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LETTER FROM THE CHAIR

A recent headline in *Minnesota Lawyer*, our local legal newspaper, read, “Are bar exams really necessary?”¹ The facts and opinions marshaled to support a negative answer were these: (1) Minnesota had an 88 percent pass rate in 2007 (so why bother?), (2) law students who go to school across the border in Wisconsin are admitted to the Wisconsin bar without any examination under Wisconsin’s diploma privilege rule, (3) there is no demonstrable correlation between passing the bar exam and being a good lawyer, (4) imposing the exam on a law student after he or she has completed three years of law school and incurred enormous debt is a hardship, and (5) perhaps we continue to give the exam to the new generation only because the prior generations (now in control of the profession) had to go through it.

One way to answer the question in the positive is to rebut these facts and opinions. (1) Minnesota’s bar pass rate is high because it has one of the lowest passing standards in the nation (a pass/fail standard of 130 on the MBE scale). (2) Wisconsin is the only state to have diploma privilege, and that privilege is currently being challenged. (3) The bar exam is intended to provide protection to the public by testing for minimum competence; it is not designed to cover the myriad of factors, objective and subjective, that go into becoming a good lawyer. (4) The need to ensure the minimum competence of those who are given responsibility for a client’s important legal affairs outweighs the unfortunate emotional and financial impact on students. (5) Speaking for the prior generation, our interest in continuing the bar exam is not personal but is driven by the need to provide some basic protection to the public. Moreover, the care and expertise that has gone into the continuing development of the modern-day bar exam means that it is a more fair and impartial test of competency than the exams given to prior generations. In fact, any person who successfully completes an accredited law school degree program should be fully capable of passing the bar exam with appropriate preparation.

1. Mark Cohen, *Are Bar Exams Really Necessary?*, MINNESOTA LAWYER, July 28, 2009.

Perhaps a better way to answer the question is to view it in a larger context. A 2005 publication by the World Bank titled *Where Is the Wealth of Nations? Measuring Capital for the 21st Century* attempted to calculate the “value” of each nation.² It looked at tangible wealth, such as natural resources and public infrastructure, and it looked at intangible wealth, such as the trust among citizens. It concluded that one of the most important components of a nation’s wealth is the Rule of Law—confidence that the law and the courts are fair and efficient. The study concluded that the extraordinary value of the United States is based on the Rule of Law.



What are the major underpinnings of the Rule of Law in the United States? I would suggest three: (1) an impartial judiciary, (2) equal access to legal resources, and (3) a competent legal profession. Interestingly, all three are undergoing some transformation.

The impartiality of the judiciary is under serious attack by special interest groups that would substitute ideology for the impartial application of the law to individual cases. After the traditional regulation of judicial election campaigns was invalidated by the United States Supreme Court as being in conflict with the First Amendment, many states have feared that judgeships will be bought by the groups willing to expend the most money to secure votes. In Minnesota, a serious effort is under way to seek a constitutional amendment to replace open elections with retention elections for judges.

“Justice for all” has been an aspiration of the American legal system, but economic pressures have

seriously eroded the right to counsel in criminal cases and interrupted discussions of a Civil Gideon right to counsel in civil cases that involve basic necessities of life.

But even impartial courts, equally accessible to persons of all economic means, would be meaningless without competent lawyers to champion the Rule of Law, individual case by individual case. Ensuring the presence of competent lawyers depends, first, on maintaining the high quality of law schools and, second, on fair, standardized tests that identify those who meet the minimum standards.

In the years to come, our system of accredited law schools will be under increasing competitive pressure, from institutions that offer online or foreign law degrees, to compromise academic quality and clinical opportunities, the two things that contribute most to competency. The public protection function of the bar exam will only become more critical. In fact, it can easily be said that but for a reliable and trustworthy process to test minimum competence for admission to the bar, the Rule of Law itself would be in jeopardy. 📌

Best regards to all.

Sincerely,

A handwritten signature in cursive script that reads "Sam Hanson".

Sam Hanson

2. World Bank, *WHERE IS THE WEALTH OF NATIONS? MEASURING CAPITAL FOR THE 21ST CENTURY* (Washington DC: World Bank 2005).