



Counterpoint Legal Education as a Pie-Maker

Why Michigan Benefits from Accessible Law Schools

By Nelson P. Miller

It was hard for me to read “Too Many Hungry Crows Pecking at a Smaller Pie,” as it may have been for you. It is too negative an assessment of law practice, while rife with factual inaccuracies about legal education. Wounds from a critic teach more than kisses from a friend. Yet “Crows” fails to consider the following counterpoints:

- Many attorneys educated in Michigan’s law schools are not from Michigan.¹
- Many graduates of Michigan law schools do not practice in Michigan.²
- Legal education combats rather than increases Michigan’s brain drain.
- Competition within the legal profession serves clients.
- Fewer law schools would mean less diversity within the profession.
- Fewer law schools would also mean less access to justice.
- That some lawyers are unhappy warrants allowing new lawyers to join the profession.
- Surveys show median income for Michigan attorneys continues to grow.³

Choice and the Free Market

“Crows” asserts that Michigan law schools “boast of boosting their first-year classes by multiples, one year after another.” To the contrary, Michigan’s largest law school, Thomas M. Cooley Law

School, of which I am a campus dean, has grown by an average of only about 1 percent a year over the past three years, after several years of substantial growth. Since Cooley’s approval in 1975, the American Bar Association has approved 37 additional law schools, none of which currently operates in Michigan.

“Crows” argues that a lawyer’s seven-year investment in college and law school pays insufficient dividends. In fact, the State Bar of Michigan’s surveys of the economics of Michigan law practice show that median lawyer income grew from \$71,167 in 1996 to \$92,000 in the most recent 2007 survey.⁴ There is a demand for legal education. When a law degree becomes a poor choice, then demand for it will decrease. Individuals from around the world come to Michigan law schools for legal education, alone demonstrating the value of legal education in Michigan.

After all, who should decide who has the opportunity to earn a law degree and who does not? It is not the role of the State Bar to substitute its judgment for individual liberty and wisdom. The State Bar should ensure that licensees are competent to practice—to protect the public, not to protect the economic interests of certain of its members. The State Bar is not a cartel; it is an organization committed to public service.

“Crows” asserts that nonlawyer paralegals, title insurers, and mortgage companies “pick[] the lunch from our plates . . .” In fact, lawyers have a legal monopoly. The State Bar polices to good effect the unauthorized practice of law. Paralegals, by the way, are not our enemies. Lawyers employ and depend on paralegals and own and operate title companies—not much to worry about there.

Continued on page 45

If, as “Crows” asserts, some lawyers’ plates are empty, then it may be time for those lawyers to refocus their practices. Healthy competition, not a medieval guild, helps meet client needs. An individual lawyer’s or firm’s failure is not the market’s fault. If, as “Crows” maintains, only 22 percent of Michigan lawyers report needing more work, then a high percentage of us are busy working. Any trade or profession will have some percentage of under-employed. Our profession is not immune from change. Our need, well served by the State Bar’s Practice Management Resource Center and other resources,⁵ is to see opportunity in change. Lawyers, like others, must continue to re-educate, refocus, and adapt.

Having a Bad Day?

“Crows” calls lawyers “unhappy campers.” That some lawyers are unhappy says little about the practice of law, but much about the attitudes of those lawyers. The question “Are you happy?” reveals nothing about the grounds for the response. Happiness (the modern therapeutic kind, not Aristotle’s classic virtue) depends on one’s perspective. See yourself as a hungry crow pecking at a smaller pie and you will be unhappy.

See law practice as it is—a tremendously important and meaningful job. The work pays decently, even by the figures “Crows” cites. We perform under conditions that are not only safe and comfortable, but also privileged. Yes, the work is challenging. Yet whoever said that law practice (or life) should be easy?

The lawyer who does not find legal work meaningful should change professions. Many citizens should have a law degree. Not all of us who do should practice law. As “Crows” admits, there are hundreds of jobs for which to use a law degree. A law degree’s utility is an endorsement for, not an indictment of, legal education. Unhappy lawyers may choose to step graciously aside for lawyers who maintain the passion to serve and desire to practice.

There is also no support for the opposing article’s assertion that new lawyers are increasingly dishonest. Law schools today require ethics instruction and conduct wondrously valuable ethics and professionalism programs. The State Bar’s Professionalism in Action program is a tremendous example. Cooley Law School recently won the ABA’s national professionalism award. State bars now require applicants to pass the Multi-State Professional Responsibility Exam. I had none of those ethics courses, programs, and testing in my law school experience and doubt that the authors of “Crows” did either.

Reversing the Brain Drain

“Crows” next cites Michigan’s declining economic base as a reason to limit law school enrollment. To the contrary, Michigan’s law schools provide an economic benefit to the state. Michigan imports law students and exports legal education. Approximately two-thirds of the entering class at the University of Michigan Law School come from out of state, and only about one-tenth of its graduates take the Michigan bar examination.⁶ A substantial majority of Cooley graduates reside in another state.⁷ While these students are here, they support Michigan’s economy, spending tuition, housing, food, entertainment, and other dollars.

Those of us who remain in Michigan should be as educated and prepared as possible. Brain drain is not only an exodus of talented young professionals. It is also failing to educate the citizens who remain. The solution to economic decline is more, not less, education. The recent recession’s job loss has been primarily in low-education jobs.

In March 2010, national unemployment for those with less education than a high school diploma was 14.5 percent, a high school diploma 10.8 percent, some college 8.2 percent, and at least a four-year college degree just 4.9 percent.⁸

The assertion in “Crows” that “only top-end graduates in blue-chip firms will practice enough to become truly expert” contradicts what we know about the profession and American capitalism. Competition promotes innovation and quality; lack of competition stifles it. Small-firm and solo practitioners practice as much as lawyers in large firms do. They become equally expert. There is difference firm

Continued on page 46



Many citizens should have a law degree. Not all of us who do should practice law... There are hundreds of jobs for which to use a law degree. A law degree’s utility is an endorsement for, not an indictment of, legal education.

If these are not the best ideas, then we need to change the direction of the State Bar to address quality of counsel. At the risk of heresy, the seemingly perpetual focus on Access to Justice must take a back seat to quality of counsel until we get that part right.

Let's Begin the Debate

This is the tip of the iceberg. The elected leaders of the State Bar of Michigan should guide the dialog to expand professional opportunities and avoid diluting the ranks of practitioners to ensure high-quality attorneys for all clients. Together, we must *raise the bar*. ■

Attorneys Thomas H. Oehmke (Wayne State University Law School, 1973) and Joan M. Brovins (University of Detroit School of Law, 1980), together with Harold W. Oehmke (Detroit College of Law, 1972), funded the Thomas H. Oehmke Endowed Scholarship Foundation for WSU law students. Tom Oehmke authors the five-volume treatise Commercial Arbitration 3rd, published by Thomson/West and available on Westlaw at CMLARB.

FOOTNOTES

1. 873 square miles of land and 10,339 attorneys as of 2010. Wikipedia, Oakland County, Michigan <http://en.wikipedia.org/wiki/Oakland_County,_Michigan>; see also State Bar of Michigan, *Michigan Lawyer Distribution by Counties and Cities* <<http://www.michbar.org/resources/distribution.pdf>> All websites cited in this article were accessed September 19, 2010.
2. Oakland County population estimated at 1,205,508 as of 2009. Wikipedia, Oakland County, Michigan.
3. See State Bar of Michigan, *2007 Economics of Law Practice in Michigan*, p 3, available at <<http://www.michbar.org/pmr/articles/0000142.pdf>>.
4. Minority Corporate Counsel Association, *Stormy Job Climate for Law Graduates* <<http://www.mcca.com/index.cfm?fuseaction=page.viewPage&pageID=2071>>.
5. Schafer, *Searching for a second career*, 88 Mich B J 54 (August 2009).
6. State Bar of Michigan, *2007 Economics Report*, p 15.
7. See Schafer, 88 Mich B J at 54.
8. Buffalo Springfield, *For What It's Worth* (Stills) (Atco Records 1967).
9. French & Wilkinson, *Leaving Michigan Behind: Eight-year population exodus staggers state; Outflow of skilled, educated workers crimps Michigan's recovery*, Detroit News (April 2, 2009), available at <<http://detnews.com/article/20090402/METRO/904020403/Leaving-Michigan-Behind--Eight-year-population-exodus-staggers-state#ixzzOzWRPkPdIF>>.
10. State Bar of Michigan, *2007 Economics Report*, p 15.
11. *Id.* at 10.

to firm in organization, specialization, staffing, and client demographics, but difference says nothing about the individual quality of client service. Large-firm associates can, unless intentionally mentored, fail to develop the practical skills needed for competent advocacy, just as small-firm and solo practitioners must attend to their professional development.

“Crows” asserts that lawyers practicing part-time are a “scrum” overshadowing experienced lawyers while deceiving clients into accepting incompetent legal service. To the contrary, licensure ensures competence. Lawyers practice part-time and in semi-retirement so that they may parent and attend to other family responsibilities and to pursue other interests and careers. These other activities tend to inform a part-time lawyer’s legal judgment while balancing law practice—and increasing happiness. Part-time practitioners enrich the profession, providing skilled resources and alternatives for clients.

Keep the Paradigm

“Crows” suggests the merger or dissolution of some Michigan law schools, on the basis of several misconceptions and inaccuracies. The authors:

- State that a “law degree has displaced the MBA as common currency in the business world, diminishing the value of the JD.” Is it bad that businesses are hiring lawyers for non-legal positions?
- Propose the forced merger of Michigan law schools when each has its distinctive constitutional or charitable nonprofit governance and educational mission.
- Want the ABA to ensure minimum compensation for lawyers by limiting access to the profession when, to the contrary, its accreditation role is limited to ensuring that a law school’s operation is “consistent with sound legal education principles.”⁹ What vision of law and values would countenance the ABA or the State Bar of Michigan dictating that individuals may not go to law school?
- State that many law professors “lack substantial legal practice experience” and propose greater relevance through adjunct faculty when, to the contrary, full-time faculty members at Cooley have substantial practice experience and offer rich educational expertise, and Michigan’s law schools



already benefit from experienced adjunct faculty, including State Bar officers and sitting state and federal judges.

- Argue that law schools must teach best practices to preserve high practice standards. There is no reliable indication that today's graduates are any less well prepared. ABA accreditation standards require writing, clinical, and ethics instruction more specifically than they did when the authors of "Crows" attended law school,¹⁰ perhaps in large part because the ABA heavily involves practitioners in writing its standards and other accreditation processes.

The Injustice of Limiting Access

"Crows" also argues that "Access to Justice must take a back seat to quality of counsel until we get that part right." There is no reliable indication that there are fewer qualified and more unqualified lawyers today. There is also no indication that a purported lack of quality has anything to do with pro bono programs.

To whom shall we refuse justice? "Crows" seems to suggest that we should shrink the bar to a size proportional to the number of well-paying clients. The State Bar's oath requires the opposite: a lawyer promises to "never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any cause for lucre or malice."¹¹ The profession's obligation is to serve all who need help, not only those who can most afford it.

"Crows" challenges bar leaders to "avoid diluting the ranks of practitioners to ensure high-quality attorneys for all clients." Yet whom do we exclude from the profession? Minorities remain underrepresented in the profession, even though nearly all the growth in law school enrollment in the past several decades has been among women and minorities. New law schools have removed traditional barriers to legal education. "Crows" encourages lawyers to "raise the bar" to the profession, but a rising bar can look like a closing door, especially when the proposals center on small-firm, solo, and part-time practitioners and graduates of affordable law school programs.

"Crows" suggests that the law should follow the medical profession by limiting professional education. When the medical profession did so, beginning in 1910 with the Flexner Report, nearly half of medical schools closed and medical schools once again excluded women (minorities are still underrepresented within the medical profession).¹² Today's healthcare crisis is in part because of a shortage of physicians.¹³

Making It Personal

The other day, my 21-year-old daughter, who began her student teaching in elementary education this fall, said that someday she might like to earn a law degree because of the challenge that it would present and the growth it would allow her. Her comment helped me realize (in that deeply personal way that only your own child's experience can convey) the intrinsic value of educational ambition.

Regardless of whether my daughter ever practices law with her degree, her legal education would help her mature and prosper, something about which I care more than anything. It would connect her with an unimaginably rich social and political history, while equipping her to serve in new ways. I will celebrate when my daughter teaches and begins her own family. I will celebrate again if she earns a law degree. We should not assume the work of denying her and others that opportunity, nor deprive ourselves of that legacy. ■



Nelson Miller practiced law in Michigan for 16 years with the Ann Arbor and Grand Haven firm Fajen and Miller, P.L.L.C., before succumbing to the dark force of legal education. He is an associate dean of Thomas M. Cooley Law School, overseeing its Grand Rapids campus, where he also teaches Torts.

FOOTNOTES

1. Cooley's Office of Admissions reports that only about 27 percent of students seeking juris doctor degrees who made deposits to enter the September 2010 class are Michigan residents.
2. For example, Cooley graduated 953 students in 2008 but had only 278 graduates (29.2 percent of 953 graduates) as first-time takers of the Michigan bar exam in February or July 2008. See ABA-LSAC Official Guide to ABA-Approved Law Schools (2011 ed).
3. Compare State Bar of Michigan, *2007 Economics of Law Practice Survey* <<http://www.lawpracticeeconomics.com>> (\$92,000 median), with Stiffman, *A snapshot of the economic status of attorneys in Michigan*, 82 Mich B J 20 (November 2003) (\$85,000 median for full-time only) and State Bar of Michigan, *2000 Desktop reference on the economics of law practice in Michigan*, 79 Mich B J 1545, 1548 (2000) (median \$71,167). All websites cited in this article were accessed September 20, 2010.
4. A summary of the 1996 survey is available at State Bar of Michigan, *The 2000 Desktop Reference on the Economics of Law Practice in Michigan* <http://www.michbar.org/e-journal/bar_journal/ECON_OF_LAW.pdf>. The 2007 survey is available at State Bar of Michigan, *2007 Economics of Law Practice Survey* <<http://www.lawpracticeeconomics.com>>.
5. See Galbenski, *Unbound: How Entrepreneurship Is Dramatically Transforming Legal Services Today* (2009); Susskind, *The End of Lawyers?* (Oxford Univ Press, 2008).
6. The University of Michigan Law School graduated 410 students in 2008 but had only 38 graduates (9.27 percent of 410 graduates) as first-time takers of the Michigan bar exam in February or July 2008. See ABA-LSAC Official Guide to ABA-Approved Law Schools (2011 ed).
7. Cooley's Office of Alumni Relations reports that 8,735 of Cooley's 13,715 alumni, or 57.13 percent, reside outside of Michigan as of May 1, 2010.
8. United States Department of Labor, Bureau of Labor Statistics, *Economic News Release* <www.bls.gov/news.release/empst.it04.htm>.
9. Standard 101 of ABA Standards and Rules of Procedure for Approval of Law Schools (2009-2010), available at <<http://www.abanet.org/legaled/standards/2009-2010%20Standards.pdf>>.
10. *Id.*, Standard 302.
11. State Bar of Michigan, *Lawyer's Oath* <<http://www.michbar.org/generalinfo/lawyersoath.cfm>>.
12. Steinecke & Terrell, *Progress for Whose Future? The Impact of the Flexner Report on Medical Education for Racial and Ethnic Minority Physicians in the United States*, 85 Acad Med 236 (February 2010).
13. See Public Sector Consultants, Inc, *Michigan Physician Profile* (January 2009), available at <http://www.michigan.gov/documents/healthcareworkforcecenter/Physician_Profile_MHC_FINAL_FEB09_267821_7.pdf>.