

YOU ARE NOT “JUST” A BAR EXAMINER

by Erias A. Hyman

The following speech was given by Erias A. Hyman at the National Conference’s biennial April seminar entitled BRIGHT IDEAS IN BAR ADMISSIONS: ILLUMINATING ISSUES AND SPOTLIGHTING SOLUTIONS. The opening session, in which Hyman spoke, was called “Bar Admissions and Professionalism: The Public’s Perception, the Profession’s Expectations.”

Some seven years ago, I became a member of the Committee on Admissions of the District of Columbia Court of Appeals, or what is more commonly known as a bar examiner. The following year, in 1996, I attended this very biennial seminar for new bar examiners sponsored by the National Conference.

And I met some wonderful people—judges, scientists, psychometricians, even some lawyers. One of the wonderful people I met is from the Midwest. I asked her, “And what do you do?” And she responded, “Oh, I am just a bar examiner.” And I thought to myself, I, too, am a bar examiner, but I am not *just* a bar examiner.

Just think about it for a minute—what do bar examiners do?

For starters, you are gatekeepers of the profession. No one—and I mean no one—becomes an attorney unless you say so. Except in Wisconsin—where a graduate of a Wisconsin law school automatically is licensed in that state. I think it is called diploma privilege. (Okay, it’s not quite that simple.)

But, in the rest of the free world, no matter where the applicant went to school, or who the applicant’s parents are, or whether the applicant is rich or poor, that applicant has to pass a bar exam, and bar examiners are the folks who say “yea” or “nay”!

Let’s take a minute to examine this awesome responsibility.

Erica Moeser, the president of the National Conference, told me a few weeks ago that the average law student graduates with \$80,000 of debt.

You—a bar examiner—determine when that graduate starts repaying those loans. You determine the kind of job that graduate gets fresh out of law school. You determine the kind of job that graduate gets later on.

To some extent, you determine where that graduate lives, how that graduate lives, with whom that graduate lives. In Washington, D.C., I am told we had an applicant who sat for the D.C. bar examination 43 consecutive times—and finally passed the exam last February. I don’t know if during those

22 years a marriage hit the skids or the rocks, but it would not surprise me.

For the past few years, American law schools have produced an average of 40,000 law graduates each summer. And you—a bar examiner—are essentially the only obstacle that stands between that law graduate and the consuming public.

Obviously, then, you play a key role in the production of lawyers. And what should those law graduates expect? They should be able to expect a fair read on their exams—and a fair grade that reflects accurately the level of performance on the exam.

And what is a passing level of performance? In D.C., minimal competence is the standard. That is, applicants must demonstrate a minimal level of competence before we turn them loose on the consuming public. And what is considered minimal competence in D.C.? It is a combined scaled score of 266.

Note, I am saying minimal competence, not extraordinary competence. You determine whether an applicant satisfies your state's minimal level of competence to be licensed there. And it is reasonable for the public to expect you to do just that. Yes, in a manner of speaking, you are a consumer protection specialist as well. Think about it. You determine who represents your own family, your friends, your enemies—my family!

In capital murder cases, when attorneys represent criminal defendants, and everything is on the line, you will have certified that the defense attorney meets a minimal level of competence to defend that man's or woman's life.

And it is not too much of a stretch to say that you, in part, determine who becomes a judge, who becomes a law teacher, who becomes an engineer—and who drives a cab.

Your predecessors have determined who sits on the Supreme Court. They have brought us great justices, like Thurgood Marshall and William O. Douglas. (And of course, they have sometimes stumbled in their decision-making.)

You get my point. You do a lot more than grade papers.

And what about character and fitness? Some bar examiners, like those of us in D.C., also handle character and fitness matters. That is, we have to make a judgment call on whether or not we believe that an applicant has the requisite legal ability—and the appropriate character and fitness—for the practice of law.

Now, if there is someone here who is without any flaws or blemishes, please stand so that we can see you. . . . So we, who are also flawed, stand in judgment of our fellow man.

Here again, at least in my view, we are presented with an awesome and sometimes daunting responsibility—that of balancing the applicant's rights and interests with those of the consuming public.

Let me briefly share with you one case that makes my point.

John Doe, I will call him, orchestrated an armed robbery that resulted in the death of the first black police officer in the District of Columbia. While he was not the triggerman, John pled guilty to second degree murder—and was sentenced to 15 years to life. He served all 15 years.

He was an outstanding inmate. Upon release, John attended law school. He was the senior class speaker. Received awards and accolades. Passed the Maryland bar, passed the West Virginia bar, passed the D.C. bar—obviously no dummy.

He convinced hearing officials and the committees on admissions of both Maryland and West Virginia that he should be licensed to practice. But each state's highest court refused to license him.

His case is pending in the D.C. Court of Appeals on a unanimous recommendation by the Committee on Admissions to deny licensure.

The Justice Department has hired John to run a juvenile crime prevention program. He has lectured in Canada. Police organizations have rallied to support his admission. If you believe in rehabilitation, John epitomizes it. But should he be licensed? John says, "Give me another chance; I have earned it."

When asked what his position was on John's licensure, the dead police officer's father said to the committee, "Do the right thing—just do the right thing."

So I leave you with this issue on your plate: Do you license John—or not?

No, my friends, you are not just a bar examiner; you are a critical player in our legal system. And we thank you for your service. 🇺🇸



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