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Dean's Message

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Dean's Message



In his latest President's Report to the Board of Overseers, President Derek Bok of Harvard gave his report the title of "A Flawed System." The system he referred to is the legal system.

Yet one more diatribe about law and lawyers might have passed without a ripple. In this case, though, it did not. For one thing, the President of Harvard commands an audience, if only by virtue of his position. For another, he should know something of his subject—he is a lawyer, and a decade ago was a distinguished member of the Harvard law faculty. Perhaps most importantly, he seems to have struck a responsive chord in the public mind. I have been sent copies of or had his report called to my attention by a number of people—legislators, lawyers, doctors, other academics.

It is difficult to sum up in a few words all that he had to say, without doing him and us an injustice. Basically, he finds our legal system overall to be grossly inequitable and inefficient. "There is far too much law for those who can afford it and far too little for those who cannot." He likens us to the state of affairs in the health care system twenty years ago—and suggests we should not follow that model for solving the problem. He believes half of our difficulty lies in the burdens and costs of our tangle of laws and legal procedures. He concludes from this that our legal system leads to much waste of money that could be put to better purposes.

He illustrates this latter point by arguing that far too large a proportion of our best young talent goes into law, rather than into other professions and skills where they could contribute more to the growth of society. He quotes a Japanese saying that "Engineers make the pie grow

larger, lawyers only decide how to carve it up." (Japan claims to have less than 15,000 lawyers, which is less than half the number American law schools now graduate *every year*.)

He finds our focus on adversary proceedings and our preoccupation with treating each case individually without regard for consequences to the larger society significant contributors to the problems of our legal system. He proposes no quick solutions, and indeed suggests that some which have been proposed, including those of Chief Justice Burger, may, standing alone, prove counterproductive.

I have often said that lawyers are my favorite people. There are no people who are more generous, more interesting, more fun to be with. Unfortunately, that perception is not widely shared by the populace.

Of particular interest to me is his discussion of the role of law schools in addressing these complex and pervasive difficulties. He thinks law schools have done surprisingly little to seek the knowledge that the legal system requires. "Even the most rudimentary facts about the legal system are unknown or misunderstood. We still do not know how much money is spent each year on legal disputes and services in the United States. We still hear law professors and eminent jurists refer to 'the litigation explosion' and 'our litigious society', even though the factual basis for such assertions is shaky at best."

He believes that law schools train their students more for conflict than for the gentler arts of reconciliation

and accommodation, and that this emphasis is likely to serve the profession poorly. He wants law schools to take the initiative in educating for a broader range of legal needs in our society. He wants legal research to become more sophisticated in the use of empirical and statistical methods. He wants more classes studying the legal system and its institutions, and believes that this will increase student interest in their studies and their commitment to their profession.

I have often said, and genuinely mean, that lawyers are my favorite people. As individuals, there are no people who are more generous, more interesting, and more fun to be with. Unfortunately, when seen as a group and in our professional capacities, that perception is not widely shared by the populace. There are many reasons for this, some we cannot do much about. President Bok suggests there are some we can do something about—some that go more to the system we administer than to the people who administer it.

I want this Law School to do its part in addressing these important issues. I do not expect to see dramatic change, either in legal education or in the profession itself. That is not our way. But I do foresee a gradual evolving of a consensus around these issues, and an evolutionary change in our institutions, including this one. I hope that the School and its alumni will work together to ensure that we remain one of the strong leaders in legal education.

In August, I will be participating in a panel discussion at the American Bar Association meeting on whether there are too many lawyers. The more I look at it, the less convinced I am by a simple yes or no answer. It is part of a much larger set of questions that go to many of the issues so provocatively raised by Derek Bok. I would welcome your comments and ideas on any of this.

Dean Sheldon J. Plager