

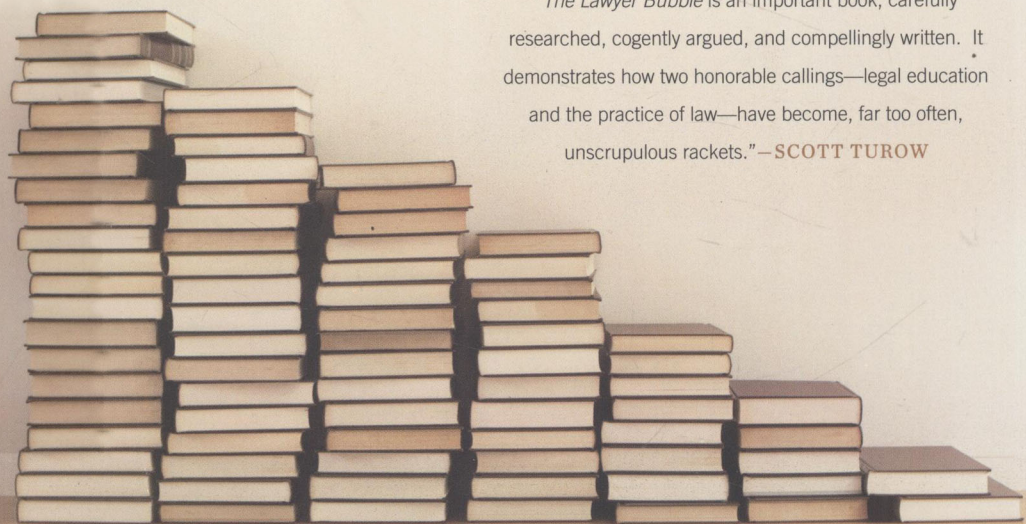
The

LAWYER BUBBLE

A PROFESSION IN CRISIS

STEVEN J. HARPER

"The Lawyer Bubble is an important book, carefully researched, cogently argued, and compellingly written. It demonstrates how two honorable callings—legal education and the practice of law—have become, far too often, unscrupulous rackets."—SCOTT TUROW



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The
**LAWYER
BUBBLE**

*For my wife, our children,
and our grandchildren*

INTRODUCTION

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

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

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

The Lawyer Bubble is about much more than lawyers. It's about a mentality that has accompanied the corporatization of America's most

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

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

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

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

The legal profession has become a victim of these trends, resulting in a massive oversupply of lawyers, growing career dissatisfaction among practicing attorneys generally, and the increasing fragility of the prevail-

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

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

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

inflate their schools' rankings with incomplete and misleading information and encourage prospective students to pursue dreams that, for most of them, are impossible, all in the name of increasing applications, enrollments, and tuition revenues.

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

Meanwhile, the proliferation and growth of law schools offer a stark contrast to the shrinking job market. The number of JDs awarded annually grew from thirty-eight thousand in 2001 to more than forty-four thousand in 2011, but legal employment opportunities have trended in the opposite direction: nine months after graduation, only about half of the class of 2011 had secured long-term full-time work requiring a legal degree. Staggering educational debt burdens thousands of young attorneys who have no hope of getting the legal jobs that inspired them to incur those loans in the first place. Many of those lucky enough to find work in big law firms, traditionally the most envied segment of the profession, soon find themselves trapped in a hell of attorney dissatisfaction because the people running those firms now view their primary mission as perfecting a relatively new business model that prioritizes specially adapted metrics.

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

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

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

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

As a consequence, interpersonal and institutional allegiances have become frayed, dangerous destabilization has followed, and some long-established firms have even disappeared.

All of this has persisted because the pyramid model—with equity partners at the top and a far greater number of salaried employees (including most lawyers) filling the bottom and middle—has worked well financially for a few. In fact, things got better for them as they made entry into their select group of fellow firm owners more difficult. As law firms and their profits grew, limits on the number of equity partners brought many partners great wealth. But it also destroyed institutional cohesion. While rainmakers offered their books of business to the highest bidder and reaped enormous benefits, overall attorney satisfaction plummeted to record low levels.

FOR ME, all of this came together in 2008 when I started teaching an undergraduate course at Northwestern about the good, the bad, and the ugly of what it means to be a lawyer. From the first day of the first class, I saw students who had great expectations for their potential law careers but little awareness of the likely reality, even for graduates of a prestigious college who were headed for top law schools. I know now that my students were not alone in displaying this gap between expectations and reality; from talking to young lawyers, I realize that it contributes significantly to the personal crisis that many new attorneys experience when they leave law school and try to get a job.

You might think that the American Bar Association, the profession's leading organization, would step in to help address the growing crisis. After all, it has a central role in accrediting law schools. Moreover, the ABA's stated mission includes promoting its members' professional growth and quality of life. But the organization has become a victim of regulatory capture by those it is supposed to oversee.

The picture isn't pretty: students with false expectations, deans with an overwhelming incentive to tell students what they want to hear, and few people with any reason to offer an effective counternarrative. It's not surprising that there have been so many more law students than jobs, and so many unhappy lawyers.

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

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

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

The bottom line is that when—as in 2012—almost seventy thousand students apply for fifty thousand first-year law student openings *each year*, but only half of those who are admitted will find full-time jobs requiring a legal degree, the market hasn’t self-corrected. For full-time long-term jobs requiring bar passage, only a dozen schools reported employment rates exceeding 80 percent nine months after graduation. Considering the investment in money, time, and brainpower that law

school requires (not to mention the promises that law schools make to prospective students), the present outcome is not acceptable and the foreseeable future offers little hope for meaningful improvement.

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

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

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PART I
LAW SCHOOLS

CHAPTER 1

TRACKING THE BUBBLE

In the spring of 1974—purely speculatively, I told myself—I took the Law School Admissions Test.

—Scott Turow, *One L: The Turbulent True Story of a First Year at Harvard Law School*

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

Law school applicants continue to overwhelm the number of places available for them, ignoring data that on their face should propel most aspiring attorneys away from a legal career. As noted in the introduction, only about half of today's graduates can expect to find a full-time