President's Page

by Erica Moeser

I suppose that there are worse things than living in a time of economic uncertainty. We could be living in a time of certainty that there is still a long trip to the bottom before we begin moving in the opposite direction.

The state agencies that provide licensing services in each jurisdiction for the good of the public are struggling along with other units of state government. Travel bans, hiring freezes, and furloughs are not uncommon. The volume of work never gets furloughed, unfortunately, and so the task of administering a bar examination in February and July is that much more daunting for the people to whom the responsibility for processing applications for admission to the bar is assigned. These are tough times, and there is no clear end in sight.

It remains to be seen to what extent these are similarly tough times for law schools. Figures from the Law School Admission Council's website (http://lsacnet.lsac.org) convey some encouraging news about the size of the applicant pool, given the times; but there is more to the story than the number of applicants for the almost 50,000 seats in the first-year class, or the projections of the number of matriculants when the class of 2012 enters law school in the fall of 2009. So much can happen between now and the date when law school doors swing open in a few months, and some of it could be awful.

First of all, shrinking resources are threatening the quality of educational programming, particularly at state universities. Programmatic cuts—some severe—coupled with reductions in faculty size foretell that increased class sizes and limited educational opportunities are likely possibilities. Law schools that have spent the past few years enhancing their offerings and redoubling their efforts to prepare students for practice may be forced to scale back the very aspects of their programs that have led their students to success on licensing tests and greater competence as they enter law practice.

The risk of falling applicant numbers or smaller incoming classes may lead some law schools to dig deeper into the applicant pool, posing serious problems for students admitted with weaker credentials. They may fail to thrive in greater numbers if their educational needs go unmet during law school. Those students who persist and earn a J.D. may emerge from law school unprepared for the bar examination, trussed up in law school debt, and unable to obtain the credential for which they trained. If history is instructive, some law schools will trim their class sizes to maintain the level of quality of the student body they have previously attained, but others will not.

And then there is the tremendous question mark surrounding student debt. It is unclear if student loans will be available from the usual sources as lenders exercise a greater level of caution in the current environment and as credit remains tight. Law school

may lose some of its luster when would-be students assess the cost of attendance against the uncertain career rewards that may follow. Without loans, access to legal education will be restricted. Here, too, if the unavailability of student loan funds or the unwillingness of students to attend becomes an issue, will classes shrink in size or will law schools dig even deeper into the applicant pool to fill their seats?

Under the grimmest scenarios, what will become of the crop of graduates in 2012—and perhaps 2013 and beyond—who emerge from law school and falter on the bar examination in greater numbers, or who succeed on the bar examination but experience rejection when they enter the legal hiring market?

The National Association of Law Placement is doing an excellent job of monitoring the trends that are emerging as law firms fail, merge, and downsize, and as lawyers migrate—or find that lateral movement is impossible. The legal press has been filled with reports on the toll that the economy has taken on law firms and the practice niches that have been hit hardest by the current conditions.

Members of the bar admission community—bar examiners, bar admission administrators, and Supreme Court justices—will have an opportunity to contemplate the developing circumstances brought on by the nation's economic woes when NCBE hosts its Annual Conference in Baltimore this April. At press time, this invitational event was almost fully subscribed. The enthusiastic response from our constituents speaks to the fact that the attendees recognize both the problems they face as well as the benefit in sharing experiences in order to deal with—and overcome—those problems.

Later this year, as spring turns to summer, NCBE plans another invitational gathering to discuss the implementation of a uniform bar examination (UBE) with representatives from those jurisdictions that are interested in embarking upon the first voyage of this concept. The idea of a UBE is maturing slowly, with input from every side of the profession. To help our readership think through the trade-offs in moving to a UBE, most of this issue of our magazine is devoted to a series of short essays written by some of the people who have participated in shaping the current concept.

The UBE is presently envisioned as a two-day test consisting of NCBE's three tests that already comprise part or all of the battery of examination components in many jurisdictions. Subscription to the concept will mean accepting a common weighting scheme that will facilitate the portability of scores from one jurisdiction to another, with the receiving jurisdiction setting the minimum score that it will accept and otherwise controlling all other aspects of admission, including character and fitness screening.

The UBE process will not foreclose a jurisdiction's prerogative to require that an applicant, armed with a portable score, learn or demonstrate knowledge of law peculiar to the state. Models that demonstrate how this can be accomplished will be encouraged, perhaps through the funding by NCBE of pilot projects that test their efficacy.

Facilitating the entry of the most recent crop of graduates into the practice of law without requiring them to face multiple bar examinations may represent a victory—one new lawyer at a time—when news on the career front during the current economic downturn is not encouraging. This strengthens the argument for a UBE.