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Law and law schools must change

The other day, my 5-year-old proudly proclaimed that he wanted to be a veterinarian. Despite the fact that I practice and teach law, I breathed a sigh of relief at what seemed to be a well-founded choice. Pets proliferate and their care cannot be outsourced.

For a generation or more, the legal profession has been blindly steaming toward a catastrophe. In a typical year, American law schools toss an additional 43,000 graduates into a pool of more than 1,143,358 American lawyers. The real problem, however, is not the annual influx, but the daily outflux.

The Internet, aided by a crippling recession, has had a profound impact upon traditionally lucrative sources of income. Stock brokers, travel agents and advertising executives, to name a few, fill the ranks of the under and unemployed. And so it may be with lawyers.

The Internet and cloud computing have not only made it viable to outsource legal work to lower paying English-speaking nations such as India and the Philippines, but they have made it a profitable reality. In 2010, Indian legal revenue from American sources was \$440 million, an increase of 38 percent over 2008. Chemical giant DuPont estimates that it will save up to \$6 million in legal expenses by outsourcing to the Philippines.

When fully implemented, the swath cut by outsourcing will run deep as individuals and small businesses look overseas for routine document drafting.

Are the lawyers drafting these wills and contracts admitted to practice in a particular state? Maybe, and maybe not.

But if they are supervised and the output comports with a particular state's parameters, how does it differ from utilizing the services of a paralegal? More important, will the consumer really care?

If the legal profession is to survive in America, we must implement at least three organic changes in the manner in which lawyers are educated, regulated and certified.

First, colleges and universities have to address the obvious. There are far too many law schools and law students. Many of each will have to go and law schools will have to be honest with potential attendees when discussing the prospects for employment.

Law schools annually report the length of time that it takes a typical graduate to become employed. But employed at what? As pointed out by The New York Times in an article titled, "Is Law School a Losing Game?" (Jan. 8), this detail is conveniently omitted. Before laying down \$152,250 for a law degree from Yale, a potential law student should know if "employed" means wearing a suit or an apron.

Second, let's recognize law's only strength: You cannot outsource a courtroom. Trial lawyers have traditionally been looked down upon as second class citizens by virtually all of this nation's law schools. As a consequence, most law schools require no courses whatsoever on courtroom practice. Given that the courtroom may be the only venue in which an American lawyer will be able to find work in the next decade, this practice must change. Law schools should beef up their courses on trial work and institute a mandatory one-year trial internship.

Third, licensing agencies must similarly address the courtroom. This means that bar examinations must fundamentally change. Mandating arcane dissertations on The Rule Against Perpetuities must give way to trials. Essays must concentrate on trial tactics and there must definitely be an oral examination.

Indeed this has been the mandate of those organizations that certify trial specialists for the American Bar Association. While on the topic of specialization, it is high time for licensing agencies to stop protecting, yes protecting, those who have not been certified as a specialist in a particular area.

In New York, for instance, an attorney who has received certification as a specialist by an ABA accredited institution is ethically required to publish a demeaning disclaimer setting forth in part that specialization, "is not a requirement for the practice of law ... and does not necessarily indicate greater competence than other attorneys experienced in this field of law."

Law, like banking, has traditionally been a conservative profession, but even the most resistant banks eventually permitted online access. Continuation of law as a first rate profession demands that we recognize reality before it is too late.

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