

PRESIDENT'S PAGE

by Erica Moeser

Unless you have been living under a rock or in a cave, the controversies that are swirling around legal education and the practice of law are all too familiar. Rarely a week goes by when the national press does not report on one or more of the following:

Law school applications are down.

Law graduates cannot find jobs as lawyers.

Law schools do not prepare students for practice, particularly in solo and small-firm settings.

Law school debt is skyrocketing.

Law school is too long/not long enough.

Law school is too expensive.

There are too many law schools.

Law school accreditation should focus on more, less, or different criteria.

There is a maldistribution of lawyers.

There should be a two-tiered model for producing lawyers, not unlike the solicitor/barrister approach in the United Kingdom.

There is insufficient access to U.S. practice for foreign-educated lawyers.

There is insufficient mobility for U.S. lawyers within the United States.

Those of us in law each bring our own satchel of life experiences to thinking about these issues. It is understandable that those with the greatest stake in the outcomes are often the most vocal. Sometimes



it is difficult to distinguish between expressions of self-interest and constructive comment. The blog phenomenon is tailor-made for venting on these topics.

So what do these issues and this national discussion mean for members of the bar examination community—the bar examiners who make judgments about entry-level competence, the justices who set admissions policy, and the administrators who seek and spend the resources necessary to perform the consumer protection work that is at the heart of licensing lawyers?

The issues mean a great deal. They are significant. They are important to the profession. Bar examining may not be the fulcrum in this, but it is more than the simple gate through which individuals pass from the classroom to the profession. Bar examiners need to know about the issues and controversies as they affect the relatively brief period when the formation of lawyers occurs—both during law school and in the first years during which client matters are entrusted to new lawyers. And bar examiners and members of courts need to participate in the national discussion lest the conversation be deprived of what our constituency can contribute.

The major item of interest to bar examiners will likely be the fact that there seems to be a market correction under way as law school applications dwindle. Many law schools, it now appears, are shrinking their entering classes. Even so, will the

current crop of entrants represent the same level of ability and promise as existed when the competition for seats was far more intense? And further, how any shrinkages relate to the distribution of applicants and law schools remains to be seen.

It is reasonable to prepare for a dip in the performance of the graduates on the July examinations in 2015 and 2016 as the September 2012 and 2013 matriculants complete their degrees. It is also reasonable to expect that with employment figures for emerging lawyers as pessimistic as they have been recently, more applicants will appear with large debt burdens and no realistic means of dealing with them.

The moves to change the law school curriculum will also have effects on what bar examiners see in the licensing setting. To the extent that both bar examiners and legal educators focus on the knowledge, skills, and abilities that new lawyers need as “factory-installed equipment” before being licensed, both the law school curriculum and the content of the bar examination are destined to change. Of course, change can mean adding elements to legal education or the bar exam as we know it, but it can also result in a reduction of elements that may be worthy of retention.

Calls to shorten law school are heard periodically. If ideas along that line gain traction this time around, the question “what must go?” must be posed. At a time when clinical skills, research skills, and writing skills are being established as important ingredients in the formation of lawyers, how can these elements be shoehorned into a shortened period of legal education unless it is at the expense of learning the law to which those skills should be applied?

If the law school curriculum declines in rigor, for whatever reason, is the two-day bar examination model sufficient to capture a sampling of what an applicant should know and be able to perform? Should an earlier test be administered to weed out

those who are unqualified to proceed, perhaps with the idea of subjecting them to additional education before they attempt the qualifying examination a second time?

Law school accreditation issues are currently prominent, as the regulation of law schools is seen, accurately, to affect the cost of legal education, the employment prospects of law graduates, the likelihood of access to the profession via the bar exam, and the capacity of law school graduates to perform work at the professional level.

It is hard to imagine that we will not see change all around us over the next five years. The question that bar examiners and courts must ask and answer is how the legitimate purpose of consumer protection must adjust to new realities, whatever they turn out to be. Perhaps jurisdictions will impose additional pre-admission requirements for things they value but do not test on the bar exam—the New York pro bono requirement comes to mind, as does the current California initiative to add entrance requirements and the established practice in Delaware of requiring that candidates complete a five-month clerkship.

As readers of this magazine know, the NCBE Board of Trustees has authorized the addition of Civil Procedure to the Multistate Bar Examination. I am pleased to announce that Civil Procedure will appear for the first time on the MBE administered in February 2015. Additional details appear in News and Events on page 61.

On a final note, the bar admissions community lost one of its own in mid-December when Chris Thomas, the Executive Secretary for the Arkansas State Board of Law Examiners, died unexpectedly. He had planned to retire this spring. Chris was a fixture at many NCBE events and will be remembered affectionately for his memorable way of speaking, which was s-l-o-w-l-y. 🗣️