Why Law Schools Must Help Their Students Pass The Bar

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As the general counsel of Microsoft Corporation, Brad Smith has confronted a career's worth of thorny problems—ranging from global competition challenges, to pirates stealing his software, to a famously convoluted corporate structure. But those may seem like rather tame

matters now that he has become the chair of the Leadership Council for Legal Diversity (LCLD), a national consortium of law firm chairs and general counsel. Over the past two years he has identified lower bar exam passing rates by minority students as a problem that can be addressed and presumably ameliorated with renewed and focused efforts. He points out that if the minority law school graduates were to start passing the bar at roughly the same rates as their nonminority peers, the numerical problem of underrepresented minorities in the profession would begin to disappear. Other issues would remain, of course, including opportunity and career advancement, but please, one problem at a time.

This won't be easy. If not the third rail of the profession's politics, minority performance on the bar exam comes close. The last national study of the subject was published in 1998, and the results were sufficiently disappointing that we haven't seen another analysis. Some observers have linked the problem to law school affirmative action policies. The conventional wisdom holds that the best predictor of success on the bar exam is a student's score on the Law School Admission Test. However, affirmative action efforts discount the importance of the LSAT results. The bar exam structure itself also remains maddeningly complex. The tests vary state by state, often relying on a mix of national and local portions. Passing scores vary between jurisdictions. And, equally perplexing, most law schools show limited interest in helping their students—the ones with diplomas!—get through the licensing process. This is a matter of misplaced pride: Too many schools have climbed the prestige ladder by disdaining the idea of "teaching to bar exams."

Faced with those problems, Smith has questions. He asks why other professions, notably medicine, do a better job with minority students on licensing tests, averaging pass rates in the high nineties. He's identified a few reasons. Instead of waiting for a postgraduate exam, the medical licensing tests are administered in several parts, mostly during medical school. Failures can be identified and resolved quickly. The medical schools prepare their students for the tests. And the exams mix heavy doses of multiple-choice questions with simulated clinical exams.

We can stipulate that the timing of bar exams isn't going to change. They seem likely to remain postgraduate, one-roll-of-the-dice events. But could the rest of the process be reimagined? Instead of tolerating isolated duchies, could the profession ask law schools to serve as real gateways to practice, and then expect bar examiners to test skills and knowledge accumulated over three years rather than in eight-week cram courses?

We don't have to start from a blank slate. Part of the American Bar Association's certification standards for law schools is a requirement that "a school . . . prepares its students for admission." What would it take to move that from a bromide to an action item? We are in the midst of a new debate over the third-year curriculum, one that even President Obama, Harvard Law '91, has joined with a skeptical eye. It's easy to imagine schools devoting part of that final year to preparing at least their most challenged students for the exam. After having students in class for two years, it's fair to expect even disengaged, research-driven faculties to identify the students who need more feedback and help.

The schools could take advantage of the digital age. We live in an era of MOOCs—Massive Open Online Courses. A new consortium of 50 schools could build a digital bar prep course that would cover every subject and every state. I bet a company like Microsoft could help make that possible.

And we might rethink bar exams themselves. Despite four decades of reform and improvements, they remain largely tests of a peculiar skill, the ability to memorize and regurgitate arcane principles over a two-day exam. It's a nifty parlor trick, but one that has little to do with how lawyers actually work. Were we to take a broader approach, both aspiring lawyers and an unsuspecting public would benefit, whatever their heritage or race.

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