



The Law School Dilemma

by Steven A. Morley

Have you ever heard an attorney comment on how indispensable his or her paralegal is? Maybe you have overheard an attorney say something like, “My paralegal runs things so well at my firm that all I am good for is my signature.” When paralegals get to the point in their careers that they are literally doing everything an attorney does except establish the attorney-client relationship, set legal fees, or give legal advice; *i.e.*, the things paralegals are prohibited from doing, *see* Guideline 3 of the ABA Model Guidelines for the Utilization of Paralegal Services (2004), it is conceivable that such paralegals might have thoughts like, “Why am I doing all the attorney’s work and not getting paid the attorney’s salary?”

While this is a hypothetical scenario (tongue in cheek), there might be paralegals out there who would like to become attorneys by going to law school to further their already established legal careers. It is ironic, however, that the most weight given by law school admission committees is the applicant’s LSAT score and undergraduate GPA. Some law schools profess to consider life experiences or “other relevant factors” in their admission decision making process, but the truth of the matter is that the LSAT and undergraduate GPA must carry the day for an applicant to stand a chance at getting into law school. Due to the recent downturn in the economy, law school applications across the country are rapidly increasing, and it is becoming more competitive than ever to get into law school.

Would it not make sense that someone who has real world legal experience and who is an “attorney by proxy” could likely thrive in the legal career field as an attorney? And, more than likely, such a person probably has a genuine love for the law that a lot of law school students quickly learn they do not have, or they realize they have gone too far in law school to back out.

Law schools must have some way of filtering the thousands of applications they receive each year. They principally use the applicant’s LSAT score and GPA. However, it is arguable that the LSAT is not a true measure of a person’s abilities, nor is it a measure of how well a person will do in law school. We can all think of law school students who practically aced the LSAT when

they took the test on a dare or because they had nothing better to do that particular Saturday. And we all know of those who did well on the LSAT but struggled or ended up dropping out of law school, because it was too hard or they did not enjoy the law or for a myriad other reasons. On the flip side, we can all think of those students who did average or poorly on the LSAT who somehow got into law school by the skin of their teeth and went on to excel and thrive in law school, because they actually wanted to be there, they had a passion for the law, and practicing law was what they really wanted to do for a career. While individuals such as paralegals generally have a love of the law and have been working in the legal career field, entrance into law school for them is such a competitive beast that most such applicants are denied, because they were not able to decipher the LSAT enigma or their undergraduate grades were not high enough, or both.

Allowing for an alternative method to sit for the bar exam and become a lawyer is not a novel idea. At the time the American Bar Association was founded in 1878, “lawyers . . . trained under a system of apprenticeship.” *See* <http://www.abanet.org/about/history.html>. Not until recently, within the last 50 years or so, did many states adopt the ABA’s recommendation that a person should not be allowed to sit for the bar exam unless that person graduated from an ABA approved law school. The Code of Recommended Standards for Bar Examiners was first adopted in 1959 where “a most important change [to the eligibility of applicants to the bar was] the elimination of private study, correspondence school study and law office training. The Code thus recognize[d] that other methods of preparation inferior to that obtained in approved law schools should not be permitted.”

STEVEN A. MORLEY is a paralegal at the US Attorney’s Office specializing in Asset Forfeiture.



See Homer D. Crotty, *Better Lawyers for Tomorrow: Code of Standards for Bar Examiners*, 45 A.B.A. J. 583, 584 (1959); See also ABA's *Comprehensive Guide to Bar Admission Requirements*, Sec. II, Para 6 (2009). Before this switch, graduation from an ABA approved law school was not a prerequisite to taking some state's bar examinations. Rather, one approach to becoming a licensed attorney was from on-the-job training as an apprentice. Isn't a paralegal receiving precisely this kind of training on a daily basis?

Some well known American lawyers who never attended law school or did not finish law school include Abraham Lincoln, John Jay, John Marshall, Patrick Henry, and Strom Thurmond. Today, apprenticeships, reading the law, or law study programs are not entirely extinct. In fact, current Vermont Supreme Court Justice Marilyn Skoglund never went to law school. See Vermont Supreme Court Justice Biographies *available at* <http://www.vermontjudiciary.org/GTC/Supreme/JusticesBios.aspx>. Having an alternative approach to becoming a lawyer offers the opportunity to practice law to those that might not otherwise be able to attend law school for whatever reason. Currently, the states of California, Vermont, Virginia, and Washington allow for a person to apply to sit for the bar exam without having set foot in law school, but only after completing some form of law study program. California's bar exam statistics from 2005 to 2009 show that 45.3% of all General Bar Exam takers passed, while 10.6% of the 4-Year Qualification non-law-school examinees passed the General Bar Exam. Vermont's bar exam statistics from 2005 to 2009 show that 70.7% of all bar exam takers passed, while 30.8% of the Law Office Study non-law-school examinees passed. Virginia's bar exam statistics from 2000 to 2009 show that 67% of all bar exam takers passed, while 23% of the Law Reader Program non-law-school examinees passed. Even more impressive, Washington's bar exam statistics from 2000 to 2009 show that less than 1% of all examinees were part of the Law Clerk non-law-school program, yet of those Law Clerk bar examinees, 90% passed the bar exam during this time period.¹

As it currently stands under the Utah Supreme Court Rules of Professional Practice, Rules 14-703(a)(3) and 14-704(a)(3) only allow for licensure of certain applicants who "ha[ve] graduated with a first professional degree in law (Juris Doctorate or Bachelor of Laws) from an [ABA] approved law school." Interestingly, in the recent Utah Supreme Court decision of *In Re Anthony*, 2010 UT 3, 225 P.3d 198, the Utah Supreme Court granted a waiver of the ABA law school requirement for an attorney applicant imposed by Rule 14-704(a)(3) to petitioner Thomas E. Anthony. While Anthony had graduated from a non-ABA approved law school in California in 1980, his petition for a waiver of the ABA law school requirement was granted when the court said

While the rules governing [bar] admission stand as important safeguards against incompetent and unethical representation, strict adherence to the rules in every case may undermine, rather than further, these goals. And where the goal of ensuring competent representation would not be advanced by a strict application of the rules governing admission, we have contemplated that rules may be waived in appropriate cases.

Id. ¶ 15.

The court "...ma[d]e clear that a waiver of the Bar's ABA accreditation requirement may be obtained in an appropriate case," but went on to "decline to set out any specific standard for evaluating petitions for waiver..." *Id.* ¶ 16. It is interesting to note that the court recognized Anthony's argument when he "acknowledge[d] the relevance of an attorney's law school education to admission decisions generally, [but] argue[d] that, at some point in an attorney's career, the law school experience fades into insignificance and becomes irrelevant in determining an individual's competency to practice law." *Id.* ¶ 13 (Internal quotations omitted).

In light of the highly unstable economy, more states, including Utah, should at least consider the idea of alternative methods

***Supervising Attorneys and Paralegals
Your Attendance is Requested:***

*At a luncheon honoring Utah Paralegals
Hosted by
The Paralegal Division of the Utah State Bar
& Legal Assistants Association of Utah*

***Thursday, May 20, 2010 at 12:00 Noon
Sheraton Hotel • 150 West 500 South, Salt
Lake City, Utah***

***Keynote Speaker: Mayor Ralph Becker
"Lifelong Leadership
Beyond the Legal Profession"***

*1.0 hour CLE Credit and Lunch
Cost is \$30 per Person*

*Register by phone at (801) 257-7220
by May 17, 2010
No shows will be billed*

for allowing a person to sit for the bar exam and become a practicing attorney. As recent as August 26, 2009, the New York Times reported that the hiring of newly-graduated, top-tier law school students has dropped off so sharply that the best and brightest law school graduates are forced to take lower paying jobs if they can find jobs at all.

After he lost his job as a television reporter two years ago, Derek Fanciullo considered law school, thinking it was a historically sure bet. He took out “a ferocious amount of debt,” he said – \$210,000, to be exact – and enrolled last September [2008] in the School of Law at New York University. “It was thought to be this green pasture of stability, a more comfortable life,” said Mr. Fanciullo, who had heard that 90 percent of N.Y.U. law graduates land jobs at firms, and counted on that to repay his loans. “It was almost written in stone that you’ll end up in a law firm, almost like a birthright.”

Gerry Shih, *Downturn Dims Prospects Even at Top Law Schools*, N.Y. TIMES, August 26, 2009. Partly due to economic factors, the trend of law schools seems to be that of increasing law school tuition. This translates into three or more years of accumulated law school debt that may take a lifetime to repay at the lower-than-expected salaries recent law school graduates are earning. The current job market is so bad that many law school graduates are even taking jobs as paralegals, hoping that with time they will be able to become paid as an associate in the firm once a position becomes available. Even some potential law

school attendees are becoming dissuaded from attending law school because of the volatile job market after law school.

Some advantages of having an alternative approach to becoming a licensed attorney by apprenticeship or law study program include: (1) no student loans to repay; (2) sitting for the bar in roughly the same amount of time as a law school graduate; and (3) having direct attorney mentoring in real world legal scenarios. Some disadvantages to becoming a licensed attorney by way of apprenticeship or law study program include: (1) severe limitations on the kinds of jobs one can apply for;² and (2) possible stigma associated with the lack of the J.D. credential behind one’s name. I would not dare argue with Justice Skoglund that the legal training she received was inferior in any way to that of a law school student.

Those individuals who want to become practicing lawyers should at least have another avenue available to them besides the highly competitive and seemingly insurmountable law school route. After all, there is no guarantee of a job after law school, but there is a guarantee of the debt associated with law school as a constant and gloomy reminder of the long road ahead to pay off that debt. Wouldn’t practicing law be much more enjoyable knowing that one is practicing because of the love of the law rather than practicing because of the burden to repay student loans?

1. All data comprising these statistics were obtained from the respective state bar associations.

2. For example, most, if not all, attorney jobs with the federal government listed on www.usajobs.gov require that the applicant hold a J.D. from an accredited law school.

Upcoming Paralegal Division Events

May 3rd	Law Day Run
May 20th	Annual Paralegal Day Luncheon w/1 hour CLE at the Sheraton
June 18th	Annual Paralegal Division Meeting w/6 hours CLE at the Law and Justice Center
July 14–17th	Utah State Bar Annual Convention in Sun Valley, Idaho