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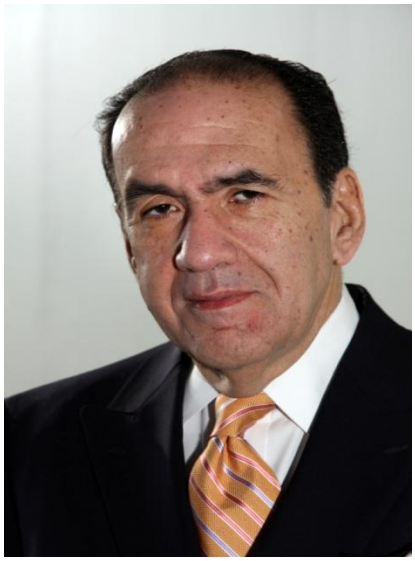

A Cost Way too High to Pay: *The New York Times* on the Price of Law School Tuition

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David Segal of *The New York Times* today continued with his hard hitting series exposing the continuing crisis in American legal education. In his current piece, entitled "The Price to Play Its Way," Segal features The Duncan Law School in the Appalachians (why there is a need for a law school in the Appalachians in a grotesquely over-lawyered nation is a separate question. I've addressed elsewhere. I have also covered Segal's previous revelations concerning law schools revelations about legal education being akin to the non-existent Emperor's new clothes elsewhere in this blog.

Segal's basic premise is that law schools are unnecessarily over priced because of capricious rules and grotesquely unnecessary requirements promulgated by the American Bar Association's Section on Legal Education and Admission to the Bar. In order to comply with the ABA's outmoded requirements, Duncan is required to maintain a fairly bare boned library at an

annual cost of $175,000, while in truth, that cost can be eliminated virtually in its entirety through the use of computer terminals and a Wi Fi installation, just as most law firms have done. The largest expense item for Duncan is maintaining the ABA mandated 16 full time faculty members, along with three adjuncts, which soaks up 75% of Duncan's budget. In Segal's previous installment, Segal described how law school graduates acquire no practical lawyering skills at law schools, largely because they are taught by full time faculty who rarely have spent a nanosecond practicing law. The result, Segal explained is lowered hiring by law firms and a general refusal by clients to pay for the hours spent during a lawyer's first two years of employment, during which he or she is largely engaged in the basic skills of lawyering.

The New York Times

Duncan apparently endeavors to run a lean machine, charging tuition of only $28,664 per annum. With housing and other costs, that tab could run to $50,000, Segal reports.

Segal's report comes on the heels of a report issued by Dean Jim Chin of the University of Louisville, in which Dean Chin. As reported by *The National Law Journal:*

> "Using the debt standards set by mortgage providers as guidelines, Chen concluded that law graduates need to earn three times their law school tuition annually to enjoy what he termed "adequate" financial viability. That assumes they borrow only the amount of their law school tuition and lack additional debt — a conservative assumption, Chen said.
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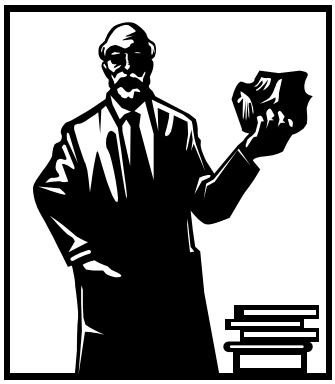
> Thus, graduates of relatively low-cost schools charging annual tuition of $16,000 would need to earn $48,000; graduates of schools charging $32,000 would need to earn $96,000; and graduates of schools charging $48,000 would need to earn $144,000.
>
> To maintain a "good" level of financial viability — meaning they could easily secure loans and would be very financially secure — graduates must earn six times their annual tuition, Chen calculates. That means graduates of $16,000-a-year schools would need to earn $96,000; graduates of $32,000 schools would need to earn $192,000; and graduates of $48,000 schools would need to earn $288,000.
>
> To maintain "marginal" financial viability, graduates of $16,000-a-year schools would need to earn at least $32,000; graduates of $32,000 schools would need to earn $64,000; and graduates of $48,000 schools would need to earn $96,000.
>
> According to the National Association of Law Placement, new law graduates earn, on average, $68,500."

Thus, using Chen's algorithm, Duncan graduates would need to earn $144,000 to maintain adequate living standards and $288,000 for better standard of living. Neither one of those numbers appears to be within Duncan Law School's grasps. And Duncan is not alone, it only was featured by *The Times* as this week's poster child.

Chen's paper is an interesting follow on to the paper written by Professor Herwig Schlunk of Villanova in 2009, using pre-recession data, in which he included only pre-recession in which he looked at the value proposition of law school. The title of Schlunk's work says it all: "Mamas: Don't Let Your Babies Grow Up to Be Lawyers." and since Schlunk wrote his paper, starting salaries for lawyers has decreased by approximately $10,000 and law school tuitions have increased by approximately 10%.



Law school professors seem to be doing considerably better. Their median pay is $120,000 to $150,000; with some "superstars" earning more than $300,000. By any measure, that's not bad pay for teaching three courses a week, writing the occasional hour and taking on unlimited clients for private gigs and getting to charge those clients premium fees, after all a "professor" skilled or not, gets to bill at the highest end of the food chain.

Segal suggests that this entire exercise is part of the ABA's guild system, creating artificial barriers to entry, while forcing law firms to bill young associates at $300 an hour, so that they can get paid a sufficiently high salary in order to pay off their artificially high student loans. The real problem with this circular reasoning is that the music seems to have stopped playing and there are way too few seats for the players to pounce upon. NALP reported that only 60% of 2010 law school graduates actually found jobs requiring a law degree and, as noted, their median salary was only $68,500. It's highly unlikely that universities will do the right thing by closing down their law schools since law schools and medical schools are second only to athletic programs in bringing the cash home to universities. Law professors are most unlikely to blow the whistles on their own safe perches, with but a few notable exceptions, such as Brian Tamahana.

Professor Larry Ribstein of the University of Illinois School of Law, never a big fan of Segal, is a proponent for simply deregulating the practice of law. Ribstein got up even earlier than I did today and, read Segal's piece and quickly posted at length on his sensational blog, "Truth on the Market" as follows:

The NYT article typically fails to articulate the causes and cures of our over-priced legal system beyond the commonplace that the ABA somehow manages to restrict competition. Segal blames the law professors, finding comfort in the scam-bloggers' simple-minded denunciation of high-priced legal scholarship. *But since Segal doesn't explain how a bunch of eggheads sitting around writing useless articles came to control the ABA, he sounds like he's blaming the mosquitoes for banning DDT*. This narrow focus isn't surprising given Segal's mission, which not to analyze or educate, but to entertain with simplistic narratives and pithy quotes.

So what's really happening? The cause of the current situation, as I make clear in my *Practicing Theory*, is obviously the practicing bar, a powerful lawyer interest group with an incentive to keep the price of legal services high. Lawyers operate not only through the ABA but also local bar associations. Legal educators (law professors, law school and university administrators) come into the picture because they manage the key instrument for doing so — the academic institutions that keep the price of entry high. If the lawyers really wanted to make law school cheaper and more "practical" they could do it in an instant.

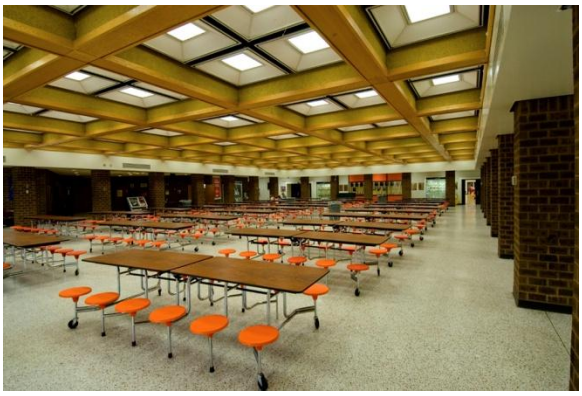
Gillian Hadfield's suggestion to Segal of alternative accrediting bodies is one possible future world, but there are others. The route to all of these worlds isn't simply changing the law school accreditation system (accreditation is pervasive throughout the education world), but changing the system of lawyer licensing which maintains the current one-size-fits-all approach. But how to do that when the powerful lawyers' guild has maintained its grip on the process for almost a century?

As I have discussed (*Practicing Theory*, Law's Information Revolution, Delawyering the Corporation, Death of Big Law) the answer lies in the current rise of technology and global competition, which are combining with the soaring costs of legal services to crack the foundations of the current regulatory system. Systemic changes such as changing the choice of law rules regulation of the structure of law practice and changing the intellectual property rules governing legal information products (Law's Information Revolution, Law as a Byproduct) could hasten this process.

Reform of law school accreditation ultimately will come along with significant changes to lawyer licensing whether lawyers and law professors like it or not. Regulation of legal services will be unbundled, with only core legal services (however that comes to be defined) subject to anything like the current level of regulation, and other areas regulated at different levels or deregulated altogether. [Emphasis supplied]

Both Segal and Ribstein have, in my opinion, missed the train. The market abhors guild type rules. That's why even in tightly controlled economies, there are always black markets.

As I have suggested a number of times, the market for providing legal services is already widely deregulated. The Duncans of this world have only a very short half life and even top tier law schools will continue to suffer serious body blows as the demand for BigLaw associates will continue to wane. Duncan-type law school graduates will largely be competing at a distinct competitive disadvantage with thoroughly unregulated Internet based providers of legal services, which do not need to post their bar admission certificates on their web sites. At the same time, BigLaw will be competing, again to its competitive disadvantage, with offshore unregulated alternative providers of legal services, which are continuing to grab sizeable market share and are indifferent to the requirements of having an ABA sanctioned law degree or even an American bar admission. The market – consumers of legal services – large and small are equally indifferent as to whether these providers of legal services have an ABA accredited education or even a bar admission.



Regulators are largely indifferent to the Internet based providers of legal services. Forty-eight of the fifty states have greeted ubiquitous ads by these Internet providers with a gaping yawn. The State of Washington early on began a proceeding against LegalZom.com, which was settled by requiring Legal Zoom.com to include a disclaimer on its advertising that it does not provide advice [sic]. That little side step. Stands in sharp contrast to a Missouri court's holding. After submission of evidence from both sides, that LegalZom.com is in fact actively practicing law. LegalZoom.com got out from under that ruling by another two step: The Missouri case was brought by several class action firms, which promptly settled with LegalZoom.com, under an arrangement in which LegalZoom will make some small changes in its advertising and operations and, presumably, the class action plaintiffs' counsel will cash a check for legal fees. LegalZoom.com is now doing battle with North Carolina in order to obtain approval for a prepaid legal serviced plan, not unlike that being offered by competing Rocketlawyer.com.

legalzoom

The academies won't solve their problems by opening branches abroad.

India already has over 900 law schools.

As John Kennedy famously said in 1961 in accepting personal blame for the Cuban Bay of Pigs fiasco, "Victory has a thousand fathers; defeat is an orphan." The law school tuition crisis, say the law schools, is the fault of the profession, which needs to charge high hourly rates to sustain the BigLaw model. Academics point a finger at the ABA. Law firms seem pretty indifferent; they are just cutting back on new hires and starting salaries, for those lucky enough to grab the brass ring, don't support tuition loan amortization, food and shelter.

Jerry Kowalski, who provides consulting services to law firms, is also a dynamic (and often humorous) speaker on topics of interest to the profession and can be reached at jkowalski@kowalskiassociates.com .