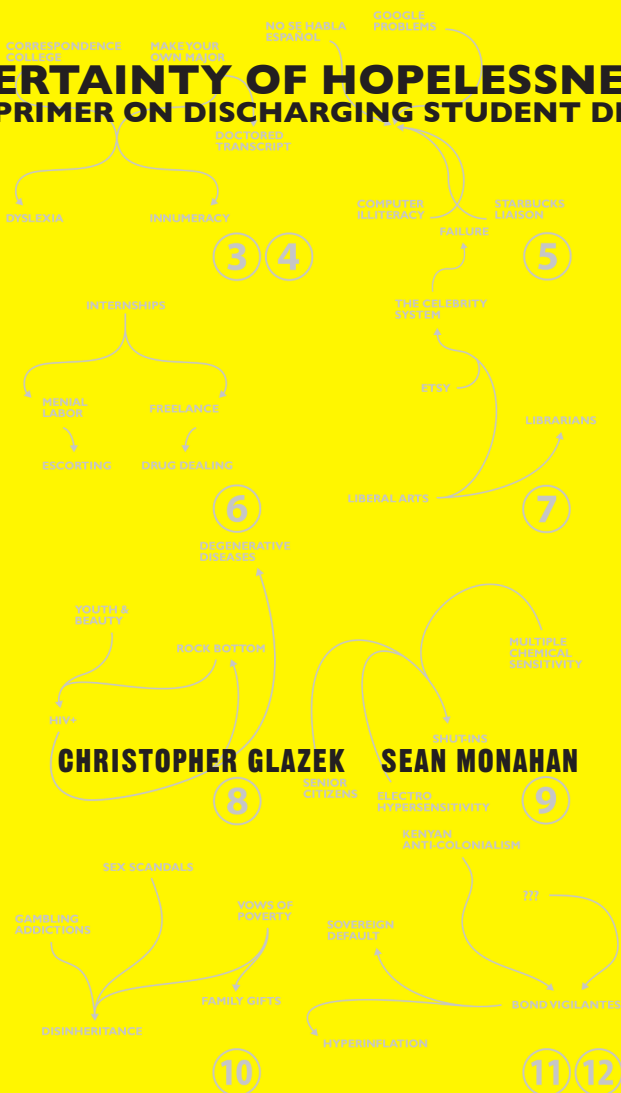


CERTAINTY OF HOPELESSNESS A PRIMER ON DISCHARGING STUDENT DEBT



Discharging student debt is a black-box dilemma. While bankruptcy protocols are always complex, student debt is loaded with its own special brand of illegibility. Debtors are misled by the media into thinking that discharging student loans is impossible and shamed into treating the mere notion of relief as a form of extravagant welfare-queenism.

Our original intention was not to create a satire, but rather to map the possibilities for broke postgrads interested in taking a more adversarial approach to dealing with their debt. Guides like Strike Debt's *Debt Resisters Operations Manual* help combat the vilification of debtors and address pragmatic concerns about keeping loans out of default. For hundreds of thousands of ex-students, though, default is inevitable and discharge is the goal.

Bankruptcy filers have the option of calling for a special separate hearing, called an "adversary proceeding," during which a bankruptcy judge determines whether a student loan can be considered in a broader bankruptcy claim. To clear the legal hurdle, debtors must not only demonstrate that they are currently unable to pay—they must also demonstrate that their future life prospects are characterized by a "certainty of hopelessness."

CERTAINTY OF HOPELESSNESS

The 9th Circuit Court of Appeals has isolated twelve criteria for determining if individuals qualify as legally “hopeless.” The following pamphlet is a brainstorm: it considers what steps a debtor might take in order to persuasively claim the mantle of hopelessness. Rather than examine softcore options, we explore the potential of self-inflicted tragedy.

The following is a user’s manual that addresses each of the 9th Circuit’s criteria for evaluating claims of hopelessness or undue hardship. Its functionality is proportional to any given reader’s desperation.

HOPELESSNESS CRITERIA

(1) SERIOUS MENTAL OR PHYSICAL DISABILITY OF THE DEBTOR OR THE DEBTOR'S DEPENDENTS

(2) THE DEBTOR'S OBLIGATION TO CARE FOR DEPENDENTS

(3) LACK OF OR SEVERELY LIMITED EDUCATION

(4) POOR QUALITY OF EDUCATION

(5) LACK OF USABLE OR MARKETABLE JOB SKILLS

(6) UNDEREMPLOYMENT

(7) MAXIMIZED INCOME POTENTIAL IN THE DEBTOR'S CHOSEN EDUCATIONAL FIELD AND NO OTHER LUCRATIVE JOB SKILLS

(8) A LIMITED NUMBER OF YEARS REMAINING IN THE DEBTOR'S WORK LIFE TO ALLOW REPAYMENT

(9) AGE OR OTHER FACTORS THAT PREVENT RETRAINING OR RELOCATION THAT WOULD FACILITATE REPAYMENT

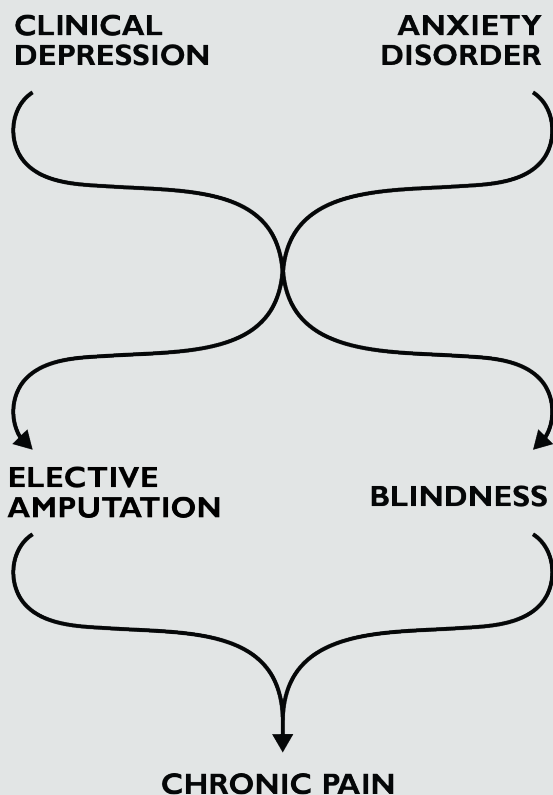
(10) LACK OF ASSETS TO REPAY THE LOANS [WHETHER EXEMPT OR NOT]

(11) POTENTIALLY INCREASING EXPENSES THAT OUTWEIGH POTENTIAL APPRECIATION IN THE VALUE OF THE DEBTOR'S ASSETS AND/OR LIKELY INCREASES IN THE DEBTOR'S INCOME

(12) THE LACK OF BETTER FINANCIAL OPTIONS ELSEWHERE

1





SERIOUS MENTAL OR PHYSICAL DISABILITY OF THE DEBTOR OR THE DEBTOR'S DEPENDENTS

One of the most straightforward ways a debtor can present a case of hopelessness is to appear in court with physical and/or mental handicap. Despite technological advances and the strengthening of regulations to protect the disabled, petitioners have successfully discharged loans on the basis of a host of

ailments, including blindness, deafness, missing limbs, and outright insanity.

AMPUTATION

Removing legs and arms is an expensive procedure and it can be difficult to identify doctors willing to amputate on an elective basis. While certain cancers and diseases require cutting off limbs, the best way to force an amputation is to let a simple infection fester—into gangrene. Although hands are more important for the completion of most work-related tasks, missing legs are more visually striking and potentially more persuasive to a judge. Advances in prosthetics and electric scooter technology make the life of an amputee easier than in the past--living legless may be a more realistic option for many petitioners than repaying their debt.

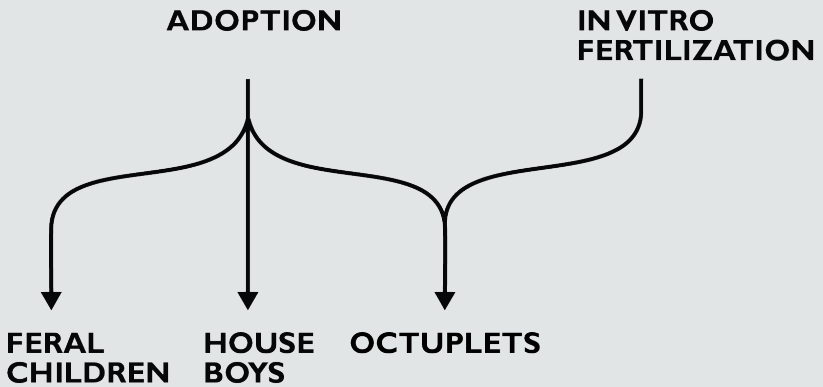
INSANITY

Mental health problems prevent millions of Americans from escaping debt every year. Diagnoses, however, range in character and severity. A strict judge may show mercy on an acute schizophrenic, for example, but might look less favorably on the 17% of Americans who suffer from Major Depressive Disorder.

A lenient judge, on the other hand, might recognize any number of obscure and/or vague psychological disorders, such as Generalized Anxiety Disorder or a propensity to hoard.



2



THE DEBTOR'S OBLIGATION TO CARE FOR DEPENDENTS

A common complaint among people burdened with student loans is that their debts will prevent them from starting families. Debtors that already have families, on the other hand, have the potential to extinguish their debt if their dependents are sufficiently expensive.

SPECIAL KIDS

"Special needs" children are among the most expensive to raise. Although they come in a variety of forms, courts have been most likely to recognize two principal breeds: older, emotionally-disturbed children who generate big therapy bills, or younger children with

physical handicaps.

One advantage for debtors of adopting older children is that the period of guardianship might only last a few years. But there are risks: adopted teens are more likely to murder their caretakers, for example, especially if they suffer from Radical Attachment Disorder. A psychiatrist should be hired ahead of time to assess the risks posed by a potential adoptee.

Younger children with physical handicaps, while less emotionally taxing, place greater demands on their adoptive parents' time. On the other hand, they are more likely to develop feelings of genuine love for their adopters as long as their handicap doesn't prevent the formation of emotional bonds.

BABY BROODS

Another way to spend a lot on dependents is to have a lot of them. Although there is no formula for determining how many children are required for a debtor's life to be considered legally hopeless, poverty line calculations from the Department of Health and Human Services suggest that around three children are needed for every \$20,000 in income.

For a family earning median income, that means octuplets or eight children spread over a number of years. Raising a large family doesn't allow for much flexibility. Whereas adopted children can always be exiled to foster homes after a debt is discharged, there's no easy way, emotionally or legally, to make biological children disappear.

ADULT KIDS

Parents aren't the only ones with expensive dependents. Adults can be claimed as dependents if they live in the house and earn less than \$3,650 a year. Dependent adults happen to have large medical bills, that can factor into a court's assessment of hopelessness.

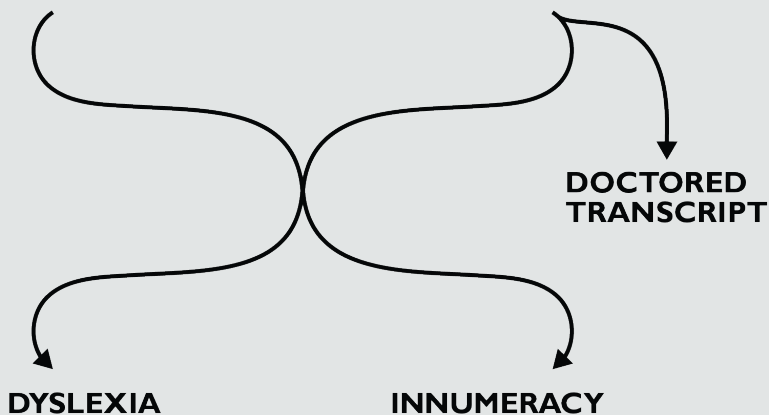
Debtors who can identify adult collaborators, through friend networks or through the world wide web can try claiming dependents and exaggerating their cost of care. If a collaborator is willing to pose as an in-house lover infected with HIV, for example, a judge might excuse some of the debtor's loans, especially if the judge is unaware of their federal AIDS Drug Assistance Program, which helps the uninsured pay for medications related to HIV.

3

4

**CORRESPONDENCE
COLLEGE**

**MAKE YOUR
OWN MAJOR**



LACK OF OR SEVERELY LIMITED EDUCATION; POOR QUALITY OF EDUCATION

Virtually all student debtors have received an education of some kind. Nevertheless, merely possessing a degree does not prevent debtors from arguing that an inferior education makes them unemployable in today's job market.

SPECIAL EDUCATION

Most students emerge from college without any measurable improvement in the skills necessary for success in the workforce. In one recent study, two social scientists followed 2,300

students at 24 universities over the course of four years. The authors concluded that, on average, college had a “barely noticeable” impact on students’ skills in critical thinking, complex reasoning, and writing. For half of the students in the sample, no improvement was registered at all.

For bad students, the transcript can be a powerful piece of evidence in arguing an inferior education. A judge might take mercy on debtors whose schools allowed them to remain enrolled—and accruing debt—after a series of D’s, fails, and incompletes. Dropouts have an even easier time.

BAD EDUCATION

Debtors who possess degrees from schools that are poorly ranked or unaccredited can argue their educations are meaningless. The courts will be especially sympathetic to debtors who attended schools that misrepresented their accreditation status at the time of enrollment or lied about the professional fortunes of their recent graduates.

Students who attend well-regarded schools and get good grades face a steeper, but not unmanageable challenge. Cheating is rampant

on college campuses, and many students pay others to write their papers and even take their tests. Debtors have a shot at arguing an inferior education, even at a highly selective institution, if they can prove their grades weren't legitimately earned. Professors are susceptible to bribery: even a humble, no-hands blow job has been known to transform a failing grade to a rock solid B.

FAKE MAJORS

A "severely limited" course of study could also simply mean a poor choice of major. Some studies have shown that Classics degrees leave students with the worst job prospects; the amount of memorization and decoding it requires leaves Classicists vulnerable, however, to the assumption that they harbor superior memory and reasoning skills.

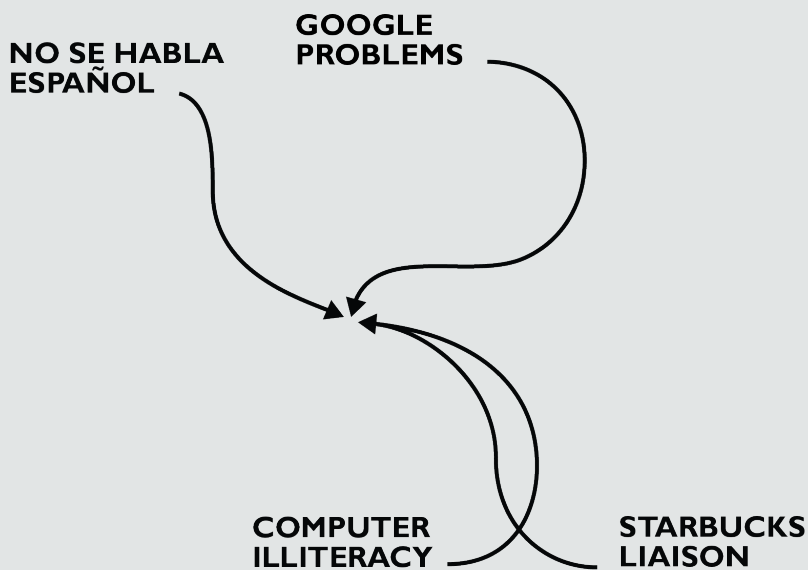
Schools that allow their students to invent their own major provide the best opportunities for discharging loans on the basis of mediocre education. Whereas most university-approved curricula go through a rigorous process of review by faculty and administrators, "special majors" have little or no oversight.

DISCREDENTIALIALS

In addition to undermining their academic credentials, debtors sometime obtain special distinctions that certify them as incompetent in various ways. "Innumeracy," for instance, isn't a universally-recognized medical condition, but various tests exist—either administered by professionals or taken online—that can certify test-takers as innumerate. Likewise, entire industries exist to help people garner diagnoses of dyslexia, typically in order to obtain extra time for college admission tests. In the working world, the courts know, there is no such thing as extra time.



5



LACK OF USABLE OR MARKETABLE SKILLS

Possessing an education is one thing: having usable or marketable skills is something else. Most courses of study do not help graduates thrive in the workforce. This is especially true of so-called "professional degrees," such as those in law or business, which certify mastery of material that is irrelevant to the practice of law or the management of actual businesses.

IDLE LABOR

Those who think they are likely to default on student debt at some point should be careful, though, about unwittingly accruing work experience while at school. Work-study jobs, even apparently menial ones, can cause the development of marketable skills. Experience with complex calculations, challenging organizational tasks, demanding interpersonal interactions, or long-term project management all count against petitioners during an adversary proceeding. Potential debtors should avoid assistantships, administrative posts, and food service positions. Jobs that allow debtors to spend most of their time reading a book, on the other hand, such as the position working the information desk at the library, are typically safe.

MENIAL LABOR

The growing fad surrounding internships presents another minefield for discharge-seekers. Luckily, many internships provide little actual training. A good rule of thumb is that if an internship does not pay, there is little risk that it imparts valuable skills.

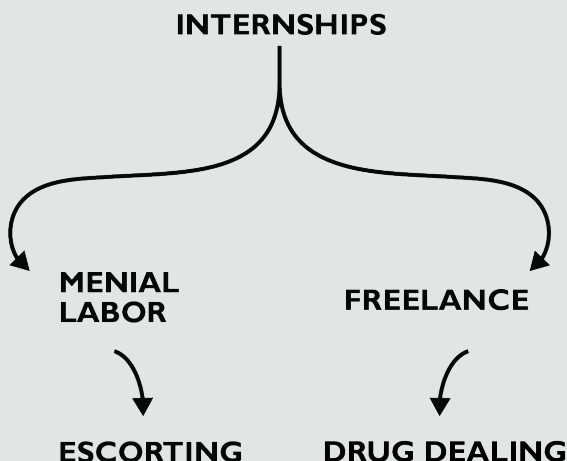
Some internships sound more substantive than

they really are. For the benefit of the court, it can be helpful to annotate your résumé with explanatory bullet points. You can diminish a lofty-sounding "Editorial Internship at The New York Times," for instance, by listing these bullets underneath:

- checked email (my own, not my boss's)
- transcribed interviews
- made nervous small-talk with superiors
- delivered coffee to senior editors
- attempted to Xerox several stacks of paper

When it comes to work experience, caution is a must: some skills are irreducibly marketable. Competence in a foreign language, for instance, can lead to a job as a translator or hotel concierge. Superior flexibility and/or physique opens doors in the worlds of fitness and yoga. Computer skills are especially damning: The ability to use PhotoShop, Final Cut Pro, or even Microsoft Excel puts petitioners at risk. Petitioners who have websites should be ready to answer the question "who built it?" If the answer is "I did it myself," the judge is unlikely to show mercy.





UNDEREMPLOYMENT

Underemployment can describe a person who either doesn't have enough hours in their workweek or is employed in a job far below his or her skill level (e.g. a barista with a PhD). Because the labor market has been weak for several years, underemployment is one of the more commonly cited criteria during "hopelessness" proceedings.

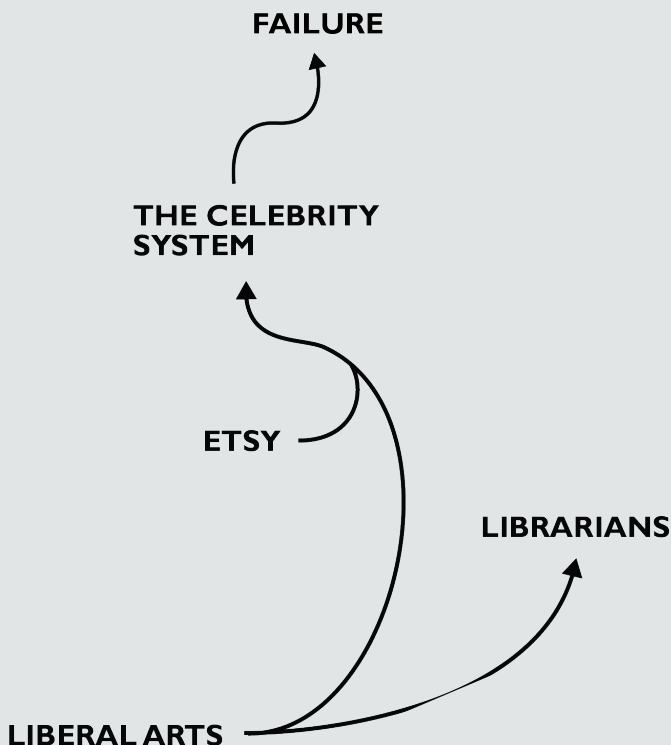
The hazy zone between destitution and full-employment is mostly populated by low-end service jobs. Other options exist, though, which compensate for low pay with other lifestyle advantages.

FREELANCE EMPLOYMENT

Freelance employment is the face of the New Economy. Freelancers' flexible schedules, low overhead costs, and tech-savvy skills make them a dream for middle managers. Outside of those with highly specialized talents and wide networks of business contacts, though, most freelancers perform work that is similar to full-time employment except with higher taxes and fewer benefits. On the other hand, freelancers are uniquely well-positioned to be "underemployed," since they can control how much work they take on.

INFORMAL EMPLOYMENT

The advantage of employment in the black market is that it can be hidden from the courts, helping to make petitioners appear poorer than they actually are. Popular black market occupations include include drug dealing, prostitution, money laundering, and day-laboring—jobs open to virtually anyone.



**MAXIMIZED INCOME POTENTIAL
IN THE DEBTOR'S CHOSEN
EDUCATIONAL FIELD AND NO
OTHER LUCRATIVE JOB SKILLS**

The most direct way debtors can sabotage their chances of repaying loans is to choose a field with poor compensation. If a debtor emerges from college with \$100,000 in loans and decides to become a maintenance man or a clothing retailer, there might never be enough floors to scrub or pants to sell to pay down the debt.

IMMATERIAL REWARDS

One problem with custodial work or other menial labor is that a judge might not deem such occupations to be legitimate career choices for someone with a college education. Courts may be more receptive, though, to petitioners whose fields require expensive degrees but still have terrible pay. These include jobs like librarian, which can require one or more degrees in information science, concert violinist, which requires four or more years at a conservatory, and various fields within the academy and the arts. Job-seekers who select these professions effectively begin their careers “underwater”—something that will not be lost on the court during an adversary proceeding.

PYRAMID SCHEMES

Other fields operate on a “winner-take-all” system: a small number of people perform extremely well, extracting enormous profits, while the large majority never break into upper-income thresholds. Film is one such field; painting is another. Many other professions, including politics and even architecture, involve similarly lopsided distributions of profit and success.

CAREER SUICIDE

Courts have been hesitant to discharge student loans if a big payday is at least conceivable in the future. Debtors who choose careers with high-earning potential, but low-earning probability face a quandary. Their burden is to convince the courts that they, of all people, will never rise to the top. They must ruin their reputations.

If a debtor is in a field regularly scrutinized by the public, ruining a reputation can be as simple as garnering one bad review. A terrible performance, an obnoxious book, a disastrous opening—each has the potential to generate negative assessments that can be submitted into evidence.

In fields free from public scrutiny, poor work assessments can be documented through employee evaluations that criticize workers for tardiness, poor organizational skills, or lack of talent.

Incompetence isn't the only route to a tarnished reputation. Scandal, insubordination, and illegal activities such as embezzlement work just as well. Sexually aggressive behavior directed at colleagues or clients, particularly if

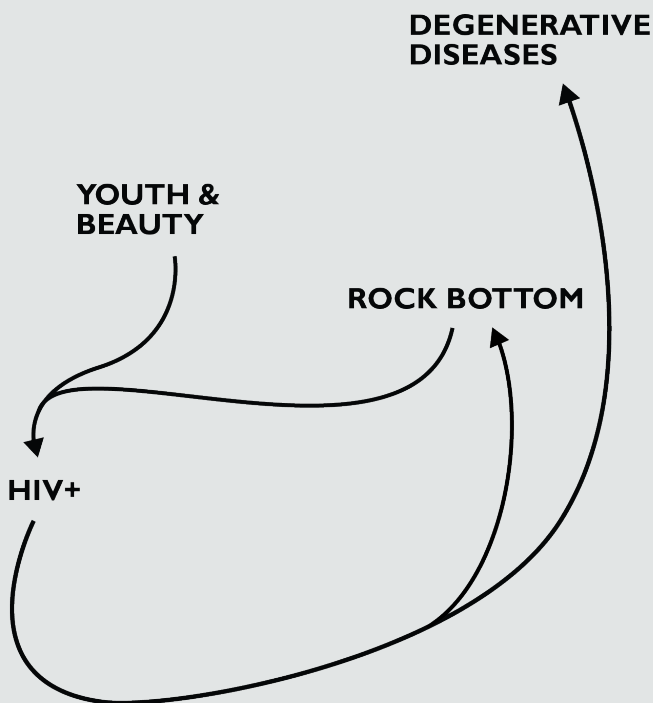
they are married, can help establish a debtor's reputation as a creep.

FIRE ME

The Internet and social media provide numerous opportunities for unprofessionalism. At many firms, tweeting nasty comments about superiors or posting offensive material on Facebook are fire-able offenses. Uploading amateur pornography can work, too.

Debtors who are fired enough times will eventually be deemed unhirable, strengthening their argument that their lives have become legally hopeless.





A LIMITED NUMBER OF YEARS REMAINING IN THE DEBTOR'S WORK LIFE TO ALLOW REPAYMENT

Inability to repay a debt can also be established by demonstrating that a debtor is nearing the end of his working life.

EARLY PEAK

Debtors whose occupations require youth and vigor, like ballet dancers, can plausibly argue

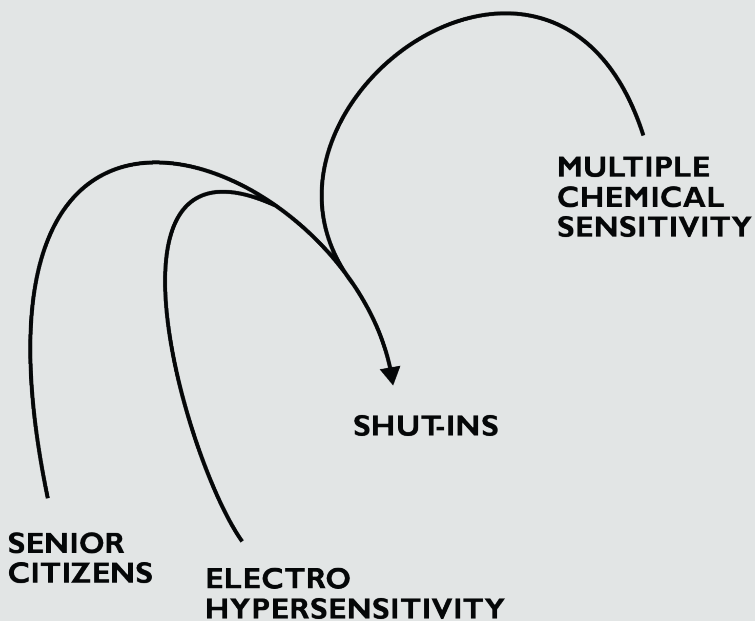
that their careers are over by the time they hit thirty. Some ex-ballerinas, though, manage to parlay their experience into other lucrative work, such as dance instruction or personal training. Other debtors fall into terrible depressions after their prime performing years and gain enough weight to disqualify themselves from physically-demanding occupations.

EARLY GRAVE

Some debtors may wish to argue that they are approaching the end of their working lives because they will die soon. Petitioners suffering from degenerative diseases with vague symptoms and uncertain prognoses such as Lupus, Multiple Sclerosis, Parkinson's disease, or cancer are well-positioned to make such an argument. Most of these diseases cannot be "contracted," however, limiting their usefulness to the average debtor.

Some debtors may be able to plead their cases in probabilistic terms. Even if they do not suffer from a degenerative disease, they might indulge in high-risk behaviors, such as snorting crystal meth, that shorten their anticipated life spans.





AGE OR OTHER FACTORS THAT PREVENT RETRAINING OR RELOCATION THAT WOULD FACILITATE REPAYMENT

Elderly debtors who want the Department of Education to stop garnishing their Social Security checks can use their age as a rationale for discharge. Lying about your age can be tricky, given the amount of documentation required by the court.

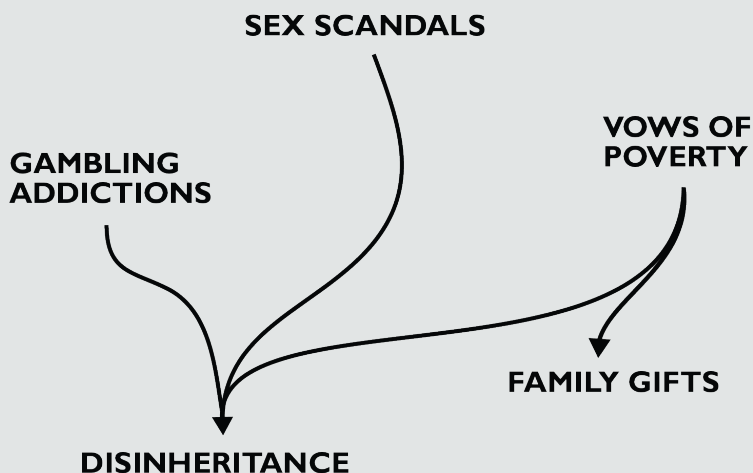
PHANTOM ILLNESS

If a debtor is young, age may not be an appropriate argument. The inclusion of “other factors” as a potential justification for discharge, though, allows petitioners to argue on the basis of ailments that fall outside the purview of the American Medical Association. Issues like Multiple Chemical Sensitivity, the umbrella term for those who claim extravagant allergies to smoke, plastics, paints, or perfumes, while not recognized by the medical establishment, is sanctioned by the Social Security administration, which has allowed it to be used as a justification for receiving disability payments since 1997.

In a similar vein, debtors can argue they suffer from electro-hypersensitivity (EHS), another disorder with limited recognition that requires its victims to flee to pre-modern rural settlements far from electromagnetic waves, including radio and Wi-Fi. EHS is restrictive in terms of where sufferers can relocate. The United States National Radio Quiet Zone, for instance, is a 13,000 square mile region that lies on the border between Virginia and West Virginia—an area not known for its economic vitality.



10



LACK OF ASSETS TO REPAY THE LOANS WHETHER EXEMPT OR NOT

Even when debtors are unemployed and lack substantial income, they can still fail to meet the legal threshold of hopelessness if they possess assets or stand to receive an inheritance.

Debtors with significant assets should consider liquidating them and hiding the proceeds before beginning a debt discharge proceeding.

STRATEGIC DIVESTMENT

Under more elaborate schemes, debtors can try to cede temporary ownership of assets to a third party with the hopes of recouping their holdings after successfully discharging their debt. The most straightforward method is for a debtor to "gift" assets to a family member, preferably a sibling, with the tacit expectation--there can't be a written agreement--that the assets will be gifted back at some point in the future.

Student debtors with wealthy parents face a number of obstacles in convincing judges to discharge their debt. To address that concern, debtors can have their parents draw up wills that specifically disinherit them. The gambit is strengthened when debtors present a plausible backstory to explain their family rift. Drug and/or gambling addictions are popular explanations, as are tales of sexual molestation.

MATERIAL RENUNCIATION

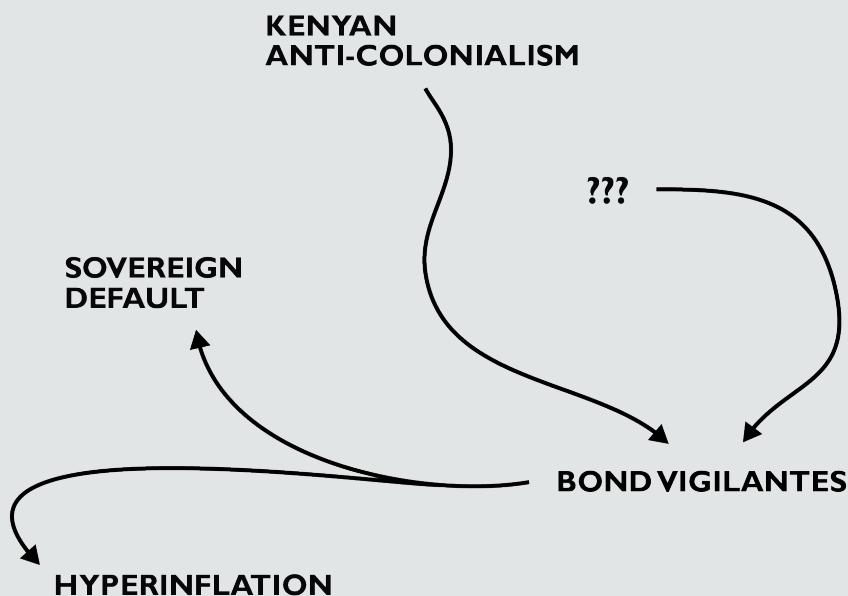
An extreme but effective move that both rids a debtor of assets and guts his or her earning potential is to take a vow of poverty. Catholic fraternal orders such as the Franciscans and Dominicans, for example, force their members

to relinquish worldly belongings. On the other hand, becoming a Catholic monk typically involves other requirements, like taking a vow of chastity, which may not appeal to all petitioners.



11

12



POTENTIALLY INCREASING EXPENSES THAT OUTWEIGH POTENTIAL APPRECIATION IN THE VALUE OF THE DEBTOR'S ASSETS OR LIKELY INCREASES IN THE DEBTOR'S INCOME; THE LACK OF BETTER FINANCIAL OPTIONS ELSEWHERE

With the national debt spiraling upward, debtors may find benefit in framing their plight in macroeconomic terms. Especially if appearing before bankruptcy judges who are Republican appointees, debtors might find it advantageous to argue their individual hopelessness on the basis of a more general hopelessness in the nation's fiscal forecast.

OBAMA-POCALYPSE

Even judges who aren't birthers may still fear the country is being taken over by communists. Many conservatives take it for granted that the Obama administration has been committed to destroying free enterprise since day one. In the aftermath of the president's re-election last November, large swaths of the population believe the country is "going to hell." Petitioners can tap into this frustration by arguing that it's the president's fault they remain unemployed. The argument can grant petitioners cover until at least 2017, when Obama will no longer be in office.

