

visited 7/9/2009

[ABA Journal - Law News Now](#)**ABA**JOURNAL  
Law News Now[Home](#) » [Magazine](#) » [April 2007](#) » Wisconsin Bar Weighs a Degree of Change**The National Pulse**

## Wisconsin Bar Weighs a Degree of Change

**Status may end as last state to admit its law school grads without taking bar exam***April 2007 Issue*By [Mark Hansen](#)[Comments: 0](#)[E-mail / Share](#)[Permalink](#)[Print](#)[Reprint](#)

Would be lawyers who intend to practice in Wisconsin would be well advised to attend one of the state's two law schools.

That's because Wisconsin is the only state in the country that still allows graduates of its two law schools to be admitted to practice without having to take the bar exam. But that won't be the case for long, if State Bar of Wisconsin President Steven Levine has his way.

Levine, a longtime critic of what is known in Wisconsin as the in state diploma privilege, has embarked on what appears to be a one man campaign to end the 137 year old practice, which he regards as a relic from another era that has long outlived its usefulness. The state bar president, who has appointed a committee to study whether to recommend any changes in the state's current bar admission requirements, won't say what he thinks needs to be done--beyond having one set of requirements that applies equally to everybody--so as not to bias the committee's deliberations.

### A Strong Analogy

# visited 7/9/2009

But Levine, an assistant general counsel at the Wisconsin Public Service Commission in Madison, has made no secret of his disdain for the status quo.

In an article in the November 2006 issue of Wisconsin Lawyer, he likened the continued operation of the in state diploma privilege to the “separate but equal” doctrine held unconstitutional in 1954 by the U.S. Supreme Court in its historic school desegregation ruling, *Brown v. Board of Education*.

Levine says he knows some might take offense to such a comparison, but he decided to use it anyway. He says he hopes the analogy will shock members of the state’s legal establishment--many of whom are graduates of one of its two law schools--out of their complacency and into the realization that the in state diploma privilege is the Wisconsin legal system’s version of separate but equal.

However, the in state diploma privilege has its defenders, including the dean at one of Wisconsin’s two law schools.

Joseph Kearney, Marquette University’s law school dean, says he can think of at least four good reasons for keeping the current system. Chief among them, he says, is that the in state diploma privilege has served the state so well for so long.

Kearney also cites what he says is the Wisconsin Supreme Court’s in depth knowledge of and especially high regard for the state’s two law schools (the University of Wisconsin is the other), the two schools’ emphasis on Wisconsin law in their curricula, and the state’s interest in offering such an incentive to its own schools’ graduates as an economic development tool.

“That strikes me as a public policy in which the state and the state supreme court have an entirely legitimate interest,” he says.

## **Further Support**

Even some outsiders speak highly of the state’s diploma privilege.

Vanderbilt University law professor Beverly Moran, who wrote a defense of the diploma privilege as a University of Wisconsin law school professor in 2000, says she still thinks it’s a good idea. In fact, she says it’s one that other small states with relatively small bars might want to consider adopting.

Moran has taught for 10 years at the UW law school and at four other law schools outside of Wisconsin. She says she thinks the diploma privilege has produced a better educated and better trained body of lawyers than those in states without it.

She also believes that it helps Wisconsin avoid what she says is the well documented discriminatory impact the bar exam has on minority and older candidates. And, she adds, the privilege provides students the freedom to relax and learn because they don’t have to worry about passing the bar exam.

“I think it’s both fairer to the individual [student] and produces a better result for the state,” she says.

The diploma privilege has a long and colorful history in Wisconsin, according to Levine, who considers bar admission policies a hobby. The privilege, which dates back to 1870, was originally designed to encourage would be

# visited 7/9/2009

lawyers to get a formal legal education. And, at one time, 31 other states along with the District of Columbia had a similar privilege.

For a brief period, Wisconsin's diploma privilege applied to graduates of all law schools. By the time Marquette's law school was founded in 1908, however, the privilege was restricted to University of Wisconsin graduates. Marquette then attempted to repeal the privilege. After that effort failed, the university successfully lobbied the state legislature to expand the privilege in 1933 to include its graduates.

But the privilege began to fall out of favor in the last half of the 20th century, as states began requiring would be lawyers to get a law degree and take the bar exam. The few remaining states besides Wisconsin to offer such a privilege did away with it by the mid to late 1980s, Levine says.

## Bar Officials Mum

Officials at the national conference of bar examiners will not comment on Wisconsin's bar admission policies. The conference sets recommended bar admission standards together with the ABA's Section of Legal Education and Admissions to the Bar and the Association of American Law Schools.

But the standards do suggest that anyone who is not already admitted in one state should not be admitted in another state without first taking the bar exam. And, in fact, of the 32 states that allow out of state lawyers to be admitted without taking the bar exam, 12 do not extend that privilege to lawyers who have been admitted under the diploma privilege. Levine is no fan of the bar exam, which he says is not a reliable predictor of competence. And he says he has no "preconceived view" as to whether Wisconsin should abolish the diploma privilege altogether or extend it to all graduates of ABA accredited law schools nationwide.

But Levine also has no illusions about what he's up against. He notes that it took 100 years for women in this country to earn the right to vote.

And he speaks mournfully about the "entrenched constituency" of Wisconsin lawyers who have benefited from the in state diploma privilege and have no incentive to end it. "It wouldn't surprise me if things didn't change for a long time," Levine says. "This, too, could take 100 years."

---

## Add Comment

We welcome your comments, but please adhere to our [comment policy](#).

[Post a comment now](#)

Copyright 2009 American Bar Association. All rights reserved.