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Calls to Eliminate Bar Exams Are Premature

By A. Benjamin Spencer

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Calls for eliminating bar exams to improve fairness and diversity in the legal profession are increasing, but A. Benjamin Spencer, dean of William & Mary Law School, argues that eliminating them is not the answer. They should be transformed into a more effective gauge of professional readiness, which, he contends, can be achieved if more states adopt the Uniform Bar Exam.

Calls to eliminate the bar exam for lawyers are growing louder. Detractors say the bar exam reinforces inequities in the legal profession, hobbles inclusivity and doesn’t do much to ensure the quality of legal practice.

They’re not entirely wrong—but the immediate answer isn’t to eliminate the exam. Rather, the goal should be transforming it into a more effective gauge of professional readiness that facilitates access to the legal profession.

A key step in that direction, at least for the time being, is to expand adoption of the Uniform Bar Examination (UBE) across more states. Some three dozen states and other jurisdictions have already taken the step.

Uniform Bar Helps Level the Playing Field

The UBE represents a natural transition away from traditional bar exams, which create an inequitable barrier to entry for aspiring lawyers. Preparation for these conventional exams often takes two months—time best spent unemployed and focused on getting ready. Further, students often need costly prep courses—luxuries that first-generation, lower-income, and underrepresented students often cannot afford or may not be aware of.

Passage rates for bar exams help tell the story: In 2020, 88% of White people who took a bar exam for the first time managed to pass, while 80% of Asians, 78% of Native Americans, 76% of Hispanics, and 66% of Blacks did so.

Such disparities contribute to entrenched inequities and a lack of inclusivity that damage the integrity of our legal and criminal justice systems. Consider: 86% of lawyers are non-Hispanic White people, according to a 2020 report from the American Bar Association.

The UBE helps level the playing field on this front: The National Conference of Bar Examiners provides free study aids for the UBE, and no specialized prep courses are necessary. The UBE also tends to reduce the amount of time needed to prepare for the test.

Likewise, the UBE can save test-takers money, with fewer tests to take (and fewer exam fees to pay) in order to practice in multiple states. That’s to say nothing of the time involved with taking long tests for more than one state.

Uniform Bar Is a Better Test of Skills
Another drawback of the traditional bar exam: It’s less effective at assessing whether students have the skills they need to be successful attorneys. With an overemphasis on memorization of legal rules, the traditional bar exam can lead law schools and students to concentrate their efforts on the information that examinees will need to recall for the exam.

The UBE—with its inclusion of a performance test that requires working with a simulated case file—puts a greater emphasis on core analytical and critical thinking skills versus rote memorization. Importantly, states that want lawyers to understand their particular legal rules can add a stand-alone component to the UBE, which helps assure familiarity with local law.

In gauging minimum competence to practice law (a concept that still doesn’t have a universal definition) any bar exam isn’t the be-all, end-all. The Institute for the Advancement of the American Legal System underscored this in a two-year study released last October. Its authors recommended radical changes like eliminating essay questions from written bar exams and banishing written exams as a stand-alone form of assessing minimum competence.

Meanwhile, the National Conference of Bar Examiners is developing a next-generation bar exam that will use “an integrated exam structure to assess both legal knowledge and skills holistically in a single, practice-related examination.”

These ideas are worth exploring, but will need much more consideration before we adopt them broadly.

Improving Testing Practices

In the meantime, we can’t wait to improve on the testing practices already in place. For the time being at least, let’s not throw out the bar exam entirely. There’s still value in having a robust evaluation of legal competence, but it’s time we bring it up to speed with our values and priorities as a society in 2021.

Expanding adoption of the UBE keeps a strong assessment tool in place while enhancing job opportunities for new graduates. And it grows the prospective pools of job candidates for individual states, such as Virginia.

Lawyers aren’t the only ones who win. It’s better for our entire legal system, and everyone it reaches, if we can refine the assessment and licensure of aspiring lawyers. Employing the UBE does better in making sure everyone who’s qualified, capable, and ready can find a place in the field.

In the long run, that makes for a fairer, more just system for everyone touched by it.

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