

The Myth of the Upper-Middle Class Lawyer

So I recently wrote an article for the ABA's GPSolo and Small Firm magazine "The Myth of the Upper-Middle Class Lawyer."

<http://www.americanbar.org/publications/gp_solo/2012/september_october/myth_upper_middle_class_lawyer.html>

In it, I discuss the dilemmas faced by recent grads, including the ailing economy and huge student loan debt.

As I explain in the article, many are saying it's no longer worth the time, energy and money spent to get a law degree. I'm on the fence. What do you think?

Nicole Black, new York

I don't disagree with anything you wrote. I think the problem, however, is broader and more systemic than just lawyers and law degrees; we got too many college graduates in programs that provide little or no chance of them getting jobs in the field and too many people in college undergrad programs that are not likely to graduate. After assuming a lot of debt and either dropping out, or graduating into a field that has few employment prospects, a lot of people are stuck.

As to whether or not it is worth it to get a law degree, it depends. If high salary is your sole motivation, probably not unless you can get cheap tuition at law school (state school, heavy scholarship underwriting at private school) or have the prospect of graduating from a first tier school.

Too many people choose law school because, well, they don't know what else to do.

Ronald Jones, Florida

I'm not sure if it's worth the time, energy, and money for other people. I do know that I spent upwards of \$200K on my law degree and ended up without any job prospects.

I chose to go to law school instead of getting a PhD in geography, and if I had it to do again? I'd definitely choose the PhD and get a degree I could use to get a job.

Laura Pisoni

I think the myth is that there should be jobs for attorneys when the reality is that we generally have to create our jobs. It's why I wish law schools would start to focus a bit more on teaching an attorney not only about the law but also about running a practice. I have about 0 business skills. I could have taken several business classes in undergrad and an excellent topped ranked business school and because it didn't fit my "idea" of what a lawyer was or did I passed the chance buy.

I am wishing I hadn't now.

Erin M. Schmidt, Ohio

This is a very tough economy to start a law practice in, along with that, competition for work is high.

Things were A LOT better 10 years ago, in fact, it was ok 7 years ago. I'd say things are tough all over, but I can't say the economic fallout is any worse in the practice of law.

Michael A. Huerta, New York

I'd agree...q.v. the sheer heart attack I'm having over my own legal career direction, and I've got two other degrees, paralegal certification, and experience in other fields (which are having similar employment issues, but to a lesser extent than law).

Wonderment: should law schools, knowing the truth of the world "outside the cave", switch focus to those other things that can be done with a law degree besides merely practicing law? I know I've had to find some avenues on my own, and I think it would make JD candidates feel better about their sacrifice if they knew that just because you're not a shingled/firm lawyer, you're not just wasting three years and untold thousands of dollars...

King Farris, law student, Mississippi

I would love for my daughter to learn a trade such as plumbing or electrical work in addition to getting a college degree. She wants to be an architect st 9 years old, and I don't want to stop her from reaching any goals she sets for herself, but I'm becoming as pragmatic as my mom was with me. She told me to get my beautician's license.

Jeena Belil, New York

There is a fallacy in much economic analysis that money is the only form of reward. I decided to go to law school because they told me how much graduates made and it was much more than I was making as a computer programmer. Boy was that a bad idea. But after law school (long after), I used what I had learned there and in practice in other lawyers' firms to make a highly fulfilling career.

Joseph Campbell advised people to "follow your bliss." Though all too many people make career decisions without knowing enough about themselves to know what they love, it's never too late. In today's market, though, never ever ever borrow money for schooling without knowing how it will be repaid.

- Wendell Finner, Floridad

I do not disagree that there are non-monetary reasons for going into this line of work. I am, honestly, totally in love with the law. I love it as much as my family. And I can still live a fulfilling life, obviously - I love my kids and wife, and I have fun with friends when I can - but that doesn't mean I'm not looking at a lifetime of negative net-worth, never owning a home, etc. It doesn't mean the system is working effectively.

Everyone's obviously got their own opinion of where the problem lies; my vote goes with the folks that say this isn't a law school problem so much as a higher ed problem across the board. An economic system that expects post-secondary education for most jobs with advancement potential cannot coexist with one where the kids who utilize that system leave school with six figure debt, immediately payable and non-dischargeable.

The reality is that, but for the few who receive (and retain) ample scholarships or family money, following the "don't borrow what you don't know you can repay" rule closes the door on law school for sure, and probably college too, for the bulk of the U.S. workforce. It certainly would have for me.

There's only two ways out of this, imho - either we stop encouraging everyone in the world to go to college, and adjust workforce expectations accordingly, or we find a way as a society to actually bring down the cost of higher education in lieu of pretending to make it more affordable through ever-increasing loans.

Timothy R. Eavenson, Illinois

Whether a law degree is worthwhile depends on what your goal is. I went to law school so that I could better protect my daughter's special-education rights, and to help other students get the education to which they are entitled. I believe that my efforts make the world a little better, and that makes me happy. So, yes, law school was worth it.

Betsy Brazy, California

I became a lawyer because I love helping people. I also love the law. Unless you really love what you do it will make you miserable.

Carolyn Jones

I was lucky. When I graduated with my first degree, I had a student loan debt of about \$4,000. After two years in the military, I was able to pay my way through graduate school, and the VA benefits helped. When I went to law school, I was working as a chemical engineer and could support myself through law school. Thus, I had minimal school debt when I became a lawyer. When I graduated, there was no myth of upper-middle class lawyers (they were a reality). I was lucky.

Now, the costs of law school has skyrocketed and the reality of good jobs in law became a myth. Major bummer.

My advice to someone contemplating a career in law is to think long and hard about the difficulties facing today's law school graduates. What worked in the past doesn't necessarily work in the present.

Ernest Schaal, Japan

My husband and I are both lawyers, as is my father-in-law (now retired). Our children are not allowed to go to law school unless some wealthy relative dies and they can go without borrowing money. The ROI just isn't there. It will take everything we can muster to get them through undergrad debt-free, based on what the two of us can save at this point in our careers. The oldest is in school now, making saving for the younger two nearly impossible. Fortunately he is a senior and we will have four more years before the next one is ready to go.

I went back to school and got a Masters in accounting several years ago. I keep in touch with one of my former professors. He wants to go to law

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school when he retires, just for the academic adventure. He never had kids and can pay cash for his tuition. He will make a good law school candidate.

Michelle Kainen, Vermont

My degree is in Interior Design/Dance Performance. I am not an attorney and never have been but have been continuously encouraged by employers at one time or another to go to law school. In the '80s my excuse was that I was going after a career in Theater and law firm temping was the best day job you could have as a day job. The subtext was that I was a terrible waitress (dropped trays all the time).

In the '90s after retiring from the Great White Way, my excuse was I liked legal work while trying to figure out what else I wanted to do, until I discovered intellectual property in '95. Whole new world and my calling.

In 2004, I found myself in Big Law training new graduates in IP who were making 3 times as much as I was straight out of school. That's when I started my own paralegal service.

Eight years later, my company is thriving servicing law firms, corporate legal departments and solos across the US and I LOVE what I do and with whom I work. As long as there are IP attorneys who need paralegal support, I will do what I do. Just that simple.

On the job training in a direction I never planned.

Lyza Sandgren, Paralegal

What I forgot to say was that student loan debt and already being in my 40s in the late '90s was what kept me out of law school. There was nothing wrong, I decided, in staying in a support position. Best decision I ever made.

With 6 years also in IP software sales, i am happy as a clam with what I inadvertantly build while I was trying to decide on a career.

Lyza Sandgren, Paralegal

For me, the investment worked out. I can't imagine what I would have done with my liberal arts undergraduate degree that would have earned me enough money to live. I never took out the maximum amount in loans, I worked part time during school, and did everything I could to minimize my debt. If you expected law school to be an automatic ticket to a big law salary job,

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I'm sure it would be a disappointment. The first few years after law school were hard and I assume there will be more hard years but I enjoy my work and I know I can work for myself, which is a freedom many people don't have. I would never discourage someone from going to law school, I'd just encourage them to have realistic expectations of the money they will make, take out as little debt as possible, and know that it will be hard work.

Emilie Fairbank, District of Columbia

What do you think?

What do I think? That is a pretty broad invitation. I think you wrote a nice article, but I think other myths are the bigger problem. One of those myths is that three years of law school are needed to prepare someone to become a lawyer. Another myth is that three years of law school actually does prepare anyone for the practice of law.

There is a very real shortage of lawyers willing to represent low income clients. Maybe because there is an inherent problem with performing low bono work while paying off large student loans.

I have a solution though; or at least a partial solution:

Drop the pretentious notion that we need 3 years of law school. Most of what a student needs to learn is, or could be, taught in the first year. Second year would be better spent as an unpaid associate with a limited license to practice law under the close supervision of a sponsoring lawyer. The unpaid part will make it much easier to find sponsors and, for the student, is still cheaper than paying another year of tuition. Third year, new lawyer would actually get paid, at least minimum wage, while they assist low income clients through clinics under the loose supervision of a clinic lawyer.

Voila! The new lawyer has earned his license to practice law with only one third of the usual law school debt and will be far better qualified to practice law than current law school grads.

Bonus! We help an underserved segment of our population who really needs the help.

D.A. "Duke" Drouillard, Nebraska

You actually make sense! The black helicopters will soon be hovering over "Nebraska: Home of Henry Fonda, Marlon Brando, and Fred Astaire."
Your opinion CANNOT be permitted.

Good luck.

Russ Carmichael

PS - why is there a 3-year requirement? Take a look at the ABA financials:

http://www.americanbar.org/content/dam/aba/administrative/aba/aba_financials/financial-statements-2010-2011_authcheckdam.pdf

Look at p 34 - operating revenues > \$100M

And, who's responsible for certification of law schools??

Duke raises a very important point here that should concern all of us: the scarcity of lawyers willing or able to represent lower income clients in ways that matter. Though I disagree as to details - I think that one year of law school is too short for law students to make the transition to thinking and analyzing like lawyers and that many lawyers may not be competent to provide the level of training that a second year would need - I do think that Duke's proposal is a step in the right direction towards mitigating the impact of skyrocketing tuition on access to law. Indeed, I haven't seen any other ideas that even come close.

Carolyn Elefant, District of Columbia

Agree with Carolyn. I graduated in 2009 and opened up in early 2010. I think law school prepared me to be a research associate in BigLaw more than anything.

Ryan Phillips

This actually approximates the learning of law before law schools, where student lawyers "read the law" under judges and such. Though I think it's rarely used, I believe a couple states still have provisions for becoming licensed without attending law school, even if it's rarely used. I seem to remember that, back when I first started considering law school, and

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exploring licensure in California, they still had such a method on the books.

As an alternative similar to Duke's idea, perhaps it would make sense to license paralegal specialists to practice in some areas of law that are most pertinent to low bono / pro bono clients, especially in contexts where there is a guaranteed right of review de novo. Consider, for instance, magisterial proceedings. Here, a magistrate judge does not need to be a lawyer (though many are), and magistrates oversee Small Claims proceedings, which include most landlord-tenant actions, which are largely procedural. Any Small Claims judgment, without exception, is appealable de novo to District Court, which is overseen by a judge. (I don't know that judges are required to be/have been lawyers, but I do not know of any who were not.) Perhaps these people could also be trained in mediation.

One could require, for instance, that such a paralegal specialist be "attached" to a lawyer (or clinic), to ensure that there is a source for more authoritative information if questions arise. But this would make a pool of legal resources available at lower cost. It would not, I believe, significantly diminish the client pool served by lawyers, and thus there's no compelling economic argument for lawyers to stand against it. In fact, it might get many potential plaintiffs past the initial economic barriers to entry into the legal system, actually bringing cases that ought to be brought into the purview of the system, by vetting what might otherwise be dismissed as "trivial" cases, e.g., the legitimate LL-T dispute might reveal a slumlord who needs to be addressed at a higher level. It might also lead to "clinic divisions" within larger firms, where appropriately trained/skilled paralegals could operate with more autonomy, allowing the firms to serve a broader economic base without "suffering" the "burden" of low bono work.

-Rick

Richard J. Rutledge, Jr., North Carolina

I wonder...if there were a way to financially incentivize students to do so-- either through a loan-forgiveness program like doctors/dentists serving in lower-income areas have, or federal grants for students to serve those clients-- would legal-aid work be made more attractive? BigLaw is where the money is, but Legal Services is where the need--and the experience, sometimes even the fun-- is. And what else do we do as lawyers but fill someone's needs, and find niches to do that better/differently than other attorneys? Zig Ziglar himself said it best: "You will get all you want in life if you help enough other people get what they want."

King Farris, law student

I'm sorry. I hate to disagree with Duke, et al. but you got two different problems; high cost of law school and underservice of low income clients. They're not necessarily related. We've already got a surplus of lawyers at this point; making law school easier, shorter or cheaper is simply going to result in more lawyers. They are not necessarily going to be willing to serve the low income. If you look at the statistics, here's ten law schools whose grads have the least debt:

<http://www.usnews.com/education/best-graduate-schools/the-short-list-grad-school/articles/2012/03/22/10-law-schools-that-lead-to-the-least-debt>

Now, I'm looking for but not finding any good statistics on percentages of law school grads who go into "public service" be it government, legal aid, or what have you, but I'm not willing to assume that the grads who have the least debt are significantly more likely to go into serving the poor. I'd be happy to be proven wrong, but I'm not willing to assume that.

The problem with the lack of legal services to the poor is that they're poor. The poor got lower access to lots of things in this country; housing, education, health care, food, transportation. I'm not saying it's right, but that's what being poor is about; fewer options and lower access to lots of things. Some governmental programs can help; Medicaid, and to a lesser extent, medicare, can provide access to medical care; but it still tends to be at a lower level than private pay; there's physicians who won't accept Medicaid. Likewise, Food Stamps and the WIC program can provide somewhat better access to food; at least in the sense of providing money to purchase the food; however, neither program necessarily provides better access to places to GET the food; You look at most poor neighborhoods you are going to be hard put to find full service supermarkets. You'll find bodegas and convenience stores, and maybe a small 'grocery' store, but that's about it in many places. Even locally; here in The Villages we've got: Two full service walmarts, an Aldi, a Winn Dixie, a Sweetbay, a Fresh Market, and 5 Publix's. 12 Supermarkets. The rest of Sumter County, Florida, has one, count them, Four supermarkets; one Save a Lot in Wildwood, an IGA (more of grocery than a supermarket) in Lake Panasoffkee, and a Winn Dixie and a walmart in Bushnell. The IGA and Save a Lot are technically supermarkets but if you've been in either of them you know they ain't Publix's. And for that matter, neither, really, is Walmart; not compared to a Publix.

Some of this of course is a function of population density, but some of it is the fact that outside of the Villages, Sumter County's a POOR community. And, Guess what? There ain't that many lawyers either, in Sumter county outside the Villages (except for government type attorneys in Bushnell, the county seat).

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Look, I'm not trying to be cynical, or nasty, but the basic problem with the lack of legal services to poor people is the fact that they're poor; I really question whether having more lawyers with lower debt loads are necessarily going to go out there and work for the poor. Maybe, but I doubt it; the problem with legal services to the poor dates back decades and far predates these enormous debt loads for law graduates; I remember reading a law journal article written in the 1920's decrying the lack of legal services to the poor and calling, essentially, for what amounted to a "legal aid" program. This is not a new problem and clearly existed well prior to the skyrocketing costs of going to law school.

For what it's worth, you want to provide legal services to the poor, come up with some sort of government subsidy analogous to Medicaid; if I knew I would be paid at a decent rate, not even my full rate, but an amount that I could count on, I'd be happy to provide legal services to the poor. But I don't know how you would set up that program.

Ronald Jones

No problem Ronald. I learn more from people who disagree with me. I think you missed the point however. I didn't say the two problems were naturally related. My suggestion was that both problems could be partially solved at the same time in a synergistic manner. As far as making law training cheaper, I am suggesting we substitute 1 year of school plus two years of practical experience for 3 years of school. The third year of training would be devoted exclusively to serving the poor and underprivileged. Prospective lawyers will do it if they want to receive their law license; it is not an option that depends on the charity in their hearts.

D.A. "Duke" Drouillard

[WC] Thomas Friedman wrote about how the rules have changed; working hard and getting an education don't guarantee success anymore. Worth reading. <http://www.nytimes.com/2012/09/09/opinion/sunday/friedman-new-rules.html>
Good global perspective.

I'm in the camp that thinks this is a universal shift. The legal profession is behind others in recognizing the magnitude and pace of change, so the tipping point has been later than with MBA's, say, and MD's, as well. You can see where the medical profession has implemented a tiered service model, with the rise of the Physician Assistant, the increased role of RN's and LPN's, etc. Robotics, for that matter. Funding- insurance and public funding- has been a key driver. It seems to me that by default, the legal

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profession is creating a new operating model now. Lawyers, needing to leverage more and deliver services at a lower cost. Associates willing to take anything, people taking the paralegal route to avoid the cost of law school. Formalizing those emerging roles by changing the credentialing requirements and barriers to entry is an exciting idea.

There's something to do with the ability to finance a legal education in the past decade that's contributed to the out-of-balance marketplace and outsized problem, too.

Back to the "myth". Good article, Niki. The title uses "upper middle class", which varies greatly in terms of statistics. One study gave it as combined "household income of six figures". As a target with clients, I use "comfortable"- meaning the practice is self-supporting, your lifestyle is fully supported, you have an emergency fund, debt gets paid off, insurance is good and savings are adequate for retirement and the support of anyone else you choose to support. That's usually in the \$100-300K annual income range.

I'd add a question mark to the title. It's a myth that a law degree automatically delivers you to the "upper middle class". Not a myth that with focus, planning, compromise and action- you can be an "upper middle class" lawyer. My current livelihood is based on my belief that solo and small-firm lawyers CAN predictably achieve a \$100-300K level of comfort. If I can't help a lawyer move consistently towards goals in that level, there's no ROI on my fees, and I'm out of business. I have a fact base. I know lawyers who have steadily increased their profitability and are making the living they choose while working hard, but not 24x7. That said, I've been doing this for about nine years now, and I know that not every lawyer can do it. Myth for some, reality for others. Still possible.

Good article, good discussion, interesting ideas. Thanks for letting me into the firm. Good article, Niki, and a good water cooler conversation. B

Barbara Nelson
Notta Lawyer. Business Coach., New Jersey'

The problem with that is, they're not lawyers. They're law students. I understand that a law student may be better than nothing; but it's sort of analogous to being in the charity ward of a teaching hospital; when the first year resident treats the charity cases, sometimes the outcomes are highly variable. And frankly, the quality of the supervision and training is going to vary a LOT.

I also really question that you don't need more than one year of classroom training. I'm kind of treading on thin ice here, but I see posts all the time from new lawyers on this list asking what I

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think are pretty basic questions about the law. In many cases when I answer those questions I am answering them from what I remember from law school; some of which were first year courses, but a lot of them were second and third year courses; i.e., Evidence, Wills, Trusts and Estates, Corporations, Agency and Partnerships, and my single most useful course, Remedies. I don't know whether they didn't take these courses or whether they didn't pay attention, but this stuff stuck with me over the years; and I use it all the time. I can see where some of this stuff could be taught in a practicum but doing the same thing over and over (i.e, doing family law in a legal aid setting) will get you real good at what you're doing over and over but is not likely to teach you anything else; you may be great at family law but I kind of doubt you are going to get much exposure or knowledge on say, Corporate M&A or, for that matter, simple sales of business. And, once again, treading on thin ice here; but I see lawyers all the time who *don't know how to read a dang case*; for whatever reason, they spent three years in law school, when, frankly, all they should have been doing was reading cases, and they never learned how to. I got my suspicions as to why they can't read a case (combination of use of 'canned' briefs and not reading cases) but this is an essential skill and can only be learned by doing, actually reading the cases.

Ronald Jones

I think the analogy to medical students may be true -- yes they have 2 years of clinical rotations after 2 years of largely classroom experience -- but they also get at least 1 year post graduation as an intern (and during the internship the hospitals they intern at provide various classroom lectures) and then in their speciality multiple year residency programs (which are basically extended low paying internships).

There is no question but that medical school graduates are only qualified to treat patients under close supervision after graduation. I tend to think the same may be true for lawyers. Given the numbers of people who seem on this list to have opened practices immediately after graduation, I'm not as confident in that belief as I once was -- but... There is no question but that my experience in medium to big corporate law after graduation was absolutely critical to me because I learned first hand from others the practicalities I needed to practice.

Definitely big law experience is not what's always needed, but perhaps just practicing under a reputable more experienced attorney may??? be.

Just saying....

Susan Zinder, New York

If I may say... Working hard and getting an education was probably NEVER the guarantor of success.

The reality is that my time as in-house counsel taught me that being right isn't always the way to succeed at a job. Make no mistake - it may be the way to keep your client out of trouble (if they follow your advice) - but it won't always get them to call you back.

To get ahead you need people skills - how to relate to people, how to deliver bad news, how to deliver the news they don't want to hear in enough time so that they don't have to act immediately on your advice but can absorb it and come around to you. And networking is the real key to advancing. Who knows your work, who knows you as a smart, ethical lawyer; who wants to work with you.....

These are the keys to success - and they don't come to you in school - they are either innate in some people or come after many hard knocks out of school.

But they really are the key - that is why some people hate the "old boys network" or "big law" - because they can't figure out how to break in and the reality is that hard work won't get you in.

The only thing that will is networking, networking, networking with the people who are in your network and being generous to share your contacts with others who share theirs with you.

That's my 2 cents

Susan

Susan Zinder

Barbara,

Not sure about Cranbury and NJ as a whole anymore, but I disagree that \$ 100,000.00 is middle class or comfortable on Long Island, unless you are single. There was an article in this weekend's Newsday about this.

Jeena Belil

Well, there's two aspects to 'upper middle'; one is income; where you draw the line depends on your geographic area.

The other aspect is, what do you do for a living? Upper middles tend to be brain workers; people who work with their mind; people are paying them to think, to be blunt. This would include lawyers, physicians, professional engineers of pretty much all stripes, scientists, some types of accountants (not necessarily bookkeepers). They've got graduate or professional degrees.

Clearly, the line can be a bit blurred at times but this article sets out the basics:

http://en.wikipedia.org/wiki/Upper_middle_class

Two people or families can have the exact same income but one is upper middle and the other is simply middle.

And lawyers are going to be 'upper middle' by the education and occupation yardstick. Whether they make upper middle income is going to depend on the lawyer.

Ronald Jones

I once visited Greece back when I was in college in the early 1970's and law students were protesting the fact the 1st year after law school they had to work as unpaid clerks before becoming lawyers.

I think it would make sense to allow the last year of law school be an internship. As an incentive upon the completion of one year and the consent of two judges and their supervision attorney the intern would gain admission with no bar exam.

John Davidson, Pennsylvania

I have son in medical school right now. There will be a shortfall of doctors in a few years, and I asked myself "why dont they just admit more students" However, the problem is you can admit all the students you want but every student in medical school must be connected with a hospital in order to complete their residency and become a doctor. The hospitals do not have staff to train new doctors; furthermore you cant just open a new hospital. Law schools are moving in this direction with clinics etc; however, like doctors there needs to be a mandatory residency or clinics in

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place for at least 3 years after you complete rigors of law school. It would require the bar to make substantial changes in order to save this profession. However, our profession seems to just make new lawyers and if you take a test (the bar) you can take any case you want to court. In DC we had a young lawyer say its first jury trial in a murder case. Thats not acceptable but it happens, Its like a new young doctor doing open heart surgery on his first patient. We need to make substantial changes or it will get worse before it gets better. Its just my thought since we are all venting

Mark Rollins, District of Columbia

I'm not sure it is if you are single.

First - there was a study in the NY Times a few years ago that said that people who earn \$125,000 in Texas have the same earning ability/life style as someone earning \$250,000 in NYC.

And while yes, if you're single you're only paying for yourself, but.... There are the many (and expensive) "single supplements" There are the bulk discount items that there is no point in buying just for yourself,

I could go on and on - trust me - living single is more expensive on a per capita basis than living as a couple in a marriage or life partnership.

On this I can definitely be trusted

Susan
Susan Zinder

Just to be clear- The numbers are there because I was trying to qualify the term "upper middle class". It's not in the article and what it means varies hugely for all of us. Studies return very low "upper middle class" numbers by quintiles, because they're based on a large population. I'm sure LI is different than Albany, Oregon, or Cranbury, NJ, and from the population means.

When I work, clients create their target: practice expense plus lifestyle expense, plus emergency fund, plus savings for you & anyone else you're saving for- college, parents, etc. You know what you need to make. That's relevant. Figuring out if it's possible and how to do it best are the next steps. For some, mythical, but not for everyone. Still possible.

Barbara Nelson
Notta Lawyer. Business Coach.

What is upper middle class is going to depend heavily on where you live, what your lifestyle is etc.. \$100,000 doesn't go as far when your buying coach purses, driving a Mercedes and living in a big house in a ritzy neighborhood, versus the person not buying the coach purse, driving a low to mid end chevy and living in a moderate house in a nice neighborhood.

Many people correlate having certain things with being upper middle class.

Erin M. Schmidt

Duke,

I think your suggestion is creative, but it sounds dangerous. The biggest problem that I see in my practice is people who have received inadequate legal advice - FROM LAWYERS. There is already a trend in the legal profession where lawyers are failing to see the big picture, failing to understand the broader consequences of their actions, etc. I don't think that turning law school into a skills-based trade school will solve that problem.

Perhaps, though, we could carve out a few key areas where poor people are underserved, and we might be able to develop a para-professional program targeted at those services. For example, someone could attend a mini-law school and then sit for the "Landlord-Tenant Bar" or the "Consumer Bankruptcy Bar." They would be entitled to handle those types of cases only.

Another model would be to have a large number of paraprofessionals working under a supervising attorney.

Another solution would be to enact vigorous fee-shifting statutes that make it worthwhile for attorneys to pursue valid claims on behalf of poor people.

As for the cost of law school, I think - to tie into another thread - the problem is related to "value billing" for the degree. People go to Harvard expecting to make \$140,000 a year when they graduate. The tuition is set accordingly. There are plenty of ways to make the curriculum less expensive without making it shorter or less detailed. That's particularly true as you go down the tiers in school ranks. I think killing the quality of the education in order to solve an over-pricing problem is throwing the baby out with the bathwater.

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Last thing, Duke... I have found your point of view more prevalent among attorneys who had careers before law school. I would have held that view myself until I became an adjunct professor. Us second-career folks are possessed of a certain common sense that isn't necessarily present among those younger folks who have never held a job. Plus, the "don't judge me" moral relativism that pervades our education system these days actually trains children AWAY from the type of lawyerly thinking they have to learn in law school. I firmly believe that it takes at least three years to properly conduct a cranial-rectumotomy for some of these kids.

Cheers,

David Allen Hiersekorn, California

There are lots of graduate degree thinkers who don't make a lot of money. Librarians take years to earn what many engineers can make with just undergrad degree.

ALso the hoops some professions have to go through in order to achieve their status is amusing. We think getting our bar licenses is bad (or waiving into another state where I am at 10 months of waiting *sigh*). Doctor's at least get paid during their residencies (and get paid fairly well). Architects get paid next to nothing during the residences and most states require anywhere from 1-3 years of work experience to become certified.

Erin M. Schmidt

As I noted, regarding paraprofessionals and specialization in "low complexity" matters.

Agreed regarding a very different mentality among "second-profession" law students and lawyers. (Generalization alert, but consistent with my experience.) Circumspect takes time to learn.

-Rick

Richard J. Rutledge, Jr.

Comments interspersed below:

Duke,

I think your suggestion is creative, but it sounds dangerous. The biggest problem that I see in my practice is people who have received inadequate legal advice - FROM LAWYERS. There is already a trend in the legal profession where lawyers are failing to see the big picture, failing to understand the broader consequences of their actions, etc. I don't think that turning law school into a skills-based trade school will solve that problem.

It could be dangerous. I think it depends on how it is implemented; the devil is in the details. As you illustrate, much of the problem is perception. Awhile back you mentioned the negative perception of Cal-Bar only schools. I believe you are a good example of how that perception is misplaced. I would expect that sponsor lawyers would have to be vetted and required to provide a certain level and diversity of experience to be allowed to participate in the program. It would have to be something more than experienced lawyers getting free help for a year.

Perhaps, though, we could carve out a few key areas where poor people are underserved, and we might be able to develop a para-professional program targeted at those services. For example, someone could attend a mini-law school and then sit for the "Landlord-Tenant Bar" or the "Consumer Bankruptcy Bar." They would be entitled to handle those types of cases only.

I like that idea a lot. We could follow the medical paradigm where the general practice license only allows limited practice, e.g. you need to be board certified in a particular specialty to get hospital privileges to treat in that area. Something similar might be a good idea for lawyers.

Another model would be to have a large number of paraprofessionals working under a supervising attorney.

Another solution would be to enact vigorous fee-shifting statutes that make it worthwhile for attorneys to pursue valid claims on behalf of poor people.

I agree. Although that is done already in some degree, it could be expanded. It still wouldn't help with employment, divorce, and custody issues though, which is the vast majority of needed services by low income clients.

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As for the cost of law school, I think - to tie into another thread - the problem is related to "value billing" for the degree. People go to Harvard expecting to make \$140,000 a year when they graduate. The tuition is set accordingly. There are plenty of ways to make the curriculum less expensive without making it shorter or less detailed. That's particularly true as you go down the tiers in school ranks. I think killing the quality of the education in order to solve an over-pricing problem is throwing the baby out with the bathwater.

I am seeking to improve the quality of legal education, not just shorten it. I believe there is no classroom equivalent to actual practice. To supplement your suggestion above to have specialty licensing, additional classes could augment that endeavor.

Last thing, Duke... I have found your point of view more prevalent among attorneys who had careers before law school. I would have held that view myself until I became an adjunct professor. Us second-career folks are possessed of a certain common sense that isn't necessarily present among those younger folks who have never held a job. Plus, the "don't judge me" moral relativism that pervades our education system these days actually trains children AWAY from the type of lawyerly thinking they have to learn in law school. I firmly believe that it takes at least three years to properly conduct a cranial-rectumotomy for some of these kids.

I agree with your sentiments, but disagree that law school effectively performs the procedure you described.

D.A. "Duke" Drouillard

Let's not forget the regulatory compliance of *being* a lawyer. There was costs to being and staying a lawyer and that's one of the reasons it's difficult to do low-cost work.

Ricky S. Shah, California

The problem with representing low income clients is that you will go broke doing it -- unless you work through an organization such as Legal Aid, where you won't make much but you will get paid. Although, you are then limited in your practice type to matters the organizations can and will allow you to handle. There is so much more out there that low income folks need.

Getting rich was never my goal (good thing) but making a living is a necessity, and I cannot do that on low income clients.

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Even with a nice supply of well heeled clients to make up the difference, the number of low income clients I can serve is limited.

Nanci Bockelie, Utah

Absolutely not. Duke, you are suggesting that in order to get a law degree I have to agree to serve certain people. That is absolutely categorically immoral. My access to a law degree cannot be so conditioned by anybody. Even a private law school ought not to be able to do so, for constitutional reasons I've no time to argue here.

Larry Frost, Minnesota

Absolutely not. Duke, you are suggesting that in order to get a law degree I have to agree to serve certain people. That is absolutely categorically immoral. My access to a law degree cannot be so conditioned by anybody. Even a private law school ought not to be able to do so, for constitutional reasons I've no time to argue here.

Getting a law degree isn't the focus. I'm not overly concerned with how or when they get a law degree. If you mean getting a license to practice law, that is a privilege and not a constitutionally protected right; as has been aptly demonstrated repeatedly by admissions requirements that vary among each state and the number of candidates who are denied admission for a variety of reasons. The choice would be to complete the program or not join the program; not pick and choose the pieces you think are appropriate. Further, I'm not sure it is necessary to limit clinic clientele to low income people; there probably aren't a lot of affluent people willing to stand in line waiting to see which attorney they get assigned to represent them. More affluent clients would probably like to pick their own lawyer.

D.A. "Duke" Drouillard

Russ-
You forgot to add Warren Buffet!

Tracy L. Griffin

You are absolutely correct about the Coach purses and Mercedes(es?).

I figure a few of those who have those items either 1. Don't have huge school loans and have more disposable income or 2. Are in a lot more debt

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than I am (and this is why foreclosures and short sales are still abundant out here).

Jeena R. Belil

Considering the amount of schooling required, most professors don't get paid accordingly (yet people seem to think they are overpaid because of a handful of outliers). And librarians CAN make good money, more than a professor in some cases. With less school.

Lesley Hoenig, Michigan

Yes they can, but it takes a number of years experience to get to that level. They do not get their MLS and expect a 6 figure income or anywhere near a 6 figure income.. Half of a 6 figure income is doing very well for a starting MLS and that is only going to be in a big university or a large public library system. And the pay raises aren't very much after that. So to get more pay it is jumping ship and moving to a new (usually bigger) system.

The better benefits to that field is that it is generally public worker or college work. Thus the benefits tend to be excellent.

Erin M. Schmidt

And most professors don't make six figures for years and years either. And that is another three to six years of school on top of a masters. And if someone isn't lucky enough to be tenure track and are only fixed term faculty, they are lucky if they even make \$40,000

Lesley Hoenig

But just like the professors, a 6 figure librarian is an outlier. There are very few jobs in that range. Now the \$30-60k range, you will find lots of jobs there. And for many people with masters degree + a \$40k job may just pay the bills and might cover the student loans to get that degree.

Though I do have to say that it is very interesting the push with library schools to move towards online learning instead of the typical classroom learning. Not that the tuition is any cheaper given that they do not need classroom space, or professor offices, etc..

Erin M. Schmidt

I think the push to online learning is very widespread

Lesley Hoenig

Clinics are a good idea. Conditioning entry into law on 'social justice' activities is a strictly political requirement. Such requirements for teachers have been rejected where they were tried. Same argument should apply to law. In order to get a law degree no one should have to perform someone else's idea of 'social justice'.

Larry Frot

I've been hearing this "social justice" phrase a lot lately, usually with the same disdain that Larry just expressed. I don't understand it. How does "social" qualify justice -- is social justice the opposite of some form of antisocial justice that some of us became lawyers to uphold?

Wendell Finner

The rubric is JUDGES PRACTICE SOCIAL JUSTICE UNDER THE GUISE OF LAW and many judges find that inflammatory.

Still, it's probably true, and also true they try to do equity under guise of law.

BUT, I think those are exactly what their job is. The law cannot provide for every nuance, they must apply other logic--hell, even morality. Their job is to bridge the blanks.

Other hand, ten years ago, I said the social justice thing in a letter to a prominent appellate judge about a speech he made. My point got lost in his

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angry letter about social justice. Made enough impression that he recognized me 2 years later when we met for first time.

Suggest it's a rule to recognize, not bring up.

John Page, Florida

The problem with 'social justice' argument is that it frequently, not always, but frequently, involves a solution that imposes a disproportionate burden on people who basically had nothing to do with creating the problem. I want to emphasize, not always, but in a lot of cases.

To use this case as an example, there is a problem with access by the poor to legal services. That's a real problem. I'm not denying that. But as I noted in a previous post, the poor got lower access to lots of things; health care, food, transportation, pretty much you name it. That's the nature of being poor.

So, what's the solution? Well, one thing to do would be simply to raise taxes and redistribute income. Believe it or not, I got NO problem with redistributionist policies; at least up to a point. It's efficient; tax the rich, give the money to the poor, or provide some sort of subsidy to them; Food, fine, give them Food Stamps and WIC, and cash assistance. Housing, fine, subsidize their housing. Health care, fine, there's various ways you can subsidize health care. Transportation, fine, tax people who drive by whatever means (directly, or via gas tax, or what have you) and build bus services and other mass transportation. The people who are best able to bear the cost are bearing the cost; you want to drive a 8 cylinder SUV that gets single digit mileage, don't complain when you're paying \$5 a gallon for gas and a buck fifty of goes to subsidize bus service for people who can't afford a car, much less a MegaSUV.

Legal Services, fine, tax the rich, hire lawyers thru legal aid, provide funding for the poor. Raise revenue thru general income tax; or impose some sort of tax or surcharge on legal services. 10% surcharge on all attorneys fees goes to legal aid; whether it's Joe Solo drafting a will for \$300 or a million dollar contingency fee or Big Law Firm billing Big Corporation on an hourly basis. The pain is spread equally, or at least, proportionately amongst those able to afford it.

Use the money to fund legal aid, or, let them pick a private lawyer and provide some sort of grant to private attorney; cap the rate at a reasonable amount but let the poor have their choice of presumably competent attorneys. There's all sorts of ways to run the details.

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Instead, 'social justice' mentality says: oh, the poor got lower access to legal services. Instead of paying qualified attorneys a decent rate to represent them in appropriate cases, what we're going to do is take underqualified students, who frankly don't know their you know what from a hole in the ground, we're going to MAKE THEM donate a year or two of their time, or even 50 hours, for free or minimum wage, to learn their craft and basically get their feet wet serving the poor. Bear in mind, the law students had NOTHING to do with the lack of legal services to the poor, they didn't create the problem, some of them may very well be willing to donate their time, but we are going to compel them- and frankly, most of them probably aren't all that wealthy- to spend a year or whatever serving the poor. Why? Because they want to be lawyers, that's why, and because we can MAKE them do this if they want to be a lawyer. Law student is forced to do this, may very well do it badly, law students are probably the least able to afford this, and poor people get what is likely to amount to somewhat marginal services (not in all cases, there are some excellent clinics and such, but I wouldn't count on that being the standard). Whoever requires this in the name of social justice gets to feel good, see, we're doing for poor folk, we're seeing they get increased legal services, law students who had nothing to do with creating the problem are forced to spend their time dealing with it, poor folk get kind of the scrapings from the bottom of the barrel, and really, it's a very poor solution to a problem . I mean, gee, if you're poor and need legal services, I'd MUCH rather gain limited access to some second or third year law student to help me than be able to deal face to face with a real, experienced lawyer. NOT.

Instead of dealing with a real solution, i.e., tax the rich, give the money to the poor, it papers things over. That's the problem with the social justice argument in a lot of cases, instead of doing what needs to be done to fix things, it forces people who had nothing to do with the problem to bear the burden. It's not that they don't need legal services, it's the compulsion of those who are least able to afford it to bear the burden.

Ronald Jones

> antisocial justice

Is that the one who refuses to plan the court's Christmas party?

Michael Alex Wasylik

I don't think the term "social justice" refers directly to legal issues. The term generally refers to efforts to make society "fair." Of course, fairness - like beauty - is in the eye of the beholder.

For example, John Rawls wrote extensively about social justice. But, in Rawls' view, social justice is about personal autonomy and freedom from government interference - essentially libertarianism. Meanwhile, modern liberals use "social justice" to refer economic redistribution, "living wage" laws, etc.

I don't mean to spark a political debate. I'm just saying that when a term has multiple, contradictory meanings, it becomes effectively meaningless. In any given situation, the meaning of "social justice" really depends on whose ox is getting gored.

I think lawyers would do better to use the term "access to justice." That properly frames the issue - i.e. how do we help protect the people who are too poor to enforce their legal rights? That's a serious and important question. And, I think that it is a definition that we can all agree on, even if we can't agree on the solution.

Cheers,

David Allen Hiersekorn

Exactly my question, and hence my disdain. Social justice is one of those terms of the sort both the left and right wingnuts like - it sounds wonderful but has a meaning so elastic it can actually contain whatever one wishes.

Larry Frost

What a great conversation! You all raise some wonderful points and I think that one of the most important ones is that legal education must change.

I agree with Duke on this one and actually proposed a very similar solution in a recent post of mine at the Lawyerist blog <http://lawyerist.com/the-legal-profession-is-at-a-crossroads-law-schools-must-change/>. I suggested that

if our law schools were structured differently, new graduates would be > better prepared. Our legal education system needs a complete overhaul and

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- > the failure to do so will cause a crisis in the years to come. Young
- > graduates must gain practical experience before they leave law school.
- > The first year should remain the same, but the second and third years
- > should have a very strong clinical focus, much like a medical residency,
- > with practice management requirements, as well. This curriculum would
- > better prepare young lawyers to go solo upon graduation or to work for a
- > firm and handle more than basic entry level tasks, which are increasingly
- > being handled by non-lawyers or computers.
- > If this doesn't occur, new graduates will be unable to gain experience in
- > traditional law firm environments, older attorneys will retire, and there
- > will be a very small pool of attorneys with the necessary experience
- > available to take their places. Eventually, in the very near future, we are
- > going to reach a point where merging firms or lateraling in partners will
- > be unsustainable practices.

>

So yep--Duke and I are on the same page;) But I'm not very hopeful that law schools will change their ways anytime soon.

Niki

Nicole Black

Yet many of us learned early on that, to paraphrase one of my old profs, the US has a system of laws, not a system of justice. Surely we all realize within a year or two of graduating from law school that the definition of "justice" depends entirely on the person? The best we can do is have a reliable system of laws that gives some certainty to society and its individuals, while allowing for mercy in the criminal courts as judges find appropriate.

Anita Fuoss, South Dakota

The idea of clinical practice is a good one, but the idea that the clinical practice must be legal aid for the poor is a very bad idea for someone who has no intention of making legal aid for the poor their chosen career.

My problem with your and Duke's approach is that it makes two wrong assumptions.

1) It assumes that everyone will practice the same area of law as you do. Maybe experience in clinics for the poor would help you be a better trial lawyer (maybe not), but it won't help someone who wants to do contract law, or copyright law, or patent law, or mergers, etc.

2) It assumes that the purpose of law and law school is to satisfy your concept of social justice. That is a very political question and does not belong on this list.

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Yes, the poor do not get the same level of legal representation that the rich do, but the purpose of law school is to make good lawyers, not to make lawyers who agree with your particular view of social/political view of justice.

Not every lawyer is (or wants to be) a trial lawyer. Not every lawyer is (or wants to be) involved with the legal problems of the poor.

Ernest Schaal

The question of whether or not the poor get good legal service is a question that is echoed in many fields. Do the poor get as good of an education as those who aren't poor? How about medical services? Housing? Food? Clothing?

The assumption is that because there is no guarantee or government assistance for legal services (outside the criminal realm) that the poor are **more** under served in the legal community than in other areas. It is a huge assumption that, in my experience, is not the reality.

It is so much easier to deal with the despairing issue if we continue to try to convince ourselves that it is limited to just a few things and not preverse through out the entire structure.

There is also a considerable belief in society that only the rich can really afford a lawyer. There were some numbers that showed that even those that should be able to afford an attorney were not using them and the reason was two fold, they felt they could do it themselves (even though the couldn't) and that they couldn't afford one. We aren't talking people at pverty level, but people strongly in the middle class. As the middle class gets squeezed by underwater mortgages, student loan debts etc, then the belief that they can't afford an attorney becomes a reality.

Is the solution that attorneys become like doctors and everyone has legal insurance (which kind of already exists)? But does the average person use legal assistance enough to justify this type of cost (perhaps they will if they have it)?

Erin M. Schmidt

I must admit that I am not convinced that America has too few lawyers. I live in a country where the number of lawyers per general population is much smaller than in America, and it seems to be a lot more civil a society.

Does America have too many lawyers or too few? Does every lawyer have an obligation to serve the poor? Is America too shy of litigation or too eager to sue? These sounds like political questions, that don't belong on this list.

Ernest Schaal

And the legal field in America WILL suffer if attorneys beleive that discussing the question of whether or not the middle class is being squeezed out of being able to afford legal services is a "political question".

It is not a "political question" it is a reality that we all have to deal with. Do we deal with it by burying our heads and hoping someone else discusses the problem and finds some solution? Do we deal with it by just hoping and praying that the economy gets better or some other outside influence steps in and helps our profession? Or do we have a discussion on steps that we, as a legal profession, can take to ensure that not only can more people access our services, but also that those services get paid for and our livelihood survives.

And the answer to that could range from individual attorneys deciding to lower hourly rates, to moving towards unbundled services, to moving towards flat fee agreements, to seeing the rise of legal insurance.

Simply because something touches on politics or has a political component does not mean we can't discuss it. If that was the case, we couldn't discuss anything because the law, whether we like it or not, stems directly from politics

Erin M. Schmidt

How did I get to asking whether or not America has too many or not enough lawyers, or whether or not America is too litigious or to afraid to sue? I asked those questions because I was pointing out the political aspects of what you and others were recommending.

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To me, the phrase "affordable legal services" is a catch phrase that has become almost political in nature. What is "affordable"? One definition is "inexpensive; reasonably priced" but those terms are relative, based on the worth of the goods or services priced. The "affordable" price for a house would be a lot higher than the "affordable" price for a candy bar. So what does the term mean for legal services?

Many of the people in America rarely use a lawyer, mainly because they don't "need to" for most things (the value added by using the lawyer not exceeding its cost). It isn't so much a question of the people being too poor, instead it is a question of the value-added versus price. If I were thrown in jail, the value of a lawyer justifies the cost; the same thing if I am sued, or if I have been cheated out of major fund, etc. I don't need it to wed, or to buy most purchases, or even buy a house.

Before we make major changes in our legal system to make our services more "affordable" (changes that by their nature seem political), we had better understand what we are talking about. Exactly what are the legal services that must be changed? How much must the price be reduced? If the changes are made mandatory, then those questions must be asked in a political setting.

The individual changes that lawyers make to improve their marketability is a different matter entirely, but government action mandating change is by its nature political, and should not be discussed here.

Ernest Schaal

Concur in detail. Ernest and I seem on a rare run of agreement.

Larry Frost

There aren't too few lawyers at the moment, but in 10 years when most baby boomers have stopped practicing law, there will be a shortage.

Lesley Hoenig

I don't understand why people (Larry and others) are saying it would be unconstitutional to require some kind of provision of legal services to the poor as a condition of obtaining a law degree. OK, if all you are saying is

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that the GUVMINT (State or Feds, or is this just Feds?) can't impose a requirement upon law schools, fine. But under the current system, the ABA could make it a requirement of accreditation, or the schools could just simply require it, like they require all sorts of other things.

And the states could certainly impose it as a licensing requirement. I mean, is NY's new pro-bono requirement unconstitutional?

Or are you just saying the FEDS can't do it? In which case, so what? We are talking about what a possible solution to some problems should/could be, not from whence the command shall come.

I would appreciate a clarification, Larry (or someone else) as to exactly what you are saying would be unconstitutional or impermissible.

C.

Cynthia Hannah-White, Hawaii

Kinda sounds like indentured servitude to me. But I'm ok with requiring it of new grads, since I'm already out and licensed!

Steve O'Donnell, Pennsylvania

NY requires pro bono? I know illinois and Minnesota require reporting pro bono, but I have yet to see a thing come of my reporting zero pro bono hours (it isn't always zero, but I have had years where it was zero, because breaking even takes precedence).

But I think the issue is the 13th amendment. You can't force someone to work for free.

Lesley Hoenig

I think the line between mandatory pro bono and mandatory criminal or civil appointments is a pretty thin one, both are involuntary servitude. But IIRC NJ has mandatory civil or criminal appointments and as a NJ practitioner I get out of it only because I am located too far away to charge NJ for the mileage reimbursement. I also seem to recall that South Carolina state system has mandatory appointments and SDGA federal court does have them.

Craig A. Stokes, Texas

Come on guys and gals, why are we posting this stuff on Solosez? Solosez has rules against political discussions, and we have Solopol for those who want to discuss politics.

Yes, there is the legal question of whether or not such modifications would be constitutional, but the other question about whether this is a good or terrible idea is basically a political discussion about whether or not the US government should be in the business of deciding morality.

There is a big political debate about whether or not our citizens should be able to make independent moral decisions in a particular area. That political debate has been very volatile and has led to violence in the streets.

In hindsight, not every governmental regulation of morality has been a winner, and not every governmental regulation of morality has been a loser either, as shown by the following list of attempts to regulate morality (in random order and no inference as to which attempts I approve of or disapprove of): civil rights laws, bans on interracial marriage, sexual discrimination laws, prohibition of alcoholic laws, sodomy laws.

Not every one of these attempts are good, but not every one of these attempts are bad either. Why they all are is political in nature, with strong feelings generated on other sides of these issues. (Yes, the Women's Temperance Union is still in existence, with about five thousand members).

We don't need political discussions in Solosez.

Ernest Schaal

I understand that the question whether the government should force lawyers to do X or Y has political ramifications, I don't see it as a political discussion. Rather, it's about the duties (or not) that our profession owes to the public. It's about issues at the core of the legal profession.

Suppose, for the sake of argument, that there is a problem preventing poor people from getting the legal help they need. And, let's assume that we are discussing how best to solve that. If someone said that we should prohibit lawyers from charging more than \$15 per hour for services, there would be a variety of objections. Some practical, and some legal. You might hear

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objections that people can't afford to run a law firm on that amount, etc. But, you'd probably also hear objections that it's illegal to impose those sorts of limits.

Just because one set of arguments involves the law, that doesn't make them political. Saying something is unconstitutional doesn't make it political. In fact, that makes it illegal.

It's il-LEGAL, not il-political.

That said, I think that the ABA, and the lawyers on this list have an obligation to consider and discuss ways that we can help make legal services available to people who can't afford to hire a lawyer, particularly in a world where rights are won and lost in court.

Cheers,

David Allen Hiersekorn

Ah, if only I could just say that something is unconstitutional and it would be made so. '')

On the schedule for tomorrow's SCOTUS conference is our cert petition in Hepting v. AT&T, part of our NSA domestic spying litigation. Please tell me I can just tell SCOTUS that it's unconstitutional (and please make SCOTUS listen).

--

James S. Tyre, California

Touche James. I always find it humorous when trained lawyers pronounce something, undecided by the courts, as constitutional or unconstitutional. SCOTUS rarely gets a 9 vote consensus on what is constitutional, so I think the possibility of them accepting your assertion would be extremely remote.

D.A. "Duke" Drouillard

To be clear, I wasn't saying that something was, or was not, constitutional. I'm only saying that when a lawyer says that X is unconstitutional, he is not rendering a political opinion. He is rendering a legal opinion.

He might be wrong, but that doesn't make it a political statement.

And, Jim, good luck with - as my then-seven-year-old son once said - your writ for "search your worry." He heard me say certiorari, and asked me about the "search your worry." I asked what he thought that meant, and he said, "that's when lawyers try to figure out what's wrong."

Close enough, I suppose.

Cheers,

David Allen Hiersekorn

You may think that the ABA, and the lawyers on this list have an obligation to consider and discuss ways that we can help make legal services available to people who can't afford to hire a lawyer, particularly in a world where rights are won and lost in court. That is your opinion, your political opinion.

If the the ABA, and the lawyers on this list does discuss that topic, (and I am not necessarily agreeing or disagreeing with that obligation), the discussion is a political one by its very nature, and does not belong on Solosez. Take it to Solopol.

We are talking about strong emotions for or against regulating other lawyers to be more in accord with your own personal, political beliefs. That, by its nature, tends to be contentious. Please take it to Solopol.

Ernest Schaal

Popping the corn now whilst slipping down the slope

Craig McLaughlin, California

I respectfully disagree. The Code of Professional Responsibility, if memory serves, obligates us to address some of those issues. Here in MD we mandate pro bono reporting. The idea of giving something back to society, in my view, is not a political discussion, but rather a human or social one. Even brainstorming mechanisms may not be political. I concur that if we start discussing taxpayer funded pro bono work, that might be a different issue.

Many of us, though not all, entered the law at least in part to do good for others. In my law students I still see altruism. If we as a profession ever stop our serious consideration of serving those less fortunate, in my view it will be a sad day for the profession.

Ken Sprang, Maryland

I am not sure I would do law school again for a number of reasons. I can think of a lot more fun ways to earn a living. Having said that, when I take on a pro bono matter or even solve a problem for a business client, there is a psychic reward that I value.

I am curious about the remuneration. Here one can get on a panel periodically representing indigent folks at a rate of \$95 per hour with a maximum of \$135,000 annually. Granted, not all lawyers can get on the panels, but it is one of many options. We are fortunate in DC that notwithstanding our abundance of lawyers, our unemployment rate is relatively not bad at 5.4%. I do wonder how we do economically. I know there are folks making boatloads of money and I know there are folks squeaking by working for agencies serving the poor, etc. I gather even some solos do extraordinarily well. Are there any reliable studies out there that shed some light?

Ken Sprang

There is a huge difference between pro bono reporting and mandatory pro bono, and even the adoption of pro bono reporting was a VERY political issue at the time (and still is).

I don't doubt your passion in your belief in mandatory pro bono (or variations thereof), but your passion does not mean your position is necessarily right and the other side is necessarily wrong, or the reverse.

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This particular mailing list does not handle political discussions, especially those political discussions involving deep passions. What happens in those discussions is that those who believe strongly in an issue then to deny the sincerity of those in the opposition, and tend to demonise the opposition. I have seen it happen over and over, especially in the early days before the rules against political discussions here, and it is not a pretty sight.

Ernest Schaal

Maybe I have been on Solosez long enough to see what happens when people with strong deeply-felt opinions differ, and I already see the seeds of it here in this thread. There are some that think that everyone should have to do what they consider is the moral and right thing to do, and some who think that this is akin to slavery.

Normally, on such topics, everything starts civil, and that civil period can last a matter of days, or even weeks. And then someone on one side or the other will make a comment that is either insulting or particularly persuasive. Either way, someone on the other side responds in attack mode, and the flame wars begin.

It is possible for the flame wars not to occur, but usually they do happen when there are strongly-felt opposing arguments.

Ernest Schaal

Ernest,

I honestly don't understand your point. Certainly, it is POSSIBLE to make this a political discussion. But, I don't think it is inherently political, or even primarily political.

The broad subject of this thread is whether the high cost of law school can be justified in light of the income one can expect to earn in a legal career. That naturally led to the question whether increases in law school tuition will make it difficult or impossible for lawyers to serve low-income individuals. After all, if I have to maintain an effective billing rate of \$300 per hour in order to keep up on student loans, then that will necessarily prevent me from taking cases representing clients who can't afford to pay me that much.

So, we are left with a few choices: (1) screw the poor, we've got bills to pay; (2) force law schools to lower tuition; (3) change the law school

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curriculum to make it cheaper or to incorporate services for the poor; (3) change the legal profession; or (4) require attorneys to provide services to the poor at a reduced rate.

Maybe there are additional solutions to the problem. Heck, I don't know. But, this is an issue facing the legal profession. It's not an issue for the government. It's an issue for lawyers.

Suppose this was a listserv for pastry chefs. We might notice that people are getting fatter, partially due to the consumption of our products. I think that we would have a moral obligation to ASK THE QUESTION whether our industry could do anything to reduce obesity. That doesn't mean that we had to act, mind you. I'm only saying that we need to be circumspect.

The same thing goes here. Even if your opinion is that we don't have any obligation to the poor, you still have an obligation to consider the question and form a reasoned opinion. We're lawyers. The very fabric of society rests on our shoulders. The rights of citizens are only as strong as our willingness to protect them.

We are the stewards of justice. We are a profession. That used to mean something. A "profession" involves taking an oath to serve others. A discussion of our obligation to the poor rests on that oath, not politics.

Cheers,

David Allen Hiersekorn

David,

I can't believe you don't know better.

DECIDING whether or not to support the poor, or FORCING the law schools to lower tuition, or FORCING the law schools to change their curriculum, or REQUIRING attorneys to provide services at reduced rates are all POLITICAL decision based upon the government's power to force compliance with its decisions. Nothing that you are recommending is not in essence of political in nature, as they involve the power to coerce compliance.

I am not arguing that these decisions should be considered. Instead, I am addressing the fact that these are political decisions, and arguments pro and con are political arguments by their very nature, thus they do not belong on Solosez.

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I know you really, really want to discuss these political issues but this is not the place for that discussion, and your arguing that they are not political in nature is disingenuous at best and dishonest at worse.

Please take it to Solopol.

Ernest Schaal

As the legal profession supposedly polices itself, I guess you have just declared the profession a political entity.

Your the only one trying to turn this political or talking about the government.

And if deep seated passion is banned on solosez, well guess we are banning posts on bbq, sports (go cards), and many legal discussions.

Erin Schmidt

Ernest is exactly right. This is certainly a political discussion. Surprising that everyone doesn't immediately see that the issue of forcing someone to work for someone else for free by whatever means and for whatever supposedly good purpose is political.

Political discussions have been banned on Solosez so this thread should go to Solopol or somewhere else.

Marylou Lavoie, Connecticut

Given that the court system is an arm of the government and every statute is enacted by political process, perhaps we should just ban the list altogether. After all, even BBQ involves food safety regulations and every foodie is aware that is a highly contentious political issue.

Anita Fuoss

Then explain how this thread is any different then the thread discussing the NY state pro bono requirements for admission.

Our entire profession revolves around what government does or doesn't. If we cannot discuss issues that are both relevant and directly related to our profession, then how the heck are we supposed to be able to discuss the

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next contentious case that comes through the supreme court?

Oh but of course, we then won't be allowed to discuss that because it is political. Dang that darn slippery slope.

Erin Schmidt

Ernest,

I'm not going to belabor this point further, except to say that I said this is a problem for the legal profession. I meant that.

Cheers,

David Allen Hiersekorn
