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Learning from Law Students: How PhDs Might Seek Legal Remedy in the Face of Widespread Unemployment

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Learning from Law Students: How PhDs Might Seek Legal Remedy in the Face of Widespread Underemployment

EMILY GROTHOFF*

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INTRODUCTION

In the wake of the Great Recession, during the paucity of available jobs, the legal market suffered along with the rest of the economy, and a number of law students matriculated only to find themselves struggling to secure gainful employment.¹ Given their background and litigious training, it is perhaps unsurprising that disgruntled J.D. holders would seek legal remedies when faced with the realities of their tough positions. Feeling misled into a false sense of economic security, and greatly burdened by large amounts of debt in student loans, many young, new attorneys brought lawsuits against their law schools under assorted tort and consumer protection laws with varied results.²

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1. Jeffrey Toobin, *The Legal One Per Cent*, NEW YORKER (Nov. 6, 2014), <http://www.newyorker.com/news/daily-comment/legal-one-per-cent> [https://perma.cc/KS5K-8LAZ].

2. *Compare* MacDonald v. Thomas M. Cooley Law Sch., 724 F.3d 654 (6th Cir. 2013) (affirming dismissal of Michigan claims because purchase of education was not covered under

In contrast, however, many PhD holders—in both the humanities as well as the sciences—have struggled to secure stable employment in the narrow market of academia for decades,³ investing years of their lives⁴ and frequently taking out loans without any hope “[of] a compensatory high salary” in the first place.⁵ The phenomenon of an underemployed⁶ PhD is nothing new in our society, and yet, it persists as a deep problem that continues to leave many private individuals unhappy and economically struggling and presents broader public concerns as well.⁷ Since many graduate students rely on government subsidies to support their specialized education, when they cannot find employment in the careers for which they have been specially trained, “this public investment . . . represent[s] a waste of limited societal resources.”⁸

This Note examines overproduction and underemployment problems facing the academic market and PhD graduates⁹ from a legal perspective. Part I will briefly review key legal takeaways from several distinctive cases that law school graduates brought against their almae matres regarding poor employability. Part II then describes the particularities of the “PhD problem” and how it compares and contrasts with the problem that J.D. holders recently faced. Finally, Part III will examine what legal remedies disenfranchised PhDs might pursue and whether such remedies could—and should—be sought in the courts.

state consumer protection law); *Phillips v. DePaul Univ.*, 19 N.E.3d 1019 (Ill. App. Ct. 2014) (affirming dismissal of Illinois claims because plaintiffs insufficiently alleged fraud, causation, and damages); *Austin v. Albany Law Sch. of Union Univ.*, 957 N.Y.S.2d 833 (Sup. Ct. 2013) (dismissing New York claims because plaintiff insufficiently alleged fraud and damages); *Gomez-Jimenez v. N.Y. Law Sch.*, 943 N.Y.S.2d 834 (Sup. Ct.) (same), *aff'd*, 956 N.Y.S.2d 54 (App. Div. 2012); *with Harnish v. Widener Univ. Sch. of Law*, 931 F. Supp. 2d 641 (D.N.J. 2013) (denying dismissal of New Jersey and Delaware claims because plaintiffs sufficiently alleged fraudulent conduct, causation, and damages); *Alaburda v. Thomas Jefferson Sch. of Law*, No. 37–2011–00091898-CU-FR-CTL, 2012 WL 6039151 (Cal. Super. Ct. Nov. 29, 2012) (denying summary judgment on California claims because plaintiff’s reliance was reasonable, and she did sustain damages).

3. LEWIS C. SOLOMON, LAURA KENT, NANCY L. OCHSNER & MARGO-LEA HURWICZ, *UNDEREMPLOYED PH.D.’S* 1 (1981).

4. According to one article published in 2007, the average time spent towards earning a PhD was 8.2 years. Joseph Berger, *Exploring Ways To Shorten the Ascent to a Ph.D.*, N.Y. TIMES (Oct. 3, 2007), <http://www.nytimes.com/2007/10/03/education/03education.html> [<https://perma.cc/RN8Y-MVTP>].

5. LEONARD CASSUTO, *THE GRADUATE SCHOOL MESS* 177 (2015). In his book, Cassuto claims that, excluding home mortgages, “one out of every three dollars that Americans borrow . . . goes to pay for higher education, with a total principal of around a trillion dollars.” *Id.*

6. For a discussion on the differences between unemployment and underemployment for PhDs, and the trouble in predicting exact numbers, see Gary McDowell, *The Fool’s Gold of Ph.D. Employment Data*, SCIENCE (June 9, 2016, 10:00 AM), <http://www.sciencemag.org/careers/2016/06/fool-s-gold-phd-employment-data> [<https://perma.cc/H2LR-X8XT>].

7. See CHARLES A. GOLDMAN & WILLIAM F. MASSY, *THE PHD FACTORY* 4–6 (2001).

8. *Id.* at 4.

9. Although consideration and comparisons across other graduate degrees would also be of great interest, for the purposes of clarity and brevity this Note focuses solely on issues of employability facing PhD holders.

I. WHAT “LAW SCHOOL LITIGATION” HAS TAUGHT US

As the Introduction notes, recent and disaffected law school graduates have led a wave of law school litigation in the past few years.¹⁰ The topic of these lawsuits and their viability have received much attention and study as an interesting battle within the legal world.¹¹ The plaintiffs in these cases brought class action lawsuits, alleging that their schools used deceptive reporting practices and manipulated data so that the schools appeared to be more successful at producing gainfully employed attorneys than they actually were.¹² While the plaintiffs did not dispute “the intrinsic value of a legal education,” they argued that the schools grossly misled them concerning “the economic value of their law degree.”¹³ Their central legal arguments were grounded both in common law tort theories, including legal claims of fraud and misrepresentation, and in violation of state consumer protection laws.¹⁴ To win on these claims, however, the plaintiffs must prove crucial elements.¹⁵ Four elements are required to prove fraud: “(1) false representation or concealment of a material fact; (2) reasonably calculated to deceive; (3) made with the intent to deceive; and (4) resulting in injury or detrimental reliance.”¹⁶ For negligent misrepresentation, three elements are required: “(1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; (2) that the information was incorrect; and (3) reasonable reliance on the information.”¹⁷ State consumer laws vary by state, but many share elements with fraud claims while having “less rigorous” standards than common law torts.¹⁸ Many courts have been conservative in finding these elements,¹⁹ and thus many cases against law schools have ultimately failed.²⁰ Several cases highlight the complexities in reasoning and demonstrate distinctive nuances among these decisions.

10. See *supra* note 2.

11. See Ogechi Achuko, *The Blame Game: Law Students Sue Their Law Schools for Deceptive Employment Reporting Practices*, 20 VA. J. SOC. POL’Y & L. 517 (2013); Andrew S. Murphy, Note, *Redeeming a Lost Generation: “The Year of Law School Litigation” and the Future of the Law School Transparency Movement*, 88 IND. L.J. 773, 779–80 (2013); Sara Randazzo, *Jobless Graduates Who Sued Law Schools Find Little Success in Court*, WALL ST. J. (Oct. 15, 2015, 4:47 PM), <http://www.wsj.com/articles/jobless-graduates-who-sued-law-schools-find-little-success-in-court-1444936032> [<https://perma.cc/RRP2-K87J>]; Amy X. Wang, *Law School Grads Can’t Get Jobs, and Now Some Are Suing over It*, QUARTZ (Jan. 9, 2016), <http://qz.com/590010/law-school-grads-cant-get-jobs-and-now-some-are-suing-over-it> [<https://perma.cc/B3XW-YH6M>].

12. Achuko, *supra* note 11, at 518–19.

13. *Id.* at 521 (emphasis omitted).

14. *Id.* at 528–48.

15. *Id.*

16. *Id.* at 528–29.

17. *Id.* at 545.

18. *Id.* at 547.

19. The Federal Rules of Civil Procedure call for a heightened pleading standard for fraud claims. FED. R. CIV. P. 9(b).

20. See, e.g., *MacDonald v. Thomas M. Cooley Law Sch.*, 880 F. Supp. 2d 785 (W.D. Mich. 2012), *aff’d*, 724 F.3d 654 (6th Cir. 2013); *Phillips v. DePaul Univ.*, 19 N.E.3d 1019 (Ill. App. Ct. 2014); *Austin v. Albany Law Sch. of Union Univ.*, 957 N.Y.S.2d 833 (Sup. Ct.

A. Reliance

One important legal issue that judges grapple with is that of reasonable reliance on the plaintiffs' parts.²¹ For example, in *Gomez-Jimenez v. New York Law School*, the plaintiffs alleged that their law school misrepresented critical data about employment opportunities by failing to give the percentage of graduates in temporary and part-time positions and counting anything such as a "part-time . . . barista in Starbucks" as a "business" job.²² In that case, however, Judge Schweitzer did not find any basis for the plaintiffs' reliance, since "[b]y anyone's definition, reasonable consumers—college graduates—seriously considering law schools are a sophisticated subset of education consumers, capable of sifting through data and weighing alternatives before making a decision regarding their post-college options, such as applying for professional school."²³ In the world of higher education, when there are "any number of sources of information to review" before making a decision on whether to enroll in school or which school to enroll in, Judge Schweitzer reasoned that the onus rests with the prospective student to make savvy choices for her future.²⁴

Not all courts have adopted such a strict sentiment, however. In *MacDonald v. Thomas M. Cooley Law School*, the plaintiffs made the same argument and contended that the law school omitted vital details when calculating and reporting employment and salary data, and that as prospective students they relied on this misleading information in deciding to attend that school.²⁵ The *Cooley* court, like in *Gomez-Jimenez*, found that the plaintiffs' reliance on this data was unreasonable.²⁶ However, it distinguished itself from *Gomez-Jimenez*, noting that it did "not necessarily agree that college graduates are particularly sophisticated in making career or business decisions. Sometimes hope and dreams triumph over experience and common sense."²⁷ Similarly, the appellate court in *Gomez-Jimenez* agreed with this sentiment in *Cooley*.²⁸ The appellate court upheld the earlier dismissal of the case for

2013); *Gomez-Jimenez v. New York Law Sch.*, 943 N.Y.S.2d 834 (Sup. Ct.), *aff'd*, 956 N.Y.S.2d 54 (App. Div. 2012).

21. For a further examination of the issue of "reliance" in these cases, see Recent Cases, *Torts—Fraudulent Misrepresentation—Sixth Circuit Finds Law School Applicants Could Not Reasonably Rely on School-Provided Employment Statistics—MacDonald v. Thomas M. Cooley Law School*, 724 F.3d 654 (6th Cir. 2013), 127 HARV. L. REV. 1017 (2014) [hereinafter *Fraudulent Misrepresentation*].

22. *Gomez-Jimenez*, 943 N.Y.S.2d at 839.

23. *Id.* at 843.

24. *Id.* Judge Schweitzer has not been alone in holding such an opinion. For similar reasoning by former ABA president William Robinson, see David Ingram, *ABA Head Has Little Sympathy for Jobless Lawyers*, REUTERS (Jan. 4, 2012, 7:30 PM), <http://www.reuters.com/article/us-usa-legal-aba-idUSTRE80401M20120105> [<https://perma.cc/652M-3JPG>] ("It's inconceivable to me that someone with a college education, or a graduate-level education, would not know before deciding to go to law school that the economy has declined over the last several years and that the job market out there is not as opportune as it might have been . . . years ago.").

25. *Cooley*, 880 F. Supp. 2d. at 793–95.

26. *Id.* at 797.

27. *Id.*

28. *Gomez-Jimenez v. New York Law Sch.*, 956 N.Y.S.2d 54, 60 (App. Div. 2012).

failure to state an actionable claim, although it noted the defendant had promulgated “an incomplete, if not false, impression of the school[’s] job placement success.”²⁹ That court further noted that it “[was] not unsympathetic to plaintiffs’ concerns” and conceded that many students and their families can easily suffer from such poor guidance.³⁰ In the opinion’s closing, the appellate court accordingly admonished the entire legal profession, demanding that the profession must strive to practice according to the highest of ethical standards, and noted that law schools have “at least an ethical obligation of absolute candor to their prospective students.”³¹

A few plaintiffs have surmounted the obstacle of proving “reasonable” reliance, however. A California court heard two similar cases in which law graduates sued their law schools over misleading employment data.³² The court held that the reports that the law schools published were enough to induce students to reasonably conclude that reported jobs were those “for which a law school education is a requirement or preference.”³³ Rather than view students as “foolhardy businesspeople” capable of making sophisticated decisions about their future careers, the California court in those cases seemed to treat prospective law students more like naïve consumers.³⁴

Additionally, the requirement for reliance vanishes altogether if state consumer protection laws do not call for it. For example, in *Harnish v. Widener University School of Law*, the plaintiffs argued, as in other cases, that their law school had disseminated misleading and false information regarding employment rates.³⁵ However, unlike the plaintiffs in many other lawsuits, the *Harnish* plaintiffs alleged that Widener violated New Jersey and Delaware state consumer fraud acts.³⁶ The New Jersey Consumer Fraud Act (NJCFRA)³⁷ and the Delaware Consumer Fraud Act (DCFA)³⁸ have a lesser burden of proof for plaintiffs; the acts do not require proof of reliance, but rather “proof of a causal nexus between the concealment of the material fact and the loss.”³⁹ The *Harnish* court found this “causal nexus” fulfilled in the “connection . . . between the allegedly misleading statements and Plaintiffs’ inducement to buy legal education from Widener, not whether Plaintiffs received a

29. *Id.* at 59.

30. *Id.* at 60 (noting that prospective students can “make decisions to yoke themselves and their spouses and/or their children to a crushing burden [of student loan debt], because the schools have made misleading representations that give the impression that a full time job is easily obtainable when in fact it is not”).

31. *Id.* at 61.

32. *Hallock v. Univ. of S.F.*, No. CGC-12-517861, 2012 Cal. Super. LEXIS 3091 (Cal. Super. Ct. July 19, 2012); *see also Arring v. Golden Gate Univ.*, No. CGC-12-517837, 2012 Cal. Super. LEXIS 4661 (Cal. Super. Ct. July 19, 2012).

33. *See Hallock*, 2012 Cal. Super. LEXIS 3091, at *2; *see also Arring*, 2012 Cal. Super. LEXIS 4661, at *2.

34. *See Fraudulent Misrepresentation*, *supra* note 21, at 1022.

35. *Harnish v. Widener Univ. Sch. of Law*, 931 F. Supp. 2d. 641, 643 (D.N.J. 2013).

36. *Id.*

37. N.J. STAT. ANN. §§ 56:8-1 to -20 (West 2012).

38. DEL. CODE ANN. tit. 6, §§ 2511–2527 (West 2012).

39. *Harnish*, 931 F. Supp. 2d. at 651 (quoting *Debra F. Fink, D.M.D., MS, PC v. Ricoh Corp.*, 839 A.2d 942, 955 (N.J. Super. Ct. Law Div. 2003)).

legal job.”⁴⁰ In that case, statutory law proved more plaintiff friendly than common law, and the issue of reliance was bypassed altogether.

B. Damages

Another element that plaintiffs in these law school cases may struggle to sufficiently plead is that of actual damages. In *Phillips v. DePaul University*, the plaintiffs sought to recover “the difference between what they paid in tuition based on the alleged misrepresentations regarding jobs and salary data . . . and what they should have been paid in tuition based on the ‘true’ value of a DePaul degree” along with the expected income they had expected to receive.⁴¹ The court in that case found that not only were such damages inadequately pleaded,⁴² but that they also “failed to plead any reliable mechanism for calculating the ‘true’ value of their law degrees.”⁴³ The court in *Gomez-Jimenez* found a similar claim for damages to be too remote and speculative.⁴⁴ In *Austin v. Albany Law School of Union University*, when the plaintiffs made similar arguments for damages, the court replied quite candidly that a student’s tuition pays for “the opportunity to acquire a legal education,” which is exactly what the plaintiffs received.⁴⁵

Again, however, lesser pleading standards under consumer protection state statutes may save the day for plaintiffs. In *Harnish*, the plaintiffs also sought “the difference between the inflated tuition paid by Class members . . . and the true value of a WLS [Widener Law School] degree.”⁴⁶ The court held this pleading sufficient under the NJCFA’s “broad standard for ascertainable loss.”⁴⁷ In this consumer protection context, the “value of a degree” seems to mean the true “market value” the degree holder can earn in the workplace, not the intrinsic value of the education itself. Ironically, it seems that the former would in fact be easier to calculate than the latter. Nevertheless, many are concerned that proof of actual damages in these cases is one element that many courts will continue to find too speculative.⁴⁸

C. “Student as Consumer”

Perhaps one of the greatest challenges for plaintiffs alleging consumer protection violations against their schools is the legal and legislative systems’ reluctance to acknowledge students as “consumers.”⁴⁹ In *Harnish*, the NJCFA and DCFA both had very similar pleading standards, which were less rigorous than those of the common

40. *Id.* at 653.

41. *Phillips v. DePaul Univ.*, 19 N.E.3d 1019, 1034 (Ill. App. Ct. 2014).

42. *Id.* (finding that “plaintiffs received exactly what they paid for (the J.D. degrees) and, thus, have failed to show any actual damages”).

43. *Id.*

44. *Gomez-Jimenez v. N.Y. Law Sch.*, 943 N.Y.S.2d 834, 851 (Sup. Ct.), *aff’d*, 956 N.Y.S.2d 54 (App. Div. 2012).

45. *Austin v. Albany Law Sch. of Union Univ.*, 957 N.Y.S.2d 833, 843 n.2 (Sup. Ct. 2013).

46. *Harnish v. Widener Univ. Sch. of Law*, 931 F. Supp. 2d 641, 652 (D.N.J. 2013).

47. *Id.* at 653.

48. *See* Murphy, *supra* note 11, at 805–06.

49. *See* Achuko, *supra* note 11, at 548.

law claims.⁵⁰ However, in some states, consumer protection laws are limited to household consumers and exclude products for “business” purposes.⁵¹ When such an exception exists and the court applies it, as the court did in *Cooley*, the court may construe the “product” that schools market—education—as a “business” rather than a household product, thus barring the plaintiff’s consumer protection claim.⁵² But it depends on the court. In *Gomez-Jimenez*, the appellate court interpreted the New York state statute for consumer protection, which included an exception similar to that in *Cooley*, as governing law schools and the legal education that they provide.⁵³ In addition to state law claims, the argument has been made that law schools’ fraudulent practices could violate the Federal Trade Commission Act, except that institutions of higher education are generally considered places that confer educational rather than economic gains.⁵⁴

The varied and enigmatic interpretations of these statutes highlight the difficulty that currently exists when students argue that consumer protection laws apply to their education. Not only do members of the legal and legislative world wrestle with this topic, but social theorists do as well.⁵⁵ As *Cooley* and *Gomez-Jimenez* illustrate, the different outcomes on the topic of education as a product rest largely in interpretation.

In summary, courts that view law students as unsophisticated buyers of a degree—a degree that is valued by its market value rather than its intrinsic value—are more likely to find the necessary elements of both common law torts and state statutes met. However, courts that adopt a stricter view are more likely to take a “caveat emptor” approach, finding law graduates as savvy and capable young persons who failed in due diligence before investing in their education to make sure they could market themselves later. Only time will tell if a more consistent approach to these lawsuits emerges.

II. THE PHD PROBLEM

How courts have reviewed and treated law school graduates is difficult to dismiss when considering the legal ramifications of the PhD problem. Both law students and PhD students share a common identity as doctoral graduate students, and it is reasonable to infer that courts would consider PhD students to be more or less equal in sophistication and position as “consumers” of higher education. However, the problems facing PhD graduates are somewhat different from the problems that brought

50. See *Harnish*, 931 F. Supp. 2d at 654.

51. See, e.g., Jean Braucher, *Deception, Economic Loss, and Mass-Market Customers: Consumer Protection Statutes as Persuasive Authority in the Common Law of Fraud*, 48 ARIZ. L. REV. 829, 831 (2006).

52. *MacDonald v. Thomas M. Cooley Law Sch.*, 880 F. Supp. 2d 785, 792 (W.D. Mich. 2012), *aff’d*, 724 F.3d 654 (6th Cir. 2013).

53. See *Gomez-Jimenez v. N.Y. Law Sch.*, 956 N.Y.S.2d 54, 58–59 (App. Div. 2012).

54. Joel F. Murray, *Professional Dishonesty: Do U.S. Law Schools That Report False or Misleading Employment Statistics Violate Consumer Protection Laws?*, 15 J. CONSUMER & COM. L. 97, 103 (2012).

55. For a review of the struggles to define education in today’s world, see THE MARKETISATION OF HIGHER EDUCATION AND THE STUDENT AS CONSUMER (Mike Molesworth, Richard Scullion & Elizabeth Nixon eds., 2011).

disgruntled law school alumni into the courtroom. A comparison of the two educational paths is thus necessary before considering whether PhD students might be able to argue similar legal claims as law students have.

A. Employment Prospects

Many doctoral programs in academic fields other than law have continued “in the business of preparing thousands of graduate students for jobs that don’t exist.”⁵⁶ Just as most law students pursue a J.D. to become attorneys, many students in other doctoral programs aim solely for academic careers.⁵⁷ Even though there are already far more PhDs than there are academic jobs, PhD departments readily accept new students into their programs each year.⁵⁸ Professors who forego any advising concerning nonacademic careers aggravate the problem;⁵⁹ instead of providing broad career advice, they “teach [graduate students] to not want [nonacademic] work and that to accept it amounts to a poor second choice at best and a disappointment to their teachers.”⁶⁰

With academic jobs in short supply, however, PhD holders may turn to nonacademic jobs after they graduate. Traditionally, certain fields such as the humanities have fared worse in securing employment outside of academia.⁶¹ However, in recent years, concerns about employability have risen in STEM fields.⁶² The question arises, of course, as to what “underemployment” looks like for a doctorate holder⁶³ and to what extent PhD graduates actually have “good jobs” available to them outside of academia.⁶⁴ But the pressing reality for many doctorate holders in areas like the

56. CASSUTO, *supra* note 5, at 2.

57. Paula Chambers, *Subject Matter Plus: Mentoring for Nonacademic Careers*, in *THE MENTORING CONTINUUM* 49, 49 (Glenn Wright ed., 2015).

58. See Scott Jaschick, *The Shrinking Ph.D. Job Market*, *INSIDE HIGHER ED* (Apr. 4, 2016), https://www.insidehighered.com/news/2016/04/04/new-data-show-tightening-phd-job-market-across-disciplines?utm_source=Inside+Higher+Ed&utm_campaign=10a263f1dc-WNU20160408&utm_medium=email&utm_term=0_1fbc04421-10a263f1dc-199134313 [<https://perma.cc/7QXF-TQC7>].

59. See *id.*

60. See CASSUTO, *supra* note 5, at 8 (emphasis omitted). In his book, Cassuto discusses this “assumption” held by professors that all graduate students will go on towards a career in academia and even provides an anecdote of one lawyer who had previously earned a PhD before pursuing law school; when she explained her plans to the director of her PhD program, he “actually refused to write her a recommendation because he disapproved of her decision to leave academia.” *Id.* at 74.

61. SOLOMON et al., *supra* note 3, at 18–20.

62. See GOLDMAN & MASSY, *supra* note 7, at 43; see also Jordan Weissmann, *The Ph.D. Bust: America’s Awful Market for Young Scientists—in 7 Charts*, *ATLANTIC* (Feb. 20, 2013), <http://www.theatlantic.com/business/archive/2013/02/the-phd-bust-americas-awful-market-for-young-scientists-in-7-charts/273339> [<https://perma.cc/5G5X-QVW4>].

63. SOLOMON et al., *supra* note 3, at 25.

64. See Lewis C. Solomon, *PhDs in Nonacademic Careers: Are There Good Jobs?*, in *7 CURRENT ISSUES IN HIGHER EDUCATION* 3 (1979); see also Nicole Freeling, *Grad Students Look Beyond the Ivy Walls of Academia*, *U.C.* (Apr. 12, 2017), <https://www.universityofcalifornia.edu/news/grad-students-look-beyond-ivy-walls-academia> [<https://perma.cc/7LV8-HMRS>] (noting that the majority of PhD graduates find employment in “other

humanities is a future of “contingent positions . . . for a decade or more without ever getting on the tenure track . . . at tremendous cost to themselves and their families.”⁶⁵

B. The Costs

By the time a person has earned a PhD, of course, it has already cost much in both time and money. The grueling odyssey for tenure often follows an already lengthy time spent in graduate education. While a law student completes their legal education within three years, the average humanities PhD degree takes nine years, which can easily mean that these students are graduating in their thirties⁶⁶ and spending most of their twenties in school. Graduate students may feel pressure from advisors to devote all their time to their studies, even if that means sacrificing important life decisions such as starting a family.⁶⁷ In contrast, most law school programs last for only three years, and most law students graduate in their mid-twenties.⁶⁸

PhD students also make monetary sacrifices as they work towards their degrees. A 2004 study found that the median debt level for PhD holders was \$45,000, excluding any undergraduate loans.⁶⁹ A recent change in the federal loan programs for graduate students further exacerbates such debts: after July 2012, graduate students were no longer eligible for subsidized federal loans, but only unsubsidized ones where interest accrues each year throughout their education at a fixed rate of 6.8%.⁷⁰ Despite this new burden, it is unlikely that the change in federal loan policy will actually deter most graduate students from their paths, since “[it’s] the only route available” for them when seeking financial aid towards their degrees.⁷¹ This debt

kinds of careers—whether in the arts, public service, or something else” and that for some PhD graduates, such careers are “equally attractive” as the “holy grail of a tenure-track university position”)

65. Chambers, *supra* note 57, at 51. Chambers further notes that for STEM graduates “it is common nowadays for a PhD to do two, three, even four postdocs, enduring years of low pay, low status, and poor working conditions with no assurance that they have a real shot at the academic jobs they want.” *Id.*

66. See CASSUTO, *supra* note 5, at 103; see also Berger, *supra* note 4.

67. See CASSUTO, *supra* note 5, at 103. Cassuto argues, however, that to ignore the reality of such “important life decisions” is “artificial . . . not to mention ethically questionable.” *Id.* He further notes that statistically, women fare worse than men when their private goals of having a family conflict with the professional goal of a career in academia and that “fewer women than men occupy the tenure-track ranks, and women are less likely than their male colleagues to be married and have children.” *Id.* at 105.

68. Kim Dustman & Ann Gallagher, *Analysis of ABA Law School Applicants by Age Group: 2011–2015*, LAW SCH. ADMISSION COUNCIL 1, [https://web.archive.org/web/20170830011752/https://www.lsac.org/docs/default-source/data-\(lsac-resources\)-docs/analysis-applicants-by-age-group.pdf](https://web.archive.org/web/20170830011752/https://www.lsac.org/docs/default-source/data-(lsac-resources)-docs/analysis-applicants-by-age-group.pdf) [<https://perma.cc/498N-SXA4>] (reporting that the median age for law school applicants is twenty-four, with the largest number of incoming students aged only twenty-two).

69. CASSUTO, *supra* note 5, at 178.

70. Katy Hopkins, *Grad Students To Lose Federal Loan Subsidy*, U.S. NEWS & WORLD REP. (Mar. 3, 2012, 9:00 AM), <http://www.usnews.com/education/best-graduate-schools/paying/articles/2012/03/13/grad-students-to-lose-federal-loan-subsidy> [<https://perma.cc/CZ2V-BJ96>].

71. *Id.*

does not only burden individual students if they fail to secure gainful employment but also exacerbates the student debt fiscal crisis that the federal government faces.⁷²

When it comes to the burden of loans, law students and PhD students may commiserate; in 2014, the average individual law student debt for graduates from public law schools and private law schools was \$84,000 and \$122,158, respectively.⁷³ Recently, the median salary at law firms for freshly graduated attorneys has reportedly risen to \$100,000,⁷⁴ but many law school graduates seem to begin legal careers with starting salaries between \$50,000 and \$74,999.⁷⁵ Even if one's starting salary is lower than the average, however, paying back students loans may seem less bleak when one considers salary raises over time; the mean annual wage for lawyers overall in 2015, according to the United States Department of Labor, was \$139,880.⁷⁶ Of course, certain jobs in law such as those with nonprofit companies or in government positions and public service tend to have lesser salaries,⁷⁷ but lawyers employed in these areas may be eligible for loan repayment programs.⁷⁸

The financial burden of debt for law students thus weighs heavily enough but may seem conquerable if you are working towards a career with a higher salary or loan repayment; for many PhD students, however, the much-desired position of a job in academia gives little prospect for either.⁷⁹ If a PhD graduate meets the rare and much-coveted success of becoming tenured, the average salary is \$60,000.⁸⁰ However, three-quarters of professorships currently are adjunct positions rather than tenured ones, and the average salary for adjuncts is much harder to estimate than salaries for

72. See Achuko, *supra* note 11, at 559.

73. Robert Farrington, *Law School and Student Loan Debt: Be Careful*, FORBES (Dec. 18, 2014, 8:46 AM), <http://www.forbes.com/sites/robertfarrington/2014/12/18/law-school-and-student-loan-debt-be-careful/#1d3493364f06> [<https://perma.cc/2J4B-S8EY>].

74. Elizabeth Olson, *2015 Law School Graduates Got Fewer Jobs in Private Practice*, N.Y. TIMES (Aug. 17, 2016), <http://www.nytimes.com/2016/08/18/business/dealbook/2015-law-school-graduates-got-fewer-jobs-in-private-practice.html> [<https://perma.cc/J8GT-ZLPB>] (noting, however, that the median starting salary in 2009 was still the highest at \$130,000).

75. Ilana Kowarski, *U.S. News Data: Law School Costs, Salary Prospects*, U.S. NEWS & WORLD REP. (Mar. 15, 2017, 9:00 AM), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2017-03-15/us-news-data-law-school-costs-salary-prospects> [<https://perma.cc/BP7L-VQKQ>].

76. BUREAU OF LAB. STATISTICS, *Occupational Employment and Wages, May 2015*, U.S. DEPT. LABOR, <https://www.bls.gov/oes/2015/may/oes231011.htm> [<https://perma.cc/P69Y-N3FT>].

77. See *Loan Repayment Programs*, ABA, https://web.archive.org/web/20171031214955/https://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/loan_repayment_assistance_programs.html [<https://perma.cc/7XJA-M3PJ>] (noting that the “median starting public interest salary in civil legal aid is in the mid \$40,000s and only somewhat higher for public defenders and prosecutors”).

78. *Id.*

79. CASSUTO, *supra* note 5, at 178.

80. Laura McKenna, *The Ever-Tightening Job Market for Ph.D.s*, ATLANTIC (Apr. 21, 2016), <http://www.theatlantic.com/education/archive/2016/04/bad-job-market-phds/479205> [<https://perma.cc/EAT5-CK2V>].

tenured positions since colleges are not required to disclose them; salaries for adjunct positions are figured to be between \$20,000–\$25,000 annually.⁸¹

Many PhD students do not need to rely solely on loans, but receive some financial assistance through fellowships, teaching assistantships, and research assistantships.⁸² In assistantships, graduate students usually teach undergraduate courses or perform research in exchange for tuition and a stipend.⁸³ While such stipends certainly help minimize debt, they are often modest—requiring careful budgeting to cover basic living expenses—and are renewable for a limited number of years.⁸⁴ And when a graduate student has an assistantship, although it does help with funding, it may also be a factor that lengthens time in the graduate program overall.⁸⁵ One student explained: “At my university, it was expected that 50% of your time be committed to teaching if you have a teaching assistantship. This means that you won’t be able to commit full time to your research.”⁸⁶ This resulting self-destructive paradox has embittered many PhD students and garnered criticism as a model of “debt peonage”⁸⁷ in which tenured professors profit, allowing more time for their own research and work “while pushing the grunt work . . . to [graduate] students and adjuncts” who must work at the sacrifice of their own progress.⁸⁸ The result leads some to feel this system in academia is among “the most exploitative labor markets”⁸⁹ that thrives on the enthusiasm and willingness of PhD students—only to kick them to the curb when they graduate.

C. Fixing the System

Over a number of decades, multiple authors have considered the PhD crisis and suggested potential solutions for it. One popular cry for reformation is for doctoral

81. Laura McKenna, *The College President-to-Adjunct Pay Ratio*, ATLANTIC (Sept. 24, 2015), <http://www.theatlantic.com/education/archive/2015/09/income-inequality-in-higher-education-the-college-president-to-adjunct-pay-ratio/407029> [<https://perma.cc/D2MJ-E65T>].

82. GOLDMAN & MASSY, *supra* note 7, at 18–19.

83. *Id.*

84. See Susannah Snider, *How To Survive on a Graduate Student Stipend*, U.S. NEWS & WORLD REP. (Sept. 13, 2016, 2:16 PM), <http://money.usnews.com/money/personal-finance/articles/2016-09-13/how-to-survive-on-a-graduate-student-stipend> [<https://perma.cc/C8DC-7AEE>].

85. See Berger, *supra* note 4; see also Andrew David Thaler, *Surviving Grad School: What To Expect from Your Stipend*, S. FRIED SCI. (Jan. 29, 2013), <http://www.southernfriedscience.com/surviving-grad-school-what-to-expect-from-your-stipend> [<https://perma.cc/TW2V-V2KV>].

86. Thaler, *supra* note 85.

87. CASSUTO, *supra* note 5, at 179.

88. Megan McArdle, *Can't Get Tenure? Then Get a Real Job*, BLOOMBERGVIEW (Jan. 3, 2014), <https://www.bloomberg.com/view/articles/2014-01-03/can-t-get-tenure-then-get-a-real-job> [<https://perma.cc/GJ69-D5ZU>].

89. *Id.* McArdle likens academia’s exploitative practices to those of Hollywood or Broadway, arguing that it “tak[es] kids with a dream and encourage[es] them to waste the formative decade(s) of their work life chasing after a brass ring that they’re vanishingly unlikely to get, then dump[s] them on the job market with fewer employment prospects than they had at 22.” *Id.*

programs to simply stop admitting so many students.⁹⁰ Others note that prospective PhD students are stubbornly refusing to acknowledge the problems in academia by continuing to apply.⁹¹ In his recent book titled *The Graduate Student Mess*, professor and graduate education expert Leonard Cassuto posits that any solution must be multifaceted and requires not only that the American university system and its graduate programs make policy changes but also that professors and graduate advisors take a more active role in communicating both transparency and support towards PhD students with regard to employment both inside and outside academia.⁹²

It may be worth considering what changes have happened in J.D. programs here. In the wake of the lawsuits brought by J.D. holders, changes have occurred in legal education.⁹³ The economic hardships that many new J.D.s face have gained public attention and concern.⁹⁴ Consequently, the number of people who have applied to law school has plummeted because publicized financial and economic risks have dissuaded prospective students.⁹⁵ The low number of applicants has concerned some law schools,⁹⁶ but several top schools have adapted their programs to accept smaller class sizes and prioritize the quality of their students and programs.⁹⁷ The American Bar Association (ABA) also responded in 2012 by mandating new reporting standards for law schools and calling for systemic transparency and uniformity of certain employment data.⁹⁸ Such measures have seemed to alleviate the concerns of the legal market, although hope remains that schools, administrations, and the government will continue to address the employment concerns for law graduates to effectuate lasting improvements to the policies and ethics of legal education.⁹⁹

Thus, even while the “law school litigation” has fared with mixed success in the courtroom, it has certainly helped to stimulate important changes in the legal market.¹⁰⁰ For PhD students facing similar problems, however, legal remedies have remained largely undiscussed. It is thus worth examining how PhD graduates might seek remedy for this plight through legal measures in the same way that law students did.

90. See Monica J. Harris, *Stop Admitting Ph.D. Students*, INSIDE HIGHER ED (Aug. 18, 2010), <https://www.insidehighered.com/advice/2010/08/18/stop-admitting-phd-students> [<https://perma.cc/Z89K-UK29>].

91. See McKenna, *supra* note 80 (noting that “when news about the bad employment market for lawyers came out, the number of applications to law schools plummeted. Wouldn’t the same thing happen to Ph.D. programs? Apparently not.”).

92. See CASSUTO, *supra* note 5, at 5.

93. See Achuko, *supra* note 11, at 556–58.

94. See *id.* at 520–21.

95. See Natalie Kitroeff, *Law School Applications Set To Hit 15-Year Low*, BLOOMBERG (Mar. 19, 2015, 11:38 AM), <https://www.bloomberg.com/news/articles/2015-03-19/law-school-applications-will-hit-their-lowest-point-in-15-years> [<https://perma.cc/SH8B-XMUM>].

96. *Id.*

97. Debra Cassens Weiss, *These Top-Ranked Law Schools Have Cut 1L Sizes by More Than 25%*, ABA J. (Jan. 28, 2016, 5:45 AM), http://www.abajournal.com/news/article/these_top_ranked_law_schools_have_cut_1l_enrollment_by_more_than_a_quarter [<https://perma.cc/DZ8S-8LL9>].

98. Murphy, *supra* note 11, at 781–83.

99. See Achuko, *supra* note 11, at 558–60.

100. See Murphy, *supra* note 11.

III. LEGAL REMEDIES FOR PHD STUDENTS

Now we may finally turn to consider what legal remedies PhD students might have available to them and whether it would be good policy for society to turn to such avenues. As mentioned previously, law graduates have had only limited success in the courtrooms.¹⁰¹ Since PhD graduates face a subtly different dilemma, however, courts might treat them differently, for better or worse. Courts have already critiqued law student plaintiffs because they had plenty of opportunity to exercise “reasonable diligence” in deciding whether to attend a law school or not.¹⁰² When seeking a legal remedy, the biggest hurdle for PhD students would likely be that they have had fair warning of dismal employment prospects for much longer than the recent recession.¹⁰³ Yet, in spite of the odds, many continue to feel dejected, misled, and embittered by “false promises.”¹⁰⁴ Many PhD students sense that their programs have betrayed them, which is similar to how many law students have felt. Therefore, it would make sense to see PhD students attempting many of the same legal claims.

A. Fraud? Or Willful Blindness?

Although many PhD students and law students deal with similar problems, there is a key difference between their respective legal positions: PhD graduate programs likely did not manipulate or skew any data to attract them. Rather, graduate students’ intellectually successful professors and mentors draw them to the program, as the students and the professors aspire toward the same goals.¹⁰⁵ While professors and programs are often criticized, sometimes quite harshly, for encouraging and leading students to pursue such dreams,¹⁰⁶ PhD professors and programs can hardly be said to commit misrepresentation or fraud in the way in which law schools are accused. Out of the possible claims for fraud, the strongest available to PhD students is likely fraudulent omission.¹⁰⁷

Under this theory, plaintiffs do not argue that the PhD program actively deceived them, but rather that it did not disclose critical information despite a duty to do so.¹⁰⁸ The relationship between a PhD student and her faculty advisor has potential to be a much more intense and personal one than the relationship between a law student and

101. See *supra* Part I.

102. *Austin v. Albany Law Sch. of Union Univ.*, 957 N.Y.S.2d 833, 844 (Sup. Ct. 2013).

103. See McKenna, *supra* note 80 (asking “Why hasn’t all this information helped winnow down the ranks of aspiring professors—why hasn’t it proved to be an effective Ph.D. prophylactic?”).

104. See CASSUTO, *supra* note 5, at 7.

105. See *id.* at 94–95.

106. See McArdle, *supra* note 88; see also Rebecca Schuman, *Thesis Hatement*, SLATE (Apr. 5, 2013, 7:10 AM), http://www.slate.com/articles/life/culturebox/2013/04/there_are_no_academic_jobs_and_getting_a_ph_d_will_make_you_into_a_horrible.html [<https://perma.cc/4XXR-MMY3>].

107. See Achuko, *supra* note 11, at 532–33 (arguing that this tort theory is also one of the “strongest” for law graduate plaintiffs).

108. *Id.*

the law school as an institution.¹⁰⁹ However, for an actual duty to disclose to exist, there must be “a fiduciary or legally recognized confidential relationship between the plaintiff and the defendant.”¹¹⁰ Such a relationship does not seem to exist between a PhD student and her faculty mentor.

There is a “special circumstances” exception in which a duty may arise if there is “a significant knowledge or power differential between the two parties,”¹¹¹ but such knowledge differential may be lacking if the student has ready access to relevant information.¹¹² It is true that a PhD student’s field may not provide specific employment data or reports within academia for them to review, as the legal profession provides through various agencies such as the ABA.¹¹³ Nevertheless, a simple internet search can yield a plethora of statistics on the average employment and salaries for academics within various broad fields of study.¹¹⁴

Another type of fraud claim, similar to omission, is “silent fraud” in which fraud emerges “from the suppression of the truth” yet is as harmful as “that which springs from the assertion of a falsehood.”¹¹⁵ However, a silent fraud claim also requires proof of a legal duty to disclose.¹¹⁶ Courts are most likely to recognize that a duty existed and silent fraud was committed when the plaintiff makes inquiries to which the defendant gives only partial answers while neglecting material information.¹¹⁷ In *Cooley*, for example, law students never argued that they had ever asked about employment claims, and the appellate court found that “[t]his failure to inquire dooms the silent-fraud claim.”¹¹⁸

Looking at law school graduates’ experiences, unless a PhD student has made inquiries and received incomplete answers from faculty or staff within her program, it is likely that she, too, has no actionable claim in silent fraud. However, one might argue that PhD students speak to their advisors more often and discuss strategies for career success, such as publishing research or attending conferences. Because PhD students and their professors have close relationships, it is plausible that PhD students are asking the right questions while only being fed sugar-coated answers that skirt around unpleasant truths. However, even incomplete information, if not actually false itself, is likely insufficient under a fraud-based claim.¹¹⁹

109. See CASSUTO, *supra* note 5, at 91 (“Whatever you call the relation, it’s the longest and most important one in a graduate student’s formal education, a unique blend of the professional and the personal. It’s a relationship with consequences.”).

110. Achuko, *supra* note 11, at 533.

111. *Id.* at 536.

112. *Id.*

113. See Murphy, *supra* note 11, at 781–83.

114. See, e.g., *Find the Graduate School That’s Right for You*, PHDS.ORG, www.phds.org [https://perma.cc/C5NC-UYCT].

115. *MacDonald v. Thomas M. Cooley Law Sch.*, 724 F.3d 654, 665 (6th Cir. 2013) (quoting *Lorenzo v. Noel*, 522 N.W.2d 724, 725 (Mich. Ct. App. 1994)).

116. *Id.* (quoting *Hord v. Envtl. Research Inst. of Mich.*, 617 N.W.2d 543, 550 (2000) (per curiam)).

117. *Id.* at 666.

118. *Id.*

119. See *Gomez-Jimenez v. N.Y. Law Sch.*, 956 N.Y.S.2d 54, 59–60 (App. Div. 2012).

B. The Damages of a Doctorate

Even if a PhD student was able to effectively argue under a fraud-based claim, however, the issue of actual damages would likely cause difficulty. The “value” of a JD degree has, we have seen, proven too theoretical and untenable for many courts.¹²⁰ For PhD graduates, however, damages may be even more speculative than they are for JD students, given that their earning potential is harder to calculate.¹²¹ Ultimately, the desired career outcome for many PhD students and their professors is that they become tenured professors themselves;¹²² but for most who make a career in academia, they will likely be adjuncts, where average salaries are as indefinite as one’s prospects of ever gaining greater job security.¹²³ Calculating the difference between a high-paying, full-time, permanent job in their desired field (within academia) and whatever job they can find, part-time or otherwise, would probably be a challenge even for a shrewd economist. From a market-value based account of future earning value, therefore, damages would most likely be found too speculative.

Regarding money lost in education expenses, a claim for damages would also likely fail. Many PhD students might have had the financial sense to not pursue their degrees absent fellowships or assistantships, but knowing that many students receive such aid to cover tuition and costs makes the PhD route look more fiscally manageable.¹²⁴ However, even for those who take out loans to help cover expenses, it is generally assumed that PhD students recognize and in fact pursue compensation not in financial terms but through the “intrinsic satisfaction from earning the PhD, even if the labor market rewards are small.”¹²⁵ When evaluating damages in the higher education context, some courts have already found the intrinsic value of education and the satisfaction of a degree to be compelling.¹²⁶ If a court should adopt the more draconian view that students with undergraduate degrees are sophisticated enough to bargain for what they want—a degree, not a job—as Justice Schwietzer did,¹²⁷ PhD students may find arguing any kind of actual damages a nearly impossible task.

C. Consumer Protection

What appears to be the most successful theory of recovery for PhD students is the plaintiffs’ approach in *Harnish*: suing under a consumer protection state statute with more lenient standards than most common law torts.¹²⁸ If other states have consumer

120. See *supra* Part I.B.

121. See *supra* Part II.B.

122. See CASSUTO, *supra* note 5, at 54–55.

123. See McKenna, *supra* note 81.

124. See GOLDMAN & MASSY, *supra* note 7, at 8 (“The huge financial investment needed to pay the full cost of PhD training would not be matched by the future rewards.”).

125. *Id.*

126. See *Austin v. Albany Law Sch. of Union Univ.*, 957 N.Y.S.2d 833, 843 n.2 (Sup. Ct. 2013).

127. *Gomez-Jimenez v. N.Y. Law Sch.*, 943 N.Y.S.2d 834, 843 (Sup. Ct. 2012), *aff’d*, 956 N.Y.S.2d 54 (App. Div. 2012).

128. *Harnish v. Widener Univ. Sch. of Law*, 931 F. Supp. 2d 641 (D.N.J. 2013).

protection statutes akin to New Jersey's,¹²⁹ for example, these statutes dispense with the reliance requirement for a lesser proof of causation,¹³⁰ and the standard for damages would also be reviewed more favorably.¹³¹ The greatest challenge in seeking this legal remedy is the particulars of the state legislation, however, so a PhD graduate would want to review the state policies carefully before making such a claim.

One of the more important considerations under a consumer protection theory is how courts view the student-as-consumer model and how a PhD might try to frame her degree as a product worth protecting. If the state legislation limits relief to protection for consumers of personal products only, then courts like *Cooley* will likely interpret any such limitation to exclude education.¹³² However, if a court uses reasoning more similar to the appellate court in *Gomez-Jimenez*, a PhD student may receive greater sympathy.¹³³ Furthermore, the same fact that can cause difficulty for PhD students trying to prove damages may be beneficial in the consumer protection context: they do place great intrinsic value on their degrees and the work they hope to do with them. In this way, the "product" of a PhD degree is a very personal one that involves much work and cultivation, personal sacrifice into one's thirties,¹³⁴ and a deep-seated motivation that comes from the satisfaction of the work, respect, and lifestyle of academia.¹³⁵ In this light, the notion of student-as-consumer is perhaps most pitiable if accepted, as the PhD student has been allowed to consume so much of the product of academia that they feel a personal sense of failure when they can no longer find a place in it.

D. They Could, but Should They?

The ultimate question remains surrounding the idea of PhDs having a legal remedy for underemployment: even if there exists a plausible remedy, is it something we as a society want? Doubtless, just as floods of litigation surrounding underemployed law graduates have come into the courts, so too would cases involving the literature PhD who works as a barista, or the chemistry PhD who has resorted to teaching high school science, and many more. And few, if any, may actually succeed in their claims—congesting court system in a futile search for some vindication. However, given that academia has been aware of the PhD crisis for years yet failed to make any concrete steps in reducing the problems, the prospect of igniting academia to action through fear of lawsuits has appeal. Even though many plaintiffs have lost in "law school litigation," the resulting changes in how law

129. N.J. STAT. ANN. §§ 56:8-1 to -20 (West 2012).

130. See *Harnish*, 931 F. Supp. 2d at 653.

131. See *id.* at 652.

132. *MacDonald v. Thomas M. Cooley Law Sch.*, 880 F. Supp. 2d 785, 792 (W.D. Mich. 2012), *aff'd*, 724 F.3d 654 (6th Cir. 2013).

133. *Gomez-Jimenez v. N.Y. Law Sch.*, 956 N.Y.S.2d 54, 58–59 (App. Div. 2012).

134. See, e.g., *McKenna*, *supra* note 80 ("Many of their friends have probably already banked a decade's worth of retirement money in a 401K account; some may have already put a down payment on a small town house.")

135. See *GOLDMAN & MASSY*, *supra* note 7, at 8 (noting that for many PhD holders, the ability to pursue one's ambitions and control their own productivity "can induce talented people to work for lower wages than they might otherwise demand in more structured careers").

schools now operate have helped a wide range of future students, if not individual former ones.¹³⁶ Perhaps if more PhDs attempted to bring their grievances to the courtroom, universities might finally take notice as well.¹³⁷

CONCLUSION

In conclusion, this Note finds that like many post-recession law graduates, PhD students face dire employment prospects and are often saddled with onerous financial burdens at the end of their education. While many graduate PhD programs have not engaged in the same quasi-mendacious behaviors that law schools have, many PhD students are nevertheless encouraged to pursue positions in academia when the market simply cannot afford them. Regarding lost future wages, PhD students may not suffer as much as their law graduate counterparts, but the sense of loss in years and resources, both personal and federal, is great. Of the legal remedies that law graduates have used, the one most likely to succeed would be a claim under consumer protection state laws, provided that the state laws adopt a more relaxed view than common law torts as far as required elements and standards of proof. While allowing such litigation into the court system would unquestionably bring a deluge of lawsuits, some of which might be frivolous, it would also elevate awareness of the problem in society and provide incentives to universities and graduate programs to address solutions outside of the legal system. If the result were greater educational reform, then not only might individuals seeking higher education be served better but also society at large.

136. See Murphy, *supra* note 11.

137. For similar reasoning, see *Gomez-Jimenez v. N.Y. Law Sch.*, 943 N.Y.S.2d 834, 855–56 (Sup. Ct. 2012) (“If lawsuits such as this have done nothing else, they have served to focus the attention of all constituents on this current problem facing the legal profession—from the law schools and their regulators, to the compilers of data that rate the schools to assist law school consumers, to the law firms that formerly primed the pump for a steady supply-line of associate positions to be filled by each graduating class, to the judiciary who offer clerkships to the best and the brightest, to the local bar associations whose members are responsible for the continuing health and viability of the profession, and, finally, to the prospective law students themselves. All must take a long, hard look at the current situation with the utmost seriousness of purpose.” (emphasis omitted)), *aff’d*, 956 N.Y.S.2d 54 (App. Div. 2012).