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# Query: Should Users of the Legal System Pay for Legal Education

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# Query: Should users of the legal system pay for legal education?

by J. Thomas Sullivan

...If tuition continues to rise as it has in the past—141 per cent at private schools and 116 per cent at public schools from 1974 to 1982, according to a recent American Bar Association study—and new scholarship and financial aid resources are not forthcoming, deans worry that only the rich will be able to afford law school.<sup>1</sup>

The concerns expressed by law school deans interviewed for a recent *National Law Journal* article suggest long range problems of significance for the legal profession and our system of administering justice. Over the past 30 years a social and legal trend toward democratization of our nation's law schools has resulted in an expansion of opportunity within the legal profession to the broad strata of qualified American students interested in pursuing legal training without regard to race or ethnic background,<sup>2</sup> gender, and to an important degree, financial resources.

The rising costs of maintaining our law schools and ensuring quality education threatens to jeopardize accessibility to legal training for those individuals simply unable to bear the cost of law school.<sup>3</sup> Threatened cutbacks in scholarship, grant and low interest loan resources constitutes a critical problem for those potential students without personal or family financial resources sufficient to undertake the three year program of study which characterizes the major source of legal training available in the United States today.

The cost of legal education is currently underwritten through both public and private funding, yet the cost of financing the student's personal experience while in the institution remains largely an individual matter. Certainly, the total cost of legal education is not borne by student-paid tuition, although that remains the most significant source of funding for private law schools.<sup>4</sup> However, even at publicly financed institutions, the cost of legal education carried by the student is significant despite relatively lower tuition.

Even where tuition charges are minimal, most programs of study require that the student forego work or suffer lessened income production during the three years of study.

The alternative to forcing qualified applicants to suffer significant deprivation, assume unreasonably large loans,<sup>5</sup> or simply forego legal training, is to create a source of financial assistance that ensures all admitted students are able to complete their education without threat of economic termination. One untapped resource for continued access to legal training for the non-rich is user fees, imposed upon litigants as a means of generating funding for financial assistance programs. Fees imposed as court costs already comprise a significant source of funding for various programs determined to have widespread public value,<sup>6</sup> yet there has been little progress

1. Riley, *Law School Deans Quest for Funding*, NATIONAL LAW JOURNAL, September 26, 1983, at 1.

2. *Sweatt v. Painter*, 330 U.S. 629 (1950) (striking down attempt by the state of Texas to establish a separate—but clearly unequal—law school for black law students).

3. In *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), the Court essentially rejected the notion that educational opportunity limited by economic resources of the student does not suggest a problem of constitutional dimension. The Court held that education is not a "fundamental" right or liberty and that wealth is not a "suspect classification" for purposes of equal protection analysis.

4. "The problem is that private law schools are heavily dependent on tuition for their survival. Tuition dependency ranges from 50-60 per cent at well-endowed schools to above 90 per cent at newer schools. Administrators believe they are rapidly approaching a ceiling on tuition increases to cover rising expenses that have consistently outstripped the rate of inflation." *Supra* n. 1, at 30.

5. The *National Law Journal* survey suggested another dimension of this problem: "For students who take the plunge with loans, administrators fear heavy debts accumulated during law school may skew their job choices into the large firm and corporate counsel sectors, and away from legal services, public interest and government careers." *Id.*

This concern may be supported by the fact that the rate of placement of law graduates in public sector careers declined from 18 per cent in 1975 to 12 per cent in 1981, according to the EMPLOYMENT REPORT AND SALARY SURVEY. (New Orleans: National Association for Law Placement, 1982).

6. Targeted special court costs already underwrite a variety of significant functions, such as the cost of maintaining public law libraries. *See e.g.* Section 19-7-31, Miss. Code Ann. (1972). Special fees of \$25 per case are assessed in New Mexico to defray costs of analysis of chemical compounds in controlled substances cases, Section 31-12-8, N.M.S.A. (1983 Cum. Supp.), and for chemical or other tests for liquor or drugs in DWI cases, Section

toward making the legal system and law school partners not only in educational programs, but in the financing of legal education.

### Why user fees?

The concept of user fees is hardly unique in our system of taxation. It recognizes that users of particular public goods and services should bear a greater funding burden than taxpayers generally. Although large capital outlays or funding for major institutional development may be borne by taxpayers in the aggregate—such as the primary responsibility for capital investment in building public law schools—the cost of maintenance may be shifted to users to impose more equity in the underwriting of the public good or service. In this case, imposition of additional costs of court would serve to generate a “maintenance” fund geared toward continuing the recent tradition of democratizing our law schools.<sup>7</sup> The availa-

31-12-7. The sums collected are used to maintain the state's crime laboratory. Section 31-12-9, N.M.S.A. (1983 Cum. Supp.). Similarly, use of special fees may serve to promote certain functions of the criminal justice system, such as operation of probation departments. See Tex. Code Crim. Pro. Ann., article 42.12, section 6a(a). Specialized fees as a component of court-imposed costs assessed in probation cases in Texas may also be directed for repayment of court-appointed counsel expenses or for payment of restitution. *Id.*, sections 6j and 6m, respectively.

7. This “democratization” has most dramatically been evidenced by the infusion of women and ethnic minorities into legal training and the profession. Consider especially the concurring opinion of Justice Blackmun in *Bakke v. Board of Regents*, 438 U.S. 265 (1978), in which he prefaces his argument in favor of democratization by noting: “At least until the early 1970s, apparently only a very small number, less than 2 per cent of the physicians, attorneys, and medical and law students were members of what we now refer to as minority groups...” *Id.* at 403.

See also concurring opinion of Powell, J. in *Bakke*, including particularly the Harvard University statement of policy on admissions appended to his opinion, *Id.* at 321.

8. For example, the fiscal crisis afflicting the state of Washington in 1981-82 led to spending reductions at the University of Washington, prompting the resignation of law school Dean George Schatzki over concern for the quality of the school's educational program.

9. Based on 342,146 new filings in 1982; Office of Court Administration, TEXAS JUDICIAL SYSTEM ANNUAL REPORT, 1982 159.

10. *Id.* (based on 82,860 total new civil filings in county courts in calendar year 1982).

11. Based on total civil and domestic filings of 43,055 cases in fiscal year 1981-82; source: ANNUAL REPORT, JUDICIAL DEPARTMENT, STATE OF NEW MEXICO, 1982 26-27.

bility of adequate forms of financial assistance would serve to protect the quality of the profession and avert compromising competence in the Bar because of the financial inaccessibility of legal training.

Imposition of user fees would also suggest a stronger link between the institution which trains lawyers—the law school—and that in which trained lawyers function, our court system. Much like the medical school and the teaching hospital, programs within law schools are already designed to take full advantage of the legal system as a training alternative to classroom teaching experiences. Establishing a fiscal link between the courts and the law school should only serve to underscore the interdependence of these two major institutions.

Because the generation of the funds used to underwrite financial assistance would not constitute a form of general taxation and would be administered on a state level, fund availability would not be subject to fluctuation caused by tax reform measures or spending reductions.<sup>8</sup> The only factor which would seemingly affect the stability of funding, apart from administration overhead, would appear to be a marked decrease in filing of civil and criminal actions.

The projected cost of the program to individual litigants would be minimal in light of existing filing fees and should present no significant barrier to recourse through the courts. For example, a modest additional filing expense of \$3 per case filing would have generated over \$1 million in 1982 in Texas—a large state in which eight accredited law schools are located—based on filings in civil cases, not including juvenile, in the state's district courts alone during that year.<sup>9</sup> An additional \$250,000 would have been raised had the same fee been imposed upon county court civil filings.<sup>10</sup> In contrast, the roughly 43,000 filings in civil and domestic cases in New Mexico during the 1981-82 fiscal year would have produced a sum of nearly \$150,000;<sup>11</sup> a considerable principal in light of the fact that a single, state-supported law school is located in the state. By using pauper's oaths and affidavits of indigency to waive filing fees for

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