Tipping sacred cows: Barriers to entry in the legal field begin to fall

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Law is not a field known for its willingness to embrace change. However, 2017 saw some important changes — on a scale not seen in decades — in the way people enter law school and are admitted to practice law.

These trends will likely accelerate in the coming year and beyond as dissatisfaction with existing models increases.

BARRIERS TO ENTERING LAW SCHOOL

One of the biggest developments in legal education in 2017 was the sudden shift away from the Law School Admission Test as the exclusive entrance exam for law schools.

There are over 200 law schools accredited by the American Bar Association. For decades, every one of them used the LSAT as their main criterion for admitting students. In fact, ABA accreditation standards require law schools to justify using an admissions test other than the LSAT.

The first salvo in the battle over law school admissions exams was launched in early 2016, when the James E. Rogers College of Law at the University of Arizona announced its plans to launch a pilot program that would admit a limited number of students based on their performance on the GRE graduate school entry exam, the standardized admissions test used by a variety of graduate programs other than law.

In response, the Law School Admission Council, which administers the LSAT, initially threatened to revoke the University of Arizona's membership. The LSAC, however, backed off when the deans of nearly 150 ABA law schools signed a letter defending U of A's right to experiment and implying that the LSAC's proposed action raised antitrust concerns.

It wasn't until April 2017 — over a year after U of A's announcement — that a second law school decided it, too, would accept the GRE. And it wasn't just any law school; it was Harvard.

This move by one of the most prestigious institutions in the legal academy appears to have opened the floodgates.

Within the next six months, five more law schools announced they would accept the GRE, including top-tier schools like Georgetown, Northwestern and, most recently, Columbia.

In a survey conducted by Kaplan Test Prep in September, a quarter of responding law schools' admissions officers indicated plans to accept the GRE within the coming year. That means as many as 50 more law schools may use the GRE in 2018.

The ABA has taken notice. It has released for public notice and comment several potential proposals to omit the preference for the LSAT and permit any admissions test that is "valid and reliable."

The infighting and hand wringing may be interesting to watch, but is there really a meaningful difference between the LSAT and GRE, and why is the shift important or at least controversial?

Facially, it is much ado about nothing. The LSAT, promulgated by LSAC, and the GRE, administered by Educational Testing Service, share some basic similarities.

One of the biggest developments in legal education in 2017 was the sudden shift away from the LSAT as the exclusive entrance exam for law schools.

They were created a year apart, in 1948 and 1949, respectively.

The LSAT lasts three hours and 30 minutes, and features scaled scores on a range of 120 to 180. The GRE lasts three hours and 45 minutes, and it is scored on a 130-170 scale.

The LSAC has reported a validity correlation of about 0.40 between LSAT scores and first-year law school grades,[1] while other studies have found a similar correlation of 0.30 to 0.45 between the GRE and both first-year and overall graduate GPA.[2]

The LSAT has three main graded components: logical reasoning, reading comprehension and analytical reasoning. The latter is also known as the notorious "games" section, with prompts like, "Al, Betty, Charles and David all went to a party. Al sat next to the guest with the green shirt...."

The GRE, too, has three main graded components: verbal reasoning, quantitative reasoning and analytical writing, which includes an "issue task" and an "argument task." The LSAT also includes an ungraded writing section.

Interestingly, one's GRE score actually factors in one's writing ability — considered one of the key skills in law school — whereas the LSAT score is based purely on multiple choice responses.

Moreover, law students have long been criticized for having weak mathematical skills ("I went to law school because I don't like numbers" is a common refrain), which can hurt their ability to understand business concepts and, thus, appropriately advise clients.

Indeed, there is data that suggests applicants with undergraduate majors in mathematics and engineering are among the highest performers on the LSAT.

At the end of October, ETS issued a press release indicating it had conducted a study involving 21 law schools that concluded the GRE was a "strong, generalizably valid predictor of first-year law school grades,"[3] which immediately prompted an accusation by the LSAC that ETS was engaging in "false claims."[4]

Arguably, then, the GRE may do as good as if not a better job as the LSAT at assessing who is likely to succeed in law school. So why has this only recently become a hot-button issue?

The cynical response is that law schools are desperate to fill seats in light of the decline in law school enrollments since the Great Recession and want to prey on GRE takers who may be less knowledgeable about the dynamics of law school admissions or the legal job market.

The counter to this response is that there is legitimate concern over whether the LSAT tests what it takes to succeed in law school. As a result, law schools have a valid interest in considering a broader array of applicants who may have strengths that the LSAT does not fully capture.

Moreover, because racial minorities have often performed more poorly on the LSAT than whites, there has long been a concern that the LSAT includes cultural biases that impede promoting diversity in the legal profession. However, similar charges of racial bias have been lodged against the GRE. Therefore, a shift away from the LSAT may do little to address this problem.

One thing is clear: For better or worse, 2017 will be seen as the year that the LSAT lost its monopoly on law school admissions. More law schools may experiment with different metrics for admitting students, and they may feel more comfortable experimenting with different ways to educate their students as well.

BARRIERS TO LAW PRACTICE

In our wired, interconnected society, the portability of one's law license across state lines would seem to be more important than ever.

Yet, each of the 50 states and the District of Columbia has its own board of bar examiners that sets its own rules for admission to practice law within the jurisdiction, and many — including large jurisdictions like California — will not "waive in" attorneys from other states.

That means a lawyer who has practiced in New York for 30 years would still have to pass the California bar exam before working there.

Other disciplines, such as medicine, generally have lower barriers to obtaining licensure in additional states. This arguably makes sense, as anatomy doesn't differ from state to state, whereas laws do. The legal profession is slowly but surely moving toward a model of easier portability, and 2017 has been an important tipping point.

For decades, every state except Louisiana used the multiple choice Multistate Bar Examination, issued by the National Conference of Bar Examiners, and included its own unique essay and/or "performance test" sections.

In 2011, however, Missouri and North Dakota began using the NCBE's Uniform Bar Exam, which has standard multistate essay and performance test sections as well. It is much easier for an attorney to move from one UBE jurisdiction to another because they already have taken the entire exam that both states use.

By 2017, a majority of states had adopted the UBE, and at least two more will do so in the next two years. It is likely that this trend will continue. In fact, within the next decade, any state not using it may become an outlier.

Granted, it is the more populous states, like Texas and Florida, that have so far declined to adopt the UBE. However, New York did so in 2016, and North Carolina will in 2019. Illinois is reportedly considering it as well.

California has not indicated any intent to move to the UBE. The state did reduce the length of its bar exam this year from three days to two, aligning its format more closely with the UBE and thus making it easier to switch to that exam in the future.

Aside from adopting the UBE, advocates are seeking lower barriers for lawyers who want to move their practices.

The National Association for the Advancement of Multijurisdiction Practice recently filed a petition for certiorari with the U.S. Supreme Court challenging federal district court "local rules" that preclude admission of out-of-state attorneys.[5]

The Military Spouse JD Network, which was formed in 2011, also succeeded this year in persuading a majority of jurisdictions to adopt licensing accommodations without requiring further examination for military families who often must move frequently.

States have also been looking at changes that would make it easier to pass their bar exams.

California recently declined to lower its bar passing score. However, Nevada, which has one of the toughest exams, lowered its passing score slightly this past July. And Oregon, which had the third-highest bar exam passing score in the nation, recently lowered its passing score from 284 to 274, and saw its pass rate increase by over 20 percentage points.

Again, some contend that bar passage rates are declining because law schools are admitting less-qualified applicants, and that states are "dumbing down" their exams rather than holding law schools' feet to the fire to admit stronger applicants or better train them.

But at least in California, there is evidence that its bar takers perform higher on the MBE than takers nationwide, and that it is only its abnormally high cut score that accounts for that state's historically low bar pass rates.

What's more, while many lawyers (perhaps understandably) decry changes that make it easier to go to law school or become a lawyer, the reality is that the country needs more lawyers, not fewer — if they can be cost-effectively prepared to represent the vast swaths of the working and middle class that are priced out of the market for legal services.

This will require more fundamental changes than those relating to whether a law school accepts the GRE or the LSAT, what a given state's bar exam passing score is, and how easy it is to move one's practice from state A to state B.

But collectively, these changes are a sign that more meaningful reform and innovation in legal education and the practice of law — which are sorely needed and long overdue — may finally start to become a reality.

We can expect even more shake-ups to the status quo in 2018. Exactly who will benefit from these changes remains to be seen. But overall, accelerating the pace of change in the legal profession can only be a good thing.

NOTES

1   *See* Lisa Anthony Stilwell, Susan P. Dalessandro & Lynda M. Reese, *Law School Admission Council LSAT Technical Report 03-01 December 2005*, LSAC Research Report Series (2005), http://bit.ly/2j6mBhx.

2   See Sarah A. Hezlett, Nathan R. Kuncel & Deniz S. Ones, A Comprehensive Meta-Analysis of the Predictive Validity of the Graduate Record Examinations: Implications for Graduate Student Selection and Performance, 127 Psych. Bull. 1 (2001), http://bit.ly/2m2qLbu.

3   *See* Press Release, Educational Testing Service, National Data: The GRE General Test is a Valid Predictor of Law School Success (Oct. 31, 2017), http://prn.to/2h27vcl.

4   *See* Scott Jaschik, *ETS Validity Study on GRE for Law School Admissions*, Inside Higher Ed (Oct. 31, 2017), http://bit.ly/2AnLrxz

5   *Nat'l Ass'n for the Advancement of Multijurisdiction Practice v. Howell,* No. 17-409, *petition for cert. filed,* 2017 WL 4162295 (U.S. Sept. 15, 2017).

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