

YLD News

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Bar examination scores decline, presenting a challenge for law schools—and for the profession

BY DANIEL THIES

The trials facing American law schools are intensifying. In addition to soaring costs, high student debt levels, and declining enrollment, law schools are now facing an additional challenge: increasingly poor bar examination scores and declining bar pass rates. Like many of the serious challenges facing legal education today, this problem cannot be solved without increased engagement from practicing lawyers and judges.

The first hint of a problem came from the July 2014 bar examination. The results of that exam showed that the nationwide mean score on the Multistate Bar Examination (“MBE”) declined by 2.8 points to 141.5, the largest drop in 34 years. (MBE scores are equated so that they can be compared across administrations). As a result of this decline, the percentage of test-takers achieving a passing score declined between 2.9% and 8.7%, depending on the jurisdiction. Illinois’s results were not exempt from this trend. In Illinois, the overall pass rate dropped 4.3% to 80.9%, and the pass rate for first-time test takers fell almost two points to 87.1%.

Until recently, the cause of this decline was unclear. A malfunction in the ExamSoft software that applicants used to upload their test answers after the first testing day in July 2014 caused significant stress that may have

contributed to a one-time dip in scores. In Illinois, a small increase in the score required for passing may also have lowered passing rates.

But the recently released results from the July 2015 examination show that these factors are not the only, or even the most significant cause of the decline. In 2015, the nationwide median score on the MBE dropped *another* 1.6 points below 2014 scores, to 139.9, the lowest level since 1988. This result rules out the theory that the dip was solely the result of the ExamSoft debacle, which was not a factor in 2015. As a result of this decline, pass rates in Illinois for the July 2015 test are expected to drop as well.

So what is the likely cause? One possibility is that as fewer people choose to pursue a legal education, law schools have begun to fill their classes with students with lower credentials who are less likely to pass the bar. The number of applicants to law schools has fallen from 87,900 in 2010 to 55,700 in 2014. During the same period, first year enrollment fell 27.7%. Overall, a stunning 80% of applicants in 2014 were admitted to law school.

To make matters worse, the decline is greatest among students with better credentials. From 2010 to 2013, for example, the percentage of entering law students

with an LSAT of 160 or above dropped by nearly 20%, from 40.8% to 33.4%, and the percentage with scores at or below 149 increased by over 50% from 14.2% to 22.5%. Students with LSAT scores in this lower range are at high risk for not passing the bar exam. In short, smart people are no longer going to law school in the numbers that they once did, and law schools are struggling to cope.

These statistics are sobering. But the solution is not simply to point fingers at the law schools, for the challenges implicate us all. The number of talented people who are choosing not to pursue a legal education speaks poorly of the profession as a whole. And a consistent decline in the abilities of prospective lawyers threatens the quality of legal services that our profession can provide to the public. The failure of our system of legal education to ensure that prospective lawyers are capable is a problem for the entire profession.

What is needed now more than ever is a call to action for the legal profession to become invested in legal education. Practicing lawyers and judges know better than anyone the knowledge and skills that are necessary for new lawyers to succeed. As the ABA’s influential 1992 *MacCrate Report* on legal education commented, “[1]

egal educators and practicing lawyers should stop viewing themselves as separated by a ‘gap’ and recognize that they are engaged in a common enterprise—the education and professional development of the members of a great profession.”¹

What does this mean practically? To start, lawyers should view themselves as part of the system of legal education, and should actively work to train new attorneys. Whether serving as a mentor at a local law school, hosting an extern or summer law clerk, signing up to teach as an adjunct professor, or simply

giving a speech to law students, practicing lawyers and judges have a crucial role to play in improving legal education.

At an institutional level, bar associations need to be actively engaged with supporting legal education and legal educators. Over the past several years, the ISBA’s Special Committee on the Impact of Law School Debt on the Delivery of Legal Services, and its Task Force on Law School Curriculum and Debt, have presented a wealth of information on this topic and have proposed various steps that law schools and bar associations could

take to improve legal education.

The challenges facing law schools are real. But lawyers cannot simply dismiss these issues as “somebody else’s problem.” Lawyers must be informed and engaged. Only then can they provide the unique insights gleaned from years of practice that are crucial to the education of every aspiring lawyer. ■

1. ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 3 (1992).

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