



A SPECIAL REPORT:

THE STATE OF THE LEGAL PROFESSION

BY ANN W. PARKS

Imagine a world where law firms charge fixed fees instead of billable hours, where differing career tracks and pay scales abound and where associate hiring is not done two years ahead of time. The legal landscape is changing, experts say, and lawyers are pondering how to navigate the new terrain. While no one can predict the future — certainly not in a year that has seen unprecedented shakeups in the business and legal communities — professors and alumni of Georgetown Law are keeping their fingers securely on the pulse of the legal profession. Many of the Law Center's events this year have examined the recent economic downturn from the lawyer's perspective, and the new Center for the Study of the Legal Profession is sponsoring symposia, research, workshops and speakers designed to explore the issues and challenges in the practice of law today. For a look at what the future may hold, read on...

When commercial litigation partner Brendan V. Sullivan (C'64, L'67) of Williams & Connolly began practicing law in the 1960s and 1970s, a typical case might involve a couple of lawyers walking into court with a hardbound volume of the *Federal Supplement* tucked under their arms. Contracts were mailed, read and digested by attorneys in days rather than hours — and in criminal prosecutions, if a defendant were accused of committing an offense at 9:42 a.m. on a Tuesday, there was no e-mail to document his state of mind at that precise time.

“We no longer have Clarence Darrow or Edward Bennett Williams going into court and dazzling a jury,” Sullivan says, noting that it’s not uncommon now for a case to require a team of 10 to 20 attorneys. The size and scale of things, he notes, has changed significantly since he graduated from law school — as has the available technology. “Edward Bennett Williams probably never tried a case with more than one bankers box of documents; now there are 20, 30, 40 boxes.”

The financial stakes have changed too. The law, as everyone knows by now, is not merely a profession but a business. A case that might have involved a few million dollars in the 1970s could

involve hundreds of millions or even a billion dollars today. And at no time in recent memory has the link between law and business been more apparent, as many practice areas decline with the stock market and lawyers are feeling financial pressures that would have been unheard of a year or two ago. The month of February saw some especially tough times, as big law firms cut hundreds of jobs. Still, some insist that it’s an exciting time to be in the profession, as attorneys step in to assist with the regulatory and legislative challenges posed by the current financial situation. And seated in the front row observing it all are today’s students, who wonder what the changes will mean to them. What can these future lawyers expect, as they begin to practice in 2009, 2010 and beyond?

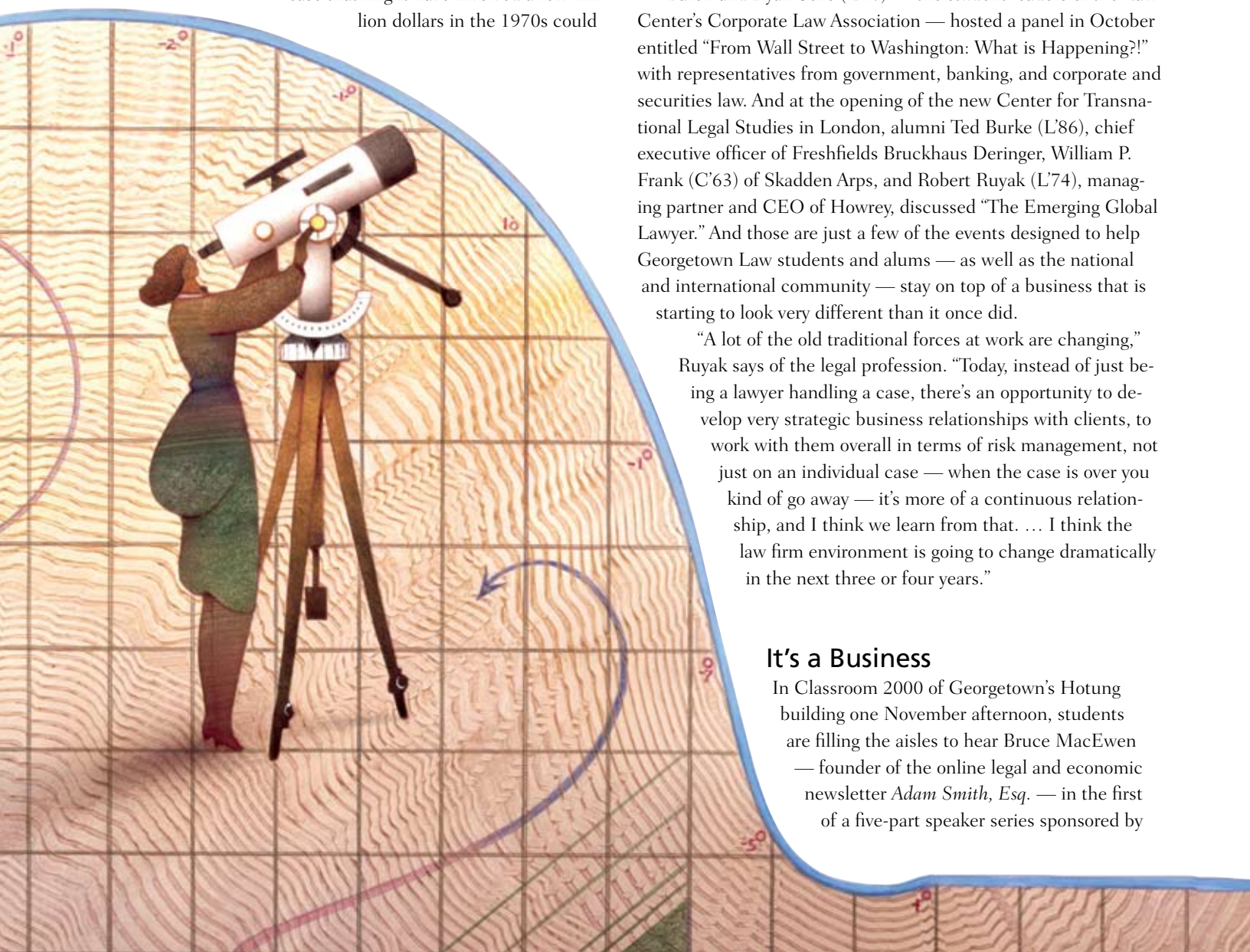
“Coming out of a really great school like Georgetown with a law degree, I’m going to be in as good a position as anyone to do well,” said Andrea Baron (L'10), who was taking the global financial situation in stride last fall. “It seems like there are so many things fluctuating right now that there isn’t one big picture; it’s more like, real estate is down and bankruptcy is up and no one knows what’s going to happen next year.”

Baron and Ryan Selis (L'10) — the student leaders of the Law Center’s Corporate Law Association — hosted a panel in October entitled “From Wall Street to Washington: What is Happening?!” with representatives from government, banking, and corporate and securities law. And at the opening of the new Center for Transnational Legal Studies in London, alumni Ted Burke (L'86), chief executive officer of Freshfields Bruckhaus Deringer, William P. Frank (C'63) of Skadden Arps, and Robert Ruyak (L'74), managing partner and CEO of Howrey, discussed “The Emerging Global Lawyer.” And those are just a few of the events designed to help Georgetown Law students and alums — as well as the national and international community — stay on top of a business that is starting to look very different than it once did.

“A lot of the old traditional forces at work are changing,” Ruyak says of the legal profession. “Today, instead of just being a lawyer handling a case, there’s an opportunity to develop very strategic business relationships with clients, to work with them overall in terms of risk management, not just on an individual case — when the case is over you kind of go away — it’s more of a continuous relationship, and I think we learn from that. ... I think the law firm environment is going to change dramatically in the next three or four years.”

It’s a Business

In Classroom 2000 of Georgetown’s Hotung building one November afternoon, students are filling the aisles to hear Bruce MacEwen — founder of the online legal and economic newsletter *Adam Smith, Esq.* — in the first of a five-part speaker series sponsored by





the Center for the Study of the Legal Profession. The topic for the day is “Law Firm Economics 101” — and MacEwen is describing to a crowd of students the realities of profits per partner and compound annual growth rates — realities that some of them might have gone to law school to avoid.

“One very practical motivation was to give our students a better sense of how the profession is changing, how it’s organized, what kinds of pressures, opportunities and risks they are likely to confront; and in what ways professional ideals are translated on the ground in concrete situations,” explains Professor Mitt Regan, who co-directs the Center with Professor Jeff Bauman. “The trend over the past 25 years has been toward much more intense competition among law firms — both for clients and for lawyers — and that has made law firms much more intensely focused on profits and financial performance.”

And the financial news was sobering as MacEwen — walking students through the realities of running a law firm — described a profession that is more competitive and pressure-driven than ever. Corporate clients, he noted, are fighting back from years of steadily increasing law firm rates, with some corporations refusing to pay for first- and second-year associates and demanding more from the lawyers they do work with.

On the plus side, MacEwen described a business that’s characterized by tremendous growth and, in recent years, a burgeoning demand for services. He noted that in 1985, there were approximately 40,000 lawyers in the *National Law Journal’s* list of the 250 largest U.S. firms (the NLJ 250); 20 years later, there were nearly 117,000 lawyers in these firms. Speaking to students a week later, Jim Jones, managing director of the professional services consultant Hildebrandt and chairman of its Hildebrandt Institute, noted that in 1987, the average size of an NLJ 250 law firm was 194 lawyers; 20 years later, the average was 513 lawyers.

Experts say that while the number of lawyers in firms has grown substantially in the past two decades, the number of students graduating from law schools has not — resulting in increased competition for talent, with employers reaching farther down in the ranks of more law schools and associate salaries that have increased three times faster than inflation in this century so far. “The good news is that, for a law firm, you are an incredibly important component of their supply,” MacEwen told the students. “You provide what they have to sell.”

Proactive

While no one sees a quick recovery to the economic downturn, experts believe that the current situation may cause a rethinking of the basic business structures of law firms. One of the biggest developments, for example, is that corporate clients are changing their attitudes toward law firms — reducing the number of outside firms and demanding more from the lawyers they do use.

“Corporate clients are cutting costs to weather what they

“The trend over the past 25 years has been toward much more intense competition among law firms — both for clients and for lawyers — and that has made law firms much more intensely focused on profits and financial performance,” explains Professor Mitt Regan.

perceive to be a long and potentially deep recession,” says Robert Dufek (L’76), former managing partner and management committee member at Morgan Lewis. In-house corporate counsel, he notes, are seeking value as well as partnering relationships from their outside counsel and want the latter to understand their business and competitive challenges. “They want their lawyers to be responsive, communicative and proactive; they want trusted advisers who are immediately available and totally committed to the assignment.”

Tom O’Neil (L’82), the senior vice president and general counsel of WellCare Health Plans who works frequently with outside law firms, agrees that the in-house bar is placing a premium on law firms that really take the time to understand a company’s business realities. “They’re expecting outside counsel not just to be the equivalent of a holistic adviser but to partner with them in solving problems,” he says.

And the leverage that corporate clients are exerting on their law firms can be surprising. As panelists pointed out at a symposium on corporate social responsibility in November — another initiative of the Center for the Study of the Legal Profession — corporations are increasingly demand-

“Our clients, many of them are suffering because of the financial problems, so one of the biggest things we have to do is to accommodate them,” says Howrey’s Ruyak. “There are a whole host of things that I think are key to helping our clients survive in these difficult financial times.”



ing that law firms make socially responsible choices, such as “going green” or meeting diversity goals.

“We have diverse work forces and we’d like our lawyers to reflect that diversity as well,” says Marc Gary (L’77), executive vice president and general counsel of Fidelity Investments. Corporate counsel, he notes, have issued statements — one in 1999 signed by 500 lawyers, another in 2004 — vowing to consider law firm diversity as a factor when hiring outside counsel.

Corporations are also looking to outside counsel to develop new approaches to hourly billing — including alternative fee arrangements, lower per unit and per project costs, and requests for proposals (RFPs) for law firm services.

“Our clients, many of them are suffering because of the financial problems, so one of the biggest things we have to do is to accommodate them,” says Howrey’s Ruyak, noting that his firm is trying to utilize different approaches and methods to conserve the cost of litigation and to help its clients prepare for expanded needs on a tight budget. This could include using staff attorneys where possible, looking more strategically at priorities and using technology to reduce costs in areas such as discovery and document management. “There are a whole host of things that I think are key to helping our clients survive in these difficult financial times.”

Globalization: From Theory to Practice

In 2007, Kate Bouquard (C’01, L’04), an associate in the corporate and securities department in Greenberg Traurig’s New York office, was representing U.S. companies in the acquisition of U.S.-owned entities. By the end of 2008, she was doing the same work — for foreign clients.

“Being at a global law firm like Greenberg, and at Georgetown Law, they really have an emphasis on being a global lawyer, so I’ve been really prepared for this time,” she says. “It sounds theoretical, the global lawyer, but that’s truly what it is; it’s being able to build international business relationships and facilitate cross-border transactions when market conditions change.”

Indeed, of all the trends facing the legal profession, the trend toward globalization is the most exciting, for lawyers as well as those in academia. Visiting Professor Carole Silver — executive director of the Center for the Study of the Legal Profession and one of the country’s foremost scholars on globalization — described some of these trends at the Center for Transnational Legal Studies’ panel on the emerging global lawyer last fall in London.

In the last 20 years, the number of lawyers working overseas for the NLJ 250 has grown at a rate of more than 10 times the number of lawyers working in the U.S. offices of these firms, Silver noted. As of October, the 64 largest U.S. firms supported 386 offices in 37 countries, with more than 8700 lawyers overseas, she said. Seventy-five percent of those were in Europe, with half of those in London.



Help for People *Living* on Main Street

All the stories about the current economic downturn talk about what's happening on Wall Street, and then Main Street — but nobody's talking about the people actually *living* on the street, says Patricia Mullahy Fugere (C'81, L'84), executive director of the Washington Legal Clinic for the Homeless.

"What attorneys in the legal services field are seeing and bracing for is a significant uptick in the numbers of people who knock on our doors for assistance," says Fugere, who is seeing more consumer issues such as people not being able to pay debt — and fewer opportunities for people being able to move out of homelessness. "Already our community is not of adequate size and capacity to respond to the need."

The current financial situation may prompt more legal services organizations to merge and collaborate with each other, things they might have resisted in the past. And while some firms and donors are maintaining their funding levels, cuts in donations and a drop in interest rates for Lawyer Trust Accounts — the interest rate in these funds goes to the D.C. Bar Association, which then uses them to make grants — may mean that organizations will have to think more creatively to meet the challenges, Fugere said.

On the positive side, Fugere notes that the public interest landscape has changed dramatically in the past 25 years, in part due to fellowship programs run by Equal Justice Works and others that allow young lawyers to work in the area of public interest.

"People always used to write in their [law school admissions] essays that they were interested in doing public interest, but when you looked at the statistics at the end, how many people held on to their interest, it tended to be a much smaller percentage," says David Stern (L'85), the chief executive of-

ficer of Equal Justice Works. Now, loan repayment assistance programs, fellowships, summer funding for students provided by groups such as Georgetown's Equal Justice Foundation, and the College Cost Reduction Act are helping turn many students' public interest visions into reality.

"We're seeing more people holding on to their commitment to doing this work," Stern says. Full-time public interest jobs are now at least as competitive as law firm jobs, Stern notes, and public interest fellowships have gained considerable prestige. Eighty percent of Equal Justice Works' fellowship applicants are women, Stern adds, though he says, "we're continually working to increase the diversity of all of our programs."

Stern is hopeful that future programs will put recent graduates in the public defender service for a year or two, to provide assistance to those overworked attorneys. And many in public interest, including Fugere, continue to envision a day when attorneys will be provided to indigent clients in certain civil cases (such as parental rights).

"I think that's a wonderful concept, [but] it can't happen for free," Fugere says, adding that a way would have to be found to bring in more resources, to expand the legal services community, or create something akin to the public defender service. "It might spur more people to do pro bono as well, and get more lawyers out to more people in these life-altering cases like losing a child, preserving a home and keeping a family intact."



trend that some predicted would have spread to U.S. firms by now. It hasn't happened yet, but Frank added that he hoped it would not. "On the one hand we are a business," he said, "but on the other hand, we still are a profession."

More Flexible Career Paths

Other "megatrends" in the profession cited by the experts include the great increase in recent years in law firm mergers and the segmentation of law firms into revenue "tiers." (In a November 12 presentation for the Center for the Study of the Legal Profession, Hildebrandt's Jim Jones, citing the *Legal Business Global 100*, noted that the top 10 Global 100 law firms account for a third of the total revenues in these firms.) And many note a rise in permanent non-partner positions in law firms.

"Law firms now offer more flexible career paths, and I believe that they are to be commended for recognizing that they had been losing good talent over that issue," said Carol Rakatansky (L'92), associate general counsel at Sallie Mae who — like most general counsel — began her career in a firm. Different career tracks and levels, with different rates and pay scales, are more accepted now in law firms, she says.

Still, those who *aspire* to an alternative career in a firm may do well to play their cards close to their vests. "Students come to me and say, being a non-equity partner or being a permanent counsel sounds great," Regan says. "But then I ask managing partners, 'Suppose someone in an interview said, this is what I aspire to?' They generally say, 'We wouldn't be interested.' They want to keep it as a consolation prize for those who aim to be equity partner but fall short."

Since they're not in the business of running a large law firm, those at the Center can examine what is happening, for example, to this group of lawyers in non-partner positions. Are they stigmatized? Do they have opportunities to advance? Are they primarily women?

"When a guy stands up [at a law firm meeting] and says, 'I've got to leave now to go take care of my kids,' that's really cool — you're making a statement," said Michael Nannes (L'77), the chairman of Dickstein Shapiro. Nannes appeared with fellow alumni Linda Oliver (L'80), Audrey Bracey Deegan (L'80, G'80) and Dean of Students Mitchell Bailin at a recent panel on work-life balance sponsored in part by the Center. By contrast, Nannes noted, when a woman steps out, people may question her commitment to the job. "That's just not fair, but it is part of the reality."

The approach to lawyering overseas has changed, too, as firms have shifted from exporting a few lawyers overseas to advise on U.S. law to a more localized approach. "The picture today is really quite different," Silver said, noting that two-thirds of all lawyers working in the overseas offices of the 64 largest firms have no U.S. legal education at all and are typically trained and licensed in the jurisdiction in which they practice. "Fewer than 20 percent of all the overseas office lawyers earned a J.D. in the United States."

At the same event, Ted Burke (L'86), CEO of Freshfields Bruckhaus Deringer, said that "a global lawyer *isn't* an expert in the laws of every country," though he noted that global lawyers do need to be flexible, open minded, creative and sensitive to the idea of different cultures and systems. "The parochial lawyer — the one who says, 'Well, this is the way we do it here and that's the way it must be done everywhere' — is a client killer."

William P. Frank (C'63) of Skadden Arps noted in the panel discussion that law firms are now publicly traded in Australia, a

Some of the other Center projects currently underway include an investigation of law firm culture and its role in the conduct and ethical standards of lawyers; as well as Silver's research on international law graduates who come to the United States for post-graduate legal education. A survey of law graduates will also gather data about the career trajectories of Georgetown Law alumni; a sample was recently sent to more than 4400 alums.

"Our research is going to inform students about opportunities available to them, how to chart their paths as well," Silver says.

Other Georgetown Law faculty members have been busy studying the legal profession, as well. Professor Jonathan Molot, for example, has been conducting research that focuses on how lawyers might be better able to manage and minimize legal risks for their clients.

"We all would like to get more faculty involved in this," says Bauman, Center co-director, "so more of our colleagues start to think about these kinds of questions and it gets more instinctively on a lot of people's radar screens."

Regan, Bauman and Silver say they would like the Center to serve as a bridge between the growing community of scholars who are studying the tumultuous changes that are occurring in the legal profession, and the lawyers who experience these changes on a daily basis.

"It's these kinds of questions that we talk about all the time and we're trying to figure out ways to systematize," Bauman says. "Someone says, 'Wouldn't it be interesting if [we looked at]...' and that's what happens."

Hiring for 2010

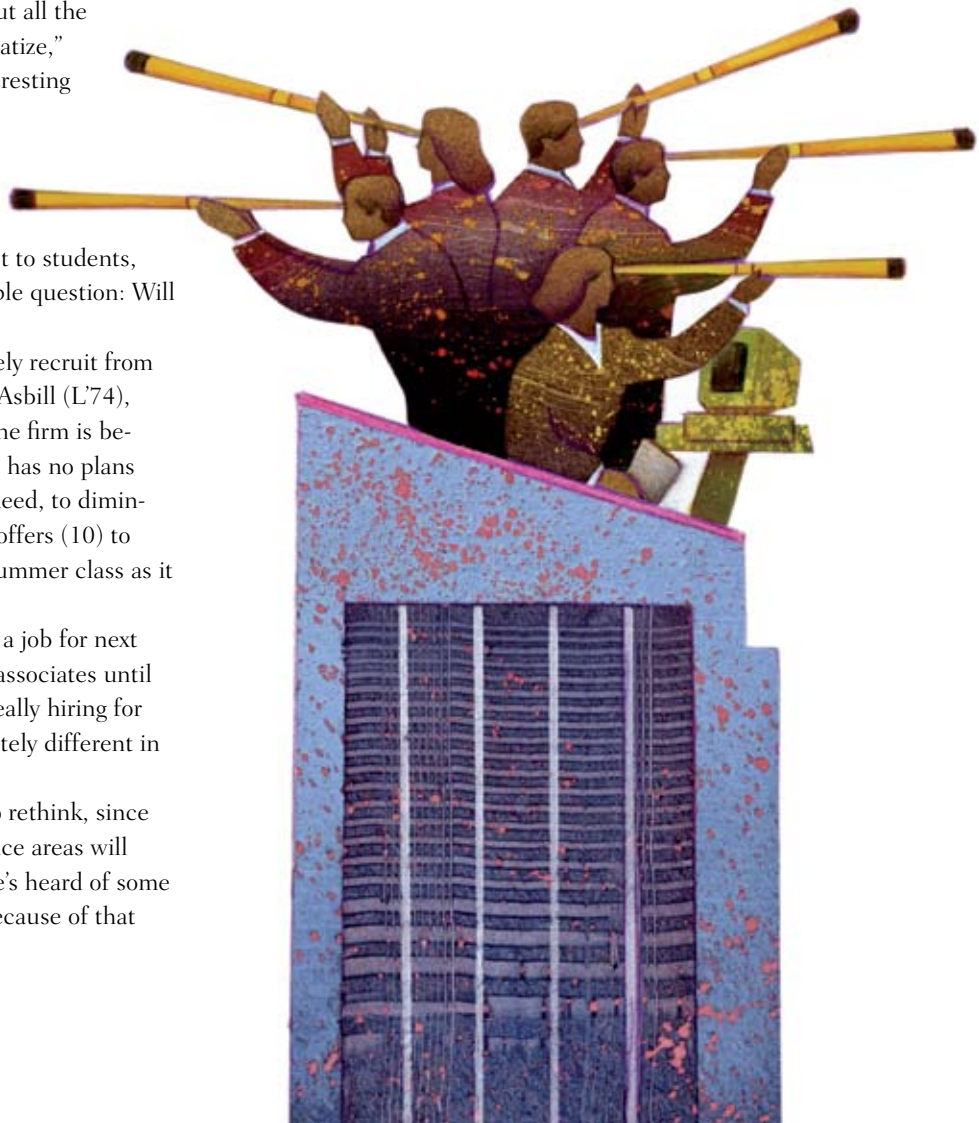
Still, questions like these are of secondary interest to students, who usually want to know the answer to one simple question: Will I get a job?

"Georgetown is a Top 20 school that we actively recruit from and have historically recruited from," said Henry Asbill (L'74), a litigation partner at Dewey & LeBoeuf. While the firm is being more cautious with respect to lateral hiring, it has no plans to diminish the summer associate program or, indeed, to diminish salaries. In fact, it made the same number of offers (10) to Georgetown Law students last fall for the 2009 summer class as it did for the 2008 class.

"The way I look at 2L hiring, if we offer them a job for next summer, they're really not going to come here as associates until two years from now," Asbill said last fall. "We're really hiring for 2010, and the economic situation may be completely different in 2010 than it is right now."

That's a tradition some firms may be forced to rethink, since they know less about what their demand or practice areas will look like two years from now. Nannes says that he's heard of some firms that have had to pull back offers recently because of that long lead time.

"Your Georgetown Law degree is an asset that will carry you through times like this, so [students] are in a great place," says Kate Bouquard (C'01, L'04), an associate in the corporate and securities department in Greenberg Traurig's New York office.



Bankruptcy: A View from the Bench

Hard to believe, but when Peter J. Walsh (L'63), judge of the U.S. Bankruptcy Court for the District of Delaware, graduated from Georgetown Law in the early 1960s, there was no course in bankruptcy law. Hardly any of the major New York law firms had bankruptcy practices, he says — and when one of his first law firm clients got into financial trouble, there was not a single lawyer with bankruptcy expertise to be found in the city of Wilmington, Delaware.

"I was in practice for five years before I met a bankruptcy judge," says Walsh, who now works with five others on a daily basis. Now, the city of Wilmington has about 100 bankruptcy lawyers. And good or bad, there's plenty of work for them to do: Walsh witnessed bankruptcy filings that doubled in 2008 from the prior year.

Still, that doesn't mean that students should necessarily rush to take bankruptcy law courses. Walsh cautions, of course, that students considering bankruptcy as a career choice should still *like* what they propose to do.

"I would encourage them to take a bankruptcy course and find out if it's the kind of challenge they're interested in," he says, noting that the bankruptcy code is very complex. "I always considered it an intellectual challenge and so I think they ought to be exposed to it and decide whether it's the kind of thing that they want."

But despite the uptick in work, bankruptcy judges still face the problem that most judges are concerned with these days — namely, that judicial salaries as a whole have not kept pace with inflation and the financial crisis makes it that much harder for Congress to do something about it. The number of applications for law clerks is growing too. Walsh received maybe 25 or 30 applications when he first joined the bench 15 years ago; this past year, he saw over 100. And though he never got to take a bankruptcy class, Walsh still remembers what he calls probably the best course he ever had — the contracts course taught by Professor Walter "Doc" Jaeger. "His course was very entertaining ... and to this day, when I'm writing opinions I quite often run across issues that I addressed in law school," Walsh says. "I feel very, very comfortable handling contract issues."

"There is an issue when firms are making summer offers in October for associate positions they want to fill 22 months later; in difficult economic times, that may cause firms to reduce their offers," says Nannes. He notes that while this may indicate "a fertile area for change," those changes may be less likely to come from the law firms themselves and more likely to be spearheaded by the National Association of Law Placement, which sets rules relating to offers of employment. A number of years ago, he says, judges set time guidelines for extending offers for judicial clerkships — because those offers were being made earlier and earlier in the law school process. "If a lot of 2Ls don't get summer offers because law firms are being cautious, I think the law schools and NALP would be inclined to reach out to law firms to try to improve the process."

Countercyclical

By January 2009, MacEwen was reporting in *Adam Smith Esq.* that "corporate transactions, mergers and acquisitions, private equity, securitization, structured finance, and even garden-variety asset sales and purchases are, by and large, without a pulse at the moment." Still, many firms are finding ways to get around this. Douglas Woloshin (L'73), managing partner of Duane Morris, says that while areas that have historically been very strong in terms of billings have been affected by the financial crisis, other practice areas have been able to shoulder the burden.

"Fortunately, we've been able to utilize the time of the associates that have been working in those areas [corporate, securities, and mergers and acquisitions] in other practice areas, either in our trial practice group or our intellectual practice group," Woloshin says.

And many lawyers anticipate an uptick in government-related work — regulation, corporate investigations and bailout monitoring — in connection with the financial crisis. Sharie Brown (L'82), a litigation partner in the Washington, D.C., office of DLA Piper who represents multinational corporations in financial fraud and bribery-related investigations, notes that the litigation and government enforcement growth in this area might not be as explosive as it was after the Enron debacle, but growth is still expected. "It appears that the financial crisis here and the corporate meltdowns in other countries will provide government agencies with opportunities to investigate possible fraud, bribery, false statements, and obstruction of justice," she says.

Brown points to a Securities and Exchange Commission "open letter," issued to CEOs of publicly traded companies in December, to remind them of the importance of maintaining their compliance programs in tough economic times. "Law firms that are well placed to address those issues for corporate clients I think will find that they are in what the office managing partners call a countercyclical practice area; that is, a practice area that isn't in major decline because of the current financial situation," Brown says.



Marlon Paz (LL.M. '08), senior counsel to the director of trading and markets at the SEC and an adjunct professor at the Law Center, says that his division is indeed in the eye of the storm. The trading and markets division writes rules that it recommends for adoption by the commission, administers the rules that are already in place and also recommends action by Congress.

"These are interesting times. ... Where it would [previously] take about a year to think of a rule, begin drafting it, research it, propose it, re-propose it, adopt it, get comments and so on, we have adopted some rules ... from start to finish, in a couple of weeks," he says.

And Paz's division is actively trying to get good lawyers to assist them in addressing the economic issues — lawyers who ideally know their way around the financial world. For anyone looking to pursue this line of government work, it's an exciting world, says Paz, who, along with Donna Norman (L'92), counsel to the director of enforcement at the SEC, teaches a course called the Regulation of Securities Professionals and the Securities Market.

"There are many folks who I work with who have been here at the SEC for two or three decades who haven't seen the stuff we're seeing right now," Paz says. "This is the stuff I think we're all going to be talking about for the rest of our lives."

Assets

Despite the current economic downturn, many experts and lawyers are continuing to remain positive, saying that the long-term prospects of the legal market remain very good.

"I think it's still a great time for young lawyers to begin practicing. Clearly there are going to be challenges in the near term and a period of adjustment, because some areas of practice aren't going to be as strong as they have been in the past," Ruyak says. "But we shouldn't be too negative. This is also a time of new opportunities; and these practices will come back as strong as ever over time."

Dufek notes that litigation, for one, is not going anywhere any time soon. "The law is the method for adjudicating disputes in the United States and I don't see that changing, short term or long

term," he says. "Those who want to try cases and get very good at it will always find a place. This downturn will pass and the new regulatory, financial and business structures that will come out of the G-20 will be exciting and create opportunities for many lawyers."

In the meantime, Georgetown Law students and alums are fully prepared to weather the challenges.

"Your Georgetown Law degree is an asset that will carry you through times like this, so [students] are in a great place," says Bouquard, who adds that one of the greatest advantages in a volatile economy is the ability to call up classmates to find out how things are over at other firms. She also tells students who want to become corporate lawyers not to let the current situation sway them. "If you want to be a part of buying and selling companies and transactions that are historic, you have all the tools."