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The Need for Prompt Action to Revise American Law Schools

Richard A. Westin

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THE NEED FOR PROMPT ACTION TO REVISE AMERICAN LAW SCHOOLS

*Richard A. Westin **

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I. INTRODUCTION

The lobster industry and the law school industry are developing an eerie parallel. Ghost fishing in the lobster industry happens when a lobster trap separates from its control line and breaks away. As planned, it attracts a lobster that entered to eat the carrion bait, but—thanks to the broken line—instead of being harvested, the lobster starves. Later,

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another lobster enters, devours the dead lobster, becomes trapped, dies and the cycle thus continues indefinitely. The same applies for many law students—they enter law school with high hopes, baited by false promises, only to find that they vastly exaggerated their hopes for success, and, if they are unlucky, find nothing in the legal field. Next year another crop of young competitors enter the field, compounding the improbability of finding a job close to what they expected.

American law students are in a crisis. The ghost fishing crisis was cured when the law required that the lobster trap's door eventually open, thanks to biodegradable metal hinges or gates. Unfortunately, there is no such relief for the glut of law students. The ABA Journal reports that 85% of graduates from accredited law schools in 2010 were burdened with debts averaging \$98,500, but they are graduating into a weak economy where their prospects for employment have narrowed greatly.¹ Students in previous classes have far from been absorbed into the legal industry and classes behind them promise a continuing flow of competitors.²

In the meantime, law schools have stood shoulder-to-shoulder behind the false numbers law schools have generated about their success in placing recent graduates into the job market because no law school dares to be the first to tell the truth. The result is a mass of private tragedies and extensive economic waste in the form of large debts for an investment that, for many, represents money wasted, leaving only haunting, unpayable education loan obligations. Ever since the *New York Times* published Segal's article *Is Law School a Losing Game?*,³ the cloud hanging over law school education has become thicker and more unsavory. Here is an illustrative case written by Janet Lorin and published by *Bloomberg News*:

Trapped for Decades

Gerrald Ellis, 28, took about \$160,000 in federal loans to attend Fordham Law School, and then spent a year searching for a job. He eventually found work at a four-lawyer firm in White Plains, New York, doing consumer protection work.

1. William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble: How Long Will it Last if Law Grads Can't Pay Bills?*, ABAJOURNAL (Jan. 1, 2012, 10:41 AM CST), http://www.abajournal.com/news/article/how_long_can_the_law_school_bubble_last/.

2. *Id.*

3. David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at B1, available at <http://www.nytimes.com/2011/01/09/business/09law.html?pagewanted=all>.

Because his student debt is so high compared to his salary, Ellis said he expects to qualify for a plan that would let him pay 15% of his salary for 25 years, and whatever debt is left after that is forgiven.

“I’m trapped for at least two decades,” said Ellis, who lives in Harlem with a classmate who also borrowed more than \$100,000. “The debt has an impact on everything, where I decide to live, what job I take. I can’t even imagine having kids with this kind of debt burden. Multiply that by a whole generation.”⁴

What follows is an attempt to lay out the problem and propose some serious changes promptly in order to make law school more humane and economically efficient before the opportunity for taking advantage of faculty attrition for restructuring the law school system has faded.

II. CHRONIC PROBLEMS

A. *Problem One: A Saturated Legal Services Market*

Reliable figures on the employment status of lawyers are hard to come by. The following tabular source is the federal Bureau of Labor Statistics.⁵ Those employed as attorneys make up a relatively small percentage of the American labor force. According to U.S. Department of Labor (2009) statistics, 556,790 people were employed as attorneys nationally.⁶ While this seems like a significant number, the total national employment was 130,647,610. Thus, by the BLS reckoning, attorneys made up only 0.426% of national employment, but the percentage of people employed as attorneys—notwithstanding small

4. Janet Lorin, *Trapped by \$50,000 Degree in Low-Paying Job is Increasing Lament*, BLOOMBERG (Dec. 7, 2011, 12:00 AM ET), <http://www.bloomberg.com/news/2011-12-07/trapped-by-50-000-degree-in-low-paying-job-is-increasing-lament.html>.

5. See *infra* Table 1.

6. *Lawyers, Bureau of Labor Statistics*, U.S. Dep’t of Labor, Occupational Employment & Wages—May 2009, Part 23-1011 (Lawyers) (May 14, 2010), [http://www.bls.gov/oes/2009/may/oes231011.htm#\(1\)](http://www.bls.gov/oes/2009/may/oes231011.htm#(1)). The American Bar Assn. put the number of licensed attorneys in 2008 at 1,180,386. *ABA Lawyer Demographics*, ABA (2009), http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/Lawyer_Demographics.authcheckdam.pdf. The difference in statistics between the BLS and ABA is related to how each organization defines “attorney.” The BLS statistics include individuals who currently represent clients, oversee judicial proceedings in a criminal or civil setting, or do transactional legal work. On the other hand, the ABA statistics include every licensed attorney in the U.S., regardless of the type of work they do or if they are employed. This includes attorneys who have retired, do not work in a particular field considered by the BLS, and those who do not practice in the legal field.

declines in 2005 and 2008—has followed an upward trend.⁷

Table 1⁸

Table of those employed as attorneys compared to total employment nationally

7. *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, National Occupation Employment & Wage Estimates—May 2009 (United States) (May 14, 2010), http://www.bls.gov/oes/2009/may/oes_nat.htm#00-0000; *Lawyers, Bureau of Labor Statistics*, *supra* note 6; *See infra* Table 1.

8. *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, National Occupation Employment and Wage Estimates—2001 (All Occupations) (Dec. 23, 2002), http://www.bls.gov/oes/2001/oes_00al.htm; *Legal Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, National Occupation Employment and Wage Estimates, Legal Occupations—2001, Part 23-0000 (Legal Occupations) (Dec. 23, 2002), http://www.bls.gov/oes/2001/oes_23le.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, National Occupation Employment and Wage Estimates—2002 (All Occupations) (Nov. 26, 2003), http://www.bls.gov/oes/2002/oes_00Al.htm; *Legal Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, National Occupation Employment and Wage Estimates, Legal Occupations—2002, Part 23-0000 (Legal Occupations) (Nov. 26, 2003), http://www.bls.gov/oes/2002/oes_23Le.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, National Occupation Employment and Wage Estimates—May 2003 (All Occupations) (May 7, 2004), http://www.bls.gov/oes/2003/may/oes_00Al.htm; *Legal Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, National Occupation Employment and Wage Estimates—May 2003, Part 23-0000 (Legal Occupations) (May 7, 2004), http://www.bls.gov/oes/2003/may/oes_23Le.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, National Occupation Employment and Wage Estimates—May 2004 (All Occupations) (June 2, 2005), http://www.bls.gov/oes/2004/may/oes_00Al.htm; *Legal Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, National Occupation Employment and Wage Estimates—May 2004, Part 23-0000 (Legal Occupations) (June 2, 2005), http://www.bls.gov/oes/2004/may/oes_23le.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, National Occupation Employment and Wage Estimates United States—May 2005 (All Occupations) (Sept. 8, 2008), http://www.bls.gov/oes/2005/may/oes_nat.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, National Occupation Employment and Wage Estimates United States—May 2006 (All Occupations) (Sept. 26, 2008), http://www.bls.gov/oes/2006/may/oes_nat.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, National Occupation Employment and Wage Estimates United States—May 2007 (All Occupations) (Sept. 28, 2010), http://www.bls.gov/oes/2007/may/oes_nat.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, National Occupation Employment and Wage Estimates United States—May 2008 (All Occupations) (May 29, 2010), http://www.bls.gov/oes/2008/may/oes_nat.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, National Occupation Employment and Wage Estimates United States—May 2009 (All Occupations) (May 14, 2010), http://www.bls.gov/oes/2009/may/oes_nat.htm#00-0000.

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Year	Attorneys	Total Employed	Percent of Attorneys	Percent Change From Previous Year
2001	490,000	127,980,410	0.3829 percent	
2002	504,370	127,523,760	0.3955 percent	0.01264 percent
2003	516,220	127,567,910	0.4047 percent	0.00915 percent
2004	521,130	128,127,360	0.4067 percent	0.00207 percent
2005	529,190	130,307,840	0.4061 percent	-0.00062 percent
2006	547,710	132,604,980	0.4130 percent	0.00693 percent
2007	555,770	134,354,250	0.4137 percent	0.00062 percent
2008	553,690	135,185,230	0.4096 percent	-0.00408 percent
2009	556,790	130,647,610	0.4262 percent	0.01660 percent

Source: U.S. Dep't of Labor, 2009

Since 2001, the ratio of employed attorneys to the national employees has risen 0.0433%; a significant number in light of the small percentage of people employed as attorneys nationally.⁹ While the number of people employed as attorneys has increased, this increase has not kept up with the number of people passing the bar and flooding the market with eligible attorneys.¹⁰ For example, in Kentucky, 3,597 people passed the state bar between 2002 and 2009, while the number of people *employed* as attorneys in Kentucky only increased by 480 during the same period.¹¹

9. See *supra* Table 1.

10. Henderson & Zahorsky, *supra* note 1, at 32.

11. See *infra* Table 3.

Table 2¹²

Table of those employed as attorneys compared to total employment in Kentucky

Year	Attorneys	Total Employed	Percent of Attorneys	Percent Change from Previous Year
2001	4,250	1,726,230	0.2462 percent	
2002	4,330	1,718,680	0.2519 percent	0.00574 percent
2003	4,480	1,721,470	0.2602 percent	0.00831 percent
2004	4,730	1,728,300	0.2737 percent	0.01344 percent
2005	NA*	1,754,590		
2006	4,710	1,779,830	0.2646 percent	-0.00905 percent**
2007	4,600	1,801,800	0.2553 percent	-0.00933 percent
2008	4,560	1,817,860	0.2508 percent	-0.00446 percent
2009	4,810	1,748,610	0.2751 percent	0.02423 percent

Source: U.S. Dep't of Labor, 2009

*Data not released, **Reflects change over two years (2004 to 2006)

12. *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2001 (All Occupations) (Dec. 5, 2002), http://www.bls.gov/oes/2001/oes_ky.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2002 (All Occupations) (Dec. 1, 2003), http://www.bls.gov/oes/2002/oes_ky.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2003 (All Occupations) (May 7, 2004), http://www.bls.gov/oes/2003/may/oes_ky.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2004 (All Occupations) (Nov. 24, 2008), http://www.bls.gov/oes/2004/may/oes_ky.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2005 (All Occupations) (Sept. 30, 2008), http://www.bls.gov/oes/2005/may/oes_ky.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2006 (All Occupations) (Sept. 26, 2008), http://www.bls.gov/oes/2006/may/oes_ky.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2007 (All Occupations) (Feb. 12, 2009), http://www.bls.gov/oes/2007/may/oes_ky.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2008 (All Occupations) (May 29, 2009), http://www.bls.gov/oes/2008/may/oes_ky.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2009 (All Occupations) (Apr. 6, 2010), http://www.bls.gov/oes/2009/may/oes_ky.htm.

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Table 3¹³

Table of the number of people passing the bar in Kentucky and the number of people employed as attorneys in Kentucky

Year	People Passing bar	Cumulative Number	Number of Attorneys Employed	Change from Previous Year	Cumulative Change
2002	363	363	4,330		
2003	392	755	4,480	150	150
2004	461	1,216	4,730	250	400
2005	461	1,677	NA*		
2006	459	2,136	4,710	-20**	380**
2007	481	2,617	4,600	-110	270
2008	502	3,119	4,560	-40	230
2009	478	3,597	4,810	250	480

Source: U.S. Dep't of Labor, 2009

*Data not released, **Reflects change over two years (2004 to

13. *Kentucky Bar Exam Results*, ADAPTIBAR, <http://www.adaptibar.com/states/kentucky-bar-exam-results.asp> (last visited Dec. 16, 2012); *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2002 (All Occupations) (Dec. 1, 2003), http://www.bls.gov/oes/2002/oes_ky.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2003 (All Occupations) (May 7, 2004), http://www.bls.gov/oes/2003/may/oes_ky.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2004 (All Occupations) (Nov. 24, 2008), http://www.bls.gov/oes/2004/may/oes_ky.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2005 (All Occupations) (Sept. 30, 2008), http://www.bls.gov/oes/2005/may/oes_ky.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2006 (All Occupations) (Sept. 26, 2008), http://www.bls.gov/oes/2006/may/oes_ky.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2007 (All Occupations) (Feb. 12, 2009), http://www.bls.gov/oes/2007/may/oes_ky.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2008 (All Occupations) (May 29, 2009), http://www.bls.gov/oes/2008/may/oes_ky.htm; *All Occupations, Bureau of Labor Statistics*, U.S. DEP'T OF LABOR, State Occupation Employment and Wage Estimates Kentucky—May 2009 (All Occupations) (Apr. 6, 2010), http://www.bls.gov/oes/2009/may/oes_ky.htm.

2006)

Though attorneys would be leaving the marketplace during that same time period, when considering the total number of those employed as attorneys in Kentucky in 2009 was 4,810, it is impossible to imagine enough attorneys, retired or otherwise, left the marketplace from 2002 to 2009 to absorb the flood of recently admitted lawyers.¹⁴ Despite that ominous insight, the number of people taking and passing the bar in Kentucky has seen a general upward trend.¹⁵ This implies that more people qualified to be employed as attorneys are finding jobs in non-traditional legal fields, whether by choice or necessity, if they are lucky enough to find employment at all.

Table 4

*Table of Law School Enrollment*¹⁶

Year	First Year Enrollment	Total Enrollment	J.D. and LL.B Awarded
2001-02	45,070	135,091	37,909
2002-03	48,433	140,612	38,605
2003-04	48,867	145,088	38,674
2004-05	48,239	148,169	40,023
2005-06	48,132	148,273	42,673
2006-07	48,937	148,698	43,920
2007-08	49,082	150,031	43,518
2008-09	49,414	152,033	43,588
2009-10	51,646	154,549	44,004

Source: American Bar Association

While Lowrey points out that this trend has not gone unnoticed by law students or the general public, this is not the first era in which concern over this issue has been raised.¹⁷ In the early to mid-nineties, there was a flurry of law journal articles about the huge growth in the

14. See *supra* Table 2; see *supra* Table 3.

15. Kentucky Bar Exam Results, *supra* note 13.

16. *ABA Enrollment and Degrees Awarded 1963-2011 Academic Years*, AM. BAR ASS'N, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf (last visited Dec. 30, 2012).

17. Annie Lowrey, *A Case of Supply vs. Demand*, SLATE (Oct. 27, 2010, 4:14 PM ET), http://www.slate.com/articles/business/moneybox/2010/10/a_case_of_supply_v_demand.html.

number of attorneys and whether that was good or bad for the profession.¹⁸ For example, Harvard Law School Dean Robert C. Clark said in one essay that, “although the recent recession was accompanied by a drop in the demand for legal service, in 1991, for the fifth consecutive year, the total enrollment at ABA-approved law schools actually increased.”¹⁹

Lowrey points out that this sentiment seems to ring as true today as it did in 1992 (as the market for new attorneys collapsed in the midst of the recent recession) and yet law schools continue to graduate new attorneys in greater numbers each year.²⁰

B. *Problem Two: Law School Expansion*

I believe, and Lutzer agrees, that law schools and the American Bar Association (“ABA”) are much to blame for the saturation of the law market.²¹ To put it simply, law schools have attracted excessive applications by issuing deliberately misleading employment statistics; the ABA has failed to rein in this deceptive conduct and continues to accredit additional law schools, which equates to more graduates every year.²²

The number of ABA accredited law schools rose 9% since 2000.²³ There are now 202 ABA accredited law schools (three of which are provisionally accredited)²⁴ compared to 182 accredited schools a mere decade ago.²⁵ The number of graduates now averages well over 40,000 per year, and seems to only be on the rise.²⁶ Between 2007 and 2009, Henderson and Zahorsky report that the number of LSAT takers

18. See, e.g., Robert E. Schechter, *Changing Law Schools to Make Less Nasty Lawyers*, 10 GEO. J. LEGAL ETHICS 367, 370, 389 (1997); Kenneth Lasson, *Lawyering Askew: Excesses in the Pursuit of Fees and Justice*, 74 B.U. L. REV. 723, 724, 731 (1994); Dean Robert C. Clark, *Why So Many Lawyers? Are They Good or Bad?*, 61 FORDHAM L. REV. 275-277 (1992).

19. Clark, *supra* note 18, at 275-76.

20. Lowrey, *supra* note 17.

21. Daniel Luzer, *Too Many Law Schools?*, WASHINGTON MONTHLY (Jan. 28, 2010, 2:07 PM), http://www.washingtonmonthly.com/college_guide/blog/too_many_law_schools.php.

22. *Id.*

23. Lowrey, *supra* note 17.

24. ABA Approved Law Schools, AM. BAR ASS’N, http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html (last visited Dec. 16, 2012).

25. Katherine Mangan, *In Tight Job Market, Some Want Bar Association to Toughen Law-School Accreditation Standards*, THE CHRONICLE OF HIGHER EDUCATION (July 31, 2011), <http://chronicle.com/article/Bar-Association-Is-Urged-to/128441/>.

26. Mark Greenbaum, *No More Room at the Bench*, L.A. TIMES (Jan. 8, 2010), <http://articles.latimes.com/2010/jan/08/opinion/la-oe-greenbaum8-2010jan08>.

increased by 20.5% as law school became a more popular career choice, evidently in response to a poor economy.²⁷ The enrollment of 1Ls in 2000 was 43,152, but by 2011, 1L enrollment was 52,448—a stunning increase of over 21%.²⁸

C. *Problem Three: Law Student Employment is Deteriorating*

In 2007, when the economy had a rosy sheen, the United States Department of Labor (2009) cheerfully reported that “[e]mployment of lawyers is expected to grow 13% during the 2008-18 decade, about as fast as the average for all occupations.”²⁹ However, even if this prediction had been true, this projected 13% increase was too small to keep up with the increasing number of law graduates. The BLS hinted at this when it explained that competition for jobs in the legal field is keen because of the number of law school graduates, with many discouraged graduates turning to jobs outside of the legal field.³⁰ Lowrey reports that in reality the total number of attorney positions has fallen about 5.4% since 2007.³¹ In fact, *The Economist* reported that the 250 biggest law firms in the U.S. cut 4% of their workforce.³²

As a practicing profession, the field grows at a mere one percent per year.³³ Taking into account deaths and retirements, the number of new jobs in the legal profession is likely to be in the realm of 30,000 per year.³⁴ This is not nearly enough to accommodate the floods of well over 40,000 law school graduates each year.³⁵ Employment ratings for the class of 2009 were 88.3%, but 25% of those were temporary jobs and 10% were part time—a significant decrease from the peak of legal jobs seen in 2007.³⁶

27. Lowrey, *supra* note 17.

28. *First Year and Total J.D. Enrollment by Gender*, AM. BAR ASS'N, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf.

29. Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook 2010-2011 Edition, Lawyer*, 260 (Jan. 2010); *see also* Bureau of Labor Statistics, Occupational Outlook Handbook, 2012-13 Edition, *Lawyers*, U.S. DEP'T OF LABOR, www.bls.gov/ooh/legal/lawyers.htm (last visited Sept. 24, 2012). U.S. Dep't of Labor has updated occupational growth rate to 10% between 2010-2020.

30. *See Occupational Outline Handbook 2010-2011 Edition*, *supra* note 29.

31. Lowrey, *supra* note 17.

32. *America's Law Schools and Firms—Trouble with the Law*, THE ECONOMIST, Nov. 11, 2010, available at <http://www.economist.com/node/17461573>.

33. Greenbaum, *supra* note 26.

34. Greenbaum, *supra* note 26.

35. Luzer, *supra* note 21.

36. Lowrey, *supra* note 17.

In the meantime, some disturbing trends have emerged for recent graduates. One is the outsourcing overseas of legal research, especially by the West Corporation, which employs Indian law graduates to replace American researchers.³⁷ Another is a small but growing resistance on the part of some larger clients to pay for work done by first year lawyers. According to a September survey for *The Wall Street Journal* completed by the Association of Corporate Counsel, “more than 20% of the 366 in-house legal departments that responded are refusing to pay for the work of first or second-year attorneys, in at least some matters.”³⁸ These trends will necessarily make prospective law firm employers more cautious about hiring rookies coming straight from law school. The only question is how much?

D. Problem Four: Law Schools’ False Reporting of Employment Data Attracts Doomed Populations

1. Background

Law schools across the country have trapped themselves in a bog of false hiring data. They all know it, but no one wants to be the “first mover” by telling the truth about the hiring picture. When a potential law school applicant sits down to determine whether pursuing a legal degree is a worthwhile economic endeavor, the process becomes hard to evaluate accurately due to the elevated statistics provided by law schools. Many law schools imply “that, within a few months of graduation, practically all their graduates [will] obtain jobs as lawyers, by trumpeting employment figures of 95%, 97%, and even 99.8%.”³⁹ This encouraging information is obviously enough to skew rational thought. However, the ABA appears to finally be catching onto this growing issue and is imposing new rules (discussed below).

Historically, there have been two main sources of information on post-law-school employment rates. The first is *U.S. News and World Report* (“USNWR”), which gathers employment data as part of the

37. *Thomson Reuters Acquires Indian Legal Outsourcing Co. Pangea3*, ABAJOURNAL (Nov. 18, 2010, 4:25 PM CST), http://www.abajournal.com/news/article/report_thomson_reuters_to_acquire_indian_legal_outsourcing_co_pangea3/.

38. Ashby Jones & Joseph Palazzolo, *What’s a First-Year Lawyer Worth?—Not Much Say a Growing Number of Corporate Clients Who Refuse to Pay*, WALL ST. J., Oct. 17, 2011, at B1, available at <http://online.wsj.com/article/SB10001424052970204774604576631360989675324.html>.

39. Paul Campos, *How Law Schools Completely Misrepresent Their Employment Numbers*, THE NEW REPUBLIC (Apr. 25, 2011), <http://www.tnr.com/article/87251/law-school-employment-harvard-yale-georgetown>.

methodology it uses in compiling its annual rankings.⁴⁰ These rankings carry great weight because potential students pay close attention to them.⁴¹ In March of 2011, USNWR, in response to heavy criticism, revised the methodology used in gathering this employment data.⁴² Before the revision, “new J.D.s counted as employed at graduation and at nine months out if they were working full or part time in a legal or non-legal job, or pursuing additional graduate school.”⁴³ Additionally, USNWR considered graduates who did not respond with their employment status (25%) as “employed.”⁴⁴ All that is sure is that USNWR was not transparent about their treatment of non-responders. As a result,

[A]lmost all ABA-accredited law schools were reporting nine-month employment rates of more than 90%, and it was a rare top 100 school that had a rate of less than 95%.⁴⁵

USNWR’s new system is supposed to assure that employment ratings at graduation and nine months after are based solely on the number of graduates employed in full- or part-time positions in a legal or non-legal job at that point in time divided by the total number of J.D. graduates.⁴⁶ Graduates who are not seeking employment are now counted as part of the total number of J.D. graduates (previously they were excluded).⁴⁷ This was a glaring flaw in the previous methodology because the discouraged graduates likely ignored polling requests. This revision makes the USNWR at least somewhat less inaccurate: schools that, before the change, were claiming 1 in 500 graduates were unemployed claimed 1 in 30 afterward and those who advertised 95%

40. Robert Morse & Sam Flanigan, *Methodology: Law School Rankings*, U.S. NEWS (Mar. 12, 2012, 12:00 AM), <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/03/12/methodology-law-school-rankings>.

41. Russell Schafer & Carina Wong, *Kaplan Test Prep Survey: Despite an Uncertain Employment Landscape, Law School Applicants Still Consider School Rankings Far More Important than Job Placement Rates When Deciding Where to Apply*, KAPLAN TEST PREP, <http://press.kaptest.com/press-releases/kaplan-test-prep-survey-despite-an-uncertain-employment-landscape-law-school-applicants-still-consider-school-rankings-far-more-important-than-job-placement-rates-when-deciding-where-to-apply> (last visited Dec. 16, 2012).

42. Bob Morse, *ABA May Revise Law School Job Reporting*, U.S. NEWS (Mar. 17, 2011), <http://www.usnews.com/education/blogs/college-rankings-blog/2011/03/17/aba-may-revise-law-school-job-reporting>. See also Campos, *supra* note 39.

43. Morse, *supra* note 42.

44. Morse, *supra* note 42.

45. Campos, *supra* note 39.

46. Morse, *supra* note 42.

47. Morse, *supra* note 42..

employment rates said 1 in 6 graduates do not have jobs.⁴⁸

Incidentally, there appears to be no change in how law school placement personnel falsify the data that they receive.⁴⁹ Instead, these individuals mold the data, converting the statistics to information for public consumption, which is misleading at best.⁵⁰ Moreover, the methodology is not explained in footnotes or text, rendering the data confusing.⁵¹ It would be a great improvement if law schools would openly explain exactly how they arrived at the employment numbers they display.

The other key source of employment information is the National Association for Law Placement (“NALP”)—the group to which the ABA delegates the compiling of employment statistics that ABA-accredited law schools are required to report. “According to [the] NALP, 88.2% of all law school graduates are ‘employed’ within nine months of graduation.”⁵² Campos concluded that “if we exclude people employed in non-legal jobs, and people doing part-time work, the NALP number drops to 62.9 percent.”⁵³ The NALP’s numbers are especially poor because they disregard non-reporting graduates—the very people who are most likely to be unemployed.⁵⁴ However, as Professor Campos detailed in his article in *The New Republic*, many problems still remain with the statistics, even if you include non-reporters.⁵⁵

In his study, Campos “used employment data drawn from 183 individual NALP forms, in which graduates of one top-50 school [self-] reported their employment status nine months after graduation.”⁵⁶ From this data, Campos determined that “one-third of those graduates who report they are working in full-time jobs that require a law degree are in temporary, rather than permanent, positions.”⁵⁷ This is a consistent failing of the NALP statistics—the NALP does not distinguish between

48. Campos, *supra* note 30. See also Morse & Flanigan, *supra* note 40.

49. See Carl Bialik, *Law-School Jobs Data Under Review*, WALL ST. J. BLOG (Mar. 16, 2012, 9:29 PM), <http://blogs.wsj.com/numbersguy/law-school-jobs-data-under-review-1126/>.

50. See Carl Bialik, *Job Prospects for Law Grads? The Jury’s Out*, WALL ST. J. (Mar. 17, 2012, 12:45 AM ET), <http://online.wsj.com/article/SB10001424052702304692804577283691965596610.html>.

51. *Id.*

52. Campos, *supra* note 39.

53. Campos, *supra* note 39.

54. *Methodology for Calculating Graduate Employment Rate*, NALP, http://www.nalp.org/uploads/Employment_Rate_Calc.pdf (last visited Dec. 16, 2012).

55. Campos, *supra* note 39.

56. Campos, *supra* note 39.

57. Campos, *supra* note 39.

temporary and permanent positions.⁵⁸ Campos concluded that, when temporary employment is taken into account, approximately “45 percent of 2010 graduates [from] this particular top-50 law school had real legal jobs nine months after graduation.”⁵⁹ Furthermore, Campos argued that the actual number is most likely lower, stating that “several instances [were discovered] of people [improperly] describing themselves as employed permanently or full-time, when in fact they had temporary or part-time jobs.”⁶⁰

The degree of inaccuracy described here strongly suggests that prospective law students need access to both more information and better information than that currently available. It is unlikely that law schools will provide this information willingly because doing so makes them look like worse investments, therefore lowering their enrollments and their ability to demand ridiculous tuition payments.

One interesting aspect of this arena is the increasing number of private players that are being founded to divulge more accurate information to potential students. For example, a new employment-data organization recently came on the scene in the legal arena—Law School Transparency.⁶¹ The business “is a Tennessee non-profit dedicated to encouraging and facilitating the transparent flow of law school consumer information.”⁶² The organization was “founded by two Vanderbilt University Law School students in 2009” and “operate[s] independently of any legal institutions, legal employers, or academic reports related to the legal market.”⁶³ Law School Transparency advocates for more stringent rules to protect potential law students from “information asymmetries.”⁶⁴ The independence of the organization and the fact that it is a non-profit presumably assures that the information it provides will be less biased than that promulgated by the NALP and USNWR.

The issue is definitely heating up and not just with respect to misrepresentations about hiring. There is an increasing amount of negative publicity surrounding the inaccurate reporting of application and performance information relating to law students at Villanova and the University of Illinois.⁶⁵ At least one U.S. Senator, Barbara Boxer of

58. See *Methodology for Calculating Graduate Employment Rate*, *supra* note 54.

59. Campos, *supra* note 39.

60. Campos, *supra* note 39.

61. LAW SCHOOL TRANSPARENCY, <http://www.lawschooltransparency.com/> (last visited Dec. 16, 2012).

62. *Id.*

63. *Id.*

64. *Id.*

65. Mark Hansen, *ABA Legal Ed Section to Draft a Standard Specifying Penalties for*

California, is perturbed enough that she is strongly considering a Senate Hearing on the matter.⁶⁶

2. The ABA Finally Acts

In response to Law School Transparency and the recent wave of litigation against law schools,⁶⁷ the ABA revised Standard 509 of the ABA Standards and Rules of Procedure for Approval of Law schools.⁶⁸ Standard 509, which law schools must comply with to obtain and retain their accreditation, formerly “require[d] that law schools publish ‘basic consumer information’ in a ‘fair and accurate manner reflective of actual practice.’”⁶⁹ Following the changes approved by the ABA House of Delegates at its August 2012 meeting, Standard 509 now requires “all consumer information that a law school reports, publicizes or distributes shall be complete, accurate and not misleading to a reasonable law school student or applicant.”⁷⁰ The changes also allow the ABA to

Schools that Misrepresent Data, ABAJOURNAL (Oct. 17, 2011, 2:16 PM CST), http://www.abajournal.com/news/article/legal_ed_section_defends/; Martha Neil, *ABA Raps Villanova re Inaccurate Admission Data, Says Law School Must Post Censure Online*, ABAJOURNAL (Aug. 15, 2011, 2:23 PM CST), http://www.abajournal.com/news/article/abas_legal_ed_section_sanctions_villanova/.

66. Ashby Jones, *Lawmakers Probe Data From Law Schools*, WALL ST. J., Nov. 14, 2011, at A5, available at <http://online.wsj.com/article/SB10001424052970203537304577031962440836218.html>.

67. Debra Cassens Weiss, *Law Firms Announce Plans to Sue 15 More Law Schools Over Job Stats*, ABAJOURNAL (Oct. 5, 2011, 10:37 AM CST), http://www.abajournal.com/news/article/law_firms_announce_plans_to_sue_15_more_law_schools_over_job_stats/; Sara Randag, *Grads Sue New York Law School and Cooley Law Saying They Inflated Job and Salary Stats*, ABAJOURNAL (Aug. 10, 2011, 11:36 AM CST), http://www.abajournal.com/mobile/comments/grads_sue_new_york_law_school_and_cooley_law_saying_they_inflated_job_and_s/; David Lat, *Class Action Filed Against Thomas Jefferson School of Law*, ABOVE THE LAW (May 31, 2011, 11:21 AM), <http://abovethelaw.com/2011/05/lawsuit-of-the-day-class-action-filed-against-thomas-jefferson-school-of-law/>; Karen Sloan, *Law School Sued Over “False” Employment Statistics*, NAT’L. LAW J. (May 27, 2011), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202495481202&Law_school_sued_over_false_employment_statistics_&srreturn=20121116164345.

68. Debra Cassens Weiss, *No Fudging: Revised Standard Bars Law Schools from Publishing Misleading Consumer Info*, ABAJOURNAL (Aug. 6, 2012, 10:46 AM CST), http://www.abajournal.com/news/article/no_fudging_revised_standard_bars_law_schools_from_publishing_misleadin/.

69. AM. BAR ASS’N, *Standard 509*, in ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 159, available at: http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf.

70. Weiss, *supra* note 68; Memorandum from the Am. Bar Ass’n, Section of Legal Educ. and Admissions to the Dean of ABA-Approved Law Schs. (Aug. 29, 2012), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/August%202012%20Council%20Open%20Session%20Ma

impose penalties against schools that fail to comply, even if the problem has already been corrected.⁷¹

Additionally, the ABA formally announced in December 2011 that The Council of the ABA Section of Legal Education and Admissions to the Bar approved changes in the section's collection and publication of graduate placement data provided by law schools.⁷² "The changes are meant to enhance the accuracy, timeliness, completeness and specificity of the data."⁷³ ABANow (2011) issued a press release detailing those changes recommended by the section's Questionnaire Committee and adopted by the Council, which included the following:

- Law schools will be required to report placement data (nine months after graduation) directly to the section of the American Bar Association. This will help ensure the accuracy of the data, and permit its expedited publication. (In the past, this information was reported only to the [NALP], which aggregated the data for individual graduates of each school, and sent a report to the schools that was then reported to the ABA in its Annual Questionnaire.)
- Information on placement data will be posted online the year after it is collected.
- Information will be more detailed and complete. The changes expand and refine the data reported by law schools. Law schools must report for each graduate:
 - Employment status (employed, unemployed/seeking, unemployed/not seeking, pursuing graduate degree full-time, unknown);
 - Employment type (law firm, business, government, public interest, clerkship, academia);
 - Employment location;
 - Whether a position is short or long term;

terials/2012_august_standards_revisions.authcheckdam.pdf.

71. Memorandum, *supra* note 70.

72. Mark Hansen, *ABA Legal Ed Section's Council Approves Changes in Law School Graduate Employment Data*, ABAJOURNAL (Dec. 6, 2011 11:39 AM CST), http://www.abajournal.com/news/article/council_approves_changes_in_law_school_employment_data/.

73. *ABA Section of Legal Education and Admissions to the Bar Improves Collection, Publication of Job Placement Data*, ABANOW (Dec. 6, 2011), <http://www.abanow.org/2011/12/aba-section-of-legal-education-and-admissions-to-the-bar-improves-collection-publication-of-job-placement-data/>.

- Whether a position is funded by the school itself.
- Going forward, schools will also report on employment type:
 - Bar passage required;
 - J.D. advantage;
 - Other professional/nonprofessional;
 - Full-time or part-time.⁷⁴

Two things still remain very troubling despite these integral changes. First, why must the ABA hold onto the information for a full year before releasing it to the public? This means that another year, possibly two, will elapse before law students receive the benefit of these additional disclosures necessary for making a smart economic decision. Second, it remains to be seen how law schools will answer this demand for honesty. Given the level of which information is inflated by personnel currently in general advertising schemes to lure students, it seems unlikely that the institutions will provide better information when it will likely result in lower profit.

E. Problem Five: Ready Educational Debt

In January 2011, the law school debt issue reached new proportions when Hassan Jonathan Griffin, a recent graduate of Ohio State University Moritz College of Law, was denied admission to the Ohio bar.⁷⁵ The Board of Commissioners on Character and Fitness of the Supreme Court of Ohio based its denial on the fact that Griffin owed around \$170,000 in student loans, \$150,000 of which stemmed from attending law school.⁷⁶

Mr. Griffin serves as an example of the staggering debt that is facing graduates of law schools in the United States. Skyrocketing tuitions coupled with easy-to-obtain loans are serving to cripple the financial state of law school graduates. As Cauchon correctly reports, lenders currently have no incentive to stop issuing debt as there is little or no risk in providing students with education loans.⁷⁷ Unlike mortgages and credit cards, education debt is rarely eliminated in

74. *Id.* See Ben Trachtenberg, *Law School Marketing and Legal Ethics*, NEB. L. REV. (forthcoming 2013).

75. *In re Application of Griffin*, 943 N.E.2d 1008, 1009 (Ohio 2011).

76. *Id.* at 1009-10.

77. Dennis Cauchon, *Student Loan Debt Surpasses \$1 Trillion*, USA TODAY (Oct. 19, 2011, 10:57), http://www.usatoday.com/NEWS/usaedition/2011-10-19-studentloans_ST_U.htm.

bankruptcy.⁷⁸ These factors result in the credit risk falling on the students.⁷⁹ When graduates leave schools with large amounts of debt, they delay purchasing cars, homes, and other items associated with “life-cycle” events.⁸⁰ Such delays will have a negative impact on the economy.⁸¹ When high amounts of debt are coupled with the inability to find employment, the effects on the economy are magnified. In the words of Henderson and Zahorsky (2012):

Direct federal loans have become the lifeblood of graduate education and they shelter law schools financially from the structural changes affecting the profession. The bills are now coming due for many young lawyers, and their inability to pay will likely bring the scrutiny of lawmakers already moaning about government spending.⁸²

The debts are virtually non-dischargeable in bankruptcy.⁸³ At the same time, Henderson and Zahorsky concluded that only 68% of those jobs obtained by students at the twenty-nine law schools with graduates maintaining the highest debt loads even needed a J.D. to get the job they wound up with—meaning that up to 32% were unwittingly wasting their time at law school.⁸⁴

At the same time, easy credit for students makes it easier for law schools to raise tuition because the student population is, for the moment, flush with ready cash. The outcomes can easily include wasteful deployment of funds into frivolous uses and expansion of administrative staffs. This problem is especially acute for law schools, which are generally seen as cash cows and tend to enjoy relaxed treatment by central administrations, on top of which the U.S. News rankings count money spent per student as a favorable factor (9.75% of the weight of all factors).⁸⁵

Be that as it may, the frequent six-digit debt figures have apparently not served to scare potential students away from pursuing law degrees. In fact, a law degree is in such demand that law schools have been able to raise tuition four times faster than undergraduate colleges.⁸⁶ From

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. Henderson & Zahorsky, *supra* note 1.

83. Henderson & Zahorsky, *supra* note 1, at 3.

84. Henderson & Zahorsky, *supra* note 1, at 1.

85. David Segal, *Law School Economics: Ka-ching!*, N.Y. TIMES, July 17, 2011, at 3, available at <http://www.nytimes.com/2011/07/17/business/law-school-economics-job-market-weakens-tuition-rises.html?pagewanted=all> [hereinafter Segal, *Law School Economics*].

86. *Id.* at 1.

1989 to 2009, college tuition rose by 71%.⁸⁷ During the same period, law school tuition rose 317%.⁸⁸

College and professional degrees are generally thought of as investments in future earning capacity, but when increasing costs of a degree are combined with decreasing job prospects, the act of obtaining a degree loses much of its aura. Instead, a prudent investment begins to look like a bad strategy resulting in the destruction of accumulated savings and wasted time. Unlike taking out a mortgage on a house, a student loan does not provide any guarantee of a return at all, or even of an asset. Even if one defaults on a mortgage, one still receives the benefit of owning a house for whatever period prior to the default; the enjoyment of home ownership, even for a short period of time, has value. Additionally, a debtor can shed the liabilities of a mortgage through bankruptcy. Unlike a home mortgage, a student loan does not guarantee any enjoyment that can be valued. In fact, most law students think of school as drudgery. Nevertheless, capable students are investing in law degrees, often as large as a mortgage, but are unemployable after graduation because the market is saturated.⁸⁹ In short, J.D. funded through borrowed money produces a high cost with potentially non-existent benefits.

After the housing bubble burst several years ago, lenders began implementing higher credit score requirements and more extensive income documentation requirements, which discouraged consumers from becoming homeowners.⁹⁰ With so much risk associated with obtaining a law degree, one would think that education lenders and institutions would take similar steps to discourage potential students from pursuing a degree. Unfortunately for many unemployed recent graduates, this was not the case. Admissions rates to law schools remain high and student debt based on “easy money” continues to increase.⁹¹

As noted above, student loans have typically been considered non-dischargeable in bankruptcy proceedings. However, one recent Maine opinion indicates that courts may be willing to step in to address

87. *Id.* at 3.

88. *Id.*

89. See Mark Greenbaum, *No More Room at the Bench*, L.A. TIMES (Jan. 8, 2010), <http://articles.latimes.com/2010/jan/08/opinion/la-oe-greenbaum8-2010jan08>.

90. Meg Handley, *Overcoming the Mortgage Obstacle: Buying A House May Be Affordable But Can You Get the Financing?*, U.S. NEWS & WORLD REP. (May 10, 2011), <http://money.usnews.com/money/personal-finance/articles/2011/05/10/overcoming-the-mortgage-obstacle>.

91. Segal, *Law School Economics*, *supra* note 85 at 1, 3.

instances where student loans present an undue hardship.⁹² Though courts perhaps do not ordinarily apply the provision, it seems that section 523(a)(8) of the bankruptcy code provides for discharging of student loan debt when it imposes an undue hardship on the debtor and their dependents.⁹³ However, whether courts will become more willing to discharge student debt given the exponential growth of student loans when coupled with today's low employment rates for recent graduates remains to be seen.

III. TOOLS AND SOLUTIONS

If the subject were overproduction of an industrial product, the solutions would be obvious: reduce output, consolidate factories, cut back on the labor force, and streamline operations so as to reduce the cost of the product. It might even require management buyout packages. All of these methods are commonly used in various industries when they are suffering from similar ailments.

Law schools have a number of available options which will become all the more important to use if and when law school applications drop as a result of full and fair disclosure of prospective employment. These options include:

- Consolidating law schools, particularly in large cities that have multiple small, often lower-tier, law schools, which alone could lead to improved efficiencies including reducing the number of administrators; combining overlapping classes; centralizing libraries; and making greater use of existing facilities and eliminating others;
- Adopting a well-developed distance learning program;
- Not filling faculty positions that become available due to retirement of professors; and
- Allowing the use of recordings, rather than requiring live lectures, in courses that can be well taught predominately by lecture.

A. *Consolidation of Law Schools*

Consolidating public or private law schools is inherently possible, but consolidating public and private laws schools seems improbable,

92. In re Ackley, 463 B.R. 146, 147-49 (D. Me. Bankr. 2011).

93. *Id.* at 149.

given their vastly different constituencies. A close inspection of the problem may instead suggest that simply closing some law schools is a better solution. However, the problem is the same—there are too many law schools in existence today turning out far too many lawyers—and the solution to the problem is all too clear—the profession must close some of the flood gates. Consolidating (and closing) some institutions will work as a limit on the amount of J.D.s that are graduating into the over-saturated market every year and will also result in a better use of resources by those remaining institutions.

One concrete example of such a consolidation is the Dickinson School of Law, which integrated two law school campuses into one single institution.⁹⁴ The striking feature is that the buildings on each campus are wired to each other, allowing real time delivery of classes.⁹⁵ The larger classrooms and seminar rooms have push-to-talk buttons at each seat, allowing a free flow of communication between campuses, “facilitating the use of the Socratic method,” and allowing conversations between students.⁹⁶

B. *Adopt a Well-Developed Distance Learning Program*

1. Efficiency Gains

At this point the technology for distance learning is readily available and not costly. Though the Dickinson School of Law represents an amazing display of technology, not all distance-learning programs need to go to such lengths. Distance learning can be implemented using very rudimentary foundations—computer-based applications, such as TWEN or Blackboard, which many institutions already use. Institutions can provide necessary computers and electronic equipment (which often merely includes a standard computer) for students to access these materials. Clearly the absence of technology is not the problem with the failure to integrate law schools’ resources. The problem is institutional.

Done right, distance learning can readily improve the richness of law school learning while holding the number of teachers at a constant

94. *Penn State Law’s Unified Two-Location Operation*, PENN STATE LAW, http://law.psu.edu/the_penn_state_law_experience/student_life/unified_school (last visited Dec. 16, 2012).

95. DISTANCE LEARNING INNOVATIONS IN LEGAL EDUCATION: FUTURE ED CONFERENCE (Harvard Law School, Cambridge, Mass.), Oct. 15-16, 2010, at 1, 3, *available at* http://www.nyls.edu/user_files/1/3/4/30/58/1053/Farmer.pdf [hereinafter Future Ed Conference].

96. *Id.* at 3.

and, in a best case scenario, can lead to a decline in the number required. The results simply depend on the number of law schools to which a subject is beamed. The logical place to begin is with the truth that the average law professor teaches four courses per year. His or her four courses can proliferate very productively. To illustrate, consider the following:

There are three law schools in Small State. Each has its own set of courses, which largely overlap. School A has a full-time professor of intellectual property, School B pays an adjunct \$5,000 per year to teach the course, and School C has no course at all but is considering hiring a full-time professor to teach some intellectual property courses. The adjunct is well meaning, but is a busy practitioner and students have expressed dissatisfaction with her lack of preparation. Realizing that intellectual property is in short supply, the schools agree that School A will beam its patent laws course to Schools B and C. One course offering has now become three. School A incurs no further costs because the infrastructure for distance learning is in place and there is no line charge for in-state calls. School B saves \$5,000 and School C can stop worrying about hiring a new professor. The state has saved a small fortune while enriching its educational programs.

In this example, Small State added two courses for free. If a teacher of a different subject at School B could then contribute a unique course, there would then be four new offerings—six if School C likewise contributed. These six courses equate to the elimination of a professor and a half for the indefinite future, which would ultimately save millions of dollars.

Students, in turn, benefit because they can claim a stronger education. With any luck they will pay less in tuition and other costs, thereby reducing their personal investment risk associated with attending law school. Even if they do not get the job they wanted, the failure would cost less than it would otherwise have.

2. Quality of Distance Learning

Educators have reason to be suspicious of claims about distance learning. It is easy enough to determine if the student is physically present by means of a proctor or by having the professor-at-a-distance take a roll call but how can one be sure that understanding and retention are really occurring? What about the lack of eye contact to keep the student alert?

Perhaps surprisingly, studies of distance learning show it to be an effective method of educating students. According to law professors

Purdum and Farmer's distillation:

While many education leaders still aren't sure whether online learning stacks up against face-to-face classroom instruction, early and continued evidence suggests that students using technology in distance education have at least similar learning outcomes to students in traditional classrooms.⁹⁷ In some studies, distance learning students out-learn and outperform students educated in the traditional classroom.⁹⁸

In a meta-analysis and review on distance learning studies, the U.S. Department of Education concluded "that, on average, students in online learning conditions performed moderately better than those receiving face-to-face instruction,"⁹⁹ and "[t]he majority of studies reviewed involved college and graduate school students, and those students [in] particular appeared to benefit from online and distance education models."¹⁰⁰

3. Cutting Edge Examples of Distance Learning

In spite of a technological revolution swirling around law schools and rapidly increasing numbers of cyber-school programs worldwide, few law schools have tapped into the resource.¹⁰¹ There are, however, many examples outside the law school sphere.

- Various business schools offer online degrees, including Kenan-Flagler Business School's program at the University of North Carolina.¹⁰²
- Oceania Medical University offers online courses from Samoa, leading to an MD degree, which the promotional materials describe as, among other things, sufficient to allow US students be accredited as MDs in the United States.¹⁰³

97. REBECCA PURDOM & LARRY FARMER, ASSESSING DISTANCE LEARNING METHODS AND SUCCESS IN THE LAW SCHOOL SETTING: A PROPOSAL FOR FUTURE ED 3, 2, available at <http://dotank.nyls.edu/futureed/2011proposals/08adlm.pdf>. See also Souder, W. E., *The Effectiveness of Traditional vs. Satellite Delivery in Three Management of Technology Master's Degree Programs*, 7 THE AM. J. OF DISTANCE EDUC. 1, 37 (1993).

98. PURDOM & FARMER, *supra* note 97; Souder, *supra* note 97.

99. MEANS ET AL., U.S. DEP'T OF EDU. xi (2009). See also PURDOM & FARMER, *supra* note 97, at 2.

100. PURDOM & FARMER, *supra* note 98, at 2-3; MEANS, *supra* note 100, at ix, xvii, 303.

101. FUTURE ED CONFERENCE, *supra* note 96, at 3.

102. *Online MBA @ UNC*, UNC KENAN-FLAGLER BUSINESS SCHOOL, <http://www.kenan-flagler.unc.edu/programs/online-mba> (last visited Dec. 16, 2012).

103. *The Role of Technology*, OCEANIA UNIVERSITY OF MEDICINE,

- Stanford University offers certificate programs over the Internet.¹⁰⁴
- Harvard offers open enrollment courses on the Internet through its “Harvard University Extension School.”¹⁰⁵ Such courses can be profitable and easy to prepare, and once they are “canned” they could be sold repetitively.
- Maine evidently has the most comprehensive library of distance education materials. It is a poor state with a widely dispersed population, but Maine considers its distance learning experiments to be a great success.¹⁰⁶ It offers a wide array of undergraduate and graduate degrees and certificates at off-campus sites via the “University College,” which is an extension of the University of Maine, utilizing the web, interactive television, and video conferencing.¹⁰⁷
- IVIMEDS, an international consortium of medical schools, offers tools for online learning content.¹⁰⁸

Over the years, the ABA has inflated law schools by letting the NALP set the rules for misinforming prospective students about their job prospects, and has steadily approved new law schools, with resultant damages to students but it has kept the cost of legal education up by constricting the availability of distance learning. Specifically, “in 2002, the [ABA] amended its law school accreditation standards to allow students to take up to twelve hours of distance learning courses over the internet or other means of electronic delivery, including closed-circuit television.”¹⁰⁹ To qualify, ABA Standard 306 requires that the distance education course have both “ample interaction with the instructor and other students both inside and outside the formal structure of the course throughout its duration”¹¹⁰ and “ample monitoring of student effort and

http://www.oceaniamed.org/graduateMD/index.php?option=com_content&task=view&id=35&Itemid=51 (last visited Dec. 16, 2012).

104. *Stanford Center for Professional Development*, STANFORD UNIVERSITY, <http://scpd.stanford.edu/certificates/graduateCertificates.jsp> (last visited Dec. 16, 2012).

105. *About Us*, HARVARD EXTENSION SCHOOL, <http://www.extension.harvard.edu/about-us> (last visited Dec. 16, 2012).

106. *Learn More About University College*, UNIVERSITY COLLEGE, <http://learn.maine.edu/learn-more/> (last visited Dec. 16, 2012).

107. *Id.*

108. *IVIMEDS Partnership: About Us*, THE INT’L VIRTUAL MED. SCH., <http://ivimeds.org/uwa/about/> (last visited Dec. 16, 2012).

109. William K.S. Wang, *The Restructuring of Legal Education Along Functional Lines*, 17 J. CONTEMP. LEGAL ISSUES 331, 361 (2008).

110. Am. Bar Ass’n, *Standard 305. Study Outside the Classroom*, in ABA STANDARDS AND

accomplishment as the course progresses.”¹¹¹

So, while the ABA now allows law schools to offer distance education courses under Standard 306, students can only take a total of twelve credit hours toward their J.D. degree and no more than four credit hours in any single term.¹¹² Additionally, no student can take distance education courses during the first year of law school.¹¹³ Finally, Interpretation 306-3 states that a course consisting of two-thirds or more of regular classroom instruction will “not be treated as a ‘distance education’” course.¹¹⁴ This is important because, as a result, the ABA Standards set no limit on the number of law school courses that have a distance education component of one third or less.

Despite the ABA’s refusal to accredit schools that allow more than 12 total credit hours of distance education courses, schools have begun offering more and more courses of this nature. Many law schools have experimented with partially or completely eliminating the live classroom component of a course.¹¹⁵

New York Law School (“NYLS”), for example, has used distance education to teach mental disability law courses since 2000.¹¹⁶ The program began with a single course and has expanded to five courses.¹¹⁷ After teaching well over twenty-five sections of those online mental disability law courses, Professor Perlin of NYLS declared that “[s]tudents are consistently better prepared, more intellectually engaged, employ more critical thinking, and participate at a greater rate in online courses than in traditional classes.”¹¹⁸ Perlin went as far as to say that he believes “[t]he single most important pedagogic development since [he] entered law school (nearly 40 years ago) has been the creation of online distance learning programs as part of the law school curriculum.”¹¹⁹

The teaching method employed at NYLS combines several different techniques and technologies.¹²⁰ A typical distance education

RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 26, available at http://apps.americanbar.org/abastore/products/books/toc/529008411ed_toc.pdf.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. Pearl Goldman, *Legal Education and Technology: An Annotated Bibliography*, 93 LAW LIBR. J. 423, 446-452 (2001).

116. Michael L. Perlin, “Ain’t No Goin Back”: *Teaching Mental Disability Law Courses Online*, 51 N.Y.L. SCH. L. REV. 991, 994 (2006-2007).

117. *Id.* at 994, 997.

118. *Id.* at 995.

119. *Id.* at 992.

120. *Id.* at 996.

course at NYLS consists of:

1. fourteen hours of DVDs;
2. a casebook and book of readings as well as two supplemental books, one a “table setter” and one a mid-term “palate cleanser”;
3. weekly reading assignments with “focus questions”;
4. a midterm and final take-home exam;
5. ongoing, threaded, on-line message boards;
6. a weekly, moderated on-line chat room; and
7. two live, day-long seminars, one about a month after the course begins and one at the course’s conclusion.¹²¹

This broad array of techniques helps appeal to all possible learning styles so that each individual student experiences a class that is almost tailored for them.¹²² Professor Paula Berg also offers several recommendations for distance learning courses, particularly with regard to interdisciplinary law school courses.¹²³

Additionally, proprietary law schools, such as Concord Law School, offer classes entirely online.¹²⁴ Concord is not accredited by the ABA, but the State Bar of California permits Concord graduates to seek admission by taking the bar examination.¹²⁵

The future is uncertain for online courses in the legal arena, but it is clear that distance education is something that should be seriously considered by law schools; the sooner the better in light of the opportunity to take advantage of attrition and the collapsing job market. It will be difficult for schools to offer a large distance education curriculum as long as the ABA keeps the limit at twelve total credit hours to keep accreditation. Being accredited by the ABA is not something that a law school can really afford to lose if it wishes to escape being confined to one state. The NYLS model has been successful and seems like a good template for a teacher interested in

121. *Id.*

122. *Id.*

123. See Paula E. Berg, *Using Distance Learning to Enhance Cross-Listed Interdisciplinary Law School Courses*, 29 RUTGERS COMPUTER & TECH. L. J. 33, 36-40 (2003).

124. *Law School Accreditation*, CONCORD LAW SCHOOL, <http://info.concordlawschool.edu/Pages/Accreditation.aspx> (last visited Dec. 16, 2012).

125. *Id.*

implementing a distance education course. In addition, there seems to be an increasing interest in distance learning courses and willingness on the part of instructors to, at the very least, experiment with this type of instruction.

It should be noted that some private internet-based educational institutions have failed under sorry circumstances. For instance, Phoenix Online University was subject to severe punishment for submitting false claims, which resulted in a \$78 million settlement.¹²⁶ This risk, of course, must be balanced with the successes discussed previously.

C. Take Advantage of Law Professor Attrition

Obviously it is more attractive for the employer to reduce employees by means of attrition than by discharging them. In addition, universities are a special case because firing professors undermines the credibility of tenure, the rock of security for older professors, and the justification for the comparatively low salaries most professors consider they earn compared to their counterparts. Further, terminating law professors would alarm existing law professors and professors in general across any campus and so should be applied sparingly.

On the other hand, when corporate America “downsizes” it often does so by offering substantial financial packages to executives. Unlike business corporations, which can finance such payments out of borrowings and future cash flows, law schools generally operate within tighter financial constraints. Still, this third path may be possible in some cases. It will, however, require the cooperation of financial administrators. The more savings the school can show from using more technology the stronger the case for the severance package. Evidently a common way to apply such severance offers is to offer a package to several people on a first-come-first-serve basis. This is not only more humane than simply terminating employees, but also eliminates those individuals who feel the least attachment to the institution.

So, is there room for cutting law professors via attrition? The answer is an overwhelming ‘yes.’ One can deduce this from looking at the Association of American Law Schools (“AALS”) Statistical Report on Law Faculty, which is available on the Internet.¹²⁷ What this report

126. See *\$78.5 Million Settlement In Whistleblower Lawsuit Against University of Phoenix*, BUSINESSWIRE (Dec. 14, 2009, 02:56 PM ET), <http://www.businesswire.com/news/home/20091214006155/en/78.5-Million-Settlement-Whistleblower-Lawsuit-University-Phoenix>.

127. *2008-2009 Statistical Report on Law Faculty*, ASS'N OF AMERICAN LAW SCHOOLS,

shows is a large numerical bulge of law professors moving into retirement age.¹²⁸ The following figures are from 2008-2009:¹²⁹

Age Grouping	Number of Professors
26-30	14
31-35	315
36-40	797
41-45	908
46-50	1,181
51-55	1,147
56-60	1,490
61-65	1,460
66-70	894
71-75	470
76-80	330
81-85	198
86+	155

Several years have elapsed since the study, and the cadres have shifted downward, but it remains obvious that there is an especially large cadre of professors who are soon to retire.

D. Using Canned Lectures as a Method of Replacing Professors

One of the little-discussed truths about law school, as well as other academic areas, is that some professors give the same old lectures year after weary year off their yellowed notes. In extreme cases, the students have outlines that were prepared by their colleagues in prior years that show the location and content of a joke the professor is just about to tell. These professors also tend to have a poor history of publication and may have been demoralized by some past event. They are almost impossible to remove because they met the standards for tenure years ago and terminating their employment would yield more problems than outweigh the benefits of eliminating their salaries.

Nevertheless, the truth is that these lectures can be replaced by disks containing either the professor's lectures, or even with the lectures of a more effective professor. I asked a student of mine to informally

<http://www.aals.org/statistics/2009dlt/gender.html> (last visited Dec. 16, 2012).

128. *Id.*

129. *Id.*

poll students at a different law school and got a result that may seem surprising: almost 40% of the professors at the other law school (intentionally not known to me) could be replaced with disks. None of these negative results applied to first-year classes, where the professors historically apply the Socratic Method to train rookie law students to “think like lawyers.”

Clearly students can learn effectively from video casts of canned lectures. The largest bar review crash-course provider, BARBRI, delivers most of its non-written materials this way and its customers achieve excellent results on bar exams.¹³⁰ The real difficulty is not showing that canned lectures would both save money and improve educational results; it is setting limits once one accepts the concept. For example, should students still be required to be present in a single physical classroom to watch the lecture? It made sense to insist on that in the past because there was no alternative; one either got the lecture by attending it or cut the class. Now, one could easily receive the lecture on the internet, but how could the ABA, which insists on substantial mandatory attendance, be satisfied that a student at home really watched the lecture? One could build in security measures, such as a quiz after each lecture as evidence of the student’s “attendance.” What about the student who hires another student to watch the lecture while she goes out for a game of tennis? Should canned lectures of mechanical subjects that require more memory than thought be allowed while those requiring abstract thinking are left to physical classes? Could one ever get a consensus on which courses did and did not qualify? The answers are not obvious. At the same time, the current situation has preposterous features that cost law students and other stakeholders a lot of money for no good reason, particularly when the ABA has authorized at least some form of distance learning programs.

IV. AN ALTERNATIVE VIEW

Whether there is an overproduction of law graduates or too many factories turning them out is debatable because law school provides an intellectual experience that lasts a lifetime and is difficult to value. That graduates are taking on obscene amounts of debt is certain. The problem is price.

On the first point: Law is a learned profession. There is nothing bad about increasing the percentage of learned professionals in the labor

130. *What is BARBRI?*, BARBRI, <http://www.barbri.com/about/whatIsBarbri.html> (last visited Dec. 16, 2012).

force. At least arguably it would be better to increase the percentage of engineers or accountants, but Americans have to work smarter to maintain a standard of living, a competitive advantage. As the percentage of farmers went down, the percentage of factory workers went up. As the percentage of factory workers and secretaries go down, the percentage of professionals, including lawyers, should go up.

What went before, at least to some extent, overstates the overproduction issue. Clearly since 2008 there has been a downturn of the business cycle. When I was in law school, my classmates widely believed that only about 60% of law graduates practiced law five years out. Whether this number is right or wrong, there is no doubt that law has always been preparation for business and government and a finishing school for the educated person.

Talking with practitioners one regularly hears tales of how a number of the practitioners' clients who have been successful in business, have law degrees. At least some of my classmates entered law school with no intention of practicing law. Instead, they viewed it as another subject worth knowing, like philosophy or history, but also as a tool for getting things done.

As to student debt, when I got out of law school (an expensive one), we had little or no debt. Tuition then was \$3,000 per year, or \$15,000, inflation-adjusted. Last year, tuition at my old law school was \$46,000. The culprit is student loans, made or backed by the federal government. They were small potatoes in 1971. The availability of credit drives up price, hence, the housing bubble. When a third party funds purchases, prices go up. Likewise, one can fairly argue that the same phenomenon of price inflation has occurred with medicine. Enter third-party funded health insurance, Medicare, and Medicaid, and health care and the cost of medicine has become 16% of the GDP, amounting to over \$2 trillion.¹³¹ Just as the defense budget gave us \$6,000 coffee pots, federal funding of education gave us \$150,000 law degrees.

The solution is to twist the tap of easy credit counter-clockwise. Cut back the loans and one drives down the price. Law professors will go back to teaching as a calling. Deans, administrators, and coordinators can find more productive work.

V. CONCLUSION

What cannot be denied is that the legal educational system is not

131. U.S. DEP'T OF HEALTH & HUMAN SERV., THE EFFECT OF HEALTH CARE COST GROWTH ON THE US ECONOMY 3, *available at* <http://aspe.hhs.gov/health/reports/08/healthcarecost/report.pdf>.

functioning properly in its current form. Law schools are popping up all over the country, increasing the number of graduates and the size of the student loan bubble. What none of the institutions can increase, however, is the current industry demand for new hires. Despite the information admissions counselors champion to trap prospective students, whether obtaining a J.D. is truly a wise investment is questionable in today's market.

Given the current surplus of graduates, law schools should take prompt action to reorganize their educational system. This reorganization can take the form of evaluating the level of attrition and eliminating the surplus of faculty members, merging smaller law schools, and using distance learning opportunities and new technology to provide richer curriculum with significantly less overhead.

In addition, the system of cheap credit has to be analyzed carefully. Congressional hearings would be a good start. Aggregate student debt is now in the realm of \$1 trillion.¹³² Chairman Bernanke warned Congress about this looming problem on February 29 of last year, and with good reason.¹³³ His son's educational loans amount to over \$400,000.¹³⁴ His son is lucky, however, because he is a medical student.¹³⁵ The legal industry is not a safe one, and never was, but this time its students and younger practitioners are menaced by dangerous levels of debt.

132. Josh Mitchell & Maya Jackson-Randall, *Student-Loan Debt Tops \$1 Trillion*, WALL ST. J. (Mar. 22, 2012, 12:46 PM ET), <http://online.wsj.com/article/SB10001424052702303812904577295930047604846.html>.

133. Jon Hilsenrath, *Student Loan Debt Hits Home for Bernanke*, WALL ST. J. REAL TIME ECON. BLOG (Feb. 29, 2012, 12:11 PM), <http://blogs.wsj.com/economics/2012/02/29/student-loan-debt-hits-home-for-bernanke/>.

134. *Id.*

135. *Id.*