

## An Immodest Proposal

I write with an “immodest proposal” for bar leaders and examiners as we collectively face the implications of the Covid-19 pandemic. I take my text from Jonathan Swift’s “A Modest Proposal” in which he ironically proposed that poor Irish toddlers be fattened and sold as food for the wealthy, to control overpopulation and unemployment and improve the economy. In writing, he hoped to shock the policy makers of his time to move beyond simplistic and ineffectual responses to the Irish plight.

My point, in using the analogy, is to remind decision-makers of the stark realities facing graduating students and desperate citizens if recent law graduates are placed into a prolonged professional coma with crippling adverse effects. Let’s look those realities in the eye.

- *A traditional September bar exam may not be viable.* Unfortunately, we face a future in which Covid-19 may result in ongoing limitations on public assemblies, particularly if a second wave of infection materializes. The upshot would be a second rescheduling, likely in February, with other solutions harder to achieve because of lost time.
- *A September or later bar exam ignores the costs to students.* Graduating students have no ready way to secure the funds they will need to survive for the added months before the proposed September 2020 rescheduled bar exam. These costs are significant: bar prep courses, living costs, and lost wages for those displaced from part-time jobs. Mental health costs will also rise, as the stress of caretaking responsibilities and uncertainty about the future cause anxiety to grow.
- *Preparation for current bar examinations takes focus and opportunity, and delay will affect the least privileged worst.* Many non-affluent students will have no recourse but to cram in close quarters with family members as they study and shelter in place. The stakes for bar passage are higher than ever for many, given debt loads and uncertain job opportunities. Students of color, first-generation college graduates, and those with limited financial means face the greatest risks.
- *Delayed licensure will deprive citizens of badly-needed legal assistance.* Along with this public health emergency, comes an unimaginable flood of legal problems concerning estates, housing, unemployment, consumer debt, family law, domestic violence, and the survival of small businesses. Recent law graduates possess strong technical skills and practice capacity based on experience with clinics, externships, and pro bono activities. We can’t afford to delay deploying their skills and energy to meet citizens’ enormous needs.

What should happen next?

- *Recognize the factors that are impeding meaningful responses.* Law is a conservative profession and client protection is important. But the impulse to delay seems to run deeper. Senior lawyers often assume that recent graduates’ experience with bar exams today are the same as their own in years past. It’s not, since it’s a different exam, there are much higher stakes given student debt loads, and the pandemic makes preparation excruciatingly difficult. Licensing authorities are committed to fairness and test security but are also financially and emotionally invested in existing bar exam practices. We can’t let our blind spots distract us from finding real solutions now.
- *Mitigate immediate problems through supervised practice rules.* The NY Court of Appeals just formally announced its intent to hold an early September bar exam. It also said it would explore

adopting practice rules that would allow recent graduates to engage in temporary supervised practice in private and public settings, subject to yet to be established criteria. Perhaps a model practice rule could be adopted to facilitate subsequent licensure and smooth the way forward nationally. But more needs to be done in light of the financial impact of truncated wages and the dislocation of requiring candidates to take a full bar exam after even greater delay.

- *Consider adopting an emergency provisional licensing system.* Grant registered bar candidates a one-year provisional license that functions as an enhanced training and evaluation period. For an initial four- to six-month period, candidates would work under the mentorship and supervision of an experienced licensed attorney who would be expected to complete and submit a detailed assessment of the graduate's competence (something currently expected of law school clinical and externship supervisors). If certified by the supervisor as demonstrating core competence requirements, the candidate would then complete a truncated bar exam that uses a closed universe library and practice-oriented questions (similar to systems being developed in Canada and England). If the candidate demonstrated requisite competence on both the supervisor's evaluation and the truncated bar exam, and satisfied character and fitness requirements, they would receive a general license. If they failed to satisfy either of these requirements, they would have the opportunity to continue working under a provisional license for another six months, receive another comprehensive supervisor evaluation, and retake the truncated exam. If they failed after a year to satisfy these requirements, they would have to sit for the regular bar exam before received a general license to practice without supervision.
- *Recognize that other options also deserve attention.* Other options deserve careful consideration such as the diploma privilege (now used in Wisconsin and previously employed by California after the 1906 earthquake and during World War II). Remote proctoring is increasingly used in educational settings and warrants immediate, intensive exploration. Developing longer-term limited licensing options in specialized high-need areas may also be worth exploring.

Swift used powerful satire to jolt decisionmakers out of deadly lethargy. But let's not incapacitate or cannibalize the next generation of lawyers eager to meet crucial citizen needs. Let's find innovative approaches to licensure that foster justice instead.

Judith Welch Wegner is Burton Craige Professor Emerita, UNC School of Law, [Judith\\_wegner@unc.edu](mailto:Judith_wegner@unc.edu)  
She is a co-author of *The Bar Exam and the COVID-19 Pandemic: The Need for Immediate Action*.

*(March 31, 2020, forthcoming in edited form as Op-Ed in National Law Journal)*

