

A Few Words on "Failures"



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"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 *Lincoln*² 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 another 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 knowing that in so doing he literally places his life on the line for people whom he will never meet, wants to be part of the profession in which I practice because he feels it is a calling that will allow him to make a difference in people's lives once he gets out of the military.

Of course, my daughter's friend is not the only twenty-something who wants to become a lawyer. For the past 30 years, the State Bar of Michigan has periodically conducted its Economics of Law Practice survey. While most practitioners recognize this survey for its value in assessing the reasonableness of fee requests, it provides a well-

spring of knowledge regarding the nature of our profession and its members.

According to the SBM's membership database, 9,997 attorneys joined the State Bar in the 10 years between 2002 and 2011—an average of just under 1,000 new attorneys per year. During that same period—and for the first time in the survey's history—although Michigan attorneys' average billable hour rates increased by slightly more than 10 percent (from \$195 to \$215) between 2006 and 2010, lawyers' median income levels fell roughly 9 percent (from \$92,000 to \$84,000). And the bad news kept coming. While those who had been in practice for 6–10 years reported coming out of law school with a median debt load of between \$75,000 (for private practitioners) and \$80,000 (for nonprivate practitioners), their counterparts who were out of school for one year or less reported a median debt load after law school of \$100,000 regardless of the setting in which they practiced.

Ah, but at least after incurring that debt, law grads could expect to be welcomed into the practice of law—even if that meant hanging a shingle and operating as a solo practitioner—once they got past that easy Michigan bar exam, right? Well...

As most readers know, the success rate of those taking the Michigan bar exam fell to near-record low levels in July with only 62 percent of first-time takers passing, and just 55 percent of the total of 957 applicants receiving passing grades. By comparison, 76 percent of first-time exam takers passed in 2011, 80 percent in 2010, and 81 percent in 2009.

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 obvi-

ously 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 anything Lincoln wrote, but I did come across a letter he wrote to George C. Latham, a classmate of his son, in July 1860 when he learned that young Mr. Latham had been denied admission to study at Harvard. Lincoln's comments focus on what is ultimately most important to success in life, as a lawyer or otherwise—character and commitment of purpose:

I know not how to aid you, save in the assurance of one of mature age, and much severe experience, that you *can* not fail, if you resolutely determine, that you *will* not.

* * *

In your temporary failure there is no evidence that you may not yet be a better scholar, and a more successful man in the great struggle of life, than many others, who have entered college more easily.

Again I say let no feeling of discouragement prey upon you, and in the end you are sure to succeed.⁴

And *when* (not if) you succeed, keep in mind the notes Mr. Lincoln wrote for a lecture he was prepared to give on the practice of law:

There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common, almost universal. Let no young man choosing the law for a calling for a moment yield to the popular belief—resolve to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave.⁵

Ours is a great profession and one that young men and women—like my daughter's ROTC friend and those who took the 2012 bar exam—ought to be honored to join. But it is not an easy profession, and admission to it must be earned not just by paying for and mastering three years of graduate school but by demonstrating that one has the mental acumen, the minimal proficiency in the substantive laws of this state, integrity, and, occasionally, the perseverance required to get beyond whatever temporary barriers might stand between each applicant and his or her admission into such an honorable profession.

Whether 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."⁶ Surely that is a laudable ideal and one that everyone involved in the administration of the bar exam must share and strive to preserve. ■

FOOTNOTES

1. Basler, ed, *Collected Works of Abraham Lincoln* (New Brunswick: Rutgers University Press, 1953), vol 2, p 328, available at <<http://name.umdl.umich.edu/lincoln2>>. All websites cited in this article were accessed December 24, 2012.
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 forebearers 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. 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 for 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.
3. According to a commentary published by Thomas M. Cooley Law School President and Dean Don LeDuc on November 7, 2012, the passage rates for students at each law school were down by at least 9 percent overall and by as much as 25 percent compared to 2011 scores. Wayne State University Law School's first-time taker passage rate fell 9 percent to 70 percent, University of Michigan Law School's fell 10 percent to 84 percent, University of Detroit Mercy School of Law's fell 11 percent to 51 percent, Michigan State University College of Law's fell 21 percent to 66 percent, and Cooley Law School's fell a whopping 25 percent to 51 percent. LeDuc, *Are the Bar Results for Real?* <http://www.cooley.edu/commentary/are_the_bar_results_for_real.html>.
4. Basler, ed, *Collected Works of Abraham Lincoln* (New Brunswick: Rutgers University Press, 1953), vol 4, p 87, available at <<http://name.umdl.umich.edu/lincoln4>>.
5. Basler, n 1 *supra* at 82.
6. Basler, n 4 *supra* at 57.