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What if they built a law school and nobody came?

The real problem may be that Kevin Costner was proven correct in “Field of Dreams.” If you build it they will indeed come. But they came and only found cornfields

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In 1990, the New York Attorney General and the New York City Department of Consumer Affairs began a series of investigations and prosecutions aimed at chains of health and beauty schools, largely, located in underprivileged neighborhoods. These schools were all licensed by the New York State and City agencies. The schools advertised broadly in various media directed at underprivileged communities.

The come-on was simple: The advertisements pitched the fact that beauticians, cosmetologists, hair stylists, make-up artists earned commendable salaries. The posters went on to note that many of those positions required both state licensing and a schooling. The schools offered the requisite training and assisted the students in obtaining those licenses. And, then, the real hook: Federally guaranteed student loans for tuition were available for attendance at these schools and, in essence, as far as the students were concerned, tuition would not impose any costs to the students: all they had to do was show up, sign a few pieces of paper, attend the program and after graduation and licensure, a career in these fields would provide a financially more rewarding career than was otherwise to these denizens of underprivileged areas.

The “hook” was exceptionally alluring: One would simply show up at the school, sign a few forms, fork over not a buck, take the classes and a more financially lucrative career lay ahead of them. Of course, among the stack of papers signed was the student loan applications. The lending institutions would then advance the entire tuition to the school.

There were only a couple of problems with the scheme: There were not jobs available to the schools’ graduates. Many students, after graduating, could not find any jobs in these fields and most of the schools’ students, after graduation could not find any jobs, gave up after their job

searches and remained largely unemployed or working at the minimum wage. Word spread from the graduates to the generation that followed, still attending the schools and large numbers of those students just simply walked away from the schools. None of these school graduates or attendees repaid their loans, quite likely because they felt snookered (which they obviously were), and they simply otherwise lacked the funds.

Of course, the various institutions which either advanced the tuition loans began collection proceeding. A sufficient number of the victims complained about being hoodwinked and filed various complaints with regulatory agencies, which, of course, served as the catalyst for the commencement of state and city proceedings.

A number of prosecutions resulted. Most were settled with substantial fines being paid and consent decrees requiring full disclosure. Some schools closed. Principals of some schools received prison terms.

The question that nobody wants to ask is whether the recent crop of law school graduates, those currently attending law school and the thousands of current law school applicants are victim of a similar scheme. A cacophony of recent articles on the subject began with the [blistering report](#) by noted law Professor, Brain Tamahana, which was followed by, among others a [rather blunt article and published comments that followed](#), which flatly accused the nation's law schools of running a large scale scam and Ponzi operation. A new term is now in vogue: law school tuition bubble, which at least one [writer compared to the housing bubble and the crisis which followed](#). In fact, there is at least one [entire blog](#) devoted to the law school tuition bubble.

Most agree that the number of lawyers currently employed is at its lowest level since 1991. We can safely assume that (a) law schools graduated an annual average of 40,000 lawyers a year in the past two decades; (b) some number of lawyers died, retired or left the profession and (c) some unknown significant number of law school graduates are working in the purgatory of part time, short gig "staff lawyers."

There is no denying the fact that there are hundreds of thousands of both *unemployed or underemployed* lawyers nationally.

In the face of all of this, law firms, every firm in the country in the country, will reduce hiring of 2010 law school graduates. By all accounts, continued, and most likely, expanded reductions at least through 2011.

In the face of all of this, our nation's currently accredited law schools, of which there are now approximately 194 insist on adding at least 45,000 new graduates to these armies of unemployed or underemployed lawyers. Add to this mix: (a) ten additional law schools are in a queue to receive accreditation; (b) law school applications have risen dramatically; the demand for lawyers and law firm revenues are in decline and (d) a number of universities announced plans to create new law schools.

The bottom line: Over the at least the next two years, the nation's law schools will produce hundreds of thousands of graduates who have no prospect of being employed as

lawyers.

Bottom line: there is something appallingly and scandalously wrong with the existing system of educating, recruiting and then training law school students and graduates. All of this and more are addressed in my recent book, [“Navigating the Perfect Storm: Recruiting, Training and Retaining Lawyers in the Coming Decade”](#) (Ark Press, 2010).

Let’s, for example, look at odd recent events in Dallas:

Quixotically, in early 2009, The University of North Texas announced that it planned on establishing a public law school in the Dallas-Fort Worth area as. Those plans continue apace in 2010 in spite of the dwindling job market. Adding to the enigmatic and rationally inexplicable plans of this University is that Houston hosts three law schools (one not yet accredited by the ABA) and 11.5% of the graduates of those law schools were unemployed nine months after graduation; the two existing law schools in the Dallas area, with equivalent post graduate employment results.

West Texas’ rationale: (1) There has not been a law school established in Texas since 1967; and (2) the Houston area had only 538 law school seats available; (3) the ratio of bachelor degrees in Houston to law school enrollment was 10:1, while the ratio in Dallas was 35:1 and (4) while the Dallas-Fort Worth area purportedly generates 1,400 new legal jobs annually, these lawyers were hired from other regional law schools and schools located in other states.

Obvious flaw in this bizarre logic is that all of the positions for lawyers in Texas (including each of the purported 1,400 new openings for lawyers in Texas) are quickly filled and there are already multiple applicants for each such position; there certainly is no dearth of job applicants for Dallas. Another obvious defect is the presumption that Dallas jingoism would somehow favor the employment of students schooled locally by a law school with no track record, while lawyers already employed in the area and those seeking employment there are already drawn from well established law schools, in existence for many years.

Obvious questions come to mind: (1) what’s the point? (2) Why add to the enormous pool of unemployed and underemployed lawyers? (3) How can one reasonably expect a faculty and university administration with such patently unsound judgment be entrusted to educate aspiring lawyers in logical thinking, careful analysis and honesty and candor demanded of lawyers? (4) Does any city have an entitlement to establish a new law school simply because it hasn’t had a new law school in forty years?

Dallas is not alone in its madness: [The ABA is considering accrediting foreign law schools, while Shreveport, Louisiana is also opening a new law school.](#)

Jim Leipold, the director of The National Association for Legal Placement, whose crystal ball is as good as anyone’s, maybe less so, announced in June the earliest he sees an “uptick” in legal employment for new law school graduates is 2012. Any simple analysis of the facts on the ground ineluctably leads to Opposite conclusions: The current graph shows a complete vertical decline in unemployment and underemployment of lawyers; that straight down vertical drop may

move in 2012 to a drop that may move a few degrees to the right in 2012; there is no possibility that the total number of unemployed and underemployed lawyers will ever be absorbed in to the market.

In its [press release](#) of July 22 by NALP, one of the most opaque reports I have ever read and in which at least the second paragraph quoted, may have been inspired by Lewis Carroll, reads in part:

“The national median salary for the Class of 2009, based on those working full-time and reporting a salary, was \$72,000, unchanged from that for the Class of 2008, and the national mean was \$93,454. However, because some large law firm salaries cluster in the \$160,000 range while many other salaries cluster in the \$40,000–\$65,000 range, relatively few salaries were actually near the median or mean, as the *Jobs & JDs* report details. The national median salary at law firms based on those reporting a salary was \$130,000, compared with \$125,000 the prior year, and the national mean at law firms was \$115,254.

With the Class of 2009 report NALP introduces the concept of an adjusted mean as an additional way to provide a broad measure of salaries for full-time jobs as a whole and for full-time jobs in law firms. Essentially, the adjusted mean compensates for the fact that the distribution of reported full-time salaries is not the same as the distribution of reported full-time jobs, particularly when it comes to law firm jobs. Whereas salaries for most jobs in large law firms are matters of public record and reported, fewer than half the salaries for jobs in small law firms are reported. The calculation of adjusted means is accomplished by giving more “weight” to the mean or average salary in small firms and less “weight” to the mean or average salary in large firms to calculate the overall law firm mean and also the adjusted mean for all full-time jobs. In other words, adjusted means are based on estimates that account for the unreported salaries. The adjusted mean for all full-time jobs reported was \$85,198 (in contrast to the unadjusted national mean of \$93,454), and the adjusted mean for full-time law firm jobs was \$102,959 (in contrast to the unadjusted mean of \$115,254).”

I do not mean to impugn Jim Leipold, NALP’s dedicated executive director, previously trained and having served with distinction as a tax lawyer at DLA Piper, you may want to try and pierce the opacity of the report. The simple meaning appears to be that since NALP does not include compensation figures for small law firms, which employs the largest number of lawyers in the nation and similarly excludes staff or temp lawyers, the reported median salary for 2009 graduates of \$72,000 per annum nor does it include the hordes who will earn \$0. The newly coined phrase, “adjusted mean,” as Mr. Leipold explains (it may take a few readings to comprehend), results in lowering the previous blindfolded shots at the dartboard hitting, which previously, quite fortuitously, I suppose, hit higher numbers.

Certainly, using a “median” or “mean” or “adjusted mean” is Orwellian. Using a median number simply begs and avoids the single most important question: “What is the average salary of a 2009 graduate?”

NALP then issued [another release](#) on September 9, 2010. This release reported a “retreat” in starting salaries at law firms to an average median of \$115, 000. The good news: starting salaries for jobs in the public service sector remain steady at about \$46,000. Again the thousand who will earn \$0 is not included.

Herwig Schlunk, a professor at Vanderbilt University Law School in an article published in 2009 entitled “Mamas Don’t Let Your Babies Grow Up to be Lawyers” performed an investment analysis of the monetary value of a law school education. He determined that the cost of attending a *second or third tier* law school ranges from \$201,000 to \$280,000. Graduates of such law schools require average compensation of between \$80,000 and \$150,000 to justify the expense of law school, while the average compensation of those graduates is below \$65,000, although some top of the class graduates do earn up to \$145,000. In all cases, Schlunk determined that the expense of law school simply does not yield a reasonable return on investment.

There is another bizarre enigma that must be added to the equation:

- A. Law school tuitions are rising well above the rate of inflation annually.
- B. As the hordes of new graduates are added to the kettle, simple rules of supply and demand will likely reduce Professor Shlunk’s suggested average compensation of \$65,000 is.
- C. These facts are well known to law school administrators, particularly deans and admissions personnel.
- D. Law schools are replete with (a) faculty of presumably high moral integrity; (b) professors who are charged with imbuing law students with the ethical mandates required of lawyers; and (c) every law school has a passel of securities and corporate professors who spend their time drilling in to law students the legal requirement of making full disclosure of all material facts while also being obligated not to make any omission of material facts; and that failure to do so would result in severe civil and criminal penalties.
- E. All of the nation’s law schools are extremely well served by selfless alumni, hard working lawyers of accomplishment, who dedicate their time and service to the leadership and guidance of their alma maters. They presumably know the score.

Another vice in which law schools have recently been engaging, particularly third and fourth tier law schools: Most graduating college students, when applying to post graduate programs, apply to both “safe schools” and schools at the top of their grasp. Third and fourth tier school in recent years, in order to improve the employment reports of their graduates, have been inducing and recruiting top college graduates to enroll in their schools with expansive and enticing scholarships, which are extremely difficult to decline. These students tend to do well and most often do wind up with far better jobs than their peers; not great jobs, just better jobs but at least get a job. The direct consequence is that students below the top quartile, those least likely to gain meaningful employment, are actually subsidizing the education of students who are far more likely to do well professionally.

And, finally dozens of law schools simply “game” their reports of employment of their graduates by subsidizing hundreds of jobs, presumably to both increase enrollment and to bolster their standings in *U.S. News and World’s* annual reports in its annual ranking of graduate schools. U.S News’ reporters are no dummies: It announced earlier this year that henceforth it will no longer take in to account law schools’ reports of post graduate employment

So, you may wonder, what’s the point of all of the foregoing? Here it is:

1. Law schools owe a duty to make full and fair disclosure to all applicants.
2. The nation’s law school student population must be reduced by at least one-half, probably two thirds, for the near term, probably at least three years.
3. The nation’s bar owes a duty of every nature to demand these changes and shepherd through the inevitable resistance of the academic community.

These conclusions are not mine alone. At least four law firm managing partners, a number of other prominent lawyers and several law school professors have shared these conclusions with me. However, they openly expressed fear about making public statements supporting these obvious conclusions because they all felt they would be seen as pariahs, shunned by the profession, insofar as the practicing lawyers were concerned, they expressed the fear that their firms’ recruiting activities would be hampered at important schools; the academics also expressed the concern of being shunned by their colleagues, since, in effect, they would be encouraging significant unemployment among the academic community.

There are also a plethora of public statements, too numerous to count, by law school deans and professors which have the cheek to blame law school applicants for entering applying to law schools without doing adequate research. Of course, these audacious pronouncements suggest an absence of any moral or ethical obligation by law schools to make full fair and honest disclosures and the purported disclosures made by the law school community are simply false and misleading.

The foregoing suggests that a viable defense by Enron and Bernie Madoff for claims made by investors is that had they had a duty to conduct their own due diligence of the facts (despite the misleading and opaque annual reports made by both) and therefore neither Enron or Madoff have any culpability.

And, indeed, if you have reached this point in this note, in the unlikely event you haven’t already come to other obvious conclusions, here they are: (a) law schools must stop behaving like the beauty schools of 1990 and (b) law schools should make full, fair and candid disclosure to every law school applicant (before they even remit the application fee) and have each applicant sign a document that he or she has read the disclosures and understands them.

The foregoing is a digest of two articles previously published in [July](#) and [August, 2010](#).

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