

# **What Law Schools Can Learn from Dental Schools in the 1980s Regarding the Consequences of a Decline in Applicants**

By Jerry Organ

For four consecutive years we have seen a decline in the number of applicants to law school and a corresponding decline in the number of matriculating first-year students. Over the last year or two, some have suggested that as a result of this "market adjustment" some law schools would end up closing. Most recently, the former AALS President, Michael Olivas, in response to the financial challenges facing the Thomas Jefferson Law School, was quoted as stating that he expects several law schools to close.

To date, however, no law schools have closed (although the Western Michigan University Thomas M. Cooley Law School recently announced the closure of its Ann Arbor branch).

Have law schools found ways to cut costs and manage expenses in the face of declining revenues such that all will remain financially viable and remain in operation? Is it realistic to think that no law schools will close?

Although there may be a number of people in the legal academy who continue to believe that somehow legal education is "exceptional" — that market forces may impose financial challenges for law schools in the near term, but will not result in the closing of any law schools — this strikes me as an unduly optimistic assessment of the situation.

To understand why, I think those in legal education can learn from the experience of those in dental education in the 1980s.

## **The Dental School Experience from 1975-1990**

In the 1980s, dental school deans, along with provosts and presidents at their host universities, had to deal with the challenge of a significant decline in applicants to dental school.

At least partially in response to federal funding to support dental education, first-year enrollment at the country's dental schools grew throughout the 1970s to a peak in 1979 of roughly 6,300 across roughly 60 dental schools. Even at that point, however, for a number of reasons — improved dental health from fluoridation, reductions in federal funding, high tuition costs and debt loads — the number of applicants had already started to decline from the mid-1970s peak of over 15,000.

By the mid-1980s, applicants had fallen to 6,300 and matriculants had fallen to 5,000. As of 1985, no dental schools had closed. But by the late 1980s and early 1990s there were fewer than 5,000 applicants and barely 4,000 first-year students — applicants had declined by more than two-thirds and first-year enrollment had declined by more than one-third from their earlier peaks. (Source — American Dental Association — Trends in Dental Education — U.S. Dental School Applicant and First-Year Enrollment Trends 1955-2009 (copy on file with author).)

How did dental schools and their associated universities respond to this changing market? Between 1986 and 1993, six private universities closed their dental schools: Oral Roberts University, Tulsa, Oklahoma (1986); Emory University, Atlanta, Georgia (1988); Georgetown University, Washington, D.C. (1990); Fairleigh Dickinson University, Rutherford, New Jersey (1990); Washington University, St. Louis,

Missouri (1991); and Loyola University, Chicago, Illinois (1993). (Source: Dental Education at the Crossroads: Challenges and Change, Table 1.1 (Institute of Medicine 1995)). According to a New York Times article from October 29, 1987, Georgetown — formerly the nation's largest private dental school — decided to close after a Price Waterhouse study found the school would face a multi-million dollar deficit within a few years. (Source: Tamar Lewin, Plagued by Falling Enrollment, Dental Schools Close or Cut Back, New York Times, Oct. 29, 1987).

Some of the primary factors contributing to the closing of dental schools were described as follows: financial issues were repeatedly described as critical, with dental education cited as an expensive enterprise that is or may become a drain on university resources, with average current-year expenditures roughly \$1 million more than current revenues; the declining size and quality of the applicant pool during the 1980s played a role in some closures by threatening the tuition base and prestige on which private schools rely; faculty and alumni resistance to change fed impatience among university administrators; and in some institutions, the comparative isolation of dental schools within the university left them with few allies and ill-prepared to counter proposals for "downsizing." (Source: Dental Education at the Crossroads: Challenges and Change, at 202-203 (Institute of Medicine 1995)).

### **The Law School Experience from 2004-2014**

In terms of applicants and enrollment over the last decade, the trends law schools have experienced look remarkably comparable to the experience of dental schools in the 1970s and 1980s. According to the LSAC Volume Summary, applicants to law schools peaked in 2004 with 100,600 applicants (and roughly 48,200 first-year students). By 2010, applicants had fallen to roughly 87,600, but first-year enrollment peaked at 52,500. Over the last four years, applicants have fallen steadily to roughly 54,700 for fall 2014, with a projected 37,000 first-years matriculating this fall, the smallest number since 1973-74, when there were 40 fewer law schools and over one thousand fewer law professors. (Source — ABA Statistics) (For the analysis supporting this projection of 37,000 first-years, see my blog post on The Legal Whiteboard from March 18, 2014.)

The two charts below compare the dental school experience from 1975 to 1990 with the law school experience in the last decade. One chart compares dental school applicants with law school applicants and one chart compares dental school first-years with law school first-years. (Note that for purposes of easy comparison, the law school numbers are presented as one-tenth of the actual numbers.)

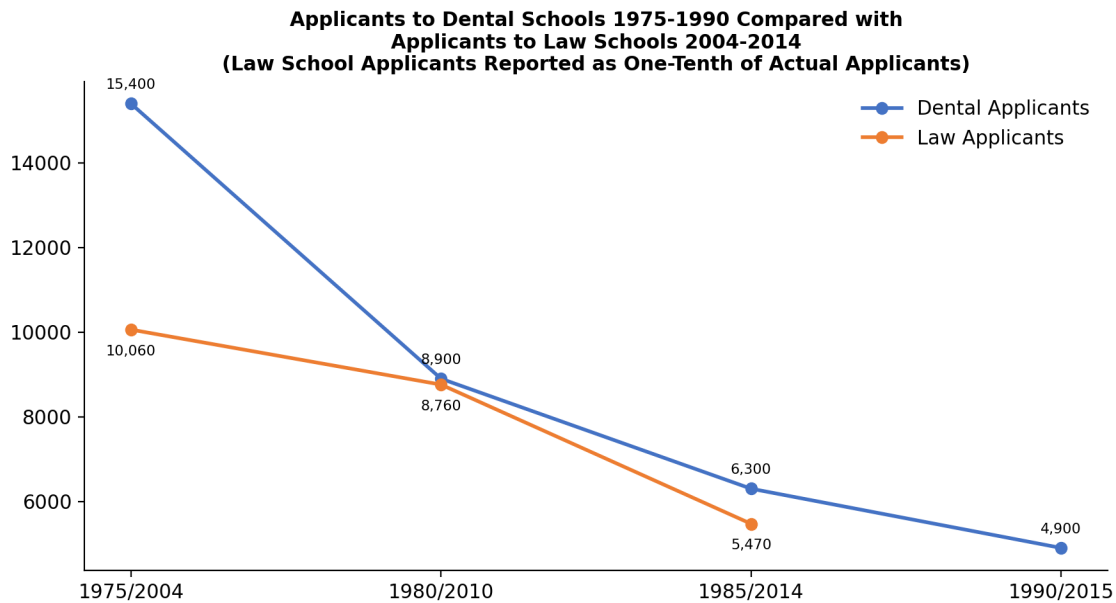


Chart recreated from figures cited in the text; the 1980/2010 dental and 2014/2015 endpoint values are approximate readings from the original chart.

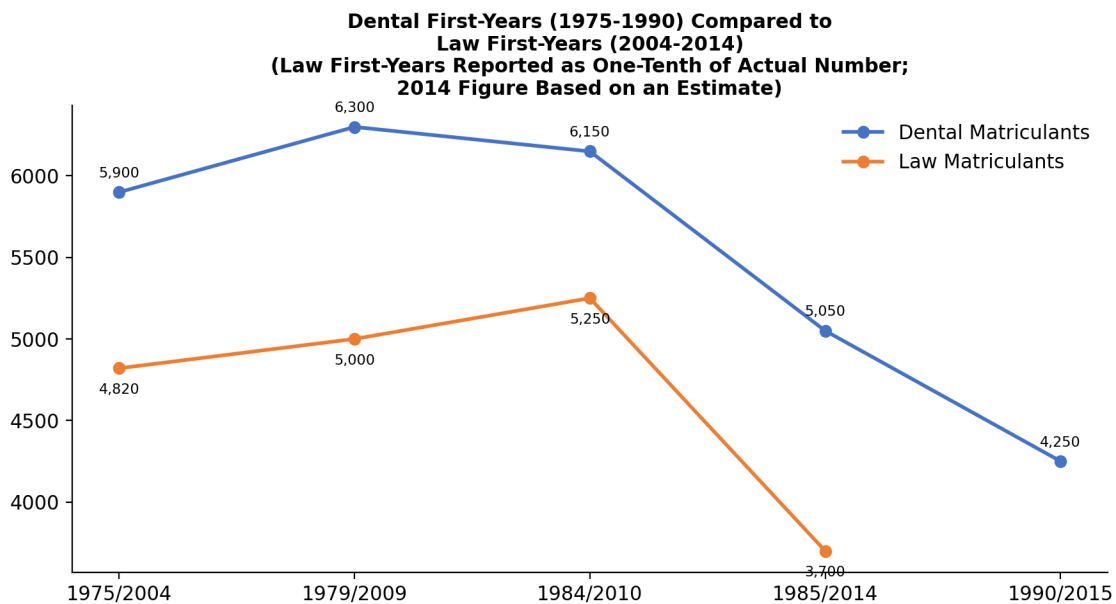


Chart recreated from figures cited in the text; the 1979/2009 and 1984/2010 interior points are approximate readings from the original chart.

(Sources — American Dental Association — Trends in Dental Education — U.S. Dental School Applicant and First-Year Enrollment Trends 1955-2009 (copy on file with author) and the LSAC's Volume Summary (with my own estimates for 2014 based on the LSAC's Current Volume Summary)).

## The Law School Experience 2014-2019

Notably, these charts do not bode well for law schools. The law school experience tracks pretty closely the dental school experience over the first ten years reflected in the charts. For law schools, 2014 looks a lot like 1985 did for dental schools.

There might be any number of reasons why the law school experience over the next several years might be different from the dental school experience in the late 1980s and early 1990s, such that the next several years do not continue as a downward trend in applicants and matriculants. The market forces associated with changes in the dental profession and dental education in the 1980s are not the same as the market forces associated with changes in the legal profession and legal education in the 2010s and the cost structures for dental education and legal education are not exactly the same.

The problem for law schools, however, is that without an upward trend law schools will continue to face significant financial pressures for the next few years just as dental schools did in the late 1980s. There might be some encouraging news on the employment front over the next few years as the decreasing number of matriculants will mean a decreasing number of graduates in 2015, 2016 and 2017. Even without any meaningful growth in the employment market for law graduates, this decline in the number of graduates should mean significant increases in the percentage of graduates finding full-time, long-term employment in bar passage required jobs. Over time, this market signal may begin to gain traction among those considering law school such that the number of applicants to law school stops declining and perhaps starts increasing modestly.

But the near term remains discouraging. The number of people taking the June 2014 LSAT was down roughly 9% compared to June 2013 and the anticipation is that the number of test-takers in the most recent administration in late September was down as well compared to October 2013. Thus, applicants well might be down another 5-8% in the 2014-15 admissions cycle, resulting in perhaps as few as 51,000 applicants and perhaps as few as 35,000 matriculants in fall 2015. Even if things flatten out and begin to rebound modestly in the next few years, it would appear to be unlikely that the number of matriculants will climb back near or above 40,000 before the fall of 2017 or 2018.

Moreover, if current trends continue, the matriculants in 2015 also are going to have a significantly less robust LSAT/GPA profile than the matriculants in fall 2010. As I noted in a blog posting on March 2, 2014, between 2010 and 2013, the number of law schools with a median LSAT less than 150 grew from 9 to 32, and the number with a median LSAT of 145 or below grew from 1 to 9.

## **What Does this Mean for the Average Law School?**

Assume you are the Dean at a hypothetical private law school that had 600 students (200 in each class) and a budget based on \$18 million in JD tuition revenue in 2010-11. (This reflects a net tuition of \$30,000 from each student — with nominal tuition set at \$40,000 but with a discount rate of 25%.)

Further assume that with this budget, your law school was providing \$2.0 million annually to the university with which it is affiliated. As of 2010-11, your entering class profile reflected a median LSAT of 155 and a median GPA of 3.4.

Assume first-year enrollment declined to 170 in 2011, to 145 in 2012, and to 125 in 2013, a cumulative decrease in first-year enrollment since 2010 of 37%. As you tried to balance enrollment and profile, the law school managed to maintain its median LSAT and GPA in 2011, but saw its LSAT and GPA medians decline to 153 and 3.35 in 2012 and to 152 and 3.30 in 2013.

This means that for the 2013-14 academic year, the law school had only 440 students, a decrease of roughly 27% from its total enrollment of 600 in 2010, with a much less robust entering class profile in comparison with the entering class profile in 2010. (Note that this assumes no attrition and no transfers in or out, so if anything, it likely overstates total enrollment). (For comparison purposes, the National Jurist recently listed 25 law schools with enrollment declines of 28% or more between 2010-11 and 2013-14.)

Assume further that the law school had to increase its scholarships to attract even this smaller pool of students with less robust LSAT/GPA profiles, such that the net tuition from each first-year student beginning in fall 2012 has been only \$25,500 (with nominal tuition now set at \$42,500, but with a discount rate of 40%).

For the 2013-14 academic year, therefore, you were operating with a budget based on \$12,411,000 in JD tuition revenue, a decrease in JD tuition revenue of over \$5.5 million since the 2010-11 academic year, over 30%. ( $170 \times \$32,500$  for third years (\$5.525 million),  $145 \times \$25,500$  for second years (\$3.698 million), and  $125 \times \$25,500$  for first-years (\$3.188 million)).

What does this mean? This means you have been in budget-cutting mode for over three years. Of course, this has been a challenge for the law school, given that a significant percentage of its costs are for faculty and staff salaries and associated fringe benefits. Through the 2013-14 academic year, however, assume you cut costs by paring the library budget, eliminating summer research stipends for faculty, finding several other places to cut expenditures, cutting six staff positions and using the retirement or early retirement of ten of your 38 faculty members as a de facto "reduction in force," resulting in net savings of \$3.59 million. In addition, assume you have gotten the university to agree to waive any "draw" saving another \$2 million (based on the "draw" in 2010-2011). Thus, albeit in a significantly leaner state, you managed to generate a "balanced" budget for the 2013-14 year while generating no revenue for your host university.

The problem is that the worst is yet to come, as the law school welcomes a class of first-year students much smaller than the class of third-years that graduated in May. With the continued decline in the number of applicants, the law school has lower first-year enrollment again for 2014-15, with only 120 first-year students with a median LSAT and GPA that has declined again to 151 and 3.2.

Projections for 2015-16 (based on the decline in June and October 2014 LSAT takers) suggest that the school should expect no more than 115 matriculants and may see a further decline in profile. That means that the law school has only 390 students in 2014-15 and may have only 360 students in 2015-16 (an enrollment decline of 40% since 2010-11). Assuming net tuition for first-year students also remains at \$25,500 due to the competition on scholarships to attract students (and this may be a generous assumption) — the JD tuition revenue for 2014-15 and 2015-16 is estimated to be \$9,945,000, and \$9,180,000, respectively (a decline in revenue of nearly 50% from the 2010-11 academic year).

In reality, then, the "balanced" budget for the 2013-2014 academic year based on revenues of \$12,411,000, now looks like a \$2,500,000 budget shortfall in 2014-15 and a \$3,200,000 budget shortfall for the 2015-16 academic year, absent significant additional budget cuts or new revenue streams (with most of the "low hanging fruit" in terms of budget cuts already "picked").

While you may be able to make some extraordinary draws on unrestricted endowment reserves to cover some of the shortfall (assuming the law school has some endowment of its own), and may be creative in pursuing new sources of revenue (a certificate program or a Master of Laws), even if you come up with

an extra \$400,000 annually in extraordinary draws on endowment and an extra \$400,000 annually in terms of non-JD revenue you still are looking at losses of at least \$1,700,000 in 2014-15 and at least \$2,400,000 in 2015-16 absent further budget cuts. Even with another round of early retirement offers to some tenured faculty and/or to staff (assuming there are still some that might qualify for early retirement), or the termination of untenured faculty and/or of staff, the budget shortfall well might remain in the \$1,000,000 to \$1,700,000 range for this year and next year (with similar projections for the ensuing years). This means the law school may need subsidies from the university with which it is affiliated, or may need to make even more draconian cuts than it has contemplated to date. (For indications that these estimates have some relation to reality, please see the recent stories about budget issues at Albany, Minnesota and UNLV.)

## **Difficult Conversations — Difficult Decisions**

This situation will make for some interesting conversations between you as the Dean of the law school and the Provost and President of the university. As noted above in the discussion of dental schools, the provost and president of a university with a law school likely will be asking: How "mission critical" is the law school to the university when the law school has transformed from a "cash cow" into a "money pit" and when reasonable projections suggest it may continue to be a money pit for the next few years? How "mission critical" is the law school when its entering class profile is significantly weaker than it was just a few years ago, particularly if that weaker profile begins to translate into lower bar passage rates and even less robust employment outcomes? How "mission critical" is the law school to the university if its faculty and alumni seem resistant to change and if the law school faculty and administration are somewhat disconnected from their colleagues in other schools and departments on campus?

Some universities are going to have difficult decisions to make (as may the Boards of Trustees of some of the independent law schools). As of 1985, no dental schools had closed, but by the late 1980s and early 1990s, roughly ten percent of the dental schools were closed in response to significant declines in the number and quality of applicants and the corresponding financial pressures. When faced with having to invest significantly to keep dental schools open, several universities decided that dental schools no longer were "mission critical" aspects of the university.

I do not believe law schools should view themselves as so exceptional that they will have more immunity to these market forces than dental schools did in the 1980s. I do not know whether ten percent of law schools will close, but just as some universities decided dental schools were no longer "mission critical" to the university, it is not only very possible, but perhaps even likely, that some universities now will decide that law schools that may require subsidies of \$1 million or \$2 million or more for a number of years are no longer "mission critical" to the university.

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