



Diploma Privilege

What it could mean
for law education
in West Virginia

Did you know that West Virginia once had diploma privilege, a method for lawyers to be admitted to the Bar without taking a bar examination? It was truly a privilege for those who benefitted from it. Before discussing why diploma privilege should be relevant and reinstated, it is important to understand its history.

By Tyler D. Gordon

In 1842, the Virginia legislature granted law school graduates from William and Mary College and the University of Virginia immediate bar admission without any form of examination. This practice, now known as diploma privilege, quickly spread throughout the country.¹ As it took shape in the United States, states that adopted the privilege granted bar admission to its in-state graduates without requiring examination. Proponents of the privilege believed that it would relieve students of the fear and anxiety that comes with examination, as well as unnecessary inconvenience and expense.² More importantly, with graduates receiving an approval from the state, schools believed that they would become more prominent in the eyes of students and the public.³ Since 1842, 32 states and the District of Columbia have granted diploma privilege, although not simultaneously.⁴ In 1921, however, the ABA denounced diploma privilege, claiming “every candidate should be subjected to an examination by a public authority to determine his fitness.”⁵ As a result of the ABA’s denouncement, states quickly began to reconsider their privilege and by 1974 only Mississippi, Montana, West Virginia and Wisconsin waived the bar examination to those who produced a diploma from an accredited school within the state.⁶ Shortly thereafter, in 1988, West Virginia eliminated its diploma

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privilege, and today only Wisconsin has their privilege intact.

Perhaps Wisconsin’s privilege continues because their legislation has been recognized as the “most restrictive diploma privilege statute ever written.”⁷ Wisconsin’s two law schools, Marquette University and the University of Wisconsin, now use diploma privilege as a recruiting tool for maintaining the state’s brightest students and importing those from other states. In fact, the opinion at the University of Wisconsin is that requiring a bar exam would be a “backwards step.”⁸ An additional benefit to graduates in the state of Wisconsin is that they are still able to sit for the bar exam in all other states.

More recently, diploma privilege has found its place in the news for a possible reemergence. Bar exam passage rates are plummeting across the board and some legal academia note that the exam has progressively grown further from its designated purpose of measuring competency and knowledge. In 2014, the Iowa

State Bar Association suggested eliminating the exam; however, without detailing reasons why, the Supreme Court of Iowa concluded that the diploma privilege should not be adopted, though they did recommend study to achieve “greater efficiency, expedition, economy and utility for the applicants for admission.”⁹ What the court did not recognize is that diploma privilege would accomplish exactly what they asked the bar

association to study. Nevertheless, the Iowa State Bar Association’s efforts, alongside growing tensions that are evidenced in some of the statements below, detail a desire to eliminate the exam.

West Virginia University College of Law’s (“WVU Law”) ranking has fluctuated recently in the annual *U.S. News & World Report* ranking. Therefore, breaking the stagnant norm could be necessary to see consistent improvement. Wisconsin, whose privilege is still intact, currently reports a 100% bar passage rate, which is an important factor when determining rankings.¹⁰ Undoubtedly, reporting a 100% bar passage rate would improve WVU Law’s overall rankings.

As tensions grow and other bar associations take action, reinstating diploma privilege will allow West Virginia to jump ahead of the curve. Diploma privilege is a proactive step to begin the rebuilding of our state and an innovative measure to keep the brightest students home. West Virginia has the opportunity to

set the trend and be the model for other states to follow. Diploma privilege was once a successful and resourceful tool that should be brought back for at least these six reasons.

1 Restoring diploma privilege will eliminate the current lack of correlation between the bar examination and practice.

The bar exam currently has little correlation with actual practice. In fact, students are regularly told by faculty and recent graduates that law school will not teach the necessary skills for practice. The bar exam forces students into courses that it covers, none of which are skills-oriented. Moreover, the bar exam only focuses on six major subjects, meaning that a student does not need to draw on their entire educational experience in order to pass the exam.

Although students are able to explain complex rules of law, such as the rule against perpetuities, there are many more practical concerns for today’s graduates. Common unanswered questions for students include:

- How to operate the administrative and business aspect of a firm?
- How to competently and confidently handle real life conflicts?
- When and how to use alternative methods to help a client?

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- How to manage personal and client finances?

Law schools around the country, including WVU Law, teach to the bar exam in order to produce students who will pass the exam on their first attempt. While this is currently a necessary means to an end, the future objective should be to teach more practical curriculum and produce successful attorneys skilled in the practice of law. By eliminating the bar exam and reinstating diploma privilege, WVU Law and its students can focus more of its resources towards practical skill development.

2 Diploma privilege allows students to gain employment immediately following graduation.

The bar exam is proctored twice a year, in February and July. Students who graduate in May will undergo three months of studying, followed by the exam itself, then another three months of waiting for the exam to be graded and to

be sworn in. Because it takes approximately six months for graduates to be licensed, they are severely limited in their employment opportunities post-graduation.

This unemployment period is an undeserving burden for obtaining a Juris Doctorate. Moreover, unemployment significantly complicates the financial situation for those with a large amount of law school debt, i.e., most law school graduates.

Reinstating diploma privilege would allow these graduates to immediately begin shopping for employment as licensed attorneys within the state.

If nothing else, West Virginia should consider implementing a system like Arizona’s where students can take the bar exam in their last year of law school. Students who pass the exam on their first attempt are then permitted to practice immediately following graduation.

3 The bar examination’s un-touchability is deeply rooted in the pockets of entities that do not benefit this state.

The bar exam is often purchased from the National Conference of Bar Examiners (“NCBE”). According to its 2013 tax filing, the NCBE reported almost \$20 million in annual revenue, nearly 85% of which came from exam sales.¹¹ Since the American Bar Association (“ABA”) denounced diploma privilege in 1921, states have reacted accordingly by spending their money on exams.¹² Meanwhile, companies like

Barbri, Kaplan, Themis and the new kid on the block, Quimbee, have gotten their hands in the cookie jar by offering bar prep courses for upwards of \$2,000 per student. This added expense creates another burden on students who are yet to be employed and, unfortunately, the money for taking such a course often comes from student loans.

West Virginia, and its students, should not fund these corporations by purchasing bar exam courses and the exam itself. Instead, all efforts, resources and time should be geared towards preparing practice-ready graduates.

4 The bar examination is an overall impediment on learning.

Guy Cook, President of the Iowa State Bar Association, has described the bar exam as “nothing more than a final hazing that tests students on esoteric material.”¹⁴ Graduation

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from law school has been deemphasized because fear of the bar exam is so great. As bar passage rates decline, students become more anxious and stressed during a time where their main focus should be on the ultimate goal of learning.

As Beverly Moran, a professor at Vanderbilt Law School and former professor at the University of Wisconsin, has recognized, the examination leads to “a litany of horrors from depression to despair.” Professor

Moran notes that a benefit of diploma privilege in Wisconsin is that it “allows students to relax and learn.”¹⁵ Eliminating this added stress could indirectly combat the poor reputation and truth behind substance abuse amongst lawyers.

Finally, rather than taking skill-oriented classes or other classes of interest, the bar exam dictates what the student should take, regardless of future practice or interest. Law school should be a time of development and growth. It should encourage your interests and help you to hone in on skills. Unfortunately, the bar exam, the ultimate dictator, determines where and what the student should be focused on.

5 West Virginia is perfectly situated for diploma privilege and it will encourage a closer relationship between the Supreme Court, The West Virginia State Bar, and WVU Law.

WVU Law is a relatively small school and is the only law school in the state, making diploma privilege a perfect fit. Eliminating the bar exam for WVU Law graduates will still allow the West Virginia Supreme Court of Appeals and The West Virginia State Bar to maintain a close relationship with WVU Law faculty, students, and curriculum. In fact, it is likely that eliminating the bar exam will improve the relationship between the three entities. For diploma privilege to succeed, it is necessary that these relationships be healthy so that the law school appropriately prepares students for in state practice. On the other hand, diploma privilege in a larger state is less likely to succeed

due to the inability to ensure a close relationship between the entities. If properly maintained, these relationships will ensure that WVU Law produces a high-quality graduate with the knowledge necessary to practice in West Virginia.

6 Diploma Privilege will encourage the brightest students in West Virginia to stay in state.

As previously mentioned, Wisconsin law schools currently utilize diploma privilege as a marketing and recruiting tool. More importantly, however, diploma privilege works to keep those students in the state of Wisconsin following graduation.

Because West Virginia indirectly outsources many of its most brilliant students, diploma privilege is a proactive resource available to combat this outsourcing issue. While top-ranked graduates are shopped by out-of-state firms, West Virginia will be able to engage in a battle for that graduate, via diploma privilege. Diploma privilege is more than a benefit to students — it is a valuable resource for an often-hurting economy, it is an investment in West Virginia’s future and it is a reminder that West Virginia wants its best to stay home.

Conclusion

In conclusion, now you know

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that West Virginia once had diploma privilege and by this point, you should also know that it is in West Virginia’s best interest to reinstate diploma privilege. Waiting to have the conversation is not a solution; action is the solution. As Thomas Edison famously said, “There’s a way to do it better — find it.” The “it” is diploma privilege and the time to do “it” is now.

Endnotes

1. M. Kirkwood, Requirements for Admission to Practice Law, in Bar Examinations and Requirements for Admission to the Bar 102-03 (1952). [Hereinafter Kirkwood.]
2. Thomas W. Goldman, Use of the Diploma Privilege in the United States, 10 Tulsa L.J. 36, at 39 (1974). [Hereinafter Goldman.]
3. *Id.*
4. Beverly Moran, *The Wisconsin Diploma*

Privilege: Try It, You’ll Like It, 2000 Wis. L. Rev. 645, at 646 (2000). [Hereinafter Moran.]

5. 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).
6. The West Virginia Supreme Court of Appeals has held that “[T]he authority and responsibility for establishing clear and unambiguous standards for [bar] admission rests in this court . . .” State ex rel. Quelch v. Daugherty, 306 S.E.2d 233 (W. Va. 1983).
7. *Goldman* at 39.
8. Moran at 650.
9. Des Moines Register, *Court Declines Proposal to Eliminate Bar Exam*, Des Moines Register (July 29, 2019, 2:24PM), <https://www.desmoinesregister.com/story/news/crime-and-courts/2014/09/05/court-iowa-law-students-will-continue-to-take-bar-exam/15127935/>.

10. Bar Passage Rates, University Of Wisconsin (July 29, 2019, 2:27PM), https://law.wisc.edu/prospective/documents/2019_sba_bar_passage_report.pdf.
11. *Id.*
12. Thomas W. Goldman, *Use of the Diploma Privilege in the United States*, 10 Tulsa L.J. 36 (1974).
13. Lyons, Kim, *Bar Exam Falling out of Favor*, Pittsburgh Post-Gazette (July 29, 2019, 2:31PM), <https://www.post-gazette.com/business/2014/01/26/Bar-exam-falling-out-of-favor/stories/201401260118>.
14. Moran at 653.
15. *Id.*

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