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# An Overview of the Interrelationship Between the State Supreme Court, the State Bar of California's Board of Governors and the Committee of Bar Examiners

Assembly Committee on Judiciary

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ASSEMBLY COMMITTEE ON THE JUDICIARY

HEARING OF THE ASSEMBLY JUDICIARY COMMITTEE ON  
AN OVERVIEW OF THE INTERRELATIONSHIP BETWEEN  
THE STATE SUPREME COURT, THE STATE BAR OF CALIFORNIA'S  
BOARD OF GOVERNORS AND THE COMMITTEE OF BAR EXAMINERS

Hearing of March 19, 1985  
Room 126  
State Capitol  
Sacramento, California



Assembly Members  
Elihu M. Harris, Chairman  
Wayne Grisham, Vice Chairman

Lloyd Connelly  
Gerald N. Felando  
Sunny Mojonier  
Maxine Waters

Rubin R. Lopez, Chief Counsel  
Ray LeBoy, Counsel

Jean Duffy  
Patrick Johnston  
Richard Robinson  
Phillip D. Wyman

Mark Harris, Counsel  
Lettie Young, Counsel

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85-9-35



February 1, 1985

Mr. Burke Critchfield, Esq.  
President  
State Bar of California  
555 Franklin Street  
San Francisco, California 94102

Dear Mr. Critchfield:

During the spring of 1984, the Judiciary Committee of the California Assembly conducted a hearing which investigated the controversy surrounding the July 1983 bar examination. Although that particular bar examination's grading procedure is no longer under scrutiny, several unanswered questions have arisen regarding both the State Bar of California and the Committee of Bar Examiners.

Therefore, the Judiciary Committee will conduct two hearings which will focus on several issues related to the practice of law in California. The first hearing is scheduled for March 12, 1985, and will commence at 3:00 p.m. in Room 126 in the State Capitol. That hearing will provide an overview of the interrelationships between the state Supreme Court, the State Bar of California's Board of Governors and the Committee of Bar Examiners. Additionally, the above-mentioned bodies will be expected to provide the Judiciary Committee with a description of their decision-making and administrative processes. The second hearing will be conducted on March 26, 1985, at 3:00 p.m. also in Room 126 and will feature input from undergraduate school deans; law school deans; law student organizations; the Educational Testing Service; and women and minority bar associations. It will focus on the state of legal education in California and on the process of preparing one for admission to practice.

To ensure that the hearings will provide a thorough and useful framework upon which to build a more complete understanding of



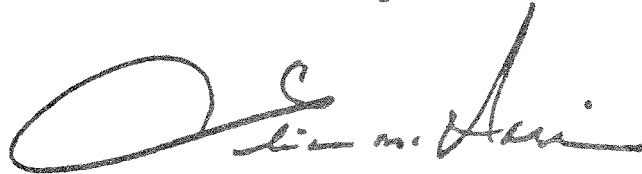
February 1, 1985

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the process of becoming an attorney in California, a short questionnaire has been enclosed with this letter. Please complete the questionnaire and return it to Mark T. Harris, of my staff, by February 15, 1985. You will receive a follow-up letter that will request a confirmation of your participation as a witness during the hearings.

Thank you for your assistance and participation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elihu M. Harris". The signature is written in dark ink and is positioned above the printed name.

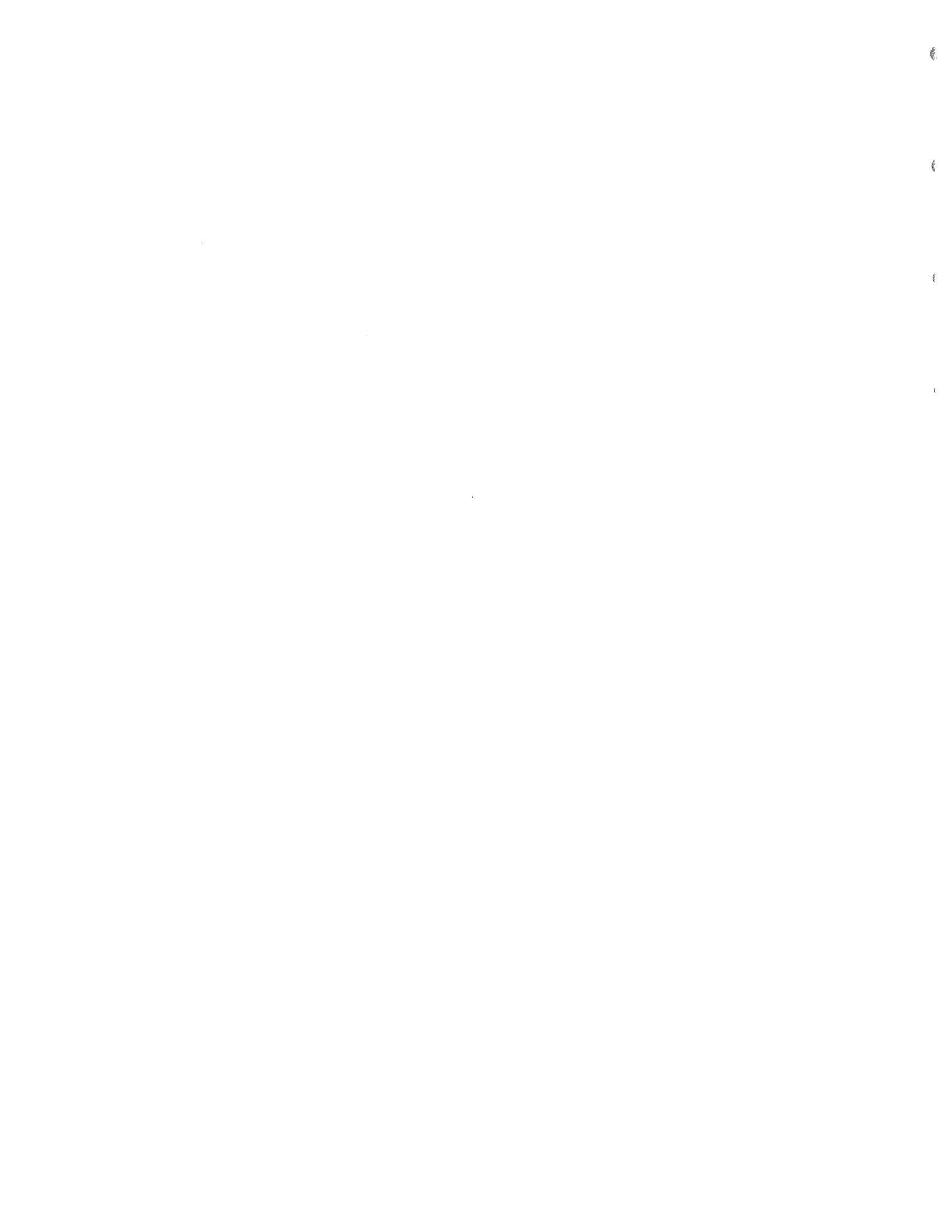
ELIHU M. HARRIS

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CHAIRMAN ELIHU HARRIS: This hearing's purpose is to investigate the state bar examination. In past months we've had discussions about the bar examination; questions as to its content, its relevancy, et cetera, also the role of the Committee of Bar Examiners, vis-a-vis the State Bar.

The Assembly Judiciary Committee will conduct two hearings on the subject of legal education and the state bar examination and this is the first of the two. The first hearing today is scheduled to discuss an overview of the interrelationship between the state Supreme Court, the State Bar of California, the Board of Governors and the Committee of Bar Examiners.

Additionally, the above mentioned bodies will be expected to provide the Judiciary Committee with a description of their decision making and administrative procedures relative to this subject.

Our first witness is Mr. Ralph Gampell, the Director of the Administrative Office of the Courts; Mr. Gampell.

Mr. Gampell, I want to make it clear that we are not asking you to give us any conclusions of law, but give us if you can, an historical perspective on the role of the Administrative Office of the Courts et al and anything you think relevant to the state bar exam or the Committee of Bar Examiners; we'd appreciate your comments.

MR. RALPH GAMPELL: Thank you Mr. Chairman and members. My name is Ralph Gampell, I'm Administrator to the Director of the Courts and I've been in that job for better than seven and a

half years and immediately before taking this job, I was President of the State Bar of California. Therefore, I do have a certain dual perspective.

I think it's important, in looking at this problem, to make a sharp distinction in your minds between the role of the Supreme Court in discipline of lawyers and the role of the Supreme Court in admission. It's my opinion that the role of the Supreme Court in admissions of lawyers to practice law is no different than its role, vis-a-vis, any other professional licensing body, such as the Board of Medical Quality Assurance, or whatever, professional engineers and all things like that. Namely, if a candidate feels aggrieved at a result, that candidate petitions the Supreme Court for relief on a one-on-one basis as would a medical student who feels that he or she has been improperly dealt with by a licensing body, that person appeals to the Supreme Court as would a professional engineer and a candidate for admission to the Bar who feels that he has, or she has been improperly dealt with by the examining body, which is the Board of Bar Examiners, that person has redress to the Court by petition.

Now, the situation, of course, is clouded because, at least as I see it, so much of the Bar is legislatively created. The Board of Bar Examiners is a legislative creation, it's B&P Code, whatever. I see the role of the Board of Bar Examiners very similar or virtually identical to whatever is the examining body for doctors or for engineers. I believe the day-to-day oversight of the Board of Bar Examiners lies with its own

regulatory body, which is the Board of Bar Governors, which also is set up by statute.

I think discipline is different and I think that's an area which is not before you today. Discipline is different in that these people, the lawyers, are the practitioners before the very regulatory body. I think you have to make that sharp dichotomy. But that's what I see the role of the Supreme Court. I think that can be underscored by what is clearly historically true. Every time that the State Bar comes up here, for example, for a dues bill, and ends up unsuccessful or less than it thought was appropriate, you hear language like, "we're going to the Supreme Court and the Supreme Court will take care of it under its rulemaking power." If I could quote a Brooklyn statement, "I think you should live so long." I don't see the Supreme Court historically ever venturing into that field. In a lot of different areas, the Supreme Court, I think, is always sensitive to an area where there has been legislative preemption, and it seems to me there is legislative preemption in this field. But the short answer is historically they haven't done it and I don't see any reason to think that they'll be doing it in the future.

CHAIRMAN HARRIS: The Administrative Office of the Court or the Supreme Court does not provide day-to-day oversight, is that correct?

MR. GAMPELL: Oh, clearly not.

ASSEMBLYMAN HARRIS: Does it have any ongoing monitoring staff relative to the Committee Bar examiners?

MR. GAMPELL: No. No, it deals with the admission of the State Bar on a one-to-one basis.

CHAIRMAN HARRIS: Okay, in other words it only deals with questions that are put to it, vis-a-vis, the Bar or the Bar exam, it does not, in fact, on its own investigate or administer, is that right?

MR. GAMPELL: No. Not, anymore that it does with any other licensing body, such as the Board of Medical Quality Assurance or professional engineers or anybody else. And that's not a new departure, that is, I think, the whole historical trend.

CHAIRMAN HARRIS: Are you aware of any cases, historically, on point relative to the role of the court, vis-a-vis, the State Bar, the Committee of Bar Examiners?

MR. GAMPELL: No, I'm not, specifically, Mr. Chairman, but I know if you go look at the cases you'll find a lot of quite turgid language about the Bar being an arm of the Supreme Court and so on, but I don't see, historically, that that has ever been, and historically, I mean something in the order of perhaps the past forty years. I don't think that has ever been reflected in the Supreme Court moving into an area which has been legislatively controlled.

CHAIRMAN HARRIS: Do you know over the year, do you have any idea how many complaints, if any, have been filed with the Supreme Court relative to the Committee of Bar Examiners?

MR. GAMPELL: No, I don't.

CHAIRMAN HARRIS: But they've all been rejected, is that right, any complaints?

MR. GAMPELL: I don't know that either.

CHAIRMAN HARRIS: Okay. Are there any other questions of Mr. Gampell? Okay, thank you very much, Mr. Gampell.

MR. GAMPELL: Thank you. I'll be around if I can add anything during the deliberations, I'd be most happy to.

CHAIRMAN HARRIS: Thank you for coming, I appreciate it. I know your schedule is very busy.

Is the State Bar here?

MR. BURKE CRITCHFIELD: Good morning, Mr. Chairman.

CHAIRMAN HARRIS: How are you?

MR. CRITCHFIELD: Just fine, sir.

CHAIRMAN HARRIS: Mr. Critchfield, I believe you know why we asked you to be here and if you'd like to give us some opening comments about the State Bar, we have a written statement in response to our questionnaire and if you'd like to amplify on that we'd be most appreciative.

MR. CRITCHFIELD: Thank you. On behalf of the State Bar and the Board of Governors, we're happy to be here. As you know, we dealt with this subject, partially, last year and we responded to your questions and today we have some of the people who are more directly involved with the Bar exam and I thought I'd go down the list and tell you who they are and explain their responsibilities. I don't know if they are all here yet. I directed them to be ready about 10:00 and I'm afraid I set that a little bit late. But I'll go through the list and as they



arrive, then I'll call them forward and you can talk to them and ask them questions.

First, we have Orville Armstrong, who's a member of the Board of Governors and he's Chairman of the Committee on Admissions and Discipline, and the Bar Examiners report to his committee. And also we have with us Diane Yu, who is a court commissioner in Alameda County and this year she's the Chair of the Committee of Bar Examiners, and this is her fourth year in being involved with the Bar Examiners.

Also we have Stephen Klein, who is a consultant for the State Bar Committee on bar examiners, and he will be here to answer questions. We had expected this morning to have Jane Smith from the State Bar, who's the Director of Examinations, but originally we thought we were going to be here last week, and she is scheduled for today; she's preparing for a review in examinations, so unfortunately, she will not be here today, but will be available next week, so if there are any questions that you have that touch on her subject matter, I would like to have you withhold them until next week.

And to my left is Herb Rosenthal, who's our General Counsel for the State Bar, and in addition we have here Andy Richy, who is in the General Counsel's office and who is liaison with the Committee of Bar Examiners. That just about covers all the people we have and I have not seen Diane Yu come in yet, but I'm sure she's on her way and until then maybe you can direct any questions to me. I have to be honest with you that my contact with the bar exam, itself, is fairly limited;

(INAUDIBLE FROM AUDIENCE)

MR. CRITCHFIELD: I know, but I took one in 1960 and passed.

CHAIRMAN HARRIS: Can you give us some perspective about the administrative relationship between the Board of Governors and the Committee of Bar Examiners and how that differs from the basically, hands-off policy that Mr. Gampell expressed relative to the Court and the Administrative Office to the Courts?

MR. CRITCHFIELD: Yes. The bar examiners, in my opinion, are considered in a different light than some of the other committees with the State Bar, but we do feel that there's a reporting requirement which goes on between the Committee of Bar Examiners and the A&D Committee and otherwise they function independently. Their staff is independent and there's a great necessity for confidentiality and as I understand the way it works is that there's no interchange of State Bar personnel between the State Bar employee that worked in the bar examiner's office and the rest of the office.

CHAIRMAN HARRIS: Do they file annual reports?

MR. CRITCHFIELD: Yes, they do. They file an annual report and Jim Tipton, who is the head of the administrative staff of the bar examiners, reports directly to the Board of Governors through the A&D Committee, and Herb would like to clarify.

MR. HERB ROSENTHAL: The Chair received, I think, or earlier either this year or late last year, a report that had been prepared by the board relating to the relationships between

the Board of Governors and the Committee of Bar Examiners and a number of changes that were recommended had been adopted by the board and it would be last September/October, October/November, I'm not certain of those specific dates. Under those changes of reporting relationships, the Committee of Bar Examiners reports monthly to the Board of Governors through the Board Committee on Admission and Discipline. The Admission and Discipline Committee is made up entirely of board members and they report on what's going on and what's happening; the process and procedures. The committee, that's the study committee, also recommended a number of changes up line in the system and those are things that are also reported and their progress.

Basically, the Board of Governors, itself, legally has several oversight responsibilities as established both by this Legislature as well as by the court. One of them is to - I don't think the word is correct, but the word is "investigate" the activities of the Committee in the admission area and I would rather refer to that perhaps as a study and report in terms of how can we improve the system. And they have done that, periodically, over the years with regard to bar examination process, minority involvement and so on, and these studies have usually been the result of a committee established by the board, a blue ribbon committee of people who represent a diversity, both in and out of the profession and basically, what they've come up with are recommendations either for legislative action or for board action or for committee action, and as this latest report was basically for board actions, that's one aspect, the board activity, vis-a-vis, the Committee.

The second area is rulemaking authority. The Board of Governors has the ultimate rulemaking authority as it relates to implementing the statutes of California in the area of admissions, and in that regard, exercises that periodically during the year when the Committee comes forward with usually its recommendations for rule change.

There are occasions when the board, itself, has amended the rules as witness the last few months ago, they added to the rules that the bar examination consists of the three parts that we're familiar with; essay, the practical skills examination, and the multi-state bar examination.

The board also has another role and that's the role that Burke referred to; the role of appointing the Committee and those committees are reviewed annually and those appointments, rather, are reviewed annually, also the board...

CHAIRMAN HARRIS: What's the term of the Committee of Bar Examiners?

MR. CRITCHFIELD: Right now I think it can continue for four years, but it's reviewed on for up to a term of four years, total, or four years, and...

CHAIRMAN HARRIS: They can be appointed again, is that right?

MR. CRITCHFIELD: My understanding is that are not appointed beyond four years, but I understand they are reviewed annually.

ASSEMBLYMAN LLOYD CONNELLY: Is this the committee of examiners?

MR. CRITCHFIELD: This is the Committee of Bar Examiners.

ASSEMBLYMAN CONNELLY: And who appoints them?

MR. CRITCHFIELD: The Board of Governors.

The other aspect where the board gets involved is with the staffing and the financing. The board has to sign off on all financing for the Committee, its fee schedule and the like. It also is responsible for the staff assigned to assist the Committee.

So the board does have oversight responsibilities and I think in this last year has reexamined that pretty much in depth and certainly if the Judiciary Committee wishes, we can resupply copies to it in terms of that board study, which has resulted in perhaps, I could describe, a greater oversight that's being exercised now.

CHAIRMAN HARRIS: Tell me something; how often does the Committee of Bar Examiners report to the Board of Governors?

MR. CRITCHFIELD: Well, now they're reporting on a monthly basis.

CHAIRMAN HARRIS: How extensively do they report? Is it just a pro forma report, or is it more in depth. How would you describe it?

MR. CRITCHFIELD: I'm afraid I'm not going to be able to answer that. The Chair will be here shortly. He can answer that specific question, because I have not attended those monthly sessions.

CHAIRMAN HARRIS: Okay. Do you know, is it a public forum or is it simply a written report?

MR. CRITCHFIELD: It's a public forum, because those maintenance meetings are open.

CHAIRMAN HARRIS: Okay, and they report at the committee, to the committee?

MR. CRITCHFIELD: They report at the board committee.

CHAIRMAN HARRIS: What is the State Bar's position relative to its relationship to the State Supreme Court? How does the State Bar view itself? Does it view itself as an appendage of the Court; how does it view itself?

MR. CRITCHFIELD: Well, I missed Mr. Gampell's remarks, so I'm not certain how he viewed it, but we certainly view it as an administrative arm to the Court and the State Bar acts as an administrative arm to the Court. That includes anybody or anyone who is performing services within the State Bar on behalf of the Court in admissions or discipline. The Court, itself, has stated in its own opinions that that is our role and the only reason that it upheld the State Bar Act in the early years, was because the Legislature had first established and flushed out the State Bar to assist the Court, itself, so it was part of that reasoning that why was the State Bar there, it was there to assist the Supreme Court as an administrative arm to the Court.

Obviously, with thousands of applicants, yearly, being processed, the Court, itself, could not possibly examine the applicants or carry out the administrative detail. They also don't have sufficient numbers of court personnel to handle that

function, so the State Bar serves as the administrative arm to perform those functions on behalf and for the Court.

One thing that is very important is, that the Court is the ultimate arbitrator and decision...

CHAIRMAN HARRIS: In that case, the role as you see it playing is the arbitrator as the appellate body when decisions of the Board of Governors or the Committee of Bar Examiners is deemed by the affected party to be inappropriate.

MR. CRITCHFIELD: It would be inappropriate but they have the last word because only the Court can admit persons to practice.

CHAIRMAN HARRIS: But you don't submit reports to the Court?

MR. CRITCHFIELD: Yes, we do. We submit at least two a year and I think in one of the questions...

CHAIRMAN HARRIS: Is that related to each exam? Is it the report on the exam, the number of applicants, the number of...

MR. CRITCHFIELD: The applicants, we normally file as well as the consultant's report, his analysis about that examination, the impact and effects of it, so that happens twice a year.

CHAIRMAN HARRIS: Okay, they are received without comment, I take it.

MR. CRITCHFIELD: Without comment, yes.

CHAIRMAN HARRIS: Okay. Let me ask one other question. The move toward specialization, I understand, how does that

process work? Does the State Bar, itself, examine for specialization or is that also referred to the Committee of Bar Examiners?

MR. CRITCHFIELD: No, the State Bar has a separate entity, again created this time by court rule. The court rule empowers the board to appoint a California Board of Legal Specialization and...

CHAIRMAN HARRIS: They give all the specialization testing?

MR. CRITCHFIELD: That's correct. So the California Board of Legal Specialization is the body within the State Bar that's responsible for the specialization over the administration. And that is a separate body from the Committee of Bar Examiners.

CHAIRMAN HARRIS: Could you tell me why does the State Bar oppose a profession-wide specialization process?

MR. CRITCHFIELD: Pardon me. Why?

CHAIRMAN HARRIS: Yes.

MR. CRITCHFIELD: Well this goes back I think more than 12 years, whatever; it's a long length of time. The matter of specialization was first studied over quite a lengthy period, then it was reported in a study, the results of that study were reported to the Bar. Even a survey was run, but I don't want to call it "polled", but it was a massive survey of how lawyers within the profession reacted to it. At that time there was very strong support to embark upon a pilot program on legal specialization.



CHAIRMAN HARRIS: How many specializations are there now?

MR. CRITCHFIELD: Now, I think it's four. We have Worker's Comp, Criminal Law, Taxation and Family Law.

CHAIRMAN HARRIS: Does the specialization mean anything other than designation for purposes of advertising? What does it get?

MR. CRITCHFIELD: Designation is certified specialist, and that is probably the only thing that one can hold out. If you're not a certified specialist by the California Board of Legal Specialization, you cannot hold that out to the public.

CHAIRMAN HARRIS: Well, when someone takes the California bar exam, what does that certify?

MR. CRITCHFIELD: What does it certify? I think it certifies a minimum level of competence.

CHAIRMAN HARRIS: Does it indicate a minimum level of competence to go into court and try a case?

MR. CRITCHFIELD: Well, I'll let Diane speak to it, but as in this case, an outsider looking on, I would say that with the practical skills training, it's beginning to move in that direction.

CHAIRMAN HARRIS: How many lawyers are there in the State of California now?

MR. CRITCHFIELD: We predict that by December we will have our 100th active member of the State Bar.

CHAIRMAN HARRIS: One hundred?

MR. CRITCHFIELD: One hundred thousand, I'm sorry, 100 thousand.

CHAIRMAN HARRIS: You shouldn't have told Mr. Robinson. (laughter). He's all ready for killing the lawyers.

MR. CRITCHFIELD: One of the things, too, that's somewhat remarkable; I'm not certain of this, but I think from what I saw and I don't know the accuracy of this, but it looked like within the last ten or 12 years, we have about two-thirds of all our entries in the profession have occurred over about the last ten to 12 years.

CHAIRMAN HARRIS: What do you ascribe that to, just to the attractiveness of the profession? Has the number of applicants also kept pace; I'm just trying to get a sense of what's happening. What percentage of lawyers in the nation is California made of?

MR. CRITCHFIELD: I think, Diane, I'm going to have to pass that onto Diane, I think she can answer that.

CHAIRMAN HARRIS: You don't know how many lawyers there are nationally?

MR. CRITCHFIELD: Nationally, I'm not certain, no.

ASSEMBLYWOMAN MAXINE WATERS: Mr. Chairman, I'd like to ask a question. At some point in time do you plan on getting an ethnic breakdown of the 100 thousand attorneys, the potential 100 thousand?

CHAIRMAN HARRIS: Mr. Critchfield, do you have any idea what that is?

MR. CRITCHFIELD: No, I don't have that either. We don't - the only thing we do have and I don't know if Diane has come in yet - here she is - she should sit up here, because some of these questions that relate to data collection and so on, she is in the best position to comment on. We haven't collected data for lawyers, per se. The Committee of Bar Examiners has collected data with regard to applicants. Now I don't believe that that data, Diane, relates to those that are admitted; it only relates to the applicants.

MS. DIANE YU: That's right.

MR. CRITCHFIELD: So we don't have the kind of information you're talking about. We don't have a profile...

CHAIRMAN HARRIS: Do you have estimates?

MS. YU: Of ethnic, the ethnicity...

CHAIRMAN HARRIS: (multiple voices). You have no idea what the number of minority lawyers are in California?

MR. CRITCHFIELD: I think Diane could give you a guess.

MS. YU: We have some idea, but not complete. We do have statistics based...

CHAIRMAN HARRIS: Why don't you introduce yourself for the record?

MS. YU: I also apologize for being late, we had trouble parking. My name Diane Yu, I'm Chair of the Committee of Bar Examiners and the State Bar of California. My apologies to the Chair and the committee for my tardiness.

I'd also like to introduce Stephen P. Klein, a consultant to the Committee of Bar Examiners and the State Bar of California, Dr. Klein.

CHAIRMAN HARRIS: Welcome.

MS. YU: The question, I understand, is whether or not there are statistics on minority law school students.

CHAIRMAN HARRIS: No, we asked for the ethnic breakdown of membership in the State Bar. Roughly how many minority attorneys are there, how many women, how many minorities?

MS. YU: There currently is not, as far as I know, any data on that; however, I understand both California Women Lawyers and the State Bar's Ethnic Minority Relations Committee have undertaken some surveys, so we hope they will be able to have that kind of information. My understanding is that the survey of number of minority lawyers in the state is one of the top priorities of the Ethnic Minority Relations Committee of the State Bar.

ASSEMBLYWOMAN WATERS: Mr. Chairman, I recently saw some figures, they were from a national organization. I can't tell you which one, now, because there was an article and I did not keep the article, that had information that talked about the relatively small number of Black lawyers in the country. Do you know about that?

MS. YU: I can inform you of some developments within the American Bar Association to produce the types of statistics you're talking about. I'm currently co-chair of the American Bar Association, Young Lawyers Division, Committee on Minorities in the Profession, and one of our projects over the last year has been to do a questionnaire and survey of minority lawyers. Number One: to find out how many there are, because most states

are like California and do not have specific data on this, and Number Two: to find out what types of employment and other opportunities are available to minority lawyers, because we understand there have been some difficulties in placement and employment for minorities once they are admitted.

ASSEMBLYWOMAN WATERS: Wait a minute. You've heard that there's been some difficulty in placement.

MS. YU: Well, the placement people with the National Association of Law Placement Directors have informed the Task Force on Minorities of the American Bar Association that there have been some.

ASSEMBLYWOMAN WATERS: Let me assure you, I have not done a study, but it is absolutely certain, and I would be interested to see what kind of information is gathered, particularly about minorities that are recruited or accepted by major law firms in this country.

MS. YU: What I could suggest, because in Detroit at the American Bar Association, (inaudible) The Task Force on Minorities of the ABA held two days of hearings; they invited people from all over the United States to speak on this, and they will be preparing some type of report and there is going to be a transcript and I could certainly request that this committee receive copies of the transcript. It may help you in terms of finding out what developments are being undertaken, nationally.

CHAIRMAN HARRIS: Do you have an opening statement before we proceed with questioning?

MS. YU: Of sorts. I did want to indicate that the recent - well, there's always been interest in the Bar exam...

CHAIRMAN HARRIS: Particularly for those of us who have taken it.

MS. YU: Yes, that's right, both who have taken it and who have not taken it and those who have taken it and been successful and well as those who have taken it and not been successful, it's been my understanding of the last four years as serving on this committee, that it's probably impossible to please everyone, because we do have competing interests and concerns.

Basically, the exam is one of many steps in the competence assurance activities undertaken by different agencies. For instance, there's first undergraduate education and the quality of that; law school education, and the appropriateness and effectiveness of that; clinical law programs and employment opportunities of law students during their law school years; then the Bar exam; then bridging the gap programs which many local Bars undertake to assist in the transition from law student to employee or lawyer. Finally, then we have clinical/legal education programs, and finally discipline. And those are roughly the seven areas of activities that are designed to try to improve and maintain standards and skills of the practicing Bar. The bar exam, then, is just one of those steps. It's obviously a hurdle that must be undertaken and surpassed, but it's certainly not the only activity.

The Committee has been committed for many years in trying to improve the test. We've conducted a series of exhaustive experiments and we've tried to implement state of the art techniques in terms of grading to make sure that we employ maximum number of safeguards to protect and ensure the integrity of the grading process. We are considered, I guess, the leaders, nationally, in terms of innovative types of testing. We were the ones to pioneer the ethics exam and we were the ones who pioneered the performance test, which is attracting a great deal of interest, nationally, and some day may be part of a national exam, and the purpose of the performance test is to respond to criticisms that perhaps the bar exam, as it was previously constructed, relied too heavily on memory work; perhaps too much on that type of the legal analysis knowledge without taking into consideration the importance for lawyers, or would-be lawyers, to have some background or competence demonstrated in the practice area.

So the purpose of the different types of experiments and innovations has been to improve the test. I assure you the Committee is committed to keeping that record up, because we feel what we should be and ought to be on the cutting edge in terms of exam testing.

CHAIRMAN HARRIS: Right. Now tell me what is the historical perspective on the exam itself? How many times has the exam actually been changed? I don't mean the questions, I mean the format. How long, for example, has the bar exam been three days? Give us some history on the bar examination.

MS. YU: Okay. How far back do you want to go? As I understand it, in the early days it was an oral exam and that was feasible when you had a small number of applicants. As the number of applicants grew, a written test became...

CHAIRMAN HARRIS: A one hour, one day or what? Did they call people in or what?

MS. YU: The oral part was what? It was before all of our time, but it was - this is where you're talking about a few hundred people. It doesn't appear to have been given more than once a year, but I don't have any statistics here. If you're interested, we can go back. It's been a written test for most of its history and until 1972, it was an essay-type test. In 1972 the multi-state bar...

CHAIRMAN HARRIS: Three days of essays?.

MS. YU: Between two and three days, but generally three days and the number of subjects was as high as 24 subject areas. In 1972, the multi-state bar exam was introduced by the National Conference of Bar Examiners, which is the national group coordinated...

CHAIRMAN HARRIS: Did you do that in my honor. The year I graduated? (laughter).

MS. YU: No. In fact, there were some who were not sure whether or not this was ever going to make it, but it had the beauty of the multi-state bar exam, although it has some flaws, obviously, the beauty of it is that it's an objective test; it's nationally administered, machine scored and it gives you some idea, nationally, as to how applicants are doing. And it, of



course, doesn't have any subjectivity build into it, at least into the grading.

In 1975, we reduced the number of essay subjects from 12 to nine, and then in 1975 we introduced the ethics test, which is called the professional responsibility exam. This test was partly in response to the Watergate era with the public being concerned about lawyers perhaps not paying enough attention to the ethical considerations in practice. The test was eventually taken over a few years later by the National Conference of Bar Examiners. It is not administered in the majority of jurisdictions throughout the United States and it's a multiple choice test.

Then we introduced in 1980 a series of experiments looking into various types of testing devices and testing techniques that had attracted some attention. We did experiments on the length of time to be concluded for your answers, so that perhaps those who complained that they needed more time to answer and perhaps that would give them a better shot at it. We ran some experiments on that. We ran an assessment center which tested lawyering skills by would-be lawyers, using video tape equipment. We would have them argue for or against objections. They would see something on a screen and act as a lawyer.

CHAIRMAN HARRIS: Why did you do all these experiments on the entire group? Why did you not either take a group of volunteers...

MS. YU: We did, we did. In 1980 we offered an option to students. If they wanted to participate in one of the experiments...

CHAIRMAN HARRIS: I mean, the changes that took place since 1972 pretty much have been system wide, you had given the changed exam to all applicants, isn't that correct?

MS. YU: Since '72, except 1980. In 1980 we told them if you want to participate in experiments, it will not count against you if you don't perform well, but if you do, it will count for you. And about 98 percent of the people signed up for the experiments. But, we had several different types. One of them was the research test, which was sort of the precursor to our current performance test. But we did do a variety of different skills. Dr. Klein can talk to you in more detail about them, but the reason for introducing them as experiments, first, was to see were they feasible.

CHAIRMAN HARRIS: Why didn't you give options in the later years?

MS. YU: Because we felt that the data supported implementing them as a mandatory part of the test, that there were some skills that were not being tested on the multi-state bar exam or on the essays that were being covered by these different types of testings, and they ought to be included, as we now had the capability and the expertise to include them. Previously, they'd never been given before, so we did need to have one run-through. And we used just about the entire July, '80 class of applicants.

Then in 1983, just finishing up, we introduced the performance test as a mandatory part of the test. The test now became essays, and we dropped from nine essays to six; two performance tests and a multi-state bar exam.

CHAIRMAN HARRIS: Why did you keep dropping the number of essays?

MS. YU: Well, because we were adding performance tests. We could have made a three and a half day or a four day test, but believed we could get sufficient information about an applicant's abilities and skills from three day's worth of testing.

CHAIRMAN HARRIS: And you still feel that way, obviously.

MS. YU: Well at the present time we do. There was some interest in reducing the length of the test, if at all possible.

CHAIRMAN HARRIS: What is the exam now?

MS. YU: The exam is now one day of multiple choice questions, 200 items that's given by the National Conference of Bar Examiners. We have one day of essays, one day's worth of essays, which is six one hour essays and then two, three hour performance tests.

CHAIRMAN HARRIS: That's the exam?

MS. YU: That's the exam now. And the professional responsibility exam is separate. They can take it during different times in their third year. And that's a multiple choice.

CHAIRMAN HARRIS: What has been the result, if you can give us a thumbnail sketch, the differences in terms of passage rates over the past several years on the two exams? Has there been any marked increase or decrease in the number of admissions as a percentage of applicants?

MS. YU: The information we have is that application for admission to law school has been dropping for the last couple of years, although the enrollments have been fairly steady. We do have charts showing pass rates and they've fluctuated somewhat through the '50's, '60's, '70's and '80's. There has been a general decline since around mid-1970; 1983 was somewhat aberrational, because the pass rate went up about 1.5 points. It went up to 49 percent, whereas in 1982, July, it had been 47.5 percent. And then in 1984, we hit the 42 percent. So the 1983 results sort of stick out a little bit over the last nine years.

CHAIRMAN HARRIS: How does that compare to other professional examinations in terms of passage rates? Do you have any idea? For medicine, for example, or for other stringent examinations?

MS. YU: I don't have specific data on that. My understanding in medicine, is that the heavy screening occurs at the entrance level to medical school; that the number of medical students is severely limited because the facilities and cost of educating a medical student is upwards of \$25 thousand a year for four years, much of that being government subsidized. That's obviously not the case where we have over 12,500 applicants every year for taking the bar exam, so their restrictions are imposed at an earlier stage, but we have very liberal access routes to law school and to the exam.

ASSEMBLYMAN PHILLIP WYMAN: I was just going to add the county exam grades on a curve and I believe they only pass the top 25 percent on each section of the exam.

CHAIRMAN HARRIS: Is that right?

ASSEMBLYMAN WYMAN: It's some number like that. If somebody here is an accountant they might be able to answer. But it's some number like that.

CHAIRMAN HARRIS: Mr. Robinson, is that true?

(inaudible)

ASSEMBLYMAN RICHARD ROBINSON: I don't know what the current percentage is. It tends to vary, depending on the demand in the marketplace. (laughter). One other thing about the accounting exam is that you have to pass all the sections and so it's harder to pass...

CHAIRMAN HARRIS: But it is cumulative, though?

ASSEMBLYMAN ROBINSON: No.

CHAIRMAN HARRIS: You could pass part at a time.

ASSEMBLYMAN ROBINSON: Well, you could pass part of the test, right, but you have to pass them all, which is harder than getting a total score and passing on the basis of the total. You can't make up on one part for shortcomings in another part.

CHAIRMAN HARRIS: Okay, thank you. Mr. Wyman has a question.

ASSEMBLYMAN WYMAN: I wanted to know, first, if you could run through, since I never took a performance test, I took it before that occurred, is that equally weighted as far as value of points on passage, or is there still a skew in favor of writing as opposed to the multi-state?

MS. YU: Well, we have the three sections and we accord general equal weight to the three sections. Because of grading

techniques and there may be some slight modification of that, but essentially it's considered a three-part test and there is one day accorded to each.

ASSEMBLYMAN WYMAN: Do you find a disparity in the number of students in the skew that pass, for instance, the performance or the multi-state and those who pass the written portion? Have you ever tried to break that out?

MS. YU: We do break that down after each test.

ASSEMBLYMAN WYMAN: But my point is, have you ever looked statistically at those who pass the written portion, which I think is the most important part of testing a prospective attorney as far as confidence is concerned, have you looked at the percentage of people who, say, failed the written portion and passed either the multi-state or the performance portion, and if you have, what have you found out?

MS. YU: We know, for instance, that people do better on the multi-state bar part, since we've added the performance test, they do next best of that portion, and they do least well of the three parts on the essays. Steve can tell you more about the interrelationship because he's done some studies on the performance on different parts of the test.

CHAIRMAN HARRIS: Tell me what other states do. Give us some examples.

MS. YU: In terms of what?

CHAIRMAN HARRIS: In terms of the examination. Any states simply use the multi-state?

MS. YU: Yes, 42 jurisdictions and U.S. territories use the multi-state bar. It's the closest thing to a national Bar exam. Most states, almost all states supplement it with a written part of the test which currently takes the essay form in all states except Alaska and California, which have performance tests.

CHAIRMAN HARRIS: Does California still administer the Alaska Bar exam?

MS. YU: Puerto Rico also...

CHAIRMAN HARRIS: Does California still administer the examination for Alaska?

MS. YU: No.

CHAIRMAN HARRIS: They did, didn't they?

MS. YU: We did for a period of time. We did supply them with our exams and assisted them in the grading and we determined we should not continue to do that, so we don't. They did pick up the idea of the performance test from California and other states, including Colorado, Minnesota, and others have contacted us expressing great interest in having that be a portion of their exams as well.

DR. STEPHEN KLEIN: We have looked at the question of people who do well on one and poorly on the other sections. The only thing that has come up that looks at those differences is not race, but sex, and that is that men tend to do a little bit better on the multiple choice and women tend to do a little bit better on the essay, and visa versa. In other words, if you hold the difficulty of the two parts of the test constant, we find

that men do a little bit better on the multiple choice questions and women tend to do a little better on the essay.

ASSEMBLYMAN WYMAN: I wasn't looking for that kind of breakdown, I was just looking at the total of people who take the essay and of those who do well on the essay, is there a correlation between those who do well and some who simply don't test well, who may not do as well on the multi-state. Let me get to the point I'm making, and not just ask a lot of questions. When I went to law school, we never had a single examination that was like a multi-state. A multiple guess is what I call it and I don't know, I think that training attorneys, training young lawyers, when you get out into the real world, you've got to be literate. You've got to be able to write and you've got to be able to express yourself, and I just think that unless the law schools are very different from McGeorge, where I went, that's all we did was write and write and write. That was the ultimate test of competence. My question is, have you found that distinction between those who do well on that which is inculcated in the law school, writing, and multiple choice?

DR. KLEIN: There may be some individuals who are that way; in general, it's not true. I've been doing some studies for McGeorge, in fact I spent yesterday afternoon with them, we find a very strong correlation between the multiple choice portion of the exam and the essay portion of the exam among the McGeorge students, among students in the state as a whole. If you took the ABA schools, the 16 ABA schools in California and got their average score on the multi-state and your average score on the



essay, and you rank ordered them on both of those, they are almost identical. And also on the PT, and on the LSAT, the law school aptitude test. If you rank ordered the schools, which we've done, and did that kind of analysis, there is almost a perfect correlation, the correlation is over .90, for those of you who are familiar with correlations, but essentially, the rank ordering of the schools on one section of the test is the same as the rank ordering on the other two sections and on the law school admissions test.

CHAIRMAN HARRIS: Did the Committee of Bar Examiners coordinate with the schools, the teaching and the examination? In other words, when I saw the bar exam after graduating from law school, I felt betrayed, because I'd never seen anything like it in law school, and I'm wondering how much correlation goes on between the law schools, what they are teaching people and then what they are going to be examined on upon graduation.

MS. YU: Well, the first thing I would say, would be the essays are prepared, produced if you will, by law professors.

CHAIRMAN HARRIS: They didn't teach it that way in the school I went to. (laughter).

MS. YU: But, the essays actually have not undergone any major shifts or changes that are really significant over the last 15 years or so. What we have changed in terms of essays is dropping the number of essays and reducing the number of subject areas, as I said, from a high of 22 to now 12 subjects.

ASSEMBLYMAN WYMAN: But you pick that up in the multi-state don't you?

MS. YU: In the amount of time. We have also increased the amount of time a student has to answer an essay. It used to be in the neighborhood of about 52 minutes.

CHAIRMAN HARRIS: Fifty-two and a half. (laughter).

ASSEMBLYMAN WYMAN: But you pick those subjects up in the multi-state don't you? In other words, a student can't focus down just to the torts, real property...

MS. YU: Right, there's six subjects on the multi-state. Constitutional law, Evidence, Torts, Contracts, Real Property, and Crimes.

ASSEMBLYMAN WYMAN: And those would not be tested in the...

MS. YU: No, they can be tested in the essays, too. In addition, on the essays, we include the sort of California-type subjects, Community Property, Wills and Trusts, Corporations, and we added Criminal Procedure & Civil Procedure.

CHAIRMAN HARRIS: There are no more optional questions, is that correct?

MS. YU: That's correct.

ASSEMBLYMAN WYMAN: Let me just follow through, based upon this perfect correlation you said you were finding, and I think this would be relevant to Mrs. Waters and her question about the number of Blacks that are practicing law. I think that the LSAT as a device for getting men and women into law school, is skewed again toward those who know how to take that kind of test and that is now as much as your academic background and qualification, the way you get your ticket into law school, and

if you never were good at taking multiple guess tests, which is how I characterize them, then you might not ever have gotten into law school in the first place, so I think, and you go through high school and you this SAT, LSAT and yet what are you really testing? What competence are you really looking for? I just think that it's a house of cards and we're directing from high school on up, people who are good at taking tests. Ultimately now, as the bar examination has changed out into the brave new world practicing law and you're not testing people's ability to think, to handle problems, to be sensitive to the concerns of society, as would be the case if a person did and the emphasis on grading or points, at least, were more on the essay area. So I just have a real problem with that, and maybe it's because I had never passed an SAT or an LSAT, I've seen other people who have been counseled as a consequence of that, they shouldn't go anywhere. You're never going to make it. Well, I think I've made it and I think there are a lot of people in other occupations that have made it that don't test well. And I think particularly, we find that among minorities in our state and in our country, that they may not test well, because it is something that I think is more able to focus on if they are from a more affluent background, so and I think there's a problem there, and I don't think that the ultimate correlation has been realized and I guess my final question to you would be if you could give me a little background of what a performance test consists of.

MS. YU: Do you want to do the validity, multi-state one? Do you want to hear any more about the multi's?

ASSEMBLYMAN WYMAN: No, what I'd like to know is a little more about what a performance test involves. Is that a multiple guess too, or is that...

MS. YU: No. The performance test is an examination whose aim it is to identify certain lawyering-type skills in an applicant, and trying to do it in a way that is logistically and administratively possible, given the nearly 13 thousand people a year who we have to examine.

What it is, the students get a file of materials; they are given a library of cases and statutes; they are given a set of instructions which outlines what the problem is and then they are given exam booklets in which to write. It's a writing test, but it attempts to test things which a traditional essay could not do.

As an example: We have given performance tests which gave them the materials from which they were to use, which eliminated some of the stress of having to memorize certain things. They do have to know general principles of law. They have to be able to organize, analyze and communicate and they have to be able to write effectively.

What we have done in the past is given them a file and asked them to imagine that they are an associate in a law office, they are being asked to research a certain problem and to write a draft of a memorandum of points and authorities in support of their client's position.

Another example was the situation where they were asked to write a draft of a proposed appellate brief that would be an

argumentative and persuasive type of piece. They have been asked to help develop a litigation strategy in a case. We give them a lot of the material to work with, but they've got to use their heads in order to figure out how to organize it and how to analyze it.

Future problems could include things like writing a contract, drafting a will; doing those types of practical things, which are impossible or difficult in a short, one-hour type context, but we could do over a three-hour period. And we're very excited about the prospect that this type of testing certainly will encourage students and law schools to put some more emphasis on this in light of all the attention given to lawyers and their competency.

CHAIRMAN HARRIS: I want to ask a direct question so we can move along. First of all, tell me, what about the Wisconsin approach. Has that been considered in California and if not, why has it been rejected?

MS. YU: It has been considered. It has not been adopted for many reasons. First of all, there are only two states in the United States that have what is called the diploma privilege; Wisconsin and West Virginia. The situation in those states are as follows: There are two law schools in Wisconsin, there is one in West Virginia. The Bar examiners can regulate through the Marquette and University of Wisconsin and the West Virginia law school in West Virginia, essentially what the curriculum is, what students must take, what minimum grade point average they must maintain, and if they are attending those

schools in those states, they are not required to take the written exam. This is not the trend. States are dropping this because supreme courts and the legal expertise, the knowledge built up around examining techniques encourage having an examination. In fact, when South Dakota dropped the diploma privilege, it was the law faculty at the University of South Dakota which was their only law school, who said, we're uncomfortable not having a bar exam, in a sense, because we have no way to tell whether or not our students can synthesize any of the material we've given them. Law schools is a very piecemeal approach. You take a course in immigration, a course in Corporations, a course in this and that, but they are never asked to put it all together. They don't have any opportunity to do that in law school, and there's also no way to measure how the students are doing as compared with people elsewhere or even within the school. So it has been considered but it has not been adopted. I think we do elaborate on this in our written responses to the questionnaire.

ASSEMBLYMAN WYMAN: I might add that when you mentioned McGeorge, when Gordon Schaber, get him over here, he is adamantly opposed to diploma privilege kind of approach.

CHAIRMAN HARRIS: Let me ask, you made a comment, at least it was attributed to you in the paper, about the passage rate and one of the reasons they attributed the passage rate of being low was because the students were not being prepared properly for, or they weren't studying hard, I'll let you explain which you meant, and if that's the case, then how does that

impact on the Bar exam. Are you (inaudible) not standard enough for accreditation purposes; what's happening, does a law school degree mean anything?

MS. YU: It means something.

CHAIRMAN HARRIS: It means you can take the bar exam and fail.

MS. YU: As long as you have some kind of exam, as long as you have some kind of gatekeeper like that, there is always the possibility that someone will fail. There are a lot of things we try to do on the exam and we do try to train our graders. We use experienced ones; they go through very rigorous...

CHAIRMAN HARRIS: Will you tell us what the grading process is?

MS. YU: Okay. What we have is teams of graders are set up for each of the questions. We have six essays and two performance tests, so with eight teams, each one is supervised by a member of the Board of Reappraisers, who is a person who is extremely experienced in grading and testing. They tend to be among the most experienced of all readers. The graders, before they even meet together as a group, are asked to put together what they would do by way of responding to the particular questions. So you have a team on Torts, a team on the property question, a team on the Civil Procedure question and they would produce an answer based on work. They would have to produce a sample answer. The groups meet together for a full day and talk about their various responses to the question; point out any

ambiguities, any problems in the essay and then they start to grade by way of what we call calibration. They are given up to 15 books, actual applicant books. They are asked to grade them and we go down one by one to see how much agreement is there in connection with what grade each person would assign to them. If there are problems, we adjust them. We work out a consensus. They do it again, another ten or 15 books and see how they are doing, now that they have a little more guidance.

Finally, we let them alone and they do 20 more and then we see what their grades come out with. Then they meet about two weeks later and try it again. We run through about 80 practice books and these are actual tests of applicants, but we don't let them loose on actual grading until they've gone through this process of having practiced, graded up to 80 different books and meeting and conferring to make sure that there is consensus about what a 70 answer should be, what a 90 answer should be, what a 60 answer should be, and anyone who is too independent and can't be subjected to the group, well, we change that person.

CHAIRMAN HARRIS: What's the average time it takes to read an exam?

MS. YU: It varies. The performance test answers take longer to grade than essays. From my experience from having participated in four years' worth of grading sessions, anywhere on the average of five and ten minutes.

CHAIRMAN HARRIS: I get four and a half.

MS. YU: There really isn't a set answer to that, because we don't (multiple voices).



CHAIRMAN HARRIS: The read ones, you told us how you select and train graders. Now the exam, what happens now. The exam has been taken, you've got your graders trained, what goes on?

MS. YU: The calibration sessions are what I was just describing.

CHAIRMAN HARRIS: I want you to tell what happens. You've got my exam and you determine whether or not I'm going to be admitted. What happens?

MS. YU: The reader will have your book with everybody else's in that question that is given to him. They are all randomly graded and assigned and they are anonymous in terms of you don't have a profile on the applicant when you're reading the question. They'll read a set of books, turn them in and get another set and read them. They do them over...

CHAIRMAN HARRIS: I'm sorry. I'm trying to get you to zero in on the screening process. You read a number of exams, you waive a certain number of people in based on the first reading.

MS. YU: Oh, you're talking about phased grading, okay. Yes, we have, thanks to a number of studies, we had determined that you could more efficiently allocate your grader time to the roughly, 50 or 60 percent of the applicants who cluster or fall within, close to the pass/fail line. In other words, on your first reading, you might find that some people were unbelievably superior to everybody else. And we've done studies that show that you don't really need to read every single thing those

people wrote, because the statistics are what, 99 percent and a half percent that if you read a portion of their work, made a passing decision on that, that you would make the same decision if you read everything. So, we don't need to put all the costs and time into grading the rest of their papers. So, that's called Phase I and that allows a portion, maybe 20 to 25 percent to get through the system early. Nobody really fails in that system. You either pass or you go into the next system.

The next reading would be all your written work, which now are the six essays and the two performance tests. They would be read, and if you met a certain score level, you'd pass. If not, but you fell within about a 36 point range, you'd read them again. Different readers on each question, so now you had a double reading you'd average the two scores together, if they make the pass/fail line at that point, they pass, and then if they don't, but they come within 24 points, you have it go to reappraisal, which is sort of an automatic appeals process. A member of the Board of Reappraisers reads all of the papers.

CHAIRMAN HARRIS: How many students that go into reappraisal pass?

MS. YU: And pass, I think we've got something on '84.

DR. KLEIN: The materials report, there is an appendix which has my report attached to it. Page 15 of the Appendix, there's a Table 16 which shows the percent passing in reappraisal as a function of what their score was prior to reappraisal. Over all the answer is 29 percent of those who came within 5 points of passing, it's 94 percent of those who were 10 points away with 64

percent and so on down, excuse me, I'm sorry. It's 86 percent of those people who came within 5 points of passing; 47 percent of those people who were 10 points away, and so on. It goes on down to the people who were at the bottom end of the reappraisal zone, 2.3 percent of them passed as a function of reappraisal. So it depends on where you were in the zone.

MS. YU: But the reappraisal is made not on the basis of specific point allocation, but whether taken as a whole, your work demonstrates the minimum competency level that we're looking for, and that way if you did poorly on Evidence, but did brilliantly on Constitutional Law, those things could offset each other and would be taken into consideration.

ASSEMBLYMAN WYMAN: I want to know how you grade each of the segments of the test and how you ensure that there isn't a prejudice on the grading of the other part of the test by pass or fail of the first test. For instance, isn't it true that you grade the multi-state first?

MS. YU: We don't actually grade that. Next week we've made arrangements...

ASSEMBLYMAN WYMAN: But you have the results available and is it possible that if a person does so poorly on the multi-state that you don't even read the written?

MS. YU: No, no.

ASSEMBLYMAN WYMAN: How do you ensure that quality control?

MS. YU: We keep them separate, we never...

ASSEMBLYMAN WYMAN: In other words, the people who are grading ...

MS. YU: ...they don't see the multi-state.

DR. KLEIN: A grader doesn't see the multi-state score or the grade if the paper is being read a second time, he doesn't see the grade that was assigned to it the first time. There's no marks made on the book, and the readers have no knowledge of the information.

DR. KLEIN: The readers have no knowledge of the multi-state score.

ASSEMBLYMAN WYMAN: So there isn't a practice, nor has there ever been, of grading to see if a person does miserably on the multi-state, that that would throw out the grading of all of their other exams?

DR. KLEIN: I only know of one state that does that and that's Arizona. Arizona has a minimum cutoff. Excuse me, there's one other state that does that which does not read the essays unless you earn at least a certain score on the MBE. We don't do that.

MS. YU: We don't do that.

CHAIRMAN HARRIS: But as a functional matter, if you score so low on the MBE you're not going to pass the exam. I don't see how you'd do it. It's almost impossible, isn't it? Isn't it calculated pretty much that if you don't score a minimum of number of points on the multi-state that it's going to be almost impossible to pass the rest of the exam?

DR. KLEIN: I'm sure that there's a score on the MBE that if you don't get above that score, your chances of passing are essentially nil, just as there's a score on the MBE that if you get above that point, your chances of passing are essentially 100 percent, I mean it cuts both ways and it's probably as far off the average score in both directions. I have advised the committee that they could use a procedure, such as what you're talking about, with no damage to the applicants, because we could find a minimum score that people have, that if they don't get above that, the chances of them passing are essentially, "no", even if we go ahead and read all the essays independently and so on, but that procedure is not used. It's used in a couple of the states, but not here.

ASSEMBLYMAN WYMAN: Nor the converse, if a person does so brilliantly on the LSAT that you would just automatically not read their...

MS. YU: The MBE.

DR. KLEIN: The LSAT is not used in ...

(MULTIPLE VOICES)

ASSEMBLYMAN WYMAN: One final question. To what extent are law schools in this state now giving examinations like the multi-state in the process of conducting their courses, if any? For instance, McGeorge never did it when I went there, and I don't know if they are now, but if they are, one has to wonder if that's done only for the purpose of preparing the student for the examination as opposed to a more traditional approach which better tests than trains. Do we know - I can understand, at

least in bar review courses and probably most law schools that they are now giving some multiple choice questions, if for no other reason than to train their attorneys-to-be would be.

MS. YU: I don't know specifically which schools are doing that. I don't think most of them do. I think most of them still test by essay or written paper. There's some seminars and other types of...

ASSEMBLYMAN WYMAN: It depends on the school and course. There is some multiple choice testing going on. I think you might want to reconsider the data at McGeorge, for example, where there's a high correlation, a very high correlation, between MBE scores and what a grade point average at McGeorge, people who do well on the MBE do well at McGeorge and visa versa. People who do poorly at McGeorge, don't do well on the MBE. There's a very high correlation between success at McGeorge and success on the MBE, as well as success on the essay. In fact, the correlation is stronger between law grade point average and MBE scores at McGeorge than it is between law grade point average and essay scores at McGeorge.

DR. KLEIN: But they claim that's because of the LSAT as a screen getting students in there in the first place. I think that the whole thing is being skewed, because you're drawing from people who wouldn't even get in there since most everybody has an adequate grade point average coming.

ASSEMBLYMAN WYMAN: The undergraduate grade point average in LSAT appear to be weighted to about equally; it depends on the school. Each school has its own formula for using

that plus other factors. At McGeorge, those two factors appear to be about equal and they correlate about equally well with total bar examination scores at McGeorge, so I don't disagree with you that there are some people who have difficulty taking multiple choice tests. There are also people who have difficulty taking written tests. And we also see this ...

DR. KLEIN: What trains an attorney, really, to practice his or her trade; I think writing, and that's why most of the curriculum and the testing of curricula items addresses that, and my only point is, if half is grade point average and half is LSAT, then you'd have a person who had a relatively higher grade point average who was not getting in because of LSAT and so you're skewing those that are being trained in the law schools today by the LSAT entrance exam.

CHAIRMAN HARRIS: So in other words, there is no coordination between the Committee of Bar Examiners, the accrediting arm of the State Board of Governors, relative to the curriculum and the training and preparation. In other words, it seems to me that one of the accreditation criteria should be whether or not, in fact, they are training people to pass the bar exam. You can't be licensed unless you pass the bar exam and for schools accredited in California, it would seem to me that part of that accreditation ought to be whether or not, in fact, that school is preparing that student to pass the bar exam, and if they're not, the passage rates are low, should that school not be accredited?

MS. YU: As you know, there are three kinds of law schools. There are unaccredited schools, many of whom are not at any point seeking accreditation. They want to be able to do whatever they are doing without having to comply with the accreditation rules or standards. There are some who have attempted to obtain accreditation. Some of them have been, and we do have a number of state accredited schools. We do set some criteria that are set forth in our rules regulating admission, as to the quality and quantity of the faculty, library, teaching instruction and that sort of thing. So we do monitor them fairly regularly. We have practically a full time consultant on educational standards who provides us with a great deal of advice and assistance, and Mr. John Gorfinkle will be present next week and I understand your focus will be more on the legal educational process.

With respect to the ABA, the American Bar Association approves schools, the determinations by the American Bar Association that these schools have met their criteria for quality and quantity of faculty; the type of curriculum they offer, library size, admissions criteria, et cetera, are fairly high and we generally have deferred to ABA in terms of analyzing...

CHAIRMAN HARRIS: I'd like to have some specifics as to how, in fact, you correlate and/or coordinate the law school education and the bar exam. I think it's really unfair, for example, if students are being educated for purposes of taking the bar exam, and the bar exam is not relative to the education



they received. If, in fact, that's the reason, now if you go to a school and they say look, we're not preparing you to take the bar, you're not going to be a practicing attorney, you're going to be a legal scholar or you're going to be a researcher, and therefore, our curriculum is not aimed at passing the bar exam, that may be fine, that may be a truth in advertising notion, but I'm wondering whether or not, in fact, there is a real correlation. I see you have some information and want to tell me what it is.

MS. YU: I do. The first thing I'll say is schools do include the bar subjects in their law schools. Whether they do a good job of teaching is something you might want to address to them. We do have a chart on Page 10 of our responses filed February 29th which is entitled in the middle of the page, "Relationship Between Law School Grade Point Average and Passing the California Bar Exam Among First-time Takers at One American Bar Association Approved California Law Schools." And you can see there is some correlation. The top 20 percent in the class had about 100 percent pass rate; the bottom 20 percent, actually had a 47 percent pass rate, (Page 10 in the responses) and this is in the general discussion of the validity of the exam. Why do we test the things we test and are we doing a reasonably effective job by trying to test those things by the format and structure we've selected? So this information, we hope will be helpful to you.

MR. ROSENTHAL: May I add for the Chair's information, and I'm sure Dean Gorfinkle can elaborate that one of the factors

with regard to accredited schools is bar examination results and the current standard reads, consideration will be given to the bar examination's success of the school's graduates as one factor in the objective evaluation of the effectiveness of the training at that school. Accumulative results of the bar examination over a period of years may be considered as some indication of the quality of the students attending and the quality of the teaching at the school. So in terms of accreditation, it is a fact.

MS. YU: One thing I'm sure you'll hear from the law school deans next week is that they would be uncomfortable if you were to indicate that law schools' only purpose was to get people through the bar. They feel, I think, that they have a broader mission than that, which includes, obviously, some passage on the bar. I'd also...

CHAIRMAN HARRIS: I'd agree with that also. It seems to me there ought to be some coordination. It seems to me that there ought to be at least some...you're going to test me on certain subjects or if you're going to test me on a certain method, ask me certain questions, require me to have a certain approach to answering questions and I've never seen that until I get into your damn examination. It seems to me that that is unfair; that that is somehow almost unethical for me, if fact, I'm going to school thinking I'm being trained, that I'm going to be able to pass the examination and I see an exam that is totally unlike anything that I've seen in law school. You've thrown in questions that I've never been given before in a form that I'm not familiar with and I've never seen it, and that's what happens

at the end of law school, all of a sudden you're experimenting with new approaches to taking the examination. And you're asking multi-state or performance exams and I've never been given any exposure to that and that seems to me to be a real problem from my perception, with the constant experimenting with human guinea pigs.

MS. YU: We're not constantly experimenting, but one thing...

CHAIRMAN HARRIS: Listen, since there have been a number of changes in the bar exam, and if they have not been regular, they have certainly been periodic, and I'm suggesting that if it's not coordinated with law school, to me it doesn't constitute a fraud, but it certainly constitutes something that I think is unfair.

MS. YU: We have, for instance, before we introduced the performance test, we did meet with law school deans up and down the state and told them, do you foresee any problems and they all said no.

CHAIRMAN HARRIS: That's because they weren't going to take the exam. (laughter).

MS. YU: We've had some sort of independent reviews; some of the law schools even after last year's results were looking at the questions and trying to see whether there was anything in the questions and as far as I know, we were not informed that they felt their students shouldn't be able to answer those questions.

CHAIRMAN HARRIS: Do you know that law professors aren't members of the State bar in California? They can't even pass the exams. They don't even take them.

ASSEMBLYMAN CONNELLY: Could you focus, Mr. Harris raised earlier the issue of the fact that the pass rate is declining; July '84 is particularly indicative of that, could you give us your reason why? I understand some of the deans when we hear from them next week are going to say that it's a function of the failure of the test; that the test is not accurately gauging the skills of their graduates and I guess you folks, at least in press comments have indicated that it's a function of the people who are taking the test not being as qualified as previous applicants.

MS. YU: Well, I don't think we said they were less qualified. It appears that the reason for the drop last year was much more attributable to the performance on the multiple choice part of the test, which we do not grade. It's a machine scored objective test and that that was a rather unprecedented drop; 2.7 points below the performance level on the multi-state bar for the July '83.

ASSEMBLYMAN CONNELLY: Did that occur nationally?

MS. YU: There was a national drop of 2.3 points but California tests 20 percent of all the people in the United States, so we make up a big chunk of that 2.3 percent drop.

ASSEMBLYMAN CONNELLY: If the test on multiple choice, or scores on the multiple choice had been consistent, with say, the previous years, past two or three, some averaging technique,

how would that have affected the overall pass/fail rate? Just roughly.

MS. YU: It's in there.

ASSEMBLYMAN CONNELLY: While he's looking up that let me ask you my next question which Elihu touched on briefly and that is, the problem whereby you get 40 or 50 percent of the people taking the test who do not pass and the situation where people are making private expenditures of funds and time to come at the end of the process and get their heads cut off and, indeed, we are, through the legislative process, are putting substantial funds in the university system, funding that same process, what recommendations you would make, specific recommendations so that we don't waste that money and student energy for people who are never going to be lawyers?

MS. YU: Do you want me to answer the first question first?

DR. KLEIN: In prior to 1983, the results were fairly stable as to what was going on. July of 1983 was the first time we saw a large change in something and the change was in the essay scores, not the MBE, the MBE stayed the same. But the essay scores did drop substantially.

ASSEMBLYMAN CONNELLY: What, 10 percent; 5 percent?

DR. KLEIN: Well, it's not in terms of percent, it's in terms of average score, the average scores were running on the essay in the neighborhood of 412 to 417, and in July of '83, it dropped to 401 and that's a fairly big drop.

In 1983, the average MBE score actually went up a little bit. It had been running in the neighborhood of - well, in 1982, it was 428, in 1981, it was 426 and so on. In 1983, it was 431, so it was the highest it had been in about three years.

So what happened, and you can see this data in Table 13 of the appendix in the materials, page 12; what happened in 1983 was that the MBE stayed high and the essay dropped and one sort of made up for the other. And in 1984, both the MBE and the essay were down, markedly, they were the lower scores in all the years that I've been studying; they were the lowest scores on both parts of the test, so it was a Double Whammy. If you asked the question, what would have happened had the MBE scores been up around 430 and the essay scores staying at 401, the answer is about 50 percent would have passed. In answer to your question, you can see that data.

ASSEMBLYMAN ROBINSON: Why don't you give us the average scores like you did for '83, so we...

DR. KLEIN: Which averages would you like, Mr. Robinson?

ASSEMBLYMAN ROBINSON: In '84, so I can

DR. KLEIN: In '84, the average MBE score was 422, the average essay was 400. Maybe I could clear the air somewhat on this issue because we've been skirting it a little bit, about what happened in 1984. Would that be helpful at this point?

ASSEMBLYMAN ROBINSON: Fine.

DR. KLEIN: There has been a lot of concern, obviously, and we've looked at several things. Before mentioning what we've looked at, I might say that I know of one law school which had

the answers of all the failing applicants graded by the law professors at that school, independently, and then compared the grades that they would assign to those answers to the grades that the bar actually assigned, and although there were some differences on some answers, the results were almost right on every time, and when Gordon Schaber comes, you can...

ASSEMBLYMAN ROBINSON: Why do these people flunk out of law school?

DR. KLEIN: That's a question that you can address to him, okay, but they went through and they did that exercise, so it does not appear to be that the grading standards on the essay, which is the most subjective part of the test.

The next question was, is there something wrong with the MBE?

ASSEMBLYMAN CONNELLY: But to equate it before you move, just one miscellaneous question. You indicate that there is a double grading process on the essays and the undecided group, in-house, how much variation do you have on that? Do you quantify that?

DR. KLEIN: Yes we do. In that same report, if you look back a way, you can see the degree of agreement between readers on a single answer.

ASSEMBLYMAN CONNELLY: What page is that and I'll look at it as you go along.

DR. KLEIN: Okay, let me put this down for a second and I'll flip to it.

Page 7, Table 7, Table 6, maybe to begin with and you can see that there's a moderate - if you're familiar with correlation coefficients, there is a moderate degree of relationship. On the average, two readers will disagree with one another about four or five points. One person might give it a 70 and another might give it a 75, but typically, that's what would happen. It's about a five point difference. Occasionally, it gets a lot larger than that, but there's an awful lot of answers that are being read twice. It's about 2,000 applicants have their answers read twice times eight different answers, so it's about 16,000 answers are read twice. The largest difference of those I think was around 25 or 30 points. That happened once or twice.

ASSEMBLYMAN CONNELLY: So, the bottom line, is it your impression that the essay testing or grading, rather, is accurate, that you are accurately comparing essay answers from year one, to year two; you're accurately grading essays within your system and that there's been an overall decline in the student's ability to take the essay questions?

DR. KLEIN: That's what the data seem to suggest. I cannot judge. I wouldn't judge myself, the quality of the essays so I have to rely upon the law schools, which went through and did that process themselves, and double checked it and the other kinds of data that we have. It seems like the grading is as reliable as it has been in the past. There's been no sudden changes there.



ASSEMBLYMAN ROBINSON: Was the pass/fail rate for individual accredited law schools in the state the same. In other words, between '84 and '83, and '82 and '84...

DR. KLEIN: There was a big difference between '82 and '83 on the essay part...

ASSEMBLYMAN ROBINSON: I'm talking law school, now, I'm not talking ...I'm trying to take what Mr. Connelly is asking and Mr. Harris is asking, because I have heard for the entire tenure I've been up here, criticisms from various, more what would be referred to as old-line law school professors and administrators, that certain other proprietary-type law schools were doing nothing more than performing a three or four year cram course for the bar, and were not going into legal theory and whatnot, and at the same time, in the market when they are advertising programs, whatnot their pass/fail rate. I'm sure Mr. Harris has heard some of the same complaints. Some unaccredited schools, too. At the same time, looking at correlations on the pass/fail rate as we got to '84, which was the worst situation and by law school and comparing that to what it was by law school in any period between '82 or something, would be very interesting. Is that table...

MS. YU: We have that, yes.

DR. KLEIN: It's not in this report but we have that information.

ASSEMBLYMAN ROBINSON: Was there a significant change?

DR. KLEIN: Between '82 and '84?

ASSEMBLYMAN ROBINSON: Yes, by law school.

MS. YU: Yes. One thing that should be pointed out is that the prediction by 1987 is that all law schools, even the ABA approved ones, will have something close to open admissions, because the number of applications has been dropping, the law schools have committed to physical plants and faculty and the enrollments, if they are going to keep the same level of enrollment, they are going to be adopting different admissions standards. This is not my prediction, this is the prediction of the Law School Admission Council.

CHAIRMAN HARRIS: Three other questions, and then we're going to bring this to a close.

Number One: I'm interested in first off, the baby bar. What is the role of the baby bar? Has it outlived its usefulness? If not, then why doesn't everybody take the baby bar?

MS. YU: The baby bar is given to students at unaccredited law schools or who otherwise do not qualify to sit for it because of special circumstances. Because of the way they entered; they end up in an ABA school, but they may have started at an unaccredited school.

Our research has indicated that actually the baby bar is a good predictor in some respects, it may actually not be graded tough enough, perhaps it should be even more strict, because a lot of people who pass that after their first year, still do not appear to have the preparation or whatever, to pass the final bar exam.

The reason it's not given to ABA approved law school graduates, is because part of the accreditation, presupposes that if by entering that particular law school, which has met certain standards, that they should have some level before they start; what the law school does with them in the next three years, is something that we can't really predict. The state accredited schools, their main goal is to get accreditation so their students don't have to take the baby bar, but that has sort of mixed advantages and disadvantages.

The scores actually do eliminate a good proportion of people at the unaccredited schools who have virtually no chance of passing the bar, and also very little chance of doing well in law school. The problem on the bar exam, is that it comes too late in the system. If there is a desire to give people an opportunity to enter the profession through the educational process, and no hard decisions are really going to be made at that level, then the bar exam declines the culprit in terms of acting as a screen.

We do have a tough exam and it's because most states throughout the country do not allow people to come in through their access routes that we have. For instance New York; Florida, the larger jurisdictions with lots of law school graduates require graduation from an ABA approved school. We have about 2200 to 2500 people a year who would not be eligible to sit in any other state for the bar exam. And it's because the policy of the state has been up to now, to give them a chance to do it. But one of the things we've imposed is the baby; all

right, we think it is still useful. It may be that the unaccredited law schools have more to answer, and I think market conditions do apply. Students see the statistics from law school to law school; they know that their chances of passing going to an unaccredited school are substantially lower than at an ABA approved school.

CHAIRMAN HARRIS: Tell us, what do you see as the role of the bar exam? Is it to screen in or screen out?

MS. YU: There's a little of both. Basically, it is to...

CHAIRMAN HARRIS: Specifically, I'm referring to statements on Page 7, is that right?

MS. YU: Page 7.

CHAIRMAN HARRIS: Page 9, the bottom paragraph under validity.

MS. YU: Yes.

CHAIRMAN HARRIS: It said the goal of the exam is to identify the applicants who have yet to master some of the basic skills and knowledge that are required for competent, legal practice. Are you trying to catch people who might slip through otherwise? Is that the purpose to keep them from the unwary public?

MS. YU: Well, the thing is, lawyers, basically yes, I think that the idea is that you have an examination to find out which people, at least at the time you're giving the exam, seem to have enough of the basic skills that they can go out and practice, and which ones may need a little more work before they

could or should actually practice. Dr. Klein used an example in one of the press articles about flying. That an applicant may have a lot of general ability, but may lack landing skills, in which case you don't really want the person to fly the plane, even though he may have a lot of other abilities and a lot of other skills. We're not saying that students lack ability, we're saying that the level of preparation that they show at the time they are taking the exam is not as high as their counterparts or their peers who do show a higher level of performance.

CHAIRMAN HARRIS: Okay, let me see if I can bring this to a close. Number One: I'm trying to get a sense from the Committee of Bar Examiners as to whether the bar is an obstacle course, or whether or not as has been described in the Wall Street Journal years back, a trial by ordeal, a quest for the Holy Grail, those kinds of analogies; I'm wondering how relevant the bar exam is, relative to the amount of disciplines that have to be exercised after a person is admitted. In other words, once a person has his ticket, his or her ticket, is that person really qualified to practice law in the State of California? What does admission to the State Bar of California really mean to the consumer? What does it mean to an individual whose rights are, in fact, at jeopardy, in terms of the judicial process? Can the Committee of Bar Examiners say with validity that if a person passed the California bar exam, they are qualified to practice law and of its manifestations in the state? If not, then why not?

I'm interested in the accreditation process. I want some recommendations. I want to hear from the Committee of Bar Examiners as to what the bar exam means, whether it's relevant, what the role is of the law schools in preparing people, both for legal education and for the bar exam, and for ultimately practicing law in the State of California. I want to know what a license means in California. If I have a license in California does it mean I ought to be able to go into court and represent somebody whose life is at stake? Do I have trial court certification, or have I simply demonstrated that I can pass written examinations, multi-state performance, et cetera. Maybe as Mr. Wyman has suggested, I'm just a good exam taker. I'm really interested in getting some recommendations on the bar exam, what it means, how it can be improved, how the relationship, vis a vis, legal education and preparation and passing the bar exam could be improved. I don't care necessarily about passing more people, the numbers of people that pass are not as great a concern to me as the fact that the percentage is so low and maybe we need to look at the question of law schools and whether or not we ought to raise the level of education and the level of training that they engage in. If we're graduating people who are not really capable of passing the bar or practicing law in the State of California, maybe we need to designate them something other than as a law school graduate. Maybe they ought to be something else. I want to look at all those things and I'm really interested in the response of the Committee of Bar Examiners as to what the problem is, because I

think there is a problem. Obviously, there is a problem because you keep changing the exam. After many years of a fairly static examination process, we now find that you are in transition and that every couple of years you throw something new into the game. I think you are obviously trying to be fair and I don't mean that to be a castigating statement, but rather one of inquiry as to the fact that there must be a problem, because you haven't found a magic formula yet that would, in fact, give you or the state or its population, some assurance that a person who passes that exam is, in fact, capable of representing people.

MS. YU: Okay, understanding your time constraints, you had quite a few questions.

CHAIRMAN HARRIS: I don't want you to answer them all now, some of this I want for next week when the law schools are here who are also a link in the chain. I want to look at this thing from Day One.

MS. YU: You're going to have to go back to grade school.

CHAIRMAN HARRIS: I understand. I'm in undergraduate school. I'm in high school, how am I being trained? What are the skills that I need to learn in order to ultimately become a lawyer? I'm in college. How am I being trained so that I can matriculate into law school? What about the LSAT? How relevant is the LSAT as an indicator of my ability to matriculate to a law school? Second; I am in a law school. I go to law school, I study, I follow the curriculum, I graduate, I flunk the bar exam. What happened? If it's an accredited law school, I'm

particularly concerned about what happened, because if you've given that school accreditation, you've given a stamp of approval. If I graduate from that school and I don't pass the exam, something is wrong. Something's wrong if I'm a California State Bar accredited law school.

MS. YU: That's if you believe the law school is a proxy for the bar exam or visa versa.

CHAIRMAN HARRIS: Well, if it's not, then it ought to be clear, it ought to be made clear that, you know, if you go to law school to become a doctor, and you never get a chance to practice, what the hell did you go for, so you know, dissect bodies?

MS. YU: (inaudible)

CHAIRMAN HARRIS: If the purpose of legal education is not ultimately to practice, then that's fine. Then you ought to just have schools that are training paralegals, to become a paralegal. You don't need a license to become a paralegal. Maybe some of the law schools that are not training people to become lawyers ought to be schools for paralegals, and let it be that, that's fine. We can use researchers. We can use people who can go out and be a claims adjuster, arbitrators. I think it's a very important point and I really want some answers to it.

MS. YU: Just generally, I'd say that the committee is - all the questions you raised have been raised by committees over the past umpteen number of years, this very self-critical committee and we're always trying to improve.



One of the things when people do have suggestions and we implement them, we end up being accused of introducing a change when, in fact, it was something that is a response to what was believed to be a need. For instance, adding the performance test in large part resulted because of concern raised by minority groups that the bar exam was not testing some skills that they thought should be tested that they could demonstrate. And if by introducing it, we're going to get nailed for having introduced something that was believed to be responsive to a change, it does make it somewhat difficult.

CHAIRMAN HARRIS: No, I think there's ways to do that. I think that the way you did it in 1980 makes a lot more sense than the way you did it in subsequent years, which is, that you allow people who want to take the examination that change, that experiment, to volunteer to do it, and it could help you, but it can't hurt you. And if it demonstrates that it, in fact, works, it may become a permanent part of the examination, maybe it ought to be experimental for two years so that the schools would then be able to prepare students to take it. I think dropping a bomb on people is unfair, and that's an opinion; that's not a conclusion. But my opinion is that it is unfair to change the rules in the middle of the game. And if I went to law school with an assumption that when I graduate, I was going to have to take an exam, and this is going to be the exam, and I approach my legal education with the idea that ultimately, I am going to pass and an examination is going to be constructed thus and so, and I graduate and find out all of a sudden you change the contract,

and I think that's a valid criticism. I think that was one of the problems with the scaling, the question that we raised last year in July. That you change the rules in the middle of the game. I mean, I think that's highly inappropriate. I think it's unfair to law students, I think it's unfair to anyone who, in fact, is going to be trying to view what is the criteria by what they are going to be judged.

MS. YU: Well, as I've indicated, the purpose of the experiments in 1980 was to try to come up with a format of a different type of examination that could be given. The idea of doing experiments on over 7,000 people was for the purpose of developing a mandatory part of the test. There are benefits to doing the experimentation, which is what we did, but there are also benefits to having it a mandatory part of the test.

CHAIRMAN HARRIS: Let me ask, what I would like is, I would like if it's possible, I know this is asking a lot, and it doesn't even necessarily have to be conclusions, but I'd like some ideas from the Committee of Bar Examiners for next week about some kind of a logical nexus, first of all, between legal education and the bar exam, the accreditation process. I'd like to know what the impact is on discipline. Is there a greater discipline problem, now? Is there incompetence? Are we admitting incompetent people to practice law in California? Should we, in fact, have further specialization? Should we not have a two-tier examination so that a person becomes a solicitor and then a trial attorney? I really want to understand what a license means in California, what it means to the public and what it ought to mean to a lawyer.

MR. CRITCHFIELD: Mr. Chairman, we'll respond to that. I do want to introduce Mr. Armstrong who is with us, who is a member of the Board of Governors and Chairman of the Admissions and Discipline Committee.

CHAIRMAN HARRIS: We've heard of Mr. Armstrong.

MR. CRITCHFIELD: We'll respond to that question and he can give his input.

CHAIRMAN HARRIS: All right. That's fine. Will you be able to do that next week or do you want to speak now?

MR. CRITCHFIELD: No, we'd rather do it next week.

CHAIRMAN HARRIS: That's fine. I really would like to have conclusions. I want some recommendations. If you think the bar is fine, I want you to say that. If you think there are problems, I want to know what, in fact, is going to be - what a license means. I want to know the nexus between every element that the Committee of Bar Examiners has to interact with, including law schools, including what its view is of specialization. I want to know what a license means. Okay, and I also want - listen, I want to understand. I don't care about the passage rate as long as it's fair and consistent and what it means is that you are capable of practicing law in the State of California, so don't come back thinking you've got to defend your passage rate. I don't care if it's 10 percent, as long as it really indicates - even it's 10 percent and that is, in fact, a fair measure of qualification to practice law in the State of California, then the problem isn't the bar exam, the problem is the law schools. I mean, let's put it where it's at. Let's

point the finger; I don't have any problem pointing the finger, but I want to make sure I'm pointing it at the right culprit. If it's the Committee of Bar Examiners, I want to point it at you. If it's the law schools that aren't doing their job, that are not training people properly to practice law in the State of California, let's put it on them. At least, hopefully, we can get the solution that's ultimately going to affect people's lives. I mean, having to live your life from bar exam to bar exam is a terrible way to go. And there are people who are living it that way. Because they got to take this exam, they wait four months for the results and then if they didn't pass, they got to take it again. I mean, it like being on a treadmill. I just think that that should be avoided if it is at all possible. So that if you go to law school and you put four years of your life in it, then you've got a reasonable expectation that you're going to be able to pass the exam. If that means that some law schools that aren't training people properly need to be out of business, so be it. And maybe we need to get back to the accreditation question. I'm not afraid of any of those questions; I'm not afraid of getting some recommendations if it needs legislative redress, we'll deal with it. But if you don't give us the information, I'm laying it on you, that's what I'm telling you.

MS. YU: Okay, I think some of your concerns are in the materials and some of the additional materials we submitted to you. And others we do have, I mean, we could address if you want, the barrister/solicitor idea, if you want.

CHAIRMAN HARRIS: Yes, I want that addressed; I want recommendations. By next week, I want specific recommendations as to changes, or no changes and why, vis a vis, the bar exam and law schools.

MS. YU: One thing I would caution you, is that the exam is never going to be a guarantee that someone is going to be a good lawyer.

CHAIRMAN HARRIS: It ought to be close.

MS. YU: We can't, unless someone can come up with a way to test for maturity, judgment...

CHAIRMAN HARRIS: Fine, let's start having oral exams again. Listen, what I'm telling you is this. The two things that I think are one of the most critical elements that you could have in terms of professional relationships, are your doctor and your lawyer. If I go to a doctor, and he's examining me, I want to make sure that he gives me reliable information. And if I'm a defendant in a criminal trial and my life is at stake, I want to make sure that person has the legal license and you've given it to him, that you haven't given him a license to kill. I think that's reasonable, that you ought to be able to tell me about that person's maturity. They should have gone through a rigorous process and once they've gone through it, there is a guarantee, if not a guarantee, it ought to be a warranty that that person is capable of practicing law in the State of California and that a person should have a reasonable expectation of competence. And you can't give me that now.

MS. YU: No, but I would say, and I think Mr. Armstrong can address this next week as well, it appears that discipline more of the problems relate to alcohol, drug abuse and things of that nature, which we're ...

CHAIRMAN HARRIS: Well, I want to hear about that.

MS. YU: That's not what we're trying...

CHAIRMAN HARRIS: I understand, but I'm saying what I want to know, maybe the test could even be more comprehensive. Maybe instead of a baby bar, maybe the exam ought to be given in stages. I talked to Mr. Gampell about this earlier, maybe the exam ought to be given after the first and second years. Why do you have to give it all at once at the end of the third year? I want you to comment on that. Why is there a comprehensive do or die exam? You said there are stages; why don't you give it in stages? Okay, those are the questions I'd like answered now. One last question. Is it possible to admit Mr. Robinson to the bar on motion? (laughter).

MS. YU: Only the Supreme Court actually admits. We merely certify them.

CHAIRMAN HARRIS: Would you recommend if I get a motion from Mr. Connelly (inaudible-laughter) ...

ASSEMBLYMAN ROBINSON: I have a technical question, Mr. Chairman. On page 10 of your written testimony, that table, I'm having some trouble understanding it. What year is that?

DR. KLEIN: That data (inaudible) six years...

ASSEMBLYMAN ROBINSON: Just quick calculations indicate a pass rate there of 78.4.

DR. KLEIN: Right.

ASSEMBLYMAN ROBINSON: And that is the statistical average for the first time...

DR. KLEIN: First time takers of that law school...

ASSEMBLYMAN ROBINSON: At one law school, oh, this is not all law schools.

DR. KLEIN: No, that happens to be McGeorge.

ASSEMBLYMAN ROBINSON: Oh, okay. Very good. It reads like it might be for all law schools.

(MULTIPLE VOICES)

CHAIRMAN HARRIS: Any other questions, Mr. Robinson, I want to get everything on the record and next week I want answers, so I want to make sure if you got questions now, they'll have time to research them.

ASSEMBLYMAN ROBINSON: I have questions on continuing education, Mr. Chairman, but that's really not on the subject as far as the board examiners.

CHAIRMAN HARRIS: If you want answers by next week, I wish you'd ask them.

ASSEMBLYMAN ROBINSON: The questions were asked initially in the committee's questionnaire. We did not really go indepth on that. (inaudible, multiple voices) at this hour to go into it. (inaudible) other professions and requirements for continuing education, especially in the areas where the bar has decided to have (inaudible) for specialization, certificates of competency and realizing they have, even within those certificated areas, they have differing requirements for continuing education, and then looking at...

CHAIRMAN HARRIS: I wish they'd be prepared to answer the question about specialization.

ASSEMBLYMAN ROBINSON: They don't have the peer - when you compare it to the medical association, which I think is a good analogy, you do not have every doctor that's licensed in the State of California even though he's licensed to commit the two upon a human being brain surgery, you'll find that he's incapable of finding an institution in which to perform that surgery, because of the peer view being so strong and the liability and a lot of other reasons. You don't have that in the legal profession and I'm somewhat suspicious of the legal profession's ability to police itself. It's not necessarily a problem for the Board of Examiners, though.

CHAIRMAN HARRIS: Well, I wish you'd be prepared to the bar exam and also the question of specialization, because I think that one of the things that I'm interested in and certainly I don't want it to be grandfathered, I don't want it to be retroactive, (laughter) is that perhaps we ought to talk about specialization as one means of making sure that people who are exercising professional responsibilities in certain areas of law are, in fact, prepared to exercise that responsibility by virtue of training. In other words, I think we're moving to an era of specialization, obviously in medicine and in law and maybe a specialization ought to be required if one is going to practice in certain areas of law, and I'd like you to be able to expound upon what specialization means, and...



ASSEMBLYMAN ROBINSON: I mean, for example a worker's comp specialist who may be licensed as a specialist becoming bond counsel the next day on a \$200 million bond issue with resulting exposure both, I mean there's all kinds of areas in law that have gotten very, very complex, so the bar is doing nothing to police itself.

CHAIRMAN HARRIS: So, I'd like to know about specialization, whether specialization, vis a vis, the examination, and that may not be direct to the Committee of Bar Examiners, but somehow it's interrelated, because it seems to me that maybe you're talking about a basic competency exam and maybe we're talking about other exams that come behind that that also require. One thing we didn't talk about also, and hope someone will comment on is the attorney exam and what that means, in terms of screening in and screening out, okay?

MS. YU: Okay. One question, I understand on your invitee list for next week there are some bar associations. Are there going to be representatives from minority bar associations? If there are, you may want to tell them of your interest in specialization, because my understanding is that almost all of them oppose specialization for a lot of reasons, and you might give them advance warning that this topic is coming up, because it's something that they are very concerned about.

CHAIRMAN HARRIS: Thank you very much. I appreciate and we will conclude this hearing next week with the law schools and their response.

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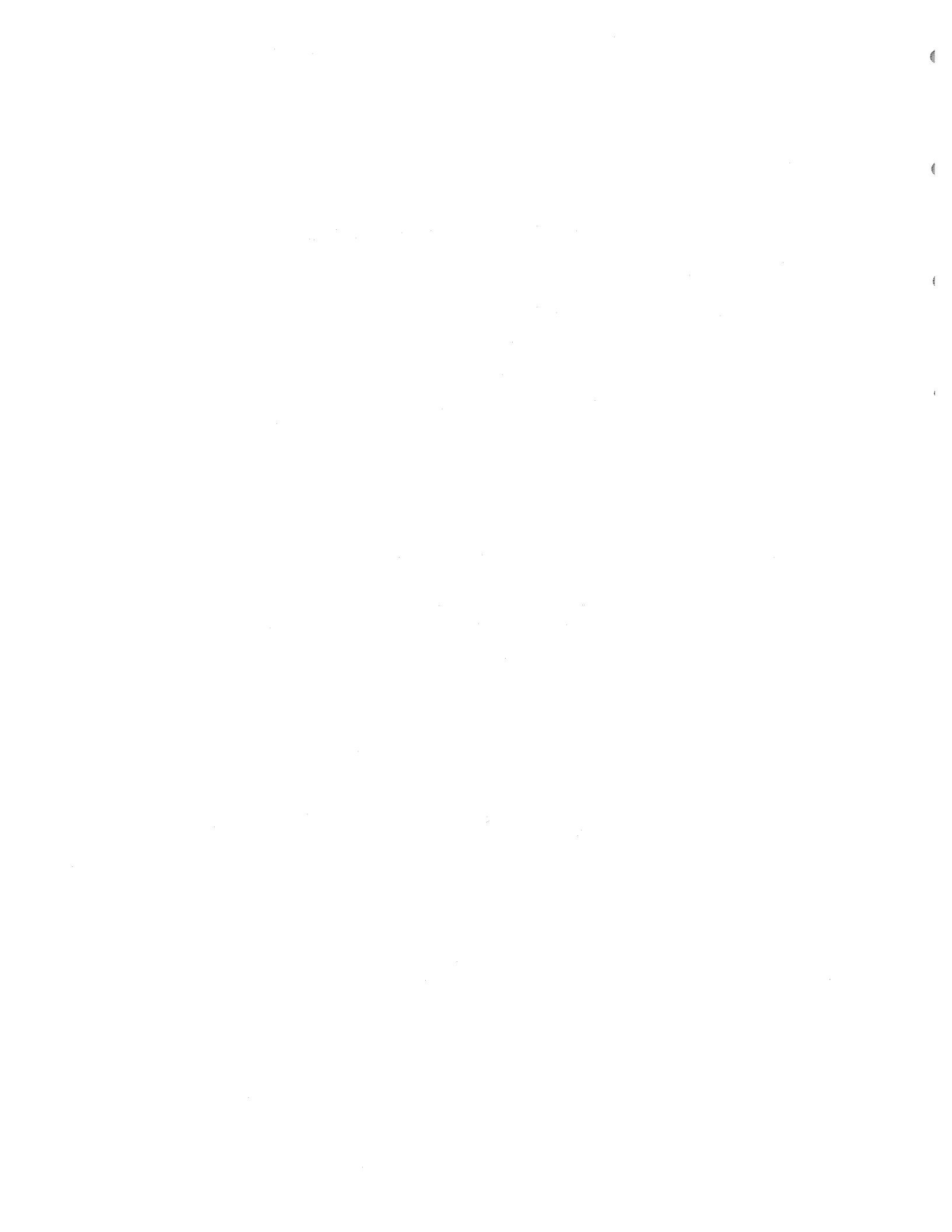
APPENDIX A



RESPONSE TO THE QUESTIONNAIRE TO  
THE BOARD OF GOVERNORS

Assembly Judiciary Committee Hearings  
March 19 and March 26, 1985  
Sacramento, California

Dated: February 28, 1985



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APPENDIX A:

RESPONSE TO THE QUESTIONNAIRE TO  
THE BOARD OF GOVERNORS

Senate Judiciary Committee Hearings, March 12, 1985  
Sacramento, California

QUESTION #1:     Please describe the administrative oversight role the Supreme Court of California plays vis-a-vis your day-to-day activities.

The Supreme Court does not provide day-to-day administrative oversight of the activities of the State Bar. The Court has referred to the State Bar as an arm of the Supreme Court for the purpose of assisting in the matter of discipline and admissions. Chronicle Publishing Co. v. Superior Court (1960) 54 Cal.2d 548, 566. However the State Bar itself is established pursuant to the California Constitution (art. VI § 9) and governed pursuant to the provisions of the State Bar Act (Bus. & Prof. Code §§ 6000, et.seq.).

The State Bar is a public corporation. It is established as a constitutional agency under the judicial branch of government. All persons licensed to practice law in California are members of the State Bar. California Constitution, article IV, section 9. All property of the State Bar is held for essential public and governmental purposes in the judicial branch of government, and all income therefrom is exempt from taxation. California Business and Professions Code sections 6008 and 6008.2.

The State Bar of California was initially integrated in 1927 pursuant to statute. California Statutes 1977, chapter 34. See California Business and Professions Code sections 6000 to 6206.

All State Bar functions are public as established by California law. Constitutional, statutory, rule and decisional duties fall into several categories, among which the principal ones are:

1. The State Bar, in the exercise of its constitutional duties, appoints four members of the Judicial Council and two members of the Commission on Judicial Performance. California Constitution, article VI, section 6, 8.
2. The State Bar is the administrative arm of the Supreme Court of California. Brotsky v. State Bar 57 Cal.2d 287, 300 (1962). The State Bar is charged with the administration, implementation and enforcement of legislative and Supreme Court standards governing admission to practice law, e.g., California Business and Professions Code, §§ 6046, 6060-6066; Cal. Rules of Court, rule 957; In re Admission to Practice Law, 1 Cal.2d 61 (1934), the discipline of



persons admitted to practice and those who would seek readmission after disbarment or resignation, e.g., California Business and Professions Code, sections 6075-6086.6; California Rules of Court, rules 951-952; Jacobs v. State Bar, 20 Cal.3d 191 (1977), mod. 20 Cal.3d 316a (1977); Chronicle Publishing Co. v. Superior Court, 54 Cal.2d 548 (1960); In re Walker, 32 Cal.2d 488 (1948). The State Bar must administer, implement and enforce programs ordered by the California Supreme Court concerning specialization, Bar Misc. No. 3339 (1971), and practical training of law students, Bar Misc. No. 4089 (1978).

3. The State Bar is charged with the administration, implementation and enforcement of state law governing law corporations. California Business and Professions Code, sections 6160-6172; California Corporations Code section 10830; pt. IV, div. 3, tit. I of California Corporations Code (commencing at § 13400, et seq.).

4. The State Bar is required to assist the California Law Revision Commission, California Government Code section 10307, and it aids in all matters pertaining to the advancement of science of jurisprudence and to the improvement of justice in California. California Business and Professions Code section 6031.

5. The State Bar or a designated agency of the State Bar is required to evaluate the judicial qualifications of all potential appointees and nominees for judicial office who are nominated by the Governor of California pursuant to subdivision (d) of section 16 of article VI of the California Constitution. Statutes 1979, chapter 534, section 2 (adding Cal. Gov. Code, § 12011.5). The State Bar is also required to establish and promulgate rules and procedures regarding the investigation of the qualifications of candidates for judicial office. Statutes 1979, chapter 534, section 2(e).

6. The State Bar is required to establish, maintain and administer a system and procedure for the arbitration of disputes concerning fees charged for professional services by members of the State Bar or by members of the bar of other jurisdictions. California Business and Professions Code §§ 6200-6206.

As can be seen the State Bar has many statutory functions other than those it performs in the discipline and admissions fields as administrative arm of the Court. The actions of the State Bar's Committee of Bar Examiners and of the State Bar disciplinary process are subjected to the review of the California Supreme Court (Bus. & Prof. Code §§ 6066 and 6082). Other actions of the State Bar are subject to review by the California Supreme Court pursuant to Rule 952(c) of the California Rules of Court. In the field of admissions the Court has reviewed individual petitions of candidates for admissions to practice. Upon its independent review the Court may uphold the administrative determination of the Committee. See Greene v. Committee of Bar Examiners, supra, 4 Cal.3d. 189; Bernstein v. Committee of Bar Examiners, supra, 69 Cal.2d. 90;

Konigsberg v. State Bar (1959) 52 Cal.2d. 769; Staley v. State Bar (1941) 17 Cal.2d. 119; Salot v. State Bar (1935) 3 Cal.2d. 615; Henderson v. State Bar (1934) 219 Cal. 696; Large v. State Bar, supra, 218 Cal. 334; Spears v. State Bar, supra, 211 Cal.183. The Court may reverse the Committee's determination. See Siegel v. Committee of Bar Examiners, supra, 10 Cal.2d. 156; Raffaelli v. Committee of Bar Examiners, supra, 7 Cal.3d. 288; March v. Committee of Bar Examiners, supra, 67 Cal.2d. 718; Hallinan v. Committee of Bar Examiners, supra, 65 Cal.2d. 447; Howdon v. State Bar (1929) 208 Cal.604; Brydonjack v. State Bar, supra, 208 Cal.439. The Court's power over the Committee is not limited to the review of individual petitions. The Court can undertake a general review of the entire examination and admission process. See In re Admission to Practice Law, supra, 1 Cal.2d 61.

Thus the Court does necessarily exercise ultimate oversight of the State Bar's activities in the admissions and discipline areas through its rulings on challenges filed with the Court by dissatisfied bar applicants and members of the State Bar who have been recommended for discipline.

QUESTION #2: Please describe the State Bar's specific role in the process of examining applicants and admitting attorneys to practice.

Business and Professions Code section 6046 provides that the Board of Governors of the State Bar may establish an examining committee having the power:

1. To examine all applicants for admission to practice law;
2. Administer the requirements for admission;
3. To certify to the Supreme Court for admission those applicants who fulfill the requirements of the State Bar Act.

Thus the State Bar Board of Governors creates the Committee of Bar Examiners and appoints its members. This Committee is principally responsible for administration of the admissions process.

Subject to the approval of the Board, the Committee may adopt such reasonable rules and regulations as may be necessary or advisable for the purpose of making effective the qualifications for admission (Bus. & Prof. Code § 6047).

The Committee's Executive Director answers to the Committee on all day-to-day operations but is specifically charged with answering full compliance with Board policy, relative to fiscal matters, personnel matters, contractual matters and other such matters. The Committee receives legal advice from and legal representation by the State Bar Office of General Counsel.

The Committee reports monthly to the Board Committee on Admissions and Discipline. Each month the Chair of the Board Admissions and Discipline Committee reports to the full Board. In addition, Board members serve as liaison to the Committee, attend its meetings and report regularly to the Board.

Attorneys are admitted to practice by the Supreme Court and not by the State Bar or the Committee of Bar Examiners.

QUESTION #3: How are your processes funded?

- What percentage of attorneys' dues are used to defray the expenses of administering the bar examination?

No attorneys' dues are used to defray expenses of administering bar examinations.

- What percentage of the costs of administering the examination are borne by the bar applicants?

Approximately 90 percent of the operating expenses of the Committee of Bar Examiners are paid by registration and examination fees. The balance of the funds come from miscellaneous sources. (See answer to Question #4 in Response to Questionnaire to The Committee of Bar Examiners, p. 7.)

QUESTION #4: Please explain why the so-called "Wisconsin approach" to bar admission would not be appropriate for California.

- Would the "Wisconsin approach" be appropriate for those who graduate from an American Bar Association approved school? A California accredited school?

Wisconsin's "diploma privilege" allows applicants who have successfully completed a legal education at the University of Wisconsin or Marquette to be admitted to practice without taking a bar examination. Graduation from one of those institutions is not automatic admission to the bar, however; one must meet the requirements of Wisconsin's rules, including taking specific courses and earning a minimum grade average. In effect, Wisconsin's admitting authority necessarily supervises legal education and failure to exercise strict supervision would mean that the law schools, not the Supreme Court, would be determining through their admission processes who can practice law in California.

In 1984, Wisconsin admitted 442 by diploma, 141 on motion (attorneys in practice three of last five years), and 183 by examination. West Virginia is the only other state that admits in-state ABA graduates without examination; Mississippi, Montana, and South Dakota have eliminated the practice.

In considering such a proposal for California, differences between Wisconsin and California should be noted: Wisconsin has 442 ABA graduates attending two schools; California tests 5,815 ABA graduates from 16 schools. It is also worth noting that Wisconsin's examination standards are significantly lower than California's: Wisconsin requires an MBE score of 125, while California's pass level is approximately 140.

For further information regarding Wisconsin's rules for admission, the Committee may wish to contact Erica Moeser, Director of the Board of Attorneys Professional Competence, 110 E. Main Street, Room 623, Madison, WI 53703. Ms. Moeser may be contacted at (608) 266-9760 and has indicated she would be pleased to comment further on this issue.

QUESTION #5: What are the merits of requiring that trial attorneys and non-trial attorneys take and pass the same examination?

- Please evaluate the relative merits/demerits of reforming our current system to allow for two different classifications of attorney - e.g. - trial attorneys and non-trial attorneys.

The State Bar Board of Governors has appointed an Interim Commission to the Consortium on Lawyer Competence and Legal Education for the purpose of studying and recommending possible modification in legal education and training. The use of internships for training lawyers is one of the items that has been expressly referred to this Commission for study and report. Although not presently being considered by the Commission, the double track system of practice suggested by the question could also be studied. However, at the present time the Commission has provided no report or recommendations.

Commenting specifically to the suggestion that the bar be bifurcated into trial attorneys and non-trial attorneys we do note the following.

The practice of law has traditionally enjoyed broad scope. In many small or rural communities a general practitioner can meet all or most of that population's needs. Even in urban areas, one of the attractions of the profession is the potential for opening up one's own office and handling whatever client problems walk in the door. A system requiring applicants or existing attorneys to choose whether they will undertake trial work or not may be both discriminatory and unworkable. Would all present lawyers be grandfathered in? After all, they were certified and admitted without restriction. Yet if the goal of the "barrister/solicitor" system is to improve the quality of legal services, they should be included in the new form of testing also.

Furthermore, how would the two-tiered exam be devised and administered? The English model presupposes many educational and training experiences alien to American legal education and bar preparation. The sheer volume of California applicants makes it difficult to design and carry out a reliable and valid means of administering an internship/clerking program for would-be "barristers" by the Committee and a separate exam for aspiring "solicitors" at a cost that can be borne by the applicants.

QUESTION #6: Please describe California's current process of specialization for those attorneys who meet specified requirements.

Since 1972 the State Bar of California has had a Pilot Program on Legal Specialization adopted by the Board of Governors and approved by the Supreme Court. California was the first state to have a formal specialization program. Pursuant to that program, specialists in the field of Taxation, Criminal Law, Family Law and Workers Compensation have been established.

In 1983 the Board, after extensive study and debate requested the Supreme Court to make the specialization program permanent. The Board then developed rules and regulations and specific standards for the permanent program and submitted these to the Court. The Court permitted briefs in opposition and support of the proposed program to be filed and set the matter for special hearing before it on January 24, 1985. The State Bar request is still pending before the Court and at the present time the pilot program is still in effect.

Needless to say, the record filed with the Court by the State Bar in explanation of the program is enormous. It can, however be made available if the Chair wishes. Attached as Appendix A is a copy of the request itself (without supporting documents). It sets forth the highlights of the permanent program, the history of the process by which it was adopted, the manner in which it is significantly different from the pilot program and a short comment on programs in other jurisdictions.

- Are current malpractice restraints adequate to prevent attorneys from practicing outside their specialty or should all attorneys be subject to a specialization process?

Both the pilot program and the permanent program provide that a certificate of specialization is not necessary to practice in any field of law and persons who are certified in a particular specialty are not precluded from practicing in other fields.

We are aware of no published studies which show what effect the threat of a malpractice action has on lawyers who are not certified specialists but who wish to practice in a specialty field or on lawyers who wish to practice outside their field of certificates. Rule 6-101 of the Rules of Professional Conduct provides as follows:

- "(A) (1) Attorney competence means the application of sufficient learning, skill, and diligence necessary to discharge the member's duties arising from the employment or representation.

(2) A member of the State Bar shall not intentionally or with reckless disregard or repeatedly fail to perform legal services competently.

"(B) Unless the member associates or, where appropriate, professionally consults another lawyer who the member reasonably believes is competent, a member of the State Bar shall not

(1) Accept employment or continue representation in a legal matter when the member knows that the member does not have, or will not acquire before performance is required, sufficient time, resources and ability to, perform the matter with competence, or

(2) Repeatedly accept employment or continue representation in legal matters when the member reasonably should know that the member does not have, or will not acquire before performance is required, sufficient time, resources and ability to, perform the matter with competence.

"(C) As used in this rule, the term "ability" means a quality or state of having sufficient learning and skill and being mentally, emotionally and physically able to perform legal services."

Violation of the Rules of Conduct subjects a member of the State Bar to professional discipline. Again, however, we know of no studies that demonstrate the affect of the threat of discipline on an attorney's decision to take or not to take a case.

- Would a profession-wide specialization process require the type of clinical internship, before admission to practice, that exists in the medical profession?

The answer to this question would depend upon what type of profession-wide specialization process were developed. It should be noted, however, that the State Bar after a thirteen year pilot program on specialization continues to take the position opposed to "profession-wide" specialization.

The proposed program now before the Court expressly provides that any lawyer in any field can practice in a specialty field whether or not he or she is certified. Further, in the permanent program, the State Bar has dropped the "years in practice" requirements that exist in the pilot program standards. The standards in the permanent program are directed to performance of specific tasks rather than to time of service.



QUESTION #7: Should continuing education be made mandatory for continued active membership in the state bar?

The State Bar has been studying mandatory continuing education since 1971. In April 1983 the Board of Governors adopted the following:

"WHEREAS since 1971 the State Bar of California has seriously studied mandated continuing education as a means of maintaining and improving attorney competence; and

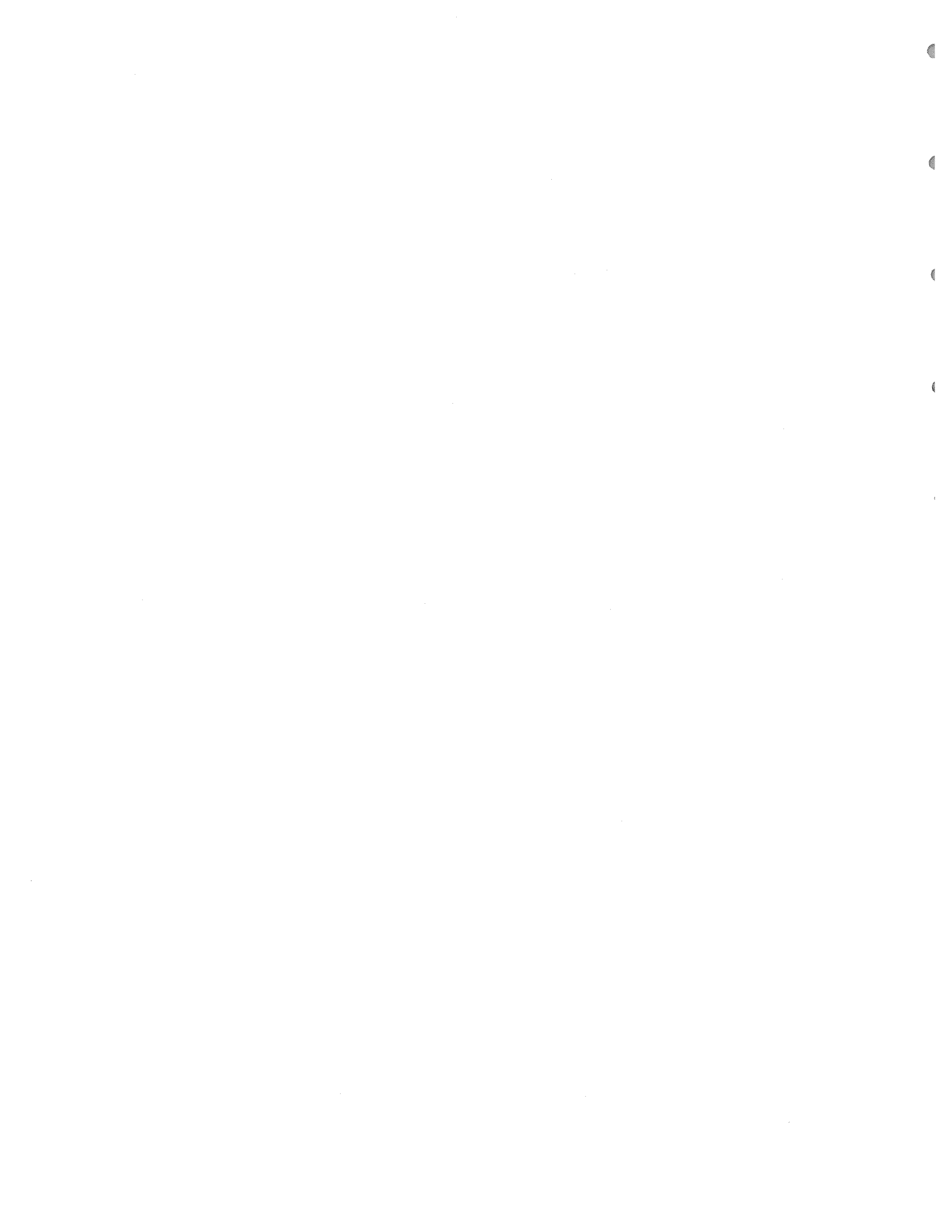
"WHEREAS the State Bar devotes substantial resources and funds to programs designed to identify, prevent and remedy incompetent delivery of legal services as well as assist lawyers to maintain and improve their competence and has determined that any measurable benefits to be realized from mandatory continuing legal education are far outweighed by the detriments, including costs to the lawyers and the consumers of legal services, therefrom; and

"WHEREAS the State Bar approves the concept of continuing legal education, sponsors a major program of such education and considers continuing education the professional responsibility of every member of the Bar; and

"WHEREAS the Consumer Affairs Department of the State of California has concluded that mandatory continuing education is ineffective in maintaining competence; now, therefore, it is

"RESOLVED that the Board of Governors opposes the concept of mandatory continuing legal education, opposes S.B. 469 and authorizes representatives of the Board to convey this opposition to the Legislature and other appropriate persons."

APPENDIX A



REQUEST THAT THE SUPREME COURT OF CALIFORNIA  
APPROVE THE STATE BAR OF CALIFORNIA PROGRAM  
FOR CERTIFYING LEGAL SPECIALISTS AND  
MEMORANDUM AND SUPPORTING DOCUMENTS IN EXPLANATION

I.

RECOMMENDATION

The State Bar of California respectfully requests that this Court approve the State Bar of California Program for Certifying Legal Specialists as adopted by the Board of Governors at its August 13, 1983 and July 27, 1984 meetings (see Enclosures 1, 3 and 4); and that the program as set forth therein replace the Pilot Program in Legal Specialization of the State Bar of California.

Should this Court determine to approve the State Bar Program for Certifying Legal Specialists, the State Bar also requests that this Court include in its Order language to effect the following transitional principles:

Subject to such further order or orders as the Supreme Court may require, the State Bar of California Program for Certifying Legal Specialists shall become operative with respect to a particular field of law, and the Pilot Program in Legal Specialization of the State Bar of California shall terminate if applicable to that field of law, ninety (90) days following published notice to members of the State Bar that the Board of Governors of the State Bar has adopted policies, rules and regulations, and standards for certification and recertification in the field of law to be governed by the State Bar of California Program for Certifying Legal Specialists and that the policies, rules and regulations, and standards have been filed with the California Supreme Court.

Subsequent to this filing, it is the State Bar's intent to publish a notice to the members of the State Bar that the State Bar has adopted Policies, Rules and Regulations and Standards for Certification and Recertification in each of the specialty fields and filed them with the Supreme Court. It is our intent that upon publication of such notice, the ninety (90) day period referred to in the foregoing will commence. The State Bar anticipates, however, that the Program for Certifying Legal Specialists will not actually take effect until thirty (30) days following the Court's Order approving the program or ninety (90) days following publication of notice to the members, whichever comes later.

INTRODUCTION

On September 8, 1983, the State Bar of California filed the following documents In the Matter of the Approval of the State Bar of California Program for Certifying Legal Specialists (Bar Misc. No. 4781): (1) A recommendation of the Board of Governors that the Supreme Court of California approve a permanent program for certifying legal specialists (see Enclosure 1--August 13, 1983 Resolution Adopted by Board of Governors); (2) Report and Recommendations of the Board Committee on Lawyer Services concerning a proposed Legal Specialization Program (materials before the Board of Governors at its August 13, 1983 meeting); and (3) The State Bar of California Record of Study Concerning a Permanent Program for Certifying Legal Specialists (Volumes I through V).

The Court was advised at that time that certification of legal specialists and the proposed program were the subject of debate before the 1983 Conference of Delegates and that the State Bar would advise the court of any action taken by the Conference. On September 11, 1983, following debate on the proposed specialization program, the Conference of Delegates adopted Late Filed Resolution No. 3, expressing disapproval of the August 13, 1983 action of th Board of Governors and calling upon the 1983-84 Board to reconsider and reverse the action of the previous Board. On September 16, 1983, the State Bar filed with the Supreme Court a copy of the Late Filed Resolution. On September 19, 1983, the State Bar informed the Court that the Board of Governors would be considering the Resolution at its October 15, 1983 meeting. On November 10, 1983, a copy of the transcript of debate concerning legal specialization and the Late Filed Resolution No. 3 was filed with the Court, and the Court was advised that the Board of Governors was continuing its deliberation on the issue.

In response to the 1983 Conference of Delegates request that the Board of

Governors reconsider its August 13, 1983 action, the Board, at its December 17, 1983 meeting, amended the Rules and Regulations of the State Bar Program for Certifying Legal Specialists (hereinafter "Rules and Regulations") in light of issues raised in the Conference debate and authorized publication for comment of the amended Rules and Regulations. (See Enclosure 2 — December 17, 1983 Resolution Adopted by the Board of Governors.) In February 1984, the Board Committee on Lawyer Services authorized publication for comment of the Standards for Certification and Recertification of Legal Specialists in Criminal Law, Family Law, Taxation Law and Workers' Compensation Law (hereinafter "Standards").

During May and June, 1984, following consideration of the comments received and following extensive redrafting of the Rules and Regulations and the Standards in light of those comments, the Board Committee on Lawyer Services recommended to the Board of Governors the adoption of re-drafted Rules and Regulations and Standards.

At its July 27, 1984 meeting, the Board of Governors, pursuant to the previous Conference of Delegates request, again considered whether there should be a permanent program in legal specialization and determined by a vote of 17-3 (with one abstention) to reaffirm its recommendation to make the program permanent. At that time, the Board also adopted the amended Rules and Regulations and the amended Standards in each of the four specialty areas and directed that they be filed with this Court. (See Enclosure 3—July 27, 1984 Resolution Adopted by Board of Governors.)

Deliberations and study thus concluded, the State Bar augments with this filing the Record of Study Concerning a Permanent Program for Certifying Legal Specialists by filing Volumes VI through VIII and files this Request and Memorandum and Supporting Documents in Explanation.

### III.

#### HISTORY OF THE FORMULATION AND DEVELOPMENT OF THE STATE BAR OF CALIFORNIA PROGRAM FOR CERTIFYING LEGAL SPECIALISTS

A comprehensive, detailed history of the development of the State Bar of California Program for Certifying Legal Specialists is outlined in Enclosure 5. Each significant event, action taken or document filed in the Record of Study Concerning a Permanent Program for Certifying Legal Specialist (Volumes I through VIII) is set forth by chronological date and, where applicable, referenced to the specific Volume Number and Appendix where the pertinent documentation can be found.

This section is intended only to provide a general overview of the developmental stages of the program.

The State Bar's formal interest in the issue of identifying legal specialists for the public began in June 1966 when the Board of Governors appointed a committee to examine the issue. Based on that study which included public hearings and a survey of the Bar, the Pilot Program in Legal Specialization was adopted by the Board of Governors in 1970 and the Supreme Court of California approved the program in 1971. This program established the nation's first legal specialization plan.

Rules and Regulations and Standards for Certification were developed and the program implemented in three initial areas of law: Criminal Law, Taxation Law, and Workers' Compensation Law. In February 1976 (five years after adoption, although less than four years of actual operation of the program), an evaluation was undertaken. A number of recommendations resulted in amendments to the program and on January 19, 1977 the Supreme Court approved those amendments. During the next two years, new committees were formed, public hearings were conducted and comment sought regarding four additional specialty areas: Probate, Labor, Bankruptcy and Family Law. The Board of Governors in 1979 added Family Law to the program, declined to add Bankruptcy or Labor Law, and recommended further study of the Probate Standards.

In September 1979 the Board of Governors resolved to recommend to the Supreme Court that the pilot program be replaced by a permanent program. In October 1979, however, the State Bar Conference of Delegates requested the Board of Governors retain the pilot program status and the Board of Governors agreed to reconsider its September actions. After appropriate notice and receipt of comments, the Board of Governors determined to retain the pilot status of the program and referred the issue of the status of the Legal Specialization Program for study to its Board Committee on Lawyer Services.

From 1979 to 1983 debate continued, in-depth studies and public hearings were conducted; comments were invited, received, and considered; and reports were drafted. At its August 13, 1983 meeting, the Board of Governors resolved to recommend to the Supreme Court that the Pilot Program in Legal Specialization be replaced by a permanent program entitled, The State Bar of California Program for Certifying Legal Specialists (hereinafter "Program"). (See Enclosure 4.) At the same time, Policies Governing the State Bar Program for Certifying Legal Specialists (hereinafter "Policies") were adopted for guidance in drafting the implementing documents. (See Enclosure 6.) Subsequently, Rules and Regulations and Standards for Certification and Recertification in each specialty area were drafted, published for comment, hearings held on each, and considered by the Board of Governors at its July 27, 1984 meeting. At that meeting, the Board of Governors resolved to adopt and ordered filed with this Court the Rules and Regulations and the Standards for Certification and Recertification. (See Enclosures 7 and 8, respectively.)

At this time, the State Bar augments the Record of the Study Concerning a Permanent Program for Certifying Legal Specialists (Volumes VI through VIII) and files with this Court this Request That the Supreme Court of California Approve the State Bar of California Program for Certifying Legal Specialists and Memorandum and Supporting Documents in Explanation.



SIGNIFICANT DIFFERENCES BETWEEN THE PILOT PROGRAM  
IN LEGAL SPECIALIZATION OF THE STATE BAR OF CALIFORNIA  
AND THE STATE BAR OF CALIFORNIA PROGRAM  
FOR CERTIFYING LEGAL SPECIALISTS

The State Bar of California Program for Certifying Legal Specialists as adopted by the Board of Governors and presented herewith to the Court for approval contains several significant changes from the Pilot Program in Legal Specialization. (See Enclosure 9—Draft Copy of Pilot Program, indicating additions and deletions.)

In order to ensure that program components are consistent with approved goals, Policies Governing the State Bar Program for Certifying Legal Specialists (Enclosure 6) have been adopted by the Board of Governors. Rules and Regulations of the State Bar Program for Certifying Legal Specialists (See Enclosure 7) and Standards for the Certification and Recertification of Legal Specialists in Criminal Law, Family Law, Taxation Law and Workers' Compensation Law (See Enclosure 8) have been developed and adopted by the Board of Governors to implement the Program in light of the Policies.

In order to assist the Court in understanding how the Program will be implemented, the Rules and Regulations are set forth at Enclosure 7. The Standards, or specific criteria, established for certification and recertification in each specialty area are set forth at Enclosure 8. For information and convenience purposes, we have cross-referenced each significant change in the Program to the specific section(s) of these implementing documents. (See Enclosure 10.)

The following discussion sets out the major changes and purposes as determined by the Board of Governors during its considerations of this recommendation for the approval of the Program.

THE STATE BAR OF CALIFORNIA  
PROGRAM FOR CERTIFYING LEGAL SPECIALISTS

FINDINGS BY THE BOARD OF GOVERNORS:

CHANGE: The following findings are now expressly stated in a newly create preamble to the Program:

1. The People of the State of California, in order to obtain counsel of their choice, must be able to identify members of the State Bar who specialize in and have demonstrated proficiency in fields of law; and
2. The legal profession, in order to fulfill the needs of the consumers of legal services, should encourage the maintenance and improvement of attorney competence in specialized fields of law, and assist in the identification to them of attorneys who choose to specialize.

COMMENT: Based on these findings, the Board concluded that a legal specialization program is necessary in the State of California. It was found that the purpose for the program is of benefit to both lawyers and the public by identifying to the public those lawyers who have demonstrated proficiency in specified fields of law and by encouraging the maintenance and improvement of attorney competence in those specified fields of law. The findings emphasize the public need to identify lawyers who are proficient in special fields of law.

SECTION 1. ESTABLISHMENT AND COMPOSITION OF THE BOARD OF LEGAL SPECIALIZATION.

CHANGE: The composition of the Board of Legal Specialization has been changed to increase from thirteen to fifteen members, to reflect the same method of selection and assure the same diversity as other State Bar Committees, and to require at least three public members.

COMMENT: The current composition of the Board was appropriate for the creation and development of the Pilot Program. The change clarifies that appointments shall

be based on the same criteria established for other State Bar committees.\* The provision for at least three public members recognizes the public service aspect of identifying and establishing criteria for legal specialists. The change also reduces the appointment period, consistent with other State Bar appointments, from a three-year term to a one-year term.

## SECTION 2. DUTIES OF THE BOARD.

CHANGE: The requirement that the Board of Legal Specialization report at least annually to the Board of Governors has been expanded to include the requirement that the report be filed with the Supreme Court and that the report shall contain an evaluation of the program, identification of problem areas and recommendations for appropriate solutions. Accordingly, Section 13 of the Pilot Program, which deals with duration and evaluation of the Pilot Program, has been deleted.

COMMENT: This evaluation of the program and problems will permit the Board of Governors to determine if the goals of the program are being met and whether or not modifications are necessary. The requirements for filing with the Supreme Court will assist the Court in its continued review of the Program.

## SECTION 3. LIMITATIONS ON THE POWER OF THE BOARD.

CHANGE: Section 3(e) placing limitations on the number of specialty fields in which a lawyer may be certified has been deleted.

COMMENT: This section has been deleted to conform to the elimination of the substantial involvement requirement for certification provisions in Section 5, infra.

## SECTION 4. ADVISORY COMMISSIONS.

CHANGE: The composition of the Advisory Commissions has been changed to establish the number of members at nine, to require appointments to the Advisory

\* See the State Bar's Program to Encourage the Opportunity of All Members of the State Bar to Participate in Activities of the State Bar. (Record of Study Concerning a Permanent Program for Certifying Legal Specialists, Vol. V, App. 25.)

Commissions be in accord with State Bar appointment policies and procedures, to reduce the appointment period from three years to one year, and to require the appointment of a public member.

COMMENT: The changes essentially establish the same criteria as in the establishment and composition of the Board of Legal Specialization and conforms appointments procedures to the same basis as other State Bar committees.

#### SECTION 5. STANDARDS FOR CERTIFICATION.

CHANGE: The Requirements which permitted "Grandfather" certification have been deleted.

COMMENT: The "grandfather" provisions were deleted based on the conclusion that such a requirement was an undesirable means of identifying proficiency. The Board of Governors also determined that "grandfathers" would be subject to the new program requirements as soon as possible after the effective date of the Program.

CHANGE: The requirement of a minimum of five years in practice to qualify for certification has been deleted and the language requiring substantial involvement (percentage of time in practice) has been deleted. Time in practice and substantial involvement by percentage of time in practice have been replaced by a requirement for "the performance of a minimum number of designated tasks."

COMMENT: The performance of designated tasks contained in the permanent program replaces the time in practice and substantial involvement requirements of the Pilot Program. The Board of Governors concluded that by selecting specialists based on the completion of those tasks essential to demonstrating proficiency in the specialty field, the five years in practice requirement and the substantial involvement standard could be deleted, and that the same or better effect could be achieved through the performance of tasks requirement.

In order to assure that the tasks requirements do not create artificially high barriers to certification and recertification, the Policies adopted by the Board of Governors to govern implementation of the Program direct that the types and minimum number of tasks to be performed shall be drafted to:

- (1) provide broad access to practitioners in the specialty field;
- (2) not arbitrarily exclude certain practitioners by reason of their association with a limited practice office;
- (3) not be arbitrary in the amount or nature of the requirements set;
- (4) avoid requirements which encourage unnecessary litigation;
- (5) provide alternatives or equivalents to assure that practitioners are not arbitrarily excluded.

The numbers and types of task vary in each of the specialty areas and reference should be made to the specific Standards for Certification and Recertification.

CHANGE: Provisions to allow for alternative equivalent requirements for both performance of designated tasks and continuing legal education requirements have been added. The written examination requirement has been amended to allow for waiver, if "additional and substantially more stringent standards are required..."

COMMENT: Equivalency requirements for performance of designated tasks, continuing legal education, and the examination are added to the Program to fulfill the policy that practitioners shall not be arbitrarily excluded. Equivalency requirements were not intended to be a means of "grandfathering". Instead, equivalency requirements are intended to provide flexibility and alternatives by substituting standards which would demonstrate equal proficiency in the specialty field.

While no change has been made in the Program document with regard to continuing legal education, the Policies provide that a specific curriculum be set for basic certification and minimum requirements of study for recertification; at least partial credit for certification and partial or full credit for recertification should be available through self-study of approved materials, broadening the methods by which credit can be obtained beyond teaching and attendance at approved courses. Again, the specific requirements for each field of law are found in the Standards for that particular specialty.

CHANGE: A requirement has been added that the Board must file a copy of the specialization examination and the proposed grading formula with the Supreme Court thirty (30) days before the examination.

COMMENT: This section was added to provide the Court with continuing information for its review concerning the operation of the Program and the application of the Standards through the examination process.

CHANGE: A verification of demonstrated proficiency through a system of independent inquiry and review has been added.

COMMENT: The independent inquiry and review process will be used to solicit information to determine that an applicant for certification has achieved recognition as having a level of competence indicating proficient performance in handling the usual matters in the specialty field and reject those who have not reached that level.

This requirement was added to provide an additional indicator of skill and competence by obtaining information regarding past and present level of performance based on observations by others. This mechanism will provide a measurement not provided by the other requirements which essentially indicate only level of knowledge. It was felt that this system will more adequately measure those other elements of proficiency in the practice of the specialty.

The independent inquiry and review requirement shall apply to both certification and recertification applicants and may not be waived by equivalents. As soon as possible after the effective date of the program, all specialists

certified under the Pilot Program must fulfill this requirement. Confidentiality of sources and information shall be maintained. An appeal is provided for those not certified as a result of such inquiry and review. Safeguards have been built into the procedure to avoid any unnecessary barriers to those who can demonstrate proficiency. For details of the procedures adopted for the conduct of independent inquiry and review, see Enclosure 7 — Rules and Regulations, Section VI.

#### SECTION 6. RECERTIFICATION.

CHANGE: The requirement of 10 years in practice prior to recertification has been deleted. The requirement that an applicant recertify by substantial involvement and either completion of continuing legal education or a written examination has been changed to require completion of performance of designated tasks and educational requirements or equivalent requirements set by the Board. A verification of demonstrated proficiency through independent inquiry and review has been added.

COMMENT: These changes were made to conform the requirements for recertification to the changes in the initial certification requirements set forth in Section 5 except that the written examination requirement for recertification has been deleted.

CHANGE: A provision has been added which will allow the Board to consider judges for recertification who resume the practice of law and who were certified specialists prior to assuming the bench.

COMMENT: Those certified specialists who temporarily left their practice because of judicial service during the Pilot Program were required to apply for initial certification again upon returning to private practice because of the rule requiring at least five years certification prior to recertification. This change would allow the Board of Legal Specialization to consider applications for recertification from practitioners, formerly judges, who had been certified before their appointment to the bench. Time away could then be considered.

SECTION 7. DENIAL, SUSPENSION AND REVOCATION OF CERTIFICATION OR RE-CERTIFICATION.

CHANGE: Language has been added which states that the certificate for a specialist who does not meet or ceases to meet the standards may be denied, suspended or revoked. Failure to abide by the Rules of Professional Conduct has been eliminated as a cause for denial, suspension or revocation.

COMMENT: The reference to the Rules of Professional Conduct has been deleted to clarify that separate findings will not be made or proceedings will not be conducted by the Board of Legal Specialization for alleged violations of the Rules, but pursuant to established State Bar disciplinary procedures. It was also deleted as duplicative of the subsection following stating that discipline pursuant to the State Bar Act, which incorporates violations of the the Rules of Professional Conduct, may be cause for denial, suspension or revocation. The changes further specifically authorize that any denial, suspension or revocation will be pursuant to procedures adopted by the Board of Legal Specialization.

SECTION 8. CERTIFICATION AND RE-CERTIFICATION.

CHANGE: This section has been amended to clarify the rights of one who has had an application for certification or recertification denied, or certificate of specialization suspended, or revoked by the Board of Legal Specialization to seek reconsideration of that action. This section requires that the Board shall establish procedures for reconsideration. This section also provides for a right to a hearing pursuant to procedures established by the Board of Governors, and the right to petition the Supreme Court pursuant to Rule 952(c), California Rules of Court.

COMMENT: The Board of Governors was aware that procedures developed to grant, deny, suspend or revoke a certificate must afford the individual due process required by law. This section has been amended to make applicable to specialization matters those procedures already established within the State Bar Court which adjudicates



most State Bar regulatory matters. Hearing panels formerly comprised of members or appointees of the Board of Legal Specialization and Advisory Commissions will be replaced by referees of the State Bar Court Hearing and Review Department. Detailed procedures governing notice, reconsideration petitions, hearing and review procedures are set forth in the Rules and Regulations, Sections VIII - X. (See Enclosure 7).

#### SECTION 10. ADDITIONAL FIELDS.

CHANGE: The limitation to the initial jurisdiction of the Board of Legal Specialization has been deleted and the provision for the addition by the Board of Governors of additional specialty fields of law reworded.

COMMENT: This amendment deletes reference to the Pilot Program and grammatically rewords the section.

#### SECTION 11. ADVISORY COMMISSIONS.

CHANGE: This section mandating the appointment of specific types of practitioners to the three original Advisory Commissions has been entirely deleted.

COMMENT: This change conforms the section to the appointment policies in Section 4, supra.

#### SECTION 11. (Renumbered from Section 12) FINANCING PROGRAM.

CHANGE: This section allows the Board of Legal Specialization to charge such other fees as may be necessary to defer expenses of operating the program.

COMMENT: This addition confirms the Board of Governors resolve that the Program be completely and absolutely self-supporting. It further clarifies that the Board may charge fees other than those specified in the section, for example, fees for educational program approval.

Other minor additions or deletions have been made throughout the program document but are essentially for grammatical or drafting purposes or delete provisions which specify the status of the program as a pilot program.

V.

LEGAL SPECIALIZATION PROGRAMS IN OTHER JURISDICTIONS

In 1971, when California became the first state to adopt a certification program, the concept of formal recognition of specialists was not new. In fact, it had been discussed within the American Bar Association (ABA) since the early 1950's. After much study, the ABA decided to leave development of specialization programs to the states and to study these programs as they were developed. (American Bar Association Report to the House Committee on Specialization adopted February 13, 1978.)

After studying other state programs, the ABA published its "Model Plan for Legal Specialization" which was modeled after the California Pilot Program. The ABA Model Plan does not require an examination. It does require a minimum time in practice, substantial involvement in the practice in the specialty field, and continuing legal education.\* This model is available for adoption or revision by any state contemplating formalized specialization.

Specialization plans have been approved in Arizona, Arkansas, Florida, Iowa, Louisiana, New Jersey, New Mexico, North Carolina, South Carolina, Texas and Utah. (A program has been approved in Connecticut but is currently being re-studied. Georgia has an approved program which has been indefinitely suspended.) Specialization plans are pending in the Supreme Courts in the District of Columbia, Kansas, Missouri, Nevada,

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\* California, after several years of experience with its program, has recommended that a requirement of performance of designated tasks replace the minimum time in practice and substantial involvement requirements as a better method of measuring demonstrated proficiency in a field of law.

Rhode Island, Tennessee, and Virginia. Many other states who have not adopted a specialization program are in the process of considering the concept. (See Enclosure 11: Specialization Plans - State Status Report, ABA, August, 1984).

## VL

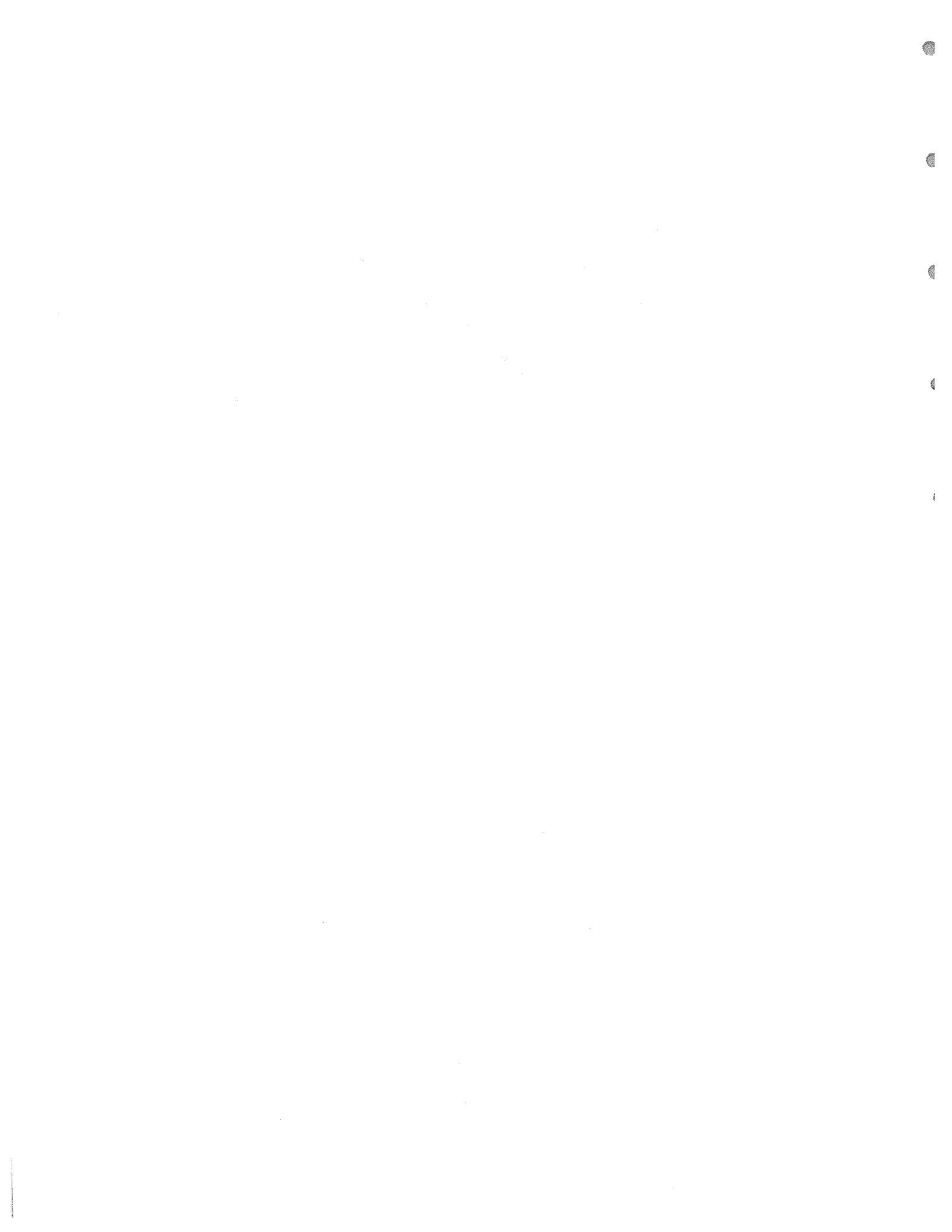
### CONCLUSION

The Board of Governors has stated two goals for the State Bar of California Program for Certifying Legal Specialists: (1) to identify for the public attorneys who have demonstrated proficiency in specialized fields of law; and (2) to encourage the maintenance and improvement of attorney competence in specialized fields of law.

The Board believes that the public consumers of legal services and the profession of law itself will benefit from both the concept and the conduct of the Program as adopted by the Board of Governors and as submitted to this Court for approval.

After thirteen years of experience under the Pilot Program in Legal Specialization, and after extensive research, analysis, evaluation and public debate, the Board of Governors concluded that the status of the legal specialization program should be changed from pilot to permanent. (See Record of Study Concerning a Permanent Program for Certifying Legal Specialists, Vols. I - VIII; and Enclosure 12 herein — Table of Contents to Record.) To effectuate this change, the State Bar respectfully requests that this Court approve the State Bar of California Program for Certifying Legal Specialists as adopted by the Board of Governors on August 13, 1983 and July 27, 1984 and as set forth in Enclosure 4 of this Request.

APPENDIX B



RESPONSE TO THE QUESTIONNAIRE TO  
THE COMMITTEE OF BAR EXAMINERS

Assembly Judiciary Committee Hearings  
March 19 and March 26, 1985  
Sacramento, California

Dated: February 28, 1985



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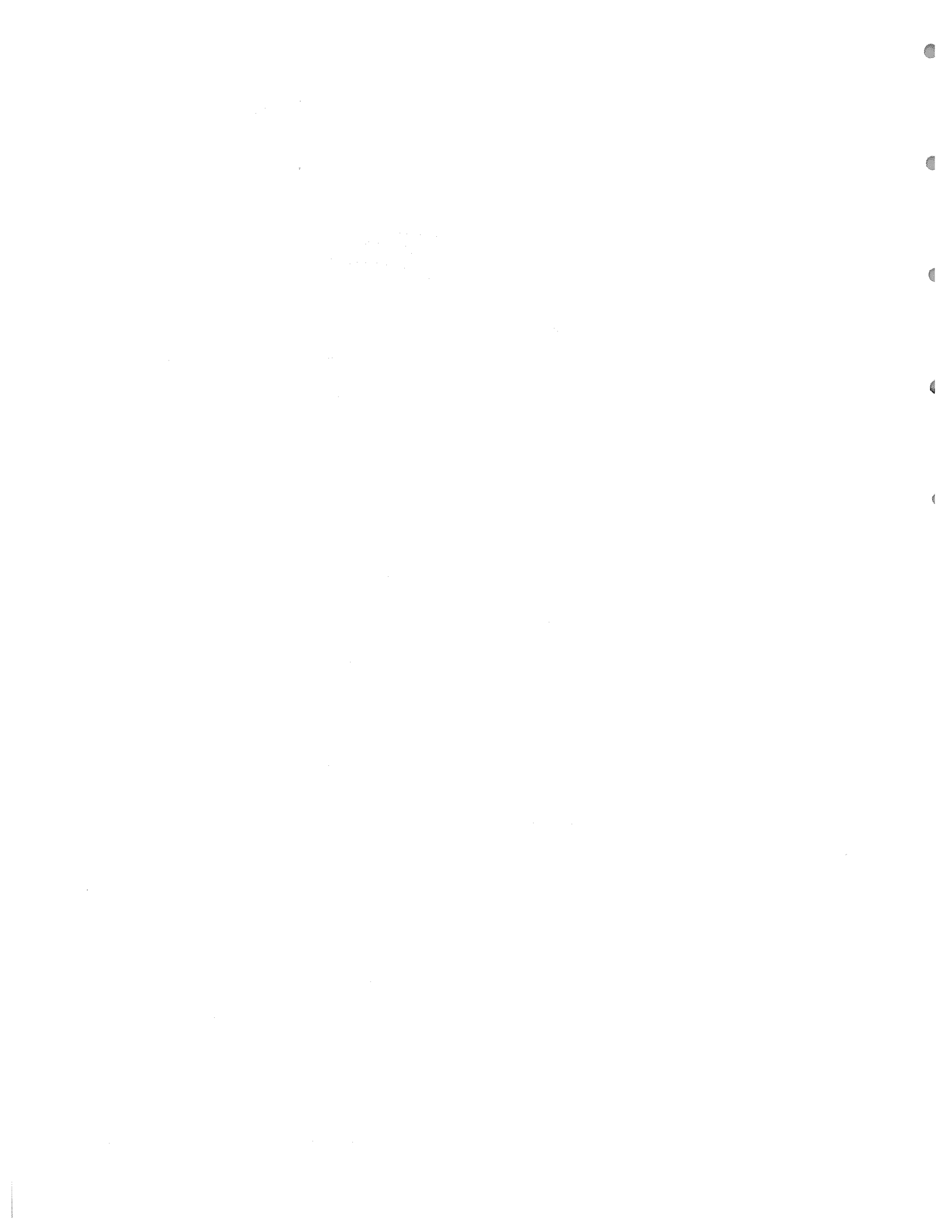
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RESPONSE TO THE QUESTIONNAIRE TO  
THE COMMITTEE OF BAR EXAMINERS

Senate Judiciary Committee Hearings, March 12, 1985  
Sacramento, California

QUESTION #1: What is the specific role of the Committee of Bar Examiners ("CBE") in the process of admitting attorneys to practice in California?

In California, admissions to practice law have been held to be an exercise as one of the inherent powers of the Court. In re Lacy (1938) 11 Cal.2d 699, 701. See California Constitution, Art.VI, Section 9. An attorney is an officer of the Court. Determining whether a person shall be admitted is a judicial function. In re Levine (1935) 2 Cal.2d 324, 328; Brydonjack v. State Bar (1929) 208 Cal.439 at 443.

The Committee of Bar Examiners is primarily responsible for the administration of the bar admission process. In re Admissions to Practice Law (1934), 1 Cal.2d 61, 67. The Committee operates as an administrative arm of the Court. Chaney v. State Bar of California (1967) 386 F.2d 962, 966; 57 Ops. Cal. Atty. Gen. 583, 584. Its purpose is to relieve the Supreme Court of the onerous duty of examining applicants for admission and to investigate their fitness. Spears v. State Bar (1930) 211 Cal.183, 191. Bar examiners are aids to the Court in the discharge of the duty of ordering admissions to the Bar. Brydonjack v. State Bar, supra, 208 at p. 446; In Re Chapelle (1925), 71 Cal. App. 129, 132.

The Committee has the power to (a) examine all applicants for admissions to practice, (b) administer the requirements for admissions to practice and (c) certify to the Supreme Court for admissions those applicants who fulfill the requirements. Business and Professions Code §§6046 and 6064; also see §§6060, 6060.5 and 6062; California Rules of Court, rule 957;\* Rules Regulating Admission to Practice Law in California, rule 1, §2.

Subject to the approval of the State Bar Board of Governors the Committee may adopt such reasonable rules and regulations as may be necessary or advisable for the purposes of making effective the qualifications for admissions. Business and Professions Code §6047. However, the Committee has only those powers which have been delegated to it by the Court or the Legislature. See In re Chapelle, supra, 71 Cal.App. at p. 133.

Actions of the Committee are subject to the review of the California Supreme Court. Business and Professions Code §6066; California Rules of Court, rule 952(c). The Committee's actions are merely recommendations and are not binding upon the Court. Siegel v. Committee of Bar Examiners (1973) 10 Cal.3d 156, 173; Greene v. Committee of Bar Examiners (1971) 4 Cal.3d. 189, 191; Bernstein v. Committee of Bar Examiners (1968) 69 Cal.2d. 90, 97; March v. Committee of Bar Examiners (1967) 67 Cal.2d. 718, 720; Hallinan v. Committee of Bar Examiners (1966) 65 Cal.2d. 447, 450; Spears v. State Bar, supra, 211 Cal. at p. 191.

Thus the Court has reviewed individual petitions of candidates for admissions to practice. Upon its independent review the Court may uphold the administrative determination of the Committee. See Greene v. Committee of Bar Examiners, supra, 4 Cal.3d. 189; Bernstein v. Committee of Bar Examiners, supra, 69 Cal.2d. 90; Konigsberg v. State Bar (1959) 52 Cal.2d. 769; Staley v. State Bar (1941) 17 Cal.2d. 119; Salot v. State Bar (1935) 3 Cal.2d. 615; Henderson v. State Bar (1934) 219 Cal. 696; Large v. State Bar, supra, 218 Cal. 334; Spears v. State Bar, supra, 211 Cal.183. The Court may reverse the Committee's determination. See Siegel v. Committee of Bar Examiners, supra, 10 Cal.2d. 156; Raffaelli v. Committee of Bar Examiners, supra, 7 Cal.3d. 288; March v. Committee of Bar Examiners, supra, 67 Cal.2d. 718; Hallinan v. Committee of Bar Examiners, supra, 65 Cal.2d. 447; Howdon v. State Bar (1929) 208 Cal.604; Brydonjack v. State Bar, supra, 208 Cal.439. The Court's power over the Committee is not limited to the review of individual petitions. The Court can undertake a general review of the entire examination and admission process. See In re Admission to Practice Law, supra, 1 Cal.2d 61.

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\*Rule 957 and Business and Professions Code §§6060, 6060.5 and 6062 charge the Committee with specific administrative functions relating to the admissions process, e.g. approval of colleges and universities for pre-law study, accreditation of law schools, registration and inspection of non-accredited law schools, etc.

QUESTION #2: Please describe the administrative structure of the Committee of Bar Examiners.

The Committee of Bar Examiners, composed of nine lawyers and two public members, is appointed by the Board of Governors of the State Bar of California. The public members of the Board of Governors choose the two public members of the Committee of Bar Examiners. The Board of Governors also designates those to be Committee Chair and Vice-Chair. The Committee's day-to-day activity is guided by the Rules Regulating Admission to Practice Law in California, which Rules can be amended only upon approval of the Board of Governors.

The Committee divides itself into six subcommittees designated as the Subcommittee on Operations and Management, the Subcommittee on Examinations, the Subcommittee on Moral Character, the Subcommittee on Petitions and Litigation, the Subcommittee on Educational Standards and the Subcommittee on Long-Range Planning. It is through these Subcommittees that the Committee oversees the total operations of the Committee in the execution of its three basic assignments; the testing for academic qualification, the examination of moral and fitness qualification, and the somewhat limited oversight of legal education. The gathering of decision-making data for the Committee is accomplished through a full-time staff of approximately fifty-five authorized positions. The staff is headed by an Executive Director and augmented by a Senior Administrative Assistant who serves as assistant to the Executive Director. The top level of management is comprised of a Director for Operations and Management and a Director for Examinations. Reporting directly to the Director for Operations and Management is the Assistant Director for Operations and Management-Fiscal Control. Reporting directly to the Director for Examinations is the Director of the Measurement Center, a person of high expertise in statistics and computer science. Attached as Appendix A is a staff organizational chart which displays the further breakdown of staff assignments and responsibilities. Special investigation in the examination of moral and fitness qualification is conducted by the Office of Trial Counsel of the State Bar of California, but under the direct supervision of the Committee's Subcommittee on Moral Character.

Law school oversight is channeled through a consultant (rather than an employee) who works almost full-time for the Committee.

The staff is augmented by part-time personnel. The examination readers, a changing cadre which includes many younger lawyers who are willing to follow the somewhat rigorous schedule of examination paper reading, number approximately 200 at one time. There are eight Reappraisers. This group has been selected over the years from the most experienced reader cadre. In addition to technical involvement in examination structure, the Reappraisers perform, in advance of score announcement, services which

approximate the appeal and examination review process of other jurisdictions that enjoy much smaller examinee populations.

Approximately 20% of all of the bar examinees in the United States and its territories are California bar examinees. This group is accommodated at approximately nine examination sites rather than one or two sites as is standard in most jurisdictions. For these reasons there must be retained a large number of temporary employees to proctor these examinations and process the resulting 104,000 answer booklets and 26,000 answer sheets per year, shepherding them through a triple-grading process.

The Committee also administers the First-Year Law Students' Examination. That examination is costly in development. The decreasing number of examinees in recent years has reduced overall administration costs but has increased the cost per examinee.

Twice each year the Committee, in organized fashion, takes a critical look at itself. The initiation of the self-analysis, generally speaking, generates within the Subcommittee of Long-Range Planning. It is a unique Subcommittee in that it has from time to time been successful in including persons of high expertise on its membership, such as former chairs of the Committee and chairs, former chairs and members of the Board of Managers of the National Conference of Bar Examiners. The Subcommittee has no power to act, but its recommendations do receive serious consideration by the Committee in its decision-making relative to major long-term issues.

The Committee's staff is housed in each of the State Bar buildings, one in San Francisco and one in Los Angeles, and maintains a smaller site known as the Measurement Center in San Mateo, California. It relies heavily upon electronic data processing and is "on-line" from the three sites to a contractor's mainframe in Berkeley, California.

Under Board of Governors' policy, the Committee's Executive Director answers to the Committee on all day-to-day operations, but is specifically charged with insuring full compliance with Board of Governors' policy relative to fiscal matters, personnel matters, contractual matters, and matters pertaining to the State Bar's Memorandum of Understanding with Local 250, SEIU, AFL-CIO/CLC.

The Committee receives its legal advice and, in matters of litigation, is represented by the Office of General Counsel of the State Bar of California.

The Committee must respond to both statutory mandates and the rules of the Supreme Court. In so doing, it is the agency that certifies to the Supreme Court those whom it finds qualified for admission to the bar of the State of California.

QUESTION #3: Please describe the relationship between the CBE and the following:

a) The State Bar of California

Business and Professions Code section 6046 provides that the Board of Governors of the State Bar may establish an examining committee having the power:

1. To examine all applicants for admission to practice law;
2. Administer the requirements for admission;
3. To certify to the Supreme Court for admission those applicants who fulfill the requirements of the State Bar Act.

Thus the State Bar Board of Governors creates the Committee of Bar Examiners and appoints its members. This Committee is principally responsible for administration of the admissions process.

Subject to the approval of the Board, the Committee may adopt such reasonable rules and regulations as may be necessary or advisable for the purpose of making effective the qualifications for admission (Bus. & Prof. Code § 6047).

The Committee's Executive Director answers to the Committee on all day-to-day operations but is specifically charged with answering full compliance with Board policy, relative to fiscal matters, personnel matters, contractual matters and other such matters. The Committee receives legal advice from and legal representation by the State Bar Office of General Counsel.

The Committee reports monthly to the Board Committee on Admissions and Discipline. Each month the Chair of the Board Admissions and Discipline Committee reports to the full Board. In addition, Board members serve as liaison to the Committee, attend its meetings and report regularly to the Board.

b) The Supreme Court of California

The relationship of the Committee to the Supreme Court of California is set forth in the response to Question (1), supra, pp. 1-2.



c) The California Legislature

Pursuant to statute (Bus. & Prof. § 6046) the Legislature has authorized the Board of Governors of the State Bar to establish a committee to carry out the State Bar's admission function. The Legislature has also set forth certain requirements that must be met by all applicants for admission to practice law. See Business and Professions Code section 6060 (general bar applicants) and section 6062 (out-of-state attorneys). These are minimum standards and the Court may adopt additional standards. Stratmore v. State Bar (1975) 146 3rd 887, 889.

d) The California accredited law schools

Business and Professions Code section 6060 (e) and (g) provide that applicants for admission must either graduate from a law school accredited by the examining committee, attend such a school for four years or study law in another approved manner for four years. Section 6060 subd.(g) provides that persons who attend a law school accredited by the Committee are not required to take the first year law student's exam. Rule XVIII of the Rules Regulating Admission to Practice Law in California contains the standards and procedures for a law school to obtain accreditation by the Committee. These standards are adopted by the Committee and approved by the Board of Governors pursuant to Business and Professions Code section 6047.

QUESTION #4: What is the cost of operating the CBE?

The Statement of expenditures for the Committee of Bar Examiners for the past five years is as follows.

<u>Year</u>	<u>CPI (A)</u>	<u>Expenditures in Historical Dollars</u>	<u>Expenditures in Constant Dollars</u>
1980	254.9	3,574,862 <sup>(B)</sup>	3,574,862 <sup>(D)</sup>
1981	294.0	3,684,548 <sup>(B)</sup>	3,194,510
1982	293.9	3,846,544 <sup>(B)</sup>	3,334,960
1983	307.3	4,089,823 <sup>(B)</sup>	3,392,073
1984	325.8	4,431,085 <sup>(C)</sup>	3,466,931

(A) San Francisco-Oakland Area

(B) Audited

(C) Unaudited

(D) Includes the cost for special sessions during the July 1980 examination.

- From what sources do you derive your funds for operations?

Taking 1984 experience as typical, sources of revenue are as follows:

Registration and Examination Fees	3,849,125 (90%)
Interest Revenue	208,026 (5%)
Other Revenue <sup>(D)</sup>	<u>228,775 (5%)</u>
	4,285,927 <sup>(E)</sup>

(D) Other revenue includes such items as grants, sale at cost of prior examinations and furnishing, upon request, customized certificates of admission, charges for processing insufficient funds checks.

(E) Rounded to nearest dollar.

QUESTION #5: The bar exam is supposed to measure minimum competency. How does it succeed in this respect?

- a) Are all competent applicants admitted?
- b) Are all non-competent applicants denied admission?

QUESTION #6: How is the bar exam determinate of the basic qualities an attorney must possess?

[NOTE: Question 5a and 5b and Question 6 are interrelated, and for this reason will be answered as one question.]

These two questions inquire about both the reliability and validity of the bar exam. In this context, reliability refers to the consistency with which the exam measures whatever it is that it is measuring. For instance, if the Committee of Bar Examiners (CBE) constructed two complete bar exams (e.g., one for July and one for February), how much would an applicant's chances of passing be affected by the particular exam he or she took? Validity refers to the degree to which the bar exam tests for the skills and knowledge an applicant must have in order to practice law competently. In other words, does the bar exam test for competency or does it measure something else? Data regarding the reliability and validity of California's bar exam are presented below:

Reliability. Reliability refers to the degree to which the exam would make the same pass/fail decisions about individual applicants regardless of which version of the exam they took (or who graded it). The two major factors influencing the reliability of the bar exam are the number of questions each applicant has to answer and, in the case of the written portions of the exam, the number of times each answer is graded. In general, the longer the test (i.e., the more questions asked), the higher its reliability. Reliability is related to test length because as more and more questions are asked, there is less and less chance that an applicant's total score is a function of a few lucky or unlucky guesses or of happening to study or not study a particular topic that is covered by one of the questions. Thus, a three-day bar exam produces a more reliable pass/fail decision than a two-day exam.

July 1984 data show that a two-day exam -- consisting of one day Multistate Bar Examination (MBE), one half day Performance Test (PT), and one half day essay (three questions) -- made the same pass/fail decisions in 88 percent of the cases as another two-day exam that was composed in the same way (but with a totally different PT problem and set of three essay questions). Applying standard statistical procedures to these data indicates that if applicants

sat for two California bar exams, each of which was three days in length, the pass/fail decisions made on one exam would agree with the decisions made on the other exam in well over 90 percent of the cases.

The foregoing analyses were based on data from a single reading of each applicant's essay and PT answers. However, there is ample evidence in both the general measurement literature and studies of past California examinations to indicate that the reliability of scores on a written portion of an exam increases when those scores are based on the average of two independent readings of each answer rather than just on reading. Because of this positive relationship between reliability and number of readings per answer, the CBE requires that all applicants have their answers read twice if their scores after one reading placed them near the pass/fail line. In this way, reader resources are concentrated on the applicants whose pass/fail status is in doubt which in turn increases the overall reliability of the pass/fail decisions.

Although the exam does not produce perfectly reliable scores, the scores it does produce meet or exceed generally accepted professional standards for important licensing and admissions tests. Analyses comparable to the ones described above indicate that bar exam scores are certainly far more reliable than law school grades. Moreover, to make bar exam scores (and the pass/fail decisions based on them) even more reliable than they are now would be impractical or threaten the exam's overall validity. For example, reliability could be increased somewhat if the exam was expended to five days or if it consisted entirely of two or three days of multiple choice questions. These considerations have led CBE to continue to use the present three-day (double read) format.

Validity. In order for a test to be valid (i.e., measure what it is supposed to measure) it must first be reliable. No matter how appropriate a test's questions may appear to be for a given purpose, the test cannot be valid unless the scores assigned are reliable (as they are on the bar exam). It does not mean that the test is valid. Thus, reliability is a necessary but not sufficient condition for validity.

There are a variety of ways of measuring an examination's validity. All of these methods begin by asking: What is the test supposed to measure? In the context of the bar exam, the answer to this question is generally "some of the abilities (skills and knowledge) that are essential to the competent practice of the law." The CBE does not claim that the bar exam measures all the skills that are needed for practice nor is a claim made that those who do especially well on the exam will be much better lawyers than those who just pass. Instead, the goal of the exam is to identify the applicants who have yet to master some of the basic skills and knowledge that are required for competent legal practice.

Law professors, judges, and other members of the bar as well as the general public might very well disagree as to how these basic legal abilities should be defined. But, even if their definitions differ, they still might agree on which applicants do and do not have the basic competencies (thereby making moot further debates on this topic). To paraphrase a classic legal criterion, 'they know it when they see it' even if they don't agree on how to describe it. For these reasons, empirical evidence of validity is given far more weight than subjective appraisals of test quality.

Empirical data on the validity of California bar exam comes from several sources. For example, there is a strong correspondence between law school grades and bar exam scores. Students with relatively high law school grade point averages (i.e., compared to their classmates) have a much higher passing rate on the bar exam than those with relatively low GPAs. Thus, whatever criteria the CBE is using to measure competence, the law schools must be agreeing with it because they rank order their students in much the same way as the CBE. This is illustrated in the following title:

Relationship Between Law School Grade Point Average  
and Passing The California Bar Examination Among  
First Time Takers at One ABA Approved California Law School.

Class Standing Based on Grade Point Average in All Required Courses	Percent Passing
Bottom 20%	47
Next to the Bottom 20%	68
Middle 20%	82
Next to the Top 20%	95
Top 20%	100

The percent passing in the top 20% of the class and in the next to the top 20% were both two times greater than the percent passing in the bottom 20% of the class.

Because of the very large differences in admission standards among even ABA approved law schools, a high GPA at one law school may result in the same passing rate as a relatively medium or even a low GPA at another school. And, this occurs even though within a school, there is close relationship between grades and bar exam scores. Thus, law school grades cannot serve as a proxy for bar exam scores.

Perhaps the best empirical study of the bar exam's validity was done five years ago. In that study, a group of almost 500 applicants not only took the regular bar exam, they also took a two-day Assessment Center type test. This test involved both written and oral tasks. On one day, the applicants served as counsel for the defendant in a simulated case and on another day, they served as counsel for the plaintiff in a totally different case. Professional actors who were specially trained for their parts played the roles of clients and witnesses for the oral tasks. An applicant's performance on an oral task was videotaped for later evaluation.

Two studies were done on the grades assigned in the Assessment Center. In the first study, an analysis was conducted of the degree to which the applicants who performed well in the very realistic Assessment Center case situations also did well on the bar exam. The results of this study showed that there was a very high, but certainly not perfect, correlation between bar exam and Assessment Center scores. This finding and other data led to the conclusion that the bar exam was measuring many but not all of the important skills that are required for legal practice. It was therefore decided to increase the bar exam's validity by expanding the exam to include a performance test section.

In the second study, an independent panel of 25 members of the bar (law professors, practicing attorneys, and judges) evaluated how well a sample of 18 applicants performed in the Assessment Center. This expert panel was split into six subgroups. Each subgroup spent two days evaluating the answers and videotapes of three applicants (without knowing how well these three applicants performed on the bar exam or what scores they received from the regular Assessment Center graders). After concluding this in depth analysis, each subgroup decided which if any of its three applicants demonstrated minimum competency to practice law. In other words, a subgroup could pass one, two, or all three of its applicants.

An analysis of the panelists' evaluations of the relative performance levels of the 18 applicants showed that these evaluations corresponded very closely with both the grades assigned by the regular Assessment Center graders and the scores these applicants earned on the bar exam. Moreover, the panelists' judgment of where the pass/fail line should be drawn (i.e., as indicated by the bar exam scores of the applicants they passed versus failed) corresponded to an examination difficulty index of 143; i.e., the same pass/fail line as is used on the bar exam. Thus, not only does the bar exam make very similar relative judgements about applicant abilities as a much more in depth, expensive, comprehensive, and performance based measure of legal skills; but the bar exam also puts the pass/fail line in the same place.

Other studies that bear upon the bar exam's validity have shown that scores on all three parts of the exam are not biased against minority groups, that the problem situations in the questions

posed to the applicants are realistic and material to the practice of law, that the subject matter areas covered are appropriate, and that the difficulty of the exam has remained relatively constant across administrations. Variations in passing rate can be explained largely in terms of fluctuations in applicant ability (such as between February and July) and differences in how well applicants are prepared to take the various parts of the exam.

In summary, whatever abilities the bar exam is measuring, they are the same ones that law professors and other members of the bar consider important for basic legal practice. Moreover, the bar exam measures these abilities as reliably and fairly as seems possible given the testing time and other resources that can be devoted to this task. This does not mean that the test cannot eventually be improved. It is just that right now, it is reflecting the level of exam quality that is consistent with the state of the art in licensing testing.

It should be noted that the bar exam does not test for many of the qualities that would help predict whether an applicant would function well as a lawyer, e.g., maturity, common sense, oral skills, attentiveness to client concerns, and integrity.

QUESTION #5: (Continuation)

- c) Please provide a list of the substantive changes to the actual bar examination that have been made since 1970 (e.g., the performance section was added to the July 1983 examination).

Attached is Appendix B, a document entitled "Changes in the California Bar Examination, 1977-82." The major substantive changes to the exam have been:

Addition of the MBE, 1972

Reduction of essay questions,  
15 to 12, 1974  
12 to 9, 1979  
9 to 6, 1983

Addition of a separate test of professional responsibility, 1975

Addition of performance tests, 1983



QUESTION #7: Are there alternative methods which may measure competency in a better, more accurate way?

- Historically, have there been any other measures of competency? If so, why have they been done away with?

Historically the bar exam has taken many forms. When applicants were few in number, oral tests were the norm. Written tests assumed their major role when it became impractical to examine orally the increasing number of aspiring lawyers.

One alternative method of testing was the Assessment Center approach. The major problems with this approach are cost, bias (when oral tasks are used), test security, and standardization. The average cost per applicant in the Assessment Center was probably in excess of \$500 when one considers test development, equipment, actors, scoring, etc. Bias can be introduced whenever the person doing the grading can see the applicant as distinct from just evaluating an applicant's work products. Test security and standardization are related to each other in that both go to the issue of fairness. An exam should not be more difficult for one applicant than it is for another. However, it is not possible to test all applicants on the same day with an assessment center, and thus, to maintain security, we have to use different tests on different days which in turn reduces standardization and thereby fairness. All of these issues also are related to internship type programs and oral tests.

QUESTION #8: Please describe the appeals process for complaints regarding the administering and grading of the exam?

- How many appeals, on average, are there after an administration and grading of the examination?
- How large a staff do you have to process the appeals?

Bar applicants who wish to make specific complaint on formal request to the Committee regarding the administration or grading of the examination or regarding other matters are provided with a copy of Instructions and Information Relating to the Petitions Process (Appendix C). When they have filed their petition in accordance with these requirements, the petition is referred to a petition analyst.

Petitions are reviewed daily. The petitions analyst "logs" the receipt of all petitions, reviews every petition and identifies inadequacies (not verified under penalty of perjury, required supporting documents not included), or in-house investigation which must take place. The analyst corresponds with the petitioner, advising of any deficiencies and of the date of the meeting at which the petition will be considered. The petitions analyst also performs all in-house investigation, discusses substantive questions with appropriate staff members and reviews documents, policies, and computerized records to secure all information relating to the petitioner's unique plea.

Processing the petitions requires that the petition and supporting documents be organized in a standard format to be reviewed by the Committee. The format is designed for easy access by the Committee to easily know the relief sought, applicable rules and policies, facts, applicable precedents, and the result of any investigation undertaken by staff. Staff's final charge is to research Committee precedents and report them to the Committee.

All petitions are then reviewed by the Subcommittee on Petitions and Litigation composed of members of the Committee of Bar Examiners. The petitions are forwarded to that Subcommittee two weeks prior to a regular Committee meeting. A telephone conference call is arranged the week prior to the Committee meeting during which the Subcommittee with appropriate staff discusses in detail all petitions. Any petition which the Subcommittee determines to grant is deemed granted and the petitioner is so advised immediately. The Committee may also recommend denial or defer for further discussion by the entire Committee. Such recommendations are considered and acted on by the full Committee at its next meeting. Petitions for which the Subcommittee wishes a full Committee discussion generally involve policy items. The petitions analyst prepares a list of these recommendations and forward it and the petitions to the full Committee.

During the regular committee meeting, the recommendations of the Subcommittee for all petitions, is considered prior to final action by the Committee and that action is communicated to the Petitioners usually no later than the Thursday after the adjournment of the regular meeting. Petitioners may also telephone the Committee's office on Monday following the meeting to gain knowledge of the Committee's action.

Thirty to fifty petitioners are considered each month. Not all these relate to the bar examination. In a typical general bar examination cycle, the Committee reviews an average of 80 exam-related petitions -- requests for special accommodations, complaints regarding a site, reconsideration of grades, etc. Following the release of results for each examination, the Director for Examinations receives and responds to approximately 100 requests for reconsideration of grades.

QUESTION #9: In your opinion, what are the factors responsible for the abysmal bar passage rate of 41.8% from this past July's examination?

- Do you foresee ways by which the declining bar passage rate could be turned around?

Attached as Appendix D is an analysis of the July 1984 examination prepared for the Committee by Stephen P. Klein, Ph.D., the Committee's Statistical Consultant. This is on file with the Supreme Court as part of the Committee's semi-annual report filed with the Court (Bar Misc. 4718). Discussion of the relative difficulty of the July 1984 Bar Examination is contained on pages 11, 12. In his conclusion, Dr. Klein states:

"Analyses of the July 1984 exam indicated that it was no more difficult (in terms of the questions asked or the leniency with which the answers to them were graded) than were previous July exams. However, applicant scores on all three sections (MBE, Essay, and Performance Test) were below the averages on these sections in prior years (see Table 13).

"A comparison of the July 1983 results with the July 1984 data revealed that the large drop in the percent passing between these two years was due to a sudden and marked decline in MBE scores. Because the MBE portion of the exam is objectively scored, this decline could not have been due to any increase in grading standards. Thus, it was apparently due to the July 1984 California applicants being less well prepared to take the MBE than previous groups of California July applicants.

"The grading of the Essay and PT written answers was only slightly less reliable than the grading of these answers on the July 1983 exam. However, both the Essay and PT total scores continued to maintain an adequately high level of reliability given that they are combined with the MBE in making pass/fail decisions.

" In terms of average scores, applicants did better on the MBE than on the PT; and better on the PT than on the Essay. This relationship held for all four of the largest racial/ethnic groups taking the exam (Anglo, Asian, Black, and Hispanic). Thus, no group was especially hurt or helped by the inclusion of a particular section. After controlling for differences in the relative difficulty of the sections, male applicants tended to score higher than females on the multiple choice sections of the exam whereas females tended to score higher than males on the written sections."

Furthermore, as the CBE has observed in the past, first-time takers from ABA-approved law schools did far better than those graduating from state-accredited and unaccredited law schools (60% pass rate for ABA applicants as compared to 29% and 21%, respectively). The continuing presence of repeaters also operates to affect adversely the pass rate: out of 1,864 repeaters with more than two exams, only 13% passed in July 1984. California has extremely liberal policies regarding access to the exam -- it is the only state to allow all five entry routes, via ABA-approved school, state-accredited school, unaccredited school, correspondence study, law office and judges' chambers study. It also poses no limit to the number of times an applicant may sit for the exam, which results in repeaters being counted in the failure statistics over and over again. As a result of such policies aimed presumably at extending greater opportunities to take the exam, the California pass rate has generally been lower than that of other large or comparable jurisdictions, which restricts access to ABA graduates and/or limit the number of times a repeater may take the exam.

QUESTION #10: Why is the passage rate on the attorneys' bar examination continually low?

- Why not allow those who pass the bar examination in another state to be admitted on motion in California so long as they achieve a score on the multistate bar examination equal to, or superior to, the California standard?

The pass rates for attorneys taking the California bar exams are as follows:

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	Attorneys Taking Attorneys' Exam			Attorneys Taking General Bar			TOTAL ATT'YS PASS %	OVERALL PASS %
	Take	Pass	%	Take	Pass	%		
7/84	143	46	32.2	567	254	44.8	42.3	41.8
2/84	125	57	45.6	520	242	46.5	46.4	29.5
7/83	126	59	46.8	584	271	46.4	46.5	49
2/83	144	38	26.4	598	273	45.7	42	27.7
7/82	141	37	26.2	515	208	40.4	37.3	47.5
2/82	160	55	34.4	545	269	49.4	46	31.4

---

There are two main reasons why the Committee does not allow persons who have passed the bar in another jurisdiction to be admitted to practice in California so long as they have attained a multistate bar exam score equal to or greater than the California standard. First, the Committee has never taken the position that the MBE alone is a complete enough measurement tool in determining minimum competency to practice law. On the contrary, the Committee believes that written skills, the ability to organize, to weave the facts in with the law, and to show how one has reached a certain conclusion, should be tested in a bar exam. Consequently, the Committee's long standing rules dictate that both the California General Bar Examination and Attorneys Bar Examination contain a written exam. (See Rule XI, § 114 and Rule XII, § 121.)

Second, the Committee would be waiving certain California law subjects (i.e., wills, trusts, community property and corporations) by adopting the above approach, which would be both undesirable and unfair.

QUESTION #11: Why was the practice of allowing a bifurcated passage of the bar examination (i.e., passage of part of the examination at separate administrations of the examination) discontinued?

Bifurcation was introduced with the July 1978 bar examination in order to grant applicants the chance to pass the test in sections rather than in one sitting. Thus, if an applicant received a passing score on the MBE and within the next 21 months obtained a passing score on the essays, the applicant would pass the exam. The Committee of necessity had to maintain score records throughout the 21-month period to determine whether bifurcation had operated to pass each applicant.

With the advent of the performance test on the July 1983 bar exam, the picture changed. Since the exam now had three parts -- MBE, essays and performance test -- allowing applicants to pass in multiple sittings as opposed to a single administration meant that trifurcation was required. The Committee lacked the computer capability to record and retain three scores for each applicant over four administrations of the test.

In addition to the administrative barrier, the Committee reviewed data revealing that bifurcation actually benefitted a very small percentage of applicants. The popular conception that it was easier to pass over the course of more than one exam administration was not borne out by the facts. The applicant who takes the entire exam all at once may pass the test even if he or she did poorly on one section, because the other section's score brought the total points up to the passing score.

Studies showed that applicants were not passing the examination by taking it in sections. That is, most applicants passed by their combined, total scores, using extra points on one part of the exam to make up for what would otherwise have been a failing score on the other part. For example, of the 3,366 who passed the July 1982 examination, only 77 passed as a result of a prior section pass. Secondly, with the addition of the performance test, it would have been administratively impossible to allow applicants to pass each of the three portions separately. Maintaining three scores would have strained the capacity of the computerized data base, swelling it by 50%. Cross-checking against prior scores and pulling additional books for regrading would have created delays at each step of the grading process. The cost would have been prohibitive and unfair in that all would have had to pay for a procedure that was benefitting only a few. Finally, the delay in release of results would have been 4-6 weeks, a delay the Committee deemed unacceptable.

QUESTION #12: How are bar exam readers (i.e., graders) chosen; trained and evaluated?

Attached as Appendix E is a copy of the recruitment letter sent to bar associations in California last May. Readers must have passed the California exam on the first two attempts and must have been in practice at least one year. In selecting readers, the Committee considers law school record and prior experience in grading exams; the Committee strives for diversity among its readers. The current pool of about 150 readers is 50% female and about 14% minority, and most have been reading more than five years. For each examination, there are 12 experienced readers and 3 apprentices for each question. All readers are evaluated by their supervising reappraiser at the close of each grading cycle.

Under the apprentice reader program, new readers attend an orientation session, write an analysis of the question to which they are assigned, and attend all calibration meetings. They do not actually grade books unless a vacancy arises. This program builds back-up into the system, expands the pool of available readers, and allows the Committee to test the abilities of new readers before actually using them to grade an examination.



QUESTION #13: Please explain why the so-called "Wisconsin approach" to bar admission would not be appropriate in California.

- Would the "Wisconsin approach" be appropriate for those who graduate from an American Bar Association approved school? A California accredited school?

Wisconsin's "diploma privilege" allows applicants who have successfully completed a legal education at the University of Wisconsin or Marquette to be admitted to practice without taking a bar examination. Graduation from one of those institutions is not automatic admission to the bar, however; one must meet the requirements of Wisconsin's rules, including taking specific courses and earning a minimum grade average. In effect, Wisconsin's admitting authority necessarily supervises legal education and failure to exercise strict supervision would mean that the law schools, not the Supreme Court, would be determining through their admission processes who can practice law in California.

In 1984, Wisconsin admitted 442 by diploma, 141 on motion (attorneys in practice three of last five years), and 183 by examination. West Virginia is the only other state that admits in-state ABA graduates without examination; Mississippi, Montana, and South Dakota have eliminated the practice.

In considering such a proposal for California, differences between Wisconsin and California should be noted: Wisconsin has 442 ABA graduates attending two schools; California tests 5,815 ABA graduates from 16 schools. It is also worth noting that Wisconsin's examination standards are significantly lower than California's: Wisconsin requires an MBE score of 125, while California's pass level is approximately 140.

For further information regarding Wisconsin's rules for admission, the Committee may wish to contact Erica Moeser, Director of the Board of Attorneys Professional Competence, 110 E. Main Street, Room 623, Madison, WI 53703. Ms. Moeser may be contacted at (608) 266-9760 and has indicated she would be pleased to comment further on this issue.

QUESTION #14: What are the merits of requiring that trial attorneys and non-trial attorneys take and pass the same examination?

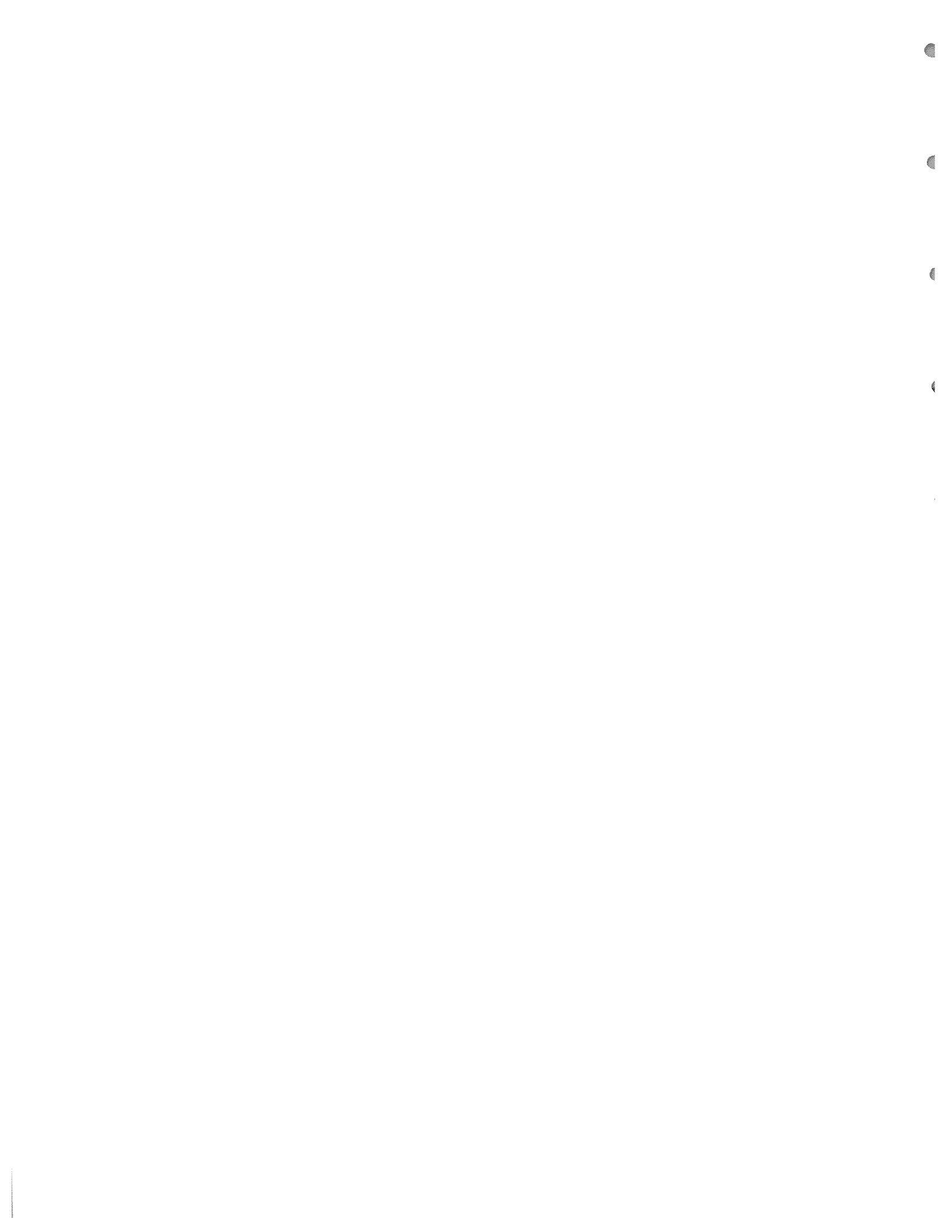
- Please evaluate the relative merits/demerits of reforming our current system to allow for two different classifications of attorney - e.g. - trial attorneys and non-trial attorneys.

The State Bar Board of Governors has appointed an Interim Commission to the Consortium on Lawyer Competence and Legal Education for the purpose of studying and recommending possible modification in legal education and training. The use of internships for training lawyers is one of the items that has been expressly referred to this Commission for study and report. Although not presently being considered by the Commission, the double track system of practice suggested by the question could also be studied. However, at the present time the Commission has provided no report or recommendations.

Commenting specifically to the suggestion that the bar be bifurcated into trial attorneys and non-trial attorneys we do note the following.

The practice of law has traditionally enjoyed broad scope. In many small or rural communities a general practitioner can meet all or most of that population's needs. Even in urban areas, one of the attractions of the profession is the potential for opening up one's own office and handling whatever client problems walk in the door. A system requiring applicants or existing attorneys to choose whether they will undertake trial work or not may be both discriminatory and unworkable. Would all present lawyers be grandfathered in? After all, they were certified and admitted without restriction. Yet if the goal of the "barrister/solicitor" system is to improve the quality of legal services, they should be included in the new form of testing also.

Furthermore, how would the two-tiered exam be devised and administered? The English model presupposes many educational and training experiences alien to American legal education and bar preparation. The sheer volume of California applicants makes it difficult to design and carry out a reliable and valid means of administering an internship/clerking program for would-be "barristers" by the Committee and a separate exam for aspiring "solicitors" at a cost that can be borne by the applicants.

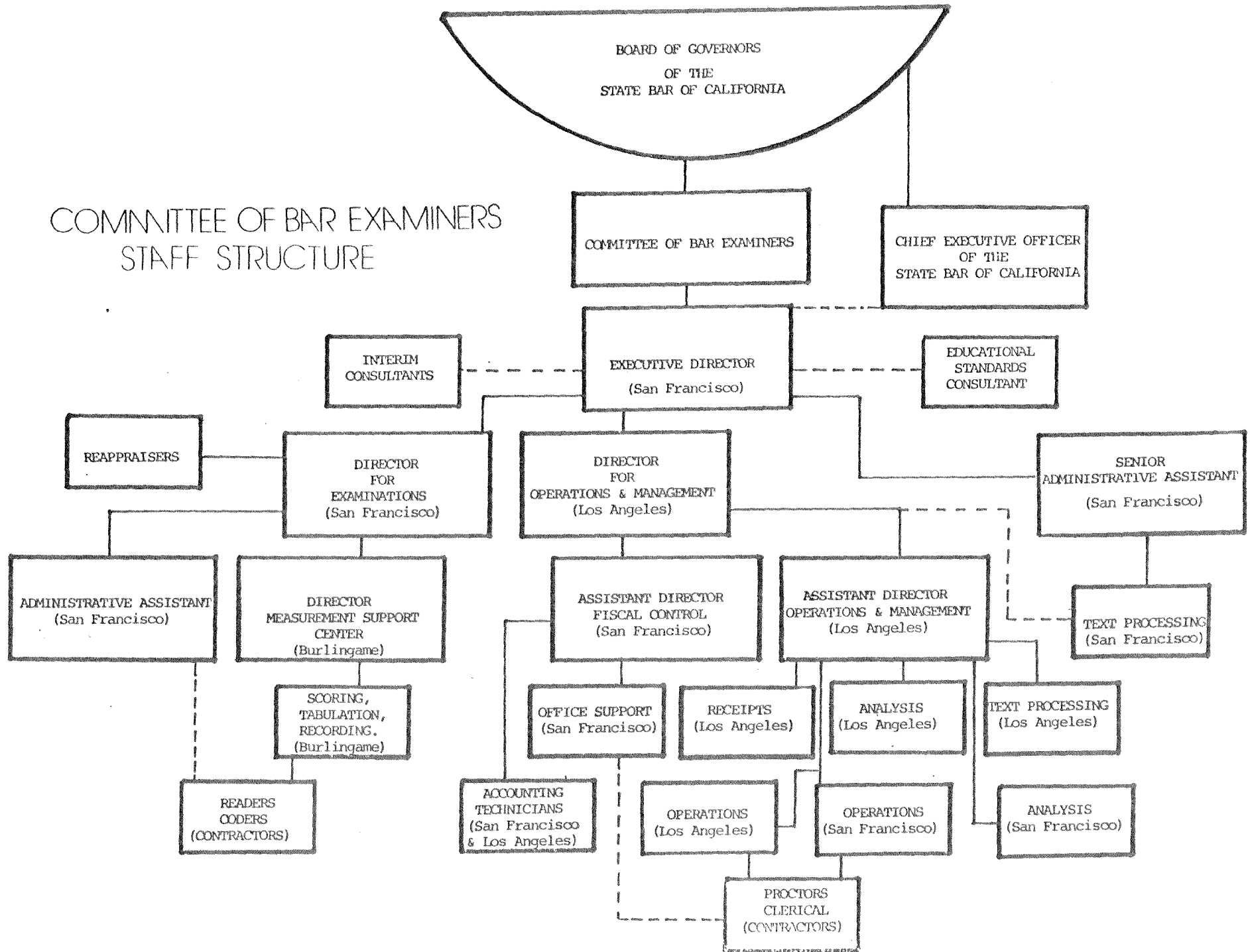


APPENDIX A



BOARD OF GOVERNORS  
OF THE  
STATE BAR OF CALIFORNIA

COMMITTEE OF BAR EXAMINERS  
STAFF STRUCTURE





APPENDIX B





# THE COMMITTEE OF BAR EXAMINERS

OF THE STATE BAR OF CALIFORNIA

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## CHANGES IN THE CALIFORNIA BAR EXAMINATION, 1977-82

### Content and Scope of the Examination

The California Bar Examination consists of two sections. The Multistate Bar Examination (MBE) is a 200 item multiple-choice test covering six topics: Constitutional Law, Contracts, Criminal Law, Evidence, Real Property, and Torts. The Essay Examination covers twelve subjects: The six included in the MBE; and Civil Procedure, Community Property, Corporations, Remedies, Trusts, and Wills.

Beginning in July 1983, the examination will consist of three parts: a six-question essay test, the MBE, and two performance tests. The performance tests will include multiple choice questions, analytical writing (such as a memorandum to a senior partner), and, in addition, persuasive writing (such as an appellate brief or memorandum of points and authorities).

Applicants will be provided a mini-library of the cases and statutes on which they are to base their answers. Thus, for this portion of the examination, they will not be tested on knowledge of specific legal rules. The facts in each performance test will be presented in the form of memoranda, interview notes, documents, and transcripts.

Analytical and other lawyering skills will be tested in practical, real-life situations, requiring the applicant to deduce applicable principles from decisional and statutory materials and to apply them to facts similarly extracted from actual sources. In subsequent examinations, the performance tests may include other tests of practical skills, such as drafting opening statements and closing arguments and negotiating settlements.

The examination has been administered over a three-day period, twice a year, in February and July, for the last five years. The MBE is given in two three-hour sessions, and the Essay Examination has varied from three to four three-hour sessions. In 1974, the number of essay questions was reduced from fifteen to twelve. In 1979, applicants were required to answer nine of twelve questions, and in

1980, the "optional questions" were deleted, so that applicants are now required to answer all nine questions given.

During 1979 and 1980, applicants had sixty minutes to answer each essay question. In 1982, applicants were given ninety minutes to answer four of the nine essay questions. A comparison of applicant performance on sixty and ninety minute questions determined that scores did not improve with the extra time.

The Spring 1983 examination will consist of the MBE and nine sixty-minute essays. Beginning in July 1983, applicants will have three hours to answer each set of three essay questions, six hours for the MBE, and three hours for each performance test.

When the MBE was incorporated into the 1972 California Bar Examination, it was weighted 30% of the total. In 1979, the respective weight accorded to the essay and MBE sections was changed from 70%-30% to 60%-40%. The total possible score on the three parts of the new examination will be 1800 points: 600 points essay, 600 points MBE, and 600 points performance tests.

Since 1975, applicants have been required to pass a separate test in Professional Responsibility (MPRE).

#### Methods of Passing the Examination

Prior to 1977, applicants were required to take both parts of the examination in a single administration. Scores were combined, and a total of 70% was required for passing.

In 1977, the Committee determined that applicants should be allowed to pass the sections separately. An applicant could elect to take only the MBE or only the Essay Examination and be deemed to have passed if scores of 70% on each portion were earned within four consecutive administrations of the examination. Scores on the two sections are combined only when taken at the same administration of the exam.

Additionally, an applicant could transfer a passing score on the MBE earned in another jurisdiction and be required to pass only the essay portion of the California exam.

An attorney from another jurisdiction in the United States who has been in practice for four of the last six years may be admitted in California by passing the Attorneys' Examination, which has consisted of the essay portion of the General Bar.

Beginning in July 1983, applicants will be required to take and pass the entire examination at the same administration. The parts of the exam may not be taken separately, and California will no longer accept transfer of MBE scores. The passing score will be 1260 (70%).

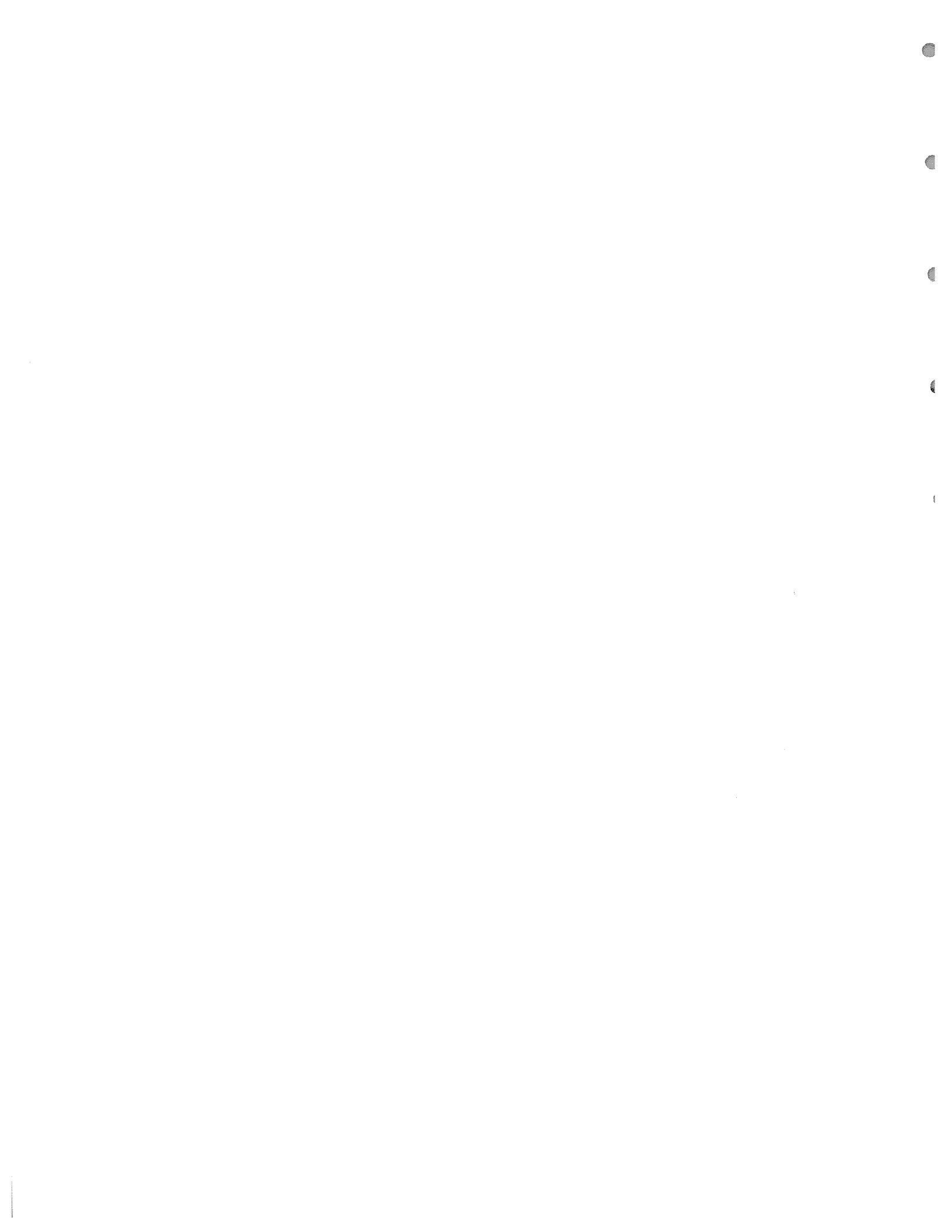
The Attorneys' Examination will consist of the six essay questions and two performance tests; it will be administered during two full days. The passing score will be 840 (70%).

Those applicants who achieved a passing score on either the MBE or the essay portion of the bar examination between February 1982 and February 1983 will be entitled to pass the total examination in accordance with the Committee's former Alternative Methods policy, as amended. That is, an applicant who earned a passing score on one portion of the examination will be deemed to have passed the entire exam if a passing score is earned on the balance of the exam within the following three administrations of the examination. An applicant who earned a passing score on the essay examination will be required to take and pass the MBE. An applicant who earned a passing score on the MBE will be required to take and pass all non-MBE portions of the examination.

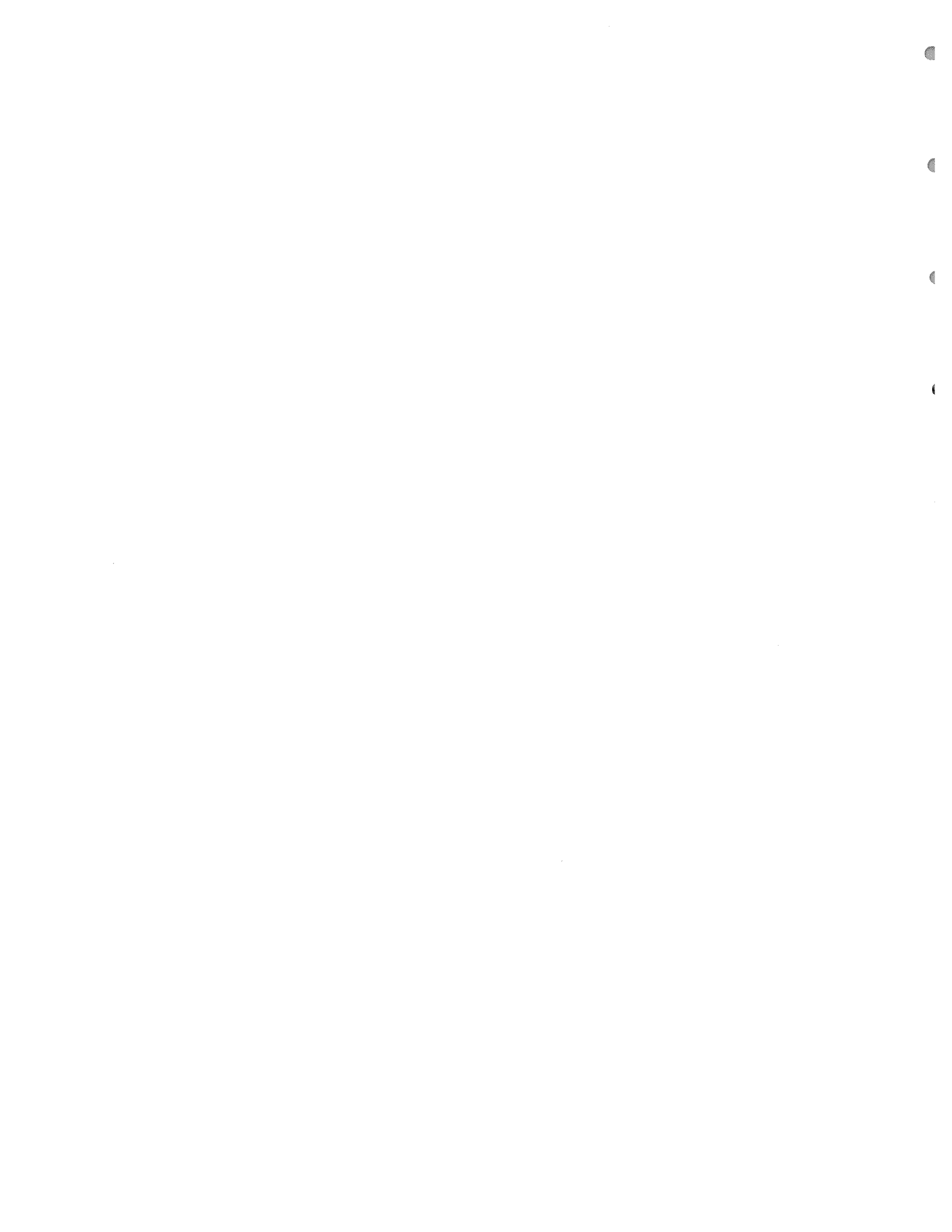
#### Grading the Examination

In 1972, the California Bar Examination was administered to a total of 5,646 applicants, and three readers were employed to read each essay question. By 1978, the number of applicants had grown to 11,727, and nine readers were required for each question. Reliability studies conducted in 1977 concluded that it was possible to identify with a high degree of accuracy (over 99.5%) a substantial number of applicants who would pass the examination as a whole by use of the applicant's MBE score and the grades received on the answers written on only three of the essay questions. These studies resulted in the implementation of a phased grading system which focuses resources on those applicants whose scores are closest to the pass/fail mark.

In Phase I, an applicant's scores on three essay questions are combined with the applicant's MBE score. A high total results in a pass, and that applicant's remaining six books are not read. The remaining books of those who do not pass in Phase I are read in Phase II; the total for the nine essays plus the MBE is calculated and those above 71% pass while those below 67% fail. Those applicants remaining have all nine of their essays read a second time in Phase III. Those whose averaged scores are 70% or above pass, while those who fall within 20 points of passing have all nine of their essays reviewed a third time by a member of the Board of Reappraisers.



APPENDIX C



# THE COMMITTEE OF BAR EXAMINERS

OF THE STATE BAR OF CALIFORNIA

1230 WEST THIRD STREET  
LOS ANGELES 90017  
Telephone (213) 482-4040

MEASUREMENT SUPPORT CENTER  
SUITE 160  
1300 OLD BAYSHORE HIGHWAY  
BURLINGAME 94010



555 FRANKLIN STREET  
SAN FRANCISCO 94102  
Telephone (415) 561-8300

MAILING ADDRESS:  
POST OFFICE BOX 7908  
SAN FRANCISCO 94120

## Instructions and Information Relating to the Petitions Process

### GENERAL INSTRUCTIONS (APPLICABLE TO ALL PETITIONS)

- A. Rulings regarding the applicability of the Rules Regulating Admission to Practice Law in California or The Business and Professions Code to individual situations may be obtained through petitions to the Committee of Bar Examiners (the "Committee"). However, the Committee cannot waive the requirements of the Business and Professions Code.
- B. Petitions for fee refunds of less than \$31.00 or for reconsideration of examination grades will not be accepted or considered. (Copies of the Committee's policy regarding requests for further consideration of grades are available upon request.)
- C. Petitions must be submitted upon forms available at the Committee's offices. Supporting documents should be attached. Petitions exceeding 5 (8½"x 11") pages must be filed in the original with 17 copies. (Transcripts and Certificates of Good Standing need not be considered as a portion of the 5-page limit.) EVERY ITEM ON THE FORM MUST BE COMPLETED. For each item that does not apply, enter in that particular space the letters "N.A." (not applicable). PETITIONS MUST BE TYPED OR LEGIBLY HAND PRINTED.

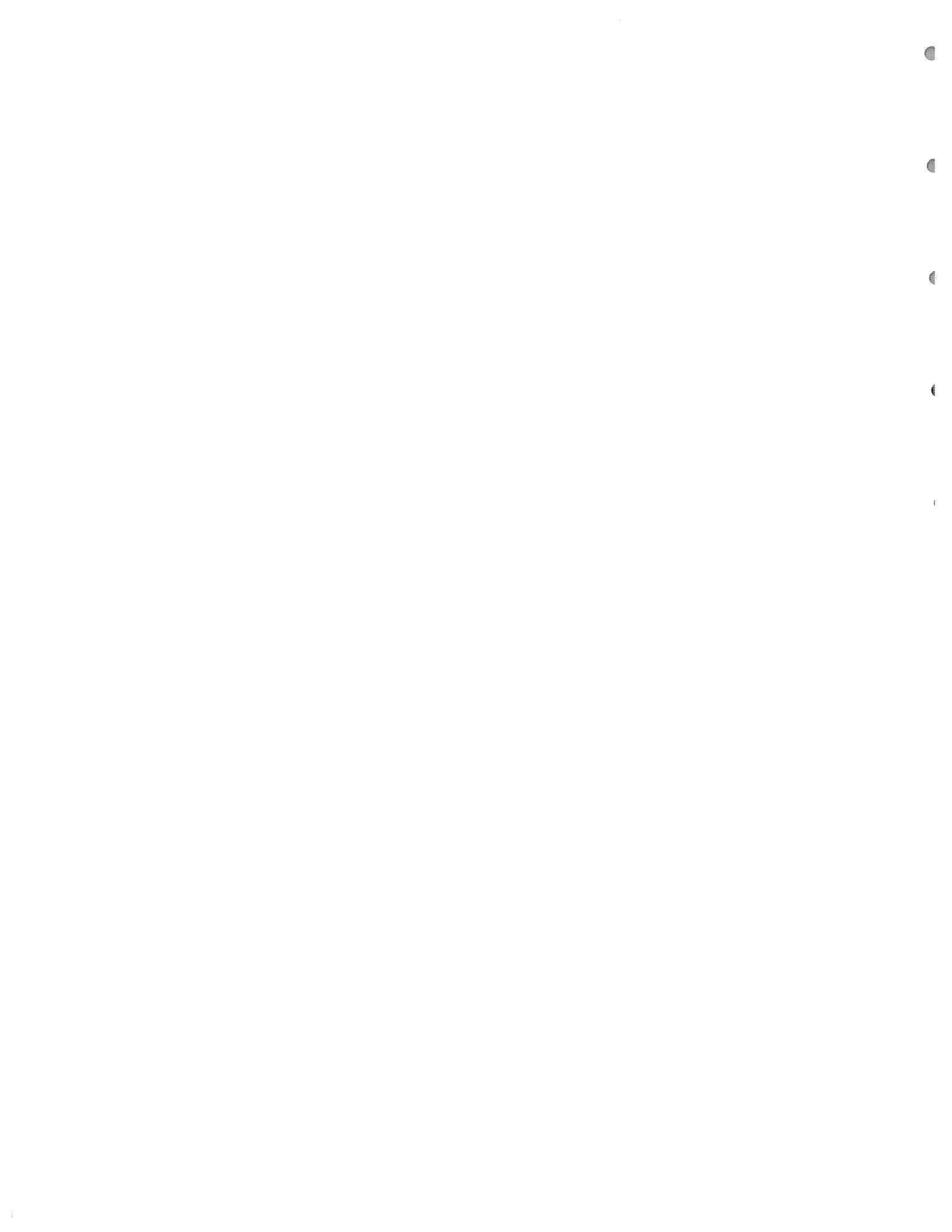
Each petition must display the petitioner's: (1) NAME, (2) ADDRESS, (3) ZIP CODE, (4) HOME AND BUSINESS TELEPHONE NUMBERS, (5) STUDENT REGISTRATION NUMBER. A SELF-ADDRESSED STAMPED ENVELOPE MUST BE INCLUDED WITH EACH PETITION for use by the Committee in confirming receipt of the petition in complete form.

- D. SUMMARIZE THE NATURE OF THE RELIEF BEING SOUGHT. A space is provided on the petition form for this purpose, and additional sheets of paper may be attached if needed.
- E. As specified under the provisions of Rule I, Section 14, of the Rules Regulating Admission to Practice Law in California (the "Rules"), all petitions must be verified or made under penalty of perjury in accordance with Code of Civil Procedure Section 2015.5.



- F. The Committee processes petitions on a monthly cycle which must be strictly enforced to insure timeliness of response to the very large numbers of petitioners. It is each petitioner's responsibility to learn the monthly deadlines through inquiry at either of the Committee's offices. Petitioners will usually receive written notice of the Committee's ruling within one work week from the adjournment of the Committee meeting at which the petition was considered.
- G. INQUIRIES REGARDING PETITIONS OR ANY OTHER SUBSTANTIVE MATTER SHOULD BE IN WRITING. The staff is not permitted to discuss petitions in the absence of the full file. Since examinees exceed 12,000 per year, the recovery of individual files is a time-consuming process and they cannot be discussed by telephone.
- H. The address for the Credentials Evaluation Service of the International Education Research Foundation, Inc. is Post Office Box 24679, Los Angeles, California 90024, and the telephone number is (213) 475-2133.
- I. PETITIONS NOT FILED IN COMPLIANCE WITH THESE INSTRUCTIONS WILL BE RETURNED WITHOUT ACTION.

APPENDIX D



## ANALYSIS OF THE JULY 1984 EXAM

Stephen P. Klein, Ph.D.  
GANSK & ASSOCIATES

February 11, 1985

## INTRODUCTION

The July 1984 exam had three sections: the 200 multiple choice item Multistate Bar Examination (MBE), a six question Essay test, and a two problem Performance Test (PT). Each PT problem had two parts, written and multiple choice. This report summarizes analyses that were conducted with the 7,201 applicants who had scores on all parts of all three sections.

The exam was administered on three consecutive days. Day 1 consisted of essay questions 1 - 3 (3 hours) and PT problem A (3.5 hours). Day 2 was devoted to the MBE (two, 3-hour sessions). Day 3 consisted of essay questions 4 - 6 (3 hours) and PT problem B (3.5 hours).

A three phased grading process was used to determine an applicant's pass/fail status. In Phase 1, applicants were classified into two groups, pass and continue, based on the sum of their MBE score, PT multiple choice scores, and scores on two randomly selected essay questions. In Phase 2, applicants in the continue group had their two PT written answers and the remaining four of their essay answers read. The sum of an applicant's MBE, PT, and Essay scores was then used to place applicants into three groups: pass, fail, and continue. In Phase 3, the "continued" applicants had all their PT written and Essay answers graded again by readers who had not graded these answers previously. If after the second complete reading an applicant came close to passing but failed, then that applicant had all of his/her scores and answers reviewed by a member of California's Board of Reappraisers. Eight repeaters had their phased grading and pass/fail decisions affected by passing a section of the exam under California's old bifurcation rule.

The July 1984 exam differed from the July 1983 and February 1984 exams in that all applicants had their essay and PT written answers read at least once; i.e., regardless of whether or not they passed in Phase 1. This procedure did not adversely affect any applicant's pass/fail status because none of the additional readings was used in making Phase 1 decisions. Except when specifically noted otherwise, the analyses presented in this report use all of the applicants' essay and PT written scores.

## OVERVIEW

The remainder of this report provides information about each of the exam's sections and subsections, the relationships among the sections, and the implications of these relationships for reducing the length of the exam. The report also discusses the July 1984 phased grading process, the impact of some alternatives to it, and whether the unusually low July 1984 passing rate was primarily a function of changes in applicant ability or changes in examination difficulty. The last section contains a summary of the findings.

## MULTISTATE BAR EXAMINATION (MBE)

Table 1 shows that with the exception of Criminal Law and Torts, the average score of California applicants on an MBE subtest was comparable to the national average on that subtest. California's average total raw score (the average number of questions answered correctly) was 1.62 points higher than the national average, primarily as a result of the higher than average Criminal Law and Torts scores.

The National Conference of Bar Examiners (NCBE) and ACT scale the raw total scores on the MBE in order to adjust for possible differences in average question difficulty across administrations. California converts these scale scores to a 600 point scale by multiplying the constants in the NCBE/ACT formula by 3. The formulas used to convert raw total MBE scores to NCBE/ACT and California scale scores appear below:

$$\text{NCBE/ACT MBE Scale} = (0.8653)(\text{raw}) + 26.6681$$

$$\text{California MBE} = (2.5959)(\text{raw}) + 80.0043$$

The American College Testing Program (ACT) has indicated that the July 1984 version of the MBE had a internal consistency reliability of .880. This is consistent with the .869 estimate obtained by stepping-up the .769 correlation between California's morning and afternoon MBE scores.

## ESSAY EXAMINATION

The data in Table 2 are based on the first reading of each applicant's essay answers. These data indicate that the six questions had very similar means and standard deviations. Thus, they carried about equal weight in determining the absolute and relative standings of the applicants on the essay test.

The average score on an essay answer on the first reading, 66.78, was essentially the same as the average score on a July 1983 answer (66.80). This finding along with the marked drop in MBE scale scores between July 1983 and July 1984 suggests that the July 1984 essay questions were, on the average, somewhat easier and/or graded more leniently than they were on the July 1983 exam.

The last column of Table 2 shows the correlation between the scores on a question and the sum of the scores on the other five questions (the higher the correlation up to a maximum of 1.00, the stronger the relationship between the scores on a question and the sum of the scores on the other questions). The consistency and level of these correlations indicate that no question stood out as measuring something quite different than the other questions.

The .260 average correlation between two essay questions led to an overall internal consistency reliability (coefficient alpha) of .678 for the total first-reading essay score. This is slightly below the .727 obtained with six essay questions on the July 1983 exam.

Table 1

NATIONAL AND CALIFORNIA AVERAGE MBE SCORES AND THE  
DIFFERENCE BETWEEN THESE AVERAGE SCORES

Test Score	Number of Items	National Mean	CA Mean	Difference
Constitutional Law	30	20.75	20.91	0.16
Contracts	40	24.76	24.78	0.02
Criminal Law	30	20.17	20.81	0.64
Evidence	30	19.38	19.45	0.07
Real Property	30	18.26	18.20	-0.06
Torts	40	26.75	27.54	0.79
Total Raw Score	200	130.06	131.68	1.62
NCBE/ACT Scale	200	139.21	140.62	1.41

Table 2

SUMMARY STATISTICAL DATA ON THE FIRST READING  
OF THE ESSAY ANSWERS (N = 7201)

Question Number	Subject Matter Area	Mean Score	Standard Deviation	Corrected Part-Whole Correlation
1	Evidence	65.70	9.46	.404
2	Constitutional Law	68.41	9.00	.475
3	Real Property*	65.84	8.04	.377
4	Remedies*	67.26	7.90	.395
5	Criminal Law	65.33	7.64	.384
6	Torts	68.15	8.66	.413
Average Across Questions		66.78	8.45	.408

\* Question 3 contained a minor issue in Evidence and Question 4 a minor issue in Contracts.

## PERFORMANCE TEST (PT)

The Performance Test (PT) had two problems, A and B. Problem A dealt with a Corporations case and Problem B with a negotiations task in a Contracts case (and to small degree, with remedies). Each problem had two sections, multiple choice and written. Applicants were given 3.5 hours to complete a PT problem. The printed instructions advised applicants to answer a problem's multiple choice questions first and to devote at least 90 minutes to preparing their written answer to that problem.

There were two forms, 1 and 2, of each multiple choice section. Both forms had the same questions. These forms differed in both the sequence in which the questions were asked and the ordering of choices within questions. The data in Table 3 (which were obtained on the item analysis sample) show that both forms of a PT multiple choice section had essentially the same means, standard deviations, and reliabilities. Thus, the scrambling of items and choices had no apparent effect on an applicant's PT multiple choice scores. This result is the same as that obtained with scrambling the February 1984 PT multiple choice items.

Raw scores, the number of questions answered correctly, on Problem A's forms were slightly higher and more reliable than they were on Problem B's forms. The July 1984 PT multiple choice scores were slightly more reliable than the PT multiple choice scores on the two previous exams.

Raw scores on each PT multiple choice problem were converted to a score distribution whose mean and standard deviation were one-sixth the size of the mean and standard deviation of California's 600-point-maximum MBE score distribution. This was done for two reasons: (1) control for any variation in the average difficulty of the PT multiple choice sections from one administration of the exam to the next and (2) assign one-sixth as much weight to a PT multiple choice section in determining an applicant's total exam score as was assigned to the MBE. The equations used to convert raw PT multiple choice scores to scale scores were:

$$\text{PT Scale Multiple Choice A} = (3.3287)(\text{Raw A score}) + 39.2497$$

$$\text{PT Scale Multiple Choice B} = (3.4122)(\text{Raw B score}) + 41.9895$$

The written answers to a problem were graded in 5-point intervals on a scale of 0 to 100 points. An applicant's written score was multiplied by 2.0 and added to his/her scaled multiple choice score in order to obtain the total score on a problem. The two problem scores were summed to yield a PT total score. Tables 4 and 5 provide summary data on each PT section by problem in the population of 7,201 applicants. These data indicate the two problems had similar means and standard deviations. The estimated overall reliability of the PT after one reading of the written answers, .658, was almost as high as the overall reliability of the essay section. However, it was still below the .70 observed on the July 1983 PT.

The two PT written scores correlated higher with each other than they did with their respective multiple choice scores. And, the two multiple choice scores correlated higher with each other than they did with their respective written scores. These findings are consistent with those obtained on prior PTs and suggest that the response mode (multiple choice versus written) factor is stronger than the content factor.

Table 3

PT MULTIPLE CHOICE ITEM ANALYSIS RESULTS

Problem	Form	Number of Questions	Number of Applicants	Mean	Standard Deviation	Reliability
A	1	14	1185	9.30	2.27	.483
A	2	14	1295	9.31	2.23	.474
B	1	15	1250	8.50	2.20	.353
B	2	15	1230	8.26	2.26	.387

Source: Educational Testing Service, Berkeley.

Table 4

SUMMARY DATA ON PT SECTIONS AND TOTAL SCORES AFTER THE FIRST READING OF WRITTEN ANSWERS (N = 7201)

Type of Score	Problem	Mean	Standard Deviation	Reliability*
Multiple Choice	A	70.33	7.51	.478
Multiple Choice	B	70.35	7.48	.380
Multiple Choice Total	A + B	140.67	12.19	.488
Written	A	67.97	8.85	----
Written	B	67.59	7.99	----
Written Total	A + B	271.12	27.98	.583
Problem A Total	A	206.27	21.32	----
Problem B Total	B	205.53	18.34	----
PT Total	A + B	411.80	34.32	.658

\* Reliabilities for total scores estimated from stepped-up correlation between problem scores. Reliabilities could not be computed for the separate written or problem scores.

Table 5

CORRELATIONS AMONG PT SCORES

	Written		MC	
	A	B	A	B
A Written	---			
B Written	.41	---		
A Multiple Choice	.35	.22	---	
B Multiple Choice	.21	.17	.32	---



## READER AGREEMENT

There were 1959 applicants who had all of their answers read twice. This group consisted of 1825 Phase 3 applicants and 124 applicants who passed in Phase 1 but had their answers read twice due to administrative considerations. Table 6 contrasts the average scores on the first and second reading of these applicants' essay and PT written answers. These data indicate that first reading scores tended to be higher than second reading scores, especially on essay question 5. The trend toward higher scores on the first reading also was observed on previous exams.

On the average, the net effect of this downward bias on second reading scores was to lower an applicant's essay score by 2.73 points ( $6 \times .91 = 5.46$ , and  $5.46/2 = 2.73$ ) and his/her PT score by 2.11 points. Thus, the average overall effect was to lower total bar scores of Phase 3 applicants by about 4.84 points. The total scores of some of these applicants did, of course, go up as a result of the second reading whereas the scores of other applicants went down. The latter pattern just tended to occur slightly more often than the former.

The last column of Table 6 shows the correlation between the scores on the first and second readings. This coefficient indicates the extent to which the relative standings of the applicants on the first reading were consistent with their relative standings on the second reading. The higher the coefficient (up to a maximum of 1.00), the stronger the relationship. These indicate there was only moderate agreement between readings in the relative standings of the applicants. The agreement level on essay question 5 was particularly low. And, the total essay score on the first reading correlated only .61 with the total score on the second reading.

The correlations between readings were generally lower on the July 1984 exam than they were on previous exams. For example, last February, there was a .72 average correlation between readings on an essay question. The July 1984 PT written sections, on the other hand, were graded just as reliably as the February 1984 PT written sections.

Table 7 shows each question's distribution of absolute difference scores and average absolute difference scores. The absolute difference is the difference in score assigned to an answer by the two readers who graded it, regardless of the algebraic sign of that difference (e.g., if one reader gave an answer a score of 65 and another gave it a score of 70, then the absolute difference was 5, regardless of which reader graded it first).

Two readers disagreed on the score that should be assigned to an essay or PT written answer by 10 or fewer points on over 95 percent of the 15,672 pairs of readings (1959 applicants  $\times$  8 answers reread per applicant = 15,672). The largest absolute difference in the set of 15,672 pairs was 35 points. This occurred once on essay question 5 and once on question 6. A difference of 30 points occurred nine times. The largest absolute difference on a PT written answer was 25 points.

Table 6

AVERAGE ESSAY AND PT SCORES ON THE FIRST AND SECOND READINGS, THE DIFFERENCE BETWEEN THESE AVERAGES, AND THE CORRELATION BETWEEN SCORES ON THE FIRST AND SECOND READING (N = 1959)

Question Number	Mean Scores			Correlation Between Readings
	1st Reading	2nd Reading	Difference	
1	66.15	65.64	0.51	.66
2	68.95	68.03	0.92	.64
3	66.33	65.86	0.47	.70
4	67.54	66.53	1.01	.61
5	65.70	63.93	1.77	.39
6	68.78	68.00	0.78	.57
Average	67.24	66.33	0.91	.60
PT-A	68.59	67.69	0.90	.66
PT-B	68.10	66.89	1.21	.62
Average	68.35	67.29	1.06	.64

Table 7

CUMULATIVE PERCENTAGE OF ANSWERS WITH DIFFERENT SIZED ABSOLUTE DIFFERENCE SCORES (N = 1959)

Size of Absolute Difference	Essay Questions						PT		Average Cumulative %	
	1	2	3	4	5	6	A	B	Essay	PT
0	36	35	42	38	31	35	39	39	36.2	39.0
5	79	82	86	81	72	77	84	82	79.5	83.0
10	94	97	98	96	91	94	97	97	95.0	97.0
15	99	100	100	99	97	98	99	100	98.8	99.5
20	100	*	*	100	99	100	100	*	100.0	100.0
25	*			*	100	*	*	*	*	*
>25	*				*	*				
Average Difference	4.6	4.4	3.7	4.4	5.4	4.8	4.0	4.2	4.6	4.1

\* More than 0.000 but less than 0.500 percent of the cases.

## RELATIONSHIPS AMONG SECTIONS

Table 8 shows the correlations between MBE subtest, Essay, and PT written scores. Underlined correlations indicate the two measures dealt with the same content area. A comparison of the underlined and non-underlined values suggests that content area (independent response mode) does not play a major role in affecting an applicant's score on a given part of the exam; e.g., the MBE's Evidence subtest correlated higher with a Constitutional Law essay question than it did with an Evidence question.

Table 9 shows the correlations among sections after all readings. If an applicant had his/her answers independently read twice, the score on a question was the average of the two readings; otherwise it was the score on the first (and only) reading of the answers. Table 9's data indicate that there continues to be a moderate correlation among Essay, PT, and MBE scores; and, the correlation between MBE and Essay scores is stronger than the correlation between MBE and PT scores. Essay scores correlate about as highly with total PT scores as they do with MBE scores.

The data in Table 10 indicate that mean MBE scores were higher than mean PT scores which in turn were higher than mean Essay scores. The PT's average score fell between the MBE and Essay averages due to: (1) scaling the PT multiple choice scores to the easier of the exam's other sections and (2) the average score on an essay question, 66.78, being one point below the average score on a PT written answer (a difference that becomes sizable when summed over six essay questions and two PT written sections).

## SUBGROUP ANALYSES

An analysis was conducted to determine whether the differences in the relative difficulty of the exam's three sections were consistent across racial/ethnic and sex groups. This analysis involved the following steps: (1) the MBE's mean and standard deviation on the 200-point NCBE/ACT scale were computed for the 5,648 Anglo applicants who took the exam, (2) their Essay and PT scores were converted to distributions having the same mean and standard deviation as their MBE scores, and (3) the equations developed for converting Anglo Essay and PT scores were used to convert the Essay and PT scores of applicants in other groups. This procedure controls for overall differences in the average difficulty of the three measures by putting them all on a common scale of measurement.

Table 11 shows the average scale scores by section and group. These data indicate that a racial/ethnic group's mean scale score on one section of the exam was very consistent with that group's mean scale score on the other sections (the Anglo means are identical because of the procedures described above). For example, the largest difference occurred between the MBE and Essay sections among Asian applicants, however, this difference was only 1.3 scale score points (less than one-tenth of a standard deviation).

The small, but consistent sex differences observed on previous exams also were present on the July 1984 exam. Specifically, after controlling for differences in the overall difficulty of the three sections, male applicants tended to score higher on the MBE than on the Essay or PT whereas the reverse was true for female applicants.

Table 8

CORRELATIONS BETWEEN MBE SUBTEST, ESSAY, AND PT WRITTEN SCORES  
AFTER ONE READING OF THE ESSAY AND PT ANSWERS (N = 7201)\*

Test	Content Area	Essay Question						PT	
		1	2	3	4	5	6	A	B
MBE	Evidence	<u>31</u>	37	30	27	30	25	32	21
MBE	Con Law	30	<u>43</u>	27	27	31	25	35	22
MBE	Real Property	26	<u>33</u>	<u>31</u>	28	27	25	33	21
MBE	Criminal Law	28	39	<u>32</u>	27	<u>30</u>	27	33	21
MBE	Torts	28	33	27	27	<u>27</u>	<u>27</u>	29	19
MBE	Contracts	27	34	30	28	29	25	33	<u>22</u>
PT-A	Corporations	31	43	32	30	33	32	--	41
PT-B	Contracts	23	30	28	22	19	26	41	--

\* All decimal points have been removed. Underlined coefficients indicate the relationship between two sections dealing with the same content area.

Table 9

CORRELATIONS AMONG SECTIONS AFTER ALL READINGS (N = 7201)

	LSAT*	MBE	Essay	Performance Test		
				Written	MC	Total
MBE	.55					
Essay	.45	.63				
PT-Written	.41	.43	.58			
PT-MC	.54	.52	.41	.36		
PT-Total	.53	.54	.62	.94	.65	
Exam Total	.62	.88	.85	.74	.62	.83

\* LSAT (Law School Admissions Scores) were available for 4917 applicants.

Table 10

SUMMARY STATISTICAL DATA AFTER ALL READINGS (N = 7201)

	MBE	Essay	PT	Total
Average Score	421.88	399.84	411.15	1232.85
Standard Deviation	44.55	31.29	34.32	94.16
Internal Consistency	.880	.696	.658	*

\* The internal consistency of the total score was not computed because the test measured different skills.

Table 11

MEAN SCALE SCORES WITHIN RACIAL/ETHNIC AND SEX GROUPS  
AND THE NUMBER OF APPLICANTS WITHIN EACH GROUP\*

Test	Racial/Ethnic Group				Sex	
	Anglo	Asian	Black	Hispanic	Female	Male
MBE	142.7	135.1	129.1	133.9	138.4	141.9
Essay	142.7	136.4	130.5	134.3	142.0	139.7
PT	142.7	136.0	129.2	133.4	142.7	139.2
Average	142.7	135.8	129.6	133.9	141.0	140.3
Number of Applicants	5648	459	477	482	2713	4397
% Male	62	61	53	69	0	100

\*Data are not displayed for applicants who did not provide their racial/ethnic and/or sex group affiliation.

## EXAMINATION DIFFICULTY

Table 12 presents the number and percentage of applicants in each of the exam's eight pass/fail categories. These data indicate that 3,002 applicants passed; i.e., a passing rate of 41.69 percent.

An analysis was conducted to determine the difficulty of the July 1984 exam relative to the difficulty of previous exams. This analysis involved scaling both the Essay and PT total scores to a score distribution that had the same mean and standard deviation as the applicants' MBE scale scores on the 200-point scale used by ACT/NCBE, computing the average of each applicant's three scale scores, tabulating the cumulative frequency distribution of these average scores, and then noting what score in this distribution would pass the same percentage of applicants as actually did pass that exam after reappraisal. This score is defined as the exam's difficulty index. MBE scores serve as the base for this index because as a result of scaling, they are not affected by possible variations in average question difficulty from one exam to the next.

The results of this analysis indicate that the July 1984 exam had a difficulty index of 142.9; i.e., 41.69 percent of the 7,201 applicants had average scale scores of 143.0 or higher. A difficulty index of 143 is consistent with the index values on the other California July exams administered during the previous eight years (see Table 13).

A comparison of the July 1983 and July 1984 indexes (143.6 and 142.9, respectively) suggests that the the 1984 exam was actually easier than the 1983 exam. Nevertheless, the July 1983 pass rate (50.0 percent) in a comparably selected sample was higher than the July 1984 pass rate (41.7 percent). Table 13 shows that these seemingly inconsistent results were due to a significant difference between the average MBE scores of the applicants taking the July 1984 exam and those taking any of the previous eight exams. This table contrasts the percent passing, difficulty index, and mean score on each part of the previous eight July exams with the corresponding July 1984 values.

Table 13 shows that the July 1984 mean MBE and Essay scores were not only below average, they were the lowest values obtained in the last nine years! The sum of the July MBE and Essay scores (822) is 20 points lower than the sum of the mean scores during the preceding eight years. The July 1984 difficulty index, on the other hand, is consistent with the index values on previous exams. And, these index values are not affected by variations in average question difficulty and/or reader leniency from one year to the next.

The foregoing results indicate the July 1984 applicants were less well prepared to take the exam, and particularly the MBE portion of it, than were previous groups of July applicants. Several factors could have produced this difference. For example, July 1984 applicants could have altered their academic curricula and/or bar exam studying strategies in a way that resulted in their devoting less preparation time to the MBE.

Table 12

NUMBER AND PERCENTAGE OF APPLICANTS WHO PASSED AND FAILED  
IN EACH PHASE OF THE MULTIPHASED GRADING PROCESS

Pass/Fail Category	Number	Percent
Fail - Phase 2	2882	40.02
Fail - Phase 3	825	11.45
Fail - Phase 4	488	6.78
Bifurcated Fail	4	0.06
<b>Total Fail</b>	<b>4199</b>	<b>58.31</b>
Pass - Phase 1	1798	24.97
Pass - Phase 2	688	9.55
Pass - Phase 3	315	4.37
Pass - Phase 4	197	2.74
Bifurcated Pass	4	0.06
<b>Total Pass</b>	<b>3002</b>	<b>41.69</b>

Table 13

RESULTS FROM PREVIOUS JULY EXAMS: MEANS, NUMBERS OF  
APPLICANTS, PASSING RATES, AND DIFFICULTY INDEXES

Year	Mean MBE	Mean Essay	Mean PT	Number of Applicants	Percent Passing	Difficulty Index
1976	436	414	---	6709	60	143
1977	429	413	---	7191	55	142
1978	434	417	---	6835	55	142
1979	432	417	---	7152	55	142
1980	425	412	---	7379	49	142
1981	426	411	---	7080	50	142
1982	428	407	---	7038	49	143
1983	431	401	414	7277	50	144
Mean	430	412	414	7083	53	143
1984	422	400	411	7201	42	143

MBE scores were converted to the 600-point-scale used on the July 1984 exam. Essay means were computed using all of the available essay scores and adjusting an applicant's score to a six-question test (e.g., if an applicant had two answers graded, then that applicant's essay score was 3.0 times the sum of the scores on the two graded questions). Results are presented for all the applicants who took all the parts of their exams. Only the July 1983 and 1984 exams used the PT.

## PHASED GRADING

Phase 1. California's phased grading process concentrates reader resources on the applicants whose pass/fail status is most in doubt. In Phase 1, applicants are placed into two categories: pass and go to Phase 2. No one fails in this phase. Phase 1 decisions are based on the sum of an applicant's MBE score, the scores on two randomly selected essay answers, and PT multiple choice scale scores. If this sum is 740 or higher, the applicant passes. Otherwise, the applicant goes to Phase 2.

On the July 1984 exam, all applicants had all of their Essay and PT written answers read regardless of whether or not they passed in Phase 1. It was possible, therefore, to assess the accuracy of the Phase 1 cutoff score by seeing how many of the applicants who passed in Phase 1 would have failed if all of their answers were read at least once. Table 14 shows the distribution of total exam scores after the first reading of all answers for the 1798 applicants who passed in Phase 1. These data indicate that 59 of the 1798 applicants had total scores below 1260 (or 0.82 percent of the population of 7201 applicants).

It is likely that several of the 59 seemingly misclassified applicants would have passed if they had gone to Phases 2 through 4. For instance, the passing rate was 38.8 percent in the group of 278 applicants who did not pass in Phase 1, but who had total scores of 1250 to 1259 after one reading. It was 16.3 percent among the 283 non-Phase 1 passes with initial total scores between 1240 and 1249. These statistics suggest that about 12 of the 59 applicants would have passed had they continued on in the process  $[(.388 \times 26) + (.163 \times 13) = 12]$ . This yields an overall misclassification rate of 0.65 percent  $(47/7201 = .0065)$ . This rate is slightly higher than the .0050 rate observed in previous studies of the Phase 1 cutoff score.

Analyses of the July 1983 data suggested the Phase 1 cut-off might be based on the MBE alone; e.g., it was discovered that 25 percent of the applicant pool had MBE scores over 464, but only 16 of these applicants failed the exam (yielding an overall misclassification rate of .0022. The 1984 data were not as encouraging. Only 18 percent of the July 1984 applicants had MBE scores over 463 (with a .003 misclassification rate).

Phase 2. There is no direct way of assessing Phase 2's misclassification rate because there was not a sample of applicants who had all of their answers read at least twice regardless of their Phase 1 scores. However, indirect evidence of the adequacy of the Phase 2 cutoff scores comes from an analysis of the passing rates among the applicants who had total scores between 1212 and 1278 after one reading of all answers because these applicants did have their answers read twice.

Table 15 shows that none of the 234 applicants with initial total scores between 1212 and 1219 passed the exam after going to Phases 3 or 4. And, only 5 of the 287 applicants in the 1220 to 1229 range passed. Thus, an initial score of 1220 appears to capture all the applicants who are likely to pass as a result of having their answers reread. An initial score of 1279, however, might not capture all the applicants who would have failed had they gone to Phase 3. Thus, the July 1984 reread band erred in the direction of putting too many low scoring and not enough high scoring applicants into Phase 3, thereby tending to increase the pass rate.



Table 14

NUMBER AND PERCENT OF ALL PHASE 1 PASSES AT VARIOUS INTERVALS OF TOTAL SCORES AFTER ONE READING OF ALL ANSWERS (N = 1798)

Score Range	Number of Applicants	Percent	Cumulative Percent
>1279	1631	90.71	100.00
1270 - 1279	68	3.78	9.28
1260 - 1269	40	2.22	5.50
1250 - 1259	26	1.44	3.28
1240 - 1249	13	.73	1.84
1230 - 1239	8	.44	1.11
1220 - 1229	7	.39	.67
1210 - 1219	3	.17	.28
<1210	2	.11	.11

Table 15

NUMBER OF PHASE 3 APPLICANTS WHO PASSED AND FAILED AFTER ALL READINGS RELATIVE TO THEIR TOTAL SCORES AFTER ONE READING OF ALL ANSWERS (N = 1825)

Initial Score Range	Number of Applicants			Percent Passing
	Fail	Pass	Total	
1270 - 1279	26	153	179	85.5
1260 - 1269	69	188	257	73.2
1250 - 1259	170	108	278	38.8
1240 - 1249	237	46	283	16.3
1230 - 1239	290	12	302	4.0
1220 - 1229	287	5	292	1.7
1210 - 1219	234	0	234	0.0
Total	1313	512	1825	28.1

Phase 3. The efficacy of the Phase 3 decision rules used to place or not place an applicant in Phase 4 (reappraisal) can be assessed by comparing Phase 3 scores with Phase 4 pass/fail decisions. Table 16 shows there was a very strong but not a perfect correlation between Phase 3 scores and Phase 4 decisions.

Only 3 of the 133 applicants at the bottom of the reappraisal range passed. This finding suggests that the Phase 3 score required for placing an applicant in reappraisal, 1235.0, is set at the right place. In other words, it is extremely unlikely that applicants with Phase 3 scores below 1235 would have passed had they gone to Phase 4.

Phase 4. The 29.3 percent pass rate in Phase 4 is consistent with the 31.0 rate obtained in this phase with a random sample of July 1983 applicants. Thus, there was no indication that the reappraisers changed their pass/fail standards.

Table 16

NUMBER OF PHASE 4 APPLICANTS WHO PASSED AND FAILED  
RELATIVE TO THEIR TOTAL PHASE 3 SCORES (N = 673)

Total Score After Phase 3	Number of Applicants			Percent Passing
	Fail	Pass	Total	
1255.0 - 1259.9	15	94	109	86.2
1250.0 - 1254.9	73	64	137	46.7
1245.0 - 1249.9	113	28	141	19.9
1240.0 - 1244.9	145	8	153	5.2
1235.0 - 1239.9	130	3	133	2.3
Total Phase 4	476	197	673	29.3

## CONCLUSIONS

Analyses of the July 1984 exam indicated that it was no more difficult (in terms of the questions asked or the leniency with which the answers to them were graded) than were previous July exams. However, applicant scores on all three sections (MBE, Essay, and Performance Test) were below the averages on these sections in prior years (see Table 13).

A comparison of the July 1983 results with the July 1984 data revealed that the large drop in the percent passing between these two years was due to a sudden and marked decline in MBE scores. Because the MBE portion of the exam is objectively scored, this decline could not have been due to any increase in grading standards. Thus, it was apparently due to the July 1984 California applicants being less well prepared to take the MBE than previous groups of California July applicants.

The grading of the Essay and PT written answers was only slightly less reliable than the grading of these answers on the July 1983 exam. However, both the Essay and PT total scores continued to maintain an adequately high level of reliability given that they are combined with the MBE in making pass/fail decisions.

In terms of average scores, applicants did better on the MBE than on the PT; and better on the PT than on the Essay. This relationship held for all four of the largest racial/ethnic groups taking the exam (Anglo, Asian, Black, and Hispanic). Thus, no group was especially hurt or helped by the inclusion of a particular section. After controlling for differences in the relative difficulty of the sections, male applicants tended to score higher than females on the multiple choice sections of the exam whereas females tended to score higher than males on the written sections.

APPENDIX E



# THE COMMITTEE OF BAR EXAMINERS

OF THE STATE BAR OF CALIFORNIA

PETER AVILES, *Chair*  
SAN FRANCISCO  
ROGER P. HEYMAN, *Vice-Chair*  
LOS ANGELES

DIANE C. YU, *Vice-Chair*  
OAKLAND

MARK C. ALLEN, JR.  
LOS ANGELES

MARGUERITE J. ARCHIE HUDSON  
LOS ANGELES

CECILIA E. COSCA  
SAN FRANCISCO

FERNANDO de NECOCHEA  
SAN FRANCISCO

STUART R. SINGER  
LOS ANGELES

LISA E. STANLEY  
SAN FRANCISCO

JOHN R. STOKES  
ARCATA

KATHERINE V. TOOKS  
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JAMES B. TIPPIN, JR.  
*Executive Director*  
SAN FRANCISCO

1230 WEST THIRD STREET  
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Telephone (213) 482-4040

MEASUREMENT SUPPORT CENTER  
SUITE 160  
1300 OLD BAYSHORE HIGHWAY  
BURLINGAME 94010

*Operations & Management*  
SUZANNE M. TENFELDER, *Director*  
LOS ANGELES

*Examinations*  
JANE PETERSON SMITH, *Director*  
SAN FRANCISCO

*Law School Accreditation*  
JOHN A. GOREINKEL, *Consultant*  
SAN FRANCISCO  
DAVE FREEMAN, *Consultant*  
NEWPORT BEACH

May 25, 1984

*Reply to:*

- LOS ANGELES
- SAN FRANCISCO
- BURLINGAME

To: Specialty Bar Associations

From: Jane Peterson Smith  
Director for Examinations

Re: READERS FOR THE CALIFORNIA BAR EXAMINATION

In an effort to obtain readers from diverse backgrounds, the California Committee of Bar Examiners is seeking female and minority attorneys to grade the California General Bar Examination, which is given each February and July. The attorneys must reside or work in the Bay Area or the Los Angeles area. Enclosed are copies of the Committee's policy on the selection and retention of readers.

We would appreciate your making this information available to members of your association who would be interested in applying to grade bar examinations. Eligible attorneys may write or call the San Francisco office for application materials. The mailing address and telephone number is:

Committee of Bar Examiners  
P.O. Box 7908  
San Francisco, CA 94120  
(415) 561-8303

Applications for the July 1984 examination will be accepted from June 6 through June 22, 1984. Those interested in applying but who are not available at this time may leave their names and addresses with the San Francisco office; applications for the February 1985 examination will be mailed to them in January.

Thank you for your assistance.

Enclosures

POLICY OF COMMITTEE OF BAR EXAMINERS  
REGARDING SELECTION AND RETENTION OF READERS AND REAPPRAISERS  
RECRUITING OF READERS AND REAPPRAISERS

It is the policy of the Committee of Bar Examiners to select, retain and advance readers and reappraisers for the examinations administered by the Committee on the basis of ability, educational attainments, and experience without regard to race, religion, color, sex, age or national origin, and the Committee shall make a positive effort to obtain applications for positions as readers and reappraisers from persons of both sexes from a representative variety of ethnic, cultural, academic and professional backgrounds with the goal that the groups of readers and reappraisers that grade each examination administered by the Committee will reflect the ethnic and sexual composition of the general population of the State of California.

QUALIFICATIONS AND SELECTION OF READERS AND REAPPRAISERS

A. Minimum Qualifications

To be eligible for initial selection as a reader, an applicant shall:

1. Be a member of the State Bar of California;
2. Have taken the California bar examination or attorneys' examination not less than one year prior to the examination for which the reader is to be selected;
3. Have passed the California bar examination or attorneys' examination on the first attempt; and
4. Have attended a law school which required classroom attendance.

B. Selection of Readers

Other factors to be considered in selection of readers from among the eligible applicants are:

1. The extent to which the prospective reader has demonstrated an ability to adhere consistently to the grading standards and policies of the Committee of Bar Examiners as demonstrated by either (a) the actual grading of answers on one or more examinations previously administered by the Committee or (b) the simulated grading of a representative sample of answers from one or more examinations previously administered by the Committee;
2. The grades achieved on the bar examination or attorneys' examination;

3. Prior experience as a reader or grader;
4. Whether the selection of particular individuals will further the efforts of the Committee to obtain readers and reappraisers from a representative variety of backgrounds; and
5. Whether the applicant, if selected, would probably remain eligible and available to serve as a reader or reappraiser for a period of several years.

C. Disqualification

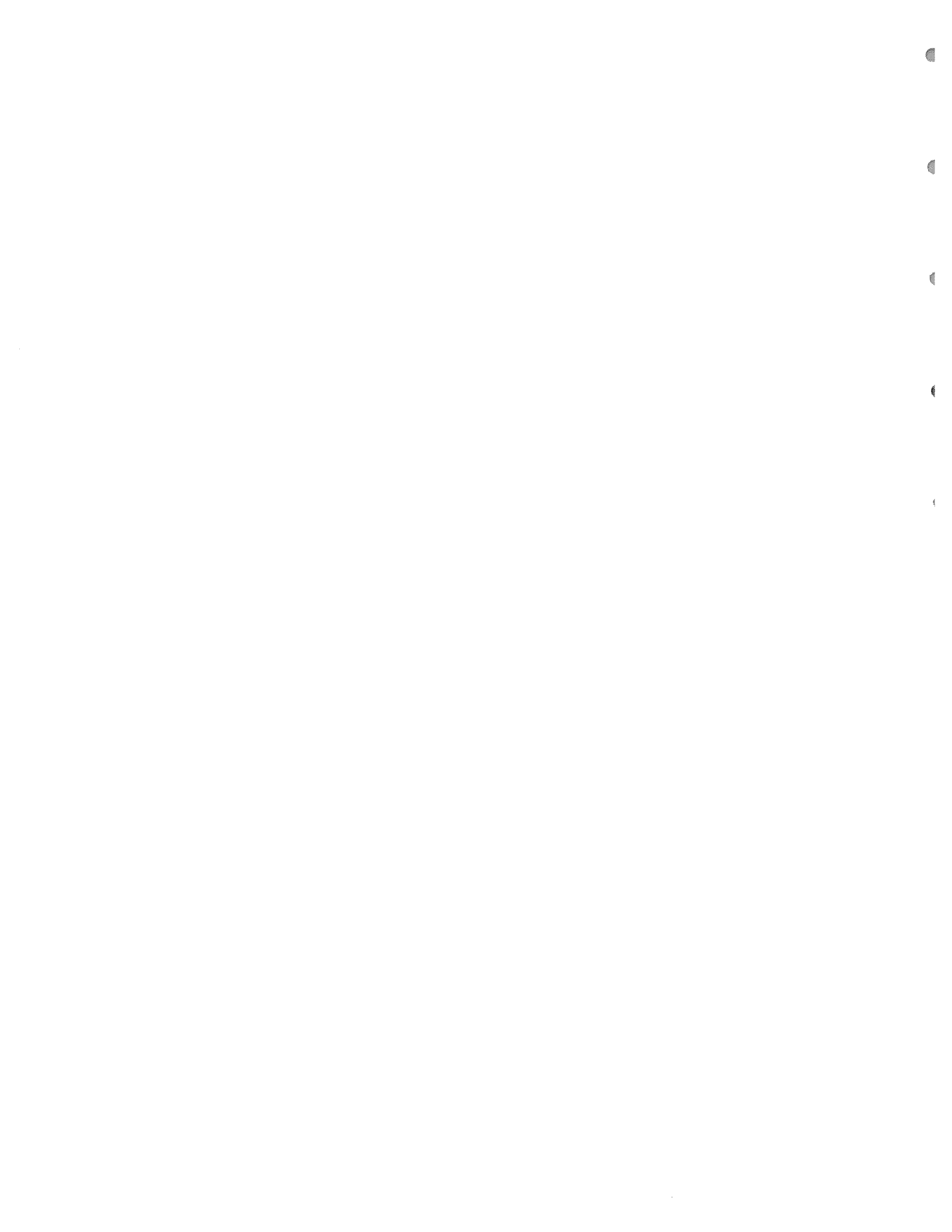
No person shall be selected to serve as a reader or reappraiser for a particular examination if:

1. That person is related by law or close blood relationship to an applicant for the examination;
2. Except as provided in 3. below, that person:
  - a. is then serving as an administrator, instructor or grader for any law school or bar review course; or
  - b. at any time within the two years immediately preceding the date of the examination, has served or been connected with any bar review course offered in California as an administrator, instructor or grader or with any law school in California as an administrator or full-time instructor or as a part-time instructor or grader for any course or subject within the scope of coverage of the bar examinations; or
  - c. has served for more than five classroom hours as a lecturer or instructor for any course(s) or seminar(s) offered by any law school or bar review course to a group of students not less than five of whom would, in normal course, be expected to qualify as first-time applicants to take the examination in question.
3. A person shall not be disqualified from serving as a reader if that person is then serving or has previously served as an instructor in Legal Writing and Research for a law school.

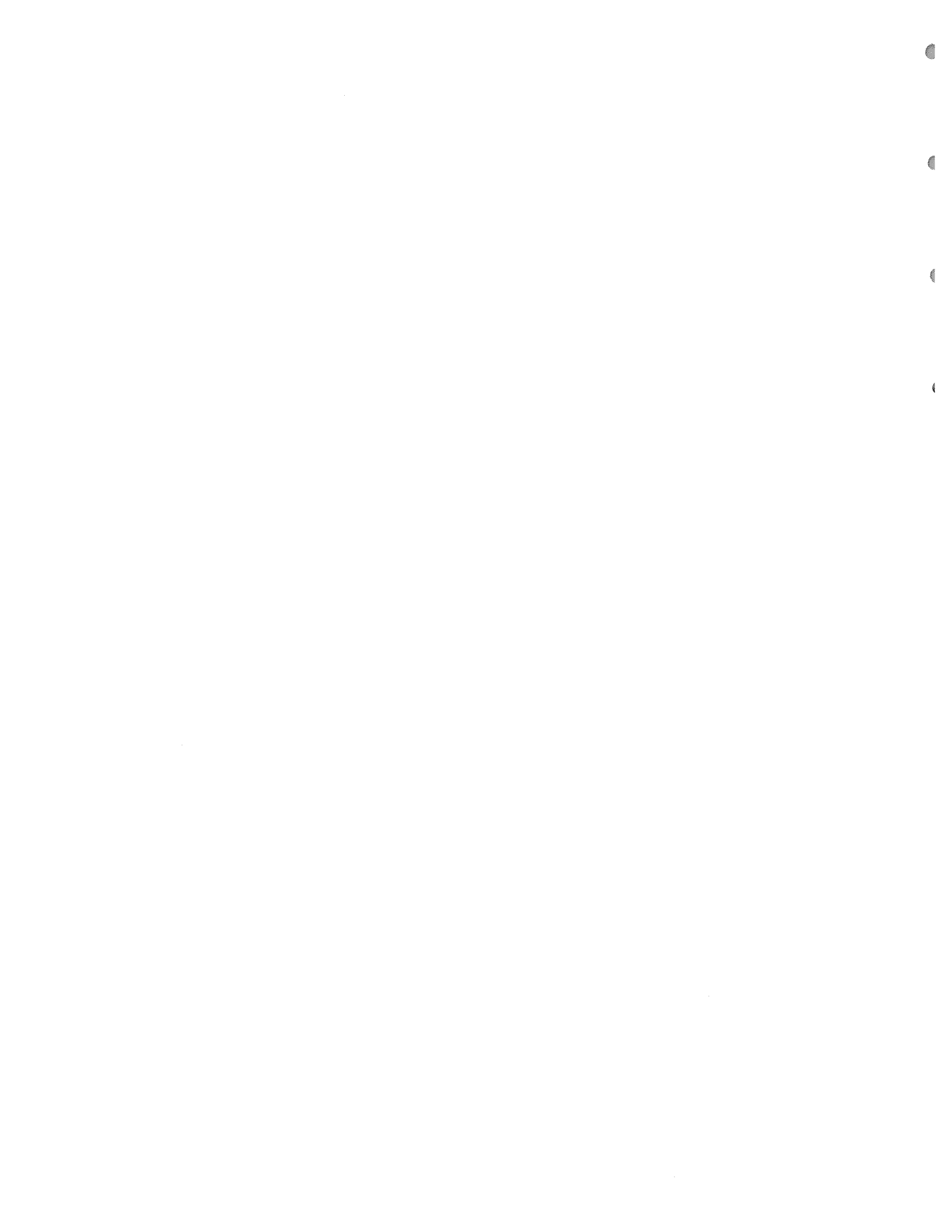
SELECTION OF MEMBERS OF BOARD OF REAPPRAISERS

Members of the Board of Reappraisers shall be selected from among those readers or former readers who have served as for not less than six general bar examinations.





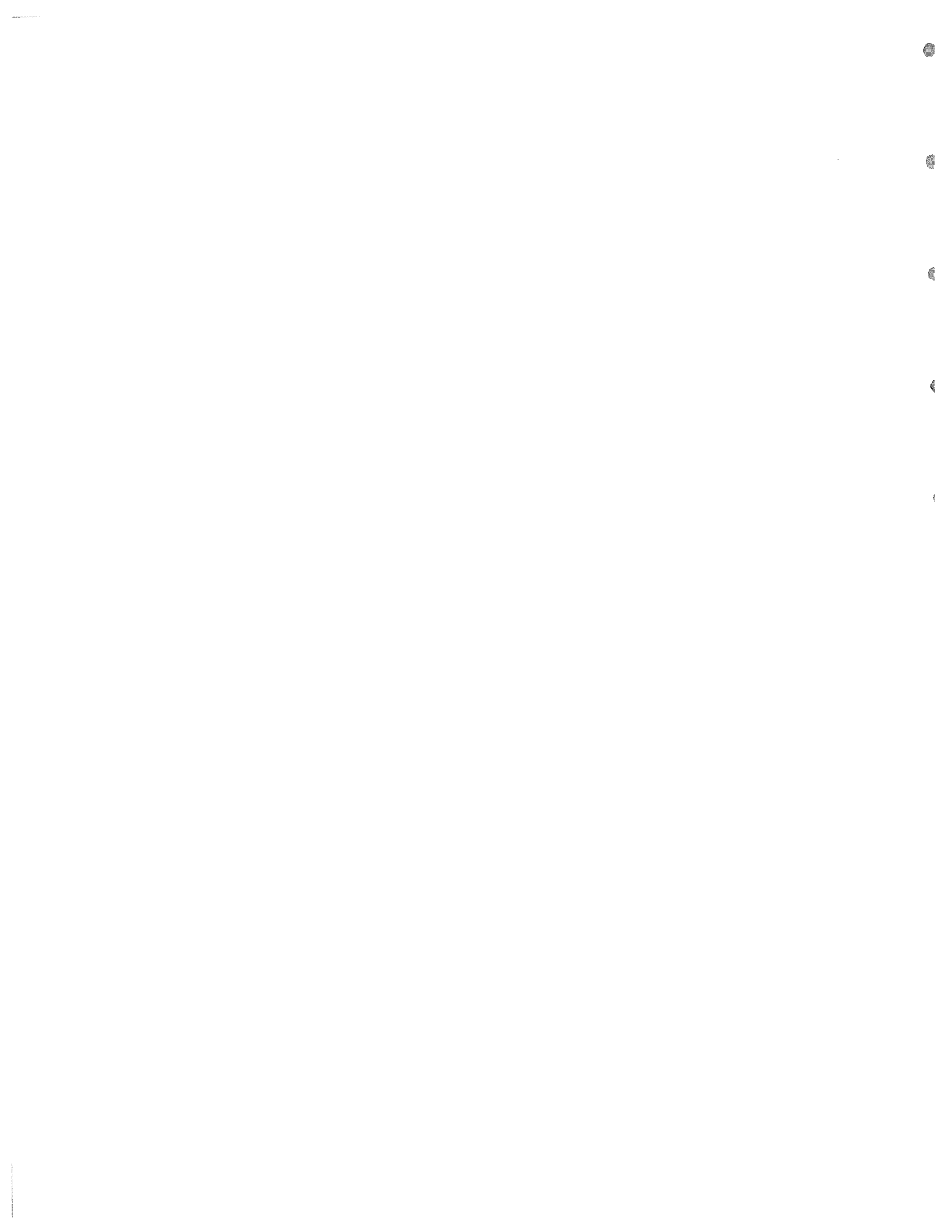
APPENDIX C



Questionnaire for Minority Bar Associations

- 1) Do you feel that the training that you received in law school adequately prepared you for the bar examination? For practice?
- 2) Was you law school's curriculum relevant to you as a minority practitioner?
- 3) What changes, if any, are needed to improve the way attorneys are trained, examined and regulated in California?
  - Do you favor the inclusion of more clinical programs at the law school level? -- If yes, what type?
- 4) Should attorneys from other states be subjected to California's attorneys' examination in its present form?

[Note: In California, attorneys from other states who have practiced for less than five years must successfully complete all three sections of the bar examination and those who have practiced over five years must successfully complete the essay and performance portions of the examination].
- 5) Should persons who have graduated from a California accredited or American Bar Association accredited law school be admitted to practice in California on motion?
- 6) Did your law school make every effort to ensure that you were prepared for the bar examination and for practice?
  - What more could your alma mater have done?
- 7) Did your law school offer tutorial programs?
  - Were they useful?
  - If not, how could they have been more useful?



*Law offices of Milton C. Grimes*

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2372 S. E. Bristol, Suite C  
Santa Ana Heights, California 92707 • Telephone (714)756-0695

February 22, 1985

California Legislature  
Assembly Committee on Judiciary  
Elihu M. Harris, Chairman  
State Capitol  
Sacramento, California 95814

Attention: Mark T. Harris

RE: Response to Questionnaire for Minority Bar Associations

Dear Mr. Harris:

The following is in response to your letter of February 1, 1985 regarding the Questionnaire for Minority Bar Associations:

1. Yes, since the courses in law school were well taught (Hastings) and correlated with the subject areas of the bar exam.

The training in law school prepared me for the substantive areas in the practice of law. However, it did not adequately prepare me for the administrative and business of practicing law as a professional nor as how to be a lawyer. This knowledge was obtained through painful years of trial and error and experimentation and observation of other attorneys.

2. Yes, because we need to know the law that is used and abused by the majority of people in this country. However, the law school curriculum did not promote the search for more humanitarian, creative and relevant law that apply to our present day society.
3. I think there is a sincere need for more clinical programs or apprenticeship programs wherein students would have an opportunity to work with more judges, lawyers, court systems, police, clients, etc.
4. Attorneys from other states should have some knowledge of California law. How this is determined would be relevant to their years of experience.

February 22, 1985  
Mark T. Harris  
Page two

5. No. There must be some test given to ascertain the overall knowledge of an individual admitted into practice of law in the State of California regardless of said persons legal training. The question is what is a fair examination to all candidates, one devoid of any bias regarding special interest groups.
6. No. Could have offered an overview course for the many subject areas covered on the bar examination itself and maybe monitored a one day mock examination covering the three areas (essay, multistate and research) that an individual would be tested in.
7. Yes, I assume they were useful. No personal knowledge. However, I am sure they are needed.

Sincerely,



Milton C. Grimes

MCG/ljc

AREA CODE 209  
TELEPHONE: 233-0377

LAW OFFICE  
RUDY BAÑUELOS  
415 NORTH PALM AVENUE  
FRESNO, CALIFORNIA 93701

FILE NO. \_\_\_\_\_

February 8, 1985

Elihu M. Harris, Chairman  
California Legislature  
Assembly Committee on Judiciary  
State Capitol  
Sacramento, CA 95814

Dear Mr. Harris:

The following are my answers to your questionnaire:

1. Adequate preparation for the bar examination.  
For practice, No.
2. Yes.
3. More meaningful clinical program participation. Of course this would only relate to attorneys that become engaged in private practice. A mini-course in areas of law should be made available to attorneys, along the lines of a bar review course.
4. Yes.
5. Standards should be the same for all graduates of California accredited or American Bar Association accredited law schools.
6. Only for the bar examination. Training for private law practice was lacking.
7. Yes.  
Not very useful. Law students were the tutors. Their methods were whatever worked for them as opposed to an insight on the particular law school course. Law school professors with an attitude of providing a tutorial program should have been utilized.

In summation, I am bothered by the fact that an individual can graduate from law school and not be able to pass the bar examination. Perhaps the law school curriculums should be analyzed to determine if they are teaching law. Schools with a low rate of bar passage should be carefully supervised by



Elihu M. Harris, Chairman  
February 8, 1985  
Page 2

the STATE BAR.

I hope that my answers are useful.

Very truly yours,



---

RUDY BANUELOS  
Attorney at Law

RB/ajr

# HAIRSTON AND WEBSTER

BILLY H. HAIRSTON  
ALLEN J. WEBSTER, JR.

ATTORNEYS AT LAW  
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945 SOUTH PRAIRE AVENUE  
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(213) 678-1241 - 677-7180 - 677-7189

February 21, 1985

ELIHU M. HARRIS, Chairman  
California Legislature  
Assembly Committee on Judiciary  
State Capitol  
Sacramento, California 95814

RE: Questionnaire for Minority Bar Associations

Dear Mr. Harris:

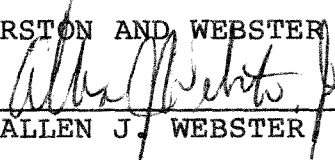
1. To a great extent yes. I went to school at night part time. Most of the instructors were practicing attorneys and the emphasis was instruction with the Bar Examination and the practice of law ultimately in mind.
2. No.
3. More clinical programs, internships, externships, field training, opportunities in government agencies, public agencies and private law firms. In addition, prospective attorneys should be examined in ways that actually tests skills to be utilized once they become practicing attorneys such as ethics, research, legal writing and interviewing.
4. Yes.
5. No, because this tends to discriminate against students from non-accredited schools many of whom are minorities, relatively poor or disadvantaged.
6. No, but it did put forth a good effort.

ELIHU M. HARRIS, Chairman  
February 21, 1985  
Page 2.

7. No.

Respectfully yours,

HAIRSTON AND WEBSTER

BY:   
\_\_\_\_\_  
ALLEN J. WEBSTER JR.

AJWJ:slj

**FRANK J. VALDEZ**  
AND ASSOCIATES  
ATTORNEYS AT LAW  
WELLINGTON SQUARE  
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P.O. Box 1849  
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REPLY TO:  
12749 NORWALK BLVD.  
SUITE 204A  
NORWALK, CA 90650  
(213) 868-5459

February 6, 1985

California Legislature  
Assembly Committee  
on Judiciary  
State Capitol  
Sacramento, CA 95814

ATTENTION: Mark T. Harris, Chairman

Dear Mr. Harris:

Pursuant to the letter we received dated February 1, 1985, enclosed please find the answers to the following questionnaire for Minority Bar Associations.

- 1) Do you feel that the training that you received in law school adequately prepared you for the bar examination?  
No. For practice? No.
- 2) Was your law school's curriculum relevant to you as a minority practitioner? No.
- 3) What changes, if any, are needed to improve the way attorneys are trained, examined and regulated in California? Greater detail in analysis of case with law and real life.

Do you favor the inclusion of more clinical programs at the law school level? Yes. If yes, what type? Law office or Judicial clerkships.

- 4) Should attorneys from other states be subjected to California's attorneys' examination in its present form? Yes.
- 5) Should persons who have graduated from a California accredited or American Bar Association accredited law school be admitted to practice in California on motion? No.
- 6) Did your law school make every effort to ensure that you were prepared for the bar examination and for practice? No.

What more could your alma mater have done? More realistic or practical law training.

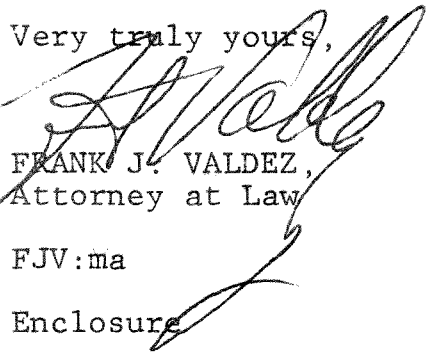
7) Did your law school offer tutorial programs? No.

Were they useful? N/A

If not, how could they have been more useful? unknown.

If you have any further questions, please feel free to call or write our office at any time.

Very truly yours,



FRANK J. VALDEZ,  
Attorney at Law

FJV:ma

Enclosure