ILLINOIS STATE BAR ASSOCIATION

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The newsletter of the Illinois State Bar Association's Young Lawyers Division

Illinois Supreme Court weighs adoption of Uniform Bar Examination

BY DANIEL THIES

The Illinois Supreme Court is considering whether to make Illinois the 28th jurisdiction in the country to adopt the Uniform Bar Examination ("UBE"), a single test that allows candidates for the bar to transfer their scores to multiple jurisdictions while still taking only one test. On December 10, 2016, the ISBA Assembly weighed in on the debate, unanimously approving a report endorsing the UBE drafted by the ISBA Standing Committee on Legal Education, Admissions, and Competence, which I chair. That report is now ISBA policy.

The report will now be considered by the Illinois Board of Admissions to the Bar, which held three public hearings across the state last fall to accept public comments. The Board will prepare a recommendation to the Supreme Court, whose decision on whether to adopt the test could come as early as this spring.

There are many reasons to support

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Embracing change: Why is it so difficult?

BY RICH SHEEHY, JD, PHD

Imagine you're at the end of your third year as an associate at a biglaw firm. One night, as you're arriving home at midnight for the fourth straight night, it suddenly hits you: this is not at all what you signed up for…

Or, maybe you're a partner at a small firm you founded with a law school buddy. Five years in, and it's successful, you're making great money, and you enjoy a great reputation in the community. But suddenly, it's become boring. You don't get the same charge you got in the beginning and you find yourself thinking about making a change.

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Using your voice

BY ERIN WILSON

As lawyers, we may sometimes take for granted our education, reputation, and our ability to use our voice. I have an example closer to home and on a smaller scale, but just as important to my family, where I have been using my voice to try and help my children.

On January 10th, I received an email from my daughter's preschool Board of Directors (which run 6 locations), telling us that they were selling the building in which her preschool is housed and they were both unsure if they would have the space available for the upcoming 2017-2018 school year or whether they would be securing a new space for the 2018-2019 school year. My first reaction was shock, panic and sadness. You have to understand, my daughter cried on the first day of preschool only at pick-up. She loves school, and we think it's an amazing place. My second reaction was to look for other school options for next year, which at this time of year are limited, and not something we even wanted to change.

My third, and ongoing reaction, was to try and save her school. So the following morning, I started a series of events that to me seemed fairly innocuous – a conversation with the center's director, emails with the parents, and eventually a first email to the President and Executive Director of the Board of Directors. Next, I urged the other parents to send similar emails to the Board, and gave them an example to use based on my email. In a span about 48 hours, with the mounting pressure, the Board promised to remain open for next year, while they figure out the lease situation for the 2018-2019 school year. This was important.

Since that time, I've attended a parent forum organized by the Board of Directors at the school, had individual meetings with the former and current president of the Board, and formed a Parent Committee, with the goal of fundraising for a new center, marketing to attract students and keep our teachers. I am committed to continuing to put pressure on the Board because while I disagree with the Board's actions and the way this was communicated, I know the preschool itself and its teachers and directors are wholly separate, and this is a good place for my family.

My point in writing this article is that my voice; my ability to draft strong, clear, and concise emails; my ability to ask the teachers and directors the right questions to get the information I needed; and my confidence to reach out to the parents; has been helpful in making sure my daughter has a place to attend school. Obviously this has benefited many other families too and the teachers who were at risk of losing their jobs, but I did this thinking of my family, including my daughter who attends the school now and hopefully my son who will in the future.

As lawyers, we have a unique ability to use our education, voice, and reputation for the better. It has become clear to me from comments of teachers and parents within this process that as a lawyer, I command a higher level of respect. Now I like to think I don't act this way, but by holding the title of lawyer, it is assumed. I encourage all of you to remember that, and use your skills and training when necessary for the better. This can be for your families, or given what is happening in society right now, for others. ■

Erin Wilson practices family law at O'Connor Family Law, PC. She is actively involved in the ISBA Young Lawyer Division, The Standing Committee on Women and the Law and Assembly.

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Is there a 'crisis' of law schools in America?

BY LEONARD F. AMARI

Crisis

We've heard, generally, in the hallways of our courthouses, at bar or alumni association meetings or casually among lawyers at lunch, that law schools today are in trouble. It has been mentioned so often and so casually that it has become a "given." This article asks whether there is a true crisis of law schools in America and, if so, to what degree and why.

Much of this article relies upon an article by Paul Campos, of the University of Colorado, for facts, insight and perspectives.[1] He states, succinctly:

> The ongoing contraction in the employment market for new lawyers has combined with the continuing increase in the cost of legal education to produce what many now recognize as a genuine crisis for both law schools and the legal profession.

Also, please be aware that this article is written by someone with a modicum of involvement and experience with this issue. The author is a 17-year board trustee of the John Marshall Law School, the last ten as its President. John Marshall is one of only approximately six totally independent, stand-alone law schools of the approximate 226 or so law schools in America.

Diminishing enrollments

In a study by Robert Zemsky, Professor of Education at the University of Pennsylvania, mapping a contracting market, the author analyzed 171 law schools and found that enrollment dropped by 21% at private law schools between 2011 and 2015. At public law schools, enrollment dropped by 18%. In the academic year 2009-2010, total law school enrollment at the 206 or so ABA accredited law schools was 154,549. 44,004 JDs and LLBs were awarded. Between 2010 and 2012, the number of applicants to ABA accredited schools fell from 87,900 to approximately 66,500. Of course, the reasons for such significant declines in the applicant pool are consumer generated, i.e. the high cost of a legal education and the diminishing job market for new lawyers.

Costs

Since approximately 1985, tuition in private law schools has increased by 161.5%, in real inflation adjusted terms, and resident tuition has increased by 396.8% for public law schools.

Here are some examples: The cost of attending the University of Illinois Law School increased from about $7,000 annually to about $45,000 during this period. Texas increased from about $5,000 to about $28,000. Minnesota increased from about $12,000 annually to about $35,000. Looking at it in a different statistical way, at John Marshall, the increase was from $220 per credit hour in 1985 to $1,540 per credit hour presently.

Professor Campos indicates, in his treatise, that the estimated total cost of attendance for most law schools is now more than $150,000, and tops $200,000 at many schools. That cost is barely manageable. For example, my present law clerk owes $250,000 for her combined college and law school education. In choosing the two annually awarded $10,000 John Marshall scholarship recipients (given to 2L students) of the Lupel & Amari scholarships, most of the applicants owe upwards of $80,000 – and these are second year/third semester students.

Thus the perception of high costs for a law school education is accurate. Coupled with a terrible employment market, there is a crisis. The crisis has been a hot topic in legal publications and the news media.[2] Why has law school become so expensive? The following are the generally accepted reasons:

- Declines in student-faculty ratios – demanded by the ABA in its accreditation process, now dictated to be 20 to 1 or less, student to teacher;
- Inflationary and rising costs of faculty, and especially tenured faculty;
- The creation and cost of clinics in the legal education process;
- The expansion and rising costs of competent and experienced administrative personnel;
- Advances and high cost of 21st century technology; and
- Experienced administrative professionals and expensive capital construction projects.

As for this declining faculty-student ratios, John Marshall is a good example. In the later 1960s/early 1970s, the faculty consisted of prominent and respected Chicago practitioners, leaders in their fields of tort, labor, immigration, IP and the rest. For the most part, they were adjunct. And those wishing to teach in a Chicago law school were many. I was an adjunct at my *alma mater* from 1968 to 1974, paid about $1,500 per course, and with no other benefits. Many practitioners call me today about adjunct faculty opportunities at John Marshall. There is no shortage of competent attorneys who are anxious to teach a class or two as a complement to their practice.

When I became a trustee at John Marshall, in 2000, enrollments and applications were the highest ever and the school had to comply with the ABA ratio demand of 20 to 1 student to faculty. In a few years, the school finally reached that ratio. Of course, over the next ten years, many, probably most, of these new "ratioed" teachers became tenured, fixing higher teacher costs well into the future. We probably all know what job security and other tenure benefits are involved with being tenured.

Before the bubble "burst," and to accommodate the increasing number of students, and to be competitive in order to attract them, schools had to increase their facilities, not only larger but also better. In addition, schools offered much greater scholarship opportunities. All of this at substantial cost. In addition, there was the cost of improving and expanding the schools' IT capabilities, with attendant equipment, software and on-premises IT professionals.

Starting in 2000, to satisfy these higher enrollment opportunity demands, John Marshall invested more than $150 million in capital improvements. On campus students totaled almost 1,800, the 14th largest law school in the country. The school created a state of the art facility, occupying almost a full block of lien-free real estate in downtown Chicago. The facilities and location compared favorably with any of the other eight law schools in Illinois.

Diminishing employment opportunities

Lawrence E. Mitchell, the Dean of Case Western Reserve's Law School, observed about the job market for new lawyers: "it's bad." "Bad" means that most students will have trouble finding a first job, especially in law firms. Historically, until the beginning of the crisis, about 80% of law graduates found employment as a lawyer within nine months of graduation. Dean Mitchell points out that, in 1998, 55% of law graduates started a job in law. He says that, in 2011, that number was 50% and it has been a weak market ever since. Professor Campos argues in his treatise that the more realistic figure for 2011 is 40%. And he points out that 26% of all jobs taken by these graduates (including non-legal jobs) were temporary positions.

Summary

Consider the quote from Professor Campos again:

> The ongoing contraction in the employment market for new lawyers has combined with the continuing increase in the cost of legal education to produce what many now recognize as a genuine crisis for both law schools and the legal profession.

So yes, these are difficult times for American law schools. Is it a crisis? It depends on how draconian one defines crisis. Are there countermeasures? John Marshall, with its great board (with all due modesty), made up for the most part of alumni who are practicing lawyers and judges, downsized and righted its ship. It got lean and mean. Since 2007, John Marshall has decreased from a 1,700+ student body to just over 900. It bought out, at considerable cost, many of its tenured faculty, mostly older teachers. It leased out much of its now unnecessary space and examined its budget, eliminating as much fat and surplus as possible. Keep in mind that John Marshall is a totally tuition driven institution. Its annual budget is zero-sum (even with a little surplus), having no debt, almost a full block of lien-free downtown Chicago real estate, state of the art facilities, an energetic administration and faculty, and a recently hired dynamic new dean, Darby Dickerson. She understands what the realities are in law school education today.

Some law schools are closing; some are at risk of losing accreditation; and there are some who are merging. It will be interesting to follow these developments in the years ahead. ■

[The author wishes to thank Anthony Pontillo, 2L at John Marshall, for his research assistance in the production of this article.]

1. The Crisis of the American Law School, Paul Campos, University of Colorado.

2. For example, see: "Is Law School a Losing Game?" New York Times, January 8, 2011; "Law School Loses its Allure, Jobs at Firms are Scarce" Wall Street Journal, March 7, 2011; "Even lawyers Struggle to Find Jobs These Days" CBS Evening News, March 8, 2012.

Illinois Supreme Court weighs adoption of Uniform Bar Examination

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adoption of the UBE, but perhaps chief among them is the flexibility it will provide to young attorneys to search for jobs across the country while minimizing the burden of applying for a law license. Applicants for the Illinois bar currently must study for and take an additional bar exam if their job search takes them outside of the state. This process is expensive, stressful, and, because bar exams are given only twice a year, time-consuming. But under the UBE, applicants will be able to transfer their UBE score to any of the 28 jurisdictions which have adopted it, allowing them to seek admission without taking another bar exam and without additional delay. Young attorneys suffering from significant law school debt loads will thus be able to find work more quickly.

A similar benefit will accrue to legal employers, particularly those in border areas like the Illinois counties bordering St. Louis. These employers sometimes must wait months for new hires from other states like Missouri to become licensed in Illinois, delaying the benefit to the employer. The UBE will eliminate these unnecessary delays and make the hiring process significantly easier.

To be sure, the UBE is not without opposition. Those opposed are most concerned about preserving Illinois's ability to ensure that new graduates are familiar with the unique aspects of Illinois law. But this argument must be evaluated in light of the alternative, the current Illinois bar exam, which has a minimal focus on Illinois-specific law.

The current Illinois exam has only three essay questions on Illinois law, totaling 90 minutes of testing time. These essays are such a small part of the test that applicants can pass relatively easily without knowing much, if anything, about Illinois-specific law. The three Illinois essay questions make up about 13% of an applicant's total score on the exam, and an applicant can obtain partial credit by answering based on general principles of law. There is no requirement that an applicant achieve a passing score on each part of the exam; instead, only the applicant's total score from all parts of the test must be at a passing level. Thus, an applicant can pass while still scoring quite poorly on the Illinois essays. Under the current system, nothing guarantees that applicants are knowledgeable about Illinois law.

The UBE would eliminate these three Illinois essay questions. But at the same time, it would allow Illinois to develop separate Illinois-specific requirements for admission on top of the UBE. These additional requirements could include a separate Illinois-specific test, or additional CLE requirements on Illinois law early in an attorney's career. Any additional Illinois exam could be multiple choice or essay-based, and could be given 4-5 times a year (separate from the UBE administration) for both first-time applicants and UBE transferees. Because each applicant would be required to achieve a passing score, this separate exam would actually ensure that all applicants have knowledge of Illinois law *better* than the status quo.

Of course, developing a separate Illinois exam will require additional cost in both time and money. Because the Illinois Board of Admissions to the Bar would need to develop and grade the Illinois portion, in addition to purchasing and grading the UBE, this setup would be marginally more expensive than the current exam, and any additional costs would be passed on to applicants. But most bar applicants are likely willing to pay a modest additional amount and to take a short separate Illinois exam in exchange for the ability to transfer their UBE scores to apply for admission in other jurisdictions, a change that would potentially save them much more time and money in the long run.

After carefully considering the plusses and minuses, the LEAC Committee unanimously recommended that Illinois adopt the UBE. Stay tuned to learn whether the Supreme Court will see things the same way. ■

Embracing change: Why is it so difficult?

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Change

The word itself often causes anxiety and fear. When faced with change, many of us resort to an instinctual defensiveness and desire to avoid it at all costs. This resistance to change results in us being more reactive to life instead of proactive, which often means we are neglecting what we really need—or want. Why is this? Why are we so afraid of change?

I could write for days on this topic but I think I can boil it down to one fundamental issue: **change is difficult.** It requires us to move out of our comfort zones and embrace uncertainty. And uncertainty is scary! Part of the problem is that many of us see change as a one-time event. We decide we want to change and so… we just change! But change is not a one-time thing. There is no magic button.

Change is a process

But it's not as bleak as it sounds. Coaches like myself can help with preparing for a change: identifying interests and values, anticipating the difficulties/obstacles, assessing the options, devising a solid plan, and supporting the person through the inevitable tough times.

In psychological circles, there is a theory that is often employed when trying to help someone change negative behavior. It's called the "transtheoretical model of change" and was originated by Prochaska and DiClemente in 1983. Though most known for it's role in a therapeutic environment, I believe its principles can be applied to any kind of change, including

job/career change and personal growth.

The model itself is fairly straightforward. It proposes that there are five stages of change. I'd like to review each individually, as it would apply to an attorney thinking about a possible job/career change.

1. Precontemplation

The "ignorance is bliss" stage. The person is not currently considering any kind of career alternative and thus is not ready to make any changes. They may argue that everything is fine at their current firm and that there is no reason to make a change. They may feel like everyone else seems to be doing fine so it must be okay. They may ignore obvious signs that things are not okay because they are afraid or simply not ready to take any action in the foreseeable future. It's a question of motivation: they simply don't want it badly enough.

What I see most often at this stage is confirmation bias: the person will ignore all evidence that doesn't align with their current thinking and only pay attention to things that support their position. They convince themselves that everything is fine:

- "How can I complain when I'm making so much money?"
- "Everyone's working crazy hours. It's just part of the job."
- "It wouldn't be any different at another firm."
- "Working at this firm will look great on my resume."

As a coach working with someone in this stage, I would want to validate and explore their lack of readiness, as well as the risk involved with any kind of change, and encourage them to do some self-exploration—maybe take some career or personality assessments—in anticipation of action down the road. My goal would be to get them to fully examine all of the evidence and make informed choices, rather than choices based on fear and lack of information.

2. Contemplation

The "sitting on the fence" stage. The person is ambivalent about change. Perhaps some things have happened that make them question whether this is the right firm for them. Perhaps a partner has treated them unfairly. They may be coming to the realization that practicing law might not be for them, after all. They acknowledge that a change may be necessary but they are unsure what actions to take or how to approach the idea. This can be overwhelming and paralyzing. In this stage, the person recognizes the potential need for change but doesn't know *how* to make change happen; the technical piece of it.

As a coach, I would encourage them to assess the pros and cons of changing jobs/careers, and to look ahead at what their life might be like—how it might be better or worse—if they initiated a change. Again, in this stage, inadequate or incomplete information is often the driving force. The person knows, in their gut, that something is not right. But the alternatives seem impossible, unrealistic, or intimidating.

3. Preparation

The "testing the waters" stage. The person has some experience with change - maybe they've been contemplating small, minor changes: reducing their hours, working with a different partner, finding a confidant to talk to about their concerns. Or the person is actively planning on implementing some changes within the next month or so. Having gone through the previous stages, the person is almost ready for action. They are at the point where they can no longer ignore the obvious: something is not right.

As a coach, I would encourage the person to take small, manageable steps. The idea is to achieve some small successes, in terms of making small changes, and to set goals that are achievable and measurable before attacking the bigger ones. So we might not immediately discuss different careers. We might start with changes, if any, they can make in their current position. I would want to help the person build their confidence so that they're prepared to take the bigger steps that might be necessary in the future.

4. Action

The person is actively in the process of making changes. They have taken affirmative steps to initiate change. They have contacted their attorney network and identified possible new jobs, legal or otherwise. They have researched companies/firms, spoken to people in their new field, maybe even sent out a few resumes or had some interviews or contacted a headhunter. At this point, I would want to help the person review what's been working and anticipate and overcome the inevitable obstacles that they will face during the change process. I would also work with them around any feelings of loss or frustration they might be experiencing as a result of the changes they've made.

Attorneys make a huge commitment to go to law school and practice law. The idea of giving that up, regardless of whether they're happy or not, can cause intense distress for many. It's important to recognize these feelings, honor them, and then move past them so that changes can be made.

5. Maintenance

In this stage, the person has initiated changes and the goal is to stay on track and continue the course. Here, the focus is on the ongoing, active work the person needs to do to maintain the changes they've made and to prevent a slip back to their old way of thinking or acting. I would try to provide support for continued change and reinforce the positive internal feelings that the person is experiencing. I would also ask about any negative feelings that may be popping up. The focus would be on the impact of the changes on their physical and emotional health. Have things changed for the better? Are they inspired to continue with the change process? We would work on identifying next steps and avoiding obstacles and set backs. The idea at this stage is to prevent going backwards and continue to help the person move forward in the process.

Change is hard, it's messy, and it's frightening, but it can also be exhilarating, liberating, and lead you to possibilities you never imagined! By approaching change, whether in a legal career or in one's personal life, as a process with distinct stages, you can manage the anxiety and overcome the inertia that holds us back from reaching your goals. I know, I've been there.

Good luck! ■

Rich Sheehy, JD, PhD, is the President and Owner of First Step Coaching LLC, a career and personal coaching service focused primarily, but not exclusively, on those working in the legal arena. You can reach Rich via e-mail at rich@firststepcoaching.org or directly at 972-900-5109.

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Court orders and detective Sergeant Joe Friday

BY MIKE MASLANKA

Many of us remember the TV series from many decades ago, named Dragnet. Sergeant Joe Friday was one of the key characters in that police tv drama. Over the years, the phrase "Just the facts, ma'am" was attributed to him. It has been alleged that he never actually said that phrase in any episode, but it was nevertheless attributed to him. In any event, the direction to the person he supposedly was interviewing was to stick to the facts, just the facts, and keep it simple. When drafting court orders, attorneys must do the same and, more importantly, must add facts that otherwise might seem unimportant.

For example, when a party who is pro se appears at a court call in a case, or does not appear for a court call, the attorney drafting the court order for the case that day should state that fact somewhere in the draft order. Some courts do not require draft orders, but that does not stop the attorney from asking the judge or the court clerk to make a notation in the docket that the other party appeared in person pro se, or did not appear at all. Those facts could be very important some day if one party wishes to file a motion for default against the other. The judge may take into consideration how many times the other party appeared in court or did not appear, and without there being notations in the court docket or references in the drafted court orders, the court may be left to guess as to the other party's level of participation in the case and perhaps deny the motion for default on the basis of not knowing how many times the other party appeared for a court call.

In Illinois, a party can be prohibited, after a certain amount of time, from contesting personal jurisdiction in a mortgage foreclosure case, if the defendant participated in a hearing without having filed a written appearance. In many cases, the courtroom clerk and judge do not insist upon seeing a filed-stamped appearance. This occurs many times in small claims cases. If an appearance is filed, there should be little question that the court has jurisdiction over the party, and that a default could be entered for not filing the appropriate pleading or appearing at future court dates. Without having a filed appearance to refer to, the court will be left to rely on other information and documentation, which could and should include drafted court orders that specifically address the other party's having appeared in person or having failed to appear in person, on each court date. In other words, the attorney wants to give the court "just the facts," just as Detective Sergeant Joe Friday wanted. ■