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R. M. Houghton

Law Librarian and Asst. Professor of Law, University of Montana

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The Market for Lawyers in Montana

R. M. Houghton*

Only a few years ago a great debate was occurring within the legal profession as to whether too many or too few students were enrolled in law schools to meet the need for legally trained persons in the United States. The past four years appear to have resolved that argument. From a postwar low of 39,339 law students in 1953, enrollment rose gradually to 43,695 in 1960. Then it increased rapidly to the 1964 high of at least 59,813.¹ This is a national increase of approximately 37 percent since 1960. The University of Montana Law School has increased 80 percent in the same period: from seventy students in 1960 to 126 in 1964. Enrollment will further rise as larger freshmen classes work their way through to senior status.

For the past several years graduating classes at Montana have contained about twenty students but within two years this number will double to around forty. Clearly twenty law graduates per year do not meet the demands of the profession within the state, but can Montana absorb twice that number or perhaps more? The answer to such a query will have an effect on the legal profession, the Law School, and anyone planning a career in law.

Exact answers are not possible in this area. Available figures are imprecise and open to conflicting interpretations. Nonetheless, it is possible to identify the chief sources of supply and demand for attorneys and to arrive at approximate statistics. The small number of attorneys in Montana also facilitates the verification of estimates by personal observation.

DEMAND

NUMBER OF ATTORNEYS REQUIRED TO MEET MONTANA'S NEED FOR LEGAL SERVICES

Any attempt to ascertain the number of legally trained persons necessary to transact the total legal business of the state must begin with a determination of the number currently engaged in the practice of law in Montana.² Martindale-Hubbell, Inc. has compiled the following statis-

* B.A. University of Denver; M.A.L.S. University of Denver; LL.B. University of San Francisco; Law Librarian and Asst. Professor of Law, University of Montana.

¹SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AMERICAN BAR ASSOCIATION, LAW SCHOOLS AND BAR ADMISSION REQUIREMENTS IN THE UNITED STATES; 1964 REVIEW OF LEGAL EDUCATION 20 (1964). The actual law school population is greater than the above figures because a few of the unapproved schools and Stanford University Law School failed to report their enrollment.

²Primarily, there is a need for lawyers as private practitioners, government and military legal counsel, educators, judges and salaried counsel for firms.

tics, published by the American Bar Foundation, as to the number of lawyers in Montana:

	1960	1963
STATE LISTINGS	901 ³	887 ⁴
NUMBER OF LAWYERS	1028 ³	961 ⁴

The STATE LISTINGS cover the lawyers who have answered the Martindale-Hubbell questionnaire. To determine the total NUMBER OF LAWYERS in the state, an estimate is added to compensate for those failing to return the questionnaire. The estimates are undoubtedly excessive because of duplications and deaths.

	1960	1963
LAWYERS NOT ADMITTED BUT LISTED	47 ³	35 ⁴
RETIRED OR INACTIVE	48 ⁵	64 ⁶

The "Explanatory Remarks" preceding the tables define a lawyer as one admitted to the bar in a state or the District of Columbia. He need not be engaged in practice. Thus thirty-five of the 961 lawyers in the state in 1963 had not been admitted to practice in Montana but had been admitted elsewhere; and sixty-four of the 961 lawyers were inactive. Many of the lawyers who had not been admitted to practice in Montana will be found in federal agencies or with oil and gas firms, particularly in Billings.

Another source of information on the number of lawyers in Montana is the bi-annual directory compiled by the Clerk of the Montana Supreme Court. In contrast to the Martindale-Hubbell figure of 961 attorneys in 1963, the *Directory of Montana Attorneys, 1964-1965*, lists some 861 lawyers in Montana.⁷

This difference of 100 attorneys between the 1963 and 1964 figures from the two sources should not be taken as an indication of a decline in the Montana Bar. An adjustment can be made to bring the figures closer together. Since most of the thirty-five attorneys listed by Martindale-Hubbell as being within Montana but not admitted to practice in the state are engaged in work requiring legal training, their number should be added to the supreme court figures. This would bring the total to 896. The sixty-four listed as retired or inactive also may no longer be fully represented in the Montana Supreme Court directory. If this number were subtracted from the Martindale-Hubbell figure of 961 the result would be 897, a remarkable agreement.⁸ Both lists may be slightly in-

³AMERICAN BAR FOUNDATION, THE 1961 LAWYER STATISTICAL REPORT Table 1. (1961).

⁴AMERICAN BAR FOUNDATION, THE 1964 LAWYER STATISTICAL REPORT Table 10 (Advance proofs, supplied by publisher).

⁵AMERICAN BAR FOUNDATION, *op. cit. supra* note 3, Table 5.

⁶AMERICAN BAR FOUNDATION, *op. cit. supra* note 4, Table 15.

⁷Some retired or inactive lawyers may be included in this number.

⁸The sixty-four inactive or retired lawyers were subtracted because the figure sought is the number required to have the legal business of Montana.

flated. Taking this into account, it is possible to estimate—somewhat arbitrarily—that the legal profession in Montana presently numbers approximately 875.⁹

A second factor to be considered in determining the demand for legally trained people is the extent of any current shortage of attorneys in the state. As an aid in answering this question a questionnaire was sent in the fall of 1964 to selected practitioners in each county, asking the following questions:

1. Aside from regular turnover due to retirement, etc., can your county use additional lawyers at the present moment? How many?
2. Do you expect any growth in your county during the next five year (to Dec. 31, 1969) that might require additional lawyers?¹⁰

Similar questions were directed to state and federal legal officers. All of the government officers and 75 percent of the other attorneys replied. In addition to furnishing information on their own counties, some answers described conditions in adjacent areas. Several who did not reply lived in counties with populations barely over 1000 and having small growth potential. Thus, negative answers from these counties could be predicted. The answers received established a uniform pattern which was used to assess neighboring areas from which questionnaires were not returned. Therefore, the information received was much more complete than the 75 percent rate of return to the questionnaire would indicate.

The answers indicated that about twenty-five additional attorneys beyond normal turnover could be used in the state.¹¹ Adding this figure to the present 875 establishes that Montana needs approximately 900 lawyers to cover its legal activities as of January, 1965.

According to the latest population estimate for Montana,¹² the ratio of lawyers to population in Montana is roughly 1:800. However, the importance of the ratio between number of lawyers and population should not be over emphasized. Blaustein and Porter in their work summarizing the findings of the *Survey of the Legal Profession*, found a much closer relationship between number of lawyers and the economic activity in each state as measured by wholesale sales, the number of manufacturing establishments, the number of service establishments, the number of cor-

⁹This figure may not completely eliminate the inflation, but any error should be less than 3 percent, completely adequate for the purposes of this study.

¹⁰This question was designed to furnish additional background material and will not be considered further in this article.

¹¹As most lawyers would be reluctant to advertise potentialities for possible competitors, this estimate should be considered as conservative.

¹²As of July 1, 1964, Montana's population was approximately 705,000. U.S. BUREAU OF THE CENSUS, CURRENT POPULATION REPORTS, POPULATION ESTIMATES 10 (P-25 Series, No. 24, 1964).

porations, retail sales, etc.¹³ The number of lawyers in relation to population would thus be higher in the more populous states containing centers of industry and commerce and lower in more rural states such as Montana. The ratio of population per lawyer might be said to represent the economic mix of a state.¹⁴

The relation of business activity to the demand for lawyers was demonstrated by the answers to the questionnaire on the need for additional lawyers in Montana.¹⁵ Those counties having over 25,000 population needed less than 1000 population to support a lawyer, even allowing for a surplus of lawyers in some of the cities. Those counties with between 10,000 and 25,000 population generally hovered about 1:1000, while those below 10,000 required more than 1,000 people to support an attorney.¹⁶ Those answering the questionnaire from the most rural counties were quite uniform in their replies. Interest in having another attorney initiated when the ratio of 1:1500 was achieved. By the time the ratio reached 1:2000, the cry was for help!

FACTORS CREATING A CONTINUING DEMAND

In addition to a current shortage of attorneys in the state, a continuing annual demand is created by: 1. attrition due to death or retirement, 2. growth of the state's economy and population, 3. lawyers leaving for employment outside the state.

Attrition

Establishing an attrition rate for the legal profession is difficult. A study of the legal manpower needs of Florida estimated the national and state attrition rate to be 1 percent per year.¹⁷ The annual attrition rate for Montana would be greater. Florida, having grown rapidly in recent years, has a younger bar than Montana, and thus a lower attrition rate. This fact is confirmed by an examination of the age profile of the Montana Bar. On page 190, *supra*, the Martindale-Hubbell statistics on lawyers in Montana were set forth. For 885 of the 887 STATE LISTINGS a breakdown by year of birth is available:

¹³BLAUSTEIN & PORTER, *THE AMERICAN LAWYER* 13 (1954).

¹⁴This ratio is a convenient tool for determining the present need for attorneys, but any significant change in the state's economy would require its revision.

¹⁵A comparison of the counties from which the questionnaires were returned as to type of economy, population, etc., indicated a remarkable similarity in the elements creating a demand for lawyers.

¹⁶One county which had a prodigious amount of oil activity did not fit into this grouping. It had a population of just under 4000 but could support each attorney with only about 650 people.

¹⁷This study was conducted as an aid in planning future law school development in that state. Florida Board of Control, *Manpower Study—Legal Profession* app. C, 1962, available at <https://scholarworks.unf.edu/mlr/vol26/iss2/3> or Montana Law School Library.

	1960 ¹⁸	1963 ¹⁹	Change
Ante 1875	10		-10
1875-84	57	45	-12
1885-94	100	82	-18
1895-1904	69	66	- 3
1905-14	172	160	-12
1915-24	293	281	-12
1925-29}		135}	+22}
1930-34}	198	85}	
1935-	2	31	+29
No Data		2	
STATE LISTINGS	901	887	

Some of the losses, particularly in the group born between 1905 and 1924, might be explained by emigration from the state to accept other legal employment. However, for the purposes of this study, loss to the profession caused by attorneys leaving the state will not be considered as part of the attrition rate.

It is illuminating to compare the present relative sizes of the older age groups in Montana with the national averages for 1963 (percentages rounded):

Year of Birth	U. S. ²⁰	Montana ²¹
Ante 1895	9%	14%
1895-1904	14%	7%
1905-1914	22%	18%
1915-1924	24%	32%

These statistics show that a disproportionate segment of the Montana Bar is now over seventy years of age. The high attrition rate of lawyers in this group, starting even before 1960, is a main cause of the present shortage of lawyers in Montana. In 1963, the number of lawyers over seventy was more than 50 percent above the national average. Even though many of the sixty-four retired or inactive lawyers are in this group, the over seventy segment may contribute an almost one percent attrition rate by itself. When this is added to the attrition rate for the remainder of the profession, the total rate for the Montana Bar should be over 1.5 percent or about fifteen lawyers a year. This rate of 1.5 percent is not likely to last much beyond 1969, for the group of Montana attorneys born between 1895 and 1914 is smaller than the national average. As these men reach retirement age, the annual rate of attrition should decline to approximately one percent.

¹⁸AMERICAN BAR FOUNDATION, *op. cit. supra* note 3, Table 3.

¹⁹AMERICAN BAR FOUNDATION, *op. cit. supra* note 4, Table 12.

²⁰*Id.* Table 3.

Economic and Population Growth

The growth of a state, particularly its economic growth, is important in creating a demand for more attorneys. Unfortunately, Montana's rate of growth has lagged for several years.²² This is reflected by the comparatively low rate of population increase for Montana. Since the April, 1960 census figure of 674,767, it is estimated that the state's population had risen to 705,000 by July, 1964,²³ or about 7,000 per year.²⁴ This would require nearly nine additional attorneys per year at one per 800 people. The population increase from 1960 to 1963 was 5.2 percent for the United States but only 3.8 percent for Montana.²⁵ Had Montana equalled the national growth rate, twelve new lawyers instead of nine would be needed each year.

An increase in the size of the state bar by nine attorneys per year will be sufficient for the foreseeable future. However, continued attention should be paid to the state's economy since modest trends in the nation's economy can drastically alter Montana's growth possibilities.

Lawyers Leaving Montana

Each year some attorneys who have previously practiced law in Montana leave for outside employment. Those leaving for military duty or for court clerkships will probably return to the state, although some permanent loss is occasioned through offers received as a result of such service. Moves resulting from retirement are covered by the previously mentioned attrition rate and need not be discussed here.

During the period from 1962 to 1964, twenty-five attorneys left Montana.²⁶ Four of these left because of such factors as economic dislocation in the Butte area. The twenty-one others probably left behind them openings to be filled by new attorneys. This is a little over ten per year. An analysis of the 1959-1960 and 1964-1965 editions of the *Directory of Montana Attorneys* indicated that just under ten attorneys per year left the state. These figures are dependent upon a notification of the Clerk of the Montana Supreme Court, so may be understated. The net outgo is thus about ten year.²⁷ Numerically it is likely to increase if the economy of the country continues to advance beyond that of Montana.

²²Mont. Bus. Q., Winter 1963, p. 35. See generally "The Business Outlook" sections of the Mont. Bus. Q. for discussions of factors affecting the growth of Montana's economy.

²³*Supra* note 12.

²⁴The rate of increase varies from year to year. Between 1963 and 1964, an increase of only 4000 people was registered. *Supra* note 12, at 8.

²⁵*Supra* note 12.

²⁶Letter from Thomas J. Kearney, Clerk of the Montana Supreme Court, to R. M. Houghton, Dec. 14, 1964.

²⁷Surprisingly, the comparison showed that at least one attorney per year returned to Montana after practicing elsewhere—often for several years. Since these attorneys are not always admitted to the bar, their return to the state may be overlooked.

Another loss to the bar occurs when attorneys abandon their profession for other endeavors such as the clergy, business, teaching or politics. The exact extent of this loss in Montana is unknown, but it is estimated to be about one attorney per year.²⁸

SUPPLY

Turnover due to death or retirement, economic growth, mobility and other miscellaneous factors combine to create a market for about thirty-five attorneys per year in Montana. This market is supplied by the University of Montana Law School graduates; and by those passing the bar examination, or who are admitted by reciprocity.

The numbers admitted to practice by passing the state bar examination or by reciprocity over the past five years are as follows: 1960—19; 1961—8; 1962—11; 1963—8; 1964—13.²⁹ These average out to just under twelve per year. It is difficult to predict what this number will be in the future since the educational requirements for admission by examination were raised this year.³⁰ The Dean of the University of Montana Law School, the Chairman of the Montana State Board of Bar Examiners and others believe that most of those taking the bar examination have studied law through correspondence schools. Many of these studied law as an aid to a career outside of the legal profession. In competition with graduates of accredited schools, the correspondence lawyer is likely to suffer. Consequently, those entering the bar by examination probably do not fill twelve legal positions a year.

The Law School will thus have to supply twenty-five to thirty of the estimated thirty-five lawyers needed annually for the near future. In order to meet the state's requirements, it is necessary to graduate more than the number actually needed. From 1960 through 1964, the Law School graduated ninety-one students. Of these, eight out-of-state students left Montana summarily.³¹ Three others who went into the military service upon graduation appear to have accepted permanent employment outside the state. If these ratios continue, 12 percent of the University of Montana Law School graduates will not be available for employment within the state. Recent non-resident fee increases may curtail the number of out-of-state students,³² but increased enrollment pressure at law schools in other states may tend to offset any such decrease.

²⁸Part of the market for legally trained persons in Montana lies outside the usual supply and demand factors. Some positions in federal employment, legal education, and a few industries, particularly oil and gas, may be filled from out-of-state sources. The small number of such positions makes this a minor factor.

²⁹Montana Supreme Court.

³⁰Instead of the previously required two years, the supreme court now requires each applicant for the bar examination to have studied for three years at the undergraduate level. MONT. SUP. CT. R. XXV B. 3.

³¹These eight were not included in the number of those leaving the state for legal employment elsewhere after practicing in Montana.

³²The University of Montana has increased non-resident tuition and fees from \$599.50 to \$750.00. *Montana Law School*, University of Montana, 1964

In 1965, Montana should graduate twenty-one lawyers. Though all are admitted to practice upon motion,³³ the demand for lawyers in Montana will not be met. In 1966 over thirty should graduate and, applying the 12 percent shrinkage figure, supply and demand will be equal. If the graduating classes thereafter are near forty, with thirty-five remaining in the state, there will be a surplus of about eight lawyers a year. This surplus could be utilized to fill the twenty-five potential positions found to exist at present in the state. About half of these positions are in sparsely populated portions of eastern Montana and a surplus of lawyers may be necessary to make the area attractive to the prospective counselor. However, all of these vacancies could be filled by 1969.

CONCLUSION

Through 1969 the outlook for law graduates in Montana is most optimistic. After 1969 the situation appears less promising. With the retirement of the large number of lawyers over seventy years old, the attrition rate will be reduced. Even with a compensating increase in the economic growth rate for Montana, the Law School would only be able to place approximately twenty to twenty-five graduates per year. To compound the difficulty, the postwar baby crop should begin entering the law schools in 1968 and enrollment—and eventual graduation—might rise by another third.

To provide employment for the law graduates will be one of the major problems during the seventies. The condition of the state and national economy will be important. A rising economy requires additional legal services. The recent passage of the act providing compensation for counsel for indigent defendants in federal court will increase legal employment.³⁴ The introduction of group legal services has already been considered by the State Bar of California.³⁵ The adoption of such plans would open a new market for attorneys. Finally, an active placement program in the Law School might discover additional openings. The years of the Law School being merely an "order taker" will soon be over.

The challenge of the sixties has been to provide facilities for the education of an increased number of law students. The challenge of the seventies will be to provide positions for them.

³³REVISED CODES OF MONTANA, 1947, § 93-2002.

³⁴Criminal Justice Act of 1964, 18 U.S.C.A. § 3006A (Supp. 1964).

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