

Most People Can't Afford Legal Help. One Reformer Wants To Change That

By Greg Rosalsky September 29, 2020 npr.com

In less than a week, law school graduates across America will be taking the bar exam. Bar officials have spent months scrambling to figure out how to administer the mass test during the coronavirus pandemic. In 18 states, they decided to hold the bar remotely. It's the first time they've done something like this, and so far it has been kind of a disaster. But it also offers an opportunity to reconsider how we regulate the practice of law in America.

First, on the bar exam fiasco: To prevent people from cheating, bar officials have been experimenting with new artificial intelligence software that uses people's computer cameras to record them while they take the test at home. Mock tests have had all sorts of technical difficulties — from system crashes to concerns about privacy to potential cheating loopholes to allegations that the AI software's facial recognition technology is racist. The State Bar of California even hired a crisis PR firm to help manage the growing uproar. But bar officials are trudging forward anyways. Test-takers are calling the impending exam dates "Barmageddon."

The pandemic prompted several states to give up on the bar exam altogether. Utah, Oregon, Washington and Louisiana decided to let grads from accredited law schools practice without passing the bar, at least for now.

The National Conference of Bar Examiners, which helps states administer the bar, argues that the bar remains important in protecting the public. "Every high-stakes profession, including engineering, medicine, aviation, and others, relies on licensure to ensure that practitioners meet minimum standards of fundamental competency, and the practice of law is no exception," the organization said in a statement.

But Gillian Hadfield, a law professor and economist at the University of Toronto, argues there's no evidence that the bar actually protects the public. She thinks not only it is time we reevaluate use of the bar exam — it's time to completely revamp how we regulate the practice of law in the United States.

The bar exam, she says, is one part of a broader system that raises the cost of legal services and contributes to an "access to justice crisis" in the United States. "My estimate is well over 80% of Americans who need legal help can't get it because it's too expensive," Hadfield says. "And the main reason for that is a crazy regulatory system. The bar exam is part of that." Hadfield says the dysfunctional regulatory system also includes arcane legal ownership rules that make it much harder for new kinds of companies to offer low-cost legal help. Various online businesses aimed at providing personal legal services — like LegalZoom, Avvo and Rocket Lawyer — have sprouted up in recent years. But state bar organizations have been trying to use regulations to stifle them.

To be fair to lawyers, their work is complicated and has high stakes. But that doesn't mean we need everyone who provides any kind of legal service to do four years of college, complete three years of law school and pass a licensing exam.

Hadfield points to the United Kingdom, which has long allowed people to provide legal advice or draft legal documents without having a law degree or passing a bar exam. According to a 2011 study, wills written by unlicensed professionals had equal customer satisfaction and near-equal quality and were much cheaper than wills written by solicitors.

Hadfield advocates regulatory reforms that would make America look more like the U.K., opening up the legal market and allowing nonlawyers and non-lawyer-owned businesses to begin competing in the legal market. She wants states to modernize their regulations, allowing state regulators to license and oversee these new legal businesses.

At least two states are listening. In Utah, where Hadfield has advised policymakers, the state supreme court approved sweeping reforms that will allow nonlawyers like accountants, software developers and social workers to own or co-own businesses that provide legal services under the oversight of a new regulator created for this purpose. Arizona is on its way as well.

With Barmageddon fast approaching, law school graduates may soon face something even scarier than a dysfunctional remote test: a future in which they have to compete with other professionals in providing legal help.

