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Recommended Citation

Littman, Rachel J., "Finding the Silver Lining: The Recession and the Legal Employment Market" (2009). *Pace Law Faculty Publications*. Paper 598.

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Finding the Silver Lining: The Recession and the Legal Employment Market

By Rachel J. Littman

The economic recession has affected the legal market as much as any other industry. The news media is replete with references to and articles on law firm layoffs and corporate legal department budget cuts. Those with a prurient interest and a sense of schadenfreude can check daily the Layoff Tracker (<http://lawshucks.com/layoff-tracker>), a running list of law firm layoffs provided by Law Shucks, an online legal tabloid. AboveTheLaw.com also provides a daily e-mail feed for the latest legal industry gossip, internal law firm memos, misdirected and astonishingly unprofessional associate e-mails, and other up-to-the-minute scoops on law firm life.

Revising the Legal Landscape

Not all the news is bad, though. The legal industry is now taking a serious look at how it recruits, hires, trains and

retains its lawyers. This introspection means the profession is paying serious attention to how best to provide efficient and valuable legal services for clients as well as create legal service businesses that comprise talented and committed lawyers.

It is important to note that the media attention has primarily been bestowed upon large law firms, namely the top 100 firms ("BigLaw") as ranked annually by *The American Lawyer*, most of which are concentrated in major metropolitan areas like New York City, Los Angeles, Philadelphia and Chicago. In the once-conservative world of law school recruiting, these firms are now rescinding offers or granting paid deferrals to recent law school graduates to whom they offered permanent post-graduate positions. To address the slowdown in work and in an attempt to retain their best talent, they are also offer-

ing paid furloughs to associates in slow practice areas. Many of those firms who still have summer associate programs this year have indicated that they do not expect to give offers to each law student, making for a highly competitive summer. Some firms have even indicated that they expect to defer the start date for next year's incoming class, leaving everyone to question the efficacy and future of law firm recruiting methods. Coupled with an almost zero level of voluntary attrition – 16% by the latest National Association for Law Placement (NALP) Foundation research – as compared to the more robust times of earlier years, the legal industry as we know it is poised for a change.

Public interest lawyers and the organizations in which they work are also feeling the direct hit of the down economy. Most state and local government departments and agencies are facing budget cuts and hiring freezes. Public interest organizations, like those that provide direct legal services to the disenfranchised and low-income members of society, are experiencing fewer and lower amounts of donations, grants and financial support, making it harder for them to provide their much-needed services. Many public interest legal organizations are reaping the benefit of free legal help from deferred law firm associates, but they have limited resources to sufficiently train and utilize these new lawyers. Resentment is building not only

among the entrenched public interest lawyers at these organizations as they try to figure out how to be year-long repositories of BigLaw lawyers, but also among the deeply committed public interest law school students and graduates who have been working their entire careers to secure coveted public interest positions – the same positions that are now being taken by questionably prepared colleagues with funding at twice the average \$44,000 starting salary.¹

Finding a full-time legal job has been and will continue to be a challenging process. There are handfuls of 2008 graduates who have been scraping by with temporary or non-legal positions since their graduation last year. Job prospects continue to look dim for the Class of 2009 and for the next year or two of law school graduating classes. Law school graduates who are waiting for bar exam results and have not yet secured full-time legal employment may not have the option of sustaining themselves with temporary contract work the way their predecessor graduates did. Many placement agencies do not have access to the work into which they could place law school graduates awaiting bar results. The types of clients and law firms that traditionally supplied the kind of legal work that lent itself to teams of contract attorneys are keeping it in-house. Or, in the case of large merger or litigation matters, the work is simply not happening.



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Some sectors of the legal employment market are faring rather well in this economy. Many small and midsize firms are finding it more economical to hire on a contract or as-needed basis, which is often mutually beneficial to the firms and the many attorneys who would otherwise have no work. Law schools are also producing savvy graduates. Many new lawyers were still finishing their legal education when the economic downturn started in late 2007; they have had the time to prepare themselves for the new economy and develop attitudes of realism and flexibility rather than one of panic.

The Delayed and Trickle-Down Effect

The down economy has affected not only the top law firms but their clients and their local outside counsel as well, not to mention each year's class of graduating law students. As a result of the deferrals, stagnant voluntary attrition, forced layoffs and the down economy, there is a glut of highly qualified new and experienced lawyers in the market. Lower recruiting and hiring rates by top law firms at top law schools mean there is a trickle-down effect for the rest of the legal market. Law students in suburban or rural communities or from lower ranked law schools are now having to compete with graduates of top-tier schools and experienced lawyers who have been let go from BigLaw firms. The upside for employers, particularly smaller ones, is that they are receiving resumes

valuable opportunities by shifting some legal work from large, expensive law firms to more local firms.

Market watchers have been tracking layoffs and recruiting reductions for over a year now, though it is generally agreed that the legal industry has not yet felt the full effects of the down economy. The initial U.S. unemployment claims may have started to level off – albeit at record high levels – at the end of May this year, but the number of people entering and staying in the job market has been increasing at a rate faster than the creation of new jobs. Based on statistics from the NALP and the American Bar Association, the 200 ABA-approved law schools in the United States add around 42,000 students each year to the legal market. Not all of those graduates are looking for employment, but add those numbers to the 4,426 attorneys laid off between October 2008 and May 2009 alone,³ and the steady increase in law school enrollment each year,⁴ and we have the makings of an unsustainable state of affairs.

Where Is the Market Likely to Go?

The general consensus in the legal community is that law firm layoffs will likely continue deep into 2009 and possibly into 2010. Associate salary pay structure – particularly at BigLaw – is not sustainable and has already started to change at some firms. It is unlikely that big-city law firm starting associate salaries will ever return to the hereto-

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from levels of talent and experience that they could only have dreamed of acquiring at the salaries they can afford to pay. Firms with practices in bankruptcy, restructuring, and bank regulatory work – particularly related to TARP (the federal government's Troubled Asset Relief Program) and other economic stimulus initiatives – have been holding steady, providing a constant and even recently increased need for lawyers.

In-house legal departments (*i.e.*, the clients) are also feeling the economic pinch. Often beholden to their shareholders and their bottom line, companies are looking to cut costs and receive as much value for their legal dollar as they can.² In-house legal departments, too, have had to let some of their attorneys go; not subject to the overinflated hiring practices of their outside counsel, however, they have been able to do so at a lower rate and in a more surreptitious manner than law firms. The silver lining for corporations and their outside counsel is that many in-house legal departments are saving money and creating

fore expected six-figure levels (\$160,000 for the entering Class of 2008). Already, some of these highest-paying firms have taken the leap and cut associate salaries to \$125,000. Some may even go to \$100,000 or below – particularly those firms bold enough to try to implement an apprenticeship-type system for the first few years of practice. Small and midsize firms whose partners barely break the six-digit salary level are not having to make as drastic cuts; many of them have had a pay structure closely tied to what they can realistically afford to pay their attorneys (and charge their clients) without the pressure of a competitive market, thus cushioning themselves against the recession.

The structure of how law is practiced, particularly at large Manhattan firms, will likely change. Permanently. Hildebrandt, a professional services consulting and research firm,⁵ noted in its *2009 Annual Report to the*

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Legal Profession that law firms are under tremendous economic pressure to change the structure of how they operate, including re-thinking the billable-hour model, using an alternative lawyer structure with more contract attorneys, outsourcing certain services, creating eDiscovery businesses and providing bundled legal services. Contract attorneys, eDiscovery specialists, of counsel and lawyers in other “nontraditional” legal roles, which have until now been relatively underutilized and kept on the fringe of law firm practice, may find more opportunities. Economic pressures are real and law firms, like any business, need to implement real changes in order to survive.

Law firms being what they are, skeptics note that attempts to change the way law firms operate failed before in the '80s after the fall of Drexel Burnham Lambert and are likely to meet headwalls again. A recent study of

in two main ways. Talent is reaching beyond its normal boundaries. Partners at local law firms in smaller cities and suburbs outside major metropolitan areas have stated that they are seeing hundreds more resumes than they usually do and are overwhelmed by the depth of talent. The NALP Foundation for Law Career Research and Education reported in June 2009 that law firms with 101–250 attorneys had increased their 2008 lateral hiring by 11% over the previous year. As long as they have the work to support new hires, these small to midsize firms will be able to acquire some top talent over the next year. With respect to the level of work, the small and local firms seem to be faring relatively well in the economy. Those corporate clients that are shifting some of their legal work from BigLaw to lower-cost local firms are adding a marginal boost to regional economies. Used to operating on a margin and with a bare-bones staff, local and small law firms operate relatively efficiently and have not been forced to trim their ranks. The attorneys in this market

Employers with the financial means can redirect their delayed staff to support pro bono needs of local legal direct services organizations and similar nonprofits.

chief legal officers showed a relatively low amount of confidence in law firms' seriousness about changing their model for delivering legal services, in spite of growing pressure from the economy, the clients, and the law schools.⁶ Post hoc conclusions about the legal market will be based upon a comprehensive review of the next year's recruiting, hiring and firing statistics, and the measure of success will be determined one law firm at a time. We will just have to monitor, wait and see.

The Silver Lining

The economic recession does have some positive points of hope for many legal industry stakeholders. Employers with the financial means can redirect their delayed staff to support pro bono needs of local legal direct services organizations and similar nonprofits. The economy also forces law firms and other employers to winnow out underperformers. To retain their best talent, law firms may also look to use part- or flex-time arrangements, as suggested by Deborah Epstein Henry of Flex-Time Lawyers LLC,⁷ or adapt the mission of the Balanomics™ work/life balance initiative.⁸ It remains to be seen, however, whether the majority of law firms will actually implement these kinds of initiatives or simply pare down to a lean and highly productive workforce.

As noted earlier, small and local law firms and legal employers are reaping the benefits of the down economy

also seem more resilient and adaptable to the changes in the economy and the types of legal work demanded, even if it means the partners must draw less salary, which is not much of an issue for firms whose reputations do not hinge on annual profits-per-partner rankings.

For experienced lawyers who find themselves in a situation of change or recent graduates looking urgently into their legal employment future, there is hope. There are many positive points in this legal market storm. Consider some of the following:

It's Not All Bad

Read the legal industry news with a grain of salt. All the media attention is going to BigLaw firms. Based on annual NALP surveys, around 80% of law school graduates each year typically go to firms with fewer than 100 attorneys; one-third or more of those are in small to solo practices. Based on the most recently available comprehensive survey of the legal profession, almost half of all attorneys in this country practice in solo settings, no matter the age, gender or location of the attorney.⁹

Expand Your Search

Many corporate clients are re-evaluating how they dole out and pay for legal services and are turning to local and smaller firms to handle their outside legal work. That is good news for the majority of lawyers around the country

that practice in small to midsize firms outside of major metropolitan areas. Attorneys currently looking for a job should make sure to expand the search to less competitive markets. Opportunities may lie in geographic areas where corporate headquarters are clustered, like northern New Jersey for pharmaceutical and manufacturing industries, and Westchester and Fairfield Counties for a variety of corporate industries.

Avoid Oversaturated Markets

Lawyers who want to stay in New York should seek opportunities in areas of the state where there is less competition for jobs.

Be Mobile

Lawyers who have some mobility may want to use U.S. Labor statistics and other demographic data to identify areas with low unemployment rates. Some of these places are regularly featured in magazine surveys of “Best Places to Live” and have lower costs of living than the Empire State.

Be Direct

Remember that you are your own best resource. As discussed earlier, placement agencies are not being given access to the kind of big deals and cases that fueled the contract attorney world. Law firms and companies no longer want to pay placement fees to recruiters, particularly with the high volume of top talent coming directly to them. The best advice is to go directly to a desired employer.

Network

Networking is key. Job seekers should go to as many events, panel discussions, CLEs, informational meetings and interviews as they can afford in cost and time. A strong, extensive network of supporters can endorse your work and character and pass a resume along to friends and colleagues. The key to securing employment is not just who you know, but who knows *you* and is willing to take an extra step for you.

Re-educate

For those coming out of law school and unable to find a desired legal position, or experienced attorneys who have either lost their jobs or whose area of specialty is now nonexistent, this may be the time to develop new skills or learn new practice areas. Those who are still employed should seek first to switch practices within their current firm, even if it means losing a year or two of seniority. Senior attorneys should talk with the partners about what areas the firm might want to develop or what legal services clients have been requesting. One of the greatest assets lawyers have is the ability to teach themselves new skills and learn about new areas of law. It is hard to

start over, particularly after spending years developing a specialty, but it is possible.

Follow the stimulus plan money.

Learn New Skills

Attorneys can develop new skills or hone other ones by participating in pro bono programs or clinics. Start with the NYSBA Web site, a local bar association, or <http://www.probono.net>. Another option may be a one- or two-year specialty LLM program in tax or environmental or climate change law. CLE courses are another great way to learn about new areas of law and to network with other practicing attorneys. Many CLE providers offer discounts or fee waivers for attorneys who are out of work.

Be the Boss

This may be a great time to start a business or legal practice. *USA Today* noted that 16 of the 30 companies on the Dow Jones Industrial Average were started during a recession.¹⁰ There is also an interesting piece on the Web that lists various well-known companies that were started during economic slumps.¹¹ Other business magazines and Web sites like *Entrepreneur* and *BusinessWeek* (through its online affiliate “Business Exchange”) promote “recession entrepreneurship” through articles, polls and special features. The NYSBA Law Practice Management Web site has terrific resources for solo and small firm practices. Be careful and thoughtful when designing a business plan for a business or legal practice; there are dozens of companies that close and fail – particularly during a recession – for every one that succeeds.

Follow the Money

There are jobs out there. Follow the stimulus plan money. Local and federal governments do have positions and will hire, even if they note a “hiring freeze.” For example, in late May 2009 New York City Mayor Michael Bloomberg, with U.S. Secretary of Labor Hilda L. Solis, announced that the city will use millions of dollars of federal stimulus funds received under the American Recovery and Reinvestment Act to provide training and job placement for 10,000 New Yorkers as part of the city’s Five Borough Economic Opportunity Plan and programs offered through the city’s Workforce1 Career Centers.

Expand Your Field

Other fields where there might be work include bankruptcy, regulatory work (financial and securities industry,

environmental, banking), and areas related to infrastructure at federal, state and local levels.

Use Every Resource

Use every available resource. Many law firms will call the career services office at the local law school when they need immediate help with litigation or other matters. Employers seem to be turning to law schools (which have free job-posting sites and eager staff) rather than fee-based legal recruiters. All lawyers should think of their law school alma mater and career services office as a major, free, job-searching and career-development resource. Bar association, law school and other online job-posting sites are also places where opportunities may be found. USAjobs.com is the central job search database for federal positions. At the state level, candidates must complete the New York State Civil Service Exam (go to http://www.cs.state.ny.us/announ/cr_announcements/20-131.htm) to be eligible for certain state jobs. Make sure your resume gets into the hands of as many people as possible, particularly at these government institutions for when positions do open.

In short, lawyers who are willing to put in the time, think about the options with a degree of open-mindedness, and persevere in the search will find a variety of opportunities. There are resources to assist those who are taking the time to look for them.

Conclusion

The current economic readjustment period is likely to last for a while. The legal industry, like most service industries, was one of the first to be hit big and hard and will be one of the last to recover and readjust. Remember that a law school degree and legal training are still valuable and adaptable assets and skills. Lawyers are a thoughtful and resilient bunch; with a positive attitude, a little creativity and flexibility, any lawyer should be able to make it through these times. ■

1. Karen Sloan, *Public-Interest Sector Getting a Little Crowded: Law Graduates Who Trained for Public-Interest Jobs Must Compete With Deferred Associates*, Nat'l L.J., June 1, 2009.
2. See Association of Corporate Counsel Value Challenge at <http://www.acc.com/valuechallenge>.
3. See <http://www.lawshucks.com>.
4. See <http://www.lisacnet.org>.
5. See <http://www.hildebrandt.com>.
6. Altman Weil, Inc., Chief Legal Officer Survey 2009.
7. See <http://www.fleximelawyers.com>.
8. See <http://www.balanomics.net>.
9. Clara N. Carson, *The Lawyer Statistical Report*, The U.S. Legal Profession, American Bar Foundation.
10. Money Section, USA Today, Oct. 17, 2008.
11. See Sarah Caron, *14 Big Businesses That Started in a Recession*, Nov. 11, 2008, available at <http://www.insidecrm.com/features/businesses-started-slump-111108>.

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