

President Barack Obama
The White House
1600 Pennsylvania Avenue
Washington DC 20500

January 1, 2011

Dear President Obama,

We all knew it was coming!

On December 3, 2008, an article appeared in CNNMoney.com “Verdict is in: Legal job market tightens” The article said “Employment opportunities for legal professionals have traditionally been plentiful – and lucrative. But as the economy has dried up, so too have those jobs.... (This) is a job market that is contracting for the first time in recent history....(R)ecent graduates not only face experienced competition for limited jobs but also hefty student loan bills. ‘Recent grads are going to have a hard time’”.

The lead story of the December 10, 2008, Boston Globe “Harvard Curtails Tenure Searches” began, “Harvard University officials said yesterday that they will postpone nearly all searches for tenure-track professors in the school's largest academic body, a sobering indication of how the economic crisis has hit the world's wealthiest university.”

What followed was: a sharp decrease in the number of applications for admission to law schools in the fall of 2009; dissolution and failures of hundreds of large law firms; an increase in the number of bankruptcies filed by law school graduates of the classes of 2006, 2007 and 2008.

By October, 2010, deans of most of the ABA accredited law schools in the country, accompanied by thousands of their most prominent alumni/ae descended upon the nation’s capitol to plead for a \$3 billion bailout to save their industry. In their impassioned testimony they urged Congress to act, pointing out how the failure of the law school industry could have widespread negative repercussions throughout the country:

Large law firms who represented the biggest corporations in the world would have to lay off thousands if the law schools were unable to “funnel” unwilling law students to their firms;

Large corporations would suffer: i.e., a large corporation producing Hummers unable to retain lawyers to plead the case against higher fuel efficiency standards; coal companies unable to obtain permits for strip-mining; tobacco companies unable to prevent the distribution of material warning about the dangers of smoking; oil companies unable to lobby to “drill, drill, drill”;

Law schools, with their graduates unable to repay the extraordinary amount of the loans that they have incurred, would have to reduce salaries of professors and lay off thousands of staff; and

Even the universities to which the law schools are a department would suffer as the law schools, affectionately referred to as “cash cows”, no longer infuse the colleges with needed subsidies. Some universities would, in order to survive, have to extend the winter recess from October 12 to April 14 in order to continue to pay professors their full salaries.

Congress also heard from others, however, who emphasized how out-of-touch the management of the law school industry is and how they industry has failed for decades to produce a product

needed or desired by the American public.

One witness read this 1980 quote from Lloyd Cutler (legal adviser to Presidents Carter and Clinton):

“The rich who pay our (lawyer) fees are less than 1% of our fellow citizens, but they get at least 95% of our time. The disadvantaged we serve for nothing are perhaps 20-25% of the population and get at most 5% of our time. The remaining 75% cannot afford to consult us and get virtually none of our time.”

And provided statistics from the National Association of Law Placement which indicated that at most of the “select” law schools (that doesn’t mean they are good, just that they are hard to get into) until recently, upwards of 95% of their graduates took jobs with large law firms.

Others from non-select law schools testified that their vision was to emulate the select law schools and find all their graduates jobs in large firms so that they could make a lot of money and pay back the loans taken to attend law school and donate lots of money to pay the high salaries of the professors who devote most of their time to making appearances on TV and writing arcane papers.

A member of a consumer group reported that responses from law schools indicated that not one of the law schools had surveyed its students as they registered at their school or at any time during the first year to find out who they wanted to represent (individuals, small businesses, public interest organizations, large corporations) and how many want to start their own firms rather than being an employee at a large law firm.

Another witness was a member of the highly regarded committee that released the MacCrate Report (the chair of the committee was Robert MacCrate, former President of the American Bar Association 1987-88). The MacCrate report found that there were ten fundamental skills needed by a lawyer to competently practice law and the law schools only taught two (and did that poorly.)

It also compiled a list of four fundamental values of the legal profession required to be taught by law schools. One of them is:

“Striving to Promote Justice, Fairness and Morality. ... As a member of a profession that bears special responsibilities for the quality of justice, a lawyer should be committed to the values of: 2.1 Promoting Justice, Fairness and Morality in One’s Own Daily Practice; 2.2 Contributing to the Profession’s Fulfillment of its Responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them; 2.3 Contributing to the profession’s fulfillment of its responsibility to enhance the capacity of law and legal institutions to do justice.”

As the ABA began to take serious action to implement the recommendations of the MacCrate Report, a law school dean who was a leader in the opposition became a leader of the ABA and the MacCrate Report was relegated to what is commonly referred to as the “dustbin of history”.

A second year student recalled reading the annual rating of law schools in the US News & World Report to decide which was the best law school. Only recently did she realize that the criteria used by the magazine were useless in that not one evaluated law schools based on the extent to which they provided the skills and values needed to practice law competently.

Recent graduates testified about:

not being taught the value of promoting justice in any course except that “silly” professional responsibility course that the law school was required to have but everyone knew was irrelevant;”

not being taught how to practice law;

the on-campus interview program and the negative effect it had on them and their classmates;

not knowing what their options are for practicing law or anything about the demographics of the legal profession, thinking that everyone practiced in large law firms, not knowing that 66% of the profession practices in firms of 5 lawyers and that over 50% are sole practitioners;

never having been exposed to career planning (what are your interests, your vision, your goals, your options, your preference, how to promote and market yourself);

how their experience in law school had destroyed their self-confidence, their self-esteem and their sense of self-worth;

with tears in their eyes, how they hated the boring meaningless work they were doing in the large law firm;

being over their heads in debt;

being so dissatisfied with their career path but having no idea of what to do except apply along with thousands of others to the few advertised jobs; and

wistfully recalling they had gone to law school so that they could continue to assist women and children as they had done while in college.

Videos compiled by over one hundred consumer organizations were shown. In each one of them individuals from all walks of life testified about how they were unable to find a lawyer to represent them in a wide variety of cases including sickness caused by pollution, evictions from homes being foreclosed, insurance claims for hurricane damage, discrimination against gays, discrimination in employment of women, injuries to veterans, abused children, claims for injury from toys, denial of insurance, inadequate public education, access to public buildings for the disabled and abuse of the elderly.

I appreciated the opportunity I had to testify before the committee first quoting my warning from an article I posted on FindLaw about fifteen years ago entitled [“Looking for Law in All the Wrong Places: Choosing the Best Law School”](#):

Are you interested in going to law school so you can eventually represent individual women, men and/or children in areas of employment, education, housing, health, discrimination, family and environmental injury? If your vision is to use your legal education to help those traditionally unrepresented by the legal profession or to promote social and economic justice, yours is a monumental task. Over 40% of those entering law school over the last 15 years shared your vision. Less than 5% reached it at graduation Based on my 38 years in the legal profession, including 15 years of career planning during which time

I have spoken to over 5000 law students and lawyers, I can strongly warn you that if you follow the path taken by college graduates over the last fifteen years and naively choose a law school without employing an analysis similar to that outlined in this article, it is extremely unlikely that you will reach your goal.

I ended by reading the conclusion from the book I wrote for law students, *Lawful Pursuit: Careers in Public Interest Law* published by the Law Student Division of the American Bar Association in 1995:

Your professional degree provides you with a unique opportunity and a privilege few have – the ability to secure a position in a place where you are comfortable, where you serve those you want to serve, and where you will have control over your career and your life. It is the key to having the flexibility to redefine your career to suit your personal needs and those of your family. Being a professional offers opportunities to continually learn and improve your skills, to develop as a professional, and to grow as an individual as you become more aware of those who need your help. Your professional life holds the possibility of autonomy, satisfaction, integrity, self-respect, and, most meaningful of all, the prospect of sleeping well after a long day on the job and waking up looking forward to going to work. And all you have to do is take control.

At the close of the initial three days of hearings, voices could be heard supported two widely divergent solutions.

One said that the industry was no longer needed, that it served no public interest, and the industry should be allowed to fail. When asked what would replace it, a spokesperson replied that it was time to return to the apprenticeship system. Those who wanted to be lawyers would sign up to work for a lawyer/mentor. When the mentor thought it was appropriate, but no more than three years, the individual would then be eligible to take the state bar examination. (In 2009, Massachusetts took the lead in the country by reinstating the apprenticeship option which has never been ended in seven other states).

The other camp thought that the industry should survive but only if there was a major restructuring: i.e., a new curriculum which integrated professional development, tenured professors teaching clinical courses, schools with diverse goals and purposes (environment, litigation, small business, education, transactional, etc., etc.), a drastic reduction in law school expenses and a decrease in tuition - starting with consideration of the elimination of the third year of law school. The progressive caucus recommended that that there be no guarantees of loans to those attending law schools unless three quarters of their graduates took positions representing those with low and middle income.

After weeks of negotiations, including representatives from the Obama administration, it was agreed that the bailout loan should be given provided that a Law School Industry Czar be appointed by the President to oversee the distribution of the funds and the compliance of the Law Schools with the terms of the loan agreement.

Based on my nearly fifty years in the legal community and my nearly 40 year obsession with not only the need for increased delivery of legal services to the public but also the failure of the traditional law schools to serve their students or the public, I hereby submit this as my application to be appointed the first Law School Industry Czar.

(By the way, you may recall that between your first and second year of Harvard Law School, my

position as Public Interest Adviser there was eliminated by the new Dean of the Law School who told me that my position was a waste a money because so few of its students were interested in careers in public service. I also want you to know that I do not take it personally and really am pleased that you and Michelle Robinson were able to pursue such a public interest career path in spite of never seeking my advice and counsel.)

Thank you for your consideration.

Ronald W. Fox, Esquire

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