Summit on the Future of Legal Education & Entry to the Profession

Florida International University School of Law & LSAC
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Envisioning the Future
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#FIULegalEd
Questions posed to us:

• If we could have a clean slate, **how would we assess competency for admission to the bar?**

• What would a **bar exam look like** if developments in technology, globalization, and other changes in the practice of law were taken into account?

• Should the legal profession adopt a **staged process** for admission to the bar akin to that used in other professions?

• What are the **alternative examination and licensure models**?

• What are the advantages and challenges of a model where more and more effort is being put on “**teaching to the bar**”?

• With **50+ separate bar admission authorities**, how can these changes be accomplished?
Some assumptions....

Crucial Opportunity with Momentum

• ABA Commission is addressing intersection of three key issues: licensure, future skills, access to justice
• Can we develop a licensing system that addresses all three?

Think Broadly

• Consider the licensing system (not just “bar exam” as we know it)
• Interconnected players and possibilities (not just bar examiners, but bar leaders, legal educators, etc.)

Think Concretely

• Consider very specific proposal submitted to ABA Commission to stretch thinking
The Construction of Competence

• **Competence**: crucial baseline for lawyer performance and increasingly important expectation of law schools and students; complex and ambiguous notion, not readily defined or understood

• **Construction**: need also to understand that understandings of “competence” are “constructed” (that is created) rather than pre-ordained

• **Multiple lenses**: to understand baseline, need perspectives both of lawyers and law professors, focused on different dimensions, over time

• **Observations**
  • **Current dilemma**: How can states justify differing cut scores when single test (MBE) supposedly measures minimum competence?
  • **Current opportunity**: To really measure “competence” employ multiple lenses
4 parts of proposal submitted to ABA Commission:

1. New **national post-1L year** “pre-bar” or “early-bar” exam
2. New pathways to **limited licensure**
3. **Skills-based residencies** in law school
4. **Improve licensing exams** (staged, specialization and choice, open book (e.g., Ontario), skills testing (e.g., UK))
Advanced Knowledge/Skills in Context ("Advanced Bar Exam")

Skills Developed in Experiential Context ("Residencies")

Critical Thinking, Analysis, Research & Writing ("Pre-Bar Exam")

Possible Access to Justice Fellowship in High Need Areas with Limited License

Possible return to complete 3rd Year/JD for full license
1. National post-1L test

- Assess critical thinking abilities and legal writing/research skills in context of some first year subjects

- Multiple choice & 2 performance tests

- “pre-bar” or “early-bar”?
Why “early-bar”? 

• Licensing should be staged; 
• Testing of doctrinal knowledge & application should come early; 
• Best way to improve legal education w/o adding cost is testing doctrinal knowledge & application after 1st year; 
• “Early-bar” liberates 2L & 3L years for lawyering experience & specialization 
• Bar exams today test mainly first year subjects anyway.
We should test fewer knowledge domains...

Bar exams today rest on the fallacy that there is a broad range of doctrinal subjects that every attorney needs to know to be competent.
We should test fewer knowledge domains...

Memorization of a broad range of subject matter domains is now obsolete:

• Generalists have disappeared.
• Lawyers have instant access to legal research 24/7.
• Lawbots are better at retrieving knowledge than people.
Why “pre-bar”? 

• law schools do not need to wait for bar examiners & licensing bureaucracies; 
• test developed by LSAC, AccessLex, ASP, & other legal educators? 
• uniform **criterion-based** test (competence, not competent, maybe competent) not simply ranking; 
• potentially useful for ABA learning assessment mandate; 
• consumer information after one-year of law school.
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#2. New pathways to limited licensure: Why?

**Access to justice.**
Address mismatch of too many indebted, unemployed, under-employed, & wrongly employed new lawyers & too many people with unmet legal services.

**Better legal education.**
Sequenced to develop mastery & expertise, moving back & forth between academic and practice settings.

**Less debt.**
Licensed employment after two years of law school. More choices about whether & when to complete J.D. for full licensure.
#2. **New pathways to limited licensure:**

Borrowing from Washington’s Limited License Legal Technicians (LLLT)


But this idea is **option** for J.D. students, not entirely separate track.
**#2. New pathways to limited licensure: How?**

1. Normal 1L Year.
2. Pass post 1L Pre-bar or Early-bar exam.
3. Semester 3 = foundational courses & courses on area of specialty limited license (e.g., family law, debtor-creditor, immigration).
4. Semester 4 = supervised clinic, externship or practice residency related to limited license to be sought.
5. Limited licensing test in areas of limited license.
6. Limited license after two years of law school.
#2. New pathway to limited licensure creates new pathway to full licensure

After limited license law practice:
1. Choose whether & when to continue for J.D. & full licensure.
2. 3L year could be online, hybrid, or law school residency.
3. Advanced courses in skills, doctrine, and theory.
4. Preparation for full license requirements.
   - Portfolio of work products?
   - Tests of competence in chosen specializations? (litigation, business planning, etc.)
   - License based on broader lawyering competencies.
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Skills Developed in Experiential Context ("Residencies")

Critical Thinking, Analysis, Research & Writing ("Pre-Bar Exam")
#3. Skills-based residencies in law school

Many law schools are already providing their students with a combination of clinical, externship, and pro bono activities. Jurisdictions could require successful completion of such semester-long “residency” programs for limited or full licensure. Cf., New York Court of Appeals, Rule §520.18 (skills competency req’ment for admission), California’s TFARR proposal for skills and pro bono requirements.
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#4. Improve licensing exams
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Drawing upon emerging best practices in other fields and countries, encourage the National Conference of Bar Examiners, working with individual state jurisdictions, to undertake significant reforms, including:

• better practices to validate bar exams for broader notions of core competence;

• two-stage bar exam system similar to that used in some other countries;

• allowing advanced stage applicants to choose subjects of intended practice (rather than on all subjects);

• incorporate better methods of examination such as have been introduced in Canada (open book), and England and Wales (skill-oriented simulations).
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Your Thoughts...?

1. Post 1L exam
2. Limited licensure after 2 years
3. Semester-long “residencies”
4. New licensing testing methods

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