Recent surveys suggest that many lawyers, as well as a significant portion of the general public, believe that an oversaturation of lawyers exists in the profession. Are there too many lawyers, or is the "too many lawyers" outcry simply a convenient catch phrase that encapsulates multiple different pressures facing lawyers and legal professionals today?

BY MICHAEL S. HOOKER AND GUY P. MCGONELL
Too Many Lawyers—Is It Really a Problem?

Have you heard the one, “What do you call 5,000 lawyers at the bottom at the sea?” “A good start!” Therefore, it is probably not surprising that a majority of Americans believe there are too many lawyers. A recent Rasmussen Reports survey revealed that 56 percent of adults think there is an overabundance of lawyers in America.1 Additionally, if recent surveys reflect the profession as a whole, even lawyers now share that opinion. When queried in a 2011 survey to list those issues that will have the “greatest impact on the legal profession” in the coming years, Florida lawyers substituted what had been the perennial favorite of “computer technology/Internet” issues, with “oversaturation of attorneys.” Further, in the 2013 survey, the response reaffirmed its top position, receiving votes from two of every five respondents.2 It is clear that over the past few years, evidence demonstrates that there may be “too many lawyers.” Lawyer advertisements seem to be more prevalent than ever, and the job market for lawyers has been tight, particularly for new graduates (many of whom bear significant debt loads). Competition for clients appears to be increasing every year, and client demands are changing, with some refusing to pay high hourly rates and demanding more cost-effective and nontraditional delivery of legal services. Additionally, some lawyers complain that law schools are not properly preparing students for the actual practice of law in the modern era.3 With the sheer number of lawyers and increasing economic pressures, it is easy to see why the general public and the legal community would conclude that there is an oversaturation of attorneys.

The Perceived Problem

At first blush, the evidence would seem to support the conclusion that there are, in fact, too many lawyers. According to the American Bar Association, there were 1,268,011 licensed lawyers in the United States in 2012.4 This equaled approximately one lawyer for every 257 Americans. By comparison, in 1950, there was only a single lawyer for every 709 nonlawyers in this country.5 By any objective measure, there currently exists a large number of lawyers in America. However, as the ranks of lawyers have been expanding, the employment opportunities have been contracting. According to the Bureau of Labor Statistics, 218,800 new legal jobs will
be created between 2010 and 2020. Although 218,800 new jobs may appear to be a large number, the problem is that more than 40,000 new lawyers are entering the job market every year. As a result, almost two out of every five 2011 and 2012 law school graduates did not obtain full-time, long-term employment in jobs requiring a law degree. By comparison, four years earlier, 77 percent of law school graduates were employed in a position requiring them to become members of a state bar. 6

Although some folks have wanted to be lawyers literally their whole lives, some traditionally see law school as a default choice for undergraduate liberal arts majors who have not yet figured out what to do next. As the reasoning goes, hang out in law school for another three years, and eventually a plan or an opportunity will emerge. This combination of the fully invested and the casually committed has sustained both law schools and the legal profession’s need for new lawyers for many years.

With the market’s inability to meet increased supply with demand, the overabundance of new lawyers also has reduced the amount of lawyer salaries. From 2009 to 2012, the median starting salary of lawyers fell from $72,000 to $60,000, according to the Association for Legal Career Professionals. Although the median annual salary in 2011 of a new associate at a private law firm was approximately $85,000, this figure is still one-third less than it was only two years earlier.7

How Did This Problem Develop?

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However, at the beginning of this century, a new trend began to emerge. Law school applications began to soar. For the incoming 2004 class, 100,000 applications were submitted to ABA-approved law schools. The number of applicants has fluctuated somewhat in subsequent years, as 86,600 applications were received for the incoming 2009 class and 87,900 for the incoming 2010 class. Similarly, between 2000 and 2010, the number of students taking the LSAT rose from 108,030 to 171,614. Buoyed by the ever-increasing application rates, law schools began to respond in predictable free-market fashion by opening new schools and expanding campuses. As a result, there are now more ABA-approved law schools than ever before—a total of 203.9 Predictably, this created a huge influx of new lawyers. These newly created and approved law schools are now graduating in excess of 40,000 lawyers each and every year.

The meteoric rise in law school applications during the early 2000s likely was due in part to an expanding economy and a perception among liberal arts majors that practicing law was a great opportunity to earn money. Ironically, the recession of 2008 also may have fueled the increase because many students probably perceived law school as a safe harbor where they could wait out what was expected to be a rapid economic recovery. Perhaps an elucidating answer can be found in a newly emerging view that analogizes the lawyer upsurge to what happened in the real estate market—something dubbed the “Lawyer Bubble.” Under this view, the availability of easy money to finance a legal education lies at the root of the problem. Prospective law students were drawn in by low-interest loans that banks were all too eager to make because, like some housing loans, they were government subsidized. Relieved of traditional concerns over loan repayment, lenders flooded the student loan market with easy credit. 10 The inevitable result has been too many law students, followed by too many law schools to meet the demand, and finally too many matriculating lawyers.

Prospective Law Students Respond

Further revealing themselves as true capitalists, law schools not only expanded capacity in the early 2000s, but also raised tuition rates. Between 2000 and 2012, the average law school tuition in this country for private schools rose from $21,790 to $40,634 annually, and from $7,790 to $23,214 for in-state residents at public schools. Importantly, 90 percent of law students historically have financed their law school education by obtaining student loans and accruing a large amount of debt. To meet the exorbitant new tuition demands, law students began to increase the amount of money that they borrowed. By 2011, the average debt had soared to a new high of $125,000 for private law school graduates and $75,700 for public school graduates. By comparison, in 2001, the average debt of private law school graduates was only $70,000. Currently, new graduates carry an average law school debt exceeding $100,000.11

What did the higher tuition rates and increased debt create for law students? Arguably, not much, and some observers lament that, despite increasing law school profitability, the school’s administration proceeded to reduce teaching loads and deemphasize real-world, hands-on curricula in favor of legal theory and interdisciplinary studies.12 In short, law students started paying more for an education that many contend prepared them less for the legal jobs they ultimately would seek.

Perhaps not surprisingly, after patiently watching these developments for a few years, prospective law students responded with a capitalism-inspired move of their own. During the four-year period from 2009 to 2013, the number of students who chose to take the LSAT dropped a whopping 45 percent. From just 2012 to 2013, that number fell almost 11 percent. Similarly, the number of students applying to law schools has fallen by nearly one-third since 2010. According to the Law School Admission Council, as of January 2013, the number of applicants to U.S. law schools for the fall term dropped a full 20 percent from the prior year. Indeed, the last time first-year enrollment was as low as the 2013 class was in 1975, according to the ABA!13
For new college graduates, becoming a lawyer was obviously no longer the “sure thing” to achieving financial and professional success that it had been just a few years earlier. Liberal arts majors were no longer willing to park in law school until they decided what they wanted to do in life. The costs were simply too high, and the perceived rewards too low.

Law Schools Under Siege

The precipitous decline in law school admissions reportedly has now placed some of these institutions in financial peril. Numerous schools are under pressure to cut back on class size and faculty, and some apparently already have begun layoffs and buyouts of staff. There are even predictions that some schools or campuses may shut down altogether. As one observer put it, if the plight of lawyers is bad, they may take perverse solace in knowing that the plight of law schools is perhaps even worse. 14

Indeed, it is hard to remember a time when law schools were under greater pressure than today. Lawyers are complaining that law schools dump too many new prospects into the market, diluting the available workforce and contributing to the increasing commoditization of what is meant to be a noble profession. Law firms are complaining that new hires are not adequately prepared for immediate employment, having been trained by law professors with an excessively theoretical or academic bent. Legal commentators, and even a recent ABA task force, have complained that law schools are too insulated from real market forces and perpetuate a culture of inflexibility and resistance to educational innovation. 15

Perhaps the biggest complaint of all has come from the students who paid large sums of money and oftentimes incurred overwhelming debt to obtain their degrees only to find out that the promised high-paying legal jobs were not available. Some lawyers are now languishing in jobs for which a Juris Doctor is not even required. Other lawyers suffer the ultimate indignity of being told that their new credentials render them overqualified for what little nonlawyer employment is available. A few graduates have lashed out against their alma maters, claiming that incoming students were duped into paying massive tuitions by misleading employment data touting legal jobs that did not exist. As of early 2013, approximately 20 class-action lawsuits had been filed against law schools throughout the country by disillusioned alumni claiming fraud and misrepresentation. 16

Some of the criticism of law schools may be well deserved. In their zeal to attract more and better students, a few schools have reportedly played fast and loose with statistics such as job placement, LSAT scores, and GPAs that are used by ratings sources such as U.S. News and World Report to devise law school rankings. Not even required. Other lawyers suffer the ultimate indignity of being told that their new credentials render them overqualified for what little nonlawyer employment is available. A few graduates have lashed out against their alma maters, claiming that incoming students were duped into paying massive tuitions by misleading employment data touting legal jobs that did not exist. As of early 2013, approximately 20 class-action lawsuits had been filed against law schools throughout the country by disillusioned alumni claiming fraud and misrepresentation.16

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Is an Overabundance of Lawyers the Real Problem?

Although the current popular sentiment, even among lawyers, is that our country is simply overrun with lawyers and we must immediately confront the problem lest we lose the profession and the educational system that it supports, an alternative view is that this is simply a temporary blip. Economic markets inevitably self-correct, and the supply of and demand for lawyers eventually again will reach equilibrium. In short, it may be possible to do nothing and the problem of too many lawyers eventually will take care of itself.18

Another view that appears to be gaining traction is that the actual source of the problem might be more complex than just a saturation of attorneys. Large segments of society still have unmet legal needs. Traditionally, the poorest citizens have lacked the financial ability to obtain necessary legal representation, and accordingly have been either unrepresented or underserved. This phenomena has now spread to the middle class, which also often lacks the resources to afford appropriate legal representation. Likewise, rural areas have often been unable to attract lawyers for a variety of reasons.19 Thus, while there may be large numbers of lawyers, there is also an abundance of legal work that is not being performed and legal needs that are not being satisfied. If such unmet needs do exist, are there really too many lawyers overall, or is it actually too many lawyers trying to do the same thing and in the same places?

Another issue that needs to be addressed is whether some of the problems that are currently being attributed to having too many lawyers, or even a misallocation of lawyers, are really just the result of the rapid change that is taking place in the profession. There can be no serious debate that the method in which lawyers have practiced law for decades is now being disrupted and will continue to evolve in the coming years. Technology that is commonplace today, such as portable computers, smartphones, and tablets, did not exist a few years ago. Large swaths of information is available to lawyers and nonlawyers, almost instantaneously. Clients expect lawyers to use the latest technology and to do it in a cost-effective manner.

Work traditionally performed by young lawyers, like document review, is now frequently handled with software programs or document-processing centers that can perform the tasks more inexpensively than lawyers can. Online services and do-it-yourself software make it possible for potential clients to bypass lawyers and to perform the work themselves with readily available forms and how-to instructions at their fingertips. Occasionally, clients or law firms employ contract attorneys to complete work that

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historically fell to new associates. Some firms and clients even send legal work overseas where it is performed at a fraction of the cost of a domestic attorney. Many of these changes have little, if anything, to do with the emergence of too many lawyers in the profession.

Regardless of how the problem is defined—too many lawyers, a misallocation of lawyers, improperly trained lawyers, or lawyers unable to adjust to rapid change—it is apparent that the practice of law for many lawyers is, or soon will be, fundamentally different from the past, and it is unlikely that the good old days of traditional practice will ever return. The legal profession is thus at, or rapidly approaching, a watershed moment.

Proposals for Addressing the Problem

Unfortunately, there is no quick and easy fix to the problem perceived by many, regardless of how it has developed or is characterized. One could argue that the starting point for solving the problem must inevitably begin with simply reducing the number of law schools and thus the number of new lawyers entering the profession. Indeed, such a fix might already be underway in light of the recent reductions in law school applications and first-year class sizes. However, upon closer examination, merely reducing the number of law students will not completely address the problem.

To adequately prepare lawyers for modern practice, changes probably should be made to the way in which law schools educate law students. As noted, the current climate has placed many law schools under tremendous pressure from almost every direction. Indeed, an ABA task force issued an unvarnished assessment of the future of legal education in a 2014 report, stating:

At present, the system faces considerable pressure because of the price many students pay for their education, the large amounts of student debt, consecutive years of sharply falling applications, dramatic changes, possibly structural, in the market for jobs available to law graduates. These factors have resulted in great financial stress on law schools, damage to career and economic prospects of many recent graduates, and diminished public confidence in the system of legal education.20

The task force acknowledged a need for sweeping changes to legal education in this country, including changing the way that such education is financed, giving more attention to real-world training, and providing broader delivery of legal services to those unable to afford them.21

Perhaps too often, formal legal education involves an ivory tower approach that is long on theoretical, epistemological debate and short on pragmatic problem solving. In the real world, lawyers are focused more on obtaining results for clients and less on legal theory or public policy. Certainly, a law student needs to learn to think like a lawyer during the first couple of years of law school. However, an argument can be made that after mastering (or at least grasping) the basic analytical skills, more time could be spent learning the more practical aspects of practicing law.

Numerous ideas have been percolating regarding the methods in which law schools could better prepare students to practice law. They might expose students earlier to clinical experiences that more closely resemble the real-world practice of law, as a few schools already have done. Some have suggested reducing the undergraduate education required for law school admission to three years and also reducing law school to two years. Likewise, a group of law school professors have proposed reducing the traditional law school coursework from three years to two and replacing the third year with apprenticeships or internships. Even President Barack Obama recently endorsed this approach, commenting: “[In t]he third year, they’d be better off clerking or practicing in a firm, even if they weren’t getting paid that much.”22
The ABA task force has suggested that accreditation requirements should be changed to allow for more diversity and innovation regarding how law schools teach and train their students. Law schools could move away from the traditional formula and be more creative in their programming. For instance, law schools might develop tracks of particular emphasis (e.g., public and private lawyering, dispute resolution or litigation, transactional, counseling, social and community service, etc.) that would allow students to select programs based on what they actually plan to do after law school. Moreover, some advocate fundamental revisions of law school curriculum to teach the broader range of skills that lawyers will need to practice law effectively in the rapidly changing profession.

Some critics have advocated the development of programs at law schools for a new type of legal professional or "nonlawyer specialist" to perform services that do not necessarily require a traditional legal degree. Students opting to pursue this path would be trained to perform services that effectively can be provided without the standard three-year legal education. This concept offers several potential benefits, including permitting students who desire a career in the legal field to obtain a degree without the cost and time commitment associated with a conventional Juris Doctor and creating a new legal professional position that can provide needed services to the public at a lower cost than typically provided by a fully trained lawyer.

Although many of these suggestions have not been warmly received by legal educators, reluctant to deviate from the traditional mode of teaching law, a few of these ideas are already being implemented by law schools. For example, some law schools now allow completion of the law school curriculum in less than three years. Other schools have increased the emphasis on clinical and skill-training programs. Even though widespread changes in legal education are probably not imminent, the recent ABA task force report likely will fuel further debate about how the legal education system should be reengineered in this country.

But the entire burden for changing the system cannot be placed on the legal educational establishment—new lawyers, their more seasoned brethren, and established law firms may also contribute to this transformation. Young lawyers looking for jobs, might volunteer their time to legal aid and legal service organizations to gain valuable experience, while providing services to those who would otherwise lack legal assistance. Similarly, law firms can help by encouraging new associates who are not being fully utilized to provide pro bono services or to perform public service work. Law firms and even solo practitioners can also offer internships and temporary employment to new lawyers who are desperate to gain experience and develop a résumé. Creative, out-of-the-box methods may lead to better ways of providing cost-effective legal services to the segments of society that are currently being unrepresented or underserved. One such approach emerged during the nation’s financial crisis in 2009, when some major law firms reportedly postponed the hire dates of new associates and instead provided them with a stipend to perform public service legal work.

Likewise, lawyers (both young and old) can be more proactive in finding new and different ways to use their law degrees and legal training. The traditional path for many lawyers has been to seek employment with private law firms and to pursue partner or shareholder status. However, the legal needs of the poor, the middle class, and rural residents still remain unmet. Lawyers could opt to set up practices that address these segments of society. Moreover, a law degree can be used in a variety of other nontraditional ways. For instance, a growing number of lawyers are using their degrees as mediators, arbitrators, and other alternative dispute resolution providers. Indeed, a legal degree can open the doors to a wide variety of different career options, including business, politics, policy work, nonlegal advocacy, community service, labor organizing, or other creative and startup endeavors, including in the scientific, entertainment, real estate, education, deal-making, and social entrepreneurship fields. Again, is it really a problem of too many lawyers or just too many lawyers trying to practice law in the traditional sense?

Lawyers and law firms also need to adapt to the rapidly changing marketplace. This will likely require firms to develop and enhance skills that historically have not been taught or emphasized in either traditional legal education or law practice. For instance, because clients are demanding greater use of technology and alternative services to reduce legal expenses, law firms (as well as practicing attorneys) must learn to use and even exploit new technologies to keep pace with competing firms. Lawyers will need to be flexible and adaptable regarding their areas of practice. For example, if a formerly hot area of law begins to cool, lawyers practicing in that specialty need to develop expertise in new and emerging lines of practice. Historically, many lawyers have been reluctant to forego their traditional areas of practice for new opportunities. Refusal to adapt might not be a luxury lawyers can afford in the modern, ever-changing profession.

In short, as pressure increases to reduce costs and provide more cost-effective legal services, lawyers and law firms that understand business affairs and can make these adjustments are the ones most likely to thrive. Success in the modern legal practice very well may turn on a lawyer’s ability and desire to learn and embrace the advancements that are occurring. Regardless of how many practitioners exist in the future, attorneys will need to acquire the skills necessary to navigate in a rapidly changing legal environment.

Bar associations also play a significant role. They are in a unique position to promote and foster the kinds of relationships among lawyers, law schools, law students, and law firms that can bring about meaningful change. Workshops, conferences, and symposia are all among the types of relationship-building and problem-solving programs that bar associations can help to facilitate.
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Beyond merely studying and analyzing the problem, bar associations may also take a leadership role in implementing programs that connect new lawyers looking for work with low- and moderate-income clients needing legal representation. Bar associations, bar foundations, and even some law schools already have developed incubator programs aimed at training solo and small firm lawyers so they may assist underserved populations. These programs typically teach younger lawyers some of the real-world mechanics of running a law business, including recordkeeping, billing, and accounting, while at the same time exposing them to the areas of substantive law most likely to arise in their new practice. 30 This matching of the increased supply of lawyers with the unmet demand among certain populations can result in a win–win situation, both for new underemployed lawyers and underserved clients. The real challenge may not necessarily be to reduce the number of lawyers, but to ensure that legal services are available to all at an affordable price.

Conclusion

Although there are by any objective measure a large number of lawyers, the question of whether too many lawyers are practicing today is probably more complicated than recent survey results might suggest. Admittedly, some disequilibrium might exist today between the supply and demand for legal services, resulting in simply too many lawyers competing for too little available legal work. However, part of the problem may be attributable not to the sheer quantity of attorneys, but rather to the quality and content of the education and training that law students are currently receiving. Further, it is possible there is not so much an overall glut of lawyers, as a misallocation in the marketplace, resulting in too many lawyers doing the same type of work in the same locations while the legal needs of the larger populace go unmet. Finally, it is also possible lawyers conveniently blame an overabundance of lawyers for the fundamental challenges that technology, competition, and increased client demands are bringing to bear on the profession. The too many lawyers outcry may be simply a convenient catch phrase that encapsulates multiple, different pressures facing lawyers today.

Simply reducing the number of lawyers is probably not going to eliminate all of these anxieties and concerns. Ultimately, the future success of our profession will likely turn on the ability of all interested parties—law students, law schools, law firms, practicing attorneys, bar associations, and clients—to work together to address these issues and adapt to the rapid evolution that is occurring in the practice of law. One thing is clear, the manner in which most lawyers have traditionally practiced law is never going to be the same, no matter how many of us are practicing.

Endnotes

1 See Eric Posner, The Real Problem with Law Schools—They Train Too Many Lawyers, SLATE (April 2, 2013) www.slate.com/articles/news_and_politics/view_from_chicago/2013/04/thereal_problem_with_law_schools_too_many_lawyers.html; see also 2012 Law Graduate Employment Data, ABA Section of Legal Education and Admissions to the Bar (comparing classes of 2011 and 2012) www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/law_grad_ employment_data.authcheckdam.pdf; see also “The Economics of Legal Education: A Concern of Colleagues, to the American Bar

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See Brian Z. Tamanaha, Failing Law Schools, UNIVERSITY OF CHICAGO PRESS (2012).

See Jacob Gershman and Mark Hansen, Law School Enrollment Down 11 Percent This Year Over Last Year, 24 Percent Over 3 Years, Data Show, ABA JOURNAL (Dec. 17, 2013) www.abajournal.com/news/article/law-school_enrollment_down_11_percent_this_year_over_last_year_data_shows.


Id.

See Maura Dolan, Class Action: Law School Grads Claim Misleading Reports of Success, LOS ANGELES TIMES (April 2, 2013) articles.latimes.com/2013/apr/02/local/la-me-in-class-action-law-school-grads-claim-misleading-reports-of-success-20130402. Some of these lawsuits have now been dismissed.


Id. at pp. 22-30.


