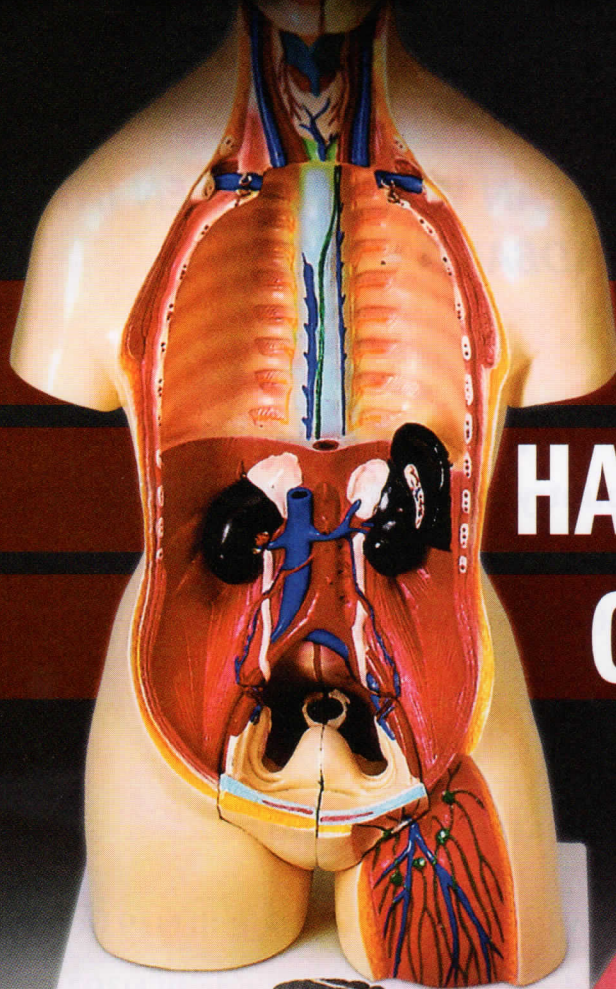


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HIRING

RECESSION HITS NEW-LAWYER RECRUITING

THE FOUR-YEAR BOOM IN RECRUITING at law schools is officially over, according to the National Association for Law Placement (NALP). Among third-year law students who had clerked at a law firm the summer before, only 90 percent were offered entry-level associate positions by those firms in 2008—down nearly three percentage points from the previous year. It's the lowest rate of offers made to such students since 2003, when the figure was 87 percent.

Meanwhile, law students are more eager than ever to accept these offers: 80 percent said yes, the most since the NALP began gathering such data in 1993. However, firms reported lower acceptance rates from third-year students who had not clerked for them over the summer (see chart).

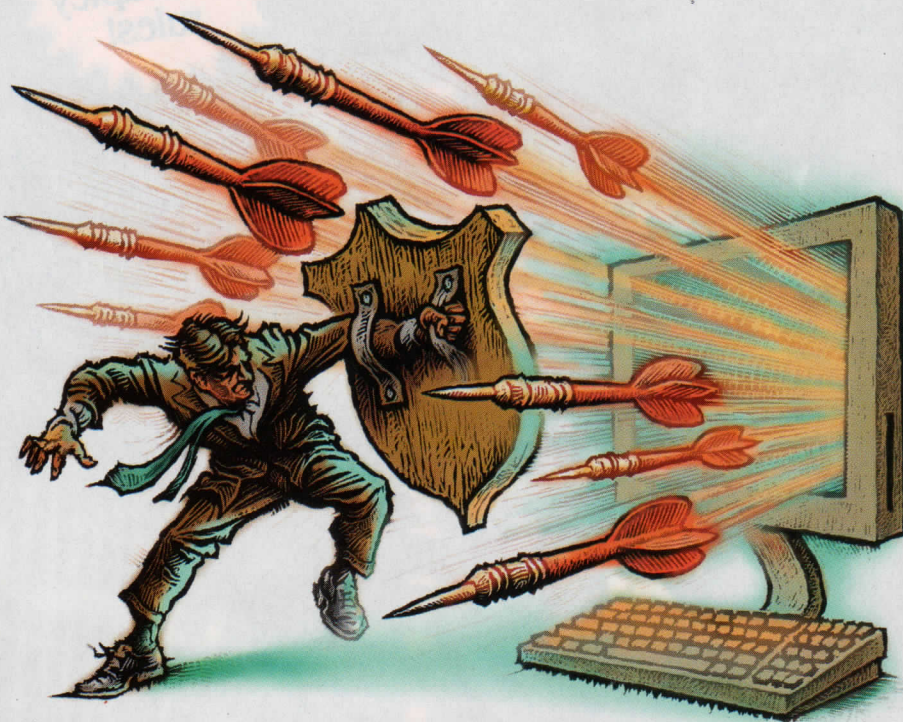
Signs of the downturn showed up in other places, as well. For example, 46 percent of law schools reported a decrease of at least 5 percent in the number of employers doing on-campus recruiting in 2008, compared with 2007. Also, 39 percent of law-firm respondents said they recruited at fewer law schools in 2008, compared to the previous year.

HIRING OF THIRD-YEAR LAW STUDENTS NOT PREVIOUSLY EMPLOYED BY RECRUITING LAW FIRM (FALL 2008)

	CALLBACK INTERVIEWS THAT LED TO A JOB OFFER	OFFERS ACCEPTED
National	20%	66%
San Francisco	19%	60%
San Jose area	32%	33%

Source: NALP

Illustration by Phil Foster



DEFAMATION

Online Libel Claims Abound

SINCE ITS FOUNDING IN 2005, Yelp.com—a website where consumers review everything from cappuccinos to car mechanics—has published more than 5 million write-ups of local merchants. But in the past twelve months its online reviews have also triggered at least three defamation lawsuits.

Welcome to the Web 2.0 world of user-generated content, where positive reviews can attract new customers—but negative reviews may inspire the subjects to head to court. One suit, waged by a chiropractor who was poorly reviewed on Yelp, settled in mediation earlier this year, and a second suit, filed last year by a pediatric dentist, is pending on appeal. A third case, also involving a dentist, settled last year after a superior court judge in San Francisco, where Yelp is based, granted the defendant's anti-SLAPP (Strategic Lawsuits Against Public Participation)

motion. California attorneys, meanwhile, say they're fielding an increasing number of calls from angry business owners seeking recourse.

"It shouldn't come as a surprise, due to the sheer increase in popularity of these sites in the past year," says Matt Zimmerman, a senior staff attorney at the Electronic Frontier Foundation, a nonprofit civil liberties law firm in San Francisco that specializes in high-tech legal issues.

Suing the host sites for their user-generated content is, of course, fruitless: Section 230 of the federal Communications Decency Act (CDA) shields the sites from defamation suits as long as they didn't create the objectionable materials.

The aggrieved parties, however, can and do go after the reviewers (known as posters) who publish their opinions online. Legally, posters have plenty of leeway—as long as they don't cross the line into

Continued on page 12

Bad Times for Good Programs

GIVEN THE STATE'S HUGE BUDGET DEFICIT AND the prison-crowding crisis, community-based detention programs might seem to be just what's called for: They cost California less than half, per offender, than incarceration. But instead of expanding such programs, two have recently shut down.

For nearly a decade, Volunteers of America Los Angeles (VOALA) ran two residential restitution centers—one for men, another for women—under contract to the California Department of Corrections and Rehabilitation (CDCR). The centers let people convicted of small-time, white-collar crimes serve their sentences by working and turning their paychecks over to the state: A third of the money went to pay restitution to victims; another third defrayed the cost of their housing; and the rest went into a trust fund to help offenders restart their lives upon release.

But the centers—the only two of their kind in the state—had empty beds, and VOALA was losing money. Jim Howat, VOALA's director of adult operations, asked CDCR to merge the two centers or admit white-collar criminals whose sentences exceeded three years, the existing cap. CDCR also wanted all the beds filled, but it lobbied for the centers to admit a more troublesome population: the parole violators that clog state prisons.

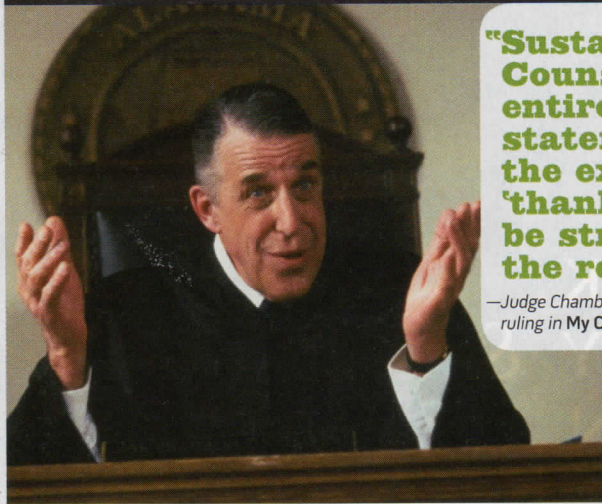
When no agreement was reached, CDCR suspended VOALA's contract in November. The following night, correctional officers arrived at the women's center. They searched the women, "put them in their prison garb, and took them outside, shackled," Howat says. The centers were shuttered before VOALA could notify the 50-odd residents' employers or families.

Scott Kernan, CDCR's undersecretary for operations, says most of the centers' residents will likely end up in other diversion programs, such as firefighting camps, or in a "minimum support facility" where, he says, housing prisoners is nearly as cheap as community-based programs. Yet it's costly to return the residents to prison even temporarily, according to Robert Weisberg, director of the Stanford Criminal Justice Center.

Kernan acknowledges that even though "there are not sufficient alternative sanctions for inmates," the state's deep budget cuts make it unlikely that CDCR will expand community-based detention programs this year. But as UC Irvine criminologist Joan Petersilia warns, "You need more [community-based] facilities if you want to satisfy the courts and keep public safety in check." —CAMERON SCOTT

DETENTION

REEL LAW ★ LEGAL MOMENTS AT THE MOVIE HOUSE



"Sustained. Counselor's entire opening statement, with the exception of 'thank you,' will be stricken from the record."

—Judge Chamberlain Haller (Fred Gwynne) ruling in *My Cousin Vinny* (1992)

Our thanks to Jonathan Ellison of Carmichael and Richard G. Logan Jr. of Oakland. Send your favorite lawyer moment from film to reellaw@dailyjournal.com.

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defamation, says Karl Kronenberger, a partner at San Francisco's Kronenberger Burgoyne who represents businesses in such matters. And California's anti-SLAPP law shields people who speak out on issues of public interest—a protection that broadly extends to consumer matters.

In addition to being difficult to prove and win, allegations of online defamation can also backfire: A stray negative posting may fade into obscurity, but a lawsuit over it can provoke exactly the kind of negative publicity that business owners are desperate to avoid, notes Mark Lemley, who teaches Internet law at Stanford Law School and is a partner at Durie Tangri Lemley Roberts & Kent in San Francisco.

This is a key reason many experts advise that, whenever possible, attorneys should help their clients settle

such matters. In fact, Yelp is among the sites that try to mediate between merchants and consumers by hooking them up to smooth out their differences. And in April, Yelp followed sites such as Trip Advisor and eBay by letting merchants respond online to negative feedback.

Another way to address the issue would be to update the CDA's section 230, says Michael Fertik, the CEO and founder of ReputationDefender in Redwood City. The regulation, after all, dates to 1996—which, as he says, is "the Jurassic Era for Internet law."

In the meantime, the smartest strategy for merchants who've suffered a withering critique may be to rally patrons to post rave reviews. "The answer to negative speech, especially online, isn't to try to silence people," Zimmerman says, "but to encourage more speech." —JUNE D. BELL

BEFORE YOUR CLIENT SUES ...

■ **DETERMINE IF THE OFFENDING POST IS TRULY DEFAMATORY.** "Take a hard look at what the claims are," advises law professor Mark Lemley. "Is it that 'I don't like what people are saying about me,' or is it actionable?"

■ **TRY REACHING OUT.** Consider contacting the poster through the website to request that an objectionable review be tempered or removed. Attorney Karl Kronenberger says this strategy works for him about 30 percent of the time.

■ **PREPARE TO HIRE A HIGH-TECH PRIVATE INVESTIGATOR.** If the objectionable review is anonymous and a suit goes forward, you'll need a tech-savvy sleuth to help ferret out the identity of the poster, says Lemley.

MPV Images