It is hardly surprising that the pairing of a sharp relative decline in the percentage of the economy devoted to legal services with a significant increase in the number of people with law degrees has produced an increasingly difficult economic situation for lawyers in general, and recent entrants into the profession in particular.

A comparison between the legal and medical professions throws a stark light on, among other things, the radically different ways in which the two professions’ regulatory bodies have responded to changes in the overall economic demand for the services of doctors and lawyers. Medical school enrollment increased rapidly from the mid-1960s through the 1970s, leading to a series of warnings from inside the profession that the nation would soon be dealing with a “glut” of doctors. In response, medical schools essentially froze admissions levels for nearly thirty years, admitting approximately 16,000 to 17,000 new students per year. Remarkably, they maintained this policy even though the percentage of American’s gross domestic product devoted to medical services was skyrocketing (it increased by 77.8 percent between 1980 and 2008). The situation in medical profession, in other words, has been the precise opposite of that encountered by new lawyers: the profession’s gatekeepers have kept a strict limit on supply, even in the face of greatly increased demand.

Most current law faculty left the practice of law for academia either before, or in the early stages of, the gradual but increasingly sharp overall decline in relative


35. See Richard A. Cooper, Medical Schools and Their Applicants: An Analysis, 22 HEALTH AFFAIRS 71, 71 (2003).

36. Id. at 71 (showing that matriculant rates in medical schools were flat between the mid-1970s and early 2000s in Exhibit Table One).

economic demand for legal services that has characterized the last two decades.\textsuperscript{38} As we shall see, most law faculty also have little in common with their graduates, when it comes to the credentials with which each group entered the legal job market. But even if this were not the case, law graduates entering that market in recent years have encountered a radically different job situation than that which greeted current legal academics, when they graduated from law school twenty or thirty or more virtual ago. Law professors may have an abstract sense that the job market for attorneys is more difficult than it once was—although until very recently a remarkable number seem to have avoided much contact with this information—but very few seem to have grasped just how drastically the world has changed since the increasingly distant days when they spent their generally brief careers in actual legal practice.

How brief were those careers? A 2003 study found that the average amount of time spent in legal practice by new law faculty hires, among those who had spent time in practice, was 3.7 years.\textsuperscript{39} Strikingly, the higher the school at which a professor was hired was ranked, the less time the professor was likely to have spent in practice.\textsuperscript{40} At the top twenty-five law schools, new law faculty hires had spent an average of just 1.4 years in legal practice.\textsuperscript{41} As we shall see, this is especially significant, given that almost all law professors hired in recent years graduated from highly ranked law schools. In other words, while law professors in general have spent little time in practice, almost all of them have been taught by law faculty who spent far less time in practice than the average law professor.

Indeed, as of 2011, sixty-five tenure track faculty at the twenty-six highest-ranked law schools (5 percent of the non-clinical tenure track faculty at these schools) did not even have a law degree (most appear to have held doctorates in various humanities and social science subjects).\textsuperscript{42} When combined with law faculty with law degrees who never practiced law, this indicates that a substantial minority of tenure track faculty at high-ranked law schools have no legal practice experience whatsoever.

Furthermore, whatever practice experience law professors have tends to reflect only a very narrow range of careers within the legal profession. A glance at the biographies of law professors, especially those of professors at elite schools (again, this is an especially significant cohort because these schools now produce almost all tenure track legal academics), reveals little in the way of practice experience beyond being a junior associate at a large law firm, or, in a smaller

\textsuperscript{38} See Mertz, supra note 31.
\textsuperscript{40} Id.
\textsuperscript{41} Id.
number of cases, a government attorney—almost always for the federal government.  

Perhaps the most remarkable feature of this system, given that at least in theory the main reason law schools exist is to train people to practice law, is that having a significant amount of practice experience as an attorney is, all things being equal, considered a negative factor in the evaluation of faculty candidates. This is attested to both by data which show that more practice experience correlates negatively with faculty hiring as one moves up the legal academic hierarchy (in other words, the more desirable a job is, the more of a demerit actually having practiced law becomes for aspiring law professors), and by the candid admissions of law faculty themselves. Here is a law professor’s description of what is considered an ideal legal practice background—what he terms “the classic resume”—for an entry-level tenure track hire. Based on my own involvement in faculty hiring over the past twenty-three years I would say this description is quite accurate, although in recent years, even less emphasis has been put on any practice experience, in favor of academic training in other disciplines:

A couple of years of practice experience, often at one of the top firms in New York, D.C., Chicago, L.A., or San Francisco. Some firms, such as Covington & Burling in D.C., Cleary Gottlieb in New York, Ropes and Gray in Boston, and Gibson Dunn in Los Angeles, have a reputation for producing law teachers. Alternatively, practice experience can be with a high profile government agency like the SEC, EPA, or the Department of Justice, or with a U.S. Attorney’s or federal public defender’s office (a few state agencies, like the Manhattan D.A. and the Public Defender Service in Washington D.C., satisfy this requirement). You don’t want to have too much practice experience, though.

A lawyer working for a small law firm provides a pungent critique of the limited perspective this sort of background tends to foster:

Academics tend to miss the sheer drudgery and asswork involved in being a lawyer; the only reason people do it is because they believed at one point they’d be millionaires. If you are reasonably likely to make as much money being a nurse, no one will go to law school. I don’t know why so many reformers think there’s a bunch of potential lawyers in Los Angeles waiting in the wings to get yelled at by judges for $60k a year—their entire career.

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43. All ABA law schools maintain web sites that feature faculty biographies. The Association of American Law Schools publishes an annual directory that supplies information regarding the legal practice background (if any) of law faculty. See generally AALS DIRECTORY OF LAW TEACHERS 2011–2012, ASS’N OF AM. LAW SCH. (2011).

44. See Leichter, A Profession in Decline, supra note 32 and accompanying text.

Even the academics that practiced for [any length of] time tended to have surprisingly, uh, delicate careers; I don’t think many of them were hired to handle appearances day after day. Being an attorney is pure ass, and the only reason people do it is the idea of riches. A lot of attorneys don’t get to riches, but if you’re 45, w/20 years in on your job, you don’t have a lot of choice.\textsuperscript{46}

A third factor contributes greatly to the gap between the virtual social identities of American lawyers as these are represented to students in law school classrooms, and the actual social identities acquired by lawyers and law graduates: most law professors are drawn from a very narrow slice of legal academia. For example, a study of entry-level tenure-track hires between 2003 and 2007 found that, out of 466 hires, 40.1 percent came from just two schools: Harvard and Yale (85.6 percent came from a total of twelve schools).\textsuperscript{47} And this effect becomes much more extreme the higher one goes in the legal academic hierarchy. It would be an understatement to say the faculty at Yale Law School, which on a per capita basis produces the most legal academics teaching in American law schools by an enormous margin, is dominated by graduates of Yale and Harvard Law Schools: thirty-nine of forty-seven tenure-track non-clinical faculty who have their initial law degrees from American law schools received them from these two schools.\textsuperscript{48} This hiring pattern is even stronger at Harvard, where seventy-one of eighty-one tenure-track faculty with initial law degrees from an American law school received them from either Harvard or Yale.\textsuperscript{49}

Indeed, it would be accurate to say that the typical American law professor is someone who graduated from either Yale’s or Harvard’s law school, where he or she was taught by a faculty that was made up almost entirely of graduates of those two schools, before going on to spend a very short time in the kind of elite legal job in which the vast majority of the graduates of hyper-elite law schools spend at least the first few years of their careers after their graduation. And that professor almost certainly acquired that job at a time when legal jobs of all types were far easier to acquire than they are today.\textsuperscript{50}

This is not a prescription for developing a legal professoriate that has any experience with, or genuine understanding of, the kinds of legal and (increasingly) non-legal careers that the vast majority of law graduates go on to have. It is hardly surprising that law professors end up presenting their students with a


\textsuperscript{50} See supra note 32–34 and accompanying text.
vision of what it means to be a lawyer that often bears little or no relation to the actual legal careers or non-careers that those students will experience.

II. ACTUAL IDENTITIES

The high social status attributed to lawyers within American culture is based on the assumption that being a lawyer means doing highly compensated, intellectually challenging, and socially important work. This is, at least within the cultural context this paper examines, the virtual identity of the American lawyer. Of course many nuances can be added to this statement. For example, it is understood within this conventional rhetorical frame that some lawyers exchange the possibility of higher compensation for what they consider more socially important and personally meaningful work: the “cause” lawyer is a discrete, well-understood, and respected professional identity. But, generally speaking, lawyers are perceived by society to be, and socialized in law school to think of themselves as, people who will become well-paid professionals performing mentally demanding, socially important, high status work.\(^1\)

The difficulty with this perception is that, in recent decades, it has become increasingly at odds with the economic realities of legal practice. Law graduates have found it more and more challenging to establish legal careers, and to maintain those careers once they have been established. Although the number of people actually practicing law in the United States at present is surprisingly difficult to determine, it is appears that somewhere between one-third and one-half of all people who have acquired law degrees from ABA accredited schools over the past four decades are not currently practicing law.\(^2\) Again a comparison with the medical field is instructive: after allowing the American Medical Association to hold medical school admissions constant over a

\(^1\) See supra notes 19–25 and accompanying text (explaining that law schools present the legal profession to students as important and high-status).

\(^2\) Slightly more than 1.5 million people graduated from ABA law schools between 1970 and 2010. See Weiss, supra note 28. The Bureau of Labor Statistics estimated that in 2010, 728,200 people were practicing law in the United States (not all of these people graduated from ABA law schools). See C. Brett Lockard & Michael Wolf, Occupational Employment Projections to 2020, MONTHLY LAB. REV. 84, 94 (2012), available at http://www.bls.gov/opub/mlr/2012/01/art5full.pdf. This estimate is based on population-representative sampling of local labor markets, and is the best estimate of how people are actually working as attorneys (this estimate includes part-time employment). On the other hand, the ABA estimates that there were 1,245,205 people with law licenses in the United States in 2011. See Total National Lawyer Counts 1878–2013, A.B.A. (2013), http://www.americanbar.org/content/dam/aba/administrative/market-research/total_national_lawyer_counts_1878_2013.authcheckdam.pdf. This figure, however, significantly overstates the number of people practicing law for at least three reasons: it includes people with inactive law licenses, it double counts people licensed in more than one jurisdiction, and it includes people with active licenses who are not practicing law. In addition, calculating the percentage of law graduates who are practicing law requires taking into account that between 200,000 and 300,000 people have graduated from non-ABA-accredited American law schools over the past forty years, and that an unknown number of practicing attorneys in the United States graduated from foreign law schools.
three-decade period, despite burgeoning demand for medical services, the United States is facing a severe shortage of physicians.53

While reliable longitudinal data are hard to find, the state of the entry-level market for new law graduates has become what observers have characterized as everything from a "crisis" to "catastrophic": barely more than half of 2011 law graduates acquired full-time long-term employment requiring bar admission within nine months of graduation, and only slightly more than one in five graduates were reported to have a salary of $60,000 or more.54 As William Henderson, perhaps the foremost expert on the economics of the contemporary American legal profession, puts it: "Simply stated, the market for traditional legal education is drying up."55

The increasingly severe oversupply of people with law degrees, entering a market in which much work traditionally performed by American lawyers is being outsourced, off-shored, delegated to machines, or eliminated altogether, has had a predictable effect on attorney compensation.56 Figures on what lawyers are paid often tend to be fragmentary—for example, a 2010 survey of Colorado lawyers, which found a median salary of $98,900, was based on a 10 percent response rate—and the interpretation of such statistics is further complicated by the fact that very large numbers of people with law degrees are not practicing law.57

In this difficult empirical context, an ongoing survey done by the Alabama Bar Association is particularly useful, both because it is longitudinal, having been conducted three times now at twelve-year intervals, and because it uses a random sampling method that produces a fairly narrow margin of error for its conclusions.58 Those conclusions are, given the virtual identity of the American lawyer, startling.

The surveys have been conducted in 1986, 1998, and 2010, with the aim of measuring the economic condition of active members of the Alabama bar in the previous year. A 2011 national survey found that lawyers in Alabama had higher median wages than did attorneys in thirty-three of the other forty-nine states, and

that the oversupply of lawyers in the state was less severe than the national average, so it seems probable that economic conditions for Alabama attorneys are no worse, and possibly better, than for American lawyers in general.\textsuperscript{59} The survey thus provides us with three snapshots of the legal profession in one apparently representative state over the course of the last quarter century. When considering the dollar figures in these reports, it is important to keep in mind that they are stated in nominal, rather than inflation-adjusted dollars. Between 1985 and 2009, the Consumer Price Index doubled, while between 1997 and 2009 it increased by 33.7 percent.\textsuperscript{60}

For example, when the survey measures how many Alabama attorneys were earning $100,000 or more in 1985, this is equivalent to asking how many Alabama attorneys were earning $200,000 or more in 2009, in real dollars. In what follows, I am adjusting the figures in the three Alabama surveys into constant, 2009 dollars. The median number of years in the profession of the respondents was approximately sixteen: 17 percent of Alabama attorneys were earning more than $200,000 in 1985 in 2009 dollars, while 8.7\% of Alabama attorneys were earning more than $200,000 in 2009. 54 percent of Alabama attorneys were earning at least $100,000 per year in 1985 in 2009 dollars, as compared to 28 percent in 2009. 23 percent of Alabama attorneys were earning less than $25,000 in 2009. 37 percent of Alabama attorneys were earning less than $50,000 in 2009. In 1997, 76 percent of Alabama attorneys were earning at least $67,000 per year in 2009 dollars. In 2009, approximately 49 percent were earning at least $67,000. In 1997, 40 percent of Alabama attorneys were earning at least $134,000 per year in 2009 dollars. In 2009, 20 percent of Alabama attorneys were earning at least this much.

A particularly telling statistic is that the starting salary for newly hired attorneys in 1998 in Alabama was only $44,100, in 2009 dollars, while the starting salary for newly hired attorneys in 2009 was between $75,000 and $100,000 (only the range is available for the latter year). What this means, of course, is that the relationship between starting salaries and salaries for experienced attorneys has (at least in Alabama) experienced a radical reversal over the course of the last fifteen years. In the late 1990s, starting salaries for attorneys in Alabama averaged about half of what all attorneys in the state were making, while today starting salaries are considerably higher than the average income of the state’s attorneys as a whole.

The explanation for this startling decrease in the compensation of experienced attorneys in the state appears simple. The total number of active licensed


attorneys in Alabama doubled between 1986 and 2010, and increased by a third between 1998 and 2010. When adjusted for inflation, this means that twice as many active licensed attorneys were competing for almost exactly the same total available economic return in 2009 as in 1985, i.e., per capita earnings for Alabama attorneys with active licenses have fallen in half over the course of the last quarter century.

This sort of survey is particularly valuable because it gives us an idea of how the legal profession as a whole is changing, for attorneys at all levels of seniority, as opposed to the far more limited picture offered by oft-quoted surveys regarding employment and salaries nine months after graduation, or high-profile stories about the “going rate” for starting associates at large law firms. While far more work on long-term career outcomes for attorneys needs to be done, especially given the current rapidly changing market for providers of legal services, the available information regarding both entry-level and experienced lawyers is more than sufficient to support the conclusion that very large numbers of law graduates at all levels of seniority are dealing with economic and professional challenges that create a large gap between their virtual and actual social identities.

In any case, the aim of this article is not to delineate the exact quantitative dimensions of that gap, but to explore the qualitative experience of living with the spoiled identities the gap creates. This article will therefore allow the stigmatized to speak for themselves, in their own words, while exploring the strategies those with spoiled legal identities employ to make their way through a world that stands ready to judge them for failing to conform to the virtual identity of the American lawyer.

A. THANKSGIVING DINNER

The following story was posted on an Internet message board forum, dedicated to discussing employment options for law students, law graduates, and attorneys:

Thanksgiving this year was more social than it typically is for us, and we attended a gathering that included a hodgepodge of various families that I had not met before. Social circles are small, however, and people appeared to be generally familiar with the concept that I was a smart lawyer in a big city working with a big firm on big cases making big money. I thus was subjected to a seemingly never-ending carousel of young, good-natured twenty-somethings who were sent to speak to me at the behest of their parents regarding the perceived merits of law school.

The kids were bright-eyed, enthusiastic, and many were more or less neck deep in the law school evaluation process. Our conversations typically fell along the following lines: “I’m looking at [law school], and I have met with the admissions people there, who seem really great. I’m pretty excited about the
prospect of attending. It’s cool that you work at [Firm X] in [City Y]. Do you like being a lawyer?

In any event, I punted, not wanting to be the resident buzz kill while the gravy was still warm. My answers were vague, and I generally discussed the intellectual challenges one might expect to face as a law student. If one did manage to corral me into discussing the prospects of obtaining law firm employment after graduation, my replies were purposely noncommittal—“it depends, some fields are hotter than others;” “It’s hard to say; before attending, be sure to research firms that you may be interested in to see the type of graduates they hire,” and so forth.

Afterwards, I reflected that it was bothersome to hear that the admissions departments were still shoveling the same brand of irresponsible rhetoric that, I suppose, in hindsight, had hooked me when I was in their shoes. I mused that, in a vacuum of anonymity—no gossip, no whispers—my answers to some of their questions would have been very different.

So here is my made-for-the-internet story, as a class of 200[6][7][8][9] law school graduate. It is not intended to persuade or dissuade; instead, I merely recount the details of my background and my work experience. The rest is, as they say, up to you.

My background: I, like most of you, am a striver. At a young age, I was identified as “gifted,” and recall that I generally enjoyed the process of learning. Academic success came, along virtually all stages of educational conveyor belt, with relative ease. I excelled in middle school, and afterwards, was able to gain admission to the highly selective private high school in our city. Less than 10% made the cut. High school was certainly more competitive—no longer the big fish in a small pond—but I continued to work hard and did well. I took the SAT seriously and prepared diligently. My score was high, and I was able to obtain admission to a highly prestigious undergraduate program.

Undergrad was more of the same, and I obtained a degree in a [technical field]. After graduation, I secured a full-time position in at [highly recognizable institution related to technical field]. While there, I [accomplished noteworthy achievements [X][Y]].

In 200[ ], I decided that I wanted a change of pace, and sat for the LSAT. Law school, after all, appeared to be attractive: only three additional years of education and a pot of gold at the end of the proverbial rainbow. With my technical background, I envisioned a career in IP litigation. My LSAT score was high, and I decided to attend a non-T14 T20 on partial scholarship.

Law school went relatively well, and I was able to secure membership on a secondary journal. I also participated in moot court and mock trial, and [further completed noteworthy achievements [X][Y]]. Grades were decent, not great—and I finished top [2][3][4]0% or so. Why not higher? Well, at the good schools,
everyone is smart, and (2) 100% enter with the notion in mind of finishing within the top 10%. Strangely, 90% end up being disappointed.

In any event, I interview well, and my technical background and law school performance were sufficient to net me a [DC][LA][NYC][SF] biglaw summer associate position during 200[5][6][7] 2L OCI.

I received an offer from the firm after the summer, and began my legal career at the same firm following my graduation from law school. I remained with firm for nearly [3][4][5] years—a period in which the firm only promoted one new partner (yes, literally one) in the [DC][LA][NYC][SF] office. I decided that, in light of these staggering odds, hanging around “to make partner” no longer constituted a viable career path. I thus decided that it was time for a change, and made a lateral move to a group at [Firm X] that appeared to have potential as an up-and-comer.

Mistake.

This new group, though initially very successful, fell apart [due to reasons completely beyond my control]. In [January][February][March][April] of this year, the entire group was shown unceremoniously to the door.

My reality: Initially, I wasn’t hugely concerned. After all, I believed in the caliber of my credentials, and I had over [X] years of top-notch training at [DC][LA][NYC][SF] biglaw. I had worked hard, and had billed a large number of hours. My skills were solid, and my references were (presumably) stellar. Additionally, I was linked to a “hot” area of the law in IP litigation, and had a great cover story too—this was not a traditional lay off. A victim of circumstance, nothing more. Think Howrey.

My family wasn’t worried, either. After all, I had been that “striver,” remember? The self-starter, the “high performer”—they seemed to intuitively believe that I was going to invariably land on my feet; historically speaking at least, I always did. My parents had several contacts at large firms—they reached out to them on my behalf. These contacts expressed interest, at least initially.

I identified “targets,” and began sending out resumes. I was not overly conservative, and a fairly significant number went out. The personal contacts called as well, and they proceed with informational interviews. They sound encouraging, and they discuss possible openings in the event of A, B, and C occurring.

Three months go by. Rejection e-mails roll into the inbox. The personal contacts have stalled. I decide to pursue potential clerkships, and I apply from the appellate level all the way down to the magistrate level. I also begin targeting more firms, widening my net: big, small, whatever—as long as the work experience requirement is relatively aligned. I reach out to every personal contact in the book, and further apply to various in-house positions.
I failed to obtain a single clerkship interview. Not even the magistrates want to talk to me. I [did], however, gain some traction with firms, and obtain interviews at several. You haven’t heard of these places—but at least one seems to have some promise—it has diverse clients in fields unrelated to my own, but is otherwise looking to further develop its IP practice. Given the generally unknown nature of this small firm, I reason that the competition can’t be too intense. The interview goes extremely well. “It’s my job,” I think, walking out. No: instead, they hire a former federal clerk out of Harvard Law with biglaw experience. Wow—fair enough. What is this guy doing interviewing at a place like this?

The next interview, well—it was with an insurance defense shop. Nice guys, made an offer on the spot—but only after complaining at length about the brutally slim profit margins. They offered 60k a year to defend insurance companies. For more money, I probably would have taken it. However, it’s completely unrelated to IP litigation and, from what I understand, once you jump into ID, that’s it, you’re stuck and yeah, let’s not mince words: we’re talking about a pay cut of more than 140k. I just couldn’t do it. I turned them down.

In hindsight, I probably should have taken it.

Thanksgiving has now come and gone, and here I am, still jobless. I’m collecting unemployment, and still manage to send a resume or two when something pops up that I haven’t already applied to. I’ve lost track of the number of “ding” emails I’ve received—I’m guessing well over 100 by now. The cycle of rejection appears to be never ending. Family, once casual about this, now appears awkward and uncertain. No one knows what to say.

At this stage, I’ve applied to the full range. In-house, out-house, large, small, prestigious, “TTT”—the end result is, shockingly, the same. In [month X], when I lost my job, I never envisioned this result. I thought that there would always be a place for a person like me—up until now, there always had been. Fortunately, my loans are paid, and thus, unlike a lot of my peers, I don’t have the weight of their financial burden around my neck but, in any event, unemployment maxes out at $450 a week—it doesn’t cover the expenses of living in [DC][LA][NYC][SF]. I am, for better or for worse, going broke.

My next step is to swallow my pride and jump into the doc review circuit full-time. It is, however, as bad as they say—generally 30 bucks an hour for 8 to 10 hours of day of base document coding. I sat through one for 2 weeks. It is truly mind numbing—“responsive,” “unresponsive,” “doctype,” etc. You could quite literally train a reasonably savvy 6th grader to do it. It isn’t legal work, and I don’t want to go back to doc review. In a way, I suppose that it’s demeaning, and is, without question, light years beneath my credentials. After all of the hard work, after the years of billing 2100 to 2400 hours, after all of the education and the achievement, is this really what I’m qualified out to do?
By way of comparison, consider a premedical student who graduates with a 3.7 and a 98th percentile MCAT score. I don’t know exactly how the percentile correlates, but let’s assume that it equates to a 41. 3.7, 41 MCAT—this person is essentially guaranteed to not only get into an elite medical school, but also to have a stable career as a physician provided that he/she is willing to do the work, etc. The same applies for your 3.7/98th percentile (780?) business school applicant: this person, provided that he/she has solid WE, will almost certainly go to a top5 MBA program on scholarship and will invariably have a career in banking, consulting, etc. provided that the desire to put in the work remains. There are no such guarantees with your prototypical 3.7/98th percentile LSAT graduate. And here, in my opinion, is the critical difference between the law and other potential career fields. In law, you can do everything right, and still be completely unemployable.61

This narrative illustrates how a stigmatized law graduate with an increasingly spoiled legal identity is both able and willing to pass in one social setting, and flaunt in another.62 Finding himself in a particularly awkward situation—surrounded by friends of his family who he discovers are under the misimpression that he is still “a smart lawyer in a big city working with a big firm on big cases making big money”—the narrator decides to pass, rather than to discomfit the “normals”—the prospective law students at the gathering, whose prospective legal identities remain unspoiled for now.

Subsequently, in what could perhaps be interpreted as an act of contrition, the narrator volunteers to flaunt (albeit anonymously) his spoiled identity on the legal employment forum, in the explicit form of a cautionary tale. Note how flaunting does not merely involve the intentional unveiling, rather than the denial or the obscuring of, a spoiled identity, but in addition includes an implicit rejection of the frame that produces the virtual identity to which the narrator has found himself unable to conform.63

Indeed, the narrator’s story is not merely a cautionary tale, but an explicit structural critique of the virtual identity that he expects his interlocutors to attribute to him. If he is not a well-compensated professional doing intellectually challenging and socially important work, that is not because his stigma is a product of what Goffman calls “blemishes of individual character,”64 but because, for reasons beyond the narrator’s control (“you can do everything right and still be completely unemployable”), the actual identity of a law graduate can

62. See Goffman, supra notes 1–4; see also supra text accompanying notes 1–4.
63. Goffman, supra note 1, at 100. “Flaunting involves ‘radically transforming [the stigmatized person’s] situation from that of a person with information to manage to that of a person with an uneasy social situation to manage, from that of a discreditable person, to that of a discredited one.’”
64. See Goffman, supra note 1, at 4.
come to bear no resemblance to the virtual identity ascribed to him by naïve observers.

B. SUITS

This story was relayed to me recently by a law professor who teaches at a well-ranked law school:

A few weeks ago I was shopping at [a “big box” national retail store]. I couldn’t find an item I was looking for, and I decided to ask an employee who was stocking a nearby shelf for help. Only when he turned around did I realize it was a former student of mine, who had graduated the previous year. I felt a rush of embarrassment, which was only intensified by my perception of his evident discomfort. We immediately resorted to small talk, and in the course of our brief conversation he took the opportunity to assure me he was only working here while he waited to hear back from various legal employers to whom he was currently applying. I wished him well and we went our separate ways.\(^{65}\)

Another professor at another, similarly ranked school relates that in recent years she has learned not to ask law students attending the spring graduation ceremony questions about what they are going to be doing in the coming fall. Instead she focuses on less potentially fraught topics, such as the event itself, bar examination study plans, and so forth.\(^{66}\)

These faculty members find themselves in such encounters to be in the position of “normals,” who must deal with the social tension felt by both themselves and the stigmatized in such contexts. Each deals with that tension in these situations by allowing the stigmatized to cover—to engage in strategies of self-presentation that reduce the obtrusiveness of their stigma.\(^{67}\) Covering is an available strategy whenever the stigmatized either cannot or refuse to pass, or to flaunt. It is an intermediate approach to the problem of spoiled identity, as it neither denies the reality of that spoliation, nor confronts the legitimacy of the social frame that stigmatizes those who fail to conform, or at least appear to conform, to their virtual identities.\(^{68}\)

The line between passing, covering, and flaunting, however, is often far from clear, especially given the complexity of social contexts. Consider the story of X. X—a second-year law student at a regionally well-regarded, but not nationally elite, law school—wore a suit to school on every day of the school’s three-week on-campus interviewing season. Wearing a suit to class during OCI signals, at the

\(^{65}\) Personal communication with the author (Dec. 4, 2012).
\(^{66}\) Personal communication with the author (Aug. 12, 2012).
\(^{67}\) See GOFFMAN, supra note 1, at 102–04.
\(^{68}\) Id.
school in question, that the wearer has a coveted OCI interview (the vast majority of students at this school do not get any OCI interviews, and only a handful of students at the very top of the class get several interviews). Yet X had confessed to his roommate—another second-year student—that he had no OCI interviews at all. Law schools being gossip-ridden places, the facts of the matter soon became known to many of X’s classmates.

At first glance, X’s behavior seems to be a clear case of an attempt to pass, which was in large part spoiled by his reckless revelation to his roommate. But other interpretations are possible. In this context, wearing a suit can also be understood as a (quite literal) form of covering: X may well have understood that many observers would fail to be taken in by his ruse, but still assumed that the mere gesture of wearing a suit—the official uniform of “real lawyers”—would in some psychologically meaningful way cover his stigma, and lessen the discomfort his stigmatized state would otherwise elicit among observers. Conversely, wearing a suit to school every day under such circumstances, especially given his confession to his roommate, can be interpreted as a kind of flaunting: a perverse performance art, mocking the sartorial conventions of an increasingly absurd situation.

Indeed, none of these explanations necessarily exclude the others: X could have been passing in the eyes of the more naïve students and faculty, covering before the more knowing, and flaunting for the benefit of those Goffman calls “the wise.” “Wise” persons, in Goffman’s nomenclature, are “those whose special situation has made them intimately privy to the secret life of the stigmatized individual and sympathetic with it, and who find themselves accorded a measure of acceptance, a measure of courtesy membership in the clan . . . [They are] the marginal men before whom the individual with a fault need feel no shame nor exert self-control, knowing that in spite of his failing he will be seen as an ordinary other.”

Or consider this vignette, from a 2008 graduate of an elite law school, who worked for a national law firm for twenty months before he, along with most of the other junior associates in his practice group, were laid off. After spending more than a year looking unsuccessfully for legal work, he decided to apply for a job at Target:

There’s a new Target opening up near where I live, and they had 140 rank and file positions to fill. I got up early, pressed the wrinkles out of my favorite cornflower blue dress shirt, put on a suit and tie for the first time in months, and drove the 30 minutes out to some community center I’d never heard of.

69. It is worth noting in this context that, increasingly, many lawyers do not wear suits to work, unless they are appearing in court or meeting with clients (I thank Brian Liegel for bringing this point to my attention).
70. See Goffman, supra note 1, at 28.
To call the parking lot full would be a gross understatement. It was game-day full. Not only was every parking spot taken, but every space big enough to fit a car had a car. Curbs, grass, the space in front of another car boxing it in. I had to leave the community center and park at a nearby strip of underused offices and then walk the quarter mile back through rain and mud. Once inside, I was given a stack of forms to fill out and pointed in the direction of a gymnasium. That’s when I realized I was probably overdressed. I counted about 300 other people, and I didn’t see a single other suit in the room. Only two other ties. Oh well, forms to fill out, and time’s ‘a wasting. Education: BA, University of Alabama (English and Philosophy); JD, New York University School of Law; Most recent job: Associate Attorney; Job duties: Securities and Private Equity (that’s all that’ll fit in the inadequate, inch-long box); Salary: $160,000.

Yeah, definitely only suit in the room. But hey, they must need some low level managers, right? I had experience managing the business team for an undergraduate literary journal, and right now I’m managing a team of writers, writers who I’ve somehow convinced to do free work on top of their very demanding full time adult jobs. Legal work could be spun as customer service experience, even though I’d never actually talked to a client. Hopefully they wouldn’t ask for details. (They didn’t.)

A little more than an hour sitting on a bleacher, then about half an hour standing in a line, and another hour sitting down again, my name was finally called. I followed a girl in standard Target attire out of the gym and into another gym, filled with tables where interviews were being conducted. I was introduced to my two interviewers and took a seat.

Maybe I should have worn khakis instead. All the Target staff wear them. I assume they provide the red Target polos, but you probably have to get your own khakis. Maybe wearing them would tell the interviewer, “Yes, I own some khakis.” That’s probably a pretty important job qualification. ‘Why are you interested in working at Target?’ Because this is what it’s come to. People study things like corporate finance, tax law, and administrative regulations. They aspire to work on hundred million dollar international project finance deals. They don’t aspire to put on khakis and a red polo every night (shifts start at 3:00 am) and restock Legos and Paul Newman’s pizza. Not until they do, that is. Eight more questions followed, all read from a script ‘What would you say was your greatest weakness at your last job?’ The economy. Lack of any feedback on job performance was a close second. ‘Describe a time you resolved a conflict with a coworker.’ The firm didn’t want to give me any more money. I had different feelings about that. We let HR sort it out. ‘Describe a time you faced a challenge and overcame it.’ I managed to not push the gas to the floor and ram every tree and telephone pole I saw on the way out here. Back to the bleachers for a little while longer, then one of the interviewers came over to tell me. ‘We don’t have anything available right now.’

They’d keep my application on file for 60 days before tossing it in the trash, at which time I was invited to reapply. 140 job openings, an entire big box store of
duties to fulfill. I wasn’t fit to do any of them. 140 rejections in one short sentence. 140 things you can’t do with a law degree.\footnote{BL1Y, \textit{140 Things You Can’t Do With a Law Degree}, \textit{Constitutional Daily} (Jan. 19, 2012, 8:35 AM), \url{http://www.constitutionaldaily.com/index.php?option=com_content&view=article&id=1422:140-things-you-cant-do-with-a-law-degree}. Note how this story also relates another form of stigma: the stigma a law degree may possess in the eyes of non-legal employers. See infra note 82 and accompanying text.}

Here again, the wearing of a suit in such circumstances is a complex gesture by a stigmatized (ex?) lawyer struggling to manage his spoiled identity. An unemployed elite law school graduate and former big law firm associate choosing to wear a business suit to an interview for an entry-level job at Target could be interpreted as a form of passing (“I am a lawyer wearing my uniform”), of covering (“I may not be a lawyer any more but at least I look like one”), or of flaunting (“Yes I look absurd. That’s the point.”).

C. STRESS, BOREDOM, AND ANXIETY

One gap between the virtual and actual social identities of lawyers is often described most clearly by the “winners” in the law game. This lawyer is responding to a question from a prospective law student about whether law school is worth the cost:

I am the son of a relatively successful lawyer, and worked in my father’s law office part-time as an undergraduate student. I knew well the personal and professional sacrifices that practicing law entailed. I had all of the marker talents (writing, research, public speaking) that aspiring lawyers are supposed to have, and had been told from childhood that law school was in my future.

I attended a so-called Top 10 law school with an excellent placement record. I borrowed the entire cost of my very expensive private law school but have since paid off my entire debt. I received many offers from BIGLAW firms. I am now a junior partner in a firm overseas and my current income is well north of US$300K. I have a net worth of seven figures. By most objective criteria, I am a “winner” in the law school lottery. (By the way, I graduated pre-financial crisis and do not think a similarly credentialed graduate today (much less in 3 years’ time) could reasonably hope to do as well as I have financially.)

This all said, I STILL regret choosing to attend law school. Why? Because legal work is soul-crushing, stressful and tedious, even for those of us fortunate enough to make a viable living at it. More importantly, it is exceedingly difficult to transition from law to other fields. The more successful and senior you become in the profession, the more pigeonholed you are. I am increasingly concerned that the growing structural oversupply of lawyers will drive down my compensation, while the passage of time has made it increasingly difficult for me to find even remotely comparable employment in any field. I believe I
could have done just as well or better in a number of other career fields, all of which would offer greater mobility and external marketability.

As lawyers, we are cursed by both success and failure. If my story does not give you pause, I am not sure what will.72

Another lawyer seconds this warning, for similar reasons:

This is a good post. I went to law school around 15 years ago and got out without much debt. My family has several lawyers in it. I make a decent wage for the area I live in. However, the work is soul crushing. I am in my 40s and look at my future of dealing with difficult people and worrying about billable hours and it makes my head hurt. I had a friend in college who went to work in a managerial position with a chain store right out of college and she finally quit that a few months ago and got a better job within a few months. She is making way more than me and has done so for years. My best friend from law school and I frequently chat about other routes we could have taken that would have been preferable to being a lawyer. O[riginal] P[oster], I hope you heed the advice that you have been given.73

This is a recurring theme among financially successful lawyers: they will often use words like “soul-crushing” to describe their work—phrases that indicate a discontent that goes well beyond garden-variety professional angst. As a partner at a large law firm put it to me (when he was well into his third gin and tonic of the evening), “boring jobs are not usually stressful, and stressful jobs tend not to be boring, but legal practice has a remarkable ability to be both stressful and boring.”

D. "STOP LYING"

Law graduates will go to great lengths to maintain the illusion that they are conforming to the virtual identity of the American lawyer. This, perversely, gives that identity much of its social power. Since members of the profession derive significant value from the prestige associated with being a lawyer, law graduates—individually and collectively—have an incentive to maintain the profession’s social prestige by maintaining to the extent possible the belief that to be a law graduate means to be a well-compensated professional doing intellectually challenging and socially valuable work. Maintaining that belief can be hard work, as this message from an unemployed lawyer reveals:

I graduated from [a prestigious university] with a B.A. in political science in 1994. I was on scholarship, so I managed to graduate with no debt. Not that

these things matter 20 years after the fact, but I had a 3.6 GPA and a 178 LSAT. I worked for a U.S. Senator between college and law school. I graduated from [a top ten law school] in 2000. My GPA was a 3.5, which was well above the mean but not good enough for law review. I clerked for a federal district court judge from 2000–2002, during which time my law school loans were in forbearance. My point is that, although my resume wasn’t printed with gold ink when I began my legal career, my credentials were good.

After my clerkship, I went into private practice. I have taken more than 200 depositions, argued motions in court more than 100 times, conducted several multi-day trials, propounded and answered more discovery than I care to think about, and drafted countless briefs, motions, and pleadings. Most of my work has been in business and real estate law, so I have also drafted stock and asset sale documents, employment and non-compete agreements, employee manuals, sexual harassment policies, commercial leases, finance leases, business formation documents, company minutes, trademark applications, loan documents, and deeds. In other words, unlike a recent law school grad, I’ve been around the block a couple of times, I have some experience, and I know how to do some things.

I was laid off on October 20, 2010, and I have been out of work ever since [i.e., two and a half years]. There were no accusations of misconduct, no complaints about my work. The law firm was downsizing, and that was that.

I’m 41 years old, I’ve been out of law school for 13 years, and I do not have a book of business, so evidently, my career as a lawyer is over. I have a wife and 2 kids who need me to work, but I don’t know how to do anything other than practice law. Instead, my wife works, and I am a de facto stay-at-home dad. It’s not that I don’t love being a dad (of course I do), but my family needs my income, and I need to work outside the home.

As depressing as my situation is, I know it is so much worse for so many people. I have read their stories on your blog and in the comments. At least I had 8 productive years as a working attorney. I paid my student loans down from $120,000 to the current balance of $23,000. As long as my wife has a job, we won’t starve. And our kids are wonderful. Knowing how much worse it is for so many people, I feel guilty complaining about my situation.

For most of my career I have wondered, and occasionally asked out loud, “What happens to all the lawyers?” Just based on my own personal observation, I could see how few lawyers actually made partner. So where do they go? Oh sure a few go in house, some end up working for the government, etc., but just based on what I could see and the lawyers I knew, the numbers didn’t add up. Lawyers just seemed to disappear... And then, of course, I disappeared.

Since I was laid off, I have floundered around, applying for jobs, representing a few clients as a solo practitioner (not that that has been lucrative—think low five figures per year), and trying to figure out “What happens to all of the
lawyers?" Finally, a few weeks ago, a Google search landed me on a scamblog (I don’t remember which one anymore). That scamblog led me to another, then another, and another, and then your YouTube videos of your interview with Bloomberg Law and your presentation at Stanford Law School. Then Google searches for “Paul Campos” led me to your blogs, and then I learned who Brian Tamanaha is, and then I read his book.

Yes, believe it or not, I had no idea about the scamblogs until just a few weeks ago. It seems hard to believe now, but why would I? I graduated from law school a long time ago now—before law schools produced most of the glut of lawyers. Times were good when I was looking for a job in 1999 and the early 2000s. I have been busy—practicing law, having a family, then dealing with my own unemployment (for which I have blamed myself). I haven’t had time to keep up with what is going on with America’s law schools. And after I was laid off, I have had very little contact with lawyers, and I haven’t had contact with law school students or recent law school grads in years. On the rare occasion that I do talk to a law school classmate or contemporary, no one ever acknowledges any problems—everyone claims to be on top of the world, knocking the ball out of the park. Now, thanks to the scamblogs, I know that some (many?) of my classmates have to have ended up like me.74

“Everyone claims to be on top of the world.” Many of these people are, in other words, trying to pass in the eyes of their fellow law graduates. As these observations from criminal defense attorney Scott Greenfield suggest, this strategy does not always succeed:

I spent about an hour on the phone with a troubled lawyer. During that conversation, something emerged that compels me to offer this suggestion: Stop lying. Stop lying to others. Stop lying to yourself. Just stop lying. [T]he guy I spoke with had left a stable and reasonably well-paying job to go solo . . . [H]e had a strong reason to do so, having gone from defense lawyer to prosecutor, only to find that he couldn’t stomach the job and had to return to defense. Even so, he looked back on his decision as a monumental mistake.

He was an experienced lawyer, with more than ten years in the trenches. He had substantial trial experience, though he hadn’t tried a case since going out on his own. He followed the advice, played by the rules, and came into the game with the legitimate ability to fulfill his obligation to defendants. He was dying. His business was essentially non-existent. As his savings depleted, the realization of more than a decade of his life, the sacrifices of his family, hit home.

74. E-mail by anonymous to author (Feb. 26, 2013) (on file with author). The so-called scamblog phenomenon, which features law graduates detailing the harsh and often humiliating conditions facing people attempting to join the legal profession, is a prime example of flaunting. Particularly notable scamblogs include Third Tier Reality (thirdtierreality.blogspot.com), But I Did Everything Right (butidideverythingrightorsoithought.blogspot.com), and Outside the Law School Scam (outsidethelawschoolscam.blogspot.com).
During the conversation, he told me that as he talked to other criminal defense lawyers, he was told that they were doing great. Fabulous. Big cases here. Huge cases there. Trials, trials, trials. New clients calling daily, with interesting cases and bulging wallets. Life couldn’t be better.

"Why," he asked me, "was everybody lying? Or am I the only one drowning?"

I’ve spoken with many lawyers, many readers. You know who you are. You know that I know the truth. The business of criminal defense is dying. It’s awful. It sucks. And you’re hanging on by a thread, if at all. Yet, most put on their game face, talking themselves up as if they are somehow beating the odds, knocking down the world, making a killing. Nobody wants to tell their brethren that they’re in the same boat, struggling daily to cover the nut and praying that the next phone call isn’t another nutjob or desperate defendant without a dime to his name.

It’s not that there is a shortage of criminal defendants, though crime is significantly down and serious crime even more so. There is a shortage of criminal defendants who can afford to pay for a lawyer. Sure, there are some lawyers who are doing well, but you can count them on your fingers and toes... And there are a great many criminal defense lawyers, exceptionally good ones, who fight over crumbs these days, because that’s all they can do to survive.

It’s time we admit this, because walking around the courtroom hallways with our chests puffed out isn’t putting any food on our tables.

During my phone call, we spoke of the baby lawyers hanging out in the hallways trying to catch the attention of a defendant’s mother with $100 in her pocket. We spoke of n00bs, barely competent if at all, taking felonies for $1,500 total. He didn’t blame them, knowing they had loans to pay. The lawprofs are busy reinventing law school so they can continue to churn out tens of thousands of new lawyers. The talk is about law school tuition and practice-ready lawyers. The theory is that if they can produce lawyers without the $150,000 in debt, they can service the middle class, who can’t afford legal representation.

It’s a lie, but the lawprofs don’t realize it. They’ve never experienced law office finance, what it takes to pay rent and phone, or staff and equipment. While student loan debt is a factor, it’s only one of many. They don’t grasp what every criminal defense lawyer faces daily, the cost of merely existing. They never paid a rent bill during their judicial clerkship or stint in the United States Attorney’s office.

On top of survival, a lawyer hopes for a bit more. To feed his family. To buy a car. A new car. To own a home, and once purchased, put furniture in it. To go out to eat once in a while, or maybe take in a movie. To go on vacation. To pay for a child’s college education. We’re called selfish, blood-suckers for wanting these things, expecting that the three years in law school, the tuition paid or owed, the experience gained over years, should produce a fairly stable middle-class existence.
The irony is that most criminal defense lawyers aren’t making enough money to live as well as the middle class clients they’re expected to subsidize. It’s unfair that people should have to pay for lawyers? Perhaps, but it’s unfair that lawyers aren’t doing any better than the clients who can’t afford them.

The fact is that the vast majority of criminal defense lawyers are starving. Because of this, lawyers are cannibalizing themselves, stealing cases in the hallway and undercutting each other at every turn. Websites create the expectation that people can get $1,000 of legal representation for $12.97. They teach that lawyers desperately want to give away their advice for free. The message is lawyers are fungible, or that no one wins anyway, so why bother paying money when you can lose just as well for free . . . I told my caller that he wasn’t crazy. I told him that we’ve become a bunch of liars, fakers, pretending to be doing great because no one wants to appear to be a failure. Failure doesn’t bring in the next case. Failure scares people away, like some ironic form of leprosy, as if it’s contagious. Only losers fail, and no one wants to announce to his peers that he’s a loser.

I’ve watched as a great many excellent, experienced criminal defense lawyers have walked away over the past few years. They took an oath, but the word “poverty” was never spoken. It’s not that they don’t want to help every person accused, but they have mouths to feed. And yes, they want to enjoy a decent standard of living. There’s no crime in that.

But until the lies stop, there will be no real discussion of how to change this downward spiral and make the practice of criminal defense a strong, desirable area of practice. You can’t pay the rent with lies, and nothing will change until we cut the crap and start talking about how to make the practice criminal defense financial viable again.  

E. FEAR AND SELF-LOATHING IN NEW JERSEY

There is a very dark underside to the contemporary American legal profession, which most law faculty have never glimpsed or even imagined, therefore remaining almost completely invisible to law students. Yet anyone who wants to explore this world can find stories like the following, which are a good deal closer to the lived experience of many attorneys than the grandiose vision of law’s empire found within our law schools (at the time, the narrator was working for a small law firm in northern New Jersey):

The saddest [sight] of all are the older I[nurance] D[efense] shitlawyers in their late 40s or so, still grinding it out and bickering over these fender-bender files, bouncing from one shitlaw ID boiler room to the next. We used to call them “poors.” You hear them bitching in court about how much their kid’s

college is gonna cost, how expensive dry cleaning their JC Penney suits is . . . A lot of these schlubs have serious alcohol problems, too. Most of them make in the 70-80K range, which is pretty piss poor for the NYC/North NJ area, especially if you have a family.

But that’s pretty much top whack for mindless monkey work like insurance defense. Even after decades of fender bender ID “experience,” you’ll never even make half of what a 25 year old Biglaw kid gets . . . Anyone who doubts what I write and lives in the NYC area just needs to take a quick trip to King’s Supreme, Status Conference and JCP Parts. Or Room 707 in Bronx Supreme (get off at the Yankee Stadium stop and walk up the hill). I really believe a day or two seeing this shit firsthand would deter 75% or more of starry-eyed 0Ls.

And no, 70 or 80K isn’t a respectable salary for a professional with seven years of education and 20+ years in the business. It’s really a downright embarrassment. Believe it or not, a lot of these guys do menial work like mowing lawns on the weekend to make ends meet . . . Hell, I was still waiting tables on weekends when I was working at the shitlaw personal injury firm, as were most of my co-workers. Almost everyone in shitlaw needs some supplemental income to scrape by . . . There was one funny old drunk I’ll call “[Phil],” who used to come to court smelling like the wrath of John Barleycorn every day. He was short, bald, fat, and about 50 years old. He worked for a notorious shitlaw mill called [firm name].

One day he was begging some adjuster via cellphone to settle a nonsense soft-tissue auto case my shitlaw firm has slapped on them. I kept dinging his “offers” and sending him back out to the hallway to beg the adjuster for some kind of decent settlement.

But the bad thing about [firm name] is that they represent [insurance company], and those pricks simply don’t cough up $$$ period. Every single case is a “no pay” for them, even your guy gets hit by a drunk driver with no license and ends up paralyzed and in an iron lung. Not that it really matters since most of the policies are puny little 25K state minimum coverage anyway (New Jersey now requires only 15K, so auto injury cases in NJ are real turds handled only by the most desperate bottom feeders from TTIs like [two low-ranked New Jersey law schools]).

I think he finally came back with 500 bucks, which I turned down. So we went to see the judge to get sent to our jury room to pick and Phil tries telling the judge he has pink eye. He was leaning over the bench and trying to pull his eyelids back because the judge didn’t believe him. Then the judge gets pissed when Phil knocks over this weird paperweight the judge had, and he starts telling “to call Lawyer Assistance” and sober up, etc. Everyone starts cracking up and here’s Phil saying he really has pink eye, and can’t we do the trial another day, etc. So the judge finally adjourns the stupid thing and Phil rolls out of court and back to his barstool.
Funny thing was that the client with that case got sent to Rikers not long afterwards for stabbing his girlfriend, and when my boss did settle the case I had to go to the joint and get him to sign the releases. We deposited the check in his commissary account when it came . . . I forgot to mention that Civil Kings in Brooklyn is perhaps the filthiest, most decrepit courthouse in America. It’s a virtual beehive of shitlaw: this is where landlord/tenant cases are heard, as well as small claims, collections, and no-fault auto cases. Half the litigants there are crackheads who haven’t bathed in weeks, and you have to “run the gauntlet” thru the hallways b/c if you have a suit on, all the landlord/tenant deadbeats beg you for free advice and like grab hold of your sleeves and shit. Once I was sitting on the bench nursing a hangover & this old lady kept telling me how much she liked [my] necktie, and how her son needed a suit for job interviews, so I took it off and gave it to her. It was from Century 21 anyway so no biggie.

The only good part about No-Fault was John, the calendar clerk. He was a semi-retired court officer with a huge mustache and an old-school NY attitude, kinda looked like Dennis Franz from NYPD Blue. Rather than a holster, he kept a huge .357 magnum tucked in the waistband of his trousers. It was all rusty from where his ass like sweated against it. Understand that this “courtroom” is kinda similar to a YMCA locker room: the half-drunk, hungover shitlawyers are washing up in the water fountain, putting on deodorant in the hallway, cleaning puke off their ties/shoes, etc. It’s very loud because everyone is basically an asshole and it’s so crowded you have to scream the name of your case to find your adversary. John didn’t take a lot of shit, so when it got REALLY loud he’d bang a stapler inside a metal trash can and say “next [expletive] who opens his mouth is getting a night in jail.” I encourage all Brooklyn 0 L’s to go check out King’s Civil first thing Monday morning—it’s at 141 Livingston Street a couple blocks from the school. ‘Bozo’ and NYLS losers should get the “10 cent tour” as well. Hell, I’ll lead it. It could be like those “scared straight” programs where teenagers visit Rikers to get on the beam.

It’s kinda what you always pictured courtrooms in Rwanda are probably like. There’s also a set of fire stairs next to the bathroom that have an outdoor landing where everyone smokes. You could get cancer just standing out there for a few minutes. The bench where the judge is supposed to sit is covered with 88,000 tons of cut n’ pasted shitmotions and old milk crates, etc., so he/she sits in a little card table in an alcove in the back. The “courtroom” proper would be too loud to do business in anyway, since everyone is “negotiating” their cases while waiting to get called back to argue these turds.76

Note how the narrator is flaunting his degraded status as a “shittlawyer,” while reveling in darkly comic self-loathing. This self-loathing tone serves to emphasize his biting criticism of a system that tries to pass off “mindless monkey

work” done in Dickensian conditions as well-paying, intellectually challenging, and socially prestigious. (Note too how the narrator touches on all three forms of stigma in Goffman’s model: “abominations of the body,” “blemishes of individual character,” and “tribal stigma,” with the relevant tribal category being low-status lawyers). 77

Using the internet nom de guerre “areyouinsane,” this pseudonymous author has published numerous cautionary tales on web sites, intended to deter “starry-eyed” prospective law students from buying into the virtual social identity of the American lawyer, as it is portrayed in popular culture and legal academia. What follows below is one of his bracing glimpses into the demi-monde of the armies of temporary workers with law degrees who support themselves via document review. It was written in response to this comment from a summer associate at a “V5” law firm:

I just recently got up the courage to ask about our doc review dungeon. I asked in a naive way, and the litigation associates I was talking to all got kind of awkward and quiet as they described being taken on their first tour through the endless maze of cubicles on a floor that looks nothing like the rest of the firm . . . . The weirdest part isn’t that it’s grunt work or unglamorous—that’s part of every industry. What’s crazy is that the bifurcation between “upwardly mobile” and “stop asking questions and start marking documents as responsive or not” happens before anybody even has a chance to practice law. You’re branded before you start, there’s no exit to the big law equivalent of the ‘mail room’—even though people of the same class year and same law schools are upstairs working for much more money and much better career prospects. 78

Areyouinsane responds:

Forget the “same class and year” stuff—there are doc reviewers in their 40s and 50s making $25 an hour in these dungeons. Lawyers with experience you wouldn’t believe: solos who once ran their own lucrative practices, former partners at small firms that split up, ex DA and public defenders, etc. The idea that everyone on doc review is a 2.0 GPA type from a Cooley/NYLS type TTT school is absurd, and I hope none of you have to learn this the hard way.

For example, a good buddy of mine from a project once was a partner in a small personal injury firm. Back when these cases were easier to settle, he made as much as 200 K a year. But the carriers started cracking down and making every

77. See Goffman supra note 1, at 4–5 (“Three grossly different types of stigma may be mentioned. First are abominations of the body—the various physical deformities. Next there are blemishes of individual character perceived as weak will, domineering or unnatural passions, treacherous or rigid beliefs, and dishonesty, these being inferred from a known record of, for example, mental disorder, imprisonment, addiction, alcoholism, homosexuality, unemployment, suicidal attempts, and radical political behavior. Finally there are the tribal stigma of race, nation, and religion.”).
case into a dogfight, revenue slowly dried up, and eventually they had to close up shop. He tried getting into insurance defense, but those jobs pay so poorly (45 K a year is not unusual, even for people with experience) that he had nowhere else to turn but the doc review dungeons.

Another gal I know was a NJ assistant DA who was let go in the budget cuts. She tried for months to get a job in private practice criminal defense, but sadly those jobs pay even worse than doc review (she was offered 25 K plus a 50/50 split of cases she brought in) by one DWI defense mill, and that was her only offer. Very few shitlawyers can make a living in crim. defense since 95%+ of all criminals just get the public defender.

I had to stop doing doc review largely because seeing (and working in) such an utter & complete waste of human capital gets depressing to the point of suicide after a few years. Understand that in document review you are treated and reminded every working minute that you’re a worthless, expendable loser due no courtesy, respect, or treated with any professionalism whatsoever. The firms and agencies will lie about hours, lie about pay rates, lie about project length, and provide you with working conditions so abysmal you’ll dread getting up in the morning.

Understand that many doc review jobs get cancelled before they even happen: Skadden was/is notorious for this. They used to staff thru an agency called Clutch Group, and the pay was often above market.

But 9 of 10 times the projects would never happen. I suppose Skadden wanted to have the coders lined up while settlement talks were ongoing so they could “call the bluff” of their adversary and start discovery rolling along quickly if need be.

Back in 2007 I was strung along for 2 weeks waiting on a gig to start: first it was Monday, then Wednesday, then Thursday, then the following Monday, then BAM: the case settled = no project period. So all that time wasted sending resumes, filling out conflict forms, and worst of all turning down other projects in the interim: all for naught. Do you know what it’s like to have rent/student loans due and turn down 2 other projects while waiting for Skadden, then find out the rug was pulled out from under you? Then you have to start scouring craigslist all over again and calling all the other agencies begging them to put you on the first gig that comes in.

Also after you do doc review awhile you start getting “conflicted out” of projects. I conflicted out of nearly every pharma project in 2008–9 because I worked on the huge Seroquel case. So you’re stuck either lying to get on the gig, or turning it down and being broke.

Here’s a terrible story re: that Seroquel case: there were over 300 temps working 90 hour weeks on that gig for the first 3 months of 2008. Once the production date passed, the partner walked into the rooms on a Friday afternoon and said “nothing to worry about, we’re now going to start reviewing docs for the state court claims. See you all on Monday morning—go home and
have a great weekend. We’re getting out early today so the new docs can be loaded.”

So everyone left, and most left their stuff (books, coffee mugs, MP3 players, etc.) at their workstations, since we were expressly told to be back at work Monday.

Two hours later the calls starting coming from the agency. “Sorry, but there’s been a new development in the case and we’re sorry to inform you you’ve been rolled off this project.” They kept only 60 people out of 300.

I was one of those kept aboard. When I came in that Monday, almost all the workstations were getting packed up/dismantled by the tech guys, and the room was completely rearranged.

Here’s the worst part: all of the personal items that the fired people had left behind were tossed into one huge pile in front of the downstairs security desk. It looked like those scenes in a prison movie where they “toss the cells.” Just a huge heap of coats, sweatshirts, Ipods, coffee mugs, family photos, books/magazines, personal papers, cigarettes etc. It was like the stuff was dumped from a dump truck: the pile was over 5 feet high. Most people had a good amount of stuff there since we’d been working 15+ hours a day for three months straight, including the weekends.

That day, most of my (former) co-workers trickled back in to claw thru this pile of shit and try to find the stuff they left behind. It was one of the saddest sites I’ve ever seen. As people plowed thru the stuff, everything was getting all stepped on and dirty. A lot of people wanted to come upstairs and say goodbye to friends etc., but security wouldn’t let anyone past the front desk.

The reason the firms do it this way (i.e., lying to your face) is because they are paying the agencies a cut to do this dirty work for them. They’re also afraid of people downloading viruses and such to the computers on the way out, and also of people begging them to be kept on the project, etc. It’s a messy affair, so they just lie and let others do the dirty work for them.

These are the type of people you guys apparently aspire to work for. People who routinely treat others like expendable pieces of subhuman garbage, and furthermore do so on purpose. People who’ve let the thirst for money & ego override every aspect of life, to the point of essentially becoming a sociopath. People who are such chickenshit cowards that they can’t even face people man to man, but have to hide behind lowlife staffing agencies to carry out their miserable directives.

I envy you guys because it’s not too late for you. You can still back out and never have to experience this soul-crushing, overrated gutter of an industry. You can actually do something pleasant and productive with your lives, rather than squander your precious youth learning “Rule Against Perpetuities”
puzzles and memorizing the "nuances" of UCC 2-207 and the other pointless make-work that constitute the bulk of this rotten industry.\textsuperscript{79}

This is a dark vision, but these sorts of narratives can serve as useful correctives to the remarkably idealized pictures of legal practice which law faculty tend to draw for their students. Many legal academics remain oblivious to how the creation of a legal "precariat"—of an ever-growing class of intermittently employed, under-employed, and completely unemployed lawyers—has invidious effects on the legal profession as a whole.\textsuperscript{80} The combination of skyrocketing law school tuition, the intensifying oversupply of law graduates, and the suppression of wages and increasingly unstable employment conditions this oversupply produces helps create situations like the one described in the following narrative:

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.

\textsuperscript{79} \textit{areyouinsane, Where Do Contract/Temp Attorneys Come From?}, \textsc{Top Law Schools} (July 14, 2011, 3:22 PM) \url{http://www.top-law-schools.com/forums/viewtopic.php?f=23&t=157855&start=259}.

\textsuperscript{80} The "precariat" is a neologism created by social scientists, who have combined the words "precarious" and "proletariat" to define an emerging social class, whose members live and work precariously, often in short-term and/or part-time jobs that lack employment benefits or regulatory protections. \textit{See generally Guy Standing, The Precariat: The New Dangerous Class} (2011).
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 has 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?  

Note that, on superficial examination, this writer would be considered a success story by her law school, and indeed by legal academics in general. After all, she has a real legal career—and not just any legal career, but that of a “cause” lawyer. She is “a giver not a taker”; that is, within the narrative frame that creates the virtual identity of the American lawyer, it will be assumed that she has forgone “the big bucks” of large firm legal practice in return for the non-pecuniary satisfactions of pursuing social justice. In other words, she conforms, to all external appearances, to the self-flattering vision of what we in the legal academy imagine ourselves to be producing. That she is, thanks to the cost of law school, living in something like perpetual poverty, and that she appears to be in something close to suicidal despair about her professional and personal situation, are not the kinds of details that show up in employment statistics. Yet this lawyer is trapped: trapped by her debt, by the apparent impossibility of leaving her economically and psychologically impoverishing circumstances, and by a spoiled identity, which she can more or less successfully continue to hide from others (“I can close the door and sob hysterically without anyone much noticing”), but not from herself.

F. THE BOTTOM

The management of a spoiled legal identity is perhaps most difficult for those law graduates who find themselves unable to enter the legal profession at all. As American law schools continue to graduate two people for every available legal job, this problem grows ever-more intense. It can be glimpsed on internet sites such as JD Underground, where posters with names such as “Depressed and Hungry,” “Subprime JD,” and “Homeless Crackhead, Esq.” discuss the disaster that pursuing a career in a contracting profession with extraordinarily expensive barriers to entry has become for many recent and not-so recent law graduates. For example, a post by “lawlawtemp,” entitled, Unemployed, $210,000 in debt, and drunk off my a—at 1 pm on a Tuesday afternoon. Taking questions generates nearly 150 responses in the course of a few days. Here is a sample of the exchanges:

AssociateX: How are you paying your rent/mortgage and bills??!!

Lawlawtemp: Unemployment checks, which is expire in 11 weeks.

81. E-mail by anonymous to author (Sept. 12, 2012) (on file with author).
82. See Maillard, supra note 23, at 2.
83. See Campos, supra note 6.
Sandawg: Get off the liquor and drink beer. Liquor will send you deeper and deeper much more quickly. I found a job with less than 8 weeks left on UI. Now is the time to step it up. You can get a job. Try hard for 11 more weeks, like you haven’t tried before. Wake up early, apply early for a few hours, go for a run or bike ride, come back apply for a couple more. Make sure your resume is tight. Give it to someone to look over for suggestions.

Lawlawtemp: I have literally been applying to every position I could find. I got a bite with a document review gig the other day, but as of yet they haven’t gotten back to me. And it’s also [not] like I have Mommy and Daddy’s house to run back to you. You people just out of school don’t know how lucky you are. My father passed away three years ago and my mother lives with my sister, and there really is no room for me there. I have nowhere to go.

BigSal: What did you do before you were laid off?

Lawlawtemp: I worked for an immigration solo for 2 years in the Chicago suburbs. After I got laid off, I did some document reviews in the loop. I recently moved to NYC thinking it would be easy to pick up immigration work and document review here, but nothing!

therewillbeblood: Where in NYC are you living? How can you afford to live here without work?

Lawlawtemp: I live in a room in Elmhurst, Queens. Rent is $750 a month. Unemployment pretty much covers it every two weeks, but will run out in 11 weeks.

Unemployed Vol: Well other than volunteering and working for free somewhere (not a bad idea for most but with your amount of debt I don’t know), I don’t have any advice for you. Keep trying to find legal work and go work at McDonalds. Leave off your JD and just start working somewhere. At least make plans to do that for when your unemployment stops. Beyond that, I am sorry for you man. I am luckier than most so I am not in such dire straits despite continued unemployment but don’t kill yourself yet. Keep at it.

Lawlawtemp: I can’t volunteer. I need to pay rent and eat. I am seriously going to have to look into what the applying for food stamps angle involves. I have picked up one or two I-400’s and adjustment of status applications to do, but nothing that I could really sustain myself with.

SchilledandBilled: With $200+)k in debt and little family ties, fleeing the country is your best bet right now. After too many rum and vodka-soaked “Prestig(ious)e” nights (ya’ll from LA know what I’m talking about at Food4Less), I can’t handle it anymore and I’m jumping ship. Applying to some foreign engineering schools which will all be on the gov’t’s $$$ I’m a good decade younger than you and I am fearful that for the rest of my life I will be an underemployed loser with debt who no woman in their right mind would want. I don’t have enough money to treat anyone (even myself) properly and it’s seriously impacting my social life. I can’t even imagine how you’re feeling at
this point because you should have an upwardly mobile and steady career and a
girlfriend or be married and even have kids. LEAVE NOW.

Subprime JD: This. GTFO.85

And so on and so on. There are countless similar stories on the internet, such as
the one below, which captures the shame and despair of the most extreme form of
spoiled legal identity: that of the increasingly large number of law graduates who
never become lawyers at all (the writer is commenting on an online debate
regarding the death of "Alex"—a law graduate who committed suicide):

No matter how much the word gets out, apparently, it's still not enough. I have
to think that, or else I don't understand the comments that deride the professor
for 'assuming' that the horrible job market, the massive debt, the hopelessness
of not being able to succeed in his profession and the destruction of his dreams
didn't contribute to Alex's death.

For those that think the professor is presumptuous for suggesting that such
factors contributed to his death, you must lead a comfortable little life, safely
insulated from the recession and failure. You obviously do not know what it's
like to have invested 10 years of your life to a goal that you now find out you
will never reach.

You obviously don't know what it's like to have spent $150,000 to reach that
goal, knowing now that you will never reach it. Note that that's not the costs of
starting up your own business—it's the cost of starting up FIVE businesses—and failing, with nothing, not even experience to show for it.

You obviously don't know what it's like to painstakingly learn and stay up
night after night, learning how, under enormous pressure to read, write, think,
and conduct trials like a lawyer, when all that ended up being a waste of time,
because you can never be one. Remembering the times when you were tired,
wanted to quit—to give in, and you didn't, but that you still ended up losing
anyway.

You must not know what it's like to have gone to great lengths to make
something better of yourself ($150,000!) only to now realize that your day is
comprised of "would you like to try that on in the dressing room?" You must
not know what it's like to have a 22 year old manage you and look down on
you—a 22 year old who never got an education—because she thinks you must
be really stupid to have to work a $7.50 an hour retail job at your age.

And dammit, you did everything—everything you could—on a national team,
on the Dean's List, an Honor's Scholar, graduated cum laude, sacrificed every
last penny ($150,000!), spent months, hours every day to study for the bar (You
gave EVERYTHING to take that bar—it took you half a year to come up with

85. While the original link to this post, http://www.jdunderground.com/all/thread.php?threadId=23185, was
available in the spring of 2014, the post has since been deleted by the administrator.
the money!), you worked while studying—to avoid that Wall-Mart, [sic] but it was all in vain, because you will be working there the rest of your life. And asking yourself every night, "Why did I do it?" And having society look down upon you: those in the legal profession because you couldn't get in, and those not in the profession because they think education is a waste of time (and they are right.)

I envy those people who cannot see or even wonder whether those factors influenced Alex's life and death. I envy you, because you do not have to live with what so many of us have to face every day.

I, too, like Alex wanted to work in public interest. And I too, like Alex, wasted my whole life trying to do so. And now, I have to look forward to Wall-Mart [sic] every day ("Would you like to try that on in the dressing room, ma'am?") and cater to my customers, most who didn't get an education but who are much better off economically than I am or will ever be. Customers who look down on me and think I'm stupid for not getting an education or think I'm stupid for getting one, or just plain think I'm stupid for working as a sales girl at Wall-Mart [sic].

In another life, I was something else. Every day, I try to remember what it was like when people actually asked my opinion—asked me to think. Now, they don't want me to think. My days are comprised of "would you like to try that on in a dressing room, Ma'am?" said with a phony smile while I cry on the inside at the lost opportunity. And why all this? Because I got a legal education—the worst mistake of my life. And worst of all, knowing that my dream—to be a public interest attorney—the reason I did it all, sacrificed—is dead. Maybe it never existed."

"I realize that, for any legal academic who may happen to look at this article, these stories do not make for pleasant reading. Stigma is not a pleasant subject—especially, of course, for the stigmatized, but also for we "normals" who, whether we acknowledge it or not, participate in the reproduction of the stigma that marks a spoiled legal identity. But what grants this brand of stigma much of its power is that it has so often been borne silently. Breaking that silence, and combating the shame which enforces it, is an important step in the struggle to bring the human cost of a failing system into the light.

87. I am speaking here specifically of the management of spoiled legal identity. It should be unnecessary to point out that people who qualify as "normals" in one social context can find themselves discredited and stigmatized in another.
III. VOICES FROM THE CEMETERY

In his book *The Black Swan*, Nassim Taleb makes the following observation:

People who fail do not seem to write memoirs... Readers would not pay $26.95 for a story of failure, even if you convinced them it had more useful tricks than a story of success. The entire notion of biography is grounded in the arbitrary ascription of a causal relation between specified traits and subsequent events. Now consider the cemetery. The graveyard of failed persons will be full of people who shared the following traits: courage, risk taking, optimism, etc. Just like the population of millionaires.  

Taleb’s point is that one cannot really learn anything by studying success if one does not also study failure. He also makes the disturbing suggestion that to the extent—which may be very considerable—that the traits associated with successful people are also associated with people who fail, success and failure are simply random outcomes, as opposed to the predictable consequences of possessing or not possessing certain talents and virtues. Taleb warns in particular of the dangers of neglecting what he calls “silent evidence:”

Consider the thousands of writers now completely vanished from consciousness: their record did not enter analyses. We do not see the tons of rejected manuscripts because these have never been published, or the profile of actors who never won an audition—therefore [we] cannot analyze their attributes. To understand successes, the study of traits in failure must be present... Any form of analysis of [success and failure] that does not take into account the silent initial population becomes close [to] pure verbiage.  

Now consider a typical law school annual alumni dinner, or similar event. Who do the law school’s administration and faculty encounter at such gatherings? Not, needless to say, a representative sample of the law school’s graduates. Instead, alumni who have had, on average, far more professional success than the typical graduate, attend such events. Awards are handed out to high-profile judges, rain making partners who have shared their largess with their alma mater, prominent crusading cause lawyers, and the like. The audience is made up almost exclusively of graduates who have received a markedly positive return on their law school investment (for one thing, these people can afford to buy a ticket to the event).


90. These observations are based on my attendance at many such events over the past 25 years. That law schools honor their most successful graduates is not surprising, but it is surprisingly easy for observers to mistake the unrepresentative nature of these events for a reflection of a more general reality.
And such events are merely particularly sharp examples of the extent to which legal academics in general, and law school deans in particular, have contact with a highly misleading sample of their former students. This exemplifies what Taleb calls the cemetery phenomenon, or the problem of silent evidence, with a vengeance. Imagine if, at such an event, a recent graduate were to give the following speech:

I want to talk about the economic illusions that keep this business going.

The first illusion is career trajectory. While you may start at $160k, there is a 90% chance that is the most money you will ever make. The only other career where that applies is athletics. Most careers have their peak earnings in the 40s and 50s, and law students likely assume that even if start at 160k, it’s only more from there, or that even if you start at 50k, you’ll keep going up.

The second illusion is starting associate salaries. Under normal economic rules, no associate position would be paid more than 40–50k. Why would they? There’s literally 2-3 times the applicant pool as there are jobs. But law is different. Big firms aren’t paying for someone to sit at the desk and do mundane work; they’re paying for your credentials that they can sell to clients to justify high billing rates, even if the work is pedestrian. They’re also paying a premium to scout partnership material and find the next rainmaker, which they can’t do by paying 40 year old washouts to do said crap work.

The third illusion is the hierarchy. People think if you just miss BigLaw, that you’ll easily get in at a government agency or smaller firm or legal aid. Baloney. After the primo jobs have hired, it’s purely about who you know. Similarly, the idea that the top [x]% of students are the ones who get the [x]% jobs is unfounded. I was top 6% at a mid-ranked law school. I have had three interviews in the last six months. There are people from my class who are objectively slow-witted who are working at solid firms making 70k.

The fourth illusion is the associated optimism bias/graveyard effect. People do not see the top 6% grad sitting on his butt writing blogspot comments. They see the middling grad making bank. It is very very easy, when you are 22 years old, to believe that you will not be a failure, and to discount objective evidence that you’re walking into a minefield. Because if you were in WW1, you just would’ve traipsed right through no man’s land without getting shot. In twenty years, all these cocky little brats are going to be judges and not solos looking for opportunities to GET OUT. But these special snowflakes will never, ever be part of the really high percentage of attorneys who take up drinking, drugs, or unethical conduct. Oh, no, not them. They’ll be arguing international civil rights cases before the SCOTUS.

The related 5th illusion is that law has a stable career path, that even if you struggle now or can’t find a spot, they’ll be one for you in time and that once you have a position, it’ll be easier to find others in the future. Oh, heck, no. Look at job listings and see how many you can find that look for people 10+ years out. I dare you. The last call for associate hiring seems to be when you hit
8–10 years of experience. After that, everyone expects you to have your own book of business or start your own firm. Not a businessman or salesman? You’re screwed.

The 6th illusion is that even if law doesn’t work out, the JD won’t inhibit you from finding generic work in another field, because there’s just no way the JD is as toxic as people say it is, and surely the deans aren’t lying when they claim it’s versatile, and surely even if it were toxic, I can overcome it because I’m special. No one can truly understand how awful the JD is perceived until they’ve been rejected for a completely mundane job requiring only a high school education. When you can’t find a legal job, you will be rejected for jobs you are “over”-qualified for. HR people do not see you as a well-rounded person. They see you as a lawyer who wants to make hay and bide time until a Boston Legal job comes open.

The 7th illusion is that this is worthwhile, life-affirming, interesting work. There’s a reason the law schools don’t want you working until you’re a 2L.

The 8th illusion is that IBR/PAYE minimizes the financial risk involved in taking out gobs of debt. No, no, and no. Also, many employers can legally look at your credit report and their eyes will dart out of their heads when they see that you have $250k in debt. Many think 60k in debt is risky, and many (especially older) have very strong moral objections to “deadbeats.”

The Grand Illusion is failing to see that going to law school will probably make you a deadbeat at some point in the next 40 years. Today, you might get a job in BigLaw. In 5 years, they will probably spit you out. You might land somewhere, but unless you’re among the anointed few who get govt/in-house for life, you’ll be expected to float on your own someday, and your JD will not save your imploding financials and mental health.91

This is a voice from the cemetery, which means that law schools as they are currently constituted are very unlikely to hear it. I will conclude with four suggestions for how legal academia might go about making changes that will make it easier for us to hear such voices.

First, law schools need to invest time and money gathering longitudinal data about the career outcomes of their graduates. An enormous effort is made to gather data regarding what law school graduates are doing nine months after graduation (although until very recently very little of this information was available to the public on a school-specific basis).92 This information is beset by various problems regarding its reliability,93 but at least it gives us some idea
regarding the initial job outcomes for our graduates. But, with a few exceptions, remarkably little is known—especially on a school by school basis—about what happens to law graduates five and ten and twenty years after graduation.\(^\text{94}\)

Law schools are very good at tracking down the whereabouts of their graduates for the purpose of soliciting donations from them. We have very little formal data about what our graduates are doing because we have chosen not to gather that data—perhaps, in part, because on some level we would prefer not to know. After all, what institutional consequences would flow from discovering that failure is as common, or more common, among our graduates as success? What, in other words, would follow from finding out precisely how large the gap really is between the virtual identity of the American lawyer as it is reproduced in our classrooms, and the actual future identities of our students? And what if we were to discover, as Taleb suggests may well be the case, that a major factor in predicting who will succeed and fail among our graduates is the inherently unpredictable, i.e., dumb, blind, and all-too random luck?\(^\text{95}\)

Perhaps it is not surprising that we seem to have gone out of our way not to inquire too closely into these matters. Nevertheless, given the growing catastrophe that is enveloping so many of our graduates, willful blindness on this score is neither morally defensible nor practically prudent. Such research could help support or discredit the up until now faith-based assertions of legal academics that a law degree is a “versatile” credential, and that the failure of nearly half of 2011 law school graduates to acquire full-time long-term employment requiring bar admission is not as dire a statistic as it appears to be, given the various career alternatives available to people with law degrees. The retort to this claim is that, far from enhancing a resume, a law degree stigmatizes job seekers who attempt to acquire non-legal work. The argument that it does is put forcefully by the following commenter—a public defender who notes that, when he interviewed for one of two open positions in his office fifteen years ago, he was one of ten applicants, while when the office advertised for two vacant openings in 2012, it received 400 applications:

JDs, excluding perhaps the graduates of the 30 or 40 least selective schools, really are brighter and more disciplined than the average BA. So why is a law degree actively despised by non-law white collar employers?

\(^{94}\) Some preliminary longitudinal data are available from the American Bar Foundation’s “After the JD—the First Ten Years,” project, described by its authors as “the first and most ambitious effort to gather systematic, detailed data about the careers and experiences of a national cross-section of law graduates.” \textit{See After the JD Project, A.B.A.}, http://www.americanbarfoundation.org/publications/afterthejd.html (last visited Nov. 12, 2014). \textit{See also} John Monahan & Jeffrey Swanson, \textit{Lawyers at Mid-Career: A 20-Year Longitudinal Study of Job and Life Satisfaction}, UC BERKELEY SCH. OF LAW, \texttt{http://www.law.berkeley.edu/files/manuscriptablesMonahanAndSwanson.pdf}.

\(^{95}\) \textit{See} TALEB, THE BLACK SWAN, supra note 88, at xxxii.
I believe it is because non-law employers recognize that a JD signifies a bundle of elite expectations, rather than a bundle of skills. A fresh JD degree doesn’t communicate the message: “I have the training to represent clients in a couple of practice areas”—which a non-law employer might respect, even if he or she cannot utilize those skills. Rather, a newly minted JD communicates: “I can’t do anything practical for you or anyone, but I spent three years playing obscure mind-games, and now I think I am a leader and oh-so-smart.” To the non-legal world, a JD stands for asshole.\footnote{Paul Campos, \textit{Response to Larry Mitchell’s New York Times Editorial}, \textit{INSIDE THE LAW SCHOOL SCAM BLOG} (Nov. 29, 2012, 6:19 PM), http://insidethelawschoolscam.blogspot.com/2012/11/response-to-larry-mitchells-new-york.html.}

Of course this assertion is not backed by any data—but then again neither are the sunnily optimistic claims of many a law school dean regarding the versatility of the $150,000 degrees they are marketing.\footnote{See generally Ken Gormley, \textit{The Law School Numbers Game}, \textit{PITTSBURGH POST-GAZETTE}, Sept. 16, 2011, http://www.post-gazette.com/stories/opinion/perspectives/the-law-school-numbers-game-314994/ (providing characteristic examples of decanal claims regarding the supposed “versatility” of law degrees); see also Amanda Robert, \textit{Recent Grads Question Decision to Go to Law School}, \textit{CHI. LAWYER} (Aug. 1, 2011), http://www.chicagolawyermagazine.com/Articles/2011/08/01/transparency.aspx (discussing Harold Krent’s observation that “many people do wonderfully creative and interesting things with a law degree other than practice law, including being a journalist or being an investor or being a counselor”).} Under the circumstances, the burden is on law schools to make the effort to discover whether such claims have any basis in reality.

Second, while quantitative data are important, they are no substitute for qualitative, essentially ethnographic research, which attempts to delve into the actual experiences of law graduates both inside and outside the profession. The very concept of actual as opposed to virtual social identity is a qualitative one, which cannot be reduced to statistical observations regarding job outcomes, average income, and the like. Legal academics need to understand what it means, at the level of lived experience, to manage a spoiled legal identity. Such understanding, to the extent it can be acquired by “normals,” can only be gained through a concerted effort to find and study what Taleb calls “silent evidence.” Again, this will not be easy or pleasant work. It is far more gratifying to hear from only our most successful graduates, who allow us to maintain the illusion that a yawning chasm does not exist between the virtual and actual social identities of so many of our schools’ alumni.

Naturally, our graduates are likely to be candid with us only to the extent that we can convince them that we actually want to hear what they have to say. And they are likely to believe that only if we are willing to acknowledge that we have begun to recognize, both as individuals and institutionally, that the picture of what it means to be a lawyer painted by conventional law school discourse bears little relation to the actual lives of many law graduates. We must, in other words, become “wise,” in Goffman’s sense of becoming, to the extent we can, “men [and
women] before whom the individual with a fault need feel no shame nor exert self-control, knowing that in spite of his failing he will be seen as an ordinary other. 98

How might this be accomplished? At the institutional level, law schools could, for example, host regular events at which the faculty and administration heard from a genuinely representative cohort of graduates—a cohort that would include an appropriate number (this number would vary greatly by school) of what I am calling “voices from the cemetery.” This would be far more beneficial to long-term institutional health than limiting our contact with our graduates, wittingly or unwittingly, to our most successful graduates. As Taleb suggests, one cannot really learn from success if one does not also study failure, in all its disturbing ubiquity and randomness.

Third, law schools should reconstitute themselves so that, over time, their tenure-track faculty come to include significant numbers of people who have spent significant time practicing the kinds of law the graduates of those schools actually practice. It is one of the more remarkable features of American legal education that law school faculties include so few real lawyer—if by a real lawyer one means a person who has genuine experience with the most crucial career challenges with which lawyers must grapple. 99 Consider that, for any private lawyer, perhaps the most critical skill he or she must acquire is the ability to acquire and keep paying clients. It is not much of an exaggeration to say that there is hardly a tenured law professor in America who knows anything about this skill. 100

Most lawyers are small businesspersons, yet it is a rare law student indeed who graduates from law school knowing the first thing about running a business of any size—and those who do probably acquired that knowledge somewhere other than law school. 101 The vast majority of law professors know essentially nothing about the economics of contemporary legal practice—which helps explain how we can continue to tell our students fairy tales about the “long-term return on their investment,” the supposed “versatility” of law degrees, and other self-flattering fantasies. Although apparently the idea of employing real lawyers to train people to become lawyers is considered by some legal academics a form of anti-intellectualism, 102 we literally can no longer afford to maintain what has become an increasingly dysfunctional gap between what goes on inside law schools and what goes on in and around the practice of law.

98. GOFFMAN, supra note 1, at 28.
99. See Leichter, A Profession in Decline, supra note 32 and accompanying text.
100. See id.
101. Anyone who surveys law school course catalogs will discover that courses touching on the economics of legal practice are very rare.
Finally, the success or failure of all attempts to bring the virtual and actual identities of American law school graduates into closer alignment will turn ultimately on the extent to which the kinds of radical reforms that legal education needs actually take place. An enormous percentage of lawyers and law graduates are struggling with the problem of a spoiled identity for two straightforward reasons: law schools graduate far too many people, and charge these people far too much for their degrees.\(^\text{103}\)

On one level, ameliorating the stigma of spoiled legal identity should be simple: most of the features of the contemporary legal profession that produce spoiled identities are to a significant extent products of a massive oversupply of heavily indebted law graduates. Currently, there are 201 ABA-accredited law schools, charging an average of about $35,000 per year in tuition.\(^\text{104}\) This means that, under current economic conditions, there are far too many law schools, charging far too high a price of attendance. And indeed, both the number of law schools, and their price structure, would be reduced radically in short order if the federal government simply applied actuarial standards to federal educational loans, while once again making private educational loans dischargeable in bankruptcy.\(^\text{105}\)

CONCLUSION

Dealing with the problem of stigmatized law graduates is not, of course, simple at all. Much of the law school world remains in denial about the extent to which the legal academy’s vision of what it means to be a lawyer in America today bears little relation to the life experiences of our graduates. Listening to the stories of the stigmatized, and beginning to understand their struggles to manage their spoiled legal identities, can be a first step in overcoming that denial.

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103. Campos, supra note 6, at 218.
104. Id.