THE Bar Examiner

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Letter from the Chair

Early in my law practice, I was introduced to utility rate regulation for electric, gas, and telephone companies. In the 1970s this was viewed as a rather arcane field of law, with only a few practitioners. And, as I continued doing this work through the 1980s, I thought that the dominant characteristic of this area of the law was constancy—utilities filed regular petitions for rate increases, the rate formulas were well established, and the facts to be applied to those formulas evolved at a comfortable snail's pace.

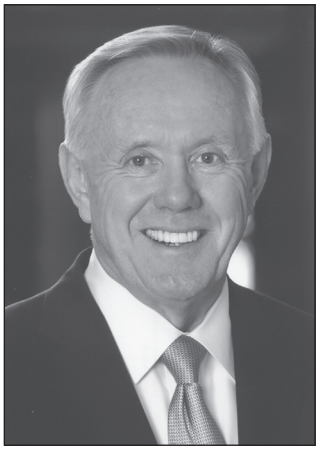
By the middle of the 1990s, however, dramatic changes in federal legislation, substituting competitive forces for regulatory ones, virtually eliminated rate regulation of telephone companies and dramatically impacted regulation of electric and gas utilities. A few examples are the elimination of the electric utilities' monopoly over power production by encouraging the development of independent power producers, the imposition of environmental mandates to expand the use of renewable resources even when they are not the least costly option, and the prospect of future carbon reduction requirements in response to climate change concerns.

You likely see where I am going with this analogy. In the early 1990s, when I became a member of the Minnesota Board of Law Examiners, I was similarly struck with the constancy of our work—no one challenged the need for a bar exam nor the eligibility requirements to sit for the bar, the testing tools were reasonably well developed and test administration was somewhat routine, the ABA took responsibility for law school accreditation, and the character and fitness issues involved reasonably predictable types of misconduct. It seemed that the course had been set and bar examiners simply needed to continue performing well-defined tasks.

This issue of the *Bar Examiner* provides a representative glimpse into the dynamic changes that have impacted bar admissions in the recent decade. Who would have thought that bar examiners would delve into the intricacies of psychometric formulas? Why would we have anything more than a passing interest in lawyer licensing in South Africa? And who could have imagined the range of techniques that would be employed in attempts to break through test security?

Although character and fitness standards have not changed materially, the factual circumstances of bar applicants have been significantly impacted by the increases in student loan debt, the troubled economy and resulting decline in

the legal job market, the availability of an increased variety of dependency-inducing drugs, advances in our understanding of the requirements of the rehabilitation process, the introduction of conditional admission rules, and the emerging implications of social networking. These have combined to alter the landscape of character and fitness investigations.



Testing methodology has greatly improved. The significant expansion of testing expertise by the National Conference, and the ongoing research that expertise has enabled, have enhanced the reliability of the testing instruments. Further, the work on a Uniform Bar Exam has provided impetus and focus to make further testing improvements. But changes in the testing environment have added new layers of difficulty for bar examiners, from the wide range of testing accommodations necessary to comply with the Americans with Disabilities Act, to the regulation of laptop use in test administration, to the increasing vigilance needed for test security in the face of greater sophistication in the efforts to cheat.

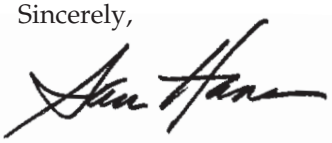
Perhaps the most dramatic change of all will come from the increasing international pressure to expand access to the legal profession of the United States by opening our bar examinations to foreign law graduates. This will necessarily spur serious reexamination of the standards for and approaches to providing an adequate legal education. Where successful, it will erect serious data and distance barriers to character and fitness investigations by the various jurisdictions and will compromise the effectiveness of the ABA law school accreditation process. Obviously, domestic law schools that do not have ABA accreditation would argue that their graduates should have access to our bar examinations that is at least equal to that of graduates from non-ABA-accredited foreign law schools. The effort to open American legal practice to foreign law graduates could undermine the traditional power of states to control and regulate bar admissions and the legal profession.

Ultimately, this change could elevate the bar examination to a role that it was not intended to perform—that of being the sole judge of who is sufficiently competent to practice law in our various jurisdictions. Until now, bar examiners could rely on the partnerships they have with law schools, which certify that their graduates have the character and fitness necessary to become members of the bar, and which verify that their graduates have developed the professional competency needed for law practice. Because many of the competencies we expect of newly admitted lawyers are difficult to adequately test within the limits of the bar exam, bar examiners have taken great comfort from knowing that the law schools have more thoroughly evaluated their graduates' abilities at legal analysis and reasoning, have provided them with opportunities to develop practice skills, and have imbued in them a well-developed sense of professional ethics and their responsibilities to the justice system.

The Annual Bar Admissions Conference, recently held in Austin, Texas, provided a much-needed opportunity to explore the implications of these dramatic changes to bar admissions. This is a critical time for bar examiners, and the courts that they serve, to engage in serious dialogue over the policy implications of these changes. We can be assured that the only thing constant in bar admissions, at least for this decade, will be change. Fortunately, we have the infrastructure to facilitate this dialogue, and we can take some comfort from knowing that we are all in this together. It is no overstatement to say that the future of legal education, the legal profession, and, ultimately, the rule of law is at stake.

Best regards to all.

Sincerely,



Sam Hanson