A Few Words on “Failures”

“If you are resolutely determined to make a lawyer of yourself, the thing is more than half done already.”

—Abraham Lincoln, in a letter to Isham Reavis dated November 5, 1855, turning down Mr. Reavis’ request for a position in Mr. Lincoln’s law firm.1

My wife and I were sitting in our seats at the movie theater watching the closing credits for Lincoln2 when one of my daughter’s friends, a 20-year-old enrolled in Western Michigan University’s ROTC program, came up and greeted us. From prior conversations, I knew that this young man hoped to go to law school once he finished his military service, and he told me that watching the movie confirmed in his mind that he wanted to be a lawyer—he wanted to be part of a profession committed to the ideals of justice and equality for all.

I left the theater profoundly moved—not only by the movie, for which Daniel Day-Lewis should clear a spot on his mantel for Best Actor Oscar—but by the fact that a young man of whom I think so highly, who so loves his country that he is willing to serve as an officer in its armed forces, turned down Mr. Reavis’ request for a position in Mr. Lincoln’s law firm.1

The resultant hue and cry came primarily, but not exclusively, from two corners: the state’s five law schools, which expressed outrage that the rules regarding the exam must have changed since the faculty obviously did not forget how to teach law in the span of a few short years;3 and from the disgruntled test takers, who felt as if they had been misled and must have been subjected to far more difficult exams and requirements than their predecessors.

Conspiracy theories quickly abounded: The State Bar was deliberately skewing the test results because of a glut of lawyers in the market! The Supreme Court had changed the minimum test scores required to pass! The Board of Law Examiners had been overthrown by greedy old lawyers who wanted to line their pockets at the expense of the downtrodden law students! (OK, I made that one up, but the other two were spread far and wide.)

The facts dispel these conspiracy theories. In truth, the State Bar has nothing to do with the compilation or administration of the bar exam. Rather, the SBM oversees the character and fitness investigation of applicants to sit for the exam—and that is it. The bar exam is the responsibility of the Board of Law Examiners (BLE), a body created by the legislature whose members are nominated by the Supreme Court and appointed by the governor for five-year terms.

Conspiracies aside, surely everyone agrees with the basic premise that applicants to the Bar should demonstrate a certain degree of competence or proficiency in this state’s laws before being licensed to practice. Does the bar exam, as it has been traditionally administered or in its latest administration, help meet that goal? More transparency in the process, including clarification of objectives, will help us answer those questions.

And what of our members’ perspectives? In my travels around the state since I assumed the SBM presidency, I have heard from a number of Michigan attorneys who...
believe that someone (the Bar, the BLE, or the Supreme Court) had, in fact, determined that there are simply too many lawyers in the state and raised the standards to slow the influx of new members into the profession—which they were happy to see. Others expressed outrage that applicants were somehow tricked into incurring massive debt only to have the rug pulled out from under them when a scoring change was foisted on them without warning.

Although the SBM does not have a role in the decision-making process concerning the formulation or administration of the bar exam, we do have a clear interest in the integrity and effectiveness of the bar admission process. In my view, our optimal role will not be to advocate for any particular mechanism or threshold but instead to advocate for as much transparency in the process as possible so future applicants will know far in advance what is expected of them and can plan their studies accordingly.

As for those who took but did not pass the exam in February or July 2012 and to my daughter’s young friend who still dreams of becoming a lawyer someday, I recall a quote that has been attributed to Abraham Lincoln: “My great concern is not whether you have failed, but whether you are content with your failure.”

In preparing this column, I was unable to find that quote in any reference necessary for problem solving. I would also heartily recommend two books I have read over the past few years concerning Mr. Lincoln’s life and death: Team of Rivals: The Political Genius of Abraham Lincoln by Doris Kearns Goodwin (New York: Simon & Schuster, 2005), upon which the movie Lincoln was based, and Manhunt: The 12 Day Chase of Lincoln’s Killer by James L. Swanson (New York: William Morrow, 2006). I particularly endorse reading these books if you are planning a trip to our nation’s capitol in the near future, as they give you a new respect for the living history that is found in and around Washington, D.C.

The bar exam is the best way to demonstrate those qualities is obviously a source of great debate. But as long as the exam is part of the process by which we admit new members to our profession, the organized bar owes it to the applicants, our membership, and the public to assure that the process is as transparent as possible. With one final tip of the cap to Mr. Lincoln, quoting his May 30, 1860, letter to Leonard Swett on an entirely different matter: “It can not have failed to strike you that these men ask for just, the same thing — fairness, and fairness only.”

FOOTNOTES
2. I recommend this movie to every lawyer (no, to every American with or without a law degree) who wants to have an even greater appreciation for the force of nature that was Abraham Lincoln, who seeks to be reassured by the knowledge that even those to whom we have assigned god-like status struggle with many of the same issues regarding parenting, grief, and loss that we do; who seeks to be inspired by the true events leading up to the adoption of the 13th Amendment; who wants to understand the political intrigue surrounding that amendment’s passage—and to realize that today’s rancorous political debates are sometimes mild in comparison with what our forbearers experienced; or who simply wants to be blown away by the cinematographic replication of our nation’s capitol and one of the best acting performances that I have ever seen in Daniel Day-Lewis’s portrayal of our 16th president.

3. Since Mr. Lincoln advocated the importance of reading in developing the well-rounded frame of reference necessary for problem solving, I would also heartily recommend two books I have read over the past few years concerning Mr. Lincoln’s life and death: Team of Rivals: The Political Genius of Abraham Lincoln by Doris Kearns Goodwin (New York: Simon & Schuster, 2005), upon which the movie Lincoln was based, and Manhunt: The 12 Day Chase of Lincoln’s Killer by James L. Swanson (New York: William Morrow, 2006). I particularly endorse reading these books if you are planning a trip to our nation’s capitol in the near future, as they give you a new respect for the living history that is found in and around Washington, D.C.


5. Basler, n 1 supra at 82.

6. Basler, n 4 supra at 57.