

Good

BY JIM CASTAGNERA



The Last Job in America?

In 2001 CUNY Graduate College professor Stanley Aronowitz published *The Last Good Job in America: Work and Education in the New Global Technoculture*. Reviewer John Marsh observed that a college professor has “a job that pays relatively well, not only affords but rewards time off for reflection, ensures job security, guarantees intellectual and political independence, and, while by no means uncluttered, nevertheless remains largely self-directed.”

Marsh also stated in contrast, “For... most workers, the weekend is more endangered than some California condors. We check our e-mail six times a day. We own enormous

homes that need to be repaired and remodeled. We commute hours to work and hours back home.... We live in an age... that has subsumed the human spirit — and all its social spaces and work and leisure time — to the imperatives of alienated work without end.” In that statement Marsh seemed to describe today’s American lawyer.

How might the two be related? Read on please.

As a young attorney in 1983, I joined the Philadelphia mega-firm Saul Ewing. At a new associates’ orientation session, the managing partner boasted that “hourly billing was the best thing that ever happened in our profession.” From a dollar viewpoint, he was absolutely right. Hourly rates for attorneys have soared, surpassing inflation by a country lawyer’s mile.

According to the August 22nd *Wall Street Journal*, “The hourly rates of the country’s top lawyers are increasingly coming with something new — a comma. New York sets trends for legal markets around the country. Recent moves to \$1,000 per

hour there are seen as a significant turning point. On September 1, New York’s Simpson Thacher & Bartlett LLP raised its top rate to more than \$1,000 from \$950. Firm partner Barry Ostrager, a litigator, says he will be one of the firm’s thousand-dollar billers, along with private-equity specialist Richard Beattie and antitrust lawyer Kevin Arquit.”

The *WSJ* article continues, “The top biller at New York’s Cadwalader, Wickersham & Taft LLP hit \$1,000 per hour earlier this year. At Fried, Frank, Harris, Shriver & Jacobson LLP, also of New York, bankruptcy attorney Brad Scheler, now at \$995 per hour, will likely soon charge \$1,000.”

My, how the legal workplace has changed

Consider this law firm development, most likely resulting from hourly billing. “Many law firms are actively thinning the ranks of equity partners,” reports Indiana University School of Law professor Bill Henderson. Eric Gouvin, associate dean for academic affairs

Good Job

and a law professor at Western New England College, confirms that trend and adds details. "Sometimes it's pretty unceremonious," Gouvin says. In many firms "partners have given away almost all their rights. Running the firm is delegated to a committee, which runs the firm like a business. Under-performing partners are given a warning and then shown the door."

Gouvin adds that "the Equal Employment Opportunity Commission has been watching this. The agency's position often is that so-called partners have ceded so many rights that they are really employees."

If many law firm partners are experiencing this difficulty, what of their non-partner associate attorneys? David Luban, a Georgetown University professor, recently drew an analogy between big-firm associates and classic exploited workers. "With overhead, an associate costs a law firm double her salary.... Thus an associate must bill 1,500 hours simply to pay for herself. Because not every hour is billable, about 1,800 hours of work are needed for break-even... six hours a day, six days a week.... The rest of the day generates the surplus value — value that the partners appropriate."

Some perspective is in order, lest this seems too onerous. Let us remind ourselves that we are talking about 26-year-olds earning upwards of \$150,000 per year who are billed out at \$200 or more per hour. Little wonder then, that big firms have no trouble recruiting top law school graduates.

Parallels on campus?

The American Association of University Professors bemoans the decline of tenured and tenure track faculty as a percentage of the total professorate. In December 2006 the AAUP reported that tenured and tenure track teachers on 2,600 campuses have declined as much as 57 percent since the 1970s. Meanwhile, full- and part-time contingent or contract or adjunct faculty increased from 43 percent to 65 percent during the same period.

Are contingent faculty exploited workers? No, answers Gouvin.

"There has been a generational shift about how much loyalty is owed to a place. Many young faculty feel, 'I'll do what I contract to do, but don't expect a long-term commitment.' Some also feel, 'Rather than get tenure, I'd rather be paid at market value. I'll trade some security for salary.'" Others, he adds, may stick around until they attain tenure, then transport their job security to a better-paying or more prestigious venue.

Anthony Liuzzo runs the MBA program at Pennsylvania's Wilkes University, and he agrees with Gouvin.

"In some ways this shift reflects the larger economy. I'm not even sure junior faculty want tenure." Liuzzo continues, "Older faculty appreciate loyalty and longevity. Our parents worked for the same companies all their lives. When I ask my MBA students about their interest in working for a company for 30 years, they laugh at me. This may also be true of newly minted Ph.D.s."

The professorate does have counterparts to law's \$1,000-per-hour mega-partners. Some law professors at top schools earn upwards of a quarter-million dollars per academic year. Some medical professors at schools such as NYU, earn more than a million dollars annually.

Liuzzo believes that exploited is an over-statement when it comes to the roles of contingent faculty. Describing himself as a free-marketer, he predicts that the tenure system "will be dented on a number of fronts" in the coming decades. He speculates, "The decline of tenured faculty and the tenure system may not be such a bad thing. There will be more mobility. If tenure goes away, some 20 to 25 percent of faculty might be forced elsewhere or out. This would drive up wages."

Possible industry results

Liuzzo also wonders if a good change for individual employees might be bad for the industry. Tenure includes the notion and practice of

shared governance. Without tenured 'partners,' all power will reside with the administration. "Might higher education wind up with the same problems that plague corporations whose quest is principally short-term profits?" Did you just hear an echo of the legal workplace developments expressed earlier in this article?

Western New England's Gouvin

takes a somewhat different tack. He knows that a business whose biggest cost is people is usually savvy about how and where to cut costs when it's necessary. "The problem for campus administrators

is that there's no comparable private-sector playbook for managing tenured faculty," Gouvin comments. "The terrible side of it is that tenure protects dead wood."

So, while lifetime law partners and tenured faculty are declining in numbers in their respective professions, neither job description is likely to vanish in our lifetime. And while associate attorneys and contingent faculty are working harder than ever, the monetary rewards are often commensurate with the demands and the insecurity.

Meanwhile, consider one more fact. Outsourced legal work, primarily to lawyers and paralegals in India, is estimated to have totaled \$163 billion — yes, that's billion — during 2006. Is there a higher education analogy in distance learning, which some disgruntled faculty have labeled "prof in a box?"

But that's an issue for tomorrow. What of "the last good job in America" today? On that Gouvin has a straightforward answer. "As a college professor I certainly think I have the best job in the legal world. Every day I wake up and thank God."

Without tenured 'partners,' all power will reside with the administration.



Jim Castagnera is a Philadelphia lawyer and writer who is the associate provost and associate counsel at Rider University.