

## A Mind is a Terrible Thing to Waste

AS BEAR STERNS and Lehman Brothers imploded in 2008, so did a substantial portion of the national market for legal services. Some sectors, of course, were relatively unaffected. Crime continued to be prosecuted, and criminal defendants continued to be defended. Overall, however, according to data compiled by the Bureau of Labor Statistics, the number of jobs in the legal industry reportedly declined by 42,000 in the 12 months ending in November 2009.<sup>1</sup> Between June 2007 and the present, the number of legal services positions has declined by approximately 93,000.<sup>2</sup>

The changes in the legal profession precipitated by the recession have adversely affected lawyers at all levels, but the burden has fallen most heavily on recent law school graduates. As law firms adjusted their supply curve to the market's decreased demand, hundreds of firms postponed the start dates for their newly hired lawyers, and some firms postponed them again.<sup>3</sup> According to the National Association for Legal Professionals, between 3,200 and 3,700 graduates had the start dates for their jobs with law firms deferred beyond Dec. 1, 2009.<sup>4</sup> Eventually, a number of offers of employment were terminated outright. The employment rate for law graduates of the Class of 2009 fell 3.6 percentage points below the 91.9 percent employment rate for the Class of 2007. The Class of 2009 registered the lowest employment rate since the mid-1990s.

Moreover, for those graduates who reported that they were employed, abnormally high percentages were employed in part-time and temporary positions. Nearly 25 percent of all jobs were reported to be only temporary positions, many created by the law schools themselves.<sup>5</sup> And an unusually large proportion of jobs did not involve practicing law. Only 70.8 percent of the Class of 2009 was employed in jobs requiring passage of the bar, compared to 74.7 percent of the Class of 2008.<sup>6</sup> Among those who reported having a job practicing law, almost 50 percent more than usual had hung up their shingle as solo practitioners.<sup>7</sup> In succeeding years, the mutually traumatic experiences of 2008 and 2009, together with a continuing slow legal market, have caused most firms to be much

more cautious in hiring. For example, 2010 summer programs involved about half the number of positions as in previous years. And firms made offers to only 69 percent of summer associates, compared to 90 percent who were offered jobs in earlier years.<sup>8</sup>

The cumulative impact of lower hiring rates, reduced salaries, more temporary positions, and increased reliance on entering the market as a solo practitioner is that a smaller proportion of new law graduates can economically justify their investment in a legal education. Dean David Van Zandt of Northwestern University Law School has estimated that more than 40 percent of law school graduates now earn starting salaries below \$65,315, the annual income that his calculations show is necessary for the investment in a law school education to provide law graduates with a positive return over that from an alternative career. And his estimate did not include in the law student's costs either the opportunity costs of spending three years in law school instead of earning a normal income or the cost of debt service on law school loans.<sup>9</sup>

The number of legal jobs available has simply not matched the supply, and starting salaries have fallen along with the oversupply. For hundreds of lawyers who thought that, after working assiduously through at least 19 years of schooling, they held the winning lottery ticket in the form of a high-paying legal position, their winning ticket has disintegrated.

Not only does the continuing paucity of positions for lawyers present a current problem for recent law school graduates, but the disappointments are also likely to linger into many graduates' futures. In the future, whenever the demand for legal services begins to grow to a level more commensurate with those of the recent past, many firms can be expected to revert to their old patterns of hiring lawyers directly from the law school class that is graduating that year. Habits are ingrained, the law school recruitment process is relatively efficient, and firms can more reliably predict the talents and skill sets the newly hired lawyers will possess immediately after graduation. For lawyers who graduated from law school during the recession years, finding a position in the eventually expanding legal market is more likely to be akin to law firms' hiring laterally, where offers are a product of the fit between the firm's specific legal needs on the one hand and the lawyer's experience, expertise, and skills acquired since law school (and perhaps the volume of portable business he or she can bring to the firm) on the other. For graduates whose opportunities in the field of legal

services have been blighted by a slow economy for several years, the prospects are not inviting.

Nevertheless, the nation's law schools continue to enroll an increasing number of students. In 2010, the number of J.D. degrees granted by law schools was 11.5 percent higher than in 2000. And the number of aspiring law students who took the LSAT increased by 20.5 percent between 2007 and 2009.<sup>10</sup>

As the campaign slogan of the United Negro College Fund reminds us, "A mind is a terrible thing to waste." And wasting hundreds of legally trained minds is an ugly prospect. Even well-trained minds that are not put to use exercising their skills are likely to lose their grip on their hard-won knowledge. Nobel Prize-winning economist Joseph Stiglitz recently described the effects of chronic underemployment of skills and training for the work force at large:

"If high unemployment continues, America faces the risk of losing human capital as the skills of the unemployed erode. It will then become increasingly difficult to bring the unemployment rate down to anywhere near the levels that prevailed in the mid and late 1990's. ..."<sup>11</sup>

This warning holds true for lawyers as well. Lack of employment (or underemployment) in the legal field is likely to mean a deterioration of unused knowledge and skills, increasing the obstacles to achieving the professional career that was anticipated upon entering law school.

The organized bar's recognition of the problems has been sufficient to prompt consideration of requiring increased economic disclosure to law school applicants. The suggestion reminds me of the day my wife and I took our oldest son to orientation as a freshman undergraduate at a leading architectural school. The faculty and the administrators separated the students from the parents and herded the parents into an information session that, we were told, would provide us with the same information being conveyed to the students. Topic number one was that, if we had encouraged our children to study architecture out of dreams that they would become wealthy like world-renowned architects I.M. Pei or Frank Gehry, we should disabuse ourselves of any such notions. Architects, they told us, were then (and had long been) the lowest paid professionals in the nation. Newly minted graduates could expect to barely scrape by economically. (I have always appreciated the candor of these remarks, but I questioned their timeliness, since responding intelligently to them would have been a lot easier had they not come on the day students reported for class. Nevertheless, I suppose transfer to another part of the university would have been feasible.)

For a profession in which primary motifs include knowing-and-intelligent waiver, informed consent, and full disclosure of all material facts (including avoiding the omission of facts required to make the facts

disclosed not misleading), disclosure of law graduates' realistic economic prospects seems to be in order. A proposal to require law schools to disclose to all accepted applicants the school's cost and the employment statistics of its graduates is currently being considered. Other disclosure is also being evaluated: (1) what employment data and information regarding graduates' salary should schools be required to disclose publicly and (2) what information regarding the fates of its graduates should each school be required to collect and disclose as part of the accreditation process?<sup>12</sup>

Economic disclosure should not be limited to the number of graduates employed nine months after graduation (the present practice)<sup>13</sup> and average incomes. Meaningful disclosure would include (1) whether postgraduate employment consisted of the practice of law or something else, (2) whether the jobs were full-time or part-time, and (3) whether the jobs were permanent or temporary positions. Income disclosure should include first, second, third, and fourth quintile incomes. And disclosure should include equally comprehensive marketwide information on graduates five and 10 years after graduation. What proportion of graduates is fulfilling their career ambitions and what proportion has decided that practicing law is not a career they want to continue to pursue?

While we are making disclosures to prospective law students, perhaps they ought not to be limited to the financial facts of life. We ought also to tell them that in practicing law, there really is no substitute for hard work and experience. When I was in law school, the faculty and administration used to tell us (and our families) "the Law is a jealous mistress." Having had neither a legal career nor a mistress, I never quite understood what that meant. But full disclosure would entail telling prospective lawyers that increased responsibility for resolving client's problems is earned by hard work and dedicated effort. The more significant the level of responsibility lawyers want to discharge effectively for their clients, the more these lawyers are going to need the expertise and the judgment that accompany experience. We may also want to let them know that clients bring to their lawyers problems that are of great significance to the clients and often problems that are not readily solved. Bearing that kind of responsibility for a client's future is not always comfortable or stressless.

The bar and law schools should not attempt to protect the economics of the legal profession by restricting entry like some form of medieval tradesman's guild. But prospective students considering a legal career do deserve to have accurate information on both the rewards and the risks, satisfactions, and frustrations that accompany the career they are considering embarking upon. Conveying such information can reasonably be expected to reduce the incidence of wasting legally trained minds in the bodies of individuals who find out that a legal career does not deliver the life they are seeking. **TFL**

**SIDEBAR** *continued on page 6*

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**Endnotes**

<sup>1</sup>American Bar Association, Statement by the Commission on the Impact of the Economic Crisis in the Profession and Legal Needs at 1, available at [www.abanet.org/op/lamm/docs/accomplishments-for-website.pdf](http://www.abanet.org/op/lamm/docs/accomplishments-for-website.pdf).

<sup>2</sup>Debra Cassens Weiss, *Law Schools Grow As Jobs Shrink, Producing Irate Unemployed Lawyers*, available at [www.abajournal.com/news/article](http://www.abajournal.com/news/article).

<sup>3</sup>Nathan Koppal, *Bar Raised For Law Grad Jobs*, (May 5, 2010), available at [online.wsj.com/article/SB1000424052748704866204575224309177184416.html](http://online.wsj.com/article/SB1000424052748704866204575224309177184416.html).

<sup>4</sup>NALP, *Market For Law Graduates changes With Recession: Class of 2009 Faced New Challenges* at 1, available at [www.nalp.org](http://www.nalp.org).

<sup>5</sup>*Id.*

<sup>6</sup>*Id.* at 2.

<sup>7</sup>NALP, *Class of 2009 Faced New Challenges With Recession; Overall Employment Masks Job Market Weakness* at 2, available at [www.nalp.org](http://www.nalp.org).

<sup>8</sup>Debra Cassens Weiss, *As 'Troubling Indicators' Mount for 2010 Law Grads, An ABA Expert Issues a Warning*, available at [www.abajournal.com/news/articles](http://www.abajournal.com/news/articles).

<sup>9</sup>*The Value Proposition of Attending Law School*, available at [www.abanet.org/lcd/legaled/value.pdf](http://www.abanet.org/lcd/legaled/value.pdf). Dean Van Zandt's calculation assumes the student would earn \$60,000 per year in an alternative occupation, that law school tuition is \$30,000 per year, that the student works for 30 years as a lawyer and that the discount rate is 5 percent.

<sup>10</sup>Weiss, *supra* note 2.

<sup>11</sup>Joseph Stiglitz, *Why Easier Money Won't Work*, WALL STREET JOURNAL, Oct. 23, 2010.

<sup>12</sup>Karen Sloan, *ABA May Join Push For Law School Transparency*, THE NATIONAL LAW JOURNAL (Oct. 18, 2010); Debra Cassens Weiss, *ABA Weighs Required Disclosure of Law School Job Stats, More Rigorous Reporting*, available at [www.abajournal.com/weekly/article/aba\\_weighs](http://www.abajournal.com/weekly/article/aba_weighs). See *The Value Proposition of Attending Law School*, available at [www.abanet.org/sd/legaled/value.pdf](http://www.abanet.org/sd/legaled/value.pdf).

<sup>13</sup>Sloan, *supra* note 12.

**MESSAGE** continued from page 3

Judgeship Act (S. 1653, H.R. 362) supported by the Judicial Conference and the FBA to add 12 new circuit judgeships and 51 new district judgeships. Unfortunately, the case for these additional judgeships, which rest upon rising case loads and insufficient resources throughout parts of the federal court system, rests on the assumption that all judgeships are already filled and that no vacancies exist. Similarly, Senate approval of legislation to add 13 permanent bankruptcy judgeships and make permanent 22 temporary bankruptcy judgeships has stalled.

The Federal Bar Association as a matter of policy takes no position on the credentials or qualifications of specific nominees to the federal bench. The FBA's foremost interest lies in the assurance of prompt, dispositive action by the President in nominating qualified federal judicial candidates and the Senate in either confirming or not confirming them in a prompt manner. Such action will ultimately reduce the number of vacancies to a more tolerable level.

The FBA seeks the fair and swift administration of

justice for all litigants in the federal courts. The large number of judicial vacancies prevents the prompt and timely administration of justice in the federal courts, where our members practice. This is causing unnecessary hardship and increased costs on individuals and business with lawsuits pending in the federal courts. Accordingly, on Nov. 19, 2010, as your President, I sent a letter to the Senate leadership urging the Senate to vote up-or-down on those 17 noncontroversial judicial candidates cleared by the Judiciary Committee and especially 7 of those nominees associated with vacancies designated as "judicial emergencies." (See the FBA's letter on [www.fedbar.org/advocacy](http://www.fedbar.org/advocacy).) The FBA continues to "raise its voice" and urge action and the development of strategies to strengthen the effective and prompt administration of justice for our members, the judiciary and the public. **TFL**



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