



The State Bar *of California*

OPEN SESSION AGENDA ITEM JANUARY 2020 COMMITTEE OF BAR EXAMINERS ITEM O-402

DATE: January 31, 2020

TO: Members, Committee of Bar Examiners

FROM: Natalie Leonard, Principal Program Analyst

SUBJECT: Action on Notice of Intent to Terminate Accreditation Pursuant to Rule 4.171(D) – Southern California Institute of Law

BACKGROUND

It is recommended that the Committee of Bar Examiners (Committee) issue a notice of intent to terminate the accreditation of the Southern California Institute of Law (SCIL) for noncompliance with Rule 4.160(N). This rule requires that all accredited law schools maintain a Minimum, Cumulative [Five-Year] Bar Passage Rate of at least forty percent, when calculated according to the formula described in Guideline 12.1. The school has not been in compliance with this Rule since schools first reported MPR's in 2015, the school's MPR has been declining, and it is likely to continue to decline based on the school's zero percent pass rate on the July 2019 California Bar Examination (CBX).

When a school is issued a Notice of Noncompliance, the Committee follows the process set forth in Rule 4.170 et. seq. that is designed to allow the Committee to determine whether the noncompliance has been cured, merits probation while the school progresses toward a cure, or warrants termination of accreditation.

The Noncompliance process consists of four steps. First, the Committee issues a Notice of Noncompliance stating the reasons for the noncompliance. (Rule 4.170(A)) Second, the school must file a response "demonstrating that it . . . is in compliance with these rules." (Rule 4.170 (B)(1)) Third, if the response is unsatisfactory in demonstrating that the school is in compliance with the Rules, "the Committee must schedule an inspection . . . within sixty days of its consideration of the matter." (Rule 4.170(B)(2)) Fourth, "[a]fter considering the [Inspection] Report, the Committee will provide the provisionally accredited law school or accredited law school with a written notice" that either advises the school that "the accredited law school is in compliance with these rules," or that it "is not in compliance with these rules for specific

reasons that warrant probation or termination of accreditation” (Rules 4.171(B), 4.171(D)) If the Committee finds continued noncompliance, it should choose termination in most cases. Probation is only appropriate “[i]f the Committee decides that an accredited law school or any approved branch or satellite campus has not complied with these rules, but has made progress toward compliance.” (Rule 4.172(B)) If the Committee decides that termination of accreditation is appropriate, then after the January 31 meeting, a notice of intent to terminate accreditation will be transmitted to the school.

The Committee executed the first step of the process by issuing Notices of Noncompliance and Continued Noncompliance in 2015 (25.3 percent MPR), 2018 (26.4 percent MPR), and 2019 (21.1 percent MPR). Internal State Bar calculations confirmed that the school’s MPR was below the forty percent requirement in 2016 and 2017 as well, and the school was advised of this by letter from staff in 2017.

After each of those occasions, the school provided a response as required by the second step enumerated in the Rules. Though the school described the actions taken and planned, the school’s MPR remains well below the minimum required forty percent value. The school’s most recent response is attached. (Attachment A)

Because the school could not establish that it was in compliance, the Committee proceeded to the next step of the process and ordered a telephonic inspection.

The State Bar conducted that telephonic inspection on October 24, 2019. (Attachment B) A three-member Inspection Team composed of Committee Member and Chair of the Operations and Management Subcommittee Alex Chan, and staff members Natalie Leonard and Ron Pi, conducted the inspection, while Educational Standards Subcommittee Chair Alex Lawrence was present as an observer. On behalf of the school, Dean Stanislaus Pulle, Board Member Eric Pommer, and staff member Kevin Mauseth attended.

The school indicated that it will continue to seek a waiver of the application of the rule to the school, but such a request was filed in 2017 and was denied by the Committee.

DISCUSSION

Termination of accreditation is the appropriate remedy for noncompliance unless “the Committee decides that an accredited law school . . . has not complied with these rules, but has made progress toward compliance,” in which case, “the Committee may place the law school on probation for a specified time.” (Rule 4.172 (B))

During the inspection, the school did not dispute that it was out of compliance, admitting that the school’s MPR has been under thirty percent, resulting in the issuance of Notices of Noncompliance in 2015, 2018, and 2019. Its past attempts did not raise the MPR, including hiring a commercial bar preparation company to work with its students. Currently, the school is revising the curriculum to include more sample essays, writing, quizzes, and multiple-choice questions during class sessions, based on a professor’s assessment that his students’ work

improved after six months to one year of having this extra exposure. The school is also considering adding a summer session of intensive multiple-choice practice. The school also plans to evaluate suggestions from another popular professor that could be adopted in the future. The school includes specific examples of the changes, both current and future, in its attached written submission. The Inspection Team recognized that SCIL is willing to experiment with new approaches, but the approaches selected since 2015 have not brought the school into compliance with the MPR requirement. The results of the new initiatives just begun and yet to be implemented are unknown.

SCIL is due to report its next MPR calculation on July 1, 2020. The 2020 MPR will delete the oldest two Bar results from the 2019 calculation and add the results of the July 2019 CBX and the February 2020 CBX. Because all twenty-five of SCIL's graduates who took the July 2019 CBX failed, the school's 2020 MPR is unlikely to rise and is likely, in fact, to decline further.

It appears that no progress has been shown that would warrant probation. Therefore, it is recommended that the Committee issue a notice to the school indicating that it intends to terminate the school's accreditation for failure to comply with Rule 4.160(N) and Guideline 12.1.

If the Committee agrees, the next step would be to provide the school with a notice of its intent to terminate accreditation. The school would have fifteen days from the date of issuance of the Notice to request a hearing at which it would have the burden of establishing that its MPR is compliant or has been rising at a rate sufficient to warrant probation. In the alternative, if the school wishes to continue to operate in California, it may apply for registration as an unaccredited law school using the standard process and making the changes necessary to comply with the Unaccredited Law School Rules and accompanying Guidelines. Should the school elect to apply for registration as an unaccredited law school, it is hoped that the school will vigorously employ evidence-based efforts to improve students' preparation to become licensed attorneys in California.

RECOMMENDATION

It is recommended that the Committee issue a Notice of Intent to Terminate the Accreditation of the Southern California Institute of Law and advise the school of its intended action.

PROPOSED MOTION

If the Committee agrees with this recommendation, the following motion is suggested:

Move that the school's most recent response to its continuing Notice of Noncompliance, as well as the inspection report summarizing the conversation with the school on October 24, 2019 be received and filed; that the Committee find the school to be in a continued state of noncompliance warranting termination of accreditation; and that the Southern California Institute of Law receive a Notice of the Committee's Intent to Terminate its Accreditation based on the school's noncompliance with Rule 4.160(N) and Guideline 12.1.

VENTURA
[MAILING ADDRESS]
871 S. VICTORJA AVENUE
YI],TURA. CA 93003
1805) 644-2327
FAX 1805) 644-7...36"/



SOUTHERN CALIFORNIA
INSTITUTE OF LAW

ATTACHMENT A

SANTA BARBARA
1525 JIATE STREET
SANTA BARBARA, CA 93101
1805) 963--4654
www.lawdegree.com

September 26, 2019

Natalie Leonard
Chief Program Analyst on Admissions
State Bar of California
180 Howard Street
San Francisco, CA 94105-1617

via e-mail and
U.S. Postal Service

RE: Petition for waiver of ALS Guideline §§ 12-1-12-2 Until July 2023

Dear Ms. Leonard.

Enclosed is a check for \$800.00.

The Southern California Institute of Law (SCIL) submits this petition for a waiver of the above referenced Guideline. Neither this payment nor this petition should be taken as vacating the reasons we earlier provided for a repeal of this Guideline as being unlawful and in violation of state and federal anti-trust law as canvassed per our "proposed changes" letter of September 19, 2019.

Rather, this petition will address what specific and concrete steps are being taken by the Southern California Institute of Law to enhance our bar pass rates while still preserving our mission to educate a low-middle income socio-economic demographic of working adults consisting mainly of under-represented minorities and women. And for many of them English is not their first-language. Several of them are single parents.

An Afro-American who was homeless in Texas, graduated as valedictorian, passed the bar on her first attempt and is now on our faculty. Recently, two of our passers, are single parents who are both of Hispanic ethnicity. The parent of one worked at McDonalds, and both parents of the other were strawberry pickers. Another bar passer, a single parent qualified for special accommodations while raising an autistic child. She is now practicing disability law. We have other examples.

Before we specify the measures we plan to implement some context is useful. First, we have small number of graduates who take the exam. Second, across the street in each location we have a state accredited law school that is also accredited by a federal accreditor (Western Association of Schools and Colleges - WASC) whose students are eligible for Title IV tuition subsidies. Third, because of the letter of non-compliance our efforts to find investors or affiliate with other colleges who are willing to plough monies into enhancing and strengthening our academic program have been stymied.

1. Small Number of Bar Exam Takers

The breakdown of our current pass rate during the immediate past five year period (10 administrations of the bar exam) is as follows. We had 12 passers and 45 non-passers for a total of 57 total takers in the 2019 MPR calculation. This results in a 2019 MPR of 21.1%.

Given these small numbers, had we succeeded in having just one more passer in each of these ten administrations of the exam plus one more to make for an extra 11 passers, we would have a total of 23 bar passers and thus make for an above 40% MPR.

Given our small numbers, one passer out of five makes for a 20% pass rate and with just one more passer, that is, two passers out of five would make for a 40% pass rate. Given the measures we seek to implement, this is not an unrealistic commitment for a law school that have been in existence for over 33 years and has earned a sterling reputation in our local communities. Before this, just one law school alone had a monopolistic control of the three contiguous counties from San Luis Obispo, Santa Barbara, and Ventura and to much of the San Fernando Valley in Los Angeles county.

Our school, as you know well, has been honored to have as our commencement speakers the Chief Justice and two associate justices of the Supreme Court. And among our speakers we have had the Chief Judge of the Ninth Circuit, a state Attorney General, a U.S. Solicitor General, four presidents of the State Bar, several Presiding Justices of the state appeals court in Los Angeles and Ventura counties, the current Chairs of the Assembly and state Judiciary Committees; and the President of the UN International Criminal Court. These speakers have applauded our efforts in serving our demographic.

Faculty, students, and alumni that include over a hundred attorneys, all have a prominent stake in the continued accreditation of our law school.

2. Competition

The neighboring law school, of which this author was Vice Dean and Academic Dean for seven years, is affiliated with the Chicago Educational System (TCES), an educational conglomerate that in addition to a law school, has within its portfolio, schools in nursing and psychology and children's schools. TCES used its WASC accreditation to umbrella the Colleges of Law. This took place about five years ago and placed SCIL at a massive competitive disadvantage in student recruitment. In the past several years because of a lack of Title IV student loan assistance, SCIL has lost some its more promising students to our competitor. Nonetheless, we continue to maintain the quality of our academic program. After reviewing our curriculum, faculty profile, exams, and grading procedure, five of our alumni were admitted to and did successfully complete a LL.M. degree program at ABA-accredited law schools.

Several others transferred out and enrolled at ABA-accredited law schools where units earned at our institution were accepted as transfer units. These transferees are currently member of the State Bar.

3. Letter of Non-compliance

This letter has had more than a crippling effect on the recruitment of new students, It has also seriously disadvantaged and hampered SCIL from attracting new affiliations with colleges and new investor funding. It is correct to say that several investors, even after signing a Memorandum of Understanding, bailed out on learning that the school had received a letter of non-compliance. This is why, on legal grounds, we have requested that ALS Guideline §§12.1-12.2 be repealed retroactively

I. Measures to Improve Pass Rates

With this backdrop, we now address the issue of what SCIL is doing as a team effort comprised of faculty, deans, students, and alumni to improve our bar pass rates and bring it to at least the 40% minimum. We have requested faculty to engage students and passers and non-passers of the bar exam for feedback. They have done so. Again, because of the small number of takers, we recognize that the task ahead is for our law school to add, at very least, a few more passers to the bar examination statistics.

Attached to this petition, is what our faculty have begun to implement beginning this Fall of 2019. We have significantly revamped our whole curriculum and instructional pedagogy rather than tinkering at the edges. To avoid duplicative documentation, we have chosen to transmit only a few of how key faculty members are instructing. In this attachment, Vice Dean Eric Pommer; Kevin Mauseth, Director of Students Admissions; faculty members, Prof. Virginia Goodrich, Eric Kunkel; Prof. Catina Irvin, Prof. Andre Verdun; and Laurel Fielden; our Director of Distance Learning provide a snapshot description of how we are gearing instruction toward achieving and exceeding the forty percent target bar pass rate.

As Dean I have included my own efforts on how we will enable students get a better grasp and understanding of complex material.

II. Synopsis

Overall our two-year experience with Bar-Bri has not been satisfactory. It cramped student choice into a one-size-fits-all technique of learning. While some liked it, many did not. Some of the passers chose other review providers. A law professor at USC who took the bar exam last year and passed, stated that he "found the Bar/Bri materials an inefficient way to do that because the rules were presented without context;" and he went on to explain that his "frustration with Bar/Bri is that the rules were not given any purpose. The rules were just rules, hundreds or thousands of rules to memorize, presented rule after rule after rule. It was something like memorizing Pi to a thousand places."

We have faculty involved in a multi-pronged endeavor stressing what we call 'critical thinking' and focused learning habits. Here is a sample.

Dean Stanislaus Pulle-Constitutional Law

The casebook, Constitutional Law-Cases and Materials by Varat and Amar is a 2000-page casebook. The usual IRAC method of extracting rules is not generally applicable here. One is dealing with complex constitutional concepts of standing, the political question doctrine; Tenth Amendment, Eleventh Amendment, Separation of Powers, Takings Clause and Due Process jurisprudence in the first semester, and the various clauses of the First Amendment in the second semester. To help students navigate this weighty material, I have written a book, Volume I and II called "Constitutional Law-A Casebook Approach". Students brief the case and test their conceptual understanding of the case law by memorizing the relevant concepts. After covering each major topic we review a past bar exam and engage students on how to write an answer confined to the topical issue only. We have a total of 10 such exercises. The answers are critiqued, and the students are supplied with a model answer written by me. A recent non-passer with an average law school GPA provided us with written proof of a score of 85 (A+) on the constitutional law question examined on the bar exam. This student later passed the bar exam. Class time does not allow for MBE questions. Hence beginning next summer an elective class on MBEs in Constitutional Law will be offered.

Vice Dean Eric Pommer- Business Organizations; Wills and Trusts;
Critical Learning Skills

This teaching technique complements the Critical Learning Skills class and involves issue-spotting techniques, preparation of an outline, the actual drafting of an answer during class followed by a marked up copy of a "model" answer. This emphasizes crafting technique to how an answer must be written.

Prof. Catina Irvin- Civil Procedure

Students are required to actually practice on past bar exam questions using substantive law derived from the actual cases briefed in class. Students are instructed not to use bar review materials as a short cut in finding answers. The instructor includes MBEs on selected topics that are covered and incorporated as the instructor moves from one chapter of the casebook to another.

Prof. Paul Hunt- MBE

The instructor explains how students for whom English is not their first language must first understand the subtle nuances in reading MBE questions and how they must first be trained to separate pertinent from non-pertinent facts. He encourages students to pull the 'logic out for themselves' thus demanding the students bring reason to conclusion. He himself has authored a book on how to navigate the world of MBEs.

Prof. Kevin Mauseth- Legal Analysis and Real Property

The instructor using a laptop actually involves the class in projecting an answer on the white board and gets students involved in writing out the answer. The instructor acts as a student in framing an answer to the question. In the process he critiques the various submissions offered by students on each issue. Students actually write out an answer to a different question and thereafter each answer is critiqued as to format, structure, analysis, and content. In IL classes both FYLSX and GBX questions are used in practice sessions.

Exam writing frameworks have been developed by topic for each of the IL classes. Thus in Torts, a framework has been developed for answering a question on negligence, products liability and defamation. In Criminal Law on how to write an exam question on Murder/Manslaughter; Conspiracy; Self Defense, Entrapment, and Insanity; and for Contracts a general formwork on service contracts and UCC.

Prof. Virginia Goodrich-Contracts

In all IL classes, MBE questions are part of the assigned homework as is the briefing of cases in each of the IL classes. The same Exam Pro Objective Multiple Choice Exams and Analysis is used for each subject. Writing on past law school exam and bar exams in this subject are incorporated as part of the learning exercises.

Prof. Eric Kunkel-Torts

The instructor uses the Socratic technique to have students explain the reason on why a given answer on an MBE question is correct or incorrect. He does this with sample essay questions as well. It becomes easier to know how to apply the rules to a fact pattern once students are taught the purpose of the rule. He reports that the students are "excited" about this approach.

Prof. Andre L. Verdun- Criminal Procedure and Evidence

The instructor uses his own experience to engage students on how they must study and write for the bar exam. He was the only CALS graduate from quite a few who was accepted to an LL.M. degree program at an ABA accredited law school. He successfully completed the postgraduate law degree. His submission is relatively lengthy but explains why for students whose first language is not English, a constant repetition of concepts and how they must be applied is essential. He makes frequent use of hypotheticals and uses Power-Point presentations to summarize his lecture notes.

Prof. Laurel Fielden, Director of Distance Learning- E-LEAP Bar Clinic

In addition to several classes on the Performance Exam part of the bar exam, we will be instituting an E-LEAP Bar Clinic. It operates in the nature of a self-accountability clinic. Students here hold themselves accountable on a scheduled timeline by using a well known electronic study platform on how to storehouse the vast quantities of written materials they practice on. The instructor herself found this platform very helpful and credits it use with passing the bar exam

CONCLUSION

Quite apart from legitimacy or constitutionality of ALS Guideline §§12.1-12.2, our law school's pedagogy is now structured to teaching students to pass the bar exam. As explained at the outset, we believe that all it takes is for a couple of extra students to pass the bar exam. The letter of non-compliance has had a deleterious impact in attracting good pre-qualified students.

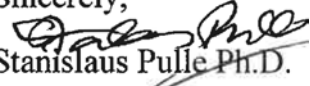
Seriously, why would any prospective student bet on completing a four year law school education and spend time, effort, and money if he/she is advised by a school's competitor's that the other law school's accreditation is in jeopardy? This is why it is in the market interest of certain competitors to advocate maintaining and not repealing ALS Guideline §§12.1-12.2.

This is why we are less than sanguine why despite compelling justification for two sets of MPRs- one for Title IV schools similar to the one used by the ABA and another MPR for non-Title IV schools will never see the light of day. It is no accident that the Parker-Walton Report noted that law deans appear to play a "dominant role" in accreditation rulemaking. Correction. It should have read "some" law deans.

We trust that the efforts made by our faculty, students, and alumni at the Southern California Institute of Law will merit an approval for a waiver and that a retroactive repeal of ALS Guideline §§12.1-12.2 will earn serious review by the Committee notwithstanding partisan clamor to maintain this as a fig leaf for quality legal education.

Thank you.

Sincerely,


Stanislaus Pulle Ph.D.
Dean of Law

DATE: September 20, 2019
To: Dean Pulle
From: Eric S. Pommer, Esq.
Subject: Pedagogy changes to improve bar pass rates

Since the changes to the Accredited Law School Guidelines §§12.1-12.2 have imposed a minimum cumulative bar pass rate as the single dispositive criterion to measure the educational quality of our law school program, I have introduced mandatory writing exercises that specifically "teach to the test" and are based on bar prep shortcuts. This has supplanted my prior classical pedagogy on essay-writing and writing assignments, which were based on Aristotle's *Rhetoric*, primarily Aristotle's instruction on *logos* (logical argumentation) as a method of persuasion. In the past, I had found this classical approach to be an effective method of instruction specifically to develop the students' critical thinking, and a number of students who passed the bar exam specifically credited this approach with helping them to pass.

Wills & Trusts

In this class, three new writing assignments have been introduced. All three are based on the same past bar exam question. The first assignment focuses on issue-spotting, with shortcuts and techniques gleaned from bar prep classes. The second assignment requires the students to prepare an outline in preparation for writing the essay, and again, the techniques for outline-writing are taken directly from bar prep classes. The third assignment is actual drafting of the answer. Students are also provided with a marked-up (graded) copy of the CBE's model answer of the past bar exam question, which they are instructed to improve on. The intention is for the student to focus on providing the best written answer, rather than spending time on substantive law. When class size is large enough, these exercises are assigned to teams, so that the students will reflect on and discuss among themselves the techniques to develop the best bar exam answer.

Business Organizations

Four writing assignments are assigned throughout the course. Issue spotting and outlining techniques are first reviewed in class, then the students are assigned four past bar exams to answer (one each month). Again, when class size is large enough, these exercises are assigned to teams, so that the students will reflect on and discuss among themselves the techniques to develop a bar exam answer. Students are provided with the marked-up (graded) copies of the CBE's model answers for two or more of these exercises, depending on student feedback. The purpose is for students to produce superior essay answers, to learn and practice how that is done, rather than simply practicing exam conditions, which I've found most students tend not to do in uncontrolled conditions.

CATINA L. IRVIN

Attorney at Law

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21781 Ventura Boulevard, Suite 615
Woodland Hills, California 91364
www.lrvinasociateslaw.com

Tel: 818-962-8595
Fax: 818-688-0501
cirvin@irvinassociateslaw.com

MEMO

DATE: September 22, 2019
To: Dean Stanislaus Pulle
From: Catina L. Irvin, Esq.
Subject: Pedagogy changes to improve bar pass rates

Pursuant to recent changes to the Accredited Law School Guidelines §§12.1-12.2 where a minimum cumulative bar examination pass rate of 40% has been imposed on all California Accredited Law Schools (CALS), I have integrated into the curriculum mandatory writing exercises and MBE questions that focus on the bar examination. While I try to maintain a pedagogy that focuses on the Socratic method and logical argumentation to promote analytical and critical thinking skills, I find that I must often forsake the thoroughness of this otherwise effective approach in order to implement bar test taking strategies and shortcuts. Ideally, this kind of hybrid curriculum would not be as problematic; however, in the context of a part-time, evening law program where instruction time is limited then the pedagogy should comprehensively focus on developing the students' fundamental legal aptitude skills. This is particularly important with CALS where the demographics are generally students who are minorities and *I* or working adults with families and many times disadvantaged. It is critical that they are given unabridged instruction time to be challenged with a quality legal education that encompasses more than an emphasis on bar results derived from a single criterion of a bar pass rate as being dispositive of the "qualitative soundness of a law school's program of legal education."

Civil Procedure I and II

Both sections of Civil Procedure now require students to complete three essay assignments derived from past California bar exam questions. Each essay assignment is approached in three phases which include issue spotting; drafting an outline and drafting the essay answer. During this process, the class engages in discourse focused on intersecting substantive law, briefed cases, legal hypothesis and practicum law. Also, students study the CBE's sample answer to take an aggressive approach to further develop the issues and analysis that are presented. Each student submits a final, written essay that is graded and returned with detailed feedback.

Additionally, I have introduced mandatory MBE questions that are completed in class and allow for group examination of the black letter law. For the essay and MBE assignments, I implement strategies and techniques from bar prep classes. Unfortunately, I find that often the students use the bar materials as a shortcut to supplant critical conditioning skills. This causes a misunderstanding and misapplication of certain legal precepts which thwart their ability to develop a rigorous and synthesized analysis necessary to be successful on the California bar exam.

DATE: September 23, 2019
To: Dean Pulle
From: Kevin Mauseth, Esq. Director, Admissions
Subject: Recent Changes Made to Legal Analysis and Real Property

This Memorandum is done pursuant to the request of the Southern California Institute of Law, in regards to improving the school-wide pass rate towards the required 40% pass rate which has been imposed on all California Accredited Law Schools (CALs).

I currently teach two course, Real Property and Legal analysis.

Legal Analysis

Legal Analysis is generally intended to assist first year students with writing for all first year courses: Criminal Law, Torts, and Contracts. Generally, we would use outlines to briefly review the subjects. And thereafter teach how to write an exam answer.

I have dramatically modified the curriculum for Legal Analysis.

First of all, I noticed that many of the questions used were somewhat dated. I additionally noticed that many of said questions were much more difficult, and in some cases confusingly so, than the normal bar examination questions. I now only use bar examination questions, sourced from the California State Bar website. I also use questions from that same website that were created for the First Year Law Student Examination.

Second, I have moved away from group projects. Often times, professors will assign a written assignment to a group of students, other than individually. The State Bar Examination is not taken in groups. Often students will lean on one or two students to get the project done, which leads to the inevitable conclusion that a portion of the group did little to no work. All of my assignments are done on an individual basis. This takes much more time in grading, but I can at least gauge how each student is doing.

Third, I meet individually with each student, every class. This is also quite time consuming, yet it is necessary. Students generally need a full explanation as to what they did wrong, and what they did correct. Also, a one-on-one setting requires their utmost attention. Attention span does seem to be a problem, more and more, especially with younger students. As I put it recently, one cannot learn complex matters by reading as much as a tweet.

Fourth, I do the a sample essay with them each class. The students not only have a take-home assignment in each class, I also physically write a response with them during class. I generally utilize a laptop and projector. I will then go through the question with them, and thereafter have them 'speak' the essay. Specifically, for each issue, I will choose a student and have them recite the law. Then I will move onto the next student and have recite the proper analysis. I keep doing this until we finish an essay. This keeps the class attentive and shows the students exactly what is needed.

Finally, I generally leave teaching the actual subjects to the other professors. My goal is to teach writing, and if I have to review the subject I do not have enough time for both.

Real Property

Real Property is one of the most difficult classes in law school. What I have noticed is that students generally struggle with the antiquated material such as the Rule Against Perpetuities. UI have also noticed that much of the class-time is dedicated to forcing an understanding of abstract areas of the law, that are not generally tested on the State Bar Examination.

As such, one of the major changes is to minimize explanations of rarely tested subjects, such as the Rule Against Perpetuities. Instead of spending several weeks on this subject, we generally limit it to one or two weeks. The goal is for the students to get a basic understanding of such difficult concepts and move on to emphasize the numerous areas which are tested.

Secondly, I have also started placing a major emphasis on exam practice. One a weekly basis we do multiple choice questions together. This requires the students attempting to answer the question, orally, with an explanation for their answer. Thereafter, I release the actual answer and explain why that is the best answer.

As part of examination practice, we also do written essays, using examination questions from the State Bar website. Every few weeks, when we have completed a section of the course, we do a practice question together. I generally utilize a laptop and projector. I will then go through the question with them, and thereafter have them 'speak' the essay. Specifically, for each issue, I will choose a student and have them recite the law. Then I will move onto the next student and have recite the proper analysis. I keep doing this until we finish an essay.

Third, I have placed less emphasis on case-briefing. While it is still a crucial part of the course, I have minimized the amount of cases, so that the students have time to do actual examination practice.

What I have noticed is that our student body is generally not wealthy, and generally have to work, have kids, or other tasks that cannot be changed. Thus, they do not have as much time as a student who can dedicate their entire focus and time to the law. So, I tend to cut any cases which do not really have a tendency to allow them to learn tested material. I also try to avoid ancient cases which are difficult to understand and tend to only have historical significance and would not assist the test taker.

Finally, on a weekly basis I ensure the student's outlines are updated, and that they have a good grasp of each week's rules. I do this by weekly oral memorization skills, with a review of the previous week's material, each class.

DATE: September 18, 2019
To: Dean Pulle
From: Virginia Goodrich, Esq.
Subject: Recent Changes Made to Contracts I & II in Ventura

Dear Dean,

I have begun to incorporate elements of the California Bar Exam into both my Contracts I and II classes. While I have always included essay writing as part of the class, the most significant and recent change has been incorporating the MBE classes as per your direction.

Multi-State Bar Examination (CMBE)

Four (4) classes are devoted to completing MBE practice questions and receiving MBE instruction. The following book is now mandatory for students to purchase and use for the class: *Brain, Contracts, Exam Pro Objective Multiple Choice Exams and Analysis*. The students are given a homework assignment which consists of completing questions in the MBE book and the students are given an in-class MBE practice exam (30 minutes in duration) consisting of published past MBE questions. After the students have completed the MBE practice exam, I instruct the class on each question which includes analyzing the correct and incorrect answers. By the end of the second semester, the students will have completed the entire MBE textbook and completed approximately 60 MBE questions in class.

GBX Essay Writing

Starting around Class 4 or 5, I begin instruction on proper essay writing for law school and the GBX. Using past Bar Exam and Law School Exam questions, I teach issue spotting, essay writing strategies, and proper essay writing format (IRAC method). The students are required to submit to me for my review 1-2 writing samples each semester. I provide to the students' with complete model answers to approximately half of the questions that are reviewed. By the end of the second semester, the students will have reviewed and analyzed with me approximately 10 past GBX and Law School exams.

DATE: September 22, 2019
To: Dean Pulle
From: Eric B. Kunkel
Subject: Instructional Methods Implemented to Enhance Student Learning/Bar Passage

Torts

In the first-year course in Torts, I have incorporated a review and analysis of model multiple choice questions, done every third week or more frequently to reinforce the students comprehension of the topics covered in class. I begin by asking the students to read the fact pattern presented for the range of questions applying to it. I then have the students turn the fact pattern face down and ask one student to recall the facts and persons described. I then call on other students to confirm whether the student selected has recited all of the facts, or has left any out. This exercise stresses the importance of both a correct and complete understanding of the facts in answering the questions, and not selecting an incorrect answer because of an incorrect or incomplete understanding of the facts.

Once the students understand the facts, I read the question aloud. I then read one of the incorrect answers and query the students as to whether it is correct or incorrect. In the process of listening to their answers, I utilize the Socratic method to push the students to explore why their reasoning is either correct or incorrect, and review for them the principles of law we have studied to allow them to see the relevance of those principles to the question. I require the students to explain fully why a given answer is correct or incorrect, noting that issue could depend on both the substance and the structure of the answer. In the latter respect, I show them an answer could be incorrect because, for example, the first part states party A "will prevail" when that cannot be the case, irrespective of the reason given as to why party A "will prevail" I have found the students genuinely benefit from reviewing and answering the questions, and feel a sense of excitement and satisfaction in doing so and understanding why a particular answer is correct and the others are not.

I undertake a similar process with sample essay questions. After asking the students to read the question, I ask them to turn it face down and articulate the facts. By doing so students learn to be far more careful and thorough in reading the facts, so as to avoid writing an answer that is incorrect because they have not understood the facts correctly or completely. I then ask them to identify the call of the question, and query them as to how many things it calls upon them to answer, noting that, even if there are only two "questions" stated, each may in fact be composed of two or more subparts. This enables the students

Primary Mailing Address
Law Office of Andre L. Verdun
401 West A Street, Ste. 1100
San Diego, CA 92101

ANDRE L VEROON
Attorney At Law

Criminal Defense and Consumer Rights Law

Primary Office Contact
Main Line: (619) 880-0110
Facsimile: (866) 786-6993
Email: office@verdunlaw.com

SENT BY EMAIL

September 25, 2019

Dean Pulle
Southern California Institute of Law
877 S. Victoria Avenue Ste #111
Ventura, CA 93003
Phone: (805) 644-2327
Fax: (805) 644-2367

Re: Changes that would improve bar
passage of students

Dear Dean Pulle:

I write this letter to document changes to the traditional learning style that I have implemented in my class which are specifically intended to increase bar passage rates.

I begin by pointing out that I am a graduate of the Southern California Institute of Law (SCIL) and a first-time bar passer. I have a unique classroom prospective as to what hinders students from SCIL from obtaining bar passing results. It is these observations that have impacted my teaching style.

When I enrolled into SCIL I was told that SCIL's mission was to provide a top-notch legal education with no desire to "teach to the bar". It relied heavily on critical thinking skills and the so-called "Socratic approach" to provide a traditional law school experience and education. I was told that the bar examination was not the concern of the school and efforts to pass the bar should be sought separate and part from the law school education provided by SCIL by consulting the various bar prep materials available.

The SCIL instructors came through on those promises. To be sure, upon my graduation from SCIL with my Juris Doctor degree, applied for and was accepted into California Western School of Law's (Cal Western) LLM program for Federal Criminal Trial Defense Advocacy. Cal Western is an ABA school, and the program was made up completely of ABA law school graduates, mostly from top-tier law school other than me.

I was initially intimidated by my inclusion into a post-JD program with no other California accredited law school graduates other than myself, but quickly concluded that my legal education, while far cheaper, was as good as any of theirs. I would assume my class mates would agree with my perceptions based on discussions we had. The LLM learning experience did not only enhance my lawyering abilities, it made me really appreciate the quality of the SCIL education that I got and never felt inferior to any attorney based upon my *alma mater* following my experience with my fellow Cal Western class mates.

Of course, when I attended Cal Western, my bar results were pending. I had high-expectations that I and one other student would likely receive a passing score for the GBX, I feared others would have a difficult time. Not only did I accurately predict the success of myself and the other student I identified as a likely passer, but I was sad to learn that we were the only two bar passers.

My experience in spending 4-years with my fellow SCIL classmates were that they struggled far more than myself and my bar-passer classmate, because we had the opportunity to make our law school studies the primary focus of our life. I didn't have a family and was able to reduce my work hours when exams were approaching, or I needed extra time to study. My class mate was a stay at home mom with strong family support. Eventually, I was able to reduce my work schedule to part time and then completely stop working to study for the bar.

Most of the other people in my class had full time jobs, many of which were careers that spread beyond the 9-5/M-F. They struggled to get through the weekly reading material and their ability to read beyond the text and get into the substance of the material was nearly, if not, impossible for them. When my fellow class mates arrived at class, they could "state a

clear/concise statement of the facts, identify an issue relevant to the material, extract a rule, provide a conclusionary statement of law" but my prospective is they were merely hunting out the answers to the IRAC queries like a pig hunting for truffles. That is all they had time to do. They allowed them to write passing papers when it was examination time, but struggle when it came to MBE performance.

Few of us with the luxury of time were able to examine the text not just to adequately brief a case in class, but to understand the public policy issues (which helped cement into our minds what the cases were about), to meet during the day to discuss the law, create flash cards and spend hours reading them, reviewing MBE questions from various sources, reviewing sample answers from previous bar exams and so on.

As I accepted the assignment to join the SCIL teaching staff in late 2018, I did so because I felt I had a prospective that would assist me in teach law school of a group of individuals I understood well and could help. With that background in mind, these are the things I have done to assist students in the eventual passage of the bar:

- 1) Talking about the bar each and every class: I understand that SCIL is no longer treating the bar examination as a off-topic subject during the class room lecture. While I understand why the law school did not want to be a 4-year "bar prep law school", I also understand that for the majority of the students, it hurt in unintended ways (resulting in law bar passage rates).

Students need to be reminded regularly that at the end of the day, to be a lawyer, you must pass the bar. While I personally disagree strongly with the bar-passage rates bring a factor considered for accreditation because it dismisses the many lives that have changed in an extremely positive impactful way even though they were not able to pass the bar by obtaining incredible work-related opportunities, I also understand that being a lawyer is still the goal for most that attend the school and the school's approach may unintentionally contributed to low pass rates.

I now feel that this deemphasis on the bar examination by SCIL in favor of traditional law school learning and critical thinking skills, caused a deemphasis of the bar to the students themselves that certainly was not intended by the school. I understand that SCIL has taken an 180-degree turn and now emphasizes bar passage difficulties at every opportunity.

In my class, we talk about "the exam" in every class. We constantly discuss my experience in taking the examination, and my experience mentoring others to passing the bar examination. I talk to them about what I have seen work (a lot of time commitment and 2000 MBEs prior to the bar) and what doesn't (taking the bar after studying evenings only for 2 months). I discuss the incredible amount of sacrifice and time that it takes to achieve a passing rate and ensure the students that merely passing law school is a far cry from what is required to pass the bar exam.

When I was a student, I heard on dozens of occasions something to the effect of: I just need to get the JD and then I can cram weekends for 2 months and be a lawyer". That doesn't work.

I think this conversation that the school is having with the students now is critical to an overall change of attitude that I saw personally as a student. In my class, we are having on a weekly basis that conversation and it is the critical first step to a change in the bar passage rates for SCIL graduates.

- 2) Deep and wider range of review: In my class, we are constantly reviewing the concepts that we cover in ALL PREVIOUS CLASSES.

For example, right now in my evidence class, we are studying hearsay exceptions. Before each class we review ALL THE CONCEPTS of ALL PREVIOUS CLASSES. This review isn't simply "define relevancy"; but instead, we do a mini "bar review type" lecture that covers each and every concept previously discussed. This mini-review often times clarifies concepts previously not well understood in the light of new concepts studied. It encourages students to ask about things covered 2-3 times in review that they still don't quite get.

My original reason for doing a mini-review before each class was to force learning through repetition, but I have come to realize that it also serves the purpose of better understanding how all the key concepts in a subject work together to help better understanding, allows students to ask questions about material they were reviewing but did not completely understand, and encourages students that decided not to speak up previously to eventually ask questions about old material.

I have the benefit of a 3-hour class. That means that for 30-minutes, I get to review every topic we have previously discussed. The detail and time may lessen as the semester moves on as to earlier concepts reviewed repeatedly and more time spent on more recently learned material, but in every class, every concept is mentioned and discussed.

- 3) Abandoning the case-book only teaching method: While there are reading assignments and an expectation that students read their cases and can discuss the facts of a case when reviewed, my class deemphasizes case book briefing as the core-concept of the class room experience. I do not cold call students with the intent to create fear in them that they may need to brief a case.

In my class, we move very quickly past the IRAC part of cases, and I lecture on how the case pertains into the material we are studying by lecture, using it more as a hypothetical, then use numerous more hypotheticals and multiple choice questions to hammer home the law that needs to be memorized and understood.

In discussing this method with my students, they told me that the time I take lecturing (rather than using the Socratic teaching method to tease critical thinking) and feeding the students the information, then asking them to feed back to me that answers to questions that I pose mostly in hypos (somewhat Socratic-like), they not only better understand that material we are learning, but better understand the case they read. I also chose only 2-3 cases a week for the students to read, and I simply brief the remaining cases are part of my lecture.

I understand how uncomfortable many law professors may be with lecturing as the focus of the class room learning experience rather than by reading dozens of cases, then a dozen or so hypos being used to understand the ins-and-outs and exceptions, I find this is the most effective way to teach the students. To the extent that it betrays the Socratic method and traditions in law school teaching, those betrayals are required to teach these specific students the law considering their available time to devote to their studies; as well as against the backdrop of the law schools now being responsible for minimum bar pass rates to maintain accreditation. I think we cut a clear balance in my class, with an emphasis towards learning the material.

- 4) Spoon-feeding students: When I was a student at SCIL, the professors teaching wanted us to come prepared by briefing cases, engage with them in lawyer like thinking during class, and expected that the studying be left to the students; similar to traditional law schools with non-working students.

I don't believe this will ever be successful with the true-working adult law school (I note that other night-only law schools that can offer financial aid allow their students to put a greater emphasis on their studying than students required to pay out of pocket for their education, work full time, and still raise a family).

I admit that I spoon feed my students. In addition to supplementing the case book teaching method in favor of a lecture centered approach that explains the material then tests the understanding using hypos and doing mini-course reviews weekly rather just a "quick-review" at the start of class, I also use PowerPoint presentations (PPP) that summarizes my lecture notes. These PPP not only highlight my lecture notes but contain my hypo fact patterns and the eventual answers to each hypo.

Following each class, I provide a copy of the PPP to the students to use in their studies, and they are free to raise questions directly from the PPP in the following class.

I also hand out a sheet following each class with an outline of my lecture created by me, followed by a "black letter law" section that tells the students what terms they need to memorize to pass my exam and the bar exam.

I have been criticized by lawyers that I have discussed this "spoon feeding approach" with, who believe that I am doing too much of the work and making learning too easy for my students.

I will accept that criticism. I am comfortable with making the law school learning experience far easier so that people can work full time, attend my classes and night, and leave understanding on the same level all of the legal concepts, cases and doctrines as any other lawyer, even if they did not have to put in as much work.

- 5) Realtime Exam writing: New to my class, after we finish a learning concept, I email the class an exam that is to be done in class. I then open a WORD document and project it to the class, and we read the exam question together. I organized the answer on the board with the students' help. Then, I write the exam question in real time, with the classes' help:

Me: *"Okay, so we need to define relevancy, who can tell me what I should write"*

I then show them how the phrases and terms I used in addition to the terms I have had them memorize form a passing essay. After the answer is complete, I convert the WORD document to PDF and give it to the class to review later.

- 6) Sharing my lawyering experience: I also talk to my class every week about my cases and experience as a lawyer. Good ones and bad. This may seem irrelevant to the issue of how to increase bar passage rates but let me explain. My students have a dream like I did: to be a lawyer. When I enrolled into law school, I had never met a lawyer and I did not get insight from professors as to what the job was like. They are also tired, stressed, exhausted, and at times, regretful they started law school.

With cell phones, laptops and the ability to day-dream, I am fighting for their attention the minute I utter my first word.

I talk a lot about what I do. Every time a previous experience can make a good hypothetical, I use it rather than make something up. I don't say "this is another hypo"; instead, I start with "I had this case once...." I tell the story and ask the class to work through the core problem in my story that made it interesting; such as, lawyer is trying to do something that I don't want to happen, and I used this concept of evidence we are learning in class to solve my problem. After I lay out the facts, I ask them: "This is the situation, how could I handle it?"

I think these stories both help understand the material and encourages them to study harder, pay attention to the material, and remember it based on the stories I tell.

RECOMMENDATIONS

I believe that this style of teaching would, at least in the subjects I cover, increase the bar examination rates, possibly quite dramatically over time. For the full potential to be seen, at least some of these methods should possibly be considered schoolwide.

There are three recommendations that I think need to be seriously considered, each of which could do more to increase bar passage rates than anything I can do in the classroom:

- having the students enroll into a bar course as a condition of enrollment or included with enrollment as is done with some ABA schools (assuming that hasn't already been done) and then emphasis being placed on the chosen bar examination course's exam taking methods in each class.

- The MBE needs to become a part of the mid-term and finals testing. My recommendations after a lot of thought are as follows:

Students should first be given the written examinations as the school is currently doing. Once the essay exams are finished, the students should be required to return to school do an MBE examination.

First year students would be tested equally on Torts, Contract and Criminal law. I would recommend a 1-hour 20 question examination during both mid-term and finals.

Second year students would be tested with Torts, Contract and Criminal law getting the share of one subject, then adding in any MBE questions for subjects students take covered on the MBE examination (e.g. a second year student enrolled in civil procedure, wills, and real property would be tested with 1/3 of the examination on Torts, Criminal Law and Contracts; 1/3 Civil Procedure; 1/3 Real Property, etc).

With the 2-L, 3-L and 4-Ls being combined, this may be more difficult than previously, but it can be achieved and would be worth the effort in putting the different test together based on which subjects have been taking.

My grading recommendation is that the MBE scores WOULD NOT BE FACTORED into the students overall grade, as the MBE scores should initially low and the focus shouldn't initially be on getting high-MBE scores but instead on 1) studying MBE questions and 2) coming to understanding of the complexity of MBEs even when your legal writing abilities are of bar passing quality. This would encourage students to start cramming for MBEs earlier.

Instead, I would require a minimum MBE pass rate of about 75-80. I would then allow the students to take the examination as many times as required to obtain a passing MBE score, but with no movement to the next year until the passing score is achieved. The re-test can be offered repeatedly during the summer until a passing grade is achieved. Once a passing score is achieved by all students, I *may* provide the students with each failing exam, the passing exam and the answer sheet so they can determine what sub-topics of each subject is causing them difficulty (which is my experience, the people typically score high in some areas of a given subject, but are confused and miss many questions in another area), but doing so may require that a new exam be designed each year. Alternatively, all of the failing answers can be discussed in a class, so that the same exam (or creating 2 exams and rotating them) can be used each year.

- My last recommendation is the most difficult for students but would be the most impactful as each of the SCJL former grads that took my advice on this passed the bar examination on the first attempt: Students must be told when they enroll that they should plan to take 8-12 weeks off from work and reduce their responsibilities so they can spend 40-hours a week for 8-12 weeks studying for the bar with weekends off (or working weekends only) to prevent burn out.

Even if the school's efforts make it easier for working adults to learn the material during the classes, there needs to be strong recommendations that the students take off from work at least 8-weeks to study for the bar, with 12 weeks being a "ideal recommendation". No one told me upon enrollment at SCIL that I should strive to make an 8-week 40-hour a week commitment to studying for the bar, but a lawyer told me that during my second year of law school and I was able to ensure that was possible. When I joined law school, I didn't know what the bar exam was, much less that I should be focused on passing it from the word "go".

I make that recommendation to every working adult law student that I come into contact with. The sacrifice is great, and most will initially dismiss the recommendation as impossible, and guess rightly that I was able to attend law school with family support that allowed me to do that. I was lucky, no doubt, that I was able to move back home, I didn't have family of my own, and could reduce my expenses to work the bare minimum of about 25 hours a week after year 2, but surely if the student isn't given the full 4-years to save money, prepare and make plans to take that time off, it is impossible when they get those recommendations as a 3-L and a 4-L, maybe even by the time they make it as a 2-L.

Not everyone can, but if they are provided this strong recommendation at the start of their law school enrollment, many may find a way with 4-years to plan and the rest hopefully can get more time to study knowing the implied assertion that comes with "you should do everything in your power to take 8-12 weeks off of work and use those weeks to study 40-hours a week" and at least start making plans to make as much time available for them during those 8-12 weeks as possible.

CONCLUSION

I will close by saying that if SCIL did not exist, I would not be a lawyer today. It was a dream of mine to be a lawyer since high school, and because of my family background, and my lack of self-belief early in my life, I never pursued law school until I found out that this school existed in my mid-20s and learned that I could afford it and happened to live 10 minutes from the campus.

The change that law school brought into my life is so profound, that I cannot imagine what any other life would be like. My previous career ambition was to slowly climb to the top of a fast-food chain, and I abandoned a fast-food job to join SCIL.

Re: SCIL Bar Passage
Client name: N/A
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You, and your pursuit to provide affordable low-cost quality education to those who could not otherwise afford it changed my life in unspeakable ways. If the only way I can give back is to teach the subjects I work in daily and provide my perspective to help others, then I will do that and know that providing only that still keeps me deeply in your debt.

Andre L. Verdun
Attorney at Law
Instructor: Criminal Procedure and Evidence

E-LEAP SELF ACCOUNTABILITY BAR CLINIC (2019)

It is the understanding of SCIL that implementation of a platform that forces students to complete, on an everyday basis, established exercises, is a necessity to raise the focus on the bar exam itself. It has, in the past, been presumed that students were preparing vigorously throughout their law school program. However, after completing informal research, it appears that only those that have passed the exam took it upon themselves to finalize and study each course over and above law school exam preparation.

Thus, our Alumni President has designed, and will be introducing, an electronic platform that will take the students through a set of approximately 2000 exercises, that range in difficulty from simple to full exam exercises. Students will be expected to complete throughout 3/4 of the exercises throughout their law school program. And, at minimum, the students will be expected to complete 20 MBE questions daily. The small numbers of students does not allow for daily interaction between students in for discussion as at larger schools. Together, the e-leap program and the LMS (*Populi*) will provide, encourage, and promote more of this via the internet by:

- 1) Conferencing, discussion, and chat options on our new LMS (*Populi*); and
- 2) Focused attention to a more vigorous study schedule in a manner that is consistent with their schedules. Creating a legal memory bank, rather than focusing on just case analysis.

In addition, Laurel Fielden (alumni President, CBE passer, and new faculty member) will hold a 1 credit class that will take place in two parts--October and April--that is designed to introduce each set of exercises suggested to be completed prior to graduation and sitting for the exam.

The interest served with this new bar prep platform is twofold: 1) It will shed a clear light on the vigorous standards necessary to pass the exam; and 2) it will provide both the student and the school with a record of the number of exercises, out of the 2000, that the student has completed. In other words, there is a clear need for the school to be able to gauge, and thereafter supply provide guidance, either through student and alumni mentoring or Professor assistance, in order to be able to determine the effort level output by the student and whether they are prepared to sit for the exam.

Along with the above program (e-leap platform), the school provides pass/fail courses that specifically focus on each area tested on the exam.

Note: After designing this program, Laurel Fielden tested it and passed the exam in July of 2017.

BOARD OF DIRECTORS MEETING (01125/2019)
COMMENTS SUMMARY: by Stanislaus PullePh.D.

1. SEPARATION OF POWERS

Accreditation involves discernment between competing policy choices and enforcing legislative policy.

Cal Const, Article I, § 3 (separation of powers), the State Legislature may not burden the Judiciary with non-judicial or extra-judicial functions. *Epperson v. Jordan*, (1938) 12 Cal.2d 61., *Abbott v. McNutt*, (1933) 218 Cal. 225, 228-232. One branch of government may not "abrogate to itself the core powers of another branch," *Carmel Valley Fire Protection District v. State of California*, 25 Cal.4th 287, 297 (2001.) The judicial branch cannot take, or be given by another branch, "executive . . . duties of a non-judicial nature" where such duties are not provided for in the Constitution. See *Buckley v. Valeo*, 424 U.S. 1, 123 (1976.) the United States Supreme Court has commanded "vigilance" against the "danger[]" of the judicial branch being "allowed 'tasks that are more properly accomplished by [other] branches.'" *Mistretta v. United States*, 488 U.S. 361, 38 (1989) (quoting *Morrison v. Olson* 487 U.S. 654 at 680-81 (1988.)) This is a bedrock constitutional principle of separation of powers reaffirmed by our own Supreme Court in *Kopp v. Fair Political Practices Commission*, (1995) 11 Cal. 4th 607, 675 where Justice Kathryn Werdegar (in a concurrence with Justice Mosk) declared: "[T]he judicial role in a democratic society is fundamentally to interpret laws, not to write them."

2. ABSENCE OF DUE PROCESS

The current framework lacks procedural due process. The due process afforded law schools involves the termination of accreditation and this is found in Accredited Law School (ALS) Rule 4.177. It recites: "*A law school may seek review of termination of its accreditation before the California Supreme Court pursuant to its rules.*"

The Supreme Court has confirmed that in the exercise of its inherent authority, it alone possesses the "sole authority to grant or deny admission to practice law..." *Sander v. State Bar of California* (2013) 58 Cal.4th 300, 305.

ALS Rule 4.177 unconstitutionally expands this "sole authority" to deny law school accreditation. Supreme Court Justices are reduced to an *Administrative Appeal Board*. Such a freewheeling legislative delegation to the State Bar denigrates our Supreme Court, in the words of Justice Scalia, "to puppets of a ventriloquist legislature." *Printz v. United States*, 521 U.S. 898, 928 (1997.) Besides, as Justice Kennard wrote, that just as the Supreme Court "may not also control the execution of the laws it has enacted," it may not "sit in judgment on persons accused of violating those laws." *Obrien v. Jones* (2000) 23 Cal. 4th 43, 70 (Justice Kennard dissenting.)

3. *DISPOSITIVE MINIMUM PASS RATE EFFECTIVE 01/01/2013 BASED ON RETROACTIVE PASS RATES FROM 2010*

The United States Supreme Court in *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009) laid down the principle that when a change in agency policy "rests upon factual findings that contradict those which underlay its prior policy ...a reasoned explanation is needed for disregarding facts and circumstances that underlay" the prior rule. *Id.* 515-516. Four dissenters led by Justice Breyer demanded more: "To explain a change requires more than setting forth reasons why the new policy is a good one. It also requires the agency to answer the question, 'Why did you change?'" *Id.* 549. Justice Sotomayor writing for the Court in *Perez v. Mortgage Bankers Ass'n* 135 S.Ct. 1199, 1209 (2015) emphasized: *u{Tjhe APA requires an agency to provide more substantial justification when its new policy rests upon factual findings that contradict those which underlay its prior policy; or wlen its prior policy has engendered serious reliance interests that must be taken into account. It would be arbitrary and capricious to ignore such matters. "*

The minimum 40% pass rate was a "political bargain" between a majority of California Accredited Law School (CALS) deans and the Committee of Bar Examiners. The 40% minimum pass rate over a rolling five-year period was extracted as part of a "take-it-or-leave-it" political bargain between a 25% pass rate proposed by the CALS deans and a 50% pass rate with mitigating factors proposed by the Committee. It was effective retroactively and was not based on substantial evidence and there were no responses to public comment.

By placing burdens on the use of prior pass rates from 2010-2012 that were previously used to extend a law school's accreditation, the minimum pass rate that was effective January 1, 2013 "attaches new legal consequences to events completed before its enactment" (*Landgraf v. US! Film Prods*, 114 S. Ct 1483, 1499 (1994) and violates due process as a matter of law.

Political compromises in legislation are distinguishable from those in agency rulemaking: See *Massachusetts v. EPA*, 549 U.S. 497, 533-34 (2007). In *Qwest Corp. v. FCC*, 258 F.3d 1191, 1202 (10th Cir.2001) the Court held that: "Merely picking a compromise figure is not rational decision-making." Picking a compromise percentage on the dispositive minimum pass rate is precisely what the Committee did here. Even here, no reasons were offered for ignoring public comment.

The United States Supreme Court demands that an administrative "agency must consider and respond to significant comments received during the period for public comment." *Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1203 (2015.) In a State Bar commissioned a study by Dr. Chad Buckendahl (July 15, 2013. PR-13-02) titled: "*Key Factors To Consider When Engaging In A Development Or Redevelopment Process For Examinations*" concludes: "Although often misused for such purposes, licensure testing program scores are not intended to serve as a comprehensive evaluation of a program's curriculum and instruction." (Emphasis supplied.)

4. ABSENCE OF SUBSTANTIAL EVIDENCE FOR RULEMAKING

The State Bar no longer acts a separate and sovereign "branch !!/ state government" (as it does with attorney admission and discipline) in accreditation issues and hence is no longer entitled to claim the exemption extended to a sovereign branch of government under the state Administrative Procedure Act (Cal. Gov't Code §11340.9(a). This means that all accreditation regulations made by the Committee of Bar Examiners, in its capacity as an executive agency of the legislature, must be supported by the "substantial evidence" rule (Cal. Gov't Code §11350 (b)(1), and the regulated entities are entitled to administrative procedural due process. The current scheme is bereft of both.

The substantial evidence requirement for accreditation rulemaking has been extended even to a private entity-the ABA. See, *Thomas M Cooley Law School v. American Bar Ass 'n*, 459 F.3d 705, 711, 713 (6th Cir.2006.) "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous . . . is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." *City of Hayward v. Trustees of California State University* (2015) 242 Cal.App.4th 833, 839-840.

5. ULTRA VIRES RULEMAKING

Section 11350(b)(1) strictly confines the State Bar's delegated authority to issue the J.D. degree, a first professional law degree, and embraces no other permutation, variation, or combination of degrees. There is no zone of twilight for degrees that are neither approved nor unapproved. Legislatures never "acquiesce" in degrees. California's non-delegation doctrine places special emphasis on the presence of safeguards to check an agency's exercise of delegated authority. *Kugler v. Yocum* (1968) 69 Cal. 2d 371 at 376, quoting *Wilke & Holzheiser* (1966) 65 Cal. 2d 349 at 369, that when agencies act "improperly no less than when they act beyond their jurisdiction, what they do is ultra vires." "An administrative agency can act only as to those matters which are within the scope of the powers delegated to it." *County of Alpine v. County of Tuolumne* (1958) 49 Cal.2d 787, 797. "[T]here is no discernible line between an agency's exceeding its authority and an agency's exceeding authorized application of its authority." *Arlington v. FCC* 569 U.S. 290, 327 (2013.)

Or as Justice Scalia colorfully explained: "Agencies may play the sorcerer's apprentice but not the sorcerer himself." *Alexander v. Sandoval*, 532 U.S. 275, 291 (2001.) In authorizing *lt vbrid J.D* degrees, *j oint J.D. degree*, and exclusivel y online p ostgraduate law deg ree for which there is no approval, the Committee of Bar Examiners indulged in unconstitutional legislative policymaking. These degrees authorizations without approval were clearly outside the rulemaking power of the State Bar. These authorizations need to be first vacated as a matter of immediacy and thereafter be the subject of BOT and legislative debate and rulemaking. To approve clearly unconstitutional agency authorization is to make the BOT complicit in this process.

6. *EMPANELING INDUSTRY LOBBYISTS ON A STATE REGULATORY PANEL VIOLATES THE RIGHT OF PETITION*

Following a State Bar sponsored study, Dean Elizabeth Parker of McGeorge Law School and Dr. Elise Walton in report of June 1, 2018 concluded that on accreditation matters, the State Bar functions as an "executive" agency of the legislature. The Report confirmed the following key points:

"Accreditation of California law schools is undertaken by CBE based on legislative mandate, subject to approval by the Board, and not as part of the Court's inherent authority to regulate the practice of law in California." (p. 7) "Overseeing both accreditation and admissions may invite conflicts of interest or perspective, particularly given the apparent dominant role of law school deans in the accreditation process." (p. 25.)

Neither Congress nor state legislatures are known to establish legislative committees consisting of industry lobbyists to "advise" on legislative policy and statutory enactments. This would be just as outrageous if the U.S. Department of Commerce created a committee involving representatives of the U.S. Chamber of Commerce to "advise" it on new rules and suggest modifications to existing regulations.

The proposed committee structure that would empanel industry representatives to advise on agency policymaking and rulemaking violates the right of petition. The "right of the people" in the "First Amendment's Assembly-and-Petition Clause"..... "unambiguously refer to individual rights, not 'collective' rights, or rights that may be exercised only through participation in some corporate body." *District of Columbia v. Heller*, 554 U.S.570, 579 (2008.) (Emphasis added.) Put differently, the right to petition government for redress that must be open to all on equal terms. This arrangement slopes the playing field to "elected" representatives from a variety of industry groups. The now defunct Rules Advisory Committee (that consisted of three private law school representatives and three committee members) held the *keys* to accreditation regulations. Without a four person vote to "recommend" a regulation, the Committee was shackled from initiating any new regulations. From this unconstitutional structure came the minimum pass rate. We urge the BOT to carefully review this issue.



The State Bar of California

Southern California Institute of Law

Inspection Report Related to Notice of Noncompliance with Rule 4.160(N) and Guideline 12.1 (Minimum, Cumulative CBX Pass Rate)

Inspection conducted
Pursuant to Rule 4.170 of the
Accredited Law School Rules on:

October 24, 2019

Inspection Team:

Alex Chan,
Committee of Bar Examiners

Natalie Leonard
Ron Pi
The State Bar of California

Observer:
Alex Lawrence,
Committee of Bar Examiners

REPORT ON TELEPHONIC INSPECTION OF THE SOUTHERN CALIFORNIA INSTITUTE OF LAW, SANTA BARBARA AND VENTURA, CALIFORNIA

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Introduction

The Southern California Institute of Law (SCIL) is a private, for-profit private law school that was registered as a law school in California in 1986 and accredited as a law school in California in 1996. SCIL operates campuses in Santa Barbara and Ventura. Dean Stanislaus Pulle has been the dean of the school since its founding.

As an accredited law school, the school must maintain five year, minimum, cumulative California Bar Examination (CBX) pass rate (MPR) of forty percent amongst its JD graduates who choose to take the examination. (Rule 4.160(N); Guideline 12.1) Students who do not take the CBX are not included in the calculation.

SCIL has reported the following MPR figures: 25.3 percent (2015) 26.4 percent (2018); 21.1 percent (2019).

In response, the Committee of Bar Examiners (Committee) issued Notices of Noncompliance, the school responded in writing, and the Committee requested that a telephonic inspection be conducted to provide the school with an opportunity to share any further information regarding its compliance status.

An inspection was held on October 24, 2019, conducted by a State Bar Inspection Team (State Bar Team) composed of Committee Member and Chair of the Operations and Management Subcommittee Alex Chan, and staff members Natalie Leonard and Ron Pi, while Educational Standards Subcommittee Chair Alex Lawrence was present as an observer.

On behalf of SCIL, the following individuals attended the call: Dean and Professor Stanislaus Pulle, SCIL Board Member Dennis Rasmussen, Vice Dean and Professor Eric Pommer, and Director of Admissions, Santa Barbara Campus Administrator and 2013 SCIL graduate Kevin Mauseth.

While the school did not provide a specific date by which it believed that compliance would be achieved, SCIL did represent that the school was willing to comply with the required MPR value of forty percent if the school was not granted a waiver.

Scope of Inspection Report

When the Committee issues a Notice of Noncompliance, the law school responds to the notice. (4.170(B)) If the response does not establish compliance, the Committee schedules and

inspection, as was done here. (4.170(B)(2)) The Committee directed that the inspection be conducted telephonically because the physical facility of the school is not at issue.

The school's prior MPR's were verified in advance of the call, so the call focused on the information that the school chose to share regarding its plan to achieve compliance with Rule 4.160(N) and Guideline 12.1.

The State Bar Team began the call by discussing the purpose of the meeting and all members of the call introduced themselves. The State Bar Team had reviewed the materials provided by the school in advance of the call. The school set the agenda for the remainder of the call and responded to questions from the State Bar Team as well. At the conclusion of the call, the school took five minutes to provide a closing statement. One hour was scheduled for the call, and the call concluded after slightly more than one hour.

This Inspection Report summarizes the telephonic inspection. The Team's conclusions include not only consideration of the telephone call, but also a review of the school's written submissions related to the Notice of Noncompliance.

Summary of the Telephonic Inspection

This summary represents the point of view of the school as presented by the school.

When SCIL first reported an MPR value below forty percent in 2015, the school advised that it had a different strategy than it does today. The strategy was based on a classical style of teaching. The school did not wish to purchase access to a commercial bar review program at that time because it was thought that this was an issue of internal faculty governance, and the faculty role should not be supplanted by an outside provider. Therefore, unspecified changes were made to the writing department, but the school did not make specific efforts to address its graduates' performance on the multiple-choice section of the CBX. The school also introduced optional practice examinations that the school believed were helpful to students, but many students did not take them.

At that time, the school used a traditional casebook method with standard briefing of cases. Cases were included from as far back as the 1800's. Students memorized rules and practiced reading and briefing. The school noted that during the 2017 year, seven of their students were admitted to LL.M. programs at ABA approved law schools, and the school was inspected by the State Bar, so they had every reason to believe that their curriculum was sound.

In 2018, SCIL changed its strategy. The school contracted with BarBri to focus on improving students' multiple-choice scores on the CBX. SCIL did so for two reasons: 1) when the examination transitioned from three days to two days in length and the weighting of the multiple-choice portion of the CBX rose to fifty percent, the school wished to include more multiple-choice

practice for its students; and 2) the school felt that during its periodic inspection in 2017, that Periodic Inspection Team encouraged the school to contract with a commercial CBX preparation program. SCIL also felt that other law schools whose graduates had worked with BarBri or Kaplan had improved their multiple-choice results on the bar examination, so they wanted to try this program.

In 2019, however, the school discontinued its relationship with BarBri in favor of a further restructuring of its J.D. curriculum. The school felt that while some students liked BarBri, others felt they were just inundated with rules from BarBri. SCIL also believes that research from other schools and articles written by professors at ABA law schools showed that through BarBri, students learned rules without context, leaving them with deficits in the areas of analysis and application of the facts. SCIL also observed that other law schools had contracted with BarBri, but their CBX pass rates decreased.

For those graduating in Spring 2019, BarBri was not offered. Students could choose to purchase their own bar preparation class, including, if they so chose, BarBri. The school did not indicate that it tracked whether students took CBX preparation courses.

During Fall 2019, SCIL began adjusting its teaching methods based on discussions with current faculty, alumni, and both graduates who passed the CBX recently and graduates who failed the CBX recently. The strategy involves incorporating more essay writing and multiple-choice practice questions into the curriculum.

The new strategy reflects the teaching methods that Professor Mauseth had chosen to use in 2018 with first- and second-year law students. Professor Mauseth graduated in 2013, passed the CBX on his first attempt and began teaching soon thereafter, experimenting with his theories based on his experience of taking the CBX. He incorporated essays written in front of the class for every session, identifying the applicable rules and analysis applying the facts to the rules. He observed that students take six to twelve months to show improvement. He believes the reason for the improvement is that students are required to do practice examinations and multiple-choice questions in class and to receive feedback from him.

In addition to the increased writing component, the school provides more intermediate feedback including results throughout the semester on multiple-choice quizzes, and inclusion of more critical thinking teaching into the curriculum.

The new curriculum is designed to address the school's assessment that students are busier, they may be coming from low income or underserved communities unfamiliar with law school, and the CBX is getting harder to pass.

The school also hired a student who graduated about four years ago and passed the CBX, but has not yet applied for licensure in California. This individual observes lectures to provide feedback

and observations. She has observed that the teaching method is different than it was previously and feels it is better suited to CBX preparation.

Students also identify themselves as taking individual classes in synchronous or asynchronous mode so the school will know their approach and how they learn.

There are also several curricular options being considered for adoption in future semesters.

One option under consideration would require mandatory practice CBX examinations.

Another option would be a boot camp focused on multiple-choice questions. This would be provided in addition to the multiple-choice questions that are already being incorporated into the regular class periods. Dean Pulle has not yet tried to weave in the multiple-choice questions because he has a 2,000 page casebook and needs more time to provide the students with background and terminology; he does, however, use an additional explanatory book that he authored. Dean Pulle gave an example of one student who could not understand how to brief cases until he read Dean Pulle's companion book, and then he graduated and passed the CBX. Dean Pulle will create his own constitutional law course to prepare for the multiple-choice portion of the bar in a careful and consultative manner and offer it as a one-credit course for the first time during the summer of 2020.

An additional option has been submitted by one of the school's most popular professors, Andre Verdun. His proposal includes constant review, such as spending ten to fifteen minutes of each class period reviewing concepts from the prior lecture verbally, as it would be included in an essay, and how it would be applied to a hypothetical question. He would also assign a CBX question every several weeks and have students write an answer and compare to his model answer. Professor Verdun believes that this results in better application of facts and fewer conclusory or unfocused answers.

The school did not indicate that it has any plans or initiatives to support alumni who are still taking the CBX and are included in the MPR calculation.

In summary, the school closed the call by asking the State Bar to see that SCIL was willing to listen, ask questions, and answer questions about how it measures outcomes and to see that the school is taking a comprehensive approach to change what is taught, how it is taught, what is expected, and how to plan for the future. While the school does not agree with the way that the forty percent MPR threshold was created and implemented, and SCIL believes that the Rule hurt the school, SCIL does believe that creating the rule triggered changes at the school that will help the students, and these changes should have been made in any case, so SCIL intends to go forward and comply with the MPR Rule independently. The school indicated that it made mistakes in the past, but indicated that it has now changed and is willing to try new things to improve graduates' success on the CBX.

Dean Pulle indicated that he and the other professors believe that bar preparation is improving based on their assessment of students' essays, as well as the scores that students are receiving on multiple-choice quizzes.

Finally, Vice Dean Pommer asked the Committee to be aware that the school has small classes and, over the last 25 years, though students were taught using the same curriculum, some class cohorts performed well while others did not, without any reason to explain the discrepancy. He also felt that the school's students historically have done better on the essay portion of the examination and have been hurt by the change in weighting between the multiple-choice and essay portions of the CBX when the examination transitioned to a two-day format.

When asked how long it will take for the school to achieve a compliant MPR, SCIL did not give a timeline. Instead, SCIL indicated it is a small school and while it has made major changes, it cannot turn the ship on a dime, but the school is committed to coming into compliance with the MPR requirement. SCIL believes its good faith efforts will ensure this result, relying on faculty assessment of student in-class writing assignments and quiz scores. The school believes that compliance will be achieved if the school can increase its pass rate per class by one to two test takers.

CONCLUSION AND RECOMMENDATION

Because the school is not in compliance with Rule 4.160(N) and Guideline 12.1, the Committee will need to determine whether probation or termination of accreditation is appropriate, depending upon the progress that the school is making toward compliance.

It is recommended that the school's status as an accredited law school be terminated based on a long term history of noncompliance, and the likelihood of continued noncompliance for several years or more. Noncompliance was first identified in 2015, and has continued through and including 2018 and 2019. In fact, the school's MPR continued to drop between 2018 and 2019 during the time when the school would be expected to focus intensely on the issue. Though the school expressed intentions to make future changes that it believes will result in compliance in the future, its current strategies remain untested and compliance is mathematically unlikely given the school's MPR history. During the July 2019 Bar Examination, the school had a zero percent pass rate amongst the twenty five students who took the examination, including nine first-time takers. This suggests that the school's MPR for 2020 will decline.

If the school's accreditation is terminated, it can decide whether to apply to the Committee to operate as an unaccredited law school.