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# Does the Current Economic Model of Legal Education Work for Law Schools, Law Firms (or Anyone Else)?

By Richard A. Matasar

I was asked to write about the following question: “Does the current economic model of legal education work for law schools? Or law firms?” The better question is, however, “Does the current economic model of legal education work for law schools, law firms (or anyone else)?”, which moves the discussion from what about *me* (lawyer, law professor, law student) to what about our clients and the public.

A couple of answers came to mind – the simple, “no;” the more complex, but equally useless, “no for some, but yes for others”; or, the ever popular and enigmatic: “it depends.” But these answers seemed so inelegant and inadequate for a journal article. So I start by offering a broader range of partial answers and tentative conclusions:

- There is no single, current economic model for all students and law schools.
- Legal education is a vehicle for social mobility, status, and career satisfaction that extends beyond the practice of law.
- The value of a legal education varies widely given individual student goals and the alternative paths that a student might have followed in lieu of law school.
- Some schools will continue to prosper charging high tuition (at least for a while); others will not.
- Lower priced alternatives to the current model will certainly evolve; non-U.S. law schools will become viable competitors in training U.S. lawyers; some schools will fail; others will adjust.
- There is no unified organizational structure followed by all law firms.
- Law is practiced in many settings beyond private practice.

- The economics of legal education has little to do with whether students fulfill the needs of employers or clients.
- The focus on law firm profits per partner undermines lawyer training and client service.
- Legal employers will evolve to serve their varying constituents, and new models will certainly emerge for training young lawyers on the job.

In this article, I examine the legal education economic model, students' goals, and alternative funding models that may emerge. I discuss the impact the current model has on firms and other employers, the tenuous relationship between law school economics and law firm economics, and models for continued lawyer development that may emerge in the years ahead. The article concludes that change is inevitable for both schools and employers, that without change we surely will not optimally serve our clients and the public, and that it is the shared responsibility of law schools and the bar to improve our profession.

### Law School Economics 101

Over the past decade, conventional wisdom has held that legal education is a bad economic investment. The argument emphasizes that educational costs have for most students been rising at a much faster rate than the salaries most law graduates will earn; very few students pay for their education without borrowing funds for tuition and living expenses; the debt service on their loans is so high in relation to the salaries they will earn that it will be difficult for most students to pay back their loans and manage all the other expenses they will face; and law graduates' debt will remain with them for decades, skewing their life and career choices.

This economic plight is exacerbated by several factors. First, students accumulate about the same amount of debt, regardless of their employment – a public interest lawyer, whose salary expectation is quite modest, generally borrows the same amount as the student headed for practice at a big law firm, whose salary will be significantly higher. Second, the only students who avoid accumulating large debt are those who either come from a family of means or who receive a “merit” scholarship – thereby creating the anomalous result that the students most likely to obtain the highest paying jobs (or be able to afford to take the lower paying jobs) are those most likely to have the lowest debt. Third, the number of jobs in big law firms – basically the only employment that allows students to comfortably manage their debt – is inadequate to employ most students, thereby ensuring that the (vast?) majority of law school graduates will face economic difficulties. Finally, initial salary differences generally widen over the course of a career.

In addition to this gloomy economic forecast, law school graduates face other financial problems. Tuition at

state-supported law schools is rising at a faster pace than private school tuition rates; and states are contributing a decreasing share of the total cost of educating law students. Together, these state actions reduce the number of lower cost options for aspiring lawyers. Undergraduate debt has been rising rapidly as well and access to non-governmental undergraduate loans has been eroding, except for students who have co-signors with good credit, i.e., the well-to-do. At the same time, students have been taking on increasing amounts of consumer debt: credit cards, car loans, revolving credit, and the like. And, we are just emerging from the worst recession of our lives. In sum: law student educational costs are rising, student debt is rising, the job market is tanking, and there is no end in sight.

In the light of this disturbing picture, one might expect that law schools are facing an imminent market collapse – declining applications, few students willing to take on financial risk, the need for significant internal cost savings, price cutting, and other similar measures. Surprise, surprise, surprise! The demand for legal education has remained strong throughout the economic downturn. Applications at many schools are at record levels. Enrollment has been solid, with many schools recording historically high yields of new students.

What possibly could be going on? Are law school applicants ignorant of the new economy and job market? Do they ignore the cost of education? Are law schools deceiving students about their prospects for gainful employment? Is this just another game of chance in which students pray to hit the lotto?

Law students are not ignorant. Today they have access to more information than ever, information that is tested daily in the blogosphere for accuracy, which is producing even greater transparency about law schools and employment. Students do not ignore costs; they bargain for higher scholarships and induce schools into bidding wars for their admission or to prevent them from transferring. Law students are fully aware of the economic conditions that force many to work while in school, live at home or with roommates, borrow casebooks from the library rather than buying them, and network at every opportunity.

In spite of the many difficult economic issues law students confront, they still find legal education attractive. Many law schools, especially outside of New York, continue to have modest tuition. Other schools provide significant scholarship support to substantial numbers of students. Even at the most expensive schools, top applicants and highly ranked students receive large scholarship awards. Other students work full time, while attending law school part-time. Others have employers or parents who are paying for their education.

Even beyond the fortunate few, many students carrying more debt than they seemingly can afford are satis-

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fied with their choice to attend law school. Some see no other rewarding career alternative. Law practitioners are licensed to engage in a business into which new competition is highly regulated. Lawyers have tremendous autonomy in their daily lives – especially in comparison with much more routinized or regimented employment.

## If law schools wish to prosper (or perhaps even survive), price must go down or value must go up.

Students who have no technical, mathematic, or scientific knowledge may have few career choices based solely upon their undergraduate degree. Thus, in comparison with other graduate disciplines, law may provide many more opportunities. Finally, over the long arc of a career, even those students who begin with high debt and a low salary can build successful and rewarding careers. The return on investment is not merely a short-term measure; it depends on lifelong earnings as against alternative paths, discounted by the opportunity costs of delaying entry to the workforce. It is simply not possible to know in advance whether the long-term financial return on a legal education will pay off until a number of years have passed. And, without more data, it is very difficult to assess whether today's investment is less wise than the similar investment made by previous generations of lawyers.

With these potential advantages to a legal career, maybe it is not such a bad investment after all. However, I have no doubt that the value of a legal education will continue to erode in the years ahead, especially if the price of that education continues to rise at a higher rate than the expected return on that investment. There certainly will come a day in which demand will decline. Therefore, if law schools wish to prosper (or perhaps even survive), price must go down or value must go up. Schools must change . . . but change will not come easily.

### The Challenge

#### State Support

In face of the deep economic pressures facing state governments, they are unlikely to increase their subsidy to legal education. It is hard to argue that support for law students is more important than for K-12 education, benefits for the unemployed, investment in new or green technology, better management of prisons and hospitals, or scores of other public service needs.

#### Federal Support

The federal government has already made a huge commitment to legal education through its direct lending program, by which virtually any law student can borrow the full cost of his or her education – and living expenses – with no obligation to make a payment while

still in law school. In addition, the federal government has embraced a loan forgiveness program for qualified public service and has set up income-based repayment programs for newly minted lawyers whose incomes are so low as to make paying their loans difficult. But, as with the states, the federal government has other priorities,

like the economy, ending armed conflict, mending the environment, improving health care, and on and on. Law students are not going to rise to the top.

#### Regulatory System

The American Bar Association regulatory regime has been built over many decades and includes many requirements that increase educational cost, like requiring job security for faculty members, librarians, and deans; requiring a significant physical plant; requiring three years (give or take) of law school; requiring an undergraduate degree; or limiting the number of classes that can be taken online. Recent proposed changes that mandate law schools to announce, measure, and improve their outcomes and offer particular types of skills classes, while desirable, will not lower costs.

#### Self-Interest

Law schools will not voluntarily cut costs, as long as demand is sufficient to maintain their current operations. Few faculty members are retiring. Few employees are giving back their salaries. Most faculty members would like decreased teaching responsibilities and more time to write and research. Schools are not downsizing their facilities. And, all schools continue to seek an improved reputation, one that frequently comes with spending more and passing the costs directly on to the students.

#### Increased Leverage

Students continue to borrow, not just for their tuition, but also to support their lifestyle choices. Most prefer to live away from their parents' homes. Many own cars, buy new technology, go out for meals, and pay for entertainment expenses. Hence, even if tuition were to stabilize, many students would still choose to take on debt to support their lifestyles. As the saying goes: "Living like a lawyer while going to school is likely to mean living like a student after graduation."

#### Change Will Come

Despite the difficulty of change, it will come. The demand for legal education will decline at high-priced schools whose graduates are having difficulty repaying their loans. The federal government, the only remain-

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ing lender, if at all rational, will respond: perhaps by restricting the amount of credit to students of such schools, requiring an equity contribution by those students, requiring co-signors, or increasing the interest rate for their loans. Alternatively, the Department of Education (aka the “Bank”) as the regulator of higher education might respond by issuing regulations requiring schools to reduce their costs, justify their price increases, or otherwise alter their model. The government, as lender or regulator, is unlikely to prioritize subsidizing legal education over all other potential uses of federal funds.

Similarly, the ABA, as law school regulator, will have to deal with cost issues. As I write, the Standards Review Committee has propounded new accreditation standards that may eliminate job security as an accreditation requirement. They are considering lifting the ban preventing students from obtaining academic credit and salaries for the same work or working more than 20 hours a week while going to school full-time. And they are evaluating proposals to expand the number of courses that may be taken online. These measures could lower educational cost substantially. More important, such measures make it possible for new, lower cost competitors to begin to offer law degrees.

Like any other market, as economic barriers to entry are lowered, we should expect lower cost and more efficient providers to enter the legal education field. Already non-U.S. law schools are seeking approval by the ABA to offer American J.D. degrees. These schools underprice our market. Even without direct ABA approval, students may take their law studies at inexpensive non-U.S. schools, take a one-year LL.M. in the United States, and sit for the bar exam – all at a lower aggregate cost than those who attend three years at an ABA-approved law school. Domestic law schools are already offering two-year law degrees (for the price of three years). Eventually, some will lower their costs as well. Taking a page from other countries, there are proposals to eliminate the requirement of a college degree for entering law school. If such proposals are approved, the total cost of higher legal education in the United States will be reduced substantially, from seven years of tuition to perhaps as little as four years.

### Law School Economics and Legal Employers

As with the conventional wisdom concerning law school economics, there is similar wisdom about the relationship of law schools and law firms.

- BigLaw jobs dictate the price of legal education (or reflect the price of legal education), a kind of chicken and egg, which came first relationship.
- Many law students falsely believe that “decent” performance in law school alone will make them attractive to big firms and that they will have a choice whether to accept a BigLaw job.

- Relying on this misapprehension or students’ overestimation of their opportunities, schools will continue to raise their prices.
- Schools will mistakenly rely on the job market to continue to offer enough high-paying jobs that will allow most students to manage their debt.
- The federal government, as lender, will continue to fund students, regardless of default rates.
- Big firms will continue to absorb large numbers of new associates to replace the significant numbers of more senior lawyers lost through attrition.
- Clients will be willing to pay firms for the high-priced new talent they have hired.
- Through leveraging their many associates, firm partners will capture revenue sufficient to restock with new talent, pay firm overhead, and yield increasing profits.
- Finally, the tight relationship among clients willing to pay, big law firms willing to employ large numbers of graduates at high salaries, and law schools graduating attractive new employees will allow sufficient numbers of talented lawyers to trickle down to smaller firms, the government, and other employers.

Ummm, no. The past three years have exposed the conventional lack of wisdom in these many assumptions. Most students do not go, have not gone, and have not wanted to go to work for BigLaw. If they go into private practice, most law graduates will work for smaller firms or end up in solo practice. Many will work for the government. And, an increasing number will find their way to permanent employment through temporary assignments or by working in a business setting. Many students will ultimately end up in non-law jobs. For some students, like those in part-time programs, this may have been the goal to begin with; they seek law degrees to enhance their roles with current employers. For others, it reflects disenchantment with a profession they may erroneously have chosen. And, for some, perhaps the largest group, it reflects their inability to find a job as a lawyer.

No more than 10% of the graduates of most law schools find work in BigLaw. As for the most elite schools, where many more students have such an opportunity, significant numbers of graduates avoid BigLaw firms or abandon such jobs once they pay down their debt. In short, the pervasive impact of BigLaw, even at its height four or five years ago, has likely been overstated. More disturbing, perhaps, is a widespread belief that students are intentionally misled into thinking that they all will receive whatever employment they seek; that they could have a BigLaw job if they want one. Given the pervasiveness of stories of law firm layoffs, popular law-debunking sites that catalogue the plight of law school graduates, the straightforward warnings that senior students give to applicants, and even honest communication

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from law schools to applicants, students today know, or should know, that banking on a BigLaw job is risky.

Whatever expectations law school graduates might once have had about BigLaw practice have been shattered in recent years. Summer programs have declined precipitously. Firms have laid off lawyers in record numbers, have deferred start dates of new lawyers, and have shut-

some and more to others? Should they pay lower entry salaries, invest more deeply in in-house professional development, and only then offer young lawyers who have demonstrable skills an increased compensation?

Other firms have questioned their managerial competence. Can they, as lawyers, really manage well or should they engage professionals to help them? Can they evalu-

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tered – all covered under the bright lights of the popular press. Moreover, the supposed BigLaw monolith long ago split, showing wide differences. Some firms offer lockstep compensation; others differentiate by practice setting, entry credentials, and even performance! Some firms want young lawyers to specialize; others demand rotation. Some firms have one class of partnership, others have tiers. Some firms do pro bono; others do not. Some have diversified practices; others (if they survived the downturn) do not. Apparently, even big firms differ from each other.

The downturn has further frayed the model. Clients are pushing back, hard, on law firm leverage. Some refuse to pay for the work of young associates. Others demand that firms justify their staffing choices. Some refuse to pay the billable hour, seek caps on fees, or unilaterally demand discounts to their bills. General counsel organize to compare notes and place greater demands on their lawyers. Client pressures have forced firms to evaluate their economic assumptions; it is clear that they cannot simply pass on new lawyer costs to clients (and make leveraging profits). Further, the downturn has also made clear that voluntary lawyer attrition cannot be assumed, that hard performance evaluations are necessary, and that hiring decisions made years in advance can lead to costly mistakes, rectifiable only by layoff, delay, or permanent down-sizing.

These economic forces have led firms to engage in serious soul-searching. Many question their hiring models. Should they abandon summer programs? Should they seek only laterals, already trained by others, who can produce more immediate returns? Should they continue to hire almost all graduates from a limited number of schools and be willing to hire even those with weak law school performance because their pedigree alone is sufficient? Should they expand their hiring to the top graduates of non-elite schools (and if so, how deeply into the class can they go)?

Some firms question the compensation offered to associates. Should they pay less? Should they pay less to

ate talent or should they expand their HR departments and delegate to them? Should they abandon the billable hour, create alternative billing models, or engage in hand-to-hand combat over fees with their clients?

BigLaw faces competition from medium law. Medium law faces pressure from boutique law. All private lawyers face competition from non-lawyers who provide routine services no longer exclusive to lawyers. Lawyers may compete with new smart computerized systems that automate some practice problems. Non-U.S. legal service providers compete vigorously for U.S. clients and may not have the same professional responsibility rules restricting how they practice, what non-legal services they offer, and even how they are financed. The government may eliminate some practice areas through regulation, restrict available fees for other areas, and authorize some non-lawyers to engage in client services.

That law practice is radically changing cannot be questioned. What remains is to look more carefully at the relationship between law school economics and law practice – a tenuous relationship at best.

Firms are not beholden to law schools or law students to pay associates high salaries. That wound is self-inflicted, reflecting law firm competitiveness to hire from a very limited pool of law school graduates whose worth to the firm is uncertain. Law firms expect high attrition, suggesting that there are many false positives in evaluating talent. They also hire laterals with demonstrable talents, many of whom they refused to hire in the entry market, suggesting that firms also produce false negatives in evaluating talent. Law school economics does not dictate this approach to evaluating talent; risk aversion does.

Law school economics is not the primary cause of deficiencies in new lawyers. Schools provide training that the market demands. To date, the market for new lawyers does not reward skills training in law schools; firms seek those with the highest grades from the highest ranked law schools, regardless of their law school curriculum. Law school economics did not create the billable hour, which is now under attack from clients. Law school eco-

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nomics did not create leverage, an unwillingness to train young lawyers, a bad balance between life and work, or hosts of other ills lumped into undifferentiated critiques of law practice, law schools, and lawyers.

But such critiques are increasingly loud and clear in identifying the problem: law schools do not graduate lawyers who are sufficiently ready to take on responsibility, the employers are not filling the void, and the clients and the public have suffered as a result.

### Improving the Value of Legal Education and Employment

Whatever the relationship (or lack thereof) between law school economics and legal employment, two things are clear: (1) the price of a legal education is too high in relation to its perceived value, and (2) the legal employment market must shift from asking what is good for lawyers to asking what is good for clients and the public. These two imperatives are related. As legal employers more clearly define the competencies they expect from their employees and seek to improve client service and pricing, they will create pressure on law schools to produce graduates who better fulfill these needs. In turn, as law schools produce more effective graduates, those graduates will provide greater value, both to their employers and, more important, to those served by their employers. Legal education then more clearly resides on a continuum of lifelong service and learning on behalf of our clients and the public.

This continuum is not a mystery. It begins with the need to define the knowledge, skills, and values essential to serving clients and the public effectively. The general taxonomy of basic service skills has been discussed for many decades: knowledge of basic law; critical thinking skills; communication skills, both oral and written; research skills; listening skills; a commitment to justice; and so on. Less clearly understood but equally critical are a strong work ethic, the ability to work on deadline and on a budget, project management skills, and a host of other interpersonal skills that allow a lawyer to be a good team member or leader. More important than such lists, however, is that law schools and legal employers must commit to teaching what is needed, evaluating performance on those factors, and recognizing that lawyers will continue to develop throughout their careers and will need increasingly sophisticated training as they mature.

Conscious, professional development in law schools is underway. Under proposed new accreditation standards, every law school must define the learning outcomes it seeks to produce, design a curriculum that will produce those outcomes, measure whether they successfully produce the outcomes, and then improve in areas in which it is less than successful. Few schools will do so without regard to the needs of those who will employ their graduates, ensuring a role for the profession to influence the

way lawyers are trained. Even if schools do not lower their prices, they can argue much more powerfully that they provide value when they seek to produce more attractive graduates.

Law firms too are becoming significantly more conscious of developing specific competencies in their lawyers. Whether they design year-by-year training programs, move CLE programs internally to their firms, define clear competencies that each lawyer must achieve, or have sophisticated, layered, practice area training, firms are reinventing their associate training programs. These too have powerful benefits: they demonstrate to potential employees that the firm is making a long-term investment in them. They offer clients more skilled younger lawyers.

Professional development will be most successful if schools and firms work together. Training is expensive. Schools will need to reallocate resources to improve their training of students. It is unlikely that they will do so unless they can improve their students' prospects for employment. Therefore, if firms speak about skills they are seeking, but act by continuing to hire only those from top-tier schools (regardless of grades), those with high grades from lower ranked schools, and do so without regard for the content of their training, schools are unlikely to make a serious effort at change. Schools and firms will change when doing so reinforces the sense that change has benefits.

The market may push greater cooperation between educators and employers. Employers and law schools may partner, with schools providing training and firms providing experts to teach. Firms may agree to hire from certain schools whose graduates demonstrate particular competencies or expertises prized at the firm. Even if schools and firms make a shallow commitment to engage in professional development, the market is likely to fill the void. Third-party training companies – legal publishers, bar reviews, for-profit post-graduate programs – may begin to offer specific courses to improve young lawyers' skills and knowledge. Other organizations – Boards of Law Examiners, courts, government agencies, *Consumer Reports* – may begin to “certify” that some graduates are better than others. Perhaps, like professional sports recruiting services, outside evaluators may hold “combines” at which they assess which potential new lawyers have appropriate skills that cannot be discerned by their transcripts. If all else fails, perhaps we will require lawyers to take mini bar exams to demonstrate that they have kept current or have developed the expertises that they claim.

Improving lawyer training cannot come without cost. In the law schools, it is likely that current faculty members will have to retool, to focus more clearly on lawyer training. If they are to maintain tenure, job security, relatively low teaching loads, sabbaticals, and the freedom

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to spend time writing scholarship, they will have to give up pet teaching areas and spend more time as mentors to their students. They will need to align their interests in legal research to the professional training needs of their

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students. In the long run, as tenured, higher-priced faculty retire, schools may refocus their own talent assessment, pay higher salaries to those who do training, give lower salaries to those seeking job security, create alliances with itinerant lecturers who peddle their wares at multiple schools, use more part-time faculty, create online learning tools that can be scaled to serve many students, or create asynchronous distance-learning programs that can make use of teaching and facilities on a 24/7/365 basis.

In firms, short-term profits may have to be sacrificed to find resources to develop new talent. Over the past two years, despite the significant economic downturn, many firms have reported flat or even greatly improved profits per partner. Easy math: throwing their associates and lower profit partners under the bus, requiring more of the remaining lawyers, equals continued wealth for the managers. But, how long can that model prosper? Clients are demanding faster, cheaper, and more effective results from their lawyers. They have a point. Profits per

partner, defined by leverage and the billable hour, cannot continue to grow unabated. On its face, the billable hour creates a potential conflict. What is good for the lawyer – more time billed – is more expensive to the client. What is good for the client – a clear price – is bad for the firm, which cannot predict in advance how much time is needed to effectively complete the work. However this delicate pricing problem is resolved, it seems likely that clients are driving the bargain.

It also seems likely that initial salaries for new lawyers at big firms will decline. This will place pressure on law schools to reduce their price. Law schools will seek to avoid this by finding ways to retain their income, but reduce costs to students – creating new graduate degrees, selling education to non-lawyers, or accelerating the training time for new lawyers, either through two-year degree programs or by eliminating some years of undergraduate training. Firms paying lower salaries might become more attractive to new employees if they acquire the debt of those employees and then forgive increasing portions of that debt as retention bonuses for those employees who stay at the firm. Perhaps the cost of a legal education should receive more favorable tax treatment, as a capital expense, depreciable over some portion of a lawyer's professional career.

The years ahead suggest that law schools and firms must change or die. We are colleagues whose futures are inextricably tied to each other. Schools exist to train lawyers. Lawyers exist to serve clients and the public. Our economic success is bound to the fulfillment of those functions. ■

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