

## LETTER TO THE EDITOR

# How about a qualified license to practice law?

Some proponents of lowering the minimum score needed for bar passage have emphasized two reported correlations: racial minorities disproportionately score just below the current cutoff and these minorities disproportionately represent underserved communities — which thus would enjoy more legal aid if the State Bar lowered the minimum. But if the goal is to expand legal assistance to underserved communities, why rely indirectly on race-based proxies and inferences when we can directly achieve that goal? Applicants scoring at a specified intermediate level should receive a qualified law license to represent underserved clients.

The compromise benefits many parties. Lower-scoring exam takers will no longer scan want ads for a nonlegal job, feeling as if they had wasted three or four years, with nothing to show for it but mountains of debt. They will instead enjoy a meaningful career helping those who are underserved, but not undeserving of justice. Higher scorers will still enjoy the superior status they merit for their accomplishment, much like those whom the State Bar honors as certified specialists.

Most importantly, because these “public advocates” will be ineligible to assist high-paying clients, they will by necessity devote their talents to helping those who would otherwise go unrepresented. Their current inability to find counsel harms not only their own interests, but the judicial function, and the interest of the entire public, which benefits from the correct resolution of legal disputes. *Legal Services Corp. v. Velazquez*, 531 U.S. 533 (2001). We all lose when parties violate the law with impunity because their victims are too poor to fight back.

The legal community has a particular self-interest in finding lawyers to represent underserved communities. In “Rebooting Justice: More Technology, Fewer Lawyers, and the Future of Law,” Professors Benjamin Barton and Stephanos Bibas propose solving the underrepresentation crisis by simplifying the legal process. This would obviate the need for many lawyers but demand additional work from the judicial branch in helping these litigants. Though the proposal has some merit, if our adversarial system takes a more inquisitorial tone, with much of counsel’s role shifting to judges and clerks, the bench will suffer. And if the legal process becomes too simplified, it could reduce the demand for counsel — and the quality of justice.

Two obvious objections to this compromise appear. First, these advocates will have special limits on their practice, but that is qualitatively better than having no practice at all.

Second, there could be a two-tiered bar, so that counsel for the wealthy will often have scored higher than counsel for the poor. But that is already often the case. And it is better to have the wealthy represented by an attorney scoring 145 and the poor represented by one scoring 140 than for the poor to proceed on their own, or not at all. This result will *improve* the situation so it resembles other professions like education and medicine, where we ensure the poor have access to qualified teachers and doctors, even if the rich have more options. Perfection cannot be the enemy of the good.

A pro bono compromise will best balance the interests of high scorers, low scorers, the underserved, and the public as a whole.

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