

BUSINESS DAY

## An Expensive Law Degree, and No Place to Use It

By NOAM SCHEIBER JUNE 17, 2016

VALPARAISO, Ind. — By most measures, John Acosta is a law school success story. He graduated from Valparaiso University Law School — a well-established regional school here in northwestern Indiana — in the top third of his class this past December, a semester ahead of schedule. He passed the bar exam on his first try in February.

Mr. Acosta, 39, is also a scrupulous networker who persuaded a former longtime prosecutor to join him in starting a defense and family law firm. A police officer for 11 years in Georgia, Mr. Acosta has a rare ability to get inside the head of a cop that should be of more than passing interest to would-be clients.

“I think John’s going to do fine,” said Andrew Lucas, a partner at the firm where Mr. Acosta rents office space. “He’s got other life skills that are attractive to people running into problems.”

Yet in financial terms, there is almost no way for Mr. Acosta to climb out of the crater he dug for himself in law school, when he borrowed over \$200,000. The government will eventually forgive the loan — in 25 years — if he’s unable to repay it, as is likely on his small-town lawyer’s salary. But the Internal Revenue Service will probably treat the forgiven amount as income, leaving him what could easily be a \$70,000 tax bill on the eve of retirement, and possibly much higher.

Mr. Acosta is just one of tens of thousands of recent law school graduates caught up in a broad transformation of the legal profession. While demand for other white-collar jobs has grown substantially since the start of the recession, law firms and corporations are finding they can make do with far fewer in-house lawyers than before, squeezing those just starting their careers.

Nationally, the proportion of recent graduates who find work as a lawyer is down 10 percentage points since its peak of the last decade, according to the most recent data. And though the upper end of the profession finally shows some signs of recovering, the middle and lower ranks remain depressed, especially in slower-growth regions like the Rust Belt.

As of this April, fewer than 70 percent of Valparaiso law school graduates from the previous spring were employed and fewer than half were in jobs that required a law license. Only three out of 131 graduates worked in large firms, which tend to pay more generous salaries.

“People are not being helped by going to these schools,” Kyle McEntee, executive director of the advocacy group Law School Transparency, said of Valparaiso and other low-tier law schools. “The debt is really high, bar passage rates are horrendous, employment is horrendous.”

Even as employment prospects have dimmed, however, law school student debt has ballooned, rising from about \$95,000 among borrowers at the average school in 2010 to about \$112,000 in 2014, according to Mr. McEntee’s group.

Such is the atavistic rage among those who went to law school seeking the upper-middle-class status and security often enjoyed by earlier generations, only to find themselves on a financial treadmill and convinced their schools misled them, that there is now a whole genre of online writing devoted specifically to channeling it: “scamblogging.”

Belatedly, many schools are starting to respond to this brutal reality, or at least the collapse in applications it has set off. In February, Valparaiso announced it was offering buyouts to tenured professors. As of May, 14 of 36 full-time faculty members had either accepted the package or retired. The law school plans to reduce its student body by roughly one-third over the next few years, from about 450 today.

To the faculty at Valparaiso and the roughly 20 percent of the 200 or so American Bar Association-accredited law schools that have cut back aggressively in recent years, these moves can feel shockingly harsh.

“Maybe I was naïve, but I didn’t think it would be as stark,” said Rosalie Levinson, a longtime constitutional law professor at Valparaiso who recently headed a committee on restructuring the school. “The number of tenured faculty that would be leaving — not gradually but immediately — just personally, that was difficult.”

But from the perspective of the students caught up in the explosion of unrepayable law school debt, the shake-up at the school, and others like it, look rather pedestrian.

Given the tectonic shifts in the legal landscape, the relevant issue may not be how much law schools like Valparaiso should shrink. Today the more

important question is whether they should exist at all.

## 'We Buy Liens'

If you drove west from the eastern edge of Valparaiso's campus early this spring, you would have passed a pawnshop, a discount cigarette outlet and, intriguingly, a sign announcing "Café available for rent," before reaching the heart of the city's downtown, which includes the county courthouse and a handful of law offices.

When I met Mr. Acosta at one of the offices on an afternoon in late April, he was moving the last of his lawyer swag into the windowless space that will house his practice. He wasn't scheduled to start work for another few weeks, until after he was sworn into the state bar, but he had the giddiness of a man eager to try on his new professional identity.

Mr. Acosta, who retains the erect manner and intense stare of his former colleagues in law enforcement, applied to law school planning to become a prosecutor. But he changed paths after briefly testing the local job market and finding his prospects grim.

Unfortunately, the market for defense lawyers in the area was only slightly better. Although he received a few offers, none came with a salary or benefits. The firms offered him little more than a desk and a business card. Any revenue he brought in would have to be shared with the partners 50-50, and they would not be reciprocating.

It was at this point that he decided to start his own firm. "If I'm going to split the money and they're not doing anything, I'm going to split the money with myself," he said.

Actually, there are others who will be sharing in his income. Mr. Acosta recently became engaged to another Valparaiso law student, Erica Melendez, who graduated this spring and plans to open her own firm specializing in immigration work. Between them they will be nearly half a million dollars in the red while trying to run two businesses and raise Ms. Melendez's 5-year-old daughter.

Still, Mr. Acosta and Ms. Melendez, who speaks fluent Spanish, are better positioned than many of their classmates, who don't have uniquely marketable skills that would allow them to set off on their own.

Earlier that day, I joined five Valparaiso students for lunch at a Mexican restaurant near campus. The main topic of conversation was whether they were more concerned about passing the bar exam, which Valparaiso graduates have struggled to do in recent years, or finding employment.

A student named Ethan Legg said that if he could just pass the bar, he could probably find something somewhere. To which his classmate Daria Anderson responded that she didn't see what good passing the bar would do if you were "working at Starbucks for less than \$40,000 per year."

Ms. Anderson had been planning to buy a house for herself and her two children when she was accepted to law school. She had graduated from Indiana University in Bloomington with minimal debt thanks to scholarships, and managed to save about \$10,000 working a variety of jobs over the next decade. Although she knew law school would be a financial strain, she decided she would regret not trying.

"I would have been sitting at some desk, in somebody's office, with some type of job, wondering, 'Should I have gone?'" she said.

Today, she is over \$100,000 in debt and her job search has been taxing. With few leads on a legal position, Ms. Anderson has set her sights on a so-called J.D.-advantaged job, such as vetting and negotiating a corporation's contracts with suppliers. The starting salary is likely to be in the mid-to-high five figures, but she hopes such a job could lead to a more senior position.

For students like Ms. Anderson, the problem isn't just that the market for Valparaiso law graduates is saturated, although it is. Mr. Lucas, the law partner who rents space to Mr. Acosta, complained of a large "oversupply of lawyers" in the area.

It's that the market for all recent law school graduates has been relatively saturated.

A decade ago, a large majority of graduates from the top 10 to 15 law schools who wanted full-time work at a big law firm could get it, said Paul F. Campos, a law professor at the University of Colorado at Boulder, who has written extensively about the economic prospects of law school graduates.

With big-firm jobs drying up, however, many of these graduates began competing for lower-paying spots at midsize firms, which also downsized, and certain government jobs they wouldn't have sought in an earlier era.

"That takes those jobs off the table," Mr. Campos said. "It has ripple effects all the way throughout the profession, so that a small law firm in northwest Indiana can say to recent grads: 'We want you to work for free. We won't pay you.'"

Law schools, for their part, seem strangely oblivious to all this. Officially, many stress the growing availability of jobs for which a law degree is preferred rather than required — the kind of job Ms. Anderson has been searching for. But given the vagueness of the category, Mr. Campos said, discounting the number of these jobs by 50 percent is a good rule of thumb.

"I counsel a lot of students and try to make them realize that a J.D.-advantaged job can be extremely useful," said Del Wright Jr., a Valparaiso tax

law professor who is one of the school's most popular instructors.

"You see all these businesses, 'We Buy Liens' — what exactly is going on there?" he continued, explaining that buyers of tax liens can earn hefty state-sanctioned interest rates, as well as fees to get the liens removed. "If you are entrepreneurial but not the best lawyer, you might look into it."

### 'It's a Mess'

The law school at Valparaiso occupies two buildings at the southwest corner of campus: a sprawling brown brick structure that looks as if it might house overflow personnel from a federal bureaucracy, and a smaller, much more elegant red brick building that sits cater-corner from the main compound. I toured them recently with Bruce Berner, a longtime law professor and associate dean at Valparaiso who retired in 2014 but remains a beloved presence on campus.

Strolling through the corridors, Mr. Berner could not help pointing out the offices of colleagues who had accepted the buyout and would not be back in the fall. "Ivan, if it hadn't been for something like this situation, wouldn't have stopped," he said of Ivan Bodensteiner, a professor who had recently served as interim dean.

When Mr. Berner joined the Valparaiso faculty in 1971, he was one of nine professors, and the school focused primarily on legal instruction. But in the mid- to late 1980s, he said, the school put an increasing emphasis on legal scholarship and recruited faculty members who could produce it. Across the country, many law schools were undergoing a similar evolution.

It's no coincidence that the average law school faculty began to grow quickly around this time: Each professor was teaching fewer courses to make time for research. Mr. Berner said he went from teaching 15 or 16 credit hours a year — typically five classes — to no more than 12. Every law school seemed to want to emulate Harvard and Yale. (Valparaiso said the growth of its faculty was due in part to an American Bar Association mandate to make its curriculum more comprehensive.)

It's also no coincidence that law schools raised the cost of attending, which helped cover the additional expense. Against the backdrop of a healthy demand for lawyers, fast-rising tuition did not discourage students, who could borrow most (and eventually all) of the cost from the government and frequently pay it back with relative ease. Law school applications generally increased over the next two decades.

For Valparaiso, the upmarket strategy had the desired effect. Although the school had long enjoyed a solid reputation in northern Indiana, producing a thick roster of judges, politicians and business leaders, it began to attract applicants from a wider geographical area. Median scores on the Law School Admission Test began to creep up, eventually moving several points above 150, roughly the median for all test-takers nationally.

"When we were in our heyday, in the late '80s, '90s," Mr. Berner said, "we could always say to the top 10 percent, you could hit something big in Chicago if you wanted. Or D.C. or New York."

In 2004, former President George H. W. Bush spoke at a gala celebrating the school's 125th anniversary. It was around this time that Valparaiso, like many law schools, approached its peak competitiveness. Law school applications topped out at just over 100,000 nationally in 2004 and gradually began to decline.

For Valparaiso, the bottom fell out in two stages. Applications dropped from over 3,000 in 2007 to under 1,600 in 2009, although this was partly because of a change in recruitment strategy, then below 1,200 a few years later.

After this second drop, faculty members and administrators became anxious. "I was chair of the admissions committee and we're sitting there watching this," Mr. Berner said. "It's a mess."

The committee agonized over whether it should accept fewer students or keep its class size roughly constant and admit weaker candidates. In the end, it opted for the latter, a decision Mr. Berner admits wasn't entirely on the merits, since fewer students would have meant less revenue.

"There was a lot of pressure, of course, from the central administration to keep the numbers up," he said. (Mark A. Heckler, the university president, said that admissions decisions were entirely up to the law school but that the financial model was for the school to fund itself.)

By 2014, the limitations of the strategy had become apparent: The figures the school reported for the rate at which its graduates passed the Indiana bar exam, which had already been dipping, crashed to about 61 percent, from about 77 percent the year before. An enormous number of students wouldn't be able to work as lawyers in the state even if jobs were theoretically available.

Andrea Lyon, who was just beginning her first semester as dean of the law school, called a mandatory meeting for all third-year students, to review the grim numbers and urge them to take a handful of remedial bar courses the school was offering. "It was a panicked meeting," said Chris Freiberg, who graduated from the law school in 2015.

"I felt I had to address this right away," Dean Lyon said. "Some students may have viewed it as panic, but that's not what it was.")

But the following year, bar passage rates ticked up only a few points. The problem was that these rates tend to be a broadly predictable function of

scores on the Law School Admission Test. With average test scores dropping as the school relaxed its entry criteria, there were limits to how much the school could improve its bar results.

Valparaiso was, in effect, caught in a deflating financial bubble, one most law schools were slow to heed because of the government's role in financing legal education. Applications ultimately tumbled about 40 percent nationally between 2010 and 2015, and by a roughly similar percentage at Valparaiso.

One telltale sign of the bursting bubble was that more prestigious schools began poaching the students of lower-ranked schools after their first year. "We were losing students to Indiana University," said Professor Levinson at Valparaiso. "We lose two to three a year of our honors students to Notre Dame."

By the fall of 2015, the university's central administration began to debate several options for overhauling the law school; among the more drastic alternatives were to close it or merge it with another school. In the end, the leadership decided that shrinking the school would suffice.

By that point, the faculty put up little resistance. "I don't think it's moral to take someone's money who can't make it," Dean Lyon told me. "It's just wrong."

Mr. Berner, for his part, feels a tinge of regret when he looks back on the years after the 2009 recession. "Everyone had good intentions," he said. "If we could go back, I think we should have erred a little more on the side of turning people down."

### 'Legion of Boom'

One side of the top row in Prof. Stephen Wilks's secured transactions class last semester belonged to a group of five students he named the "legion of boom."

If you teach at Valparaiso Law School, it's the legion of boom that makes you believe you are on the path of righteousness. The students radiate intelligence and prepare for class scrupulously.

Unusual among their classmates, four of the five had lined up jobs well before graduation, including a broad-shouldered Iowan named Jeremy Hahn, who will be joining the general counsel's office of a large corporation in Des Moines.

You don't have to talk to Mr. Hahn for very long to figure out that he would succeed in just about any terrain you airlifted him into. In addition to being near the top of his class, he was president of the business law society, editor in chief of the student law journal and head of the graduation steering committee.

On the day I turned up, Professor Wilks had stumped his students with an obscure question about collateral. "If you'd missed this, you would have lost one-third of the available points for this essay question," he gently chided the class. When I later asked Mr. Hahn if he had known the answer, he admitted that he did, but said he preferred not to call attention to himself for validation.

It's easy to assume that Valparaiso's decision to scale back its class size means that going forward, the law school will consist much more of people like Mr. Hahn and his fellow legionnaires. If that were the case, the decision might be completely rational.

But in reality, that stands almost no chance of coming to pass. That's because the way Valparaiso and other lower-ranked schools lure students like Mr. Hahn is to offer sizable scholarships, and the only way they can afford these scholarships is if a large proportion of other students pay full freight.

Inevitably, many of these sticker-price payers are weak students who lack better options. Research by Prof. Jerome M. Organ, an expert on law school economics at the University of St. Thomas School of Law in Minneapolis, shows that students with low test scores and undergraduate grade-point averages tend to subsidize the stars; this is especially true of third- and fourth-tier schools like Valparaiso. It's the marginal students who pay the bills, not students like Mr. Hahn.

And this dynamic is very likely to continue, for the simple reason that there is still too much law school capacity chasing too few good students. While law school applications have dropped by nearly 40 percent nationally since 2010, enrollment has dropped by only about 30 percent, and the number of full-time faculty members has dropped by less than 15 percent, according to data compiled from A.B.A. filings by the law school analyst Matt Leichter.

In such a world, schools like Valparaiso essentially face the following choice: Admit a large number of marginal students, or shut down.

Professor Organ believes that some law schools will in fact shut down. He draws an analogy to dental schools, which experienced a similar collapse in applications in the 1970s and 1980s, leading to the eventual demise of about 10 percent of all schools by the early 1990s.

In the meantime, Valparaiso must keep taking risks on a lot of students, a reality the administration does not exactly hide.

"I don't think we should stop taking chances; I just think we need to take chances intelligently and thoughtfully," Dean Lyon said. "If you've taught

for any length of time, you know pretty quickly if someone has that hunger to do a good job. That makes up for a lot.”

## A Career Deferred

A few hours after I spoke with Dean Lyon I drove about 75 miles east to a Meijer store in Goshen, Ind., where I met a 2015 Valparaiso Law School graduate named Sarah Tapia.

As a child, Ms. Tapia had siblings who were in and out of jail. She decided in high school that she would become a lawyer to help people like them. “I kind of grew up with that my whole life,” she said. “Because of money, because of race, they never really got a fair chance at justice.”

She attended Goshen College, where she studied history, and was admitted to two law schools: Valparaiso and a for-profit school in North Carolina, Charlotte School of Law, that won full American Bar Association accreditation only in 2011.

Ms. Tapia struggled her first semester at Valparaiso, but she said her grades steadily improved after that. After graduation, she took a bar prep class and threw herself into studying full time, undeterred by her “massive” debt load. When she found out she failed, she took a job in the clothing department of Meijer while she prepared to take the test again this past February. But not long before I showed up, she found out that she had failed that test, too.

Ms. Tapia is a small woman with long brown hair who often looks down when she speaks. But it would be a mistake to confuse this with a lack of conviction. She urged me to watch the Netflix documentary series “Making a Murderer,” which raised questions about the murder conviction of a man named Steven Avery. “It’s exactly what I went to law school to do,” she said.

From the perspective of an admissions committee looking to take a chance on a high-risk applicant, Ms. Tapia must have presented a compelling case. She had already defied long odds by graduating from college. She had an obvious passion for the law.

She had that unteachable impulse to succeed that Dean Lyon said she was looking for. Even today, with two strikes against her, she is determined to keep taking the bar exam until she passes it. There is no doubt in her mind that she will one day be a practicing lawyer, and she may well be right.

Still, in the meantime, she has a crushing amount of debt and a job that doesn’t pay her enough to so much as dent it.

“Why does Valpo have an economic structure that looks like Harvard Law School’s?” asked Mr. Campos, the University of Colorado expert on the prospects of recent law school graduates. “It makes absolutely no sense to do it. It’s why they have to charge Harvardenesque prices.”

Two generations ago, someone like Ms. Tapia could have attended Valparaiso and still made it financially even if her legal career didn’t pan out. Today, that’s simply not possible.

“The bottom line here is that institutions like Valparaiso clearly were fulfilling a valuable role until they were swept up in various forms of craziness in higher education,” Mr. Campos continued.

I asked Ms. Tapia if she ever regretted her decision to go to law school. She said she sometimes wondered if “maybe I shouldn’t have done this, maybe this isn’t what I was supposed to do with my life,” but those moments are pretty fleeting.

“I wouldn’t trade my law degree for anything,” she added. “I would trade the debt.”

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