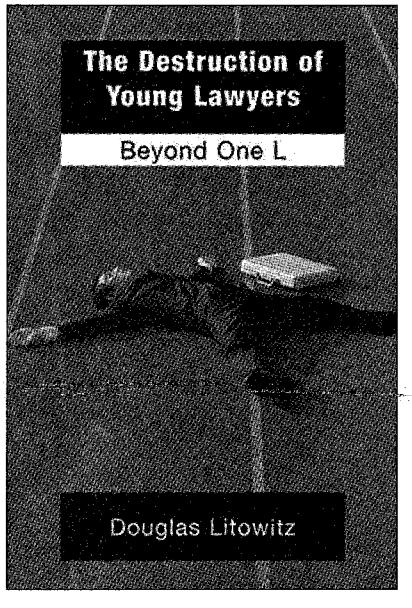
Earnest, Young, & Owing

How law students find themselves trapped in a corporate cartel.

By Avi Klein

Alger Hiss once remarked to his son that "three years at Lewisburg penitentiary is a good corrective to three years at Harvard [Law School]." It is hard to know exactly what he meant by this—Hiss (codename: Advokat) was, after all, a communist spy—but he was neither the first nor the last lawyer to suspect there was something fundamentally wrong with legal education. As Hiss's behavior suggests, law school has the ability—some might say the intention—to engender greed and intellectual myopia, sometimes from the very first day. Young, creative, ambitious men and women, fresh from four years of liberal arts education, enter law school eager to make a change in the world. They leave as dedicated corporate functionaries, consumed with money and prestige, and fearful of upsetting the legal establishment. Douglas Litowitz, in *The Destruction of Young Lawyers: Beyond One L*, exaggerates only a little when he says that law school "breaks people....[I]t is experienced as a trauma, an assault." If law school changes people, it is rarely for the better.

For this reason, popular literature on law school can usually be divided into two groups: the painful memoir and the indignant exposé.



The Destruction of Young Lawyers: Beyond One L
By Douglas Litowitz
University of Akron Press, $32.95

Scott Turow's classic *One L*—which succeeded in scaring two generations of incoming law students witless, and to which Litowitz alludes in his subtitle—is the former, as is *Broken Contract*, by Richard Kahlenberg. In the indignant expose pile are books such as the recent *The People vs. Harvard Law*, by Andrew Peyton Thomas, which accused the school of succumbing to political correctness in its hiring and in its pedagogical decisions. (Turow and Kahlenberg are both Harvard alumni. The school seems to produce a healthy number of both authors and spies—meager evidence, perhaps, that guidance counselors are right when they say you can do anything with a law degree. Litowitz, for his part, attended Northwestern.)

What neither of these two styles of book manages to do, however, is seriously discuss what it is exactly that makes law school so unpleasant. To understand law school—and therefore the grassroots of the legal profession—one has to first grasp the economics supporting it. Here, Litowitz, a professor at Ohio Northern University with a short career in corporate law, stakes out space few practicing attorneys are willing even to survey: The system, Litowitz observes, is designed and sustained by corporate law firms in order to create just the right number of lawyers to fulfill corporate demand, but not so many that the fees of established lawyers are at risk of competition. At the same time, by failing to adequately teach these same lawyers how to actually practice law, and by saddling them with huge debts in the process, the legal establishment "scare[s] young lawyers into cowering submissively before the awesome power of the organized bar and the licensing authorities."

Law students leave the real world behind sometime around orientation, learning instead to construct their lives around their grades and careers, often to a point of absurdity. A single personal anecdote will suffice: On September 11th, 2001, during my first month of law school in Los Angeles, I awoke in time to see the second tower destroyed. My roommate and I made phone calls, wrung our hands, speculated and mourned. And then we thought about morning classes. My torts professor used the Socratic method: Each day he chose a random student or two and grilled them about the previous night's reading. Absence, lack of preparation, and—I assumed—a terrorist attack were no excuse. If I skipped class and the professor mentioned an exception to the laws of negli-

gence, the students who showed up would know it for the exam—but I wouldn't. And so on a day when three thousand Americans were killed, understanding full well that Los Angeles might be the next target, my fellow students and I decided the most important thing to think about was *res ipsa loquitar.*

The truth is we were more scared about grades than we were about Osama bin Laden. And what we were really thinking about was money. Unlike other professional schools, in law school there exists a direct relationship between the two. Large firms typically will not interview students below the top quarter or third of the class for summer associateships, so the difference between an 'A' and an 'A-'—one or two exceptions noted in a three-hour exam—can mean tens of thousands of dollars forgone. These summer positions—which are really martini-fueled junkets—typically turn into full-time positions after graduation; because they are given out based on first-year grades, competition is intense. Concepts like 'billable hours' and 'boutique firm' are better understood in the first semester than 'venue' and 'probable cause.' Before they understand anything about the function of the law, budding lawyers have the economics down pat.

Public opinion of lawyers is shared by lawyers themselves. "Attorney self-loathing," Litowitz reports, "is a specific response both to the conditions under which lawyers are educated, licensed and regulated and to the economic cauldron into which they are thrown." Students worry that they aren't smart enough, that they aren't competent enough, that they won't earn the grades they need to pay off the average $80,000 of debt the average law student accrues. They begin to hate what they are becoming, yet fear alternative paths. Although only ten percent of incoming law students report mental health problems, forty percent of graduates do.

The self-hatred begins in law school classrooms, where the Socratic method—"a ritual of subjugation that purposely disables a student"—is still used, even if it has softened a touch since Turow's experience in the 1970s. Each answer solicits a further question, until the student is forced either into a mistake or into admitting in front of his peers that he is ignorant. "There is a strong element of sadism in the Socratic interchange," Litowitz writes. "It uses fear and shame as a motivating force, which is easier than motivating people with ideas and worthy goals." Instead of learning out of intellectual interest, students study as an insurance policy against being called upon.

If the Socratic method was actually an effective pedagogical device, the costs might be worth the benefits. But, as Litowitz explains, it has absolutely no merit other than as a way to establish a power differential between the would-be lawyer and

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the already established one. Socrates himself didn't use it to teach—it was just a conversational tool he used on his friends. After all, the teacher is the one who is supposed to explain things to the students, not the other way around. This is especially true with the law, which is "intrinsically complicated to such an extent that students need a professor who makes the subject *less* complicated, not more." As Litowitz neatly puts it, "Is it really necessary to raise the anxiety levels of ninety students just to teach the parol evidence rule?"

By using the Socratic method and emphasizing the case study approach—law school textbooks are mainly compilations of appellate decisions, not original teaching material—law professors fail their students both intellectually and professionally. At graduation, the student knows much about appellate court opinions on various complex matters, but to the exclusion of any practical knowledge of how to actually practice. Students know the difference between a 'fee simple absolute' and a 'fee simple subject to condition subsequent,' but they don't know the first thing about how to write a will that takes these concepts into account. Contracts classes rarely involve looking at one. One can even graduate law school without learning how to format a word processor to include line numbers on the margins. Compare this to medical school, where graduates have spent two years in hospital rotations assisting in surgery and delivering babies, and it is easy to understand why Litowitz calls the typical recent law graduate "a licensed fraud."

If there was a conspiracy to commit such a fraud, it would begin with law school and end with the bar exam. Developed in the 1910s in the same fervor of WASP anti-Semitism that motivated the Ivy League to overhaul its admissions procedures, the bar exam has served ever since to boost lawyer salaries while reducing the numbers of skilled lawyers available. Litowitz points out that although there is absolutely no evidence that the ability to pass the bar is related to how well someone practices law, there is an aggressive psychological element not unlike fraternity hazing that helps perpetuate the system. The bar exam, he writes, "is a rite of passage by which the hopeful lawyer-to-be shows his willingness to do anything to please the state bar authorities in exchange for a license." This humiliation is complete with a bar disclosure form that rivals the CIA's in its comprehensive invasiveness. In Maryland, applicants must present themselves at a character interview—a smilingly impolite episode that permits a senior attorney to inquire after a new lawyer's finances and mental health. The message is that the bar made your career on arbitrary grounds, and it can break it the same way.

Each state has its own exam, though most supplement a day of essay writing with the Multistate Bar Examination (MBE), a two hundred question multiple-choice exam testing common law disciplines including torts, contracts and property. "To pass the bar," writes Litowitz, "it is necessary to have at your fingertips an overwhelming stockpile of one-sentence rules about miscellaneous legal subjects." If lawyers practiced like doctors, instant recall would be worth examining. But they don't. When you hire a lawyer, most of what you pay for is his research ability, not his immediate knowledge, and very few corporate lawyers handle any of the issues being tested. Even so, students are placed through a wringer in which they must dedicate two months of study, paying thousands of dollars for preparation courses, all under the absurd presumption that their "competence" is being tested.

Of course, what makes a competent lawyer one year may make an incompetent lawyer the next. "When scores on the MBE started to rise in the 1990s," Litowitz writes, "bar examiners were not delighted: instead they raised the passing cutoff point to ensure that an even greater number of students would fail." As a rule, the more popular a state is, the more difficult the exam. Although there was no evidence lawyer quality was suffering, the Florida bar "now fails twice as many first time takers as it did ten years ago," all in order to avoid "putting the people of Florida at risk." The Sunshine State, not coincidentally, is also a popular retirement home for East Coast attorneys who might be tempted to set up small practices for extra income.

This is all particularly absurd when one considers that most jurisdictions require out-of-staters to retake the MBE to be admitted. If John Roberts decided to leave the Supreme Court and retire to Virginia, keeping a small office for occasional appellate work, he would still have to go for two days next July and sit in a hot auditorium filling in multiple-choice bubbles about constitutional law. (That would be the least of his indignities: Test-takers in Virginia are required to wear both business suits and sneakers or other quiet shoes—Adidas poking out beneath their Brooks Brothers trousers in a Paul Bremer-inspired look.)

One additional distasteful characteristic of the bar exam is that it artificially deflates the number of minority attorneys. First-time bar passage rates for African-Americans are only 61 percent, compared to 90 percent for whites. While law schools have aggressively developed affirmative action programs for both students and faculty, the bar associations have not succeeded in meeting the needs of minority communities. The effect is especially pernicious because, according to a University of Michigan study, minority lawyers are far more likely than their white classmates to pursue public interest jobs.

After cataloging the flaws of law school and the bar exams, Litowitz moves on to the life of young lawyers. Having just narrowly escaped that fate, I found his descriptions faintly horrifying: seemingly independent adults required to account in a ledger for every eight minutes of their time;

licensed professionals who have no contact with their clients, even if those clients are mainly faceless corporations; law firms creating fewer and fewer equity partnerships.

For many young corporate attorneys, the firm is a sweatshop, and their own labor is merely legal-ruled piecework. "The law is crowded—interesting—and full of despair," wrote Archibald MacLeish to his parents after a few disappointing years as a lawyer. "It offers its own rewards, but none other." To his friend Dean Acheson he wrote, "If I correctly analyze my emotions, I am attracted to the law by considerations the most superficial imaginable." Lawyers suffer high rates of mental illness, job dissatisfaction, alcoholism and drug abuse, and divorce. Sandra Day O'Connor calls them "a profoundly unhappy lot."

Mitigating all this personal unhappiness, of course, are the fat paychecks lawyers receive each month—it is hard to feel too sorry for them. The real losers here are the millions of Americans who can't afford the legal representation they need. The incarcerated may receive a court-appointed attorney, but a person in a dispute with a landlord, or on the wrong end of a collections agent, will be lucky to find a law school clinic to assist him. In the end, such a person will always fall victim to rapacious interests that can afford a legion of intimidating legal shock-troopers. We are used to thinking that America has too many lawyers. The truth is, the lawyers we have are just the wrong kind. Litowitz refers to a survey of students from 117 law schools that "found that two-thirds of the respondents were so deeply in debt that they could not even consider a career in public service," and only 5 percent of law students actually follow through. Law schools are good at serving the interests of corporate America. But it's the rest of us who have to fight them off, usually alone.

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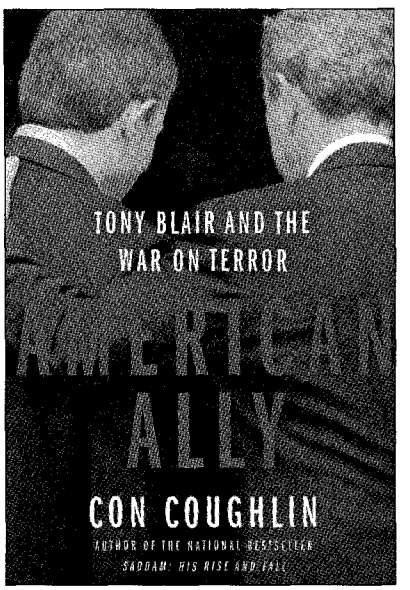
Blair Hitch Project

The real reason Britain's prime minister stood by Bush on Iraq.

By Isaac Chotiner

In the spring of 1999, Tony Blair received a furious call from Bill Clinton. Policymakers in both London and Washington were concerned that the war in Kosovo was not proceeding smoothly. Disputes over ground troops and logistics had found their way, anonymously, into the British and American press. When Blair picked up the phone, Clinton lit into him, accusing the prime minister of not adequately controlling the leakers in his own administration. The episode rather surprised the new premier, who had been enjoying a rapport with the second-term president. But there was no mistaking the message from Clinton, according to the author of a new book on Blair and his relationship with America: "Washington was happy to have Britain as an ally, but only so long as Britain followed Washington's agenda." This would not be the last time Tony Blair was confronted with being the decidedly junior partner in his country's "special relationship."

Con Coughlin's *American Ally: Tony Blair and the War on Terror* is a useful guide to the way Great Britain has conducted its foreign policy since "New Labour" swept into power in 1997. A hawkish, conservative British journalist, Coughlin has written a brisk summary of the international crises of the Blair years. Unfortunately, Coughlin seems unwilling to state for the record what his own reporting suggests—that Blair went along with the Iraq war primarily out of pragmatism and a desire to maintain Britain's historic closeness with America.



American Ally: Tony Blair and the White House
By Con Coughlin
Ecco Press, $26.95

What does make Coughlin's book important, however, is that it highlights the inability of (mostly conservative) commentators to differentiate between liberal internationalists like Blair and the neoconservatives who led the charge for war in America. While liberal hawks are often willing to use force to prevent humanitarian violations and ethnic cleansing, neoconservatives are much more prone to acting unilaterally and without the consent of international institutions. By not adequately explaining this important distinction, Coughlin's analysis of Blair's motives comes up short.