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Commentary: Secrets of the Bar: A Guide to the Unauthorized Practice of Law

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SECRETS OF THE BAR: A GUIDE TO THE UNAUTHORIZED PRACTICE OF LAW *

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WOULD YOU like to help the less fortunate? Would you like to see liberty and justice for all? Do you want to vindicate the rights of the oppressed? If so, join the Peace Corps. The last thing you should do is attend law school.

People basically hate lawyers, and with good reason. It's only at times like these, when a Supreme Court vacancy is being filled, that lawyers appear to have any respectability. Even other species detest lawyers. Carl Sandburg wrote: "Why is there always a secret singing/ When a lawyer cashes in?/ Why does a hearse horse snicker/ Hauling a lawyer away?"

It is true that some lawyers are dishonest, arrogant, greedy, venal, amoral, ruthless buckets of slime. On the other hand, it is unfair to judge the entire profession by a few hundred thousand bad apples. In fact, there are many legitimate reasons for going to law school. For example, are your inlaws pestering you to do something meaningful (i.e., lucrative) with your life? Do you want to go to medical school but can't stand the sight of blood? Did you major in English and have nowhere else to turn?

TAKING THE LSAT

Before you can go to law school, you have to take an exam called the LSAT that measures how well you can use a No. 2 pencil to fill in the little circles on the computer sheet.

The LSAT people say that LSAT preparation courses do not help, since the LSAT tests knowledge and skills that cannot be improved by last-minute cramming. But you will notice that there are several suspiciously solvent LSAT prep course companies that are happy to take your money. Of course, you can always choose to "go bare" and take the LSAT without any prep course at all. People who have done this in the past are called "non-lawyers."

After you take the LSAT, they send you your score and a statement explaining which "percentile" you are in. The percentile is the inverse percentage chance you have of spending your life doing something honest.

APPLYING TO LAW SCHOOL

You will need to submit applications to several law schools, at 50 bucks a pop. Law schools have you fill out lengthy application forms that require you to describe your unique abilities and experiences and the ways in which you might add to the rich fabric of the law school class. It takes you about 80 hours to fill out each of these forms. In your "personal statement," make certain that you have used the two key words every law school looks for: "endeavor" and "cognitive."

When the law school receives your application, it banks your check, adds up your GPA and LSAT scores and throws the rest of the application away. No sane admissions officer is going to wade through 6,000 personal statements.

Anyway, after submitting the applications, you will receive several letters saying, "CONGRATULATIONS! You are on the 'hold' list for getting on the 'preliminary waiting list' to be considered for admission." They won't reject you until after they see how many students show up on the first day of class. I mean, what does it hurt them if you give up your other career plans and lifelong ambitions?

THE FIRST YEAR

At first, it's not so bad. The honeymoon ends, however, when you have to go to your first class. Your professor has a black belt in an ancient martial art called "the Socratic method." The key to the Socratic method is that the professor never reveals what the answer is. To get the answers, you have to buy

commercial outlines, which cost $16.95 a piece and are written by the professors to provide them with a handsome income on the side.

At first the people in your class seem like nice enough folks. But gradually everyone begins to realize that his only hope of getting a job is to blast the chromosomes out of their classmates in the zero-sum game called "class standing." Of course, the professors tell students that class standing and grades do not matter. Not at all.

During the first year, the law students quickly divide into three groups:

The Active Participants: Overconfident geeks who compete with each other to take up the most air time pointing out that before law school, when they were Fulbright scholars, they thought of a question marginally relevant to today's discussion. Their names appear on the class' "Turkey Bingo" cards, a game you win if five people on your card speak during one class period. The Active Participants stop talking completely when first-semester grades come out and they get all C's.

The Back Benchers: Cool dudes who "opt out" of law school's competitive culture and never prepare for class. They sit on the back row, rather than in their assigned seats, so the professor can't find them on the seating chart.

The Terrified Middle Group: People who spend most of their time wondering what is going on, and why don't the professors just tell us what the law is and stop playing "hide the ball?" The cases are, of course, dreadfully boring; chloroform in print, in Mark Twain's phrase. But there are a few interesting characters in the legal literature, like the "fertile octogenarian," the "naked trespasser" and the "officious intermeddler." It is best to keep these people from spending too much unsupervised time together.

THE LAW FACULTY

In the 1960s, faculties were conservative and students were liberal. In the 1980s, the students were conservative and the faculties were liberal. The 1970s were a difficult transitional period during which, for an awkward moment, faculties and students were able to communicate. They discovered that they did not like each other.

When law professors are not writing commercial outlines, they are writing casebooks. Of course, they make you buy their casebooks for their classes. One of the cardinal rules of casebooks is that they must have as many authors as there are soldiers in the Montana National Guard. The more authors the publisher can recruit, of course, the more classes in which the casebook will be adopted.

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LEGAL WRITING

During your first year, you take a class called "Legal Writing," the sole objective of which is to make you write like real lawyers as little as possible.

Lawyers like to use "lawyerisms," like "aforementioned," "hereinafter," and "mortgagee." They also invoke Latin phrases, such as "res ipsa loquitur." This means: "The thing speaks for itself." They never explain, however, what the thing says.

Lawyers also write "said" a lot. For example, one complaint stated: "[B]eginning at a point on said railroad track about a half mile or more north of a point opposite said curve in said highway, quantities of highly volatile coal were unnecessarily thrown into the firebox of said locomotive and upon the fire contained therein, thereby preventing proper combustion of said coal, resulting in great clouds of dense smoke being emitted from the smokestack of said locomotive . . . ."

The judges who quoted this language then added another sentence containing eight more "saids." Said practice is supposedly invoked for precision. The real problem is that "the" doesn't sound important enough to lawyers, so they write said "saids."

Another sin of legal writing is verbosity, which is exacerbated by the practice of using pairs of duplicative words, like "cease and desist," "null and void," "free and clear," "suffer and permit," "devise and bequeath" and "idiot and senator." This practice supposedly stems from periods in history when English lawyers had two languages to choose from: first, Celtic and Anglo-Saxon, then English and Latin and later English and French. But who knows whether this is true and

correct?

Legal writing also features double negatives. The Supreme Court has refined this art, writing the world's only quadruple negative: "This is not to say, however, that the prima facie case may not be met by evidence supporting a finding that a lesser degree of segregated schooling in the core city area would not have resulted even if the board had not acted as it did." Government cryptographers have tried to decipher this sentence for years.

The worst part of legal writing is having to learn the legal citation system. This is set forth in thousands of subrules in a book whose name nobody can remember, but which everybody calls the Bluebook, mostly because it's blue (or, as lawyers put it, "blue in color").

EXAMS

Studies have shown that the best way to learn is to have frequent exams on small amounts of material and to receive lots of feedback from the teacher. But anyone can learn under ideal conditions; law school is supposed to be an intellectual challenge. Therefore, law professors give only one exam, the Final Exam of the Living Dead, and they give absolutely no feedback before then. Actually, they give no feedback after then, either, because they don't return the exams to the students. That might permit you to do better next time, which would upset the class ranking.

Another reason that law professors give only one exam is that they are lazier than three-toed sloths. They teach half as many hours as other professors, are paid twice as much and get promoted three times as fast. Then, they whine because they have to grade one exam per class.

The exam questions are usually absolutely hilarious fact situations that send students into paroxysms of helpless laughter. Law professors learn how to write these witty exams at a seminar for new professors, "How to Make Up for Your Humorless Teaching Style on the Final Exam." Try not to let the laughing get out of hand.

After the exam, do not review or "post-mortem" the exam with other students. This is depressing, especially if you can't even agree whether it was a torts exam or a contracts exam. On the other hand, if some persistent bozo insists on reviewing the exam with you, be sure to point out several issues that were not on the exam. This will cost him several days' sleep and, probably, 30 pounds.

"Evidence": Memorize the hearsay rule and its 50,000 exceptions.

"Criminal Law": Study common law crimes that haven't been the law anywhere for more than 100 years. Then, to bring things up to date, study the Model Penal Code, which is not the law anywhere today.

THE SECOND AND THIRD YEARS

These years are about the same as the first year, except that you get to choose your teachers based on the difficulty of their grading curve. The professors describe their courses in a list called, appropriately enough, "Course Descriptions." They try to make the courses sound like important educational opportunities that no person who calls herself a lawyer would dare overlook. They do this because if no one attends their class, the dean might fire them. An honest list of course descriptions might include some like this:

"Alternative Dispute Resolution (ADR)": How people resolve disputes without lawyers, because a simple dog-bite case takes five years and $50,000 to get to trial. Learn how to recognize ADR and squash it.

"Civil Procedure": Discover why, every time a case is filed, another forest dies.

"Constitutional Law": Ridicule people who still believe that the Framers' intent has any relevance whatsoever.

"Contracts": Study rules based on a model of negotiators with equal bargaining power who dicker freely, voluntarily agree on all terms, and reduce their understanding to a writing intended to embody their full agreement. Learn that the last contract fitting this model was signed in 1879.

"Criminal Law": Study common law crimes that haven't been the law anywhere for more than 100 years. Then, to bring things up to date, study the Model Penal Code, which is not the law anywhere today.

"Criminal Procedure": Learn enough about the rationale behind the exclusionary rule to defend yourself at cocktail parties.

"Evidence": Memorize the hearsay rule and its

50,000 exceptions.

"Federal Courts": How to administer prisons, schools, and most of society from the bench.

CO-CURRICULAR PROGRAMS

Being fully committed to providing the best possible educational opportunities for every student, law schools offer co-curricular programs, like law journals and moot court. Then, quite naturally, they let hardly anyone participate.

The most elitist organization is the law review, which is generally restricted to the top 10 percent of the class. These students are given this special honor so that employers will not overlook them just because they are at the top of their class. Law review editors spend their time doing meaningful educational tasks like checking the citation form of articles they don't understand.

The second type of co-curricular program is upper-level moot court. These students are the ones with bared fangs and fire in their eyes, who can't wait to get out of school and litigate the living corpuscles out of every warmblooded creature. So they start doing it in law school.

INTERVIEWING FOR JOBS

Job interviews begin in the fall semester of the students' first year, nearly three years before they graduate. Before you interview, you will need to prepare a resume or "curriculum vitae," a Latin phrase meaning "preposterous fable." There is a fine art to interpreting resumes. "Top 10 percent" means "top 20 percent." "Top 20 percent" means "top half." "Middle of the class" means "bottom half." Law schools get extremely angry and moralistic when students pad their resume's like this. Because they are the nation's leading law schools, the 25 of them in the Top Ten get particularly huffy about it.

People realize that it is impossible in one 20-minute interview to learn enough about a firm to decide whether you want to trust to its care your professional reputation, the financial security of your family, and all your waking hours for the rest of your entire life. Doing that takes at least two or three 20-minute interviews.

You should ask how many hours associates are required to bill. In some firms, associates bill as many as 3,000 hours a year. Sometimes this is accomplished through "triple billing," a technique by which an associate works on client A's matter while flying to a city for client B, and he thinks that the issue may possibly somehow someday be relevant to client C. So he bills each client full bore.

Let me explain how large law firms work. The partners hire associates, pay them about a third of the income the associates bring in and keep the rest. Naturally, the more associates and the fewer partners, the better. After the associates have billed a gazillion hours a year writing memos for seven years, the partners

throw them out on their ears and hire new associates. Large law firms therefore combine the best features of an indentured servitude, a sweatshop and a pyramid scheme. If you make partner, life is not much better. Partners spend most of their lives squabbling like a pack of hyenas over the firm's profits. This is what it means to practice at the highest level of a noble profession dedicated to the ideal of public service.

You should not get discouraged, however. You should remember that there are many job opportunities and lots of different types of work that lawyers do. For example:

Corporate Work: drafting documents for scumsucking corporations that poison huge numbers of innocent people.

Litigation: defending scumsucking corporations that poison huge numbers of innocent people.

Criminal Defense: defending scumsucking individuals who poison a few innocent people at a time, mostly because they lack the capital and technology to poison huge numbers of innocent people.

Public-interest Work: suing scumsucking corporations that poison huge numbers of innocent people. Lawyers doing this work earn less than what the law firms on the other side pay their pencil sharpeners.

MAKING YOUR GETAWAY

After you have graduated, you face eight weeks of "Preparing For and Taking the Bar Exam." The state bar association says that bar exams are designed to ensure the competency of the practicing bar. You learned about them in your antitrust class, under the topic of "Market Entry Barriers." They make it possible for people who are already admitted to the bar to make a living wage (i.e., about $200,000 a year). You will probably feel better about the exam's rationale after you pass it.

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