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“Are There Too Many Lawyers?”

by *Wm. Reece Smith, Jr.**

I. INTRODUCTION

THERE ARE BASICALLY two ways to look at the question of whether there are too many lawyers in the United States. In the first analysis, the problem seems insignificant, since as of 1978, lawyers represented only .0032 of 1 percent of the work force of the United States. But from another perspective, it can be said that two-thirds of the lawyers in the world are American lawyers.

Some critics have tended to focus their attention upon sheer numbers and to assign to us the responsibility for a variety of societal problems. We paralyze simple business relationships. We complicate the efficient handling of personal affairs. We breed lawyers and regulations like rabbits. We create a litigious society. Yet we fail to serve significant segments of the public and make the cost of legal services prohibitive to all but the affluent. None of these criticisms is entirely wrong, but none is entirely fair. All are overly simplistic. Some critics wistfully ask why we cannot be like Japan or Germany where the lawyer population pales in comparison to ours. The answer is, we can. All we have to do is drastically revise our political, social and economic concepts to accord with those of nations with a lesser lawyer population.

II. TRADITIONAL ROLE OF LAWYER

One reason the United States has so many lawyers is that, for better or worse, America has always been a legalistic society. Two hundred years ago, when Alexis de Tocqueville published his famous work on Colonial America, he observed that Americans had a penchant for taking every conceivable political, social and economic issue to the law for resolution.

Perhaps because of this penchant, lawyers in the United States have traditionally been regarded as essential to commercial enterprise and as necessary, however unwanted, appendages to business and commercial transactions. In a way which would now be difficult to reverse, American lawyers are facilitators of commerce.

The political structure of our nation offers further explanation of our numbers. Leery of government power, American lawyers have constructed constitutional safeguards for the rights of citizens. At an early date, lawyers became principal protectors of those rights and their responsibilities have grown as government has grown. Lawyers today are constantly

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called upon in large numbers to assert and defend the rights of citizens in dealing with local, state and national government. While our concepts are not necessarily unique to the Western World, our assertion of them is, especially in terms of the sheer volume of controversies.

III. THE LAWYER BOOM

Admittedly, lawyers must find ways to reduce such controversies and discover better means for dispute resolution, but until we do so, it is unlikely that the demand for lawyers in this context will be drastically reduced.

To blame the legal profession for a proliferation of laws and regulations is to ignore the size and complexities of society and its government. To blame lawyers for a proliferation of litigation is to ignore the development in the United States of concepts of personal entitlement and self-interest and to ignore the failure or weakening of some of our most important societal institutions. It can be fairly said that as the relative authority of those institutions waned, public necessarily has come to rely more and more upon the law. As a result, our legal system has experienced, and continues to experience, considerable stress. Yet its ability to respond to the demands reflects great strength and resilience. Finally, to complain unduly of costs is to ignore the effects of an unstable and inflationary economy for which the legal profession is not responsible. In fact, legal costs in the United States have risen less dramatically than either the cost of most consumer goods or the cost of other personal services. Much can be said therefore, in defense of the legal system and the legal profession in the United States.

Despite this reliance, or perhaps because of it, lawyers have never led in American popularity polls and concern about our existence and our numbers is not novel. In recent years, from the early 1970's and on, there has been renewed anxiety about our numbers, and not without apparent justification.

In the 8-year period between 1964 and 1972, the number of students in accredited law schools increased from some 54,000 to over 102,000, an increase of nearly 100 percent. In 1980, the figure was 125,000.

Consistent with this expansion, there has been a tremendous growth of lawyers in the United States during the last 20 years. As of April, 1980, it was estimated there were at least 535,000 American attorneys. As I have said, that number represents nearly two-thirds of the world's supply. The 1980 total is nearly twice that of 1960 and 1-½ times that of 1970.

Our lawyer population has grown much faster than that of the nation. In 1960, there was one lawyer for every 700 Americans. In 1970, one for every 600 and in 1980, one for every 410. The numbers prompt us to ask, why such a remarkable increase?

There are several reasonable explanations as to the period from the middle 60's to the middle 70's. During that period, the United States ex-

perienced simultaneously the peak of the World War II baby boom and a perception by many socially-conscious students that our legal system was an effective instrument for social reform. These events coincided in part with the impact of change in other professions where there was overcrowding or drastic change in economic conditions, notably in the hard sciences, engineering and education. For example, when the United States Government abandoned development of the supersonic bomber in the early 1970's, large numbers of current or prospective engineers and physicists turned to the study and practice of law.

Developments such as these leave unexplained the continued growth in our lawyer population in the late 1970's. That growth can best be attributed to the earlier momentum, to still increasing governmental regulation, to economic growth and to perceived opportunity for upward mobility through the legal profession. Whatever the reasons, it is significant to note that the numbers now seem to have peaked and we have entered a period of stabilization. Increases are still indicated, but they are far less dramatic than those experienced in the last 10 years. Moreover, it is misleading today to look at gross numbers. While national figures indicate overall expansion, the dramatic growth has occurred primarily in the five or six states which are experiencing the greatest growth in population and economic activity. In essence, lawyers are following economic opportunity.

While burgeoning lawyer population has been, and is, a matter of concern, it is hardly a leading subject of discussion in the public forum. Outside the profession, the matter has attracted the attention of a relatively small number of news commentators and critics of the profession. But they are not without distinction. President Carter, for example, once chose Law Day to complain that there were too many of us and that we were poorly distributed. Generally speaking, however, the concern over numbers is far greater within the profession than without. There, a high degree of economic self-interest is apparent which must be taken into account both in examining our numbers and in determining what, if anything, should be done.

In the United States, we now have considerable experience both in analyzing numbers and in developing responses to the concerns they generate. In the early 1970's, when the number of people taking the Law School Aptitude Test increased dramatically, the American Bar Association created a Task Force on Professional Utilization. That group carefully developed statistical data, evaluated the trends, and held public hearings throughout the country. Those hearings revealed considerable sentiment within the profession in favor of placing arbitrary limitations upon access to legal education and to the practice of law. The Task Force rejected that notion. In order not to controvert the law of supply and demand in a free economy, it concluded that:

- 1) We should regard trained lawyers as a national asset;
- 2) We should assure that prospective students were properly counselled

about opportunities in the law;

3) We should seek to improve lawyer placement systems;

4) There should be an organized effort to make effective use of trained talent;

Since that time, we have had considerable success in implementing these concepts even though there is great room for improvement in the coordination of our efforts. Career counselling within our universities has improved considerably. Placement services, in law schools and otherwise, are more effective. Employment statistics are more favorable. The market has adjusted. For example, a recently published study of the National Association for Law Placement indicates that, despite a continued increase in the number of lawyers, employment of available lawyers grew from 91.5% in 1975 to 95% in 1979. For further example, in the 1970's we predicted that by 1980 there would be 65,000 students entering accredited law schools. By 1980, however, the number was only 41,000.

No doubt it is true today that there are unemployed and underemployed lawyers. Certainly, no crisis exists. Indeed, most who are willing to work hard in the practice of law enjoy earnings that others find excessive. Critics of the profession today seem to be far more concerned about the cost of legal services than the number of practicing lawyers.

IV. PUTTING THE CRISIS IN PERSPECTIVE: CONCLUSORY REMARKS

Familiarity with the issues for at least a decade has led me to conclude that it is not in the public interest in my country to place arbitrary limits either on law school admissions or on admissions to the bar. In the first place, our experience leads me to doubt our ability to predict the future with sufficient accuracy to determine how many new lawyers will be required at a later date to meet the legal needs of the public. U.S. projections in that regard have proved to be less than totally reliable. Moreover, I regard the employment of arbitrary limitations as a dangerous practice. It invites governmental regulation of educational opportunities in ways that are threatening to a free society. In addition, it could well intensify the adverse effects of the so-called lawyer monopoly.

There must be some limits on the opportunity for legal education. We simply cannot afford to educate everyone who desires a legal education. Clearly it is necessary to make reasonable and responsible allocations of public resources among educational and other needs. But this is the only limit I would place upon the opportunity for qualified individuals to pursue a legal education if they desire to do so. Otherwise, market forces must be allowed to work and the law of supply and demand to prevail. This is consistent with the economic policy of my country. It also recognizes the fact that potential students seem to shift from one career to another consistent with the dictates of the economy and with the opportunities it affords.

I oppose arbitrary limitations for other reasons as well. First, we need

greater minority representation within the legal profession and it is likely that the opportunity for minority members to study law will be adversely affected by arbitrary limits. Second, I believe that a legal education is a useful one that enhances the capacity of the student and can be employed with profit in other career pursuits. Thirdly, the legal needs of poor persons and of persons of moderate means remain to be properly met. Here, the problem is not only one of numbers but also one of economic cost and lawyer distribution. There are no easy solutions to these latter concerns, but it seems clear that mere reduction of numbers is not part of the answer. Indeed, growing numbers may be desirable from the public viewpoint because of the effect they could have on lawyer competition and redistribution.

The question ultimately is not what will best serve the profession. The question is, what best serves the public interest? I believe that interest is best served by affording educational opportunity in the law to as many as we can reasonably afford to educate and by admitting to the practice all who can meet a reasonable standard of competence. The rest must be left to the operation of the market place. This, in my opinion, will best serve the public and assure the continuation of a free society.