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COMMUNITY SERVICE COMPONENT OF AN ALTERNATIVE BAR EXAM

Eileen Kaufman*

This Symposium has served to advance the conversation about the bar exam to another level. I have been working with the Society of American Law Teachers (“SALT”) on the issues raised at this Symposium for many years. From the beginning of our critique of the bar exam, we have repeatedly said that we need a more in depth understanding of how other professions license their graduates and how other countries license their attorneys. We owe thanks to Clark Cunningham and Andrea Curcio for inspiring the submission of the articles to the Georgia State University Law Review, which, along with today’s presentations, furnish much of the information that we have been seeking. The descriptions of (1) the strengths and weaknesses of medical training and licensing in this country and (2) attorney training and licensing in England, Wales, Scotland, and South Africa will serve as a fabulous resource for all those engaged in rethinking how we license lawyers.

I have been asked to briefly comment on a community service component of an alternative bar exam. More specifically, I have been asked to address three questions: assuming that a community service component were made a component of an alternative bar exam, (1) whom should such a component serve, (2) how would it fit into existing models of providing service to underserved communities, and (3) how could such an approach be funded.

I’m far more confident on the first two questions than on the third.

First: What’s the target population? My answer is: any underserved population. As Peggy Maisel described at the Symposium when she was discussing the South African model, one

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of the benefits, indeed one of the goals, of adopting a community service approach is to enhance access to justice. The Legal Needs Assessment Study that was conducted in New York some years ago reported that a bare 15% of the civil legal needs of the poor were being met.¹ So, my target population would be those most in need. Although there are many ways of defining “those most in need,” I would focus on those lowest on the economic scale. Another approach is the one adopted in the Arizona proposal and advanced by Toni Massaro and Sally Simpson—to target an often overlooked segment of the population that does not qualify for free legal services yet cannot afford market rates. Yet another approach would be to focus on indigent criminal defendants, which would be easily justified given the deplorable level of resources devoted to indigent defense.

So, answering the first question is not too difficult for me. Any model that serves to improve equal access to justice makes sense.

Second: Should a community service model utilize preexisting delivery models or operate independently? My answer is: utilize existing models. No matter what model a state chooses, it is unacceptable to propose anything that would divert funding or resources from legal services programs. Time has shown us that they are the most effective way of delivering service to poor communities, at least when they are adequately funded and not overly regulated.

Having said that, utilizing legal services offices makes sense to me. The expertise is there. These programs already have student practice orders, demonstrating an acknowledgement that legal services offices are well-suited for student placements and well-equipped to help train new lawyers. The key to any community service program, of course, is adequate resources to ensure proper training, supervision, and assessment. Placing students in legal service programs may help to keep the cost down because the programs could absorb at least some of the supervision cost, given the benefit that they will be deriving.

1. THE SPANGENBERG GROUP, N.Y. ST. BAR ASS'N, NEW YORK LEGAL NEEDS STUDY (1989).

This is likely to be a less expensive model than the Arizona proposal, which requires funding to establish the foundational staffing.

A community service model that placed law graduates in legal services programs could operate like the old VISTA program—the domestic peace corps. When I entered legal services in the mid-1970s, virtually all new hires were either Reginald Heber Smith fellows or VISTA Volunteers. Most of us were absorbed within the legal services program within a year, due to attrition or to new forms of funding. The key difference between the VISTA model and a community service approach is that the latter would have to include highly developed training and assessment components, which was not in any way standardized in the VISTA model.

Although my answer to the second question is to utilize existing delivery models, this becomes unrealistic in states with large numbers of graduates seeking to fulfill their licensing requirement through this alternative model. However, if we are at the stage of developing pilot projects with limited enrollment (along the lines of the Arizona model, which places only 18 graduates) it is certainly manageable.

Third: The biggest challenge, it seems to me, is not who should be served, or what program model to utilize, but how to pay for it. There are two aspects to funding: the first is the need for sophisticated training, supervision, and assessment. Conceivably, this can be financed by a fee that law graduates pay, much the way they pay a fee to take the bar examination. Also, the cost might be shared by partnering legal services programs with local bar associations, who already offer free training to pro bono lawyers. Technology, such as long distance learning, could also be used to cut costs and could have the added benefit of standardizing the training across a state.

The bigger funding challenge is how to pay the law graduates. If we are talking about anything longer than three months, the students would have to be paid. Kristin Glen has repeatedly emphasized that any proposal for an alternative bar examination must not, by its design, exclude those graduates who cannot go several months without income. This is where I am stumped. While loan forgiveness could be a part of the answer, students who cannot afford to work

without compensation will be precluded from participating. This phenomenon was addressed and described in some of the presentations at this Symposium. The people excluded will often be just those we would most want participating in a community service model. Perhaps some kind of work/study matching grant program could be developed, although getting any governmental funds right now seems little short of a pipedream.

To conclude, my answers to the three questions are: (1) target a community service program at underrepresented populations, (2) utilize existing community service programs because those programs are best situated to deliver legal services to those most in need, and (3) keep the program short (no more than three months), unless a major source of funding can be identified.

Let me end where I began—by thanking the Symposium organizers and the Georgia State University Law Review members. The presentations have identified two serious challenges: one addressed to the academy to better train students for the practice of law and the other addressed to law examiners to better evaluate graduates on the skills they need to practice law in a way that is non-discriminatory.