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Keep Calm and Carry On

René Reich-Graefe

Western New England University School of Law, rene.reich-graefe@law.wne.edu

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Keep Calm and Carry On

RENÉ REICH-GRAEFE*

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INTRODUCTION

Supposedly, there is a crisis in legal education.¹ It appears to be touted mostly by those who are in the business of realizing monetary (or, at least, reputational) gain from providing cost-efficient coverage about matters of (rather) little importance.² Lawyers have always been easy targets in this regard.³ Thus, not

* René Reich-Graefe is a professor of law at Western New England University School of Law. The views and opinions expressed herein are those of the author only and should not be attributed in any way to the Western New England University or its School of Law. In the interest of full disclosure, the author (i) reiterates the obvious, namely, that he makes a living as a legal educator, and (ii) points out the non-obvious, *viz.*, that he is a current member of his School's Admissions & Financial Aid and Budget & Planning Committees and his University's Budget Advisory Committee. As always, I am most grateful to Barbara Noah for her comments and support. All errors are mine. © 2014, René Reich-Graefe.

1. A *Google* search for only the last decade (2003-2012)—conducted on September 15, 2013, with the search term “crisis in legal education”—returned approximately 1,740 hits for such topic. Search of “crisis in legal education”, *Google Search*, <http://www.google.com> (search “crisis in legal education”; then follow “Search Tools” hyperlink; then follow “Any Time” hyperlink; then follow “Custom Range . . .” hyperlink; then search “from 2003 to 2012”; then follow “Go” hyperlink; then follow “Search Tools” hyperlink). A similar search of *HeinOnline's Law Journal Library* database, conducted on the same date and, again, searching for “crisis in legal education,” resulted in 43 articles. Search of “crisis in legal education”, *Law Journal Library Search*, http://0-www.heinonline.org.gull.georgetown.edu/HOL/LuceneSearch?collection=journals&search_type=advanced (search “crisis in legal education” for “Search for:” and “2003” for “Date: (YYYY)” and “2012” for “To: (YYYY)”; then follow “Search” hyperlink).

2. For example, in 2011, *The New York Times Company* reported annual revenues of \$2,323,401,000. Of those, approximately 52.57% (or \$1,221,497,000) were raised in advertising revenue. *See* Press Release, *The New York Times Company, The New York Times Company Reports 2011 Fourth-Quarter and Full-Year Results* (Feb. 2, 2012), at 7, *available at* <http://www.nytc.com/pdf/FYRE20LEA11E.pdf>. If one's business model as a newspaper is significantly, if not, predominately based on advertising sales, one has to meet two core requirements: First, one needs readership to look at, and to be manipulated by, advertising. Otherwise advertisers will take their business elsewhere. And second, one needs to provide at least some editorial coverage

surprisingly, we have long learned to respond in collective mea culpas in order to shield ourselves against the implications of any perceived crisis on our income-generating utility.

But there are more fundamental root causes: Lawyers are also trained to thoroughly dislike change and to stay the course—unless both change and resultant course correction come in rather small, controlled and self-initiated increments and doses.⁴ Lawyers are further trained to thoroughly dislike being wrong, or having missed the ball, or being found asleep at the wheel.⁵ These fundamental sentiments combine to put lawyers, as a group, among the most pessimistic people within society.⁶ As a result, lawyers also often respond to any perceived crisis by means of collective hysteria—rather than by the same measured, pragmatic and productive righten-the-ship-and-proceed-calmly approach which they generally employ so well and successfully on behalf of their clients. Legal educators—as a sociologically important sub-group of legal

of interest to one's readership. Newspaper readers are not buying newspapers in order to read advertisements. Finally, in order to maximize profits from a business model predominately built around advertising revenue, one needs to do two more things: first, sell advertisement space as expensively as the advertiser market will bear. And second, produce editorial coverage as cheaply as the readership market will bear in order to fill (at least, some of) the actual pages. Reporting on (and exaggerating) the shortcomings of the current legal education market must be one of the cheapest means possible in order to produce (serious-looking) editorial coverage for purposes of bringing in and maintaining readership and, accordingly, advertising revenue. Another one of the cheapest means possible would, of course, be coverage on the demise of print media in general and on the resultant demise of the quality of news reporting in particular. That, however, is a story for another day.

3. See, e.g., George M. Burditt, Comment, *President's Page*, 62 CHL. B. REC. 58, 59 (1980) ("Lawyers are an easy and favorite target for negative-minded authors, for the media, and for politicians."); John J. Curtin, Jr., Comment, *The President's Page*, 23 BOSTON B. J. 3, 3 (1979) (stating, more generally, that "Shakespeare, Dickens, Sandburg, to list but a few, found lawyers to be an easy target.").

4. Cf. Maureen F. Fitzgerald, *Stirring the Pot of Legal Education*, 10 J. PROF. LEGAL EDUC. 151, 175 n.1 (1992) (quoting then-President of *The Law Society of England and Wales*, Tony Holland, as saying that "a common trait among lawyers is dislike of change" and that "[l]awyers are particularly good at strangling new ideas at birth."); Wilber G. Katz, *What Changes Are Practical in Legal Education?*, 27 A.B.A. J. 759, 759 (1941) ("[T]oo often dislike of change in law and practice prevents a lawyer from understanding what is actually taking place and the forces responsible for the change.").

5. Cf. Peter D. Baird, *Beside Manners for Lawyers*, 32 LITIG. 27, 29 (2005) ("Like many other lawyers, I worry so much about being wrong, getting sued, or scaring off clients that what I say or write is occasionally devoid of any meaning."); reprinted in 16 EXPERIENCE 28, 30 (2006); Victor P. Goldberg, *Lawyers Asleep at the Wheel? The GM-Fisher Body Contract*, 17 INDUS. & CORP. CHANGE 1071, 1080 (2008) ("Counsel should . . . have known when drafting the agreement that it would not be enforceable . . . [A] minimally competent attorney would have had to conclude that there was no enforceable contract.").

6. Cf. Amiram Elwork & G. Andrew H. Benjamin, *Lawyers in Distress*, 23 J. PSYCHIATRY & L. 205, 215 (1995) (describing empirical study findings which concluded that "compared with 104 other occupational groups in the United States, lawyers were the most likely to suffer from depression and 3.6 times more likely than average"); Carles Muntaner & William W. Eaton, *Mental Illness*, in 2 ENCYCLOPEDIA OF OCCUPATIONAL HEALTH AND SAFETY 34.62, 34.63 (Jeanne Mager Stellman ed., Int'l Labor Office 4th ed. 1998) ("After adjustment for sociodemographic factors, lawyers . . . had significantly elevated rates [of major depressive disorders] when compared to the employed population.") (citation omitted); Martin E.P. Seligman et al., *Why Lawyers Are Unhappy*, 23 CARDOZO L. REV. 33, 40 (2001) ("But while pessimists tend to be losers on many fronts, there is one striking exception: pessimists may fare better in law."). The last article also provides a detailed treatment and (psychological) explanation of this phenomenon.

professionals⁷ who function as society's chosen gatekeepers of, and, thus, command the access monopoly to, the services monopoly that is the legal profession⁸—seem particularly vulnerable to be held, and to holding themselves, responsible for every crisis that allegedly happens in the legal profession.

Perhaps for all of these combined reasons, lawyers and law educators finally appear either extremely ill-suited or equally unwilling to grasp fully current demographic data and trends⁹ and to deduct from such positive, real-world evidence reasonably certain future developments with regard to their own profession on any meaningful scale. Somehow, in the current climate, it seems easier for lawyers and legal educators—to the point of complete hysteria and delusion—to embrace the purported 'all-goes-to-hell' status quo of legal education and the legal profession. Pessimists may love this stuff. As a collective response of our profession, however, it seems time—indeed *way past* time—to stop such nonsense.¹⁰

I. ONE EXAMPLE

Consider a typical example of the current hysteria: In a news story by the *Washington Post*¹¹ on Halloween 2012,¹² we are first told that the “U.S. Bureau of Labor Statistics forecasts 73,600 new lawyer jobs [in total] from 2010 to

7. See, e.g., Philip C. Kissam, *The Decline of Law School Professionalism*, 134 U. PA. L. REV. 251, 256 (1986) (“Since at least 1870 and Langdell’s reign at Harvard, American law professors have exhibited a distinctive set of values, ideas, and attitudes that define them as a separate group or sub-group of professionals.”).

8. See Eric J. Gouvin, *Teaching Business Lawyering in Law Schools: A Candid Assessment of the Challenges and Some Suggestions for Moving Ahead*, 78 UMKC L. REV. 429, 429 (2009) (describing law schools as the “gateway to the legal profession”); cf. John Henry Schlegel, *Searching for Archimedes—Legal Education, Legal Scholarship, and Liberal Ideology*, 34 J. LEGAL EDUC. 103, 108 (1984) (“Take any group of middle-class, first-year law students and try any other approach than a doctrinal, rule-focused one. They hate the alternatives because the alternatives undercut the notion of law as specialized knowledge available only to, and for sale by, the professional lawyer.”).

9. In doing so, they may still be heeding Mark Twain’s advice. See MARK TWAIN, MY AUTOBIOGRAPHY: “CHAPTERS” FROM THE NORTH AMERICAN REVIEW 208 (Dover Publ’ns, Inc. 1999) (1907) (“Figures often beguile me, particularly when I have the arranging of them myself; in which case the remark attributed to [former British Prime Minister Benjamin] Disraeli would often apply with justice and force: ‘There are three kinds of lies: lies, damned lies, and statistics.’”).

10. See Lawrence E. Mitchell, Op-Ed., *Law School Is Worth the Money*, N.Y. TIMES, Nov. 29, 2012, at A31, available at http://www.nytimes.com/2012/11/29/opinion/law-school-is-worth-the-money.html?_r=0.

11. In 2011, *The Washington Post Company’s* Newspaper Publishing Division reported annual revenues of \$648.0 million. Of those, approximately 57.15% (or \$370.3 million—consisting of \$264.5 million at *The Washington Post* and \$105.8 million in newspaper online publishing, primarily at *washingtonpost.com* and *Slate*) were raised in advertising revenue. See Press Release, *The Washington Post Company, The Washington Post Company Reports 2011 and Fourth Quarter Earnings* (Feb. 24, 2012), at 5, available at <http://www.washpostco.com/phoenix.zhtml?c=62487&p=irol-pressArticle&ID=1665015&highlight=>; see also *The New York Times Company*, *supra* note 2.

12. Elizabeth Lesly Stevens, *Will Law School Students Have Jobs After They Graduate?*, WASH. POST (Oct. 31, 2012), http://articles.washingtonpost.com/2012-10-31/lifestyle/35498320_1_law-schools-law-jobs-legal-career-professionals [hereinafter Stevens, *Will Law School Students Have Jobs?*].

2020,” but that “just three years into that decade, about 132,757 new lawyers [already] have hit the job market.”¹³ Then, with completely faulty and (for a supposedly serious newspaper) reckless logic, the story concludes that “in theory, all of the [Bureau of Labor Statistics]-forecasted job openings through 2020 have already been filled,” that, accordingly “59,157 new lawyers are still looking for ‘real’ law jobs” and that “[b]y 2020, about 300,000 additional grads will join those 59,157 in a hunt for jobs that, statistically, are not to be found.”¹⁴ Now, such statistical ‘reasoning’ is blatantly and patently wrong in three major respects:

First, the *Bureau of Labor Statistics* (BLS) works hard to make people properly understand its data and projections. For such purpose, the BLS publishes, for example, the *Monthly Labor Review* (MLR), established in 1915 as its “principal journal” in order to help disseminate “fact, analysis, and research from the [BLS].”¹⁵ A wee bit of journalistic research would have easily found an MLR article published in January 2012¹⁶ in which the authors carefully explain as follows:

Legal occupations are projected to add 131,000 new jobs between 2010 and 2020. This represents 10.8 percent growth from the occupational group’s 2010 employment level of roughly 1.2 million. Legal occupations form the second-smallest major occupational group; it is expected to add the second-fewest new jobs. They tend to be high-paying jobs, though, with a median annual wage of \$74,580 in May 2010. Lawyers account for more than half of the jobs in this group, with employment of 728,200 in 2010. Because their employment is growing at about the same rate as the group as a whole, the 73,600 new jobs projected for lawyers will also account for the majority of new jobs in the group.¹⁷

Thus, what apparently got lost (or was conveniently overlooked) in the ‘reasoning’ employed by the *Washington Post* is the little, one-syllable word “new” in the phrase “73,600 new lawyer jobs.” “New” as in *in addition to existing jobs* that is. 73,600 new legal employment jobs projected by the BLS for this decade do not include the additional, and significantly higher number of existing lawyer employment positions that need to be refilled upon the retirement of incumbent lawyers during the course of this decade.¹⁸

Second, the above excerpt from the *Monthly Labor Review* explicitly states that lawyer employment jobs in 2010 were at 728,200. Again, the conveniently

13. *Id.* at 1.

14. *Id.*

15. *About*, MONTHLY LABOR REVIEW ONLINE, <http://www.bls.gov/opub/mlr/about.htm> (last visited September 15, 2013).

16. C. Brett Lockard & Michael Wolf, *Employment Outlook: 2010-2020—Occupational Employment Projections to 2020*, MONTHLY LAB. REV., Jan. 2012, at 84, available at <http://www.bls.gov/opub/mlr/2012/01/art5full.pdf> [hereinafter Lockard & Wolf, *Employment Outlook*].

17. *Id.* at 94.

18. See *infra* notes 42-46 and accompanying text.

overlooked, but critical words here are “employment” and “jobs.” In addition to the number of *jobs* for *employed* lawyers, there are many *lawyers* who are, for example, self-employed or only partially employed within the legal profession or who are not counted as “lawyers” in the BLS data. They, therefore, remain entirely unrecorded in the *BLS Employment Projections* 2010 base-year data.¹⁹ Indeed, according to the *ABA Market Research Department*, the United States had a total of 1,225,452 lawyers licensed in 2010.²⁰ Accordingly, there is a large lacuna comprising an additional half million of currently licensed lawyers who are not properly reflected in the *BLS Employment Projections* data.²¹ One may safely assume that, at present, a good number (though certainly not all)²² of those licensed lawyers are gainfully employed, too—mainly *within* the legal profession. One may also safely assume that, during this decade, a significant number of them will retire, thereby making further room for others, including new law

19. The *BLS Employment Projections* (EP) data already includes certain self-employed lawyer positions categorized as “self-employed and unpaid family workers” (constituting 157,400 out of the 782,200 lawyer employment positions). See BUREAU OF LABOR STAT, U.S. DEP’T OF LABOR, OCCUPATIONAL OUTLOOK HANDBOOK, 2012-13 EDITION: EMPLOYMENT BY INDUSTRY, OCCUPATION, AND PERCENT DISTRIBUTION (2012), <http://www.bls.gov/ooh/legal/lawyers.htm#tab-6>. However, in developing the *Occupational Outlook Handbook*’s 2010 base-year employment data for wage and salary workers, self-employed workers, and unpaid family workers, the BLS measured total employment as a count of (legal occupation) *jobs*, not as a count of individual (legal occupation) *workers*. See BUREAU OF LABOR STAT, U.S. DEP’T OF LABOR, EMPLOYMENT PROJECTIONS—PROJECTIONS METHODOLOGY, http://www.bls.gov/emp/ep_projections_methods.htm#occupational_employment (last modified Feb. 25, 2013). Thus, the BLS EP program counted a total of 728,200 *jobs* for lawyers as part of the legal occupations group in 2010, see EMPLOYMENT BY INDUSTRY, OCCUPATION, AND PERCENT DISTRIBUTION, *supra*; Lockard & Wolf, *Employment Outlook*, *supra* note 16, at 94. However, the annual average data from BLS’s *Current Population Survey* (CPS) shows that 1,040,000 *people* were actually employed as lawyers for that same year, see BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, CURRENT POPULATION SURVEY, HOUSEHOLD DATA—ANNUAL AVERAGES—TABLE 11 (2011), at 15, <http://www.bls.gov/cps/cpsa2010.pdf>. In other words, the total number of actual *lawyers* employed in the legal profession in 2010 (as counted by the BLS CPS program) was almost 43% higher than the number of lawyer *jobs* in the same year (as counted by the BLS EP program).

20. *Lawyer Demographics*, A.B.A. MKT. RESEARCH DEP’T, AM. BAR ASS’N (2011), http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2011.authcheckdam.pdf. Obviously, not all of the lawyers licensed in the United States are practicing lawyers or are even practicing in the United States.

21. For 2011, the total number of licensed lawyers in the United States as reported by the ABA further increased to 1,245,205. See *Lawyer Demographics*, A.B.A. MKT. RESEARCH DEP’T, AM. BAR ASS’N (2012), http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2012_revised.authcheckdam.pdf.

22. The latest edition of the *Lawyer Statistical Report*, based on 2005 annual data, estimates that the number of retired/inactive and nonresident licensed lawyers are at 4.4% and 5.7%, respectively. CLARA N. CARSON & JEEYOUN PARK, THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2005 8-9 (2012). In 2005, there were 1,104,766 lawyers licensed in the United States. *Total National Lawyer Counts 1878-2011*, A.B.A. MKT. RESEARCH DEP’T, AM. BAR ASS’N (2011), http://www.americanbar.org/content/dam/aba/administrative/market_research/total_national_lawyer_counts_1878_2013.authcheckdam.pdf. Reducing the 2005 total by a combined 10.1% for retired/inactive and nonresident licensed lawyers leaves a total number of “active” licensed lawyers for 2005 of 993,185 (rounded). That number coincides (very) closely with BLS’s 2005 *Current Population Survey* which showed that about 961,000 people were actively employed as *lawyers* in the legal profession. HOUSEHOLD DATA ANNUAL AVERAGES—TABLE 11, *supra* note 19, at 219.

graduates.

Finally, the misleading math employed in this *Washington Post* article is further inherently flawed in that it assumes that *all* of the 132,757 J.D. graduates from U.S. law schools between 2010 and 2012²³ actually wanted to enter (and, if given the opportunity, would have entered) the legal profession and practice law in the United States. That has never been the case. For the last five years (2007-2011) of available data collected by the *National Association for Law Placement* (NALP), the number of law school graduates who, immediately after graduation, entered the legal profession in a so-called “Bar Passage Required” position was, on average, slightly less than ninety percent nationally—counting and comparing, for such purpose, *only* actual, full-time employment positions in *only* three categories, each with substantial national salary averages (namely, between \$60,271 and \$96,330).²⁴ The other approximately ten percent of law graduates actually employed full-time and reporting their salaries post-graduation as collected by NALP in either the “JD Advantage/Preferred” or “Other Professional” categories—i.e., those graduates who often become licensed immediately after law school graduation in order to get a bar exam (or two) out of the way but who are not directly practicing their craft—are *all* gainfully employed.²⁵ Most (if not, all) of them, however, will not show in the *BLS Employment Projections* statistics as employed “lawyers.” Thus, in sum, the *Washington Post* article conveniently neglects to mention (i) an additional approximately 500,000 licensed lawyers, a large majority of whom are gainfully (self-)employed inside or outside the legal profession, as well as (ii) an increasingly large number of imminent retirements of both legal professionals and licensed, though non-practicing, yet gainfully employed lawyers (which

23. Which is, indeed, the correct number. See *Enrollment and Degrees Awarded 1963-2011 Academic Years*, AM. BAR ASS'N, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf.

24. For 2011, the categories and numbers are as follows: “Bar Passage Required” (15,999 graduates with full-time, long-term employment and an \$81,050 average salary), “JD Advantage” (1,771; \$63,995), “Other Professional” (779; \$66,547). See *Class of 2011 National Summary Report*, NAT'L ASS'N FOR LAW PLACEMENT (2012), http://www.nalp.org/uploads/NatlSummChart_Classof2011.pdf. For 2010 to 2007, the respective numbers in each year are: 2010—Bar Passage Required (16,260 graduates; \$86,985 average salary), JD Preferred (1,336; \$60,271), Other Professional (713; \$68,276) (see *Class of 2010 National Summary Report*, NAT'L ASS'N FOR LAW PLACEMENT (2011), <http://www.nalp.org/uploads/NationalSummaryChartforSchools2010.pdf>); 2009—Bar Passage Required (17,699; \$96,330), JD Preferred (1,062; \$61,755), Other Professional (667; \$73,306) (see *Class of 2009 National Summary Report*, NAT'L ASS'N FOR LAW PLACEMENT (2010), <http://www.nalp.org/uploads/NatlSummaryChartClassof09.pdf>); 2008—Bar Passage Required (20,444; \$94,108), JD Preferred (1,131; \$65,642), Other Professional (672; \$76,027) (see *Class of 2008 National Summary Report*, NAT'L ASS'N FOR LAW PLACEMENT (2009), <http://www.nalp.org/uploads/natlsummary2008.pdf>); 2007—Bar Passage Required (21,279; \$88,091), JD Preferred (1,307; \$66,503), Other Professional (706; \$74,420) (see *Class of 2007 National Summary Report*, NAT'L ASS'N FOR LAW PLACEMENT (2008), http://www.nalp.org/uploads/1229_natlsummary07revised.pdf).

25. At average salaries between a low of \$60,271 for JD Preferred (in 2010) and a high of \$76,027 for Other Professional (in 2008). See sources cited *supra* in note 24.

retirements will occur with increasing rapidity during this decade as well as the one immediately thereafter).²⁶

And then, after all of this misleading ‘noise’ in the article itself, there is the additional problem created by today’s hyped-up, news-hungry and distortion-friendly blogosphere. Bad news²⁷ travels fast and is rapidly and uncritically repeated until original factual misrepresentations become accepted as the ‘reality’ we want to hear and believe in. For example, in a November 5, 2012 online post, even the *ABA Journal* repeated and summarized the *Washington Post* story from five days earlier including—without any further comment or critical reflection—all of its inaccurate numerical representations and projections.²⁸ And with every further repetition of the ostensibly bad news, some of the original nonsense gets more lost in, and more nonsense becomes gratuitously added to the iteration exercise. A more recent example of this journalistic “game of telephone” can be found in the February 2013 issue of the *National Jurist*. After referencing the prior *ABA Journal* source, the article *How Legal Education Can Get Practical* claims that “by 2020 there will only be 73,000 [sic] jobs available for 360,000 [sic] law school graduates.”²⁹ Wait, 360,000 graduates in 2020 alone? That is more than a 700 percent increase from current graduation numbers in 2012 (44,495)³⁰—so, every year for the remaining eight years of this decade (2013 to 2020) we are almost doubling the amount of law school graduates compared to 2012 levels? Where does one even begin in trying to deconstruct this hyperbolic chaos of (deliberate) misinformation and reflexive, but utterly unreflected ‘news’ reporting?

II. SIX PROJECTIONS

For starters, it should be noted that the remaining pages of this essay are not meant as an answer to the last question.³¹ Rather, they are intended merely as a brief exercise in some eclectic apologetics³² of the present state of legal

26. See *infra* notes 42-46 and accompanying text.

27. Pun intended.

28. Debra Cassens Weiss, *Law School by the Numbers*, A.B.A. J. (Nov. 5, 2012, 5:29 AM), http://www.abajournal.com/news/article/law_school_by_the_numbers_300k_additional_law_grads_by_2020_73k_new_jobs.

29. Richard Sobelsohn, *How Legal Education Can Get Practical*, NAT’L JURIST, Feb. 2013, at 7 (typos in original). There are two more problems with this article: First, it quotes the *ABA Journal* piece and refers to “360,000 law school graduates” in its text but also includes a text banner running across the page saying it is “73,000 [sic] jobs available for 300,000 law school graduates.” Second, the problem with either number is that both are incorrect compared to the original *Washington Post* article. A diligent read of either the *Post* article or the *ABA Journal* piece would have shown that the (incorrect) numbers in the *Post* article were even more dire, namely 73,600 jobs for 432,757 graduates during the decade.

30. See *Enrollment and Degrees Awarded 1963-2011*, *supra* note 23.

31. Which question, of course, comes with the ‘meta-question’ of whether it is even answerable. I herein provide no answer for that question either.

32. Now, there is an oxymoron if I ever saw one.

education for those of us who refuse to become card-carrying members of the contemporary ‘Hysterias-R-Us’ legal lemming movement. Thus, as a mere starting premise, the following six projections examine some of the hard data available about today’s legal market and provide some very basic forecasts and hypotheses about what the future will bring for the legal profession during the next decades—without the hype or any need to sell advertisement space.³³

1. *Over half of currently practicing lawyers in this country will retire over the next fifteen to twenty years.*—The latest (2012) edition of *The Lawyer Statistical Report* (LSR) prepared and published by the *American Bar Foundation* (ABF) found that the median age of lawyers in 2005 was 49 years.³⁴ The median age of lawyers significantly increased every time the ABF prepared a new edition of the LSR—from 39 years in 1980,³⁵ to 41 years in 1991,³⁶ to 45 years in 2000,³⁷ and, finally, to 49 years in 2005.³⁸ In a mere quarter of a century, the entire profession aged by a full decade. Unsurprisingly, then, in that same final year of available data (2005), 28.1% of all lawyers were aged between 45 and 54, 21.2% were aged 55–64, and 13.0% were 65 years or older.³⁹

In other words, eight years ago, over sixty-two percent of *all* lawyers licensed in this country were aged 45 years or above. Obviously, some of those will have retired since. Those remaining, however, will have replenished the above three age brackets of 45 and older, together with their younger colleagues who were 37–44 years of age eight years ago.⁴⁰ Thus, the current population of lawyers in the United States is in an unprecedented process of ‘overaging.’ It is still safe to assume that more than sixty percent of lawyers practicing today are 45 years or older.⁴¹ As a result, one can conservatively predict that the total number of

33. See *supra* notes 2 and 11.

34. CARSON & PARK, *LAWYER STATISTICAL REPORT 2005*, *supra* note 22, at 3.

35. BARBARA A. CURRAN ET AL., *THE LAWYER STATISTICAL REPORT: A STATISTICAL PROFILE OF THE U.S. LEGAL PROFESSION IN THE 1980s* 7 (1985).

36. BARBARA A. CURRAN & CLARA N. CARSON, *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN THE 1990s* 4 (1994).

37. CLARA N. CARSON, *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2000* 4 (2004).

38. CARSON & PARK, *LAWYER STATISTICAL REPORT 2005*, *supra* note 22, at 3.

39. *Id.* at 8.

40. In 2005, 12.5% of all lawyers were aged 35–39 years of age, and another 13.0% were 40–44 years old. See *id.* at 8.

41. Statistically, such percentage should now be even higher than the 62.3% in 2005 and should continue to increase significantly for approximately the next two decades. The reason for such continued further increase is law school graduation numbers. In 1965, a total of 10,491 people graduated from law school. See AM. BAR ASS’N, *Enrollment and Degrees Awarded*, *supra* note 23, at 1. Assuming that those people graduated at an average age of 25 in 1965, they were born around 1940 and, on average, 65 in 2005. Thus, lawyer retirements in the age bracket of 65 and older since 2005 have occurred in relation to graduation numbers of around 10,000 and below for graduating cohorts between the eight years of 1958 to 1965. In comparison, lawyers between the age of 37 and 44 in 2005—again, assuming that they graduated at an average age of 25 and were born between 1961 and 1968—graduated during 1986 and 1993. The annual cohorts of graduates that replenished the age brackets between 45 and 54 (as well as 55 and 64, and 65 and above) over the last eight years were much, much larger. At the replenished 45 to 54 level (or, more precisely, 45 to 52 level), 1986 started out with 36,829 law school

lawyers currently practicing in the United States will—at a minimum—be cut *in half* over the next two decades. Such unprecedented loss of half (or more) of our nation's current supply of legal services providers will be accelerating soon and rather rapidly.

2. *Over the next ten years, the current annual retirement rate of lawyers will double; over the next fifteen years, it will triple.*—In the 1963-64 academic year, 135 ABA-approved law schools in the United States awarded 9,638 terminal degrees (J.D. or LL.B.).⁴² Fifteen years later, during the 1978-79 academic year, now 167 accredited U.S. law schools awarded 33,317 law degrees⁴³—constituting an increase of the number of annual law school graduates of over 345 percent. In a mere six years, between the 1972-73 and 1978-79 academic years, U.S. law degrees awarded went from 22,342 to 33,317⁴⁴—an increase differential exceeding, in absolute numbers, the entire graduating class of the 1963-64 academic year. Similarly, absolute numbers of degrees awarded more than doubled in only eight years between the 1964-65 academic year (10,491 degrees) and the 1972-73 graduating cohort (22,342 degrees).⁴⁵

Assuming that most lawyers at the time graduated law school at about 25 years of age, those graduating in 1964 were born around 1939 and now, in 2013, are approximately 74 years of age. Similarly, those graduating in 1979 were born around 1954 and are now about 59 years old. One may safely assume that most of those law school graduates currently between 59 and 74 years of age will retire in the next fifteen years. Assuming further that, on average, their annual retirement numbers will correlate in some rough lockstep with their respective yearly law school graduation numbers, one can (again, rather conservatively) predict that the annual total number of retirements in the United States by (i) lawyers currently practicing, and (ii) lawyers currently licensed, though non-practicing, yet gainfully employed, will double within approximately the next decade and about triple over the next fifteen years. In other words, by 2022, lawyers will retire—in absolute numbers—at more or less twice the total amount of retirements in 2012, and by 2027 the number of lawyers retiring in that year will be about three times as many as did in 2012. Note, that annual retirement numbers will still continue to rise after 2027 for some time.⁴⁶

graduates and 1993 ended with 39,425 graduates (i.e., at almost four times the 1965 total). *See id.*, at 1; *see also infra* notes 42-46 and accompanying text.

42. *See* AM. BAR ASS'N, *Enrollment and Degrees Awarded*, *supra* note 23, at 1.

43. *Id.*

44. *Id.*

45. *Id.*

46. The reason for such continued further increase is, again, law school graduation numbers. Since the 1978-79 academic year (with 33,317 law graduates), annual law school graduation totals have continued to steadily increase to what appears to be the (preliminary) high point of 44,495 graduates in the 2011-12 academic year. Note that in the latter year, total law school enrollment in J.D. programs declined for the first time since the 1997-98 academic year. *See* AM. BAR ASS'N, *Enrollment and Degrees Awarded*, *supra* note 23, at 1. The result will be smaller graduating classes for, at least, a few years from this point on forward.

3. *The U.S. population will increase by over one hundred million people, i.e., by one third, until 2060, thus, increasing total demand for legal services accordingly.*—Law and legal systems are strictly human inventions and artefacts.⁴⁷ Thus, lawyers ultimately deal with issues that arise from the discrepancies between the actual world of human interaction and cooperation on the one hand and the should-be world of human invention as mandated by legal rules (which, themselves, are within a state of constant metamorphosis)⁴⁸ on the other hand.⁴⁹ Put simply, the more people, the more legal issues and the more demand for legal services. According to the latest *U.S. Census* data, the *2012 National Projections*, the resident population in the United States is estimated “to increase from 314 million in 2012 to 420 million in 2060”⁵⁰—i.e. to increase by *one third* in 48 years or within a mere generation and a half—with most of such increase to occur in an almost linear progression of adding two to two-and-a-half million people *every* calendar year.⁵¹

Such annual increases, when measured for the entire time span, are almost evenly divided between natural population growth (i.e., births over deaths) and population growth through net international migration.⁵² Note that the *2012 National Projections* already represent a more conservative, downward adjustment from the pre-financial-crisis population growth estimates made by the *2008 National Projections*.⁵³ Accordingly, one may predict that, over the next

47. Cf. Brian Leiter, *The Demarcation Problem in Jurisprudence: A New Case for Scepticism*, 31 O.J.L.S. 663, 666 (2011) (“The concept of law is the concept of an artefact, that is, something that necessarily owes its existence to human activities intended to create that artefact.”).

48. Cf. GRANT GILMORE, *THE AGES OF AMERICAN LAW* 110 (1977) (“When we think of our own or of any other legal system, the beginning of wisdom lies in the recognition that the body of the law, at any time or place, is an unstable mass in precarious equilibrium.”).

49. Cf. A.P. Herbert, *Foreword to THE BEST CARTOONS FROM PUNCH: COLLECTED FOR AMERICANS FROM ENGLAND’S FAMOUS HUMOROUS WEEKLY* (1952) (quoting the early nineteenth century English writer and philosopher, William Hazlitt, as saying that “[m]an is the only animal that laughs and weeps, for he is the only animal that is struck by the differences between what things are and what they ought to be . . .”).

50. U.S. CENSUS BUREAU, U.S. DEP’T OF COMMERCE, *METHODOLOGY AND ASSUMPTIONS FOR THE 2012 NATIONAL PROJECTIONS* (2012), at 11, available at <http://www.census.gov/population/projections/files/methodology/methodstatement12.pdf> [hereinafter U.S. CENSUS BUREAU, *METHODOLOGY AND ASSUMPTIONS*].

51. See U.S. CENSUS BUREAU, U.S. DEP’T OF COMMERCE, *SUMMARY TABLES—TABLE 1. PROJECTION OF THE POPULATION AND COMPONENTS OF CHANGE FOR THE UNITED STATES: 2015 TO 2060, 2012 NATIONAL POPULATION PROJECTIONS* (2012), <http://www.census.gov/population/projections/data/national/2012/summarytables.html> [hereinafter U.S. CENSUS BUREAU, *2012 NATIONAL POPULATION PROJECTIONS*].

52. Birth rates are estimated to decrease over time and net international immigration rates are estimated to increase—with the inversion of both such rates (in absolute annual numbers) estimated to occur around 2030. See U.S. CENSUS BUREAU, *2012 NATIONAL POPULATION PROJECTIONS*, *supra* note 51. See also U.S. CENSUS BUREAU, *METHODOLOGY AND ASSUMPTIONS*, *supra* note 50, at 11.

53. The *2008 National Projections* estimated a population increase from 310 million residents in the United States in 2010 to 439 million in 2050 (representing a 41.6% increase of the U.S. population in 40 years). U.S. CENSUS BUREAU, U.S. DEP’T OF COMMERCE, *TABLE 1. PROJECTION OF THE POPULATION AND COMPONENTS OF CHANGE FOR THE UNITED STATES: 2010 TO 2050, 2008 NATIONAL POPULATION PROJECTIONS: SUMMARY TABLES* (2008), available at <http://www.census.gov/population/projections/data/national/2008/summarytables.html>. The difference in the 2008 and 2012 projections “is explained by decreases in the level of net international migration

approximately 45 years, the national demand for legal services—in particular, for large-volume general-practice legal services—is going to increase by about one third over current levels. Such growing demand should also, on average, require at least a 25% to 30% increase of legal professionals necessary in order to meet such demand at current levels of service.

4. *The two largest generational wealth transfers in the history of mankind—dubbed the ‘Great Transfer’ and the even ‘Greater Transfer’—will occur in the United States over the course of the next thirty to forty years, thus, increasing total demand for legal services even further.*—The U.S. economy is situated at the very doorstep of two gigantic, back-to-back intergenerational shifts in wealth. Each shift by itself is of entirely unprecedented, historical proportions. The so-called ‘Great Transfer’ of accumulated wealth from the *Greatest Generation* to the *Baby Boomers* will continue over the next decade-plus and see a total of approximately \$12 trillion in assets shift to the next generation.⁵⁴ In addition, the even larger ‘Greater Transfer’ from the *Baby Boomers* to the *Gen Y* generation is currently estimated at about \$30 trillion in financial and non-financial assets and will not be completed until about 2050.⁵⁵ Because of the temporal overlapping of both transfers as well as their acceleration over time, it is further projected that at their peak—between 2026 and 2046—a staggering ten-plus percent of total wealth in the United States will be changing hands intergenerationally *every* five years.⁵⁶ Any and all of these financial and non-financial asset transfers need to become validly effected. And it is lawyers—and only lawyers—who hold the monopoly of providing client services for any and all asset transfers with regard to (i) the original planning, structuring, and documenting, (ii) if necessary, the

in the 2012 series compared to the 2008 series.” U.S. CENSUS BUREAU, *METHODOLOGY AND ASSUMPTIONS*, *supra* note 50, at 11.

54. See, e.g., *The MetLife Study of Inheritance and Wealth Transfer to Baby Boomers*, CENTER FOR RETIREMENT RESEARCH, BOSTON COLLEGE (2010), at 8, available at <https://www.metlife.com/assets/cao/mmi/publications/studies/2010/mmi-inheritance-wealth-transfer-baby-boomers.pdf> (estimating past and prospective transfers to the Baby Boomers at \$11.6 trillion). By means of comparison, the entire economic productivity of the United States in 2011 as measured by gross domestic product was slightly over \$15 trillion (in current prices). See *World Economic Outlook Database, October 2012*, INT’L MONETARY FUND, available at <http://www.imf.org/external/pubs/ft/weo/2012/02/weodata/index.aspx>.

55. See, e.g., Larry Barrett, *Gen X, Gen Y Represent Sweet Spot For Retirement Specialists*, BANK INVESTMENT CONSULTANT, April 18, 2011, <http://www.bankinvestmentconsultant.com/news/limra-loma-gen-x-gen-y-retirement-2672706-1.html> (referring to a December 2010 *FTI Consulting* report which found that “Gen Yers, those born between 1977 and 1995, will eventually become the wealthiest generation in U.S. history,” standing “to inherit more than \$30 trillion”). See also *The “Greater” Wealth Transfer: Capitalizing on the Intergenerational Shift in Wealth*, ACCENTURE (2012), at 1, available at <http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture-CM-AWAMS-Wealth-Transfer-Final-June2012-Web-Version.pdf> (estimating the ‘Greater Transfer’ at over \$30 trillion) [hereinafter ACCENTURE, *The “Greater” Wealth Transfer*]; *Passing It On: What Will Future Inheritances Look Like?*, BMO RETIREMENT INSTITUTE, BMO FINANCIAL GROUP (2009), available at http://www.bmo.com/pdf/mf/prospectus/en/09-429_Retirement_Institute_Report_E_final.pdf (estimating the combined total of upcoming intergenerational wealth transfers in the United States at approximately \$41 trillion).

56. See, e.g., ACCENTURE, *The “Greater” Wealth Transfer*, *supra* note 55, at 1.

updating and remedying of earlier planning, and (iii) finally, the settling of any legal disputes that may arise later.

5. *Everything in the law, by definition, will continue to change, increase in volume, and become more complicated and complex—a trend further accelerated by the developments discussed in 3. and 4. above.*—Perennially increasing regulatory and tax compliance as well as more pervasive, transaction-cost efficient documentation in general has meant, and will continue to mean, that most aspects of legal services will increase in volume—both as regards their breadth (i.e., by adding entirely new areas of law and regulation) and depth (i.e., by adding new case law as well as by revising and amending existing areas of statutory law and regulation).

For example, in a period of just five years—from 2006 to 2011—the average length of proxy statements filed with the *U.S. Securities and Exchange Commission* by Dow 30 companies increased from 46 to 71 pages, or by over 54 percent.⁵⁷ Similarly, since 2001, there have been approximately 4,680 changes to the *U.S. Internal Revenue Code*, or, on average, more than one per day.⁵⁸ As a result, the tax code currently consists of almost four million words.⁵⁹ That there will be more work for more lawyers tomorrow is also evident from the robust and sustained demand-driven growth of the total number of *licensed* lawyers per capita in the United States over the last fifty years. Whereas, in 1961, there was an average of one licensed lawyer among 636 residents, that lawyer-per-capita average increased by 2011 to one lawyer per only 254 people—an increase in the number of licensed lawyers relative to the total population by almost exactly 250%, or, on average, by about 50% over the 1961 base ratio in every of the five decades since.⁶⁰

6. *As a result of Projections 1 through 5 above, recent law school graduates and current and future law students are standing at the threshold of the most robust legal market that ever existed in this country—a legal market which will grow, exist for, and coincide with, their entire professional career.*—Here is some quick, back-of-the-envelope math based on the earlier five projections for just the two decades following the 2010 base year as used in the *BLS Employment Projections* data discussed above:⁶¹

57. See Holly J. Gregory, *Innovations In Proxy Statements*, PRAC. L.J., July/Aug. 2012, at 28, available at http://www.weil.com/files/upload/July-August2012_Opinion.pdf.

58. 2012 ANNUAL REPORT TO CONGRESS (VOLUME 1), TAXPAYER ADVOCATE SERVICE, U.S. INTERNAL REVENUE SERVICE (2013), at 6, available at <http://www.taxpayeradvocate.irs.gov/userfiles/file/Full-Report/Volume-1.pdf>.

59. *Id.*

60. These lawyer-per-capita ratios are derived from two different sets of data: total number of U.S. licensed lawyers (see AM. BAR ASS'N, *Total National Lawyer Counts*, *supra* note 22) and total U.S. resident population (see U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, *POPULATION ESTIMATES—HISTORICAL DATA* (2012), <http://www.census.gov/popest/data/historical/index.html> (last visited July 8, 2013)).

61. Similar calculations could be made for the time period of 2013 to 2033. The resultant totals under a. through d. below would increase even further because, among other things, the total amount of employed lawyers nationally as measured by BLS's *Current Population Survey* further increased from 1,040,000 in 2010

a. In 2010, there were approximately 728,200 *jobs* for employed lawyers⁶² and 1,040,000 actual employed *lawyers*.⁶³ A very conservative 50-percent retirement rate over the next two decades (as per Projections 1. and 2. above) will mean that about 520,000 of currently employed lawyers are going to leave the legal profession and require replacement until 2030.⁶⁴

b. The total U.S. population on July 1, 2010 was estimated at 309,330,219.⁶⁵ According to the latest *U.S. Census* projections discussed above, the total resident population in the United States will increase to 358,471,000, or, by about 15.9 percent⁶⁶ by July 1, 2030.⁶⁷ A conservative 15-percent increase over the 2010 base amount of actual employed lawyers (1,040,000) results in 156,000 new, additional legal professionals at 2010 lawyer-per-capita levels (as per Projection 3 above).⁶⁸

c. In the decade before 2010, the lawyer-per-capita ratio based on (i) actual employed U.S. lawyers as reported by the *Bureau of Labor Statistics* and (ii) resident U.S. population as estimated by the *U.S. Census Bureau* increased from one *employed* lawyer per 320 residents in 2000⁶⁹ to one *employed* lawyer per 297 residents in 2010⁷⁰—an increase of 7.74 percent for the decade.⁷¹ A continued increase of the lawyer-per-capita ratio at an aggregate (but, perhaps, less conservative) rate of 14 percent for the *two* decades after 2010 (as per Projections 4. and 5. above) would result in a lawyer-per-capita ratio of 1 to 261 in 2030.⁷² Accordingly, at the projected U.S. resident population of 358,471,000 in that

to 1,061,000 in 2012. See BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, CURRENT POPULATION SURVEY: TABLE 11, EMPLOYED PERSONS BY DETAILED OCCUPATION, SEX, RACE, AND HISPANIC OR LATINO ETHNICITY, HOUSEHOLD DATA—ANNUAL AVERAGES (2013), at 3, <http://www.bls.gov/cps/cpsa2012.pdf>.

62. See BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK, *supra* note 19; Lockard & Wolf, *Employment Outlook*, *supra* note 16, at 94.

63. BUREAU OF LABOR STATISTICS, CURRENT POPULATION SURVEY 2010, *supra* note 19, at 15. For an explanation of the difference between the total number of lawyer *jobs* and the total number of lawyers *employed*, both as counted by different BLS programs, see *supra* note 19.

64. $1,040,000 \times 0.5$ (or 50%) = 520,000.

65. See U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, NA-EST2011-01-11, MONTHLY POPULATION ESTIMATES FOR THE UNITED STATES: APRIL 1, 2010 TO NOVEMBER 1, 2012, tbl.1 (Dec. 2012), http://www.census.gov/popest/data/historical/2010s/vintage_2011/index.html (follow "XLS" hyperlink).

66. $358,471,000 - 309,330,219 = 49,140,781$. $49,140,781/309,330,219 = 0.159$ (rounded) or 15.9%.

67. See U.S. CENSUS BUREAU, 2012 NATIONAL POPULATION PROJECTIONS, *supra* note 51.

68. $1,040,000 \times 0.15$ (or 15%) = 156,000.

69. In 2000, the BLS's *Current Population Survey* showed 881,000 employed lawyers. See BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, CURRENT POPULATION SURVEY: EMPLOYED PERSONS BY DETAILED OCCUPATION, SEX, RACE, AND HISPANIC ORIGIN 179 tbl.11 (2001), <http://www.bls.gov/cps/cpsa2000.pdf>. For the same year, on July 1, the U.S. Census Bureau estimated a resident population of 282,162,411. See U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, US-EST00INT-01, INTERCENSAL ESTIMATES OF THE RESIDENT POPULATION BY SEX AND AGE FOR THE UNITED STATES: APRIL 1, 2000 TO JULY 1, 2010, tbl.1 (Sept. 2011), <http://www.census.gov/popest/data/intercensal/national/nat2010.html> (follow "XLS" hyperlink). $282,162,411/881,000 = 320$ (rounded).

70. $309,330,219$ (i.e., estimated resident U.S. population in 2010)/ $1,040,000$ (i.e., employed lawyers in 2010) = 297 (rounded).

71. $320 - 297 = 23$. $23/297 = 0.0774$ (rounded) or 7.74%.

72. $297 / 1.14$ (or 114%) = 261 (rounded).

same year, the additional yield for new legal professionals needed over the next two decades would be 166,479.⁷³

d. The projected combined change in the total *legal* employment of lawyers as per a. to c. above therefore equals 842,479 newly *employed* lawyers between 2010 and 2030.⁷⁴ Note that those new legal market entrants are *only* gainfully-employed new *lawyers*, i.e., people who use their law degree to practice law. Also note that such number comes very close to and almost equals the total (hypothetical) output of all 201 ABA-approved law schools in the United States at 2012 graduation levels (i.e., 44,495) for twenty years (i.e., 889,900). In other words, over the next two decades, the legal profession market is moving statistically into the direction of *almost guaranteed legal employment* for all law school graduates.⁷⁵ Given that (i) not all law school graduates intend to enter the legal profession⁷⁶ and (ii) not all law school graduates who want to enter the legal profession will (immediately) pass the bar,⁷⁷ one can further predict that *shortages* will already begin to develop over the next two decades in the general availability of legal services. As a result, future law school graduates can expect soon to secure better legal jobs, have more opportunity to move laterally and earn higher incomes over the next two decades and beyond than has been the case for the last thirty years—even when they enter, and remain within, the legal services market with lesser professional credentials and qualifications as compared to market entrants and participants during the last three decades.

CONCLUSION

Law is about both substance *and* perception; it has both imperative *and* expressive functions.⁷⁸ At least for our own sake—if not society's sake as a

73. $358,471,000$ (i.e., projected resident U.S. population in 2030)/261 (i.e., projected lawyer-per-capita ratio in 2030) = 1,373,452 (rounded). $358,471,000/297$ (i.e., lawyer-per-capita ratio in 2010) = 1,206,973 (rounded). $1,373,452 - 1,206,973 = 166,479$.

74. $520,000 + 156,000 + 166,479 = 842,479$.

75. Note that such aggregate employment is based on the same distribution of the types of legal employment as pursued by currently employed lawyers in the legal profession and as measured by the U.S. Bureau of Labor Statistics. Not all of it is full-time salaried legal employment or full-time legal self-employment, i.e., partial legal (self-)employment (at current ratios) is included in this number. Also note, however, that this number does not include (i) law school graduates who will be gainfully employed but do *not* use their law degree to practice law and make a living, and (ii) legal self-employment and other legal employment not recognized by the BLS in its CPS statistical category of “lawyers” (for example, judges and judicial law clerks).

76. See *supra* notes 23-25 and accompanying text.

77. For example, a 1998 longitudinal bar passage study undertaken by the *Law School Admission Council* found that the eventual bar passage rate for all 23,086 study participants was 94.8%. See Linda F. Wightman, Law Sch. Admission Council, LSAC National Longitudinal Bar Passage Study viii (1998), available at <http://www.unc.edu/edp/pdf/NLBPS.pdf> (last visited Sept. 15, 2013).

78. See, e.g., Matthew D. Adler, *Expressive Theories of Law: A Skeptical Overview*, 148 U. PA. L. REV. 1363 (2000); Elizabeth S. Anderson & Richard H. Pildes, *Expressive Theories of Law: A General Restatement*, 148 U. PA. L. REV. 1503 (2000); Alex Geisinger, *A Belief Change Theory of Expressive Law*, 88 IOWA L. REV. 35 (2002); Richard H. McAdams, *An Attitudinal Theory of Expressive Law*, 79 OR. L. REV. 339 (2000); Richard H.

whole—we, as lawyers and legal educators, should be more measured in what we believe and express *is*; what we believe and express *should be*; and what we believe and express *will be*. And, in doing so, be as rational and thorough, as empirical and scientific, and as practical and equitable about it as we can be—which is what we owe society, what we owe our law students (former, current and future), and what we owe ourselves as a profession and as professionals. Hindsight may show that our current collective deflationary treatment of legal education and its value—at least, for purposes of income generation (as opposed to its holistic value for both individual and society)—is only a footnote, and an interesting incident of mass hysteria,⁷⁹ in the early history of the twenty-first century. The above-mentioned article in the *Washington Post* speculated, in its opening paragraph, that a “perhaps permanent—sharp constriction in the job market for new lawyers” has occurred.⁸⁰ In the end, nothing could be further from the truth.

McAdams, *A Focal Point Theory of Expressive Law*, 86 VA. L. REV. 1649 (2000); Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021 (1996); Carol Weisbrod, *On the Expressive Functions of Family Law*, 22 U.C. DAVIS L. REV. 991 (1989); Maggie Wittlin, *Buckling Under Pressure: An Empirical Test of the Expressive Effects of Law*, 28 YALE J. ON REG. 419 (2011).

79. Or, in the words of Philip Slater, at least, a historical “moment of panic” that we will soon “feel sheepish about.” PHILIP E. SLATER, *THE PURSUIT OF LONELINESS: AMERICAN CULTURE AT THE BREAKING POINT I* (1970).

80. Stevens, *Will Law School Students Have Jobs?*, *supra* note 12.