

Q&A

Objection!

Doug Litowitz has a few theories on why lawyers are so miserable.

By Michael Lenehan

When Doug Litowitz graduated from Northwestern's law school in 1988, he got what most of his classmates wanted—a nice-paying job in a big downtown firm. He didn't like it much, judging from the title of his recent book. *The Destruction of Young Lawyers*, published late last year by the University of Akron Press, is an attempt to explain why, in Litowitz's opening words, "lawyers are pathologically unhappy."

Everyone has an unhappy lawyer story. But is there evidence that lawyers are less satisfied, as a group, than people in other professions?
In the first chapter of survey after survey—from the American Bar Association, other bar associations, and

studies by psychologists—saying that huge numbers of lawyers would not be lawyers again. And there's a lot of evidence of depression and alcoholism, way above the norm.

So what's the problem?
I attribute it to a number of factors, starting with law school. We know from statistics that law students are more depressed than medical students and business students. How do you explain that? Part of it has to do with the way law is taught, which is the Socratic method, which is basically an interrogation where one side knows the answers and asks questions of a side that doesn't know the answers. You know, like in the movie *The Paper Chase*—Professor Kingsfield. It

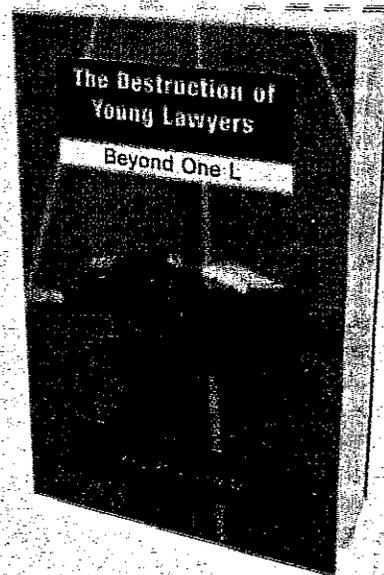
just makes people anxious and nervous. There's no proof whatsoever that it's a good way of teaching material. Socrates didn't even use the Socratic method to teach—he just used it to puzzle people.

Wouldn't Professor Kingsfield say that it teaches law students to think on their feet?
The ostensible justification is that it rewards quick thinking—it's sort of like fencing—you learn to be nimble and to anticipate questions that will be thrown at you. But there really is no parallel for that in the practice of law. There's no time at which I'm in front of a hundred people being asked questions by someone who knows the answer and I don't know it.

How about arguing in front of an appeals court?

Yeah, but usually when that happens, you know the case better than the judges, because you've been on the case for a year or two years and you've had a lot of time to prepare. You're right, but that's the only parallel, and it's not very common. There's no parallel in corporate law, business law, poverty law.

Basically law is taught inductively, case by case. You build up grains of sand, or, like an impressionist painting, you build up dots until a picture emerges. It's a really ineffective way to teach. Say you're taking a contracts course. You might read one case that deals with an offer, then a case that deals with an acceptance, then a case that deals with consideration, and then maybe a month later a



case that deals with a term, and then the lesson that you would put together at the end of the year, looking backward, is: Oh, I guess for there to be a contract there have to be all these pieces.

You mean there's never really an overview?

There really isn't. I wish there was. In the book I give an example of the speech I wish my contracts teacher had given us: "Here's what a contract is. Here are the types of contracts. Here's what you need for a contract."

Here's why we're reading this." That kind of thing really doesn't get said in law school. And you don't get to see things. You're not working on things. I argue that for corporation class, you should file to form a corporation. If you're doing wills and estates, you should write a will. I think the whole thing really should be two years, plus one year of practicum.

OK, so let's stipulate that law school sucks. After law school comes . . .

The bar exam. Reason number two why lawyers are unhappy. The bar exam's real purpose is to be a funnel restricting the flow of new lawyers. And it also serves the purpose of scaring young lawyers to be submissive in front of the bar authorities. That real purpose is caked over with the rationalization that it's to make sure lawyers are competent, but there's zero evidence that the bar exam does that. In fact the bar exam is relatively new



Doug Litowitz

in history, and there are some states, like Wisconsin, where in-state law graduates don't have to take the bar exam. I've worked with lawyers who didn't take the bar exam and they were fine.

Explain what you mean by restricting the flow of new lawyers.

Well, think of a state that has a number of law schools of various types. For example, Illinois has some very elite law schools, then it's got some second-tier schools, then it's got some lower-tier. So the candidates for the bar are pretty mixed. Same in New York, same in Texas. So it would seem to me, when I think logically about it, that every state that has a mix of law schools and a mix of intelligent people would have roughly similar pass rates for the bar exam. Let's say that 20 percent of the pool is incompetent, you'd figure there'd be a 20 percent failure rate in any of these states. But the rates are not similar—they vary wildly. And the explanation for that is that it's not really about competence, it's

about literally adjusting a bar, to keep people out. The proof of this is that states keep adjusting their pass rates. So New York will say: Well, our pass rate is 75 percent, but Pennsylvania's raising it to 80 so we're going to raise it to 80. And they'll change the figures—Florida has been steadily raising the score you need to pass—for no reason. They can't articulate any reason why they're doing it.

Then after you pass the test, there's a character committee that you have to pass through to get your license. And they're very intrusive. They always ask if you've ever seen a psychiatrist or a psychologist. In many states you have to disclose your medicines, name every place you've lived for the last ten years, and so forth. And really it's not about screening. Each year they get thousands of lawyers; they're not going to go down the line and look at everybody's references and where they lived. It's about power: we know something embarrassing about you. To me it's really just a

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ritual of humiliation.

The whole system of legal education would be so much more useful if they just said: Here's what we're going to do. You have to take a course on the structure of the Cook County court system. You have to know where to file a complaint, you have to know how to schedule a motion, how to

open a client file. That would be a thousand times more useful than what they have now. Because you get your law degree, you pass the bar, and you know what? You don't know anything! You're a licensed fraud.

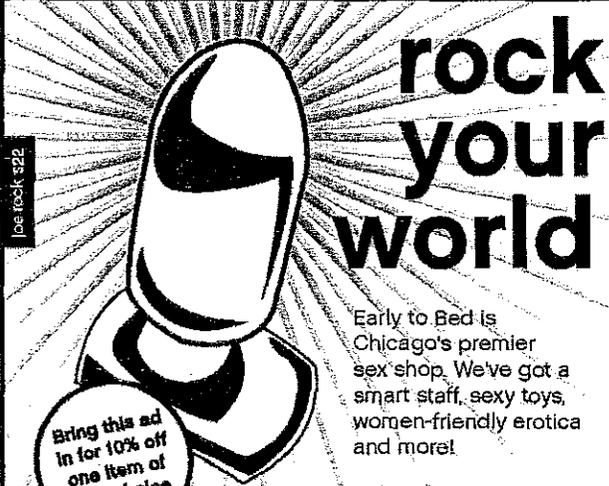
Which brings us to another one of your themes, the forces that push young lawyers into big firms.

Young lawyers cannot hang out a shingle like they used to. It's too expensive, they have too much debt, there's too much competition for clients. . . . And they don't know anything about how to help a client, how to file a motion, how to form a corporation. Lawyers learn these things on the job, not in school. So they get pushed into

the big firms; where they're worked to death.

It starts with debt. Law school has gotten so expensive. The average law school grad owes \$80,000 by the time he gets his degree. So at this point you're very vulnerable. You need to make money, you need competence, you'll do anything. So you take a job in a big firm. Because,

after all, that's where most of the jobs are. And they have an incentive to take as much out of you as possible. And so they work you to death, and you're monitored constantly for your billable hours, and it's not a good life. One of the things that happens is you lose interest in areas of law. You just get interested in money. When you're in law school you



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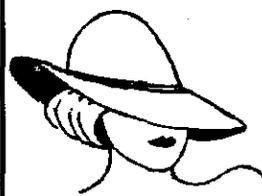
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might say, well, I'm kind of interested in intellectual property, or I'm interested in real estate. But when lawyers get out they find themselves in places they never thought they'd be, doing things they may not believe in.

What do big firms specialize in? They specialize in representing powerful companies. So you're a corporate lawyer, and corporate law is largely about protecting people who are insiders in corporations.

One of the examples I use in the book, from my own experience at a big firm, is we take a company that's public and we take it private, take it off the stock market, buy it up. And then we would take it back public again. And you ask yourself: What's going on? Why are we doing this? Who benefits from this? And it always came down to benefiting the insiders of the corporation. Because those are the people who are your clients. Those are the people who hired your firm and the people you deal with every day. So you write the fine print in a contract that takes away an employee's right to sue his company for discrimination, or you write a brief for a company that fights tooth and nail against every workman's comp claim. You are pretty much trying to protect these insiders against workers and against consumers.

And of course the client is always right.

Yeah, the prevailing ethos among lawyers is that your job is to serve the client, whatever their needs are. It's not for the lawyer to say that the client is overreaching, or being unfair—your job is just to do what they want you to do. Everything that happened at Enron and WorldCom and all that stuff, that was all mediated by lawyers. All of the dot-com meltdown—everything there, every piece of paper, was drafted by a lawyer.

So that's why you left the big-firm life?

Yes, after practicing at a big firm for a couple of years I decided that I would go back and be a professor. So I went to Loyola and got a PhD, and after that I started teaching [at Chicago-Kent and Ohio Northern University, among other places]. I did that for eight years.

But now you're working in securities law.

I needed to earn some money, so I quit teaching recently and came back to Chicago, where I grew up, to work at an investment fund.

Given all you have to say about the influence of capitalism on the legal profession, isn't that a little weird?

I think about that. But what can I say—life is full of surprises. It's a personal thing. Let's just say it's a contradiction that I hope to be able to resolve someday. **Q**