The Proper Measure Of An Attorney

BY **ADRIANOS FACCHETTI**

"I'd rather have a lot of talent and a little experience than a lot of experience and little talent" – John Wooden

"The error of youth is to believe that intelligence is a substitute for experience, while the error of age is to believe experience is a substitute for intelligence" – Lyman Bryson

Attorneys are typically measured by their **education**, **experience** (age/years of practice), and accomplishments. Attorneys who have gone to "better" law schools are deemed by the public to be better attorneys, as are lawyers who have been practicing for a very long time.

But I am here to tell you that where a lawyer went to law school, or how many gray hairs a lawyer has on his or her head, has very little to do with how well a lawyer will handle a case. Some of the best lawyers I have come across went to "sub-par" law schools, and some of the worst I have come across have been practicing law for more than 25 years. So it's not about where or how long.

I think the most important factor in evaluating a lawyer is his **talent.** I define talent in this context as the ability to spot legal issues, develop legal arguments, devise a litigation strategy, and execute that strategy. But how do you determine if a lawyer has talent? This is difficult, but possible. I would look at what his opponents have said about him. I would also look at the results he has obtained. These are the best indicators, in my opinion.

A close second is the lawyer's experience in the **specific area of law** for which you need a lawyer's services. If you have been wrongfully terminated, you need a lawyer who focuses his practice on that area. For example, it does not help you if an attorney has practiced for 30 years if he has never handled a wrongful termination case. You need a specialist, however, California only allows attorneys practicing law in certain areas to claim they are a "specialist," e.g., family lawyers, criminal lawyers, and

appellate lawyers. Those kinds of lawyers must take a test and meet other requirements to be able to certify that they are specialists in a particular area of law. Lawyers who practice in other areas of law cannot claim they are specialists, even though they may have substantial experience in a given area. So, you'll often see attorneys saying things like: "My practice focuses on elder abuse law," or "I concentrate my practice in the area of libel law," to communicate that they "specialize" (in the traditional sense -- not the sense forbidden by the California Bar) in an area of law.

This brings me to a court decision which prompted me to write this post. In the case of Russell v. Foglio (2008) 160 Cal.App.4th 653, the appellate court affirmed the lower court's ruling with regard to defendant's anti-SLAPP motion and held the attorneys' fee award was not an abuse of discretion.

The court rejected plaintiff's argument that defense counsel's hourly rate ($300) was unjustified because defense counsel had only been practicing law for 3 years. Here is what the court wrote:

> "Plaintiff attacks the award for Attorney Bray on grounds the $300 per hour rate claimed and allowed was excessive. Plaintiff so contends based on the facts that Bray had been a lawyer only since June 2002, that he had graduated from an unaccredited law school, and that his experience was in family law as opposed to defamation. These facts do not establish an abuse of discretion in the trial court's ruling.
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> From the standpoint of Bray's capability, experience, and performance, **the identity of his law school made no difference**. In the same respects, **that Bray had become a lawyer two years and eleven months before he undertook the case also was not dispositive**. The trial court recognized Bray's representation that he brought to the case far more extensive trial experience than an average junior associate at a law firm would have had. That Bray's experience had arisen in the family law context was also not discrediting. **What the court perceived as relevant about that experience was its practical extent.** The court referred to Bray's "family law experience" simply as shorthand for his in-court

> experience.
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> FN5. It is incorrect for plaintiff to refer to Bray as a “second-year” lawyer. Bray had more than three years licensure when he handled the crucial evidentiary hearing on reconsideration.
> **Plaintiff's arguments also fail to take into account the court's observations concerning the quality of Bray's performance and the time constraints under which he undertook representation of defendant**. These factors supported the court's determination of the value of counsel's work.
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> Ultimately, while expressing awareness of plaintiff's submission regarding junior associates' billing rates, the court concluded that Bray's experience, the exigency of the case, and “the demonstrated level of performance by counsel” justified the hourly fee level. Given all the circumstances, that ruling was not an abuse of discretion."

The court was mostly correct in ruling the way that it did. It does not matter that an attorney went to an unaccredited law school and has only practiced a short period of time. What matters is the skill displayed and results obtained. That's all the client cares about any way. I did disagree with the court in that the family law experience had little to do with anti-SLAPP law. Anti-SLAPP is a very complicated area of law (which generally requires hiring an anti-SLAPP expert), and doing family law petitions and the like, does not relate to the anti-SLAPP statute. As a result, I believe the trial court should have reduced the lawyer's fee to reflect his inexperience in the specific area of law.

At the end of the day, it's about talent and experience in the specific area of law. That's it. Do you agree?

The Author: Adrianos Facchetti is a Defamation Lawyer located in Los Angeles, California. He practices in the areas of defamation, slander, and libel law. He also has successfully brought and opposed anti-SLAPP motions on behalf of his clients.