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# THE WISCONSIN DIPLOMA PRIVILEGE: TRY IT, YOU'LL LIKE IT

BEVERLY MORAN\*

## I. INTRODUCTION

When I was asked to speak at the Society of American Law Teachers' (S.A.L.T.) conference *Re-Examining the Bar Exam*,<sup>1</sup> I realized that I accepted the bar examination without question. After all, I had passed two bar examinations, graded a third and written questions for a fourth. To me, bar examinations seemed both fair and needed to protect our profession and the public. In fact, when I came to Wisconsin, the last state in America with a diploma privilege, I was deeply disturbed. My safety net had been taken away and I felt more pressure to test frequently and grade harshly. Thus, I did not begin this project as a great fan of the diploma privilege. I am a fan now.

When I started my research, my first discovery was that the diploma privilege was created to produce a quality bar. Even more importantly, I learned that, in Wisconsin, the privilege strengthens relations between the bar, judiciary, and academy. Rather than leaving the privilege to wither and die, I now suggest that other states consider re-adopting the privilege. By doing so, they will open their bars to better connected and cared for lawyers who can (and do) receive broader, more relevant training.

## II. HISTORY OF ADMISSION TO THE BAR IN WISCONSIN

Initially, Wisconsin, like many other states, opened practice to all citizens regardless of training or ability.<sup>2</sup> Other than residency, the only requirement for admission was good moral character.<sup>3</sup> Yet, open admission was short lived in Wisconsin.<sup>4</sup>

In place of universal access, Wisconsin next premised bar admission on oral examination by a Circuit Court Judge.<sup>5</sup> As with other states, oral examinations were minimal at best. For example, an Illinois attorney examined by Abraham Lincoln as Lincoln lounged in a tub, described his oral examination this way:

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\* Voss-Bascom Professor of Law, University of Wisconsin Law School.

1. Held at Golden Gate University, September 25, 1999.

2. See Richard A. Stack, Jr., Commentary, *Admission upon Diploma to the Wisconsin Bar*, 58 MARQ. L. REV. 109, 117 (1974).

3. See *id.*

4. See *id.*

5. See *id.*

He asked me in a desultory way the definition of a contract, and two or three fundamental questions, all of which I answered readily, and I thought, correctly. Beyond these meager inquiries . . . he asked nothing more. As he continued his toilet, he entertained me with recollections—many of them characteristically vivid and racy—of his early practice and the various incidents and adventures that attended his start in the profession. The whole proceeding was so unusual and queer, if not grotesque, that I was at a loss to determine whether I was really being examined at all.<sup>6</sup>

Oral examination was not a great barrier to bar admission. A candidate who failed an oral examination simply found a more sympathetic judge.<sup>7</sup> Accordingly, once the University of Wisconsin Law School was established, the legislature moved quickly to a diploma privilege.<sup>8</sup> In Wisconsin, as in many other states, the diploma privilege was meant to (and did) increase standards of practice.<sup>9</sup>

Indeed, although Wisconsin is the last American hold out, the diploma privilege is not a Wisconsin invention. Since 1842, “[thirty-two] states and the District of Columbia have granted the diploma privilege.”<sup>10</sup> As late as 1977, five states retained the privilege.<sup>11</sup> Its immense popularity is demonstrated by its many forms, for during its heyday, there was no single diploma privilege. Instead, each state created its own admission practice. Those practices fell into three general categories: (1) universal diploma privilege, in which the state admitted anyone who had a diploma from any U.S. law school;<sup>12</sup> (2) statewide diploma privilege, in which a graduate of any school within the state was admitted to practice in that state;<sup>13</sup> and (3) state university diploma privilege, in which only graduates of the state’s law school were permitted to practice without further examination.<sup>14</sup>

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6. Joel Seligman, *Why the Bar Exam Should Be Abolished*, JURIS DR., Aug./Sept. 1978, at 48, 48.

7. See George Neff Stevens, *Diploma Privilege, Bar Examination or Open Admission: Memorandum Number 13*, 46 B. EXAMINER 15, 17 (1977) [hereinafter Stevens, *Diploma Privilege*].

8. See Stack, *supra* note 2, at 118.

9. But see Stevens, *Diploma Privilege*, *supra* note 7, at 18-19 (“[T]here is no evidence that the raising of standards was the true objective of this early law school drive for the diploma privilege.”).

10. *Id.* at 19. Virginia was the first state to adopt the diploma privilege. See *id.*

11. See *id.* at 20.

12. See *id.* at 37 n.12.

13. See *id.* at 19, 37 n.12.

14. See *id.* at 37 n.12; see also ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 250 (1976). When first enacted in Wisconsin, the diploma privilege was extended only to graduates of the University of Wisconsin Law School. See Stack, *supra* note 2, at 118-19. Later, the diploma privilege was extended to graduates of the only other law school in Wisconsin, Marquette University Law School. See *id.* at 119.

Of the three, the state university privilege was most popular at first.<sup>15</sup> However, most states eventually granted a statewide diploma privilege.<sup>16</sup> Nevertheless, as law practice moved to the twentieth century, objections to the diploma privilege became stronger. These objections included (1) a fear that law school education lacked uniformity in the length of time given over to study;<sup>17</sup> (2) a belief that the diploma privilege was anti-democratic because it tended to favor state law schools over private schools, which were often not granted the privilege;<sup>18</sup> (3) a belief that the diploma privilege discriminated against state residents who studied at out-of-state institutions;<sup>19</sup> (4) a belief that the bar examination produced a higher standard of practice;<sup>20</sup> and (5) a fear that the diploma privilege allowed law schools to circumvent the state's control of the bar.<sup>21</sup>

### A. The Rise of the Bar Examination

Support for the bar examination grew until, by the 1920s, the American Bar Association declared that "graduation from a law school should not confer the right of admission to the bar, and . . . every candidate should be subjected to an examination by a public authority to determine his fitness."<sup>22</sup>

As a result, the present debate is not about the diploma privilege but about the bar examination. Reasons given for the bar examination are that it (1) forces students to study;<sup>23</sup> (2) forces students to demonstrate that they can identify areas of the law without guidance from an examination's title;<sup>24</sup> (3)

15. For a recital of the history of the use of the diploma privilege in each state and all U.S. territories, see George Neff Stevens, *Appendix to Diploma Privilege, Bar Examination or Open Admission, Memorandum Number 13*, 46 *The Bar Examiner* 15, 46 B. EXAMINER 71 (1977).

16. See Thomas W. Goldman, *Use of the Diploma Privilege in the United States*, 10 *TULSA L.J.* 36, 40 (1974).

17. See, e.g., Daniel R. Hansen, *Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 *CASE W. RES. L. REV.* 1191, 1201-02 (1995); Stevens, *Diploma Privilege*, *supra* note 7, at 20 (citing REED, *supra* note 14, at 172-78, 256-59).

18. See, e.g., REED, *supra* note 14, at 250, 252; Hansen *supra* note 17, at 1201-02.

19. See, e.g., *Huffman v. Montana Supreme Court*, 372 F. Supp. 1175, 1176 (D. Mont. 1974); see also Stack, *supra* note 2, at 110-13 (examining *Huffman*).

20. See, e.g., Hansen, *supra* note 17, at 1201; Stevens, *Diploma Privilege*, *supra* note 7, at 20.

21. See, e.g., REED, *supra* note 14, at 266-67.

22. Elihu Root et al., *Report of the Special Committee to the Section of Legal Education and Admissions to the Bar of the American Bar Association*, 46 *REP. ANNUAL MEETING A.B.A.* 679, 688 (1921).

23. See, e.g., Erwin N. Griswold, *In Praise of Bar Examinations*, *A.B.A. J.*, Jan. 1974, at 81, 82.

24. See, e.g., E. Marshall Thomas, *The Bar Examination: Its Function*, 32 *B. EXAMINER* 69, 70 (1963).

protects the public by ensuring qualified practitioners;<sup>25</sup> and that it (4) forces law faculties and law schools to maintain high standards.<sup>26</sup> In the face of these arguments, only Wisconsin maintains the diploma privilege.<sup>27</sup>

Like other states, Wisconsin has a bar examination. Originally that examination applied to everyone except University of Wisconsin Law School graduates.<sup>28</sup> Beginning in 1885, the bar examination changed from oral to written form.<sup>29</sup> The fact that it only applied to those outside the University of Wisconsin Law School was a great affront to state residents who were graduates of other law schools.<sup>30</sup>

Strangely, the faculty of Marquette University Law School in Milwaukee resisted the diploma privilege.<sup>31</sup> In 1926, some fifty years after the diploma privilege was first adopted for the University of Wisconsin Law School, Professor Carl Zollman of Marquette wrote that his faculty and students recognized “the consequences on the morale . . . of the extension of this privilege . . . and far from desiring it will oppose by all legitimate means within [our] power the receipt of such a ‘gift of the Greeks.’”<sup>32</sup> Nevertheless, Marquette graduates received the privilege in 1931.<sup>33</sup>

### *B. Wisconsin Gets Tough: The Thirty-Credit and the Sixty-Credit Rules*

Beginning in 1971, the Wisconsin diploma privilege took a stricter turn with the adoption of the thirty-credit rule and its companion the sixty-credit rule.<sup>34</sup> Under the thirty-credit rule, students must take ten specific courses and achieve a grade point average of seventy-seven.<sup>35</sup> Further, the diploma privilege is subject to a sixty-credit rule that requires students to take at least sixty of their law school credits in thirty subject areas also achieving a seventy-seven average.<sup>36</sup> In this sense, the diploma privilege directly enforces

25. See, e.g., GEORGE NEFF STEVENS, ASSOCIATION OF AM. LAW SCH., BAR EXAMINATION STUDY PROJECT: FINAL REPORT 3 (1976).

26. See, e.g., REED, *supra* note 14, at 267; Griswold, *supra* note 23, at 81; Thomas, *supra* note 24, at 70.

27. See Hansen, *supra* note 17, at 1192 n.7.

28. See Stack, *supra* note 2, at 118.

29. See *id.*

30. See John McDill Fox, *Preface to Carl Zollman, Diploma Privilege in Wisconsin*, 11 MARQ. L. REV. 73, 73 (1927).

31. See Stack, *supra* note 2, at 118 n.28.

32. Zollman, *supra* note 30, at 78.

33. See Peter K. Rofes, *Mandatory Obsolescence: The Thirty Credit Rule and the Wisconsin Supreme Court*, 82 MARQ. L. REV. 787, 790 n.9 (1999) (citing WIS. STAT. § 256.28(1) (1931)).

34. See WIS. STAT. § 256.28(1)(b) (1971).

35. The ten courses are “constitutional law, contracts, criminal law and procedure, evidence, jurisdiction of courts, ethics and legal responsibilities of the legal profession, pleading and practice, real property, torts, and wills and estates.” WIS. SUP. CT. R. 40.03(2)(b).

36. These courses are “[a]dministrative law, appellate practice and procedure,

what the bar examination indirectly enforces: that students take certain courses. According to at least one author, because of the thirty-credit and sixty-credit rules, "Wisconsin has the most restrictive diploma privilege statute ever written."<sup>37</sup>

### III. COMPARING THE DIPLOMA PRIVILEGE AND THE BAR EXAM

Coming from a diploma privilege state, I spent a fair amount of time reading justifications of the bar examination and trying to compare those justifications to what I know about the Wisconsin experience. As explained more fully below, I conclude that the diploma privilege bests the bar examination in each of the areas of concern.

#### *A. Ensuring a Qualified Bar*

One of the major claims for the bar examination is that it helps produce a qualified bar by ensuring that students know the law.<sup>38</sup> Clearly, there are those who dispute this claim. As Professor Seligman opined in 1978,

The rigor of the modern state bar examination is better illustrated by a cartoon . . . . In the cartoon, an instructor for "E-Z Beans Bar Review" sits before a chart that shows two hands shaking; one is labeled "offer," the other "accept." Below the handshake two heads lean against each other, symbolizing a "meeting of the minds." The caption of the cartoon has the bar review lecturer explaining, "So much, ladies and gentlemen, for the law of contracts."<sup>39</sup>

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commercial transactions, conflict of laws, constitutional law, contracts, corporations, creditors' rights, criminal law and procedure, damages, domestic relations, equity, evidence, future interests, insurance, jurisdiction of courts, legislation, labor law, ethics and legal responsibilities of the profession, partnership, personal property, pleading and practice, public utilities, quasi-contracts, real property, taxation, torts, trade regulation, trusts, and wills and estates." *Id.* R. 40.03(2)(a).

37. Goldman, *supra* note 16, at 42.

38. See Griswold, *supra* note 23, at 81; Stevens, *Diploma Privilege*, *supra* note 7, at 22-29, 34; Thomas, *supra* note 24, at 69, 73; Yoshio Shigezawa, *Observations—Bar Examiners and Bar Examinations—1974, Address to Annual Conference of Chief Justices 1974*, 43 B. EXAMINER 147, 147 (1974). *But see* Edward F. Bell, *Do Bar Examinations Serve a Useful Purpose?*, 57 A.B.A. J. 1215, 1215-16 (1971); Leon Green, *Why Bar Examinations?*, 33 ILL. L. REV. NW. U. 908, 909-12 (1939); Hansen, *supra* note 17, at 1204-10; Joan Howarth, *Teaching in the Shadow of the Bar*, 31 U.S.F. L. REV. 927, 930 (1997); Cecil J. Hunt, II, *Guests in Another's House: An Analysis of Racially Disparate Bar Performance*, 23 FLA. ST. U. L. REV. 721, 763-69 (1996); Seligman, *supra* note 6.

39. Seligman, *supra* note 6, at 49.

In Wisconsin, we believe that our law school examinations are more rigorous than state bar examinations, a belief that I think law professors throughout the country share.<sup>40</sup> In fact, Dean Oliver S. Rundell asserted that a move to a bar examination “would be a backwards step in what has hitherto been an encouraging forward movement.”<sup>41</sup> For Dean Rundell,

A bar examination is framed without any specific relationship to the particular educational background of the individuals who take it. It must be comprehensive in character and must call largely for information respecting things everyone is supposed to know. It necessarily emphasizes memory at the expense of reasoning and this is true no matter how conscious an effort is made to avoid such an emphasis.<sup>42</sup>

Wisconsin students' record of bar passage in other states supports the view that the diploma privilege does not erode standards. For example, in July 1997, twelve Wisconsin graduates took the California bar and ten passed that bar, which is considered one of the most difficult in the country.<sup>43</sup> Although Wisconsin students are not guaranteed high pass rates, their achievement is not uncommon even on difficult bar examinations. Wisconsin students taking the bar exam for the first time had a ninety-six percent pass rate on the Illinois bar for the Summer 1996-Winter 1997<sup>44</sup> and a ninety-one percent pass rate on the Illinois bar for Summer 1997-Winter 1998.<sup>45</sup> Further, as someone who has graded the Wisconsin bar examination, I can tell you that an essay that will pass for Wisconsin bar examination purposes would fail if submitted for a University of Wisconsin Law School course.

### *B. The Bar Examination Catches the Unworthy*

One argument for the bar examination is that it catches the unworthy; that is, people who somehow graduate law school but who lack the skills or knowledge for law practice. In this case, the bar examination should, logically, test what an applicant was meant to learn in law school.

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40. See Stack, *supra* note 2, at 120-22.

41. *Id.* at 125.

42. *Id.*

43. See Letter from Philip G. Schoner, Deputy Director Examinations, The State Bar of California: Office of Admissions, to Deans, California Law Schools (Nov. 21, 1997) (on file with the Office of Career Services, University of Wisconsin Law School).

44. See SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AMERICAN BAR ASS'N, OFFICIAL AMERICAN BAR ASSOCIATION GUIDE TO APPROVED LAW SCHOOLS 447 (Rick L. Morgan & Kurt Snyder eds., 1999 ed. 1998).

45. See SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AMERICAN BAR ASS'N, OFFICIAL AMERICAN BAR ASSOCIATION GUIDE TO APPROVED LAW SCHOOLS 441 (Rick L. Morgan & Kurt Snyder eds., 2000 ed. 1999).

Unfortunately, that is not the case. Instead, the bar examination tests many of the same skills already tested on the LSAT.<sup>46</sup> In fact, because the LSAT and the bar examination are scaled to each other, each test is deliberately constructed so that a person who does well on the LSAT will also do well on the bar.

The problem with scaling is that if a test that is taken before law school is the best predictor of bar passage, then three years of law school are almost completely irrelevant to admission to practice in most states. Accordingly, it is hard to see what bar examinations add to protecting the public. Instead of law school and a bar examination, perhaps states should admit based on LSAT score and save us all a lot of time and money.

### *C. Ensuring a Hard-Working Student Body and Faculty*

Another claim for the bar examination is that it prevents both students and faculty from falling into lethargy.<sup>47</sup> My Wisconsin experience puts a lie to that claim. Neither Wisconsin students nor faculty are lazier than their counterparts. In fact, rather than lower standards, I find that I am harder on Wisconsin students than on students I have taught in other states. I am much more likely to fail a Wisconsin student because I know that there is no bar exam to do the job for me.

Further, years of teaching at other schools, all with higher average LSAT scores than Wisconsin, convinces me that Wisconsin students are, on average, smarter, more dedicated students than those in bar examination states.

In a sense, the bar examination can foster laziness because professors never have to question their syllabi and law schools need never change their curricula. Each can just model the bar exam and the students and the public be damned.

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46. This is best demonstrated by the fact that LSAT scores are a significant indicator of bar passage. See Alfred B. Carlson & Charles E. Werts, *Relationships Among Law School Predictors, Law School Performance, and Bar Examination Results*, in 3 REPORTS OF LSAC SPONSORED RESEARCH: 1975-1977, at 211, 259 (1977); LINDA F. WIGHTMAN, LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY 77 (1998). The significance of the correlation between LSAT scores and bar passage rate has been called into question. See Hunt, *supra* note 38, at 767 ("Positive correlations . . . may evidence nothing more than the fact that each index is measuring essentially the *same thing* . . ."); Rebecca Luczycki, *Bar Exam Winners & Losers*, NAT'L JURIST, Jan./Feb. 2000, at 20 (exploring the argument that schools with low LSAT scores and a high bar passage rate focus their teaching toward the bar exam).

47. See Griswold, *supra* note 23, at 82-83; Stevens, *Diploma Privilege*, *supra* note 7, at 27-28; Thomas, *supra* note 24, at 70; Shigezawa, *supra* note 38, at 147-48. *But see* Hansen, *supra* note 17, at 1211-12.



*D. Ensuring that Students Have Absorbed the Entire Curriculum*

Another claim in favor of the bar examination is that it tests students on a wide variety of courses together rather than separately as in law school.<sup>48</sup> The point, apparently, is that wide knowledge of courses is needed for good practice.

In the past, there might have been some truth to the claim that law schools test one subject at a time while the bar examinations force students to draw on their three years of coursework. Not so long ago, bar examinations tested more subjects and spent more time on local law and practice.<sup>49</sup> Today, the bar examination is more national in character with six major subjects as the focus. Thus, students need not draw on their entire educational experience to pass a bar examination.

Further, the examination's emphasis on coursework disfavors many other skills needed for law practice.<sup>50</sup> Bar examinations force students into those classes covered by the examination, none of which are skills-oriented. Thus, bar examinations work to make students less prepared for practice by emphasizing bar exam subjects in place of clinical skills.

This emphasis on traditional course work and away from the development of the skills needed for effective lawyering is another objection to the diploma privilege as instituted in Wisconsin.<sup>51</sup> Nevertheless, coupled with the credit requirement for graduation,<sup>52</sup> the thirty- and sixty-credit rules still allow for a wide variety of courses. The University of Wisconsin Law School provides several clinics that serve a large part of the student population.<sup>53</sup>

48. See Griswold, *supra* note 23, at 81; Stevens, *Diploma Privilege*, *supra* note 7, at 27-28; Thomas, *supra* note 24, at 70; Shigezawa, *supra* note 38, at 147. *But see* Hansen, *supra* note 17, at 1212-14.

49. See Seligman, *supra* note 6, at 50.

50. See Hansen, *supra* note 17, at 1213-14.

51. See Rofes, *supra* note 33, at 812-19. Rofes's criticism is based on a 1992 report by the American Bar Association which sets forth ten skills necessary for effective lawyering. These skills are (1) problem solving; (2) legal analysis and reasoning; (3) legal research; (4) factual investigation; (5) communication; (6) counseling; (7) negotiation; (8) litigation and alternative dispute-resolution procedures; (9) organization and management of legal work; and (10) recognizing and resolving ethical dilemmas. See AMERICAN BAR ASS'N TASK FORCE ON LAW SCH. AND THE PROFESSION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 135-221 (1992) [hereinafter *MACCRATE REPORT*] (Robert MacCrate was chairperson of the task force). The findings of the *MacCrate Report* were further developed by the State Bar of Wisconsin. See STATE BAR OF WIS., COMMISSION ON LEGAL EDUC., FINAL REPORT AND RECOMMENDATIONS 17-23 (1996).

52. The diploma privilege requires the "completion of not less than 84 semester credits." WIS. SUP. CT. R. 40.03(1) (2000).

53. For example, clinical programs that were available to UW students in the Spring 2000 semester included the Consumer Law Clinical, Coalition for Advocacy, Labor Law Clinical, Legal Defense Program, Prosecution Project, Domestic Violence Clinical, Family Law Clinical, Legal Assistance to Institutionalized Persons (LAIP), and the Family Law

*E. Bar Examinations and Disparate Impact*

One of the greatest benefits of the diploma privilege is that Wisconsin avoids the disparate impact on minority applicants that bar examinations have imposed for decades.<sup>54</sup> This tremendous disadvantage caused the National Bar Association to call for a universal diploma privilege and others to pursue failed litigation against several bar examinations.<sup>55</sup> Although litigation failed, legislatures can adopt a diploma privilege in order to avoid this discrimination problem.

*F. Bar Examinations As an Impediment to Learning*

An even greater benefit to the diploma privilege is that it allows students to relax and learn. I cannot emphasize that enough. If you asked the average Wisconsin student about his state of mind, I am sure that you would hear a litany of horrors from depression to despair. My friends at the University Counseling Center tell me that law students are disproportionately represented in their case loads. Yet, Wisconsin students do not suffer as much as other students I have known. It may be that Wisconsin is just a calmer state or that Wisconsin students hide their feelings better, but I know that the terror I saw other places seems absent here. Outside of the Marine Corps, a lack of terror makes for a better learning environment.

*G. Waiving into Practice*

The major downside of the diploma privilege is the problem of waiving into practice in other states. Yet, as the American work force becomes more mobile, the right to avoid future bar examinations becomes a greater concern. There are several states that will not admit anyone who has not taken a bar examination no matter how long or successfully that lawyer has practiced in another state.<sup>56</sup> These states usually border states with more recent histories of waiver into practice. The idea is to protect the local bar from neighboring

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Project. See University of Wisconsin Law School, *Spring 2000 Course Schedule* (last modified Feb. 11, 2000) <<http://courses.law.wisc.edu/schedule/schedule.asp?sem=spring-00>>.

54. See Howarth, *supra* note 38, at 931-36; Hunt, *supra* note 38, at 733-63, 769-86; John Antonides, *Minorities and the Bar Exam: Color Them Angry*, JURIS DR., Aug./Sept. 1978, at 56.

55. See Bell, *supra* note 38, at 1215, 1216-18; Hunt, *supra* note 38, at 733-60; Antonides, *supra* note 54. The National Bar Association is the "nation's oldest and largest national association of predominately African American lawyers and judges." *About the NBA: The NBA Perspective* (visited April 26, 2000) <<http://www.nationalbar.org/about.html>>.

56. See AMERICAN BAR ASS'N SECTION ON LEGAL EDUC. & ADMISSIONS TO THE BAR & NATIONAL CONFERENCE OF BAR EXAMINERS, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 32 (1999) [hereinafter BAR ADMISSION REQUIREMENTS].

lawyers who passed into practice in a diploma privilege state.

For example, Ohio is a neighbor of West Virginia, which kept its diploma privilege until the 1980s.<sup>57</sup> In response to West Virginia's now-extinct diploma privilege, Ohio will not waive a lawyer into practice who has not passed a bar examination. This Ohio rule then causes Wisconsin to retaliate against Ohio lawyers or even people who once lived in Ohio even if they did not practice law.<sup>58</sup>

To use me as an example, I am not a member of the Ohio bar. Yet, simply because I taught in Ohio, I was forced to wait five years before being waived into the Wisconsin bar. Wisconsin would not admit me—a New York/New Jersey lawyer who was just passing through Ohio—because Ohio does not waive in Wisconsin graduates.

#### *H. Creating Relationships Between the Bar, the Judiciary, and the Academy*

One unrecognized advantage of the diploma privilege is that it brings lawyers together throughout the state. This increased contact among the various members of the bar occurs because the Wisconsin Supreme Court and the Wisconsin State Legislature control the diploma privilege. As elected officials, these judges and legislators are sensitive to bar concerns and Wisconsin lawyers.<sup>59</sup> Through the diploma privilege, the bar and the judiciary are active participants in legal education. This gives the Wisconsin law schools access to law as practiced “on the ground,” which, in turn, allows for more modern curricula. While bar examinations are often purposely mysterious and hidden, the diploma privilege puts lawyers’ and academics’ concerns front and center where the citizens of the state can know what is going on and why.

#### IV. WHY THE DIPLOMA PRIVILEGE WORKS IN WISCONSIN

The big question that the Wisconsin diploma privilege raises is whether waivers into practice upon graduation can work outside the Dairy State. Is Wisconsin simply so unique that its successful experience cannot be

57. See Hansen, *supra* note 17, at 1192 & n.7.

58. Wisconsin limits its admission on motion to attorney applicants from jurisdictions that offer admission on motion. See BAR ADMISSION REQUIREMENTS, *supra* note 56, at 32. Ohio offers an attorney-applicant admitted in a jurisdiction under the diploma privilege admission without examination “only if [the] applicant has also taken and passed the bar examination and been admitted as an attorney-at-law in the highest court of another state or the District of Columbia.” *Id.* at 33. Thus, applicants from Wisconsin who have only been admitted under the diploma privilege are not eligible for admission on motion in Ohio.

59. But see Rofes, *supra* note 33, at 821-22 (describing how the Chief Justice was unreceptive to Marquette University Law School’s proposed curriculum change because it could “open the Pandora’s box of the diploma privilege”).

replicated elsewhere? My conclusion is that there are certain characteristics that make Wisconsin a good site for the diploma privilege but that those characteristics are shared by several other states. These characteristics include (1) a small state with a relatively small practicing bar; (2) a close relationship between the bar, the judiciary, the legislature, and the law schools within the state; and (3) great regard between the public and the bar for the state's law schools.

A small state and small practicing bar are required because it is hard to develop the trust and participation that the diploma privilege represents in a large state where people do not know one another. A close relationship between the bar, the judiciary, the legislature, and the law schools within the state is needed so that the diploma privilege is combined with law school programs that truly represent what lawyers need to know, not just on a superficial level but on deeper levels as well. A great regard between the public and the bar for the state's law schools allows for the type of trust that makes the diploma privilege work.

Thus, some states might do well to consider re-establishing the diploma privilege such as Washington, Oregon, West Virginia, Minnesota, and Iowa; while California, New York, and Texas should probably reconsider the bar examination using other approaches. Those states that reinstate a diploma privilege might find that this older method helps them prepare for the modern world by forcing up-to-date concerns into the classroom, while states that keep the bar examination find that they are stuck in the twentieth century.

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