Here Come the Mediocre Lawyers

By Dukakis, J. Boshaw and Terry W. Hartle

"There are a lot of mediocre judges around the country, all but the most popular ones, who do not deserve their time. "Some schools have understood this to Stretch 10% to 20%.

Many (perhaps most) law schools will take the path of least resistance and reduce their academic standards in order to maintain enrollments. The incentives are clear. In the past decade more than half of law schools built new facilities or substantially renovated existing ones. Hundreds of new and high-salaried law professors were hired. Steady enrollments are needed to justify these expenses.

Law schools might try to keep academic standards high by admitting more marginally qualified students and then failing those who do not perform well. But few law schools will revert to this practice, common in the 1960s. They will be competing for one another's students. Legal education has become much more expensive. Law schools are not as well endowed as they once were.

Every law student dreams of taking a case to the Supreme Court. But we don't need to have bar energetic people from the law merely because they cannot reach this pinnacle.

Students are now older; many are married, and many graduate with large debts. So few students will avoid schools with high washout rates. Some schools already operate under a de facto "no fail" policy. Their mandate "cannot" limits the bottom 2% or 3% of the class.

Thus, in the coming years we are likely to see an increasing number of mediocrity became, or perhaps an increasing cull. An oversupply of lawyers will result in more bar disbarments. Among the most vulnerable will be those whose legal services further just at bar expansions of medical school enrollments led to price competition among doctors.

The most serious weakness of our legal system is that there are too many lawyers but that they are too expensive—and the right things. President Carter exaggerated only slightly when he complained that "90% of our lawyers serve 10% of our people.

Legal services are beyond the reach of most Americans. Only the rich (who can hire a lawyer), or the poor (who might obtain free legal services), or the victims of a major injury (who can engage a lawyer for a contingent fee), have any real chance of obtaining legal assistance. Most lawyers need more clients; to help middle-class clients cope with the legalities of wills, consumer complaints, contracts, landlord/tenant battles and other problems. And that is why the coming glut of mediocre lawyers could be a real boon to societas. These new lawyers could make legal services more widely available to the average American. Many would find greater, as is happening already, to create legal-service "clinics" that provide practical legal help at very modest prices.

But lawyers are not like widgets. Unlike a manufactured product, incompetence legal services are not easily driven from the market. They can spend years plying their craft, and doing useful harm to clients. Thus, the legal profession can't be a completely free market.

To protect consumers, law graduates must prove their competency by passing a state bar examination. In 1984, the California bar failure rate was about 25%. If bar examiners do not alter their standards, the declining academic quality of law students will lead to higher failure rates. In 1986, the California failure rate was 25%, up from 51% the year before. These California results are still optimistic; they could be a harbinger of things to come.

Historically, the organized bar has pressured state examiners to set high standards. It will try to maintain current standards to protect consumers. "It's tough thus restringing access to the profession will also help prop up failing incomes will not be on the line at the lawyers.

Certainly, no one wants to see "incompetent" lawyers. The organized bar's commitment to high professional standards should be applauded. But lawyers and many legal researchers have documented the bar examination's subjective nature. Two well-known California studies, Stephen Klein found that bar examiners agreed on one another about whether papers passed or failed only 40% of the time. More telling, when Mr. Klein gave the same paper to the examiners once more, 25% of the time they passed papers that he had failed or failed papers they had passed.

This does not mean that standards should be radically lowered. A multistate, test-taking procedure should be considered. New doctors are required to take a basic test before entering practice, and many other further training programs have been tied specially examinations. Why not lawyers? We can fine-time standards as they weed out the obviously incompetent.

Competent Legal Technicians

We purposefully have characterized the coming crop of lawyers as mediocre: we dramatize their fall in quality. The word has a precise meaning: "of moderate or moderate quality." Mediocre lawyers don't belong on the Supreme Court, but they can handle the average legal case just fine. But a collapse in the supply pool, most future lawyers will still enjoy better qualifications than their 1960s counterparts.

Law schools should also adjust. The great improvement in the quality of law students in the past 20 years encouraged most schools to upgrade. For example, in a test of course work they saw trien students to handle the most basic legal problems. If every American child dreams of being president, every low student dreams of taking a case to the Supreme Court. We don't need to exclude energetic young people from the law merely because they cannot reach this pinnacle of professional performance.

With some modifications in legal education, the changing pool of law students can become more competent legal technicians. This role was played by the "second-tier" law schools until the late 1960s.

Thus, the same market pressures that led to fewer law school applicants may also encourage a more widespread implementation of legal services. That is, if we can maintain the flow of new lawyers while substantially raising standards of professional competence.

Yes, we face a difficult choice: more lawyers of declining quality vs. more access to legal services at affordable prices. Deciding where the balance should lie is too important to be left to the lawyers.

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