

PUBLIC COMMENTS – EMAILS

**From:** Ian R. Greensides [mailto:ian@greensideslaw.com]  
**Sent:** Wednesday, August 16, 2017 11:34 AM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** RE: California Attorney Survey on Bar Exam Pass Line

Hello -

There was no room for any detailed comment for the private survey. I am emailing you so that it might be considered as part of the private survey.

The bar exam format of 3 days, with general essay questions, practical questions, and MBE are all good ways to assess test takers, and this approach of testing different ways is wise.

However, the bar exam appears to be designed to keep most people out of the profession, given the very low pass ratios. I believe that California's bar exam is designed to protect the franchise of attorneys who charge very high fees.

I would suggest that the bar exam should not require a minimum score, but should perhaps have a weighted scale - where no less than 50% would pass the bar exam on any given exam. If the pass rate is in the 30% range - it is a sign that the test is too difficult.

**From:** Judy Ruud [mailto:ruud.judy@yahoo.com]  
**Sent:** Tuesday, August 15, 2017 4:20 AM  
**To:** The State Bar of California – California Bar Journal  
**Cc:** Judy Ruud  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

Good morning. My apologies if I missed something, but the email you provided below seems incomplete. In particular, is there data on why the rate is dropping, i.e. is it from graduates of a particular law school(s), out-of-state attorneys taking the bar, people not taking a bar review course, etc.?

That information would help structure solutions, which might include lowering the pass rate ( or not). If you have that information, could you provide it to those of us to whom you sent this survey? If you don't, would you consider getting it and providing it before you consider this survey- or explain why that information is irrelevant?

Again, if you provided it- my apologies for missing it ( please resend it to me).

**From:** Andrew Jun [mailto:awjun0812@gmail.com]  
**Sent:** Friday, August 11, 2017 11:06 AM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** Re: Survey on Bar Exam Pass Line **From:** Andrew Jun [mailto:awjun0812@gmail.com]  
Reduce it to 1414.

**From:** Andrew Sanders [mailto:dandrewsanders@gmail.com]  
**Sent:** Friday, August 11, 2017 12:02 PM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** Re: Survey on Bar Exam Pass Line

Dear Elizabeth Rindskopf Parker,

I thank you for your email and attempt to get an understanding of general opinion. There are some flaws with this survey. The first and major flaw is that it allows a person to take it as many times as they want. All a person has to do is use multiple devices or simply put their browser in Incognito mode

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and they can then spam your survey. This essentially makes this survey unreliable and useless because there is no control element to it. Second the wording as the scaled answers asking on a scale of 1-10 is confusing. It asks what is important when I believe the desired question is what is important in relation to the cut score. Many attorneys when reading a statement that says to keep the integrity of our profession will automatically put a 1, because duh we all have a huge interest in maintaining the integrity of our profession. However, in regards to a bar exam and test it is insane to think that a test which main focus is to force its applicants to memorize as much information as possible would somehow make them more ethical, or better able to represent someone in court.

I do not support the current cut score or your purposed cut score 1414. At a minimum the cut score should be lowered to 1350. This is enough to push students to study their brains out to pass while allowing for them to pass on par with the rest of the nation.

Thank you

**From:** Isabel Metzger [mailto:isabel.m.metzger@lacity.org]  
**Sent:** Friday, August 11, 2017 12:20 PM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

Prospective attorneys need to take their law school seriously. You cannot learn in 6 weeks, what you failed to learn and comprehend in 3 years. The Bar is an exam of minimum competency. It is important to have attorneys who are well prepared to represent the public adequately (whether in the private, government, non-profit or people who cannot afford representation). It is my humble opinion that lowering the score is not the solution. I hope the studies find out what is causing the scores to be low. It probably starts before the Bar Exam.

**From:** Randolph Houts [mailto:rhouts@gmail.com]  
**Sent:** Friday, August 11, 2017 12:20 PM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** RE: California Attorney Survey on Bar Exam Pass Line

Liz,

I've responded and commented publicly, strongly objecting to this proposal, which is rooted in political correctness, not concern for quality services. It's about appearances, not substance. Why don't we reduce standards for police, firemen, doctors, and dentists, cancer researchers, and the like? That would make society better too, right? Wrong, and the political activists at the bar are wrong-headed about this too. Address declining educational standards and performance. That's the issue, not race.

**From:** C Gordon [mailto:csg240@gmail.com]  
**Sent:** Friday, August 11, 2017 12:14 PM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

What? Why? Do we have a SHORTAGE of attorneys? Or do we really just want to LOWER the quality of the incoming batch?

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**From:** Matyi Law [mailto:matyilaw@comcast.net]  
**Sent:** Friday, August 11, 2017 2:37 PM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** RE: California Attorney Survey on Bar Exam Pass Line

In 1984 the pass rate was less than 25% so at 43% it is already very high....

**From:** James Aguirre [mailto:jim\_aguirre2002@yahoo.com]  
**Sent:** Friday, August 11, 2017 1:48 PM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

The survey is poorly designed and poorly worded. The changes being considered do not adversely affect the integrity of the profession nor do they endanger public protection. The new standards are valid and protect both those interests. On that subject, we need better continuing education and professional guidance from the organized bar not more obstacles.

I am a former bar exam grader, former Star Bar Governor and former member of the CBE.

**From:** Amy A. Breyer [mailto:amybreyerlaw@gmail.com]  
**Sent:** Friday, August 11, 2017 3:33 PM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** Re: Survey on Bar Exam Pass Line

Dear Ms. Parker:

Thank you for the opportunity to participate in the survey. I'd also like to volunteer to help with this committee. Before moving to California, I used to practice in Chicago. I also used to be pretty active with the Illinois State Bar Association. I think I could bring another perspective to this discussion: transferring attorney rather than recent graduate. Plus, as you might imagine, I have a lot of free time at the moment to help with any grunt work. Let me know what you think.

**From:** Patricia A. Bennett, Esq. [mailto:pabennett@peoplepc.com]  
**Sent:** Sunday, August 13, 2017 1:46 PM  
**To:** The State Bar of California – California Bar Journal  
**Cc:** me too  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

Just completed your Bar Exam Survey and had no opportunity to explain my responses. I strongly believe that CA should not lower its standards as it grows and not be afraid to uphold rigorous ones for future generations of attorneys. I believe this is laudable for our profession in a world that is moving the competency and ethical requirements for members. Therefore, I recommend keeping the standard high and providing better practice and preparation for students taking the bar.

We need to be committed to providing for everyone competent practice and prep for the exam as we expand our profession to students with non-English as a first language, graduation from non-American colleges and those from backgrounds of less opportunity to grow up with advantages of knowing American professional culture and the everyday common knowledge of the practice of law and fitting into the profession.

Thus, I suggest a survey on how the legal profession can fully incorporate into its legal education help

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that is often now offered by special interest groups, such as pre-law clinics the summer before entering law school, classes and class materials in other languages (possibly tapes) and Bar Prep in other languages.

In summary, we do not need lower standards. As a product of these standards, I appreciate and have become a most valuable member of society with high morals and legal learning. But, we need to know what help we can give to make sure our students will succeed, as other professions.

**From:** Tony Benanti [mailto:Tony@Benanti.org]  
**Sent:** Sunday, August 13, 2017 10:59 AM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** RE: California Attorney Survey on Bar Exam Pass Line

I say keep it where it is. You f'ed me with it. You can f all those snotnose ucla and santa clara grads with it now. To change would be unfair to those of us who passed. I passed the exam that many of my colleagues said was the worst or most difficult bar exam in at least the preceding then years. The only offered raison detre for your organization is to establish and maintain standards. If you can't do that anymore then why should you exist and what did I waste all that bar dues money on? Sincerely perplexed, Anthony P. Benanti, Esq.

**From:** John Blakely [mailto:johnblakely7@gmail.com]  
**Sent:** Saturday, August 12, 2017 9:48 PM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

The last thing any intelligent attorney could ever be in favor of is lowering the quality of representation to our clients. An absolutely unprofessional suggestion.

**From:** Terry Mairs [mailto:busywoman5@gmail.com]  
**Sent:** Saturday, August 12, 2017 4:23 PM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

When I took it first time it was 16% pass rate. Next time..as 29% passing..I passed. Lower rates I think ..means something!!!. Don't make it easier!!!

**From:** Richard Brown [mailto:richardbrwn44@gmail.com]  
**Sent:** Saturday, August 12, 2017 1:00 PM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

Dumbing down is not the answer. If students don't show dedication to apply themselves than they should fail.

**From:** Paul Roller [mailto:paulroller@volcano.net]  
**Sent:** Saturday, August 12, 2017 12:52 PM  
**To:** The State Bar of California – California Bar Journal; paulroller@volcano.net  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

The "lawyer" who are graduating from law school now are dumber than past generations. Don't

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change the pass line.

**From:** Karen Andres [mailto:karen.andres.212@gmail.com]  
**Sent:** Saturday, August 12, 2017 6:21 AM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

since I took it in 1975, I could hardly be much help.

**From:** Dennis Debroeck [mailto:ddebroeck@me.com]  
**Sent:** Thursday, August 10, 2017 9:22 PM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

Elizabeth

I am interested in this topic—BUT without the benefit of 1) focus on the problem you want to solve and 2) data/analysis that may have come from the studies --I cannot provide a meaningful and thoughtful response. I have no bias for considering the issue and therefore submit the survey results you receive are probably based on a guessing game or bias.

I therefore question the entire survey—but nonetheless will respond. BUT you should question the validity of the responses. The California State Bar can and should do better when soliciting input.

I do not believe the survey and questions really specify the real question— WHAT PROBLEM IS THE BAR TRYING TO ADDRESS? PASS RATES --BECAUSE? HOW ABOUT SCHOOL QUALITY? STUDENT EQUITY ( IE LIKELIHOOD OF PASSING AND GETTING A JOB VS COST, OF EDUCATION )? THE BIG PICTURE OF THE LEGAL ECOSYSTEM—HOW MANY LAWYERS DO WE NEED?... AND ULTIMATELY DOES THE BAR EXAM REALLY TELL US WHO IS GOING TO BE A GOOD, EFFECTIVE AND ETHICAL LAWYER???

To respond to the survey in addition to defining the problem you are trying to solve----additional and relevant information is needed---maybe school based \_- I am aware of a decline in students at some schools and schools shrinking class sizes to avoid reducing US News and World Report scores and other schools considering closure—This maybe a good thing and the falling pass rate maybe transitory as the schools/law profession “right size” the supply and demand.

If looking only at scores there are a number of questions/data points— such as-- is the decline in pass rate correlated to all schools, lower tier schools —non accredited schools. Is the “problem” the test or the commercial promotion/selling by some lower tier or commercial schools of a JD?

The analysis should not be solely based on scores —but should be a holistic consideration of the legal profession and schools.

In the absence of input/data I would not change anything  
Please feel free to contact to have further discussion

**From:** Vera Pardee [mailto:vera.pardee@gmail.com]  
**Sent:** Friday, August 11, 2017 8:46 AM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** RE: California Attorney Survey on Bar Exam Pass Line

How unfortunate – both links you provide in the email below cannot be accessed, reporting that they have “timed out.” That does not exactly inspire confidence about the current information gathering process. That said, there is no reason to adjust the bar examination cut score downward. The state

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has an overabundance of lawyers already, and admitting those less qualified to practice law is a recipe for further degradation of the level of skill shown among our practitioners.

Rather, train your eye on our law schools. Are they admitting less qualified applicants? Are they reducing the quality or quantity of their instruction? Are law school financial motives to blame? Do we have too many law schools, and/or have the accreditation criteria been lowered?

If the State Bar were a manufacturer discovering that fewer of its widgets passed the quality assurance requirements, the correct course would not be to change those requirements but to undertake a root cause analysis to determine the reason for the change. Indeed, that would be the only acceptable course if the widget defects in question made the product dangerous. Unqualified lawyers are dangerous to society, so it's clear that the remedy is NOT to let them practice law.

So, no, do not change the cut score.

**From:** William Kenney [mailto:billk1135@gmail.com]  
**Sent:** Thursday, August 10, 2017 10:12 PM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

Thanks for having a relatively short survey with relevant questions. I do not think gender or race should make a difference in considering results.

Many of us who worked all the time that we were in school are not too sympathetic to students who have loan balances when they are finished with school. Also, we well know of the pressures on working and going to school, but in the long run feel it made us really focus and use our time efficiently.

I feel that lowering the standards will not be in the public's best interest.

**From:** Linda Ginsburg [mailto:LGinsburg@cchomenurses.com]  
**Sent:** Friday, August 11, 2017 8:43 AM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** RE: California Attorney Survey on Bar Exam Pass Line

I am unable to respond on the website for unexplained technical reasons. I think lowering standards for bar pass rates is a very big mistake. I am also a registered nurse and test standards were lowered in the 1980's due to a nursing shortage. I can tell you from my continued experience as a nurse and medical malpractice attorney that this was detrimental to the practice of nursing, to the care of our patients, and that substandard nurses continue to be put into our healthcare system without regard to the safety of the patient. There is obviously no shortage of attorneys in California and even if there was, there is no need to encourage mediocrity in the practice of law. There are already many practicing attorneys who are ill prepared to advocate for their clients and to advance more substandard attorneys into the legal system would be devastating to the public who depend on the California State Bar to demand some level of acceptable standards. I do not think that standards should be lowered just to improve that California's pass rate. The pass rate is a reflection of the education the individual received, the law school he attended, the professors he received instruction from, and his ability to be successful as an advocate for his clients. This pass rate should be used as an indicator for improving the law schools, the professors, the preparation for the bar, etc. I am very disappointed that the California State Bar would even consider lowering their standards for no reason other than to have bragging rights on higher pass rates.

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**From:** Tara Hoveland [mailto:tarahoveland@gmail.com]  
**Sent:** Friday, August 11, 2017 7:11 AM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

Oh please, not only does everyone get a ribbon - now they want to help everyone get a bar license!

**From:** Azar Elihu [mailto:azarelihu@hotmail.com]  
**Sent:** Friday, August 11, 2017 9:02 AM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

Elizabeth the two links below don't open. This is my public comment:

I absolutely oppose lowering the bar passing score and concur with Judge Fahey's position in the Daily Journal. There is no shortage of lawyers in California. Lowering the passing score will increase the number of incompetent lawyers.

<https://www.dailyjournal.com/articles/342590>

**From:** Patricia Grace [mailto:patriciagrace1@earthlink.net]  
**Sent:** Friday, August 11, 2017 8:06 AM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** RE: California Attorney Survey on Bar Exam Pass Line

Do not change the cut score.

**From:** Minnick, M. David [mailto:dminnick@pillsburylaw.com]  
**Sent:** Friday, August 11, 2017 9:18 AM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** RE: California Attorney Survey on Bar Exam Pass Line

Please explain what you mean by our demographic information providing appropriate context for our comments. It sounds like you have decided that certain types of people, whether it is based on age or some other factor, have certain predispositions to their opinions that you may elect to "adjust" or "discount" based on your perception of that person's attributes. Why should anyone spend their time responding to a survey where the readers of the input have predisposed views as to how certain types of people will respond. It is also raises serious questions about the integrity of the State Bar's approach to any issue and the process you apparently want to use to decide on some outcome.

**From:** John Munding [mailto:john@mundinglaw.com]  
**Sent:** Friday, August 11, 2017 8:38 AM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** RE: California Attorney Survey on Bar Exam Pass Line

I must be getting old. Are you kidding me? Perhaps a participation award is appropriate and corresponding "letter" for the jacket.

**From:** Mike frankel [mailto:lawmic6@gmail.com]  
**Sent:** Friday, August 11, 2017 9:40 AM  
**To:** The State Bar of California – California Bar Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

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The pass rate in the 60 s was as low as 21% there is no reason to change the line.

**From:** Michele Desoer [mailto:mdesoer@gmail.com]  
**Sent:** Thursday, August 10, 2017 5:52 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

That survey was not very helpful. And it ignores the very real problem that California's low bar passage rate is because we allow people to take the Bar after going to fly-by-night, for profit, and even correspondence law schools that accept students that should not be lawyers in the first place. So the students pay huge bills and are then unqualified to practice law. It is sad, but that is not fixed by allowing people who are not qualified to practice.

**From:** Stephen D. Barnes [mailto:sb@morrisyorn.com]  
**Sent:** Thursday, August 10, 2017 4:24 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** RE: California Attorney Survey on Bar Exam Pass Line

Is it at all possible to know to what the lower pass rates are attributed? I would have a different point of view on a change in the cut score if I thought, for example, the lower pass rate was due substantially to the quality of some of the non-ABA law schools, rather than an overall decline among all schools, including those accredited by the AALS. I'd also like to know ethnic and gender breakdowns. Is any of that or other background information available?

**From:** Tom Janzen [mailto:thomas.janzen@charter.net]  
**Sent:** Thursday, August 10, 2017 5:42 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

I am more than happy to submit the response to the Bar inquiry, but based on the Standard Setting Study and the Committee of Bar Examiners Agenda Item on that subject, it appears to me that declining passing rates are a function of law school decisions made for financial reasons and a move to bail them out of the difficult position of being called to account for law school graduates' high tuition costs and immense loan burdens with lowering passing rates.

For your information, I've been practicing in a narrow field of construction law for over 30 years. I studied (a lot of evenings and weekends) and sat for the Oregon Bar examination in February and passed it the first time. After 30 years I had to relearn a tremendous amount of law that was only a hazy recollection. I don't consider myself to be an exceptionally gifted test taker, but I passed. I must say I'm not inclined to come down on the side of lowering standards.

Thomas Janzen 105783

**From:** suchmanlaw@aol.com [mailto:suchmanlaw@aol.com]  
**Sent:** Thursday, August 10, 2017 4:44 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

I have completed the survey and want to maintain the current cut line to try to maintain a high standard for those who pass the bar. It seems to me that maybe the lower scores are more a result of a decrease in legal education. Is lowering the cut score really "dumbing down"? I should add that I am close to retirement and my comments are solely addressed to maintaining a higher standard for the legal profession in California.

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**From:** Marty Fleetwood [mailto:marty@homebaseccc.org]  
**Sent:** Thursday, August 10, 2017 4:23 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

I completed the survey, but there was no space for comments. As an employer with over 27 years selecting attorneys, lawyers, and law school graduates to work in a non-profit public interest environment, I have met many very intelligent and skilled people who missed becoming Bar members by 1-3 points, and were denied on appeal.

This has seemed inherently unfair, particularly as when hired under a different job description, their performance for tasks appropriately assigned is many times far, far superior to those with a license. I hope any change when implemented, will allow retroactive application, particularly for those with an employer willing to vouch for their capacity.

**From:** Shelley Carder [mailto:shelley.carder@gmail.com]  
**Sent:** Thursday, August 10, 2017 5:15 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

Where can we find the Standard setting study? It seems to me that changing a cut – score should be based on some reasoning other than simply the numbers of people passing or failing. I would like to read the analysis for the recommendation to cut the score, at all. Thank you.

**From:** John Shaffer [mailto:jcslaw1@aol.com]  
**Sent:** Thursday, August 10, 2017 4:33 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

Dear Ms Parker,

Thanks for contacting me about this issue. For your consideration, I had to work a bit to find the report. And I found it difficult reading.

As an assist for us in evaluating how to respond, I think a direct link to the report in your letter would be helpful. I also believe it would helpful to provide us with a summary, something better than the summary than that provided in the report. This might include what we would think about why we would change the test, what the issues are that impact lawyers now practicing and the public, why there has been the three year drop in the pass rate and what other factors might have contributed to this change.

I know time is short and hopefully a follow up email will help obtain more replies.

Thanks for your consideration of this request.

**From:** David Walmsley [mailto:davidwalmsley120@gmail.com]  
**Sent:** Thursday, August 10, 2017 5:03 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

I filled out the survey but did not see any option to comment. I don't need to go to your "Public Comment" site to comment as follows: Is there a shortage of attorneys in California? If so, lower the cut score. If not, leave it where it is. If there's an over-supply of attorneys, raise the cut score. I suspect there is an over-supply.

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**From:** Luis Villa [mailto:luis@lu.is]  
**Sent:** Thursday, August 10, 2017 4:28 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

It's pretty terrible form (borderline irresponsible) to simply ask these questions without providing any sort of context or information about why scores have dropped. Did the exam get harder? Has the composition of test-takers changed? What has happened in other states?

**From:** Robert Hennessy [mailto:rhennssy@gmail.com]  
**Sent:** Thursday, August 10, 2017 3:59 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

Thank you for doing this, Elizabeth. I wish the survey had asked about what I view as the biggest problem: the number of kids coming out of terrible schools, unprepared and unable to be effective attorneys. Lowering our standards is not the answer.

**From:** Herbert Murez [mailto:fredaherb@aol.com]  
**Sent:** Thursday, August 10, 2017 5:01 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

Below I copy a letter recently sent to the Committee of Bar Examiners.

August 05, 2017

The State Bar of California  
Committee of Bar Examiners  
180 Howard Street  
San Francisco, CA 94105

Honorable Committee Members:

I write to express my opposition to the proposed easing of the California bar examination. Doing so would hurt the public and the profession. My principal reasons:

The law is an honorable and learned profession. Lawyers are rightly held to a high level of competence and a stringent fiduciary standard. Lowering that level will not persuade more high quality students to make the law their lives' chosen career path, nor will it improve the public's attitude towards our profession. There are means of improving competence as well as public esteem, but lowering the entry level to the profession is not one of them.

There is no shortage of attorneys. Every ad for an open position in a law firm draws an avalanche of resumes, curricula vitae and writing samples. An increased influx of newly minted lawyers who have not achieved the academic and analytical competence of presently admitted lawyers will not serve the public nor any potential client. It will make presently admitted unemployed lawyers even less employable. The ones who will be hurt most will be the racial minorities, LGBT people, experienced but elderly lawyers, physically handicapped lawyers, in short all those who are legally protected against discrimination but who still experience it. These quasi-protected persons are still the last ones to get hired and the first ones to be dismissed when the labor supply becomes even more ample than it is now, as greater numbers of less qualified lawyers will swell the available labor pool.

I have not observed any decline in the unlawful practice of law – quite the contrary. Areas of legal practice which

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require both expert knowledge and a total fiduciary obligation to the client are increasingly invaded by unlicensed persons who lack both expertise and fiduciary constraints. Immigration “notarios” come to mind, as do “typing services” for bankruptcy petitions, family law papers and the like, as well as stock brokers who advise on and prepare complex estate plans. Greater numbers of less qualified lawyers will not abate these invasions, nor better protect the public against the shoddiness and worse of these unlicensed activities.

I add a short description of my professional life as a lawyer, to show the basis of my foregoing opinions. My State Bar number is 025746. I am now 94 years old. I graduated from a law school which at the time was unaccredited. I had to work fulltime to support myself. I passed the bar examination the first time. I engaged in a general practice, sometimes solo and sometimes in a loose association with others. I no longer accept any client responsibilities, but keep up with what is happening in the law. For some years, I taught law school classes in civil procedure and remedies. Until recently and for about ten years or thereabouts, I heard FINRA arbitrations. In the late 1980s I wanted to be admitted in Nevada, and was told I could not take the bar examination in that state because I had not graduated from an ABA accredited law school. I requested and secured a hearing before the Nevada bar, which ruled that I was not qualified. I petitioned the Supreme Court of Nevada which reversed that ruling on constitutional grounds and modified the rule governing admission of persons like myself. Thereupon I took and passed the Nevada bar examination.

**From:** L. Anne Mainieri [mailto:mainman1@roadrunner.com]  
**Sent:** Thursday, August 10, 2017 4:25 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

This date I completed the survey and public comment. My husband Charles Mainieri is also an attorney. We share the same personal email address so kindly forward an additional survey so that he may provide his input as well. Regards, L. Anne Mainieri Esq. (nee Lotito Esq.)

**From:** Fine, Art [mailto:ABF@msk.com]  
**Sent:** Thursday, August 10, 2017 3:08 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Cc:** Fine, Art  
**Subject:** RE: California Attorney Survey on Bar Exam Pass Line

All:

Without background on what the study found, the survey is worthless as one’s responses to the survey may and probably will differ depending upon what the study found. More specifically what are the reasons for the continuing decline of bar exam pass rates in California? Has the bar exam become more difficult over time? If the exam has not become more difficult, has the grading become more stringent resulting in lower pass rates? If the answers to the preceding two questions are in the negative, has the quality of legal education and/or proficiency of bar examinees decreased over time, and if so why? If not one of the foregoing reasons, what are the reasons for the decline? Will a reduction in the cut score from 1440 to 1414 restore the pass rate to what it has been historically, and if not how much does the cut score have to be reduced to restore the historical pass rate?

**From:** Jerry Lipkin [mailto:lawyerjerrylipkin@att.net]  
**Sent:** Thursday, August 10, 2017 2:35 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

I am in fsvor of lowering the cut line. A very close friend has taken the bar twice.

**To:** The Stat **From:** Lucille Hino [mailto:lucillehino@gmail.com]  
**Sent:** Thursday, August 10, 2017 2:16 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

PUBLIC COMMENTS – EMAILS

Most important -- not specifically addressed == measuring depth of understanding of the law. The number means nothing to me not knowing the quality of the education represented by the applicant pool  
e Bar of California - California Bar e-Journal

Subject: Re: California Attorney Survey on Bar Exam Pass Line

Most important -- not specifically addressed == measuring depth of understanding of the law. The number means nothing to me not knowing the quality of the education represented by the applicant pool

**From:** Rob Walter [mailto:rob@robwalter.us]

**Sent:** Thursday, August 10, 2017 2:56 PM

**To:** The State Bar of California - California Bar e-Journal

**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

What the heck does Gender Identity have to do with this issue?! Why does demographics play a role in deciding who is qualified to practice law? Isn't that what the bar exam is about and if not, then why have it? Just have a transgender bar exam and solve the whole issue.

**From:** Edward Idell [mailto:eddiesq@gmail.com]

**Sent:** Thursday, August 10, 2017 2:15 PM

**To:** The State Bar of California - California Bar e-Journal

**Subject:** RE: California Attorney Survey on Bar Exam Pass Line

Hello,

I looked at the survey but I don't think it is helpful without some background information.. Is the test process/ contents basically the same over the last 5 or so years or has it changed in any material way? When one of the questions recites that California has the second highest cut score, is that standardized across the nation? If not, how do you compare to determine that it is second highest? Have there been any significant number of new law schools opened in the past decade or so that might influence the results? Has there been a substantial change in the basic law school curriculum? I think just to answer a question about the cut score, without more information, is not really meaningful. By also asking questions about increasing diversity, it also implies that increasing diversity in law schools might be affecting the scores, when I don't know that there is real evidence for that – or maybe there is, I just don't know.

I wish I had time to investigate all of these issues on my own before answering this survey, but I don't. Perhaps if you provided some links or some more background information it would help you obtain better and more meaningful survey results.

**From:** Richard C. Gagliano [mailto:rgagliano@socal.rr.com]

**Sent:** Thursday, August 10, 2017 2:45 PM

**To:** The State Bar of California - California Bar e-Journal

**Subject:** RE: California Attorney Survey on Bar Exam Pass Line

Hi Elizabeth,

If I could put in my two cents, the reasons why salaries are so low, and attorneys are still paying off student debt into their 40s and often unable to scrape together a down payment for a home, is because salaries are low. In other words, too many lawyers chasing too few jobs. Many firms, and I have worked at one, exploit this dynamic. When you do get a job you have to work harder than ever to keep it.

The Bar should be proactive and protect the profession the same way other licensed professions are protected. This is not about making legal services assessable, because lawyers with a heart for public service will pursue opportunities to be of service, because it is a fulfilling thing to do. And it is not about diversity, because lowering

PUBLIC COMMENTS – EMAILS

the score harms everyone that studied hard and passed the test, and that group, is a diverse group. There are minority or international student for whom English is a second language, who hits it out of the park on the first take.

Thank you for bringing this important issue to light.

**From:** Michael Duberchin [mailto:mduberchin@gmail.com]  
**Sent:** Thursday, August 10, 2017 2:20 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

The following speaks volumes about my closing argument:

Just like what happened in New York, the results looked much better in D.C. thanks to the UBE. According to the [District of Columbia's Committee on Admissions](#), 684 examinees sat for the test this summer — the highest number of examinees in quite some time. Of those examinees, 62 percent passed the D.C. bar exam. The overall pass rate for first-time takers was 71 percent. These are tremendous gains from [July 2015](#), where 296 examinees sat for the exam with an overall pass rate of 39.1 percent, and a pass rate for first-time takers of 53.8 percent. The District's July 2016 results under the UBE represent the highest pass rates in recent history for the nation's capitol. Illinois' pass rate the same.

**From:** chet1003@aol.com [mailto:chet1003@aol.com]  
**Sent:** Thursday, August 10, 2017 2:15 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

Dear Director--interesting issue which has been around for many years--what is the purpose to the bar exam? and what form should it take? Also difficulty of questions and standard of grading may come into play. What does the multistate tell us? What does school attended matter? Lots of variables as the score is a function of many things including preparation . Good luck. Chet

**From:** Jeff Briggs [mailto:jbriggs@applicantone.com]  
**Sent:** Thursday, August 10, 2017 2:12 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** RE: California Attorney Survey on Bar Exam Pass Line

Gender "identity?" What in the world does that mean? Seriously. Come on.

**From:** John Hamilton [mailto:johnjhamiltonlawoffice@gmail.com]  
**Sent:** Thursday, August 10, 2017 2:40 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** Re: California Attorney Survey on Bar Exam Pass Line

I think law schools have been lowering their standards to keep admissions up and revenue streams going.

Schwartzahs dont do as well as whites on bar exams

**From:** Jim Wakefield [mailto:JWakefield@cwlawyers.com]  
**Sent:** Thursday, August 10, 2017 2:18 PM  
**To:** The State Bar of California - California Bar e-Journal  
**Subject:** RE: California Attorney Survey on Bar Exam Pass Line

I responded to the survey. But the questions you asked about me.....which I answered truthfully, and the

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questions you asked about the basis for my opinion told me everything I needed to know about your bias.

There is no shortage of lawyers. Law schools have reduced their requirements for both admission and graduation. You did not ask about that. If law schools returned to their original requirements for admission and graduation, you will see an increase in bar passage rate.

From: Marti Potiriades [<mailto:martiellis7@icloud.com>]

Sent: Wednesday, August 02, 2017 9:50 PM

To: ADMSF

Subject: Fix Bar admission standards for July 2017

I write to relay my disgust with the comment of Janet Brewer, in today chronicle, asking "what's the rush" to fix the unrealistic bar standards now in place. The "rush" is that real people, young people, have put their lives on hold, have incurred thousands of dollars in student loans, have incurred thousands in bar prep classes, lost time with their families, have job applications in suspense, due to the extreme length of law school itself, compounded by sadistic standards, compounded by intolerable waiting time for results.

As a practicing attorney with a child now waiting for bar results, I support the view of the 20 CA law school deans who endorse immediate, meaningful changes. My son recently graduated Cum Laude from a respected accredited school, yet the lousy odds are daunting to all students, for good reason. Get out of the ivory towers and do the right thing.

From: Nello Prato [[mailto:nello\\_prato@att.net](mailto:nello_prato@att.net)]

Sent: Thursday, July 20, 2017 6:48 PM

To: ADMSF

Subject: Admission requirements

I am 81 years old. I have been an active member of the Set Bar since 1962 and have been practicing law in SF for 55 years. I am not retiring and will practice law as long as I can. I want to give my clients the benefit of gaining 55 years experience as a lawyer. My Bar Number is 32618.

Briefly: please do not make it easier to pass the Calif Bar. There ae too many attorneys now who are so eager to file lawsuit at the drop of the hat. This eagerness to file suits as a remedy really hurts their clients. Too many fake and false lawsuits in the CA. If you make it easier for lawyers to pass the Bar, you make it easier for them to open up law offices without the necessary background and experience. In my 55 years I have seen too many of these phony lawsuits that clog up the judicial process.

If necessary, I am happy to sit down and talk to you.

From: David Schmidt [<mailto:schmidtdavidf@yahoo.com>]

Sent: Monday, August 14, 2017 9:08 PM

To: deanfaigman@uchastings.edu

Cc: ADMSF; Fox, James; Danette Meyers; Jason Lee; janet.brewer@calbar.ca.gov; Mark Broughton; Michael Colantuono; terrance.flanigan@calbar.ca.gov; Renee LaBran; Joanna Mendoza; Richard Ramirez; Sean SeLegue; Stacie Spector; Brandon Stallings; Alan Steinbrecher; Todd Stevens

Subject: Re: Bar Exam Pass Line

Dear Chancellor & Dean Faigman,

I read your email about the State Bar survey and can't help but wonder whether this has some connection with minority activists (mostly black and Hispanic) who have recently been attacking standardized exams. For such activists, who often are anti-white racists and ethnic cheerleaders, it isn't enough to have received unfair preferences and advantages (i.e., reverse discrimination) in admissions, classes, grades, etc. When their favored

PUBLIC COMMENTS – EMAILS

ethnic groups can't pass standardized exams, most of which have set the standard for many years in a color-blind manner, these minority activists then proceed to attack the exams, insisting on additional ethnic privileges beyond those that they have already received. Such ethnic activism and racism suck and standardized exams should not be altered for social engineering (i.e., dumbed down to cater to certain ethnic groups). I certainly hope Hastings is not catering to minority activists in pressuring the State Bar. I personally want to see a Bar Exam that maintains high standards, without any consideration of race, ethnicity, gender, etc., which factors are irrelevant to exam participation and performance. Why do the powers that be seem to have such a problem with simply administering exams and applying rules in a neutral, fair manner, without regard to minority activists and the racial preferences and anti-white racism that are their obvious agenda?

From: Clay Jackson [mailto:cjackson@affinitygroupadmin.com]  
Sent: Thursday, August 10, 2017 1:55 PM  
To: ADMSF  
Subject: State Bar Results  
Importance: High

Dear Cal Bar Admissions,

I have been practicing law, in California, since 1989 and am happy to say that I passed the Bar Exam the first time.

I was just asked to participate in your survey about lowering the Bar Exam cut rate, which I am wholly against. I was surprised that your questionnaire didn't allow me to comment upon this issue, so here's an article that well expresses my feelings on the subject: <https://www.dailyjournal.com/articles/342590>

Also, the fact that you have pared down the exam from three (3) days to two (2) days should be enough of a concession to those that might have a problem passing the Bar Exam. So, lowering the bar to make it easier to become an attorney is certainly NOT the solution to make better lawyers in this state or keep the quality of our attorneys high. Conversely, lowering the cut rate would have the opposite effect, as pointed out in the article which I've noted above.

Just as the saying that you don't want your brain surgeon to have been the bottom of his/her class, we need to make and keep the same principle true for the legal profession in California.

Please share these comments with the Board of Trustees and let's do all we can to make California's attorneys better attorneys and not make it easier just because people are having a tough time passing the Bar Exam.

From: Arti Denterlein <adenterl@yahoo.com>  
Sent: Friday, August 4, 2017 9:29 AM  
To: Arti Denterlein; Pi, Ron  
Subject: Input-Bar Exam cut-score

Mr. Pi,

I would also like to add that reducing the bar exam cut-score from 144 to 141 will not even scratch the surface. The high cut-score disadvantages the minority students whose native language is not English, but at the same time they are in a best place to help their communities, as they speak foreign languages besides speaking English. There are poorer communities who need legal help but they would want to speak to a lawyer who speaks their language. NY cut-score is around 133. So, may be California cut-score can be aligned with NY.

From: Arti Denterlein <adenterl@yahoo.com>  
Sent: Friday, August 4, 2017 8:41 AM  
To: Arti Denterlein; Pi, Ron  
Subject: One Bar-Taker's feedback

PUBLIC COMMENTS – EMAILS

Mr. Pi,

I took the California Bar last week and have taken it several times in the past. I would like to give my feedback on the bar exam grading policies. Here they are:

1. There is no way a bar-taker can answer these essay questions within the allocated time. The model answers posted on the calbar site could not possibly have been written during an examination and under time constraints. We follow these model answers and find that it is humanely impossible to write these very long answers under the allocated time. We believe that these model answers are written by some lawyers without any time restrictions. So, please be realistic and post only model answers that have been actually written by bar-takers during bar exams. There is no way one can write pages and pages of answers within such a short period.

2. The grading is the problem- very inconsistent. The essay grading is very subjective and the essays are graded within a very short period of time. We heard that the graders are paid very little and they could not care less about grading - basically it is a chore for them. Please have the exam questions writers evaluate the grading to verify that the answers have been correctly graded. The exam question writers may not agree with the these graders. It is very unfair on students. Calbar essays require very high degree of analysis- so it is fair the exam question writers verify the grades. Since it is 5 essays now-a-days, it may not be so time consuming for them to verify the grades.

3. Since it is a 2-day bar now, please release the results before current result dates (Nov, and May).

4. In California we have to also learn California subjects on top of federal subjects. Such as California Evidence as well as federal evidence; California Civil Procedure as well as federal civil procedure; California Professional Responsibility as well as ABA authorities. So, in total we have to study 18 subjects including these California subjects.

This is too much. No other jurisdictions have this many subjects to cover.

5. We should not have to retake MBEs if we have passed it. Other jurisdictions do not require retaking of MBEs if they pass the MBE portion of the exam. It is only fair.

6. Because Calbar has made the exam so hard, many students have to take barprep courses, costing thousands of dollars (and go into debt), and still don't pass. These barprep persons/vendors prey on repeaters or first timers because they make a ton of money and the helpless students have no other options but to rely on these so-called extra help. This is an epidemic now.

7. Since, the bar is 2-day now - please reduce the exam fee.

From: Joan Lavine - LA, CA, USA [mailto:joanlavine@gmail.com]

Sent: Tuesday, August 01, 2017 10:31 AM

To: Conneely, Cathal <Cathal.Conneely@jud.ca.gov>

Subject: When will there be a comment period on changing the CA State Bar entrance exam requirements?

Tuesday, August 1, 2017 10:30 a.m. PDT

Good morning, Ms. Conneely

I would like to find out if and when there will be a comment period on changing the minimum scoring requirements on the California State Bar entrance exam?

My opinion is that our exam requirements are too high and too harsh. I would prefer that they be dropped to a minimum of 135.

Feel free to post my opinion to your comments regarding this topic and to circulate it and make it a public record.

PUBLIC COMMENTS – EMAILS

From: Victor Davich [mailto:vdavich@gmail.com]  
Sent: Friday, July 14, 2017 11:28 AM  
To: Conneely, Cathal <Cathal.Conneely@jud.ca.gov>  
Subject: Privileged: Forward to Chief Justice Tani G. Cantil-Sakauye. |Objection to lowering CA bar pass score.

Your Honor

I am an attorney admitted to the State Bar of California in 1987, 30 years ago. As such, I want to register my strongest objections to lowering the passing score for the California Bar Exam.

The level of legal knowledge, expertise, and acumen in our state is unparalleled. One major reason is the high bar we set for admission. This so-called reasons is, in my opinion, are specious and seem to be a transparent attempt by California law schools to increase their dwindling application rate. This issue was not even a blip on the screen until the recent drop-off in law school applications. In this connection, here is a quote from today's New York Times:

"And only 51 percent of the graduates of the University of California Hastings College of the Law passed the state's exam in July 2016. That result, the school's dean, David L. Faigman, wrote the California Committee of Bar Examiners last December, was "outrageous and constitutes unconscionable conduct on the part of a trade association that masquerades as a state agency."

If Mr. Faigman has a problem with his school's pass rate, perhaps he should review its admission policies, faculty competence, and student performance. Instead of complaining that the bar has been set too high. I don't think California residents who need a good attorney have the same issue he does.

I implore you to ensure the preservation of California's high standards.

From: j tobin <tobin.jm@gmail.com>  
Date: August 23, 2017 at 08:47:26 PDT  
To: <elizabeth@pacific.edu>  
Subject: Bar survey missed deadline - comments

Hello Elizabeth,

I'm a member of the CA bar since 1988. I was on travel and missed the deadline to provide comment through the survey process.

I believe the pass rate should remain as it always has. I find it interesting that lowering the bar solves any problem, and what is the problem that we are seeking to address? Does CA need more practicing attorneys? Given that persons attending non-accredited schools and/or 'reading' the law can sit for the exam, it would appear that CA casts quite a large net. Presumably, a larger percentage would fail. I don't believe lowering the standard solves anything, and without being clear about the problem we are seeking to address, any 'solution' is unnecessary. I don't think CA should seek to have a higher pass rate simply for the sake of having a higher pass rate. If CA would like to see more students pass the bar because it needs more lawyers, then consider a more rigorous education and vetting process throughout the totality of law school education that prepares students for the exam. Law school education is more important than ever in today's global market. If one were to take the exam by 'reading the law' through an 'apprenticeship' arrangement, then that person's education is solely dependent on one teacher's own qualification and teaching, rather than a more well rounded experience from an accredited school.

From: camen [mailto:camen@yourestatematters.com]  
Sent: Monday, August 14, 2017 3:29 PM  
To: Chinn, Deanna  
Subject: Proposed amendments to law school statutes and rules

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I am a graduate of U. of California, Hastings College of Law in 1982, and in that year passed the California Bar Exam the first time. I received an email from the state bar stating that they were considering lowering the cut score on the bar exam in order to raise the pass rate. I know that when I took the bar exam, the pass rate for Hastings, and other accredited law schools was around 80% and what was driving down the pass rate was that law students from unaccredited law schools, out of state lawyers, and self-study persons were responsible for lowering the pass rate. Rather than dumbing down the pass rate the State Bar should insure that the people taking the exam are qualified. Like other states, the Bar should require a law degree from an accredited law school to take the Bar exam and to be admitted to the bar.

From: Stephen Cole [mailto:SCole@colenetlaw.com]  
Sent: Monday, August 07, 2017 8:10 AM  
To: ADMSF  
Subject: bar

Greetings:

My father passed the bar in 1942, I in 1972 and our son in 2012.

I read this quote recently:

“When you look at the decline, what that means is you have fewer lawyers in California over time,” said Leah Wilson, the state bar’s chief operating officer. “We know that we have significant numbers of people in this state that have inadequate access to counsel or no access to counsel.”

Curious as to the basis for the statement that CA needs additional attorneys. Would you mind sharing? It sure seems like there are a lot of CA attys out there looking for jobs.

From: Marti Potiriades [mailto:martiellis7@icloud.com]  
Sent: Wednesday, August 02, 2017 9:50 PM  
To: ADMSF  
Subject: Fix Bar admission standards for July 2017

I write to relay my disgust with the comment of Janet Brewer, in today chronicle, asking "what's the rush" to fix the unrealistic bar standards now in place. The "rush" is that real people, young people, have put their lives on hold, have incurred thousands of dollars in student loans, have incurred thousands in bar prep classes, lost time with their families, have job applications in suspense, due to the extreme length of law school itself, compounded by sadistic standards, compounded by intolerable waiting time for results.

As a practicing attorney with a child now waiting for bar results, I support the view of the 20 CA law school deans who endorse immediate, meaningful changes. My son recently graduated Cum Laude from a respected accredited school, yet the lousy odds are daunting to all students, for good reason. Get out of the ivory towers and do the right thing.

Dear Mr. PI:

Your name has been provided to me by Mr. Coneelly at the California Supreme Court. I have been a practicing lawyer in California for approximately 38 years. I understand you are a key person in the California Supreme Court's current analysis of the California bar exam results. As you know, there has been a great deal of controversy in the press and otherwise about the recent low bar passage rate in California. A related issue that I urge the court to consider is the requirement that the California bar exam be passed all at one sitting. When I took the bar exam I passed the essay but had to retake the multiple choice test. Thus, like many others, I passed in multiple sittings. My son, who went to night law school and who has dyslexia, was allowed extra time, and has taken the bar exam three times. He has passed every section of the bar at one sitting or another, but never in one sitting, which is apparently, as I understand it, the requirement now. That requirement seems to me, and to the numerous other bar members with whom I have discussed the issue, to be capricious and arbitrary. Furthermore, if the California

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Supreme Court were to lower the requirement for passage, what happens to people such as my son who have indeed passed the bar exam at the higher rate but just not in one sitting? Should the California Supreme Court lower the passage rate requirement it would be extraordinarily unfair to those who have passed the exam but just not at one sitting. In fact, that would mean that those applicants who have passed the bar exam at multiple sittings have met the higher requirement, as opposed to a new lowered requirement, and are entitled to be members of the California bar just as much if not more so than those who pass at the lower level. In the interests of fairness, the applicants who have passed at the higher level but not at one sitting should be admitted retroactively. I would appreciate your feedback on this issue as I understand you are compiling the analysis for the California Supreme Court.

Patrick Baldwin

From: Anthony Niedwiecki <aniedwiecki@ggu.edu>

Sent: Thursday, August 24, 2017 4:05 PM

To: Comment, Public

Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Attachments: ahead\_of\_the\_curve\_turning\_law\_students\_into\_lawyers.pdf; nybarstudyimpact2006.pdf; nybarstudyimpact2007.pdf

I made remarks at the SF public hearing, but I wanted to submit electronic copies of the studies I discussed in my remarks. They are attached to this email.

The relevant language from the NY report is this:

“The current and planned increases in the passing score tend to have the largest impact on groups with average scores in or near the range over which the passing score is projected to vary (660 to 675). Among the domestic-educated first-time takers, the Black/African American group and other minority groups tend to suffer sharper declines in pass rates than the Caucasian/White group as the passing score goes up. In addition, because the minority groups have lower pass rates to begin, a decrease of a few percentage points in the pass rate has a larger proportional impact on the pass rates for these groups than it would if the initial pass rates were higher.” Michael Kane, et. al., *Impact of the Increase in the Passing Score on the New York Bar Examination, A Report Prepared for the New York Board of Law Examiners*, October 4, 2006, at 136-37.

The relevant language from the report on the Daniel Webster Scholar program in New Hampshire is:

“To find out, IAALS worked with an evaluation consulting firm to conduct quantitative and qualitative analysis of existing research to evaluate outcomes of the Daniel Webster Scholar Honors Program. Notably, we learned:

- In focus groups, members of the profession and alumni said they believe that students who graduate from the program are a step ahead of new law school graduates;
- When evaluated based on standardized client interviews, students in the program outperformed lawyers who had been admitted to practice within the last two years; and
- The only significant predictor of standardized client interview performance was whether or not the interviewer participated in the Daniel Webster Scholar Honors Program. Neither LSAT scores nor class rank was significantly predictive of interview performance.” Alli Gerkman & Elena Harman, *Ahead of the Curve: Turning Law Students into Lawyers*, at 1 (2015).

From: Dunworth, James R <james.dunworth@pfizer.com>

Sent: Saturday, August 19, 2017 1:37 PM

To: Comment, Public

Cc: Dunworth, James R

Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Attachments: Letter to Bar Examiners May 16.pdf

PUBLIC COMMENTS – EMAILS

To the Committee of Bar Examiners,

My name is James Dunworth and I recently took the July 2017 California Bar exam and am presently awaiting to hear the results. I am writing the Committee of Bar Examiners to express my concern with the way the Committee grades the exam. Earlier in February 2016 I also took the bar exam and scored a 1,433.06 (based on my calculations) – see the attached letter to the Committee of Bar Examiners sent in May of 2016, as well the contents of this letter below. This letter was written to express my concern that the Committee: (1) made in error in not reporting my resolution grade after a second read of my essay and performance tests was completed; and (2) in my opinion the process of re-grading the entire written portion of the exam was unfair given the subjective nature of the grading process. (as explained in the attached letter regarding my February 2016 bar exam grade, Essay #3 was graded at 70% after the 1st Read, and then received a grade of 55% after the 2nd Read; and PT A received an initial score of 75 and then received a grade of 65% on the 2nd Read).

As I mentioned in my May 2016 letter, the subjective nature of the grading system related to the written portion of the exam is very concerning. How an applicant such as myself goes from providing an answer that one grader considers to be clearly adequate to another grader considering it to be inadequate is beyond comprehension. The only fair way to handle the evaluation of an applicant who undergoes the second read process, due to his receiving a score of 1390 or higher but less than 1440 , would be to only change the score on any written exam that improves an applicant's first read score. The net result of a second read should not be to penalize an applicant by lowering his or her initial score obtained after the first read, but rather should provide the applicant with the benefit of any doubt that may exist as to his or her competency. To further illustrate why this process is so unfair, imagine a scenario where an applicant scores 1440 after the first read. If this were the case then the Committee would never have considered a second read. However, had they done a second read and used the same subjective grading process used when re-grading my February 2016 exam, the applicant would have ultimately failed the exam despite receiving an initial passing grade.

Further, I want to also state my concern and frustration with the Committee of Bar Examiners as I never did receive an acknowledgment of either receipt or any subsequent answer to my letter written in May 2016 where I clearly made the case that an error had been made in calculating the resolution grade I received for Essay #3 where the first read was 70% and the second read 55%. Essentially, the Operant Grade received for essay #3 was a 55, the same grade received on the 2nd Read, despite having received a grade of 70% on the 1st read.

The Committee of Bar Examiners needs to seriously consider not only the need to lower the cut score, but also how it evaluates the final grade of applicants who are required to have the written portion of the exam re-graded.

From: david.chaiken@gmail.com  
Sent: Saturday, August 19, 2017 8:08 AM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

To whom it may concern:

I am a member of the State Bars of California and Georgia, having taken the full examinations for both states in 2004 and 2002, respectively.

I am astonished that the State Bar of California is considering lowering its standard for a passing score. This is because a considerable factor--if not the determinative factor--in successfully taking a bar examination is studying, taking practice exams, and, as much as lawyers do not like to admit it, memorization.

Before I began studying for the CA bar examination, I conducted research on passage rates because I had heard rumors that the CA exam was one of the hardest in the country, and I had some concerns over whether it would be a challenge for me. As it turned out, however, as far as I could tell, the CA passage rate data was no different than that of any other state bar when you looked at the passage rate data for graduates of similarly situated law schools

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such as mine, Emory (80%-90% range). But in CA, there are so many other schools--including unaccredited schools--that it appeared to artificially deflate the passage rate data. So in the end, I was left with the impression that the notion that the CA bar is so difficult or so elite is largely a farce.

Then I actually began studying for the exam, which strengthened my conclusion. As it turns out, studying for the CA exam is dramatically easier than other states because, unlike Georgia for example, there are almost no state-specific subjects covered on the exam, and therefore dramatically less material to prepare for and study. By way of example, the GA exam purported to cover--and thus required preparation for--somewhat arcane subjects such as commercial paper, negotiable instruments, taxation, Georgia criminal procedure, and Georgia civil procedure (both of which were different from the federal rules).

In contrast, the CA exam purported to cover only two state specific subjects (marital property and trusts & estates), both of which were almost comically easy and straightforward in comparison to the Georgia-specific examples above. Studying for the CA bar, therefore, thus required preparing on, and memorizing, a mere fraction of the universe of material required in GA, and essentially required only a refresher on the federal law and federal common law of evidence, criminal procedure, constitutional law, and other subjects, which means that studying for the essays and the multi-state portion can be done simultaneously rather than separately.

Given how much easier the CA bar is to prepare for and complete, I am extremely skeptical of any effort to lower the standard required for a passing score.

I hope that you find this information helpful, and I am happy to answer any questions that you may have.

Barbara Erickson <barerickson@gmail.com>  
Sent: Wednesday, August 16, 2017 2:52 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Please keep the same bar exam passing score intact. We should not be going for the lowest common denominator, but instead should be finding ways to elevate the competence level of those seeking to pass the bar

From: mjcesq100@aol.com  
Sent: Wednesday, August 16, 2017 6:59 AM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

The decline in pass rates is unrelated to the content of the bar exams. It is a result of a decline in educational preparation in our schools that long occurs before an applicant enters law school.

There should be only one criteria for passing the exam: academic standards that include literacy and the ability to think rationally and critically.

The standard for passing should not be changed.

Margot J. Champagne  
Hastings College of the Law '72  
California Bar No. 54907  
DC Bar No. 186544  
From: camen <camen@yourestatematters.com>  
Sent: Monday, August 14, 2017 3:57 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

I am a graduate of U. of California, Hastings College of Law in 1982, and passed the California Bar the first try in the

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summer of 1982. I believe that the pass rate was around 50%. But I also believe that the pass rate for graduates of accredited law schools and people taking Bar Review Courses was over 80%. Rather than lowering the passing test scores, it should be a requirement to graduate from an accredited law school and have the law schools teach the students what they need to know to be a lawyer and pass the bar exam.

To lower the pass rate to get diversity, and because of the concerns that some law students have student loans that they can't pay off because they can't pass the bar (some of the concerns that were on the Survey put out by the State Bar) is just wrong. Admissions to accredited law schools already consider diversity. That unaccredited law schools continue to charge tuition to persons who lack the qualifications to get into accredited law schools, rather than someone telling them that they won't ever be a lawyer, should not be the reason to lower the passing grade. Stop the unaccredited law schools.

The declining pass rate is due to the watering down of eligible persons that can take the bar exam. Require accredited law schools and a bar review course for everybody including out of state lawyers to get the pass rate up, rather than lowering the interim cut score.

From: Elizabethanne Agevine <outlook\_4BA4C92EB9D737F6@outlook.com> on behalf of Elizabethanne Agevine <angevine@earthlink.net>  
Sent: Monday, August 14, 2017 1:38 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

After more than 30 years of practice I am continually astounded by about 10% of the attorneys who practice. These people just seem too dim to have passed the bar and too lazy to not be in trouble. They created problems in cases and give us all a bad reputation With 10% of us already practicing without the knowledge and/or effort that is needed to do a good job, I do not see that lowering the bar rate by 26 points will improve anything.

The big problem for diversity is that bar exam classes are very expensive and require a full time effort. Why not create scholarships to take exam classes and a small grant to pay their rent and food.

It is very hard to pass the first time without the classes and most students have a heck of a time finding the money for them. 31 years ago I borrowed the money and was fed and housed by my educated white family who understood how important the classes were. If we want diversity we need to make sure the classes can be paid for by all the people who want to take the test.

Start a grant program to pay for the exam classes for people who want to take the test. Do not lower the test cut.

From: Korell <korellhome@verizon.net>  
Sent: Sunday, August 13, 2017 6:22 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

8-13-17

Re: Lowering the pass line / cut score for the California Bar Exam

Lowering the pass line / cut score for the California Bar Exam is an extremely bad idea and potentially seriously injurious to the public, the justice system, the State Bar and its members. Given the number of practicing attorneys in this state and the state's continually growing population, the decline in the pass rate for examinees seemingly reflects simply a decline in the competency and qualification of the individuals taking the exam. While there may be numerous contributing factors to this decline, neither the public as a whole, the interests of diversity and the under-represented, the justice system, the State Bar or attorneys are safeguarded, much less advanced, by adding less qualified individuals to the practice of law. Protection of the public through competent representation is an imperative.

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Steven W. Korell  
SBN 77056

From: Susan Nerlinger <snerlinger@earthlink.net>  
Sent: Sunday, August 13, 2017 11:09 AM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

I am writing to make a public comment about the proposal to lower the score for passing the California State Bar Exam.

I left the practice of law in California quite some time ago, around 25 years ago. There were too many lawyers competing for business then and I can't imagine that it's gotten any better since that time.

On the contrary, hundreds more enter the profession every year. It makes no sense to lower the standard for licensing. At the time I practiced, the challenge for consumers of legal services, as far as I could see,

was to find a lawyer who was adequately trained AND held himself or herself to the highest ethical standards. Making it harder for lawyers to make a living in the profession only encourages them to take short cuts with ethics and standards for competence. It is a bad idea, in my opinion.

From: Susan <susanflr6@gmail.com>  
Sent: Sunday, August 13, 2017 10:49 AM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Admittedly, I haven't read all the background materials, but I think the questionnaire misses the main issues, which include:

The amount of correlation, if any, between bar exam pass rates and scores and the quality of the legal services later provided, and the definition of "quality",

Whether/how much the pass rate increases the number of attorneys providing services to the poor, public interest etc. Why assume the lower scoring attorney will be interested in those areas of law? Won't many want to make more money? Do states with lower pass rate scores have a higher percentage of attorneys pursuing such careers---my guess is 'no',

Whether the concepts tested on the exam in both the written and mult-choice parts of the exam to reflect the interests, cultures, concerns of all of the various groups taking the exam,

Whether the lower test scores result from lowered standards in colleges, and, if so, whether law schools should provide post college pre-law school remedial classes to bring the students up to level instead of lowering the passing score., and

Whether the lowered pass rate reflects the fact that fewer people are interested in being lawyers so school admissions standards have been lowered to compete for them.

There are many more I'm sure.

From: Mitchel Kahn <mkahn76@gmail.com>  
Sent: Sunday, August 13, 2017 10:30 AM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

The issue should be maintaining educational standards for all law school attendees. If the tests don't properly

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reflect the attorney entrance standards, then they need to be modified as necessary. There's no shortage of attorneys in the state and of those many are not practicing at a very high level. Those that are command \$1000+ hourly rates which is obnoxious. Creating more quality attorneys to compete regardless of race, religion, etc., will benefit all in society and reduce the enormous high-end expense of justice for all. Don't reduce standards, increase competency.

Rudy Loewenstein <rudy@relcrimlaw.com>

Sent: Sunday, August 13, 2017 8:34 AM

To: Comment, Public

Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Admitting people who don't have the requisite intellectual capabilities to pass the Bar Exam does not serve the public interest. Lowering the standards to be a lawyer means more unqualified people practicing bad law. No one is saying there aren't enough lawyers. Too many law schools producing too many unqualified candidates who shouldn't have passed law school in the first place who were passed through for economic reasons is not a reason to admit less qualified candidates.

Jim Tuthill <tuthill@pacbell.net>

Sent: Saturday, August 12, 2017 8:15 PM

To: Comment, Public

Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

The foremost goal of the State Bar is to ensure the competency and integrity of attorneys licensed to practice in the state. No more than I would want an unqualified surgeon to operate on me, I would not want an unqualified attorney to provide me with advice and counsel. The state bar and the Supreme Court must ensure the ability of licensed attorneys by maintaining high standards. Unfortunately, there are too many unaccredited law schools in CA. When you look at the pass rates of students from accredited law schools, the rates are similar to other states where the majority of bar examinees are from accredited schools. Do not lower the standards for admittance.

From: Jim Wright <jgord23@hotmail.com>

Sent: Saturday, August 12, 2017 3:57 PM

To: Comment, Public

Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

I strongly believe that the written bar exam represents only a portion of what is necessary to be an effective lawyer. In my 40+ years in practice mostly in government law, I sometimes came across attorneys who had passed the bar, but simply did not have the requisite: ethics, ability to understand and work with complex systems, business sense and emotional stability. The bar exam does not successfully evaluate any of these factors.

We do not allow medical doctors full licensure to practice until each of them has served a period of supervised performance. The third year of law school should have half time classes and half time supervised work with experienced attorneys who would evaluate work and report regularly to the law school and the individual students.

King Hall did not require actual work experience, but I worked half time for legal aid, etc. my last year, as well as carrying a full academic load, and in the course of that work I learned how much I still needed to learn to be a good practicing lawyer. Fortunately for me, after changing jobs a couple times, I ended up in assignments where two or three very experienced attorneys and one local judge regularly monitored my work and gave me professional feedback which informed the rest of my career. Much of that feedback I could have and practically should have received in a structured program my last year of law school. Such regular review and feedback may well also

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enable students to marshal skills needed to pass the bar exam.

From: Thomas Horn <monacosf@gmail.com>  
Sent: Saturday, August 12, 2017 12:58 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Good afternoon. I just completed the form sent to licensed attorneys in California but wanted to add a couple of comments. I took and was admitted to the Bar in 1971 (so perhaps my comments aren't relevant as my experience predates multi-state). But I came from another state to study law in California because California was considered nationally as the best state in the country for its legal system, known for the quality of its legal education, its judiciary and its bar. Everyone also knew that California had the toughest bar exam in the country. I don't remember precisely the pass rate at the time, but it was among the lowest in the country, even then. I have been troubled over the years by the ever lower pass rates and the skyrocketing cost of legal education. And I am deeply committed to the values of diversity and access that you ask about in your questionnaire. But I do not support any action that would compromise the quality or reputation of California lawyers and the system of justice they serve.

From: Kathleen O'Connor <oconnork56@gmail.com>  
Sent: Saturday, August 12, 2017 12:03 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

With respect to the Bar's legitimate concern about the abysmal bar passage rates in recent years, and it's concerted effort to study and reevaluate the current minimum score, I do not believe that "dumbing down" the exam will benefit the public or the profession. Better to explore the reasons for the fail rate - or study the exam itself for its efficacy in testing the knowledge necessary to competently practice law. It has taken several decades of declining passage rates to get to this point.

Perhaps it is the current admission policies or law school curriculum. I suspect that the falling scores on the exam may, at least in part, correlate to increases in percentage of class graduation rates. Schools don't "flunk out" students at the rate seen years ago. Whether that is for altruistic reasons or cash flow, I don't know. But, allowing students who are unlikely to pass the bar the benefit of the doubt does most of them no favor other than doubling or tripling their student debt. I feel for these students. Unless they knowingly consented to the gamble they're taking, law schools are robbing them of millions in tuition and irretrievably lost years. But, in determining who will be permitted to practice law in California, our first priority must be protection of the public from incompetent lawyers. Second to that is the integrity of the profession itself. Lowering standards is not the answer.

From: Rfrostlawyer@sbcglobal.net  
Sent: Saturday, August 12, 2017 9:41 AM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Ladies and Gentlemen

I have two comments regarding the cut score for bar exam passage.

First, the people of California deserve a competent lawyer no matter what the socio-economic situation. The competency of the lawyer should be the same at every level. By reducing the cut score for the reason of increasing the number of lawyers to flood the court with less than qualified lawyers is foolish and will only result in more litigation and expenses in order for the competent lawyer to dispose of claims that have no basis being filed. The lessening of the standards of practice does a disservice to our legal system. There are already too many lawyers who despite passing the bar have no clue to practicing law professionally.

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Second, the fact that the percentage of persons passing the bar exam is diminishing could be a result of the proliferation of students who are not receiving adequate instruction. I suggest that the law schools of all levels be evaluated and be compelled to disclose to any incoming student their respective pass fail ratios. If a student selects a law school with a low bar passage rate knowing the rate when entering the school that student assumes the risk. The fact that the student has incurred a student loan for the education should not be the concern of the bar. Rather the education institution and the student should jointly bear the burden of the loan. If a student fails the bar that is also a failure of the institution allegedly providing the education. The institution like the student bears some responsibility -- an insurer to some extent, a refund of tuition possibly to reduce the student loan. Some people are not cut out to be attorneys.

From: MPH <mphgm1@gmail.com>  
Sent: Friday, August 11, 2017 8:10 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

While I do believe diversity in the profession and access to legal services are important, I strongly believe they should be addressed at the educational level and not by lowering the standards for admission, i.e., the bar exam.

From: Julia Briscoe <julia.briscoe@gmail.com>  
Sent: Friday, August 11, 2017 5:48 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Keep 1440, mandatory waiting period after second failure, no retakes after 3rd failure:

Are you kidding? The scores fall because the people are unqualified and unprepared, and you want to continue/worsen the trend by lowering them again? When are we going to stop lowering standards to mollify the people who don't make the standard? As it is you didn't even tell us our score. There are already too many lawyers in California. You already cut out 33%/1 day of the exam. In the opinion of someone who finished law school in the early 90's: What a bunch of wusses. Students now go through school with computers to spell+ for them; Excel to do their math; Google (not to mention their parents) doing their work and enabling rampant grade inflation; test "prep" for the SAT where they artificially inflate their score by learning to guess and parrot answers they don't know — and still the SAT has been made easier at least 3 times because as the takers get lazier, their scores continue to drop; Google/plagiarizing through college; more test "prep" for the LSAT; canned commercial outlines all the way through law school — just get rid of the case study method because no one does it — and another "review" course for the Bar exam. Scores fall because people are literally going through school without reading a book. Stop penalizing the people who are qualified and are prepared and are intelligent. Keep the current score, impose a waiting time after the second exam failure, and cut off further exams after the third failure. Then those people will think twice about law school in the first place. Test prep should be outlawed or at least required to be reported and if you stop lowering standards, you'll see performance improve. This is no different than overly permissive parenting.

From: Donald D. deRosier <derosied@earthlink.net>  
Sent: Friday, August 11, 2017 5:01 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Hi folks,

I answered the private survey but it didn't give me the opportunity to explain the reasoning.

From a selfish standpoint, I'd like to point out that in spite of graduating from an excellent law school (University of Illinois College of Law), I still haven't been able to get even an interview for an entry level job with the CA DoJ over the past two years. In fact, since I graduated back in 2007, I haven't been employed at all as an attorney.

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That suggests to me that there is currently an over-supply of attorneys so why would we want to increase the supply by lowering the score?

Next, simply increasing the supply of lawyers isn't likely to help underserved communities. That would be done by reducing the cost of going to law school. Communities are probably underserved because they can't afford to pay the same as other communities. When attorneys graduate with \$150K in soul-crushing debt, they're going to want to pay their bills. If they had no debt, they'd be more inclined to help others such as underserved communities.

At the time I took the bar examination, we had a 3 day schedule. My first attempt would have been sufficient in any other jurisdiction in the United States because of my MBE score. Having a tough examination isn't necessarily bad but you really should pay attention to weighting that unduly and unnecessarily favors one method of test taking.

As for the apparent suggestion that minorities need to have a lower score because they are incapable of performing at the same standards as other groups, I find that to be offensive and belittling of those minorities. I assume that they are just as smart as other racial groups and, barring evidence of systemic bias, I expect them to perform to the same standard as other groups.

Finally, you didn't seem to have an option for unemployed but seeking employment or acknowledge the possibility that people might not have worked as an attorney so I submitted the county in which I live.

From: Pamala King <pking10@gmail.com>  
Sent: Friday, August 11, 2017 4:45 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

I don't think the "cut score" should be the focus of the Bar's attention, qualified lawyers should be the aim of schooling and exams. Perhaps it is time to eliminate unaccredited law schools in this state.

Sandra Stewart <nvatt@icloud.com>  
Sent: Friday, August 11, 2017 4:40 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Regarding Bar pass rates. I don't think the criteria for new admittees who have never practiced before should be lowered. However, I think that California should consider granting reciprocity with other states to allow people who have practiced elsewhere for at least five years with no sanctions or disciplinary actions to be able to be admitted to the California Bar upon successful completion the Ethics Exam, alone. Bar requirements for individual states requiring people to pass each bar of a different state is stifling travel of attorneys within the United States. I am admitted in California, and practiced there for ten years before moving to Nevada where I had to take another bar exam. I passed, so I am now admitted to the Nevada and California bars. My husband and I would like to move to Florida, but are precluded from doing so because of the lack of reciprocity among states. Why should I have to pass a complete bar exam when my practice has been limited to criminal defense of indigent defendants for the past 20 years. This practice is denying competent representation to underprivileged people.

From: John Lagle <outlook\_503B4CD8A555069E@outlook.com>  
Sent: Friday, August 11, 2017 4:31 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

California Bar exam standards should be maintained to assure the highest ethical standards and the highest quality of legal services. Anything less would be social engineering intended to satisfy goals other than high quality legal services.

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From: T. Chevront <chevyrungergirl@gmail.com>  
Sent: Friday, August 11, 2017 1:53 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

In response to written comments for the bar examination scoring:

Too many intelligent people are taking this exam multiple times. It would be one thing if the people failing were from "online schools" or bottom of their class, but they are not.

The examination is supposed to be one of minimal competency, not top ranking law students. More than half of the practicing attorneys right now would fail the examination if they had to take it, yet we hold students to impossible standards.

These students spend countless hours studying, thousands of dollars in fees to take the exam and many are broke and in debt by the end of the process only to find that the CA bar is not one of minimal competency as described. Currently, the cut score is not a fair representation of the talent that we have in CA. Limiting the number of attorneys we have in CA should not be done through the bar exam- it should be done through the marketplace. Colleges are easing standards in an effort to allow students to achieve the American Dream and the CA bar exam should do the same. Lower the cut score to allow more very capable students to practice law.

Tom Dunnion <tjd@dunnion.com>  
Sent: Friday, August 11, 2017 11:03 AM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

I PASSED THE CA BAR ON MY 4TH ATTEMPT AND NEVER ASKED ANYONE TO CHANGE THE SCORING. I JUST WORKED HARDER.

The high quality of lawyers must be maintained in California. Lowering the bar will drastically affect our profession and those we serve.

The concept that more admitees will help the poor or disadvantaged is speculative nonsense.

Please, do not dumb down the quality of lawyers or the practice for political expediency.

From: Helen O.Page <hpagelaw2000@gmail.com>  
Sent: Friday, August 11, 2017 10:43 AM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

I read the studies on the pass rate for the bar examination and answered the survey questions. These are my concerns with lowering the pass/fail scoring. The public has expressed disappointment in the quality of legal services currently provided by their attorneys. Disciplinary rates have risen over the last decade (at least). While provision of legal services to underserved people, usually translated as lower income, is inadequate, the problem with lowering the pass/fail score will not "fix" that problem. Studies published by the State Bar itself indicate that many people who have passed the bar examination can't find jobs (or law related jobs). Lowering the pass/fail score will not "fix" this problem either. If the intention here is to "fix" either of these problems, isn't the bar simply putting more inadequately trained people into a market already overflowing with lawyers who can't find work or don't want to work for the "underserved communities?" I know that the State Bar has done studies in these areas, too, (particularly directed at "underserved communities") and has not found a solution to that problem. Lastly, perhaps people who have become lawyers and are not employed have higher expectations than are realistic in an overcrowded field. Lowering the pass/fail score will not solve any of the problems addressed in the survey and may well cause more harm to reputation of the law community by informing the public that we have made it easier for unprepared people to become lawyers and serve the public in any capacity. Thank you for the opportunity to comment on this extremely important issue

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From: J. Jason Hill <jjasonhill@sbcglobal.net>  
Sent: Friday, August 11, 2017 6:47 AM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

I believe the standards should remain at the current level. Though I understand that many law schools are impacted by the fact that some students fail the California Bar Exam at rates that may affect their accreditation, the availability of law schools in this State has done nothing to reduce the costs of a legal education. Supply and demand are not in sync. The “seat availability” for law students and the concurrent student debt obligations has not lowered the cost of a legal education one iota. Watering down a standard that has worked well for many years will lead to a less competent, not more diverse, Bar Member constituency.

Perhaps a compromise could be allowed to have the lower “threshold” rate be used as a means for additional law and analytical skills training, like a probationary period, that would allow the Bar Exam taker some sort of “in-between” status for a year-long period, serve as quasi-attorney capacity and take the exam again, then if passed at the higher standard on the second exam, their bar number is reserved and retroactive. I do understand the need for legally trained minds and a diversity of those who practice, but strong analytics must be maintained, especially in this day and age where whole communities of people cannot discern between fantasy and reality.

This is my personal opinion and not of any other person, law firm or association for which I am affiliated.

From: Richard <richard\_gilardi@hotmail.com>  
Sent: Thursday, August 10, 2017 10:00 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Reducing the cut rate is avoiding the real issue. Are we graduating unprepared and/or unqualified students from law schools.? The legal profession is touch enough and thrusting unprepared and/or unqualified new lawyers into the profession is ill advised and will damage the integrity of us all.

From: Eloise <eleegp@aim.com>  
Sent: Thursday, August 10, 2017 9:27 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

I think it is a grave mistake to lower the cut score of the California Bar Exam. It would diminish the value of earning the right to practice law in California. If the Board of Examiners feel that too many people are failing they might want to evaluate the exam itself. But, quite frankly, there are plenty of lawyers in California of every race creed, color and gender. There is no need to lower the standards just to make the results sound better. For in the long run, it could make things worse.

From: Wm. Brennan Lynch <wblynch@verizon.net>  
Sent: Thursday, August 10, 2017 8:23 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Quit dumbing down America. Leave the Bar score where it is, or raise it.

From: haigner@sonic.net  
Sent: Thursday, August 10, 2017 6:47 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Categories: Red Category

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Some of what you keep looking right past is as follows:

1. The best and the brightest are no longer drawn to law in as many numbers but, rather, to tech. Why look forward to the vagaries of solo practice and the too often abusive corporate atmosphere of large law firms—sorry, but the word is out—when you can work in tech and get treated to gourmet lunches in the cafeteria, a simulated rock wall to climb when a break is needed, etc. A friend comments that these are amenities that tech companies use to get employees to work 60-hour weeks but, then, that’s the kind of hours large law firms also want, but without the amenities.

2. With fewer numbers of the best and the brightest, there is less buffer for the deficiencies of many of the faculty members of law schools. I passed the Bar exam on the first try. At the law school I attended, when we got a lousy professor, some of us would form a study group. We got the good grades and, in turn, made the professor look good. But in actuality it was not thanks to the professor but, instead, thanks to the mutual support of the study group.

3. Now what’s caught up with law schools is that there are fewer enterprising students capable to mitigating the deficiencies of the schools’ faculties.

From: rsherfy <rsherfy@att.net>  
Sent: Thursday, August 10, 2017 6:28 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Don't lower standards because some are having a more difficult time passing the bar exam. Many younger people simply do not have good written communication skills.

From: Chad Brandel <chad.j.brandel@gmail.com>  
Sent: Thursday, August 10, 2017 6:14 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Lowering the cut score as a result of the complaints from law schools that their revenue is down is in no way a meritorious reason to take an action that panders to those who fail to meet the long established standards that more than 300,000 attorneys have met and exceeded.

If the cut score is lowered to 1414, myself and countless other attorneys will view this solely as a move to appease those for-profit law schools who complain to you because of the lashing they receive from their boards of directors.

If less and less millenials lack the skills, drive and dedication necessary to pass the bar exam, then those individuals do not deserve to be a member of the bar in our State.

I failed the bar exam the first time based on a lack of focus, drive and dedication. I recognized the error in my ways and dedicated myself accordingly. These attributes are necessary to be a competent, prudent member of the bar. Those who lack any of these qualities should not be allowed to practice. If they are, the end result will be less competent individuals being allowed to hold themselves out to the public as having the same license and base level of competency as those who came before them, which would be a patent misrepresentation of their skill set.

From: Susan Basko, Lawyer <susanbasko@gmail.com>  
Sent: Thursday, August 10, 2017 6:11 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

PUBLIC COMMENTS – EMAILS

Categories: Red Category

Dear Sirs and Madams:

Please keep the California Bar exam cut-off score the same as it is.

When I took the California Bar exam, the pass rate was 38%. That seemed appropriate since it appeared to me that many of the people taking the exam did not seem qualified. I based this observation on their behaviors during the exam (appearing to have great difficulty, lots of erasing going on, etc) and their discussions during the lunchtime. Many of them were discussing answers they had written on the essays, and the things they were saying were utterly clueless. It was as if those speaking had never attended law school. Since I had no friends there and no one to talk with, I just listened. And winced. When it came out that the pass rate was 38%, I was not in the least bit surprised.

When I took the California Bar exam, I had taken the Illinois Bar exam just six months earlier. The Illinois Bar exam was very similar to the California Bar exam, except that on the essays we were given half as much time in Illinois. In Illinois, we had to keep a very quick, steady pace, which made it difficult. When I took the California Bar exam, we were given twice as much time to do most of the test segments. I found the test to be ridiculously easy. I finished most sections of the test with a half hour to an hour and a half to spare. I used my time to walk outside in the sunshine. Meanwhile, most of the other test takers were sighing, groaning, furiously erasing and rewriting, etc. I concluded that they simply were not qualified.

When the test results came out, it turned out that many of the test takers were from non-ABA schools and that most of those schools had a 0% pass rate. I would conclude that those schools are not adequately preparing the students to pass the Bar Exam -- or to be lawyers. I think if California really wants to serve the public and serve potential law students, they should abolish all non-ABA law schools in the state. If a person cannot be admitted to any ABA law school, they probably cannot pass a Bar exam and they probably do not belong being a lawyer. Lowering the test pass score is simply compounding the problem of putting more unqualified people out as California lawyers. The situation is bad enough as it is.

Again, I want to say that from the perspective of someone who has taken the bar exam of another state, the California Bar exam is ridiculously easy because so incredibly much time is given for each segment of the test. The subject matter also was very basic and easy and things that I readily learned in my law school classes in Illinois. There was nothing complex or tricky about the test. One of the practical work sections had poorly written, confusing instructions, but it was doable. The rest of the exam was well-written, logical, very basic, and very easy to do. If people cannot do well on this test, they really do not belong being lawyers. They are not doing a service to anyone and are only causing trouble.

In addition, I strongly urge California to abolish all non-ABA law schools. The non-ABA schools are mostly a waste of time and money for those attending. Their existence makes the whole practice of law in California substandard.

From: Tyler W. Cramer <tcramer@cramerlaw.net>  
Sent: Thursday, August 10, 2017 5:15 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Ladies & Gentlemen:

I'm not at all sure the problem is with the Bar Exam, or its pass line. The problem, if anything, is with attorneys not knowing what they are doing in increasingly numerous and complex areas of law.

After nearly 40 years of practicing transactional, finance and tax law, why should my license allow me to represent someone in a criminal proceeding (where I have no experience or training)? Conversely, how many litigators (or judges) have ever read the deeds of trust which encumber their personal residences, much less know

PUBLIC COMMENTS – EMAILS

how the one action rule or anti-deficiency statutes would apply upon an event of default?

Is the public well-served, or even protected, by all of us having passed the same Bar Exam? It's time we recognize how complex the law has become and license attorneys for practice in specific areas (and then perhaps only after an appropriate articulated clerkship).

From: David M. Barling <dmbarling@msn.com>  
Sent: Thursday, August 10, 2017 5:04 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Dear Reader:

My point in writing is that the best should be attorneys. Lawyers are judged by the worst of the lot and not the best of the lot.

People know you need a higher score they will study BETTER (not harder) and be BETTER lawyers, at least in theory.

In practice, the business needs to be a profession again instead of a group of people chasing debt service.

Two worst things to happen to the legal business were student loans and the laser printer and in effect they may have gone hand and hand.

Good luck with this as the blowback from the law schools with a financial interest will be considerable.

From: Mike Stephens <mikekfu@yahoo.com>  
Sent: Thursday, August 10, 2017 4:36 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

I see no reason why the bar should be lowered.

I strongly feel there are more lawyers in CA than law and related jobs. Looking at bar numbers, there are about 100,000 more CA lawyers than there were just 15 years ago. It's an absurdity.

Furthermore, many jobs that attorneys used to perform have been automated, and this automation will continue. Eg, there is more and more software available to draft documents and perform discovery.

Somehow, some kind of appreciation of all of this this should be demonstrated by all applicants of law schools. Otherwise, we are just cranking out grads simply for profit and without recognition for how the profession is changing.

I have just left the profession after 14 years to get an elementary school teaching profession. Finding a new profession has been quite difficult and I could not have done it without assistance from family. Having a law degree seems to be a barrier to entry for non-law-related jobs.

I think someone who is a physician would have similar difficulty finding work outside the medical and related fields. I'm sure we intimidate people outside our professions. And we can seem greatly overqualified.

Thank you for this opportunity to comment.

PUBLIC COMMENTS – EMAILS

From: Fontaine, James <james.fontaine@sdca.org>  
Sent: Thursday, August 10, 2017 4:33 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Having worked with or against a number of talented, highly competent attorneys who did not pass the bar exam on their first attempt (some did not pass on their second or third attempt), as well as some who passed on their first try but whose skills are questionable, I am unconvinced that passage of the bar exam provides the proper metric with which to measure either protection of the public or integrity of the profession.

Still, recognizing the need for some level of testing prior to licensure, the question remains whether the cut rate/pass line should be adjusted downward in order to increase our state's bar passage rate. Anecdotally, I have heard on a number of occasions that the California Bar Exam was made intentionally difficult, as compared to exams in other states, in an effort to stem the flow of new attorneys into an already glutted market. If there is truth to that statement, and if, as is being reported, there is now a shortage both in law school admissions and those entering the practice of law such that the public is suffering, then an adjustment of the pass line that would increase the passage rate seems appropriate.

If, on the other hand, a determination was made that the current pass line provides the best insurance as to a minimum level of competence for those entering the profession, then the answer seems obvious to me that no adjustment should occur. It is interesting but unconvincing that there is a national trend downward in bar passage rates. I suspect there are as many theories as to why this is as there are states in the union. I believe our work, the stakes in which we deal, and the duties owed to our clients, require that we not compromise minimum standards to practice law.

From: Jeffrey Rabin <jrabin@rpblaw.com>  
Sent: Thursday, August 10, 2017 3:45 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Ladies and Gentlemen:

I am opposed to the lowering of the cut rate:

- The fact that California has the nation's lowest bar passage rate should be considered in light of the fact that the State Bar of California is among the few (if not the only) state bar that allows people take the bar who did not study at an ABA accredited law school. I think to get a fair comparison to other states' passage rates, one should consider the passage rate California Bar applicants who studied at ABA accredited law. I haven't seen the data, but I suspect that if we remove from the data the applicants who did not study at ABA accredited schools, the California Bar passage rate would compare favorably with the passage rate of other states.

- I have also read, anecdotally, that the LSAT scores all around have been going down. It might be that the pool of qualified applicants has shrunk, as other professions and careers have grown attractive. Many people who might have become lawyers in a prior generation are now going into business, high tech, investment banking, and other intellectually demanding professions. Thus the pool of people who used to make up law school applicants may overall be of lower quality. But that should not mean we should be admitting low quality applicants to the State Bar.

- Indeed, there are, simply, a lot of bad attorneys in the State. I am concerned that lowering the cut score would admit to the practice in this State even more persons who should not be practicing law to be admitted to the practice. This will harm the public. Other arguments that were mentioned, such as increasing diversity, or to help applicants be able to pay off student loan debt, seems to suggest we should place diversity, or the applicants' debt burden, as a priority above protecting the public and maintaining the integrity of the profession; I disagree with that change of priority.

PUBLIC COMMENTS – EMAILS

Indeed, I would ask the Examiners: is the California Bar Exam really more difficult than the bar exams of every other state? I suspect that the Examiners endeavor to create an exam that is no more difficult than that of other states'. The Bar Exam should be designed to discern the applicant's basic ability to practice law. In California, once admitted to the Bar, there is no internship requirement - once someone passes, he or she can take on any matter. Therefore, the Bar Exam should have a standard that the Examiners can confirm that the applicant meets a minimal, reasonable level of competency. I trust that this is the objective of the Committee of Bar Examiners, and it would be counter to the interests of the public to change that objective.

In conclusion, in my opinion, the State Bar has a duty to do its best to make sure that persons licensed to practice law meet a certain minimal level of competency. The State Bar's first duty is to protect and serve the public, not to serve unqualified applicants. If an applicant is not qualified, he or she should not be unleashed onto an unsuspecting public.

From: Andrew Wolf - Attorney <andy@AWOLF-ATTORNEY.ORG>  
Sent: Thursday, August 10, 2017 3:30 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

I graduated from a California accredited law school night program in 1975. I passed the bar on the first try. In my class, 42 out of 46 passed on the first try. I was admitted to practice in December 1975. I opened a private practice solo office in March 1976. I am still in practice as a sole practitioner. I also taught at Ventura College of Law (which was not the school I attended) for 20 years. Over my time at Ventura College of Law, the biggest issue which I observed was a decline in writing skills. This was not just a matter of occasional typos. It was incorrect spelling of legal terminology, grammatical errors and deficiencies in the most basic of writing skills. At the start of every school year, I recommended that students needed to assess their writing skills and, if deficient, address the issue through community college writing courses. Lowering the bar will do nothing except the "dumbing-down" of the perceived quality of the lawyers. Keep in mind that the first impression that judges generally have of specific attorneys is based upon their writing skills and not upon their courtroom performance. Ethnicity may play a part in this. While I have no legitimate statistical studies to rely upon, I have no doubt that deficient writing skills will lead to increased litigation in contract-related cases. My Contracts professor correctly advised us that contracts should be written for the judges who may eventually need to interpret them. A huge disservice is done to the public if a contract's interpretation is not what was intended, but is rather what the judge thinks may have been intended based upon the writing itself.

During my last 9 years on the faculty at VCL, I was the supervising attorney for the family law clinic. The clinic provided hands-on training for the students with real clients and real-world situations. It operated year round and was, at the time, the only such program operating in a California law school. Students participated in the program one semester or summer session only. Students were not permitted to participate more than the one time. The benefit to the public was inestimable. The clinic was closed by the Committee of Bar Examiners because the school was giving students three units of credit for participation when the Committee believed that only one unit was warranted. Because of the Committee's unit value determination, this valuable public service was eliminated. Equally important, actual hands-on training for students was eliminated. With that kind of thinking, it is no wonder that lowering the bar seems to be attractive to the Committee.

Everyone should read Judge William Fahey's op-ed in the August 10, 2017, Los Angeles Daily Journal. One of Judge Fahey's concerns was the observation that many students do not have a sufficient understanding of evidence. My students in the clinic certainly did based upon the writing of many family law case declarations. Does anyone realistically think that lowering the bar is going to improve the understanding of evidence?

From: Price, Ernest E. <ernest.price@rmkb.com>  
Sent: Thursday, August 10, 2017 3:18 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

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If by analogy the question was whether we should accept lower test scores for doctors, engineers or airline pilots, how many of us would be willing to be operated on, go into a skyscraper or be flown in jet aircraft by an individual who “got there” because the standards were lowered?

I seriously doubt many of us would.

The same rationale should apply to attorneys. Even with the current standard, I personally encounter many young attorneys who need tremendous assistance and training – lowering the bar passing score, in my opinion, would needlessly increase this burden on our profession.

From: Newhope Law, PC <law@clemcheng.com>  
Sent: Thursday, August 10, 2017 3:06 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Dear CalBar,

There is really not that much of a drop. Changing the cut score is not justified. A 1440 score is still a pretty bad score. We should be the highest in the nation for protecting consumers, not dilute that. Vulnerable portions of the population would be hurt by an influx of underqualified attorneys. Changing the cut score to achieve a fixed pass rate basically sets a fixed pass rate rather than setting a fixed standard of competency. The bar exam is supposed to be a test of minimal competency. It is for the purpose of protecting consumers.

From: Ledger, Eric@DIR <ELedger@dir.ca.gov>  
Sent: Thursday, August 10, 2017 2:53 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Good day,

I do not agree with the proposal to lower the bar passing score. I believe that like nearly every other state, the State Bar should allow only those who have graduated from ABA accredited schools to sit for the bar. I believe that the State Bar should provide a reasonable grace period (perhaps 3-5 years) to allow unaccredited and state accredited schools to become accredited through the ABA. Following a reasonable time thereafter, the bar should not allow non-ABA accredited school graduates to sit for the exam. I believe this proposal will have the desired effect of raising the bar passage rates and increasing the quality of lawyers admitted to the profession.

Next, the State Bar should limit the number of times one may sit for the exam. I believe there should be a three strikes policy. If you cannot either dedicate enough time and effort or you do not have the requisite skillset to pass the bar exam after three attempts, then you should not, in my opinion, be licensed to practice law.

For those who cannot pass the bar, there are a multitude of jobs in the legal field that do not require an active law license. Furthermore, the state may want to explore a tuition credit for those who don't pass the bar, to be refunded by the school. This would create the incentive upon the school to select quality candidates, which may be a significant reason for bar passage rate declines.

The legal field has just as significant an impact upon peoples lives as the medical field. I could only imagine what the headlines would read if the California Medical Board started licensing students who obtained online degrees from unaccredited universities, or if the Medical Board lowered their standards for granting a medical license. The State Bar should treat the practice of law no differently. I agree that changes are needed, but the proposed change to lower the standards is directly in opposite of the State Bars mission to protect the public interest. While I fully sympathize with those who struggle to pass the exam, the public interest outweighs the individual.

PUBLIC COMMENTS – EMAILS

From: FRANCES MULLANE <fhmullane@comcast.net>  
Sent: Thursday, August 10, 2017 2:52 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Before you lower the cut score could you spend some time trying to find out WHY the pass rate is so low? What part of the exam is proving the most problematic? Any particular demographic having more trouble than others with certain parts of the exam and in particular the one that is problematic if there is one?

There has been a continuing dumbing down in America. I hate to sound like some old semi retired attorney complaining about younger generations.

I think a lot of study needs to be made to determine why?

Is the LSAT too easy and people who never belonged in Law School getting admitted?

Are law schools giving grades away in order to maintain enrollment... Keeping a high number of students \$\$\$\$.

Go over the demographics... Survey talked about opening it up to different demographics by lowering cut score. Why? Is there a basis for that?

Can't lower the standards in order to provide for the poor. That is crazy.. Those same attorneys who are less than the best could have regular clients also. Need to see what to do about Legal Aid for poor people. A lot has been done in Family Law to let people do in Pro Per etc.

I was a special student and Western State ... Fullerton.. I did not have an undergraduate degree... I scored high on the LSAT and they took me. I scored VER Y high on the Baby Bar and I passed on the first time and never attended a Bar Review Course.. I did pay for tapes to be sent and listened to the better ones. I studied ... I did my assignments. I was married and I had a horse and a place too take care of. I had a long drive from Norco CA to Fullerton taking time. I did it and I was 33.

I may sound cynical but we cannot lower the standards for the BAR nor can we lower the standards for anything in America... People have to understand life is not a walk in the Park. We did away with the draft... If I could name an underlying problem... that is it.. We have several generations of people who did not have the discipline that the military instills in people. We really need mandatory draft.. Male and female.. 18 months would be fine... AND all combat totally voluntary. Then we might go back to a society that knows how to work that has some self discipline.

From: Mark Swendsen <mdswendsen@gmail.com>  
Sent: Thursday, August 10, 2017 2:37 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

It is very harmful to minorities and poor to have no access to lawyers. It is harmful to our system of justice, because the minorities who cannot afford attorneys resort to other means to settle their disputes. The high score necessary to pass makes this worse.

The fact that so many people who graduate from excellent law schools cannot pass the California bar indicates that the bar is set way too high.

From: zahnlaw@aol.com  
Sent: Thursday, August 10, 2017 2:22 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

PUBLIC COMMENTS – EMAILS

My position is that studies have failed to link a high pass score with better attorneys and keeping the pass score where it is only serves to burden test phobic individuals who would otherwise be good attorneys from practicing law. These people are often stuck with large loan debt they cannot discharge as a result.

A pass score of 1400 would be sufficient to maintain the standards of the profession.

The State Bar must also reconsider their position on reciprocity with other states for admission to California for licensed attorneys. No attorney who has been practicing in another state for 5 years or more should have to pass a general education test to prove they are worthy to practice in California.

From: Shari Pakravan <sharipour@gmail.com>

Sent: Thursday, August 10, 2017 2:17 PM

To: Comment, Public

Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

It's important to keep the integrity of the profession and not allow a high population to be admitted. There are no jobs for graduates with lots of loans that graduated from non aba accredited schools. The problem is that non aba accredited schools take money from large population of students who never pass the bar exam later on. Does that mean we should lower the cut score to admit them? NO! It's crazy that non accredited schools even exist. Lowering the cut score is not the answer. If that happens you are permitting people not highly knowledgeable to practically become ambulance changing solo practitioners that just want to sue everyone and settle every case before they actually need to do something but never will bc they don't have the knowledge of doing it.

Doug Linde <dal@lindelaw.net>

Sent: Thursday, August 10, 2017 2:17 PM

To: Comment, Public

Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

I suggest a survey of the people who are kept out of the profession by the current California Bar Exam cut score.

My admittedly anecdotal experience is that around a few times a month I interact with attorneys (opposing counsel on cases, referring counsel on cases, or attorneys I see argue in Court) and wonder to myself, "how did this person pass the Bar exam?" I have only rarely in my life have met people and wondered to myself, "maybe the Bar Exam is too tough if this person did not pass." I realize that my experiences in this regard may not be the same as other people's experiences. I am also mindful of the problems of lack of access to legal services, particularly in rural parts of our State.

Accordingly, I believe a more scientific approach to the issue of who is being kept out of the profession would help answer the question of whether the current California Bar Exam cut score is really too high.

From: david Murray <davidjmurraylaw@sbcglobal.net>

Sent: Thursday, August 10, 2017 2:16 PM

To: Comment, Public

Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Dear Sirs:

Please don't dumb down the bar exam. It will not help the ultimate beneficiary of the bar exam, the client.

We need to keep the standard we have worked so hard to maintain.

## PUBLIC COMMENTS – EMAILS

From: Martin, William <wmartin@hbblaw.com>  
Sent: Thursday, August 10, 2017 2:12 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Lowering the standard to let more attorneys practice law does not provide better legal services to the public.

From: Joseph Dzida <jdzida@crdattorneys.com>  
Sent: Thursday, August 10, 2017 2:05 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

I have been a licensed California attorney since 1979 and a law firm partner since 1985. I am currently a named partner in the law firm of Callanan, Rogers & Dzida, LLP.

The focus on the cut score seems to me to miss the point—the focus should be on whether those passing are getting quality jobs, or jobs at all, in the legal profession or not.

If you lower the cut score, more people will pass the bar but will they get jobs? Will they get QUALITY jobs?

To me, if there are no good jobs for them, it is inhumane to encourage people to go through law school, pay the high tuition, take the bar, only to not be able to get good jobs if they pass. The inhumanity of this INCREASES if the cut score is lowered to allow more to pass but still not get work, or get quality work.

Furthermore, while diversity is a noble goal, it FURTHER INCREASES the inhumanity if the cut score is lowered to allow more of our most vulnerable citizens of diverse backgrounds to pass but still not get work, or get quality work.

Finally, this inhumanity is exacerbated EVEN MORE by the FACT that passing the bar does not, by any means, guarantee success in the profession. I would venture to say that most lawyers learn more in their first three years of practice than they did in law school. Many drop out of the profession in those first three years (and even after).

Yet we sell people a bill of goods and allow them to torture themselves and spend hard earned money in this long process even though objectively and realistically THEY HAVE LITTLE IF ANY CHANCE, even IF they pass the bar.

Therefore, we should not provide up front encouragement people to go through this ordeal by lowering the cut score, only to have them be unable to work in the profession after they have gone through the ordeal.

In light of the above, I am thinking:

1. Whatever the cut score, there should be a limit on the number of times you are allowed to take the bar. I would say the limit should be twice; though perhaps with a one time waiver of the limit for an applicant who scored near the cut score, who had grades in the 50% percentile and who undergo an internship with licensed lawyers, receiving the written recommendation of their mentors.
2. Law schools should lose accreditation if they fail to reach specified passage rates. They should not be able to sell students a bill of goods, collect the money, but not deliver.
3. Likewise unaccredited schools should be REQUIRED to make full disclosure of bar passage information BEFORE they accept students and the students should have independent counseling from the bar BEFORE they commit to the school.
4. The bar should publish full data on bar passage rates and also on post bar job acquisition and require ALL schools to give this to students up front.

PUBLIC COMMENTS – EMAILS

5. There should be a pre-bar exam after the first semester or year of law school which would give a gauge of progress and allow students to seek advice as to whether they should continue or not.

6. If students are below the current cut, but above a new cut set, perhaps they could be allowed to practice, but only in certain areas of law or certain communities better matching their skills, with the right to seek release of any such restriction once they have a track record of success.

Something along these lines seems more directly aimed at the real problem?

From: Patricia E. Curtin <PCurtin@wendel.com>  
Sent: Thursday, August 10, 2017 2:03 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

I am a 30 year practicing attorney who passed the California Bar in 1987. I put myself through college and law school and had a significant amount of student loans which I eventually paid off. I currently work and managing a medium size law firm in Alameda County.

I was surprised to hear the Committee is considering to reduce the bar passage scores for July 2017. What a slap in the face for those who took the Bar before and will take the Bar after that time and for those who passed the Bar in July 2017 with a score of 1440. If this is done, I would be reluctant to hire an attorney who "passed" the Bar in July 2017. PLEASE do not allow this to happen. We need qualified persons to practice law. There is no fear there is not a sufficient number of attorneys in California to provide legal services. I believe there are too many.

From: LAWRENCE GOLDBLUM <LawrenceJ@Goldblum.onmicrosoft.com>  
Sent: Thursday, August 10, 2017 2:02 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

I am an attorney, CSBN 194747. I did complete the survey emailed to me.

I do not think adjusting the cut score downward will achieve the result of helping underserved/low wealth/low income persons or result in meaningfully increasing diversity in our profession,

Regarding underserved: Adding more persons to the ranks of attorneys in no way guarantees that there will be any more resources dedicated to underserved persons. And my guess is that exactly the people who will successfully struggle to make the current cut score are the persons who would be most interested in working with the underserved.

Regarding diversity, the cut score is the wrong place to go to solve that problem. Affirmative action makes good sense to me in college and law school admissions, and then law schools should be graduating people of all backgrounds ready to pass the bar. Adjusting the cut score to encourage diversity in the profession, to me, is a fig leaf that disguises the real problem.

Since lowering the cut score reduces the integrity and public confidence in our profession, and I do not think lowering it will accomplish anything else at all, let alone anything good, I think the cut score should be left right where it is.

From: Raphael Lachs <joshlachs@yahoo.com>  
Sent: Thursday, August 10, 2017 2:00 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

PUBLIC COMMENTS – EMAILS

Keep the cut score where it is. The exam has already been made easier by cutting it from three days to two. Part of what made it difficult was that it was a three day exam.

There are already to many licensed attorneys in California. Keep it the hardest exam in the country.

From: Nina Brahman <nina@brahmanlaw.com>  
Sent: Thursday, August 10, 2017 1:58 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Greetings!

I am writing to discourage the State Bar from lowering the pass rates. In my 22 years of practice, I have hired or used the services of many new attorneys only to find out that across the board, they were not ready to effectively practice law.

If the bar pass rate is further lowered, it would reduce the quality of the profession. I believe that instead of enabling more unprepared attorneys to practice law, the State Bar should implement a "residency" requirement, much like the one required of doctors. for anyone who wishes to be a licensed California attorney. The residency does not have to be 4 years (even 1 year may suffice) and it can be a paid position, but it should be a requirement for licensing. It is almost certain that implementing a residency requirement s being much more confident and qualified to help the public ;and will certainly help the passage rate, which are the ultimate goals.

From: Justin D. Hein <jdhein22@gmail.com>  
Sent: Thursday, August 10, 2017 1:54 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

What about people who failed a prior CA bar exam with a score between 1414 and 1440 who never retook it?

From: JONATHAN SHIBLEY <jonathanshibley@verizon.net>  
Sent: Thursday, August 10, 2017 1:53 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Standards on almost everything are engaging in a race to the bottom.

**DO NOT MAKE THE BAR EXAM ANY EASIER!**

From: carol.humiston@gmail.com  
Sent: Thursday, August 10, 2017 1:50 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

The problem with the bar is the scope of the subjects tested. There is no reason that any attorney needs anything other than a passing familiarity with wills and trusts or community property or probably real property unless they are going to practice in that area. The Bar should be limited to only key subjects and key issues. Complaints about attorneys qualifications in the court room, following rules, missing deadlines, not knowing how to present evidence or object, etc are not going to be solved by a higher bar passage rate. My experience says these inadequacies are more personality driven, which the bar does not test for. Perhaps the Bar should have 1-year attorneys randomly selected to take the bar without studying. That might tell you if the bar is testing for the right knowledge to practice law. If after a year of practicing law you cannot pass the bar without studying... The bar needs to be revamped.

PUBLIC COMMENTS – EMAILS

From: Denise Billups-Slone <Denise.Billups-Slone@McNamaraLaw.com>  
Sent: Thursday, August 10, 2017 1:37 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Absolutely not! There are already too many unqualified and ill prepared attorneys, many of who cannot find employment. Why would we want to make our profession worse? Leave the requirements as is!

From: Antoinette Tutt <nettetutt@yahoo.com>  
Sent: Thursday, August 10, 2017 1:29 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

The cut score is the second highest in the nation for a reason. Before changing it, the bar and Supreme Court should consider the reasons for the 1440 cut score. The test takers should endure and be compelled to pass just like so many others who have had more difficult circumstances to overcome, yet have met the 1440 standard.

By way of background: I attended law school out of state. Paying my pending law school bill after graduating in order to get transcripts to simply for the bar took three years. Three. I took the California bar three years after graduating from law school without the benefit of a bar review course because, of course, I could not afford it. I passed on my first try. (editorial: Professor Sander may be shocked to learn that I am a female of color and achieved these milestones.) But milestones they are and the bar should not change the tempo—now that people like me can keep up the pace—presumably, because the majority population is not committed, willing, or able to pass the bar on their first try. If at first you don't succeed, try, try again.

From: bruce guttman <brucejguttman@gmail.com>  
Sent: Thursday, August 10, 2017 1:18 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

I highly recommend a study to determine if it would be best to do away with the bar exam in its entirety. After more than four decades of litigation practice I believe the bar exam is not a good test for qualification to practice law. I see many poorly trained attorneys in court.

I would like to see more stringent law school testing, and then a one year apprenticeship .

From: John Huckabay <huckabaylaw@gmail.com>  
Sent: Thursday, August 10, 2017 1:16 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

I attended McGeorge School of Law in Sacramento, night school, 1976 – 1980 and graduated somewhere near the bottom of my class. I worked full time, studied nights and weekends and continued to do that up to about a week before the bar exam in July 1980. I passed the first time and the fact that the California exam was known to be the most difficult in the country is a mark of pride for me.

Regardless of studies, I do not believe that California is wanting for licensed lawyers and I do not believe the standard should be lowered at all. A law degree will give anyone a great advantage when applying for work in just about any industry, even if the bar exam is not passed or was not taken – there are always other options.

From: Deidra Zolezzi <outdoorsz@comcast.net>  
Sent: Thursday, August 10, 2017 1:05 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

PUBLIC COMMENTS – EMAILS

I have been at this for 28 years and what I am seeing/experiencing is a decrease in competence on all levels, so I would be opposed to reducing the score.

Clearly the law school curriculum and/or teachers need to be examined for their skill level and commitment. In an age when the schools want to make more money and therefore hire less competent teachers and pretend it's the students fault, the students and the bar both lose.

Another factor could be more people attending evening schools that are not ABA accredited.

From: Bradley I. Kramer, M.D., Esq. <bkramer@biklaw.com>  
Sent: Thursday, August 10, 2017 12:56 PM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court

Hello...

I want to very quickly state my adamant opposition to lowering the "cut" score on the bar exam. The plain facts are that if one prepares appropriately for the bar exam, it should be passed by the applicant. The California bar exam is an extremely difficult and demanding exam, but I put in the necessary time and effort and passed on my first attempt, as did every one of my colleagues who put in the necessary time and effort to prepare for it. Not preparing for the exam, or not having the skill set or intelligence to pass the exam should not be used as an excuse for failing the exam, and allowing unqualified attorneys to work in this state puts people's lives and this profession in danger. There are already MANY unqualified and unethical lawyers practicing law in California. The LAST thing we need is more unqualified attorneys practicing law in our great state. I strongly recommend that the bar "cut" rate remain the same. If there are less lawyers who pass, so be it. There are already PLENTY of attorneys who cannot make ends meet because there are too many lawyers competing for the same business, and adding more lawyers to the mix that are NOT qualified to practice law will only make the problem worse.

From: Olivia Willis <olywillis@sbcglobal.net>  
Sent: Tuesday, August 22, 2017 12:01 PM  
To: Comment, Public  
Subject: CA Bar Exam Cut Score Public Comment Letter

Dear State Bar Committee:

I am writing to give you some perspective on the face of your CA Bar Exam candidates. I have been taking the California Bar Exam since February 2006. I, unfortunately, have to work full time and never had an opportunity to take the exam studying full time because I had to return to my job with the State of California after doing my legal studies in Portland, Oregon. If I didn't return, my position would have been eliminated due to being on a leave of absence for too long. Given this, my scores have ranged anywhere from a low of 1284 to a high of 1402. I do not believe my scores are based on my lack of legal knowledge, but merely the circumstances in which I must study due to financial and time constraints, as well as general test taking abilities. The range in score does not indicate that I would be a better lawyer, but only that I may have happened to score better on a particular exam for one reason or another. Sometime in 2008 after 4 CA bar failures, I decided to take the Washington State Bar Exam. I passed WA's bar exam despite working a full time schedule, signing up late and having to pay a late fee, and despite having to learn some law that the CA Bar does not test as well as learning new WA State Professional Responsibility rules. I did have to take the ethics portion a second time, not having passed that portion by one point, but I passed the main WA State essay portion on my first try. Since I reside in CA, however, I must still pass CA's bar to practice here as an attorney. Having to save for each bar administration has been extremely difficult even with a full time job. I also have multiple sclerosis and have to deal with various issues regarding my health, so it's important that I manage my stress levels to minimize any exacerbations. Each time I take the CA Bar, I have to save money and save leave time from work to pay for not only the exam fees, but fees involved with the moral character portion of the bar, any external study materials, hotels, and the other hidden costs of taking the bar exam such as ensuring my health care for myself and my family is paid for during any leaves. All of this is very

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costly for repeat candidates like myself.

I am the first person in my family to become an attorney so I do not have the support that some people have financially or have a connection to the legal career world, so it has been a difficult journey for me. Since passing the WA Bar, I have volunteered for people in WA State including low-income people going through the foreclosure process, as well as veterans to receive the proper benefits. I won my first case during the housing crisis by helping a homeowner retain his home of many years. I did this with very little direction as I was in California while most of the guidance attorneys resided in Washington. I would gladly provide these same services for CA residents when I pass CA's bar exam. Unfortunately, the high cut score has kept me from passing all these years. It has already been 12 years since I graduated from an ABA-accredited law school and many people in my shoes would likely have given up by now. If diversity in the profession itself is also a concern, then I would fit that category as well as I am an African-American female. Due to the person I am, I do not believe that the higher cut score weeds out unethical or unqualified attorneys. I believe I have been an ethical and qualified attorney for the State of WA since I passed their bar in 2009 and I would be an equally ethical and qualified attorney here in CA when I pass CA's Bar.

The debt burden from law school, and now many bar exam administrations, is also a looming issue and is another reason I must work full time to pay my debts back. Others who do not have a job or fall-back career cannot continue to pursue this expensive pursuit if they do not have financial help from other sources. Of course, this thus impacts lower income people and communities of color more disproportionately as a result. If I were able to practice as an attorney since 2006 when I first took the CA Bar, I probably would have been able to pay back a lot more of my debts by now and contribute my legal skills to the community as well as assist in mentoring others in the legal profession. I am one of the attorneys who would volunteer my services to underserved communities as well, as I see that is a current concern for the State Bar. I wanted to become a lawyer, not for the potential financial benefits, but truly for social and environmental justice reasons.

Although I have not passed CA's Bar Exam, I believe I am already an excellent lawyer and have a very hard time believing that WA State could deem me as good enough to practice in their state, but CA cannot. I would meet the CA State Bar goals of reaching out to underserved communities and am a diverse attorney myself that would help diversify the profession. In comparison to friends that have passed, most of my friends that took the exam were able to study full time immediately after graduating, had financial help from family, and did not have the same stresses that I have had to deal with in life. I think all of these issues matter very much in determining your success on the CA Bar exam because of the very high cut score. Having to divide my time between a full time career, studying for an exam, and caring for my family are a balancing act that I must make each time I take the exam. I know I am not the only story out there and I know many people have just stopped taking the exam because it is cost prohibitive as well as mentally and physically taxing to take this exam repeatedly.

Another area where the CA Bar could improve is allowing test takers to take portions separately. For example, with WA's Bar, the ethics portion could be taken separately from the essay portion. As I mentioned above, the first time I took the exam, I did not have enough time to finish studying the ethics portion and I missed passing that section by a mere one point. I was able to take that portion again during the next administration without having to study for the entire exam again and then fully passed. The WA Bar was passable even though I was still working full time and I believe it fairly tested my legal competency. The engineering and CPA exams also allow portions to be taken rather than the entire exam all over again. This should be something that the CA Bar Exam Committee considers in the future as well. If we were allowed to take the MBE portion again separately from the essays if we didn't pass during the initial full exam, just having to take the portion we did not pass would be beneficial and in alignment with other state exams.

I sincerely hope the Committee reconsiders the current cut score to allow more attorneys to be able to practice this great profession and help more members of the public of the state of California. Due to all of the above reasons, I would request a change to the cut score to 133-136, just as other ABA-accredited law school Deans, including a Dean from UC Hastings, have requested as well (See: <http://www.latimes.com/opinion/op-ed/la-oe-faigman-california-bar-exam-cut-score-20170321-story.html>). I do not believe this score would allow in unqualified or unethical attorneys. If the bar exam did this already with the 1440 cut score, there would be no

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disbarments, and I am well aware that disbarments and reprimands happen all the time despite the current cut score rate. As the article states, this score would be in alignment with other states (median of 135 and NY's cut score of 133), and would not allow unethical and unqualified attorneys to practice. I believe a larger increase than a mere 10.4% of African-American attorneys are needed if the pass rate overall for February 2016 was a mere 34.5% (Referring to Table 5 of <http://apps.calbar.ca.gov/cbe/docs/agendaitem/Public/agendaitem1000001926.pdf>).

I hope my personal experiences help to shed some light on some of your candidate's experiences with the CA Bar Exam and help to make a determination on a more adequate cut score. I believe 141 would still be a very difficult goal to reach for many and would not impact the low passage rate of CA Bar takers by very much. It would also not help in assisting with diversity in the profession by very much and attorneys that would assist with low and middle income members of the public. Thank you for listening and I am open to providing more information if necessary for your research into this matter.

From: kenlipton998431@aol.com  
Sent: Tuesday, August 22, 2017 2:45 PM  
To: Comment, Public  
Subject: RE: Bar Exam Cut Score

I am highly against lowering the bar passage standards, simply because not enough applicants have been passing as of late.

When I took the bar exam in 1978, I believe we had a 38% bar passage rate. I do not believe there is any shortage of attorneys that would necessitate lowering the standard.

In addition, lowering the standard may result in less professional attorneys and higher incidents of malpractice.

I would strongly advise against changing the bar exam in any way.

From: Paul Eisner <pauldeisner@gmail.com>  
Sent: Monday, August 21, 2017 3:34 PM  
To: Comment, Public  
Subject: The bar passage standard should not be lowered

California State Bar  
180 Howard Street  
San Francisco, California 94105

To the Committee of Bar Examiners:

The pending proposal to lower the standards for bar passage is an ill advised, ill thought out idea which should never be adopted for a number of reasons.

First, law is a learned profession and bar passage shows that the person has learned a certain volume of law and can analyze it successfully. Lowering the bar passage requirements degrades the legal profession as a learned profession by not requiring attorneys to be as knowledgeable as in the past. Adoption of the proposal will result in less qualified less educated attorneys with poorer skills joining the profession, lowering the quality of legal services, all to the detriment of the profession and the public whom the profession serves.

Second, the proposal is discriminatory in two respects. It sets a double standard where the presently admitted attorneys will have had to pass more rigorous standards than those to be admitted in the future. Additionally, the proposal encourages discrimination against older, women, minority and LGBT attorneys. When a employee shortage occurred during World War II, disadvantaged workers, namely the older, women and minority found employment in fields previously closed to them (LGBT was not acceptable back then). Flooding the profession with

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less qualified new attorneys will again result in older, women, minority and LGBT attorneys being denied employment and being locked out of the market

Third, there is no reason to lower the standards. The reason for the lower bar passage rates is because the applicants currently taking the bar as a group are less qualified resulting in they doing worse on the bar examination than those in the past. Since the public, whom the profession serves, is not facing a shortage of lawyers and unavailability of legal services, there is no need to resort to such desperate measures, lowering and degrading the quality of the legal profession. There is still a glut of attorneys who cannot find work and lowering the standards for admission will only add to that glut. If anything, standards for admission should be strengthened and improved, not relaxed. The solution is to get better qualified people to want to become lawyers and enter the profession, not lowering standards.

The purpose of the bar examination to protect the public and make sure that individuals entering the profession have sufficient knowledge and competency to practice law. There is no reason to decrease that protection and expose the public to persons with less knowledge and competency. Yet that is exactly what is being proposed. Increasing the incompetency of lawyers is not the solution. The proposal to degrade and debase the profession by lowering bar examination standards should not be adopted

From: William Schultz <Bill@Schultzlawfirm.com>  
Sent: Saturday, August 19, 2017 1:36 PM  
To: Comment, Public  
Subject: California Bar Exam - Let's Maintain It's Integrity

Staff:

Please do not dilute the California Bar Exam, long-standing benchmark for the Nation. Yes, it is difficult and it needs to remain difficult so California has competent lawyers serving Californians and the Nation.

California already has too many lawyers. Let's not add lesser-qualified people to this mix.

From: Katie Mitchell <bpath88@gmail.com>  
Sent: Saturday, August 19, 2017 9:07 AM  
To: Comment, Public  
Subject: State Bar Passing Score Comment

Thank you for giving us an opportunity to voice our opinions regarding your notification of the recent trend in passing score rates.

First and foremost, I'm utterly astounded at the notion that the State Bar is giving any weight to this idea. I work in an industry where we study and track the Millennial trend, their habits, traits, likes and dislikes. As such we are privy to much data that defines this class. Unfortunately, this data does not shine a bright light it shows many qualities and traits that indicate not only their failure at passing the bar but also many aspects of their life when it comes to job interviews, writing skills, communication skills, thinking skills and lastly knowledge skills. They are a class that if I must put an adjective to describe, in one word-lazy. They expect everything handed to them, they have an entitlement attitude and want instant gratification. They do not believe in working hard to obtain or achieve anything. They believe it is their right to have whatever they want but not put in any effort in exchange. I speak in generality as there are exceptions to every class but the bulk of the information holds true.

With this in mind, by the State Bar lowering the passing score, you are in essence enabling this group to continue with their state of mind and beliefs. This will lower the quality of future attorneys we have for the future of our country. Do you really want to change your standards or continue to have California be the most respected state in the country for our Bar exam? Myself and many many friends studied our butts off to pass the exam and I personally know many others who studied for years just to pass. We worked hard to accomplish this. It was not given to us nor was it handed on a silver platter. It was expected that the exam was hard. We were told numerous

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times during law school and while studying for the exam. We prepared in order to pass.

If you lower the passing score now, what will you do in 10 years when the rate continues to decline? Will you lower it again to accommodate those applicants? Will you continue to lower until CA passing score is equal to those of Idaho???

From: Julie Jung <juliejung.esq@gmail.com>  
Sent: Monday, August 14, 2017 3:36 PM  
To: Comment, Public  
Subject: Re: CA Bar Exam Cut Score

Dear CA State Bar:

I am extremely disappointed about this proposal to cut the bar exam passing score. I think it is quite disturbing that the Bar and other individuals believe this is the answer to solve the growing concerns and issues of many attorneys in California.

I believe that the issue is not the Bar exam. I believe the root of the problem is the law schools and the accreditation process. CA State accredited law schools are a joke. The standard for the accreditation process for law schools, in general, in California seems too easy and the standard to obtain/maintain accreditation is too low. So many law schools in CA accept students into their law degree program to make a profit, yet they have no accountability and responsibility when the bar passage is low.

So, my question is, who or what is the actual problem? I, along, with many other colleagues, have expressed to each other about the financial hardships from high student loan debt. If the Bar Committee cuts the passing score, there will be more attorneys; and, in turn, may actually lower the starting salaries of first year/young attorneys. Why does one think that passing the Bar will change everything? What good is a Bar license if the starting salary is not even enough to pay for necessary living expenses after paying the high monthly loan payments? For example, I pay about \$1200 per month on just student loan payments, and that is with me paying the bare minimum on my Federal Loans. And, paying the bare minimum is what I can afford. You know what bare minimum means for me? My original loan balance was about \$86,000; currently my loan balance is about \$77,000 because \$35,000 of what I paid went to interest.

In my opinion, the ideal plan would be to monitor and scrutinize, even to the point of micro-managing, these law schools. To mandate that every law school in CA is ABA accredited, and to ensure that these law schools provide bar preparation courses during the school year for course credit and other practical courses that may actually benefit them when they begin their career after passing the Bar. For instance, law schools providing a law school course about opening and managing one's own firm; or, requiring law schools to have relationships with the small medium and large firms around the area for mentoring/internship/externship opportunities as part of course credit.

It may have seemed laughable that there were people suing the law schools they attended, but I think their initial perspective was correct - the root of the problem is not the Bar exam - it is the law schools. Who is going to do something about that and what?

From: HARIOM911@aol.com  
Sent: Sunday, August 13, 2017 11:37 AM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Co

Good afternoon,

I feel that passing score from current 1440 should not be changed.

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I could had passed the bar long back if passing score was 1414. However, I passed after few years with a three full day bar exam and minimum passing score of 1440.

There is abundance of CA lawyers.

Standard of lawyers will go down if the passing scores are lowered

From: Stephen Dill <swdill@hotmail.com>  
Sent: Friday, August 11, 2017 12:40 PM  
To: Comment, Public  
Subject: Why the passing score should be made even lower than 1414

The passing score on the California Bar Examination should be set even lower than 1414.

Far too often the Bar Examination receives attention to its minimum required score on the Multistate Bar Examination (MBE) portion of the examination. However, the MBE is a national test that is scored objectively, i.e., either an individual answered the question correctly or not. The only issue regarding the MBE is that most find that the required minimum cut-off score set by the State Bar of California is too high. I agree.

However, what gets little attention is the subjective scoring of the essays and practice portion of the examination. Over the years, graders have drastically skewed the scoring downward. When reviewing answers to essay and practice questions, an average answer (essentially a "C" and therefore supposedly passing answer) is given a 50. A "C Plus" answer is given a 55. However, to pass the California Bar Examination a test taker must average somewhere above a 65 on each essay and practical question. A 65 equates to a "B Plus" answer. Therefore, it is too high a hurdle.

Take for instance test takers who are members in good standing of the bars of other states and who have practiced law for more than 5 years. They are not required to take the MBE and take the Attorney Exam, which consists of only the essay and practice questions. This group has one of the lowest pass rates in the state due to the onerous and purely subjective grading of answers to the essay and practice questions.

The scoring of the written portion of the test must be made fair. An average answer should be given an average score of 65.

From: vaidosa73@aol.com  
Sent: Friday, August 11, 2017 12:08 PM  
To: Comment, Public  
Subject: PUBLIC COMMENT ON REDUCING THE BAR PASS SCORE

FRANKLY, I FIND THIS TO BE RIDICULOUS.

UNLESS SOMEHOW THE EXAM HAS GOTTEN SIGNIFICANTLY HARDER THAN WHEN I TOOK THE EXAM, I FIND REDUCING THE PASS SCORE JUST BECAUSE THE NEW STUDENTS CAN'T PASS MUSTER IS JUST ANOTHER SIGN OF OUR TIMES, WHERE STUDENTS AREN'T SCORED IN SPORTS AND/OR GRADED IN SCHOOL ANYMORE, SO NO ONE'S FEELINGS ARE HURT. MAYBE THAT IS WHERE WE SHOULD BE LOOKING, AT HOW CHILDREN ARE BEING TAUGHT FROM YOUNG AGES.

THE BAR EXAM IS HARD FOR A REASON. WE WANT QUALIFIED PEOPLE TO BECOME ATTORNEYS NOT UNQUALIFIED PEOPLE. EVEN WITH THE BAR EXAM AS HARD AS IT IS, PEOPLE STILL MANAGE TO MAKE IT THROUGH AND RUIN THE REPUTATION OF THE PROFESSION FOR THE REST OF US.

THE BAR PASS SCORE SHOULD REMAIN THE SAME.

MAYBE WE NEED TO TAKE A LOOK AT SCHOOLS, BAR PASS CLASSES, ETC. THE BAR SHOULD NOT BE LOWERED SO MORE UNQUALIFIED PEOPLE CAN BE LAWYERS IN CALIFORNIA.

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From: arminesq dslextreme.com <arminesq@dslextreme.com>  
Sent: Friday, August 11, 2017 11:01 AM  
To: Comment, Public  
Subject: Cal Bar Exam

Keep the bar the way it is. Everyone went thru it as a rite of passage. Don't lower standards. Not good for the profession.

From: Vincent O'Gara <vogara@gmail.com>  
Sent: Friday, August 11, 2017 10:18 AM  
To: Comment, Public  
Subject: Changing Bar Exam Standards

When I began my first year of law school, 20 participants in the prior year's Legal Educational Opportunities Program (LEOP) had failed their 1st year comprehensive exams. Activists organized demonstrations and a school shut-down [partially effective].

The result was that the failed LEOP students were re-tested, passed, and began their 2nd year. I do not know the graduation rate for the 20 LEOP students.

Years later, one of the LEOP students was an opponent in a case. Naturally, I checked this lawyer's Bar Status -- the lawyer was not, and had never been, a member of the California Bar. Apparently, the lawyer became a member of a non-California bar, and practiced as a Pro Hac Vice attorney in each case in which he appeared in California (where he had his office and was a resident).

Unfortunately, changing standards, or granting special status, does not make effective, ethical lawyers.

From: Gregory Wilkinson <gmystrusa@gmail.com>  
Sent: Thursday, August 10, 2017 5:00 PM  
To: Comment, Public  
Subject: Don't Lower the Bar

I am an CA licensed attorney and I do not think we need to lower the Bar exam scope in any way. There are still plenty of people that pass it and are not in a shortage of attorneys in CA. If law students take the time to study and practice they will pass just fine. Lowering the standard does not help us or the public. A few more lawyers is not going to make any real difference in the industry so hold them accountable.

From: Evans, David W <devans@HBBLAW.com>  
Sent: Thursday, August 10, 2017 2:21 PM  
To: Comment, Public  
Subject: California Bar Exam

Ladies and Gentlemen,

I write in support of the view that the passing score for the California Bar Examination should not be lowered. As an attorney in private practice for 39 years who specializes in the defense of professional liability claims against attorneys, I have direct, first-hand experience dealing with both the best and, on occasion, the worst of California's admitted attorneys. I say "best" because the vast majority of the clients I have been fortunate enough to represent, and the expert consultants and expert witnesses involved in their defense, have given me a first-hand seat to observe the very best of our profession. I say "worst" because, unfortunately, many attorneys who bring such claims against other lawyers and law firms have often not done the kind of analysis and evaluation, let alone legal research, necessary to determine that a case has even minimal merit or bring such actions in the hope that the defendants will simply pay them off to save embarrassment. Of course, I hasten to add that the foregoing are simply generalizations – and that there have been exceptions to both statements. Many attorneys who have

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brought malpractice claims in which I have been involved are every bit as deserving of my “best” label, just as some of the parties I’ve defended can rightly claim the other end of that spectrum. But my experiences have taught me that the consumer and business public deserve the best possible legal representation available – and reducing the Bar’s standards is simply not the way to accomplish that. This proposal seems designed solely to artificially increase the number of attorneys in California without paying attention to what that means at the end of the day. Diversity is a very worthwhile objective, and one that should be encouraged by all secondary and graduate educational institutions, particularly those involved in producing law school applicants and graduates. But changing the minimum passing grade for the Bar exam to accomplish that goal begs the question of why law school graduates are not as prepared or well educated as they could be, and thus not achieving passage of the Bar exam in the same numbers as seen in the past. California doesn’t necessarily need more lawyers, it needs more good lawyers – and adding to the population of lawyers by lowering Bar passage requirements is not going to help, nor is it going to create jobs for a new crop of attorneys who just barely failed the last Bar exam, but might under the new proposal, just barely pass the next one.

These are my own opinions and don’t necessarily reflect the views of my colleagues, this firm, or any of my clients and professional acquaintances.

From: Mary Lou Serafine <mlserafine@gmail.com>  
Sent: Thursday, August 10, 2017 2:09 PM  
To: Comment, Public  
Subject: Opinion on lowering "cut score": AGAINST

Categories: Red Category

As an Ivy-League-educated lawyer who flunked our bar exam, then passed the second time, please count me as against lowering the cut score, even temporarily, for these reasons:

1. Simply as a matter of principle, the candidates should follow the cut score to a higher level by upping their game, rather than our creating a cut score that follows the candidates downward to a lower level. So long as candidates can re-take the exam, as I did, and learn from doing so, there is no unfairness in a high cut off.
2. As a member of the bar in three other jurisdictions, I can testify that lawyers elsewhere respect California lawyers because of the well-known high standards of our bar exam.
3. Equally, as a member of a bar where the cut score is lower, I can testify that there is a palpable difference in the quality of both lawyering and ethics when the admission is tough rather than easy.
4. If the purpose of lowering the cut score is to further an affirmative-action type agenda, it is a disservice to all, especially the public.
5. All lawyers know that they learn a lot by preparing for the tough bar exam. For many of us, this is where we really learned the black letter and learned to write. Also, at least back in my day, the bar review courses were taught by the best teachers and scholars around, and even if such courses are on line today, their high quality is a reflection of the high level to which they must prepare their candidates.

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6. Finally, there will be no such thing as a temporary, lower cut score. If it is temporary, it will later be seen as a move to a "higher" and thus unfair cut score.

From: ogbo0006@gmail.com on behalf of jake ogbozo <jogbozo@gmail.com>  
Sent: Thursday, August 10, 2017 2:05 PM  
To: Comment, Public  
Subject: Bar exam changes

The problem with the bar exam is your graders. I took the exam three times. The first two time I was not passed yet those were by far my better performances. The third time I merely parroted a very very short Bar-Bri attack outline and you passed me. I barely studied and my answers were not very good, but they followed the Bar Bri organizational structure. In other words your graders are just recognizing patterns in responses and not taking the time to read actual essays for content. I had several law school professors tell me my failing essays were perfectly accurate and should have been passing. I don't have the scores from the time I passed, which is your policy, and to any attorney clearly indicates your unwillingness to have your grading process closely scrutinized. I began working with a bar exam grader after finally being passed and she was, and still is, the worst attorney I've worked with to date. She was fired shortly after I started and the entire time I knew her I was appalled and how poorly she grasped the law. I have had very similar experiences with Bar-Bri test graders and I understand there may be some overlap in who works for Bar Bri and who grades for the Bar Exam. In short you have a lot of test graders that can't be bothered to take the time to read an entire essay and discern if the answer is accurate, or don't understand the law. Instead they are looking for key phrases and organization that is simply insulting to the rest of us who attended law school to learn the law and not merely learn how to say what's expected.

From: Hale <halesf7@aol.com>  
Sent: Thursday, August 10, 2017 1:00 PM  
To: Comment, Public  
Subject: Re State Bar Admission Criteria

I believe that the requirements to practice law in California are ridiculously restrictive, limiting bar admissions mostly to students who attended A rated schools like I did (Hastings). I actually believe it is the big law firms who run the state bar trying to limit competition. Minorities and people from working class backgrounds are disproportionately underrepresented in our profession. As I am lgbt and part Hispanic I am especially sensitive to these issues

From: Smith, Ryan C. <RCSmith@duanemorris.com>  
Sent: Thursday, August 10, 2017 12:49 PM  
To: Comment, Public  
Subject: Public comments on lowering the CA bar cutoff passing value

No.

We need to maintain the integrity of the public's faith in the quality of our legal system.

California has a sufficient number of attorneys per capita (we rank 14th overall – per [http://www.averyindex.com/lawyers\\_per\\_capita.php](http://www.averyindex.com/lawyers_per_capita.php)). We are not in any danger of being unable to provide sufficient legal services to the entirety of the income spectrum in California.

Let the free market dictate the supply and demand of attorneys in our state. If there are too few attorneys, rates and incomes will increase, drawing higher-skilled persons into the profession.

One could argue that with the tech boom, many qualified candidates are pursuing careers in high tech rather than in the law. As the tech boom cools relative to the legal field, more will feel inclined to pursue a meaningful legal career.

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If a minor-league law school has to fold or retrench, that's their problem. The mission of the California State Bar should not be to maintain ALL of the law schools in the state.

From: Rick Lebherz <r\_lebherz@u.pacific.edu>

Sent: Wednesday, August 9, 2017 5:29 PM

To: Comment, Public

Subject: Leave the cut score as is

To whom it may concern,

My opinion as a recent multiple repeat taker who passed on the third attempt is to leave the cut score as is. You have already made recent changes which have drastically changed the nature of the exam from three days to two days with scoring changes. To change the cut score prior to an discernible impact of recent changes to the test structure would be premature.

Also, as you know since they are your statistics, the passing rate that gets passed around publicly is an inaccurate metric that shouldn't be used to to evaluate a need for scoring changes.

For example, the number that man discuss publicly is that in July 2016 only 43.1% passed the exam. However, if you break down the numbers ( <http://www.calbar.ca.gov/Admissions/Law-School-Regulation/Exam-Statistics> ), the overall passage rate for "First Time takers from ABA accredited Law Schools in the State of California" for July 2016 is 62.4%. Again for July 2015 the number discussed that leads to much of this discussion is that only 46.6% passed. However, again the passage rate for First Time takers from ABA accredited Law Schools in the State of California is 68.2%. Repeat takers (myself included), out of state test takers, and non-ABA approved schools bring these averages down significantly.

Please note, I have intentionally omitted February Testing date due to limited sample size for that population of takers.

Yes the bar exam is a hard test, and while there are always exceptions to any rule, the general numbers indicate that if you want to pass the CA bar exam go to an ABA accredited law school in the State of California. Based solely upon my own recent experience, the student i anticipated passing passed. They studied hard all three years and for the test.

Also, there may be some insistence from Law Schools asking to change the grading, but please consider their vested interest and potential conflict of interests in seeking this change. If the tests is easier to pass the thought is that more students will attend Law Schools as the attendance and admissions around the state continue to fall. However, the nature of the legal market is changing, and as more attorneys become increasingly efficient because of technology the work one attorney is capable of handling increases while the hours associated with this work decrease. This will lead to more attorneys, who are potentially less qualified, fighting for work and making the service provided by attorney's a commodity. This leads to reduced earning capacity which will likely lead to the same issue the practice faces today, dropping enrollment numbers, as law becomes less attractive. A reduced entry only serves to delay the inevitable. However, it may potentially allow those not capable of adequately performing the service to practice and this could potentially lead to public harms.

I would strongly ask that you reconsider any changes to the score given that the impact of recent changes to the test structure have yet to be seen, that public perception of passage rates is flawed, the impact if may have on the current members of the CA Bar, and the potential harms to the public of those not adequately qualified to serve.

For these reasons, I am against any changes to the scoring at this time.

## PUBLIC COMMENTS – EMAILS

From: John Schunk <jjschunk@msn.com>  
Sent: Friday, August 4, 2017 3:35 PM  
To: Comment, Public  
Subject: Public Comment re California Bar Exam Cut Score

Here are six comments.

1. Groundhog Day -- Many of the current issues raised and concerns expressed about the current bar exam passing score were raised and expressed after the results of the July 1983 California Bar exam were released. This transcript of a May 21, 1984 Hearing of the Assembly Judiciary Committee on the Fall 1983 State Bar Examination <[http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1222&context=caldocs\\_assembly](http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1222&context=caldocs_assembly)> takes some time to read, but it does illustrate that history repeats itself (almost verbatim).

2. No Interim Score Change -- To the extent any change to the passing score should be made, it should not be interim. With that said, the proposal for an interim score change is better than what Oklahoma did by undoing its scaling of the exam <<http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=477458>> .

3. Purpose of the Bar Exam -- The Committee should be clear about what purposes the bar exam serves. It does more than merely protect the public from completely incompetent attorneys. "The purpose of the bar examination is to screen applicants in such a way as to protect the public and to protect the reputation of the legal profession. The bar examination should not be easy. It should be a rigorous test of legal knowledge and ability. The fact that there was a greater failure rate on the most recent bar examination is not a reason to change the examination's grading or scaling." See RE: ORDER VACATING SCAD-2013-11, BAR EXAM ALTERNATIVE SCORING AND GRADING METHODS <<http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=477458>> (TAYLOR, J., joined by Watt, Winchester, and Colbert, JJ., dissenting).

The Committee may want to revisit its recommendation <<http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000013552.pdf>> for the two-day bare exam. [From page 4 of the Recommendation]

"[T]here seems to be continued confusion with regard to what the bar examination is intended to do. The examination is not designed to predict success as a lawyer or even that a lawyer is ready to practice law. Nor is it designed to test endurance. In fact, the best predictor of bar examination scores are the grades an applicant received during law school. So, in a sense, the examination is confirmation that the necessary skills and knowledge were learned during the three or four years of law study, through whatever means, which are needed to show minimum competence." (emphasis added).

The Committee's recommendation regarding the two-day bar exam indicates part of the bar exam is consumer protection for law students. It is designed to ensure that law schools teach what they are expected to teach. Beyond protecting the public generally, it also serves to protect students from receiving an inadequate education. In fact, the bar exam acts much like an Advanced Placement test does for students taking high school AP courses.

4. Results of Standard Setting Study are Consistent with Definition of Minimum Competence from 1970s and 1980s -- As the Committee probably knows, the 1440 passing score was not selected out of thin air or by a "Bunch of Guys Sitting at Table," see The Testing Column: Standards? We Don't Need No Stinking Standards <[http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia\\_files%2FBar-Examiner%2Farticles%2F2017%2F860217-BE-TestingColumn.pdf](http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2017%2F860217-BE-TestingColumn.pdf)> , The Bar Examiner (June 2017). Rather, the 1440 passing score was selected based on a much broader set of evidence than the current standard setting study. "The score required for passing is 1440. This score reflects the average of the pass/fail standards that were used on the all the exams that were given between 1977 and 1986. This average was computed by using the procedures above to calculate total scale score on each of these 20 previous exams, finding the total score on each exam that would have produced the same passing rates as actually occurred on that exam, and then determining the average of these standards." See Klein, HISTORY OF GENERAL BAR EXAMINATION STRUCTURE AND PASS/FAIL RULES <<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKewix->

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tSFur7VAhXLzLQKHRBKB1oQFggmMAA&url=http%3A%2F%2Fboard.calbar.ca.gov%2Fdocs%2FagendaItem%2FPublic%2Fagendaitem1000009450.pdf&usg=AFQjCNHozac4HFrIuoYIv5IapZ54gT27oQ> (PR-11-05), at p.4.

The current Standard Setting Study merely confirms that the panel reviewing the July 2016 bar exam answers had a similar communal sense of minimum competence as those who graded the California Bar Exam three to four decades earlier.

5. Who Benefits from a Lower Cut Score? -- Any bar exam cut score affects three groups: (i) the California public, (2) the bar exam takers, and (3) law schools, primarily California law schools.

Especially given the results of the current standard setting study, any lowering of the current cut score provides the public with less protection than it previously had. California seems to pride itself for providing consumers with more protection than other states (e.g., air quality, minimum wage, worker safety), but protecting consumers' liberty and property apparently are different for some people. The market does a pretty good job of judging minimal competence. Many clients already are unwilling to pay for legal services performed by young attorneys <<http://abovethelaw.com/2014/09/biglaw-firm-figures-out-a-way-for-clients-not-to-pay-for-first-year-associates/>>. This suggests that bar exam cut scores are not so high that they are only identifying overly-qualified entry-level attorneys. The ABA employment statistics for California law schools <<http://employmentsummary.abaquestionnaire.org/>> also suggest that the public is not being short-changed access to minimally competent California attorneys. If employment rates were higher, one could argue that the 1440 passing score is acting as a restraint of trade, but that is not the case now.

Lowering the cut score only subsidizes law schools that have compromised their previous academic standards in order to meet their current financial exigencies. This has led to poor admissions decisions made by many law schools in order to support the out-dated or flawed business models of many law schools. The main reason CA-ABA law school deans have decided to complain about the current 1440 passing score after more than three or four decades is that keeping the cut score at 1440 could hasten a market correction that might adversely affect a number of law schools (e.g., Whittier). USF provides a good example of this. Its reported LSAT scores have dropped from 159/157/155 (2011) to 154/151/148 (2016) <<http://www.abarequireddisclosures.org/>>. It should surprise no one that USF's July first-time bar pass rate has dropped from 75% (2013) <[http://www.calbar.ca.gov/Portals/0/documents/admissions/gbx/JULY2013STATS.012214\\_R.pdf](http://www.calbar.ca.gov/Portals/0/documents/admissions/gbx/JULY2013STATS.012214_R.pdf)> to 61% (2014) <[http://www.calbar.ca.gov/Portals/0/documents/admissions/gbx/JULY2014STATS121814\\_R.pdf](http://www.calbar.ca.gov/Portals/0/documents/admissions/gbx/JULY2014STATS121814_R.pdf)> to 47% (2015) <<http://www.calbar.ca.gov/Portals/0/documents/admissions/Statistics/JULY2015STATS.121715.pdf>> ) to 36% (2016) <[https://docs.google.com/viewerng/viewer?url=http://abovethelaw.com/wp-content/uploads/2016/12/California-Law-Schools-July-2016-Bar-Pass-Data.pdf&hl=en\\_US](https://docs.google.com/viewerng/viewer?url=http://abovethelaw.com/wp-content/uploads/2016/12/California-Law-Schools-July-2016-Bar-Pass-Data.pdf&hl=en_US)> .

6. Increasing Type 1 Errors -- Type I errors involve passing unqualified candidates. Lowering the cut score will increase the number of Type I Errors. The Committee and the Board of Trustees should not ignore the decades of prior research regarding the California Bar Exam. While there is substantial variance for individual bar exam takers, groups of bar exam takers are very predictable when grouped by their average LSAT scores <[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwj\\_mLSUx77VAhVjr1QKHSGCBRIQFggmMAA&url=http%3A%2F%2Fwww.seaphe.org%2Fpdf%2Fpast-bar-research%2FResearch\\_on\\_the\\_CA\\_Bar\\_Exam.pdf&usg=AFQjCNF3Njf\\_kXakYJt4asr1sxCsEgtb1g](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwj_mLSUx77VAhVjr1QKHSGCBRIQFggmMAA&url=http%3A%2F%2Fwww.seaphe.org%2Fpdf%2Fpast-bar-research%2FResearch_on_the_CA_Bar_Exam.pdf&usg=AFQjCNF3Njf_kXakYJt4asr1sxCsEgtb1g)> (see p.5, Item G.3 ("almost a perfect prediction")) and when rank-ordered by their law schools by LGPA (see id., Item G.1.). Which bar exam takers will likely benefit from a lowering of the current 1440 passing score? It will include those bar exam takers who (i) had below national median LSAT scores or (ii) who performed academically poorly in law school (i.e., bottom third to bottom quarter of graduating class).

Prior California research <[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&cad=rja&uact=8&ved=0ahUKEwiGwvFnbzVAhVoh1QKHVVVBrwQFghDMAU&url=http%3A%2F%2Fwww.seaphe.org%2Fpdf%2Fpast-bar-research%2FTemporal\\_Trends\\_in\\_LSAT%2C\\_MBE%2C\\_and\\_Essay\\_Scores.pdf&usg=AFQjCNFjn2hYtBdHUIJKSb2AsP2KewEY-A](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&cad=rja&uact=8&ved=0ahUKEwiGwvFnbzVAhVoh1QKHVVVBrwQFghDMAU&url=http%3A%2F%2Fwww.seaphe.org%2Fpdf%2Fpast-bar-research%2FTemporal_Trends_in_LSAT%2C_MBE%2C_and_Essay_Scores.pdf&usg=AFQjCNFjn2hYtBdHUIJKSb2AsP2KewEY-A)> (see Table 2) and NCBE research <[http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia\\_files%2FBar-](http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-)

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Examiner%2Farticles%2F2011%2F800411Testing.pdf> (see Table 2) find a fairly high correlation between average LSAT scores and MBE scaled scores. With respect to admissions, look at these new cut scores and compare them to the LSAT score generally needed for someone to have a 50% chance of attaining an MBE score equal to the state's passing score.

144 -- LSAT 151 (48th percentile -- 56% of LSAT questions answered correctly (57/101))

140 -- LSAT 147 (34th percentile -- 49% of LSAT questions answered correctly (50/101))

136 -- LSAT 144 (24th percentile -- 42% of LSAT questions answered correctly (43/101))

133 -- LSAT 141 (16th percentile -- 39% of LSAT questions answered correctly (40/101))

One has to wonder if the public will be served by producing more lawyers who scored in the 35th-40th percentile on the LSAT while answering less than half the questions correctly.

Without the current cut score, California essentially would be trusting California law schools to identify minimally competent future attorneys by the fact of graduation. The CA-ABA deans will not be satisfied with a 141.4 cut score. However, many CA-ABA law schools never seem to find anyone they admitted may not be competent. Take UC Hastings as an example. Its July 2016 first-time takers passed at 51% and scored at or below average when compared to other CA-ABA law schools, but for its 2015 Standard 509 Report <<http://www.abarequireddisclosures.org/>> , UC Hastings reported only one first-year student in that academic cohort of 333 students had academically disqualified. This

By lowering the cut score, the Committee would be increasingly delegating the "confirmation that the necessary skills and knowledge were learned during the three or four years of law study, through whatever means, which are needed to show minimum competence" to a law school's grading process. Alas, if a law school is willing to compromise its admissions decisions for financial reasons, the odds are high it has compromised or will compromise its grading standards for determining academic disqualification.

From: Julie Hamill <julie@juliehamill-law.com>  
Sent: Wednesday, August 2, 2017 10:39 AM  
To: Comment, Public  
Subject: 2017 Standard Setting Study and Related Options- Keep the Cut Score Where it is

To the State Bar of California:

National efforts to explain the declining bar pass rates over the last eight years have focused on the precipitous drop in law school enrollment. Erica Moeser, President of the National Conference of Bar Examiners, believes that the decline in the job prospects of newly licensed attorneys led to a decline in the number of law school applicants which, in turn, led schools to admit students with weaker academic credentials. See p.3 of Standard Setting Study for the California Bar Examination and Related Recommendation to Circulate Two Options for Public Comment.

Law school graduates have had a tremendously difficult time finding gainful employment over the last eight years. To resolve this issue and keep profits high, law school deans lobbied the CA State Bar to lower the cut score to enable more (less-qualified) people to pass. Some legal aid organizations spoke up in support, saying that their prospective employees were not able to pass the bar and it hampers their ability to help people.

We do not have an attorney shortage in California, and such a shortage is not on the horizon. It's not just legal aid attorneys who are not making the cut- it's big law summer associates, unemployed people, high-powered sports agents and experienced attorneys from out of state. We do not need to lower barriers to entry in California's legal field just because people are not able to pass the test. Nobody has the right to practice law in California. It is disturbing that law school deans are pushing for this change, because they directly benefit from it. It keeps them employed. Law schools have been lowering barriers to entry across the nation, admitting people who wouldn't

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have met the requirements years prior. A lot of these people graduate with hundreds of thousands of dollars in student loan debt, and cannot pass the bar exam. The solution is not to make it easier to become an attorney.

If a school's students are not finding employment following graduation, that school must (1) work to change those statistics by improving employment prospects and better equipping students to find or create their own employment, or (2) close down the law schools with failing employment statistics. By lowering the bar, we are exacerbating the problem of these lower-tier schools opening up to weaker academic credentials with the promise of an easier time passing the bar. But guess what? Passing the bar does not create more jobs. You will just have a bigger pool of barred attorneys with weaker academic credentials and still no job prospects, and the real problem of insurmountable student loan debt will continue on.

Lowering the bar does not protect the public. In fact, it does the exact opposite.

The argument that lowering the bar will fill a gap in legal aid employment is a logical fallacy, unless we mandate that any new attorneys who reach the lower cut score but not the previous cut score must work for legal aid or nonprofits.

**From:** Victor Davich [<mailto:vdavich@gmail.com>]

**Sent:** Friday, July 14, 2017 11:28 AM

**To:** Conneely, Cathal <[Cathal.Conneely@jud.ca.gov](mailto:Cathal.Conneely@jud.ca.gov)>

**Subject:** Privileged: Forward to Chief Justice Tani G. Cantil-Sakauye. |Objection to lowering CA bar pass score.

Your Honor

I am an attorney admitted to the State Bar of California in 1987, 30 years ago. As such, I want to register my strongest objections to lowering the passing score for the California Bar Exam.

The level of legal knowledge, expertise, and acumen in our state is unparalleled. One major reason is the high bar we set for admission. This so-called reasons is, in my opinion, are specious and seem to be a transparent attempt by California law schools to increase their dwindling application rate. This issue was not even a blip on the screen until the recent drop-off in law school applications. In this connection, here is a quote from today's New York Times:

"And only 51 percent of the graduates of the University of California Hastings College of the Law passed the state's exam in July 2016. That result, the school's dean, David L. Faigman, wrote the California Committee of Bar Examiners last December, was "outrageous and constitutes unconscionable conduct on the part of a trade association that masquerades as a state agency."

If Mr. Faigman has a problem with his school's pass rate, perhaps he should review its admission policies, faculty competence, and student performance. Instead of complaining that the bar has been set too high. I don't think California residents who need a good attorney have the same issue he does.

I implore you to ensure the preservation of California's high standards.

Thank you for your consideration.

Committee of Bar Examiners:

I am submitting these comments on the 2017 Standard Setting Study and Related Options for Recommendation to Supreme Court via email in addition to via the online platform. The online platform presented me with an error message when I tried to submit my comments before the 5PM Pacific time deadline, and I want to ensure my comments are received. My comments are as follows:

I disagree with Option 1, and I agree with Option 2 if modified:

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As a partner in a very large law firm, I have witnessed highly competent practicing attorneys licensed in other jurisdictions prepare for and fail the CA bar exam. I have also been privy to the scores some of these applicants received, and it was clear that had they taken the bar exam in almost any other state in the country they would have passed. The result is that it is extremely difficult to relocate attorneys to CA based on the needs of the firm and our clients, even though the attorney has already demonstrated much more than the minimal competency required to practice law.

As the Committee of Bar Examiners is aware, currently CA's cut score is the second highest in the nation. Reducing the cut score to 141.4 (based on the 200-point scale) simply results in CA having the third highest cut score in the nation rather than the second highest, still well above the majority of states with cut scores between 135-139 (most of which have cut scores of 135). Although lowering the cut score to 141.4 is an improvement, it fails to hit the mark and, as the Committee is aware, would have resulted in only a very small percentage increase in pass rates among takers of the July 2008 or July 2016 examinations. I would urge the adoption of a cut score between 135-139.

Jody Brewster

### Retroactive Admission Proposal

I strongly urge the CA State Bar and the California Supreme Court to consider retroactive admission to exam takers who recently scored a 1414 or above within the last 4 years. If in fact the current 1440 score is considered "arbitrary" because it lacks justification, then how do you address the thousands of past bar exam takers who took the exam and scored above the new 1414 cut score multiple times during this downward passage rate trend?

#### Why Retroactive Admission?

Retroactive admission should be considered because many CA bar takers, like myself, have taken the exam in recent years and scored well above the 1414 score. If the State Bar cut score changes, how are recent exam takers, like myself, made whole when I have scored above 1414? It is no fault by previous bar takers who took the exam when the cut score was 1440. But now, in July 2017 and future test takers will reap the benefit with a "more just cut score"?

The State Bar must consider retroactive admission because asking repeat takers to "merely take it one more time" only shows how out of touch the State Bar is to recent law graduates. We represent the profession's future. Repeat bar test takers face multiple obstacles: (1) the time commitment to prepare for the exam, (2) the large financial cost in paying for test preparation, and (3) the commitment to pay hefty student loans each month. These are key examples repeat test takers face each time and go unrecognized.

#### Why retroactive admission for recent years only?

I propose the State Bar implement retroactive admission for recent years when the state passage rate had steadily declined, namely the 2013, 2014, 2015, 2016 years. If the reason for changing the cut score in 2017 is based upon passage rate data in the last 3-4 years, then the test takers in those years should have their prior exam(s) reconsidered. You have to look at the entire data sets, not just those in 2017.

#### How to address the Moral Character requirement

The moral character determination lasts 2-3 years. I'd imagine a concern in this retroactive proposal is, "How would the State Bar handle those whose moral character determination has lapsed?"

Simple: past bar takers must still have, or be able to submit, a positive moral character determination for retroactive admission. For example, I had to update my moral character determination when I took the CA bar exam in February 2016.

#### My Story

I graduated from Golden Gate University, School of Law in 2013, with hopes of starting my legal career. But I have

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been delayed because I have taken the California bar exam six times and have yet to pass this exam. Multiple times I have come close to passing. Last May 2016, I scored 1434 (6 points away from passing). This disclosure is a very sensitive and difficult topic for me and I hope you can keep this information private.

Everything in the February 2017 letter by law school deans that discussed how failing the bar exam negatively impacts recently graduated law students is correct. The financial and lost job opportunity cost is serious. For the financial cost, the investment in retaking the bar exam (\$1,500+ each time including hotel stay for the 3 days), the cost in bar exam tutors I've spent (around \$7,000), and not to mention, finding a way each month to pay my \$166,000 in student loans has created unnecessary stress and financial burden on me. My experience is not rare, but instead an unfortunate trend. Through these last three years, I have personally met countless peers from various law schools through tutoring preparation and they confess to a very similar experience.

The lost job opportunity cost is significant as well. On a quarterly basis, I am approached by legal recruiters on LinkedIn, and others, who send me attorney positions at law firms and high-tech companies because of my combined academic credentials and job experience in data privacy and intellectual property. However, I turn them down, each time, because of my inability to practice law in California. I'm fortunate to have recently found a job working in data privacy, however, I know my earning potential is likely less than my peers and my career opportunities delayed because I have not passed the bar exam.

Further, my inability to practice law impedes my ability to help my family and friends. Frequently, they contact me for legal advice but I'm unable to help them because of my lack of a bar card. My local community is impacted too. On the weekdays, I volunteer as a Literacy Tutor to teach English and reading comprehension to primarily Spanish-speaking parents at the San Mateo Public Library's Project READ program. All of these parents are low-income with limited education and, upon learning that I graduated from law school, ask for legal assistance in areas such as employment, landlord-tenant, and immigration. Again, I cannot help my local community and vulnerable populations in my area because I lack my legal license. I'm bilingual in Spanish, multicultural, and work in technology; all valuable skill sets in a diverse Bay Area, but despite my accomplishments, I am hindered due to the State Bar's arbitrary cut off score.

I appreciate the State Bar and CA Supreme Court consideration to my proposal.  
I'm happy to discuss further.

Ron Lau

From: Herb Detrick <hdetrick@att.net>  
Sent: Friday, August 25, 2017 4:07 PM  
To: Comment, Public  
Subject: BACP Comments - California Bar Examination Cut Score

The State Bar of California

Re: California Bar Exam

180 Howard St.

San Francisco, CA 94105

By e-mail only to: Public.Comment@calbar.ca.gov

Re: Public Comments on Standard Setting Study with Respect to Possible Changes to California Written Bar Exam Cut Score

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Dear State Bar:

The Bar Admission Challenge Project (BACP) is an unincorporated California private association, established in about 2011 by individuals who failed (in some cases just barely) to pass the California bar exam on their first attempt.

Of the founding members of the organization, two had previously filed petitions with the Supreme Court of California, essentially seeking reconsideration of the manner in which their nearly-passing California bar examination scores had been calculated.

In both cases, had the then-accepted passing scaled score been 1414, as currently-proposed, rather than 1440, each of these individuals would have been deemed to have "passed" the written exam.

One of these petitioners did subsequently retake the exam, and received notice of a passing score, but after being subjected to intensive (Level III/IV) scrutiny of his so-called moral character (in part because the filing of his petition challenging the bar examiners' methodology for calculating a passing score), he was denied a determination of good moral character by the Committee of Bar Examiners (COBE) -- notwithstanding that he had already been authorized to practice law, in a representative capacity, in four states, five federal district trial courts, and the United States Supreme Court.

Because the BACP was created as a vehicle for fostering more liberal approaches to bar admission proceedings, generally, consistent with the particular situations and beliefs of its members, and not as a "one voice speaks for all" organization, the constitutional structure of the BACP does not expressly provide for the issuance of any single, unified, or official "group" position on specific bar-admission issues, such as the present debate over whether to change the "cut" score for the California bar examination from 1440 to 1414.

At a bare minimum, however, it can fairly be said that various members of the BACP do support a reduction, from 1440 to 1414, of the "passing" scaled score.

In addition, some would also support making any reduction of the "passing" or "cut score" retroactive, by a minimum of at least five years, but ideally, by extending retroactive "passing" credit to any individual with a previous "non-passing" scaled score of at least 1414, or whatever revised, or lower, cut score might be selected.

Some of the organization's members also have come to believe, however, that California's exclusionary bar admission regime, as long-administered by the State Bar, and enforced by the Supreme Court of California, is really nothing but an illegal quota scheme, masquerading as a meritocracy.

As such, even if the "cut score" for the California written bar examination were to be reduced, from 1440 to 1414, the 39 million residents of the state, and many of the thousands of persons who annually seek official state government (i.e., State Bar and/or Supreme Court) imprimatur to practice law in California, effectively would continue to be denied (or limited in) their fundamental natural, civil, and/or political rights of free expression, peaceable assembly for the common good, and petition to government for redress of grievances, each of which is unambiguously-declared, in Article 1 of the California Constitution of Government, to be protected from state governmental encroachment.

After all, what is the practice of law, in a representative capacity, in the courts of any state of the Union, if not political speech, on behalf of freely-associated clients, by private fiduciaries, seeking meaningful remedies, from the only branch of American state and federal governments constitutionally-empowered to grant judicial relief in individual cases and controversies?

Moreover, although the State Bar claims that it only recommends individuals for admission to the practice of law in California, and although the California Supreme Court has treated bar admission proceedings as ostensibly-judicial, rather than administrative, the reality is otherwise.

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At every critical juncture in the California bar admission process, the State Bar acts in a specially-privileged, quasi-legislative, quasi-executive, quasi-judicial capacity, unlike that of any other state occupational, business, or professional licensing authority.

Case in point: The opinions of bar exam graders -- all of whom who happen to be economically-conflicted, hand-picked, incumbent members of the State Bar -- are treated as dispositive of the fundamental question of bar admission applicant "competency."

Despite official State Bar disclaimers of any licensing authority powers, the most common public perception of who (or what) is really the de facto lawyer licensing and attorney disciplinary authority in California is also generally (if incorrectly) to the effect that the State Bar tail wags the Supreme Court dog.

Witness, for example, numerous recent instances of reportage, in leading state newspapers like the Sacramento Bee, that mis-characterize the currently-embattled State Bar as the state agency responsible for licensing California attorneys.

It is almost as if the Supreme Court of California would rather not be bothered with any of the administrative burdens that have grown up around the long-standing fiction that state courts have "inherent authority" to regulate the practice of law, no matter when or where or by whom it occurs. Cf. *Eley v. Miller* (Ind. 1893) & *In re Day* (Ill. 1899).

And so, without any actual statutory language in the State Bar Act, expressly-characterizing the State Bar as the Supreme Court's "administrative arm" in matters of bar admission and lawyer discipline, that is exactly what the State Bar has become -- to the absolute detriment of the rule of law in the Golden State (a/k/a America's Left Coast).

The progressive arrogation to the un-democratic, anti-republican (indeed, counter-American Revolutionary) exercise of collective political power, by the State Bar, in areas of endeavor not expressly provided for in the State Bar Act (not to mention by means contrary to American constitutional design) would likely be more apparent to the public and legislature and applicants alike, if various bar admission and lawyer disciplinary activities were not conducted largely in secret.

That being said, one overlooked but clearly-visible example of just such an egregious over-reach is the State Bar's reliance on the Office of Chief Trial Counsel (OCTC) to "oppose" adverse moral character determination appeals filed by rejected applicants (including, over the course of several months, the valiant, and briefly successful, appeal by former New Republic journalist Stephen Glass).

Unless the Supreme Court of California has somehow found a means of constitutionally-harnessing the OCTC draught-horse to the adverse moral character determination appeal cart, there is no legal basis for the OCTC to be engaged, on behalf of either the State Bar or the Supreme Court, in any investigations, depositions, inquisitions, or prosecutions of bar admission applicants who, like Stephen Glass, have mustered up sufficient courage (not to mention financial resources) to fight the COBE on its home turf (i.e., in the State Bar Court).

On this seemingly-tangential point, the OCTC enabling statute, incorporated into the California Code via an amendment to the State Bar Act, specifically established the OCTC to deal exclusively with disciplinary matters involving current members of the State Bar.

Thus, former members of the State Bar (e.g., those who have resigned rather than face OCTC prosecutions) are not properly-subject to OCTC interventions. Neither, as far as the State Bar Act is concerned, are mere applicants for State Bar membership status properly-subject to roughly-analogous OCTC litigation efforts. Yet that is exactly the challenge that Mr. Glass was faced with when the State Bar initially-decided that he was not of sufficiently-good moral character to become a member of their exclusive club. And the rest (at least for Mr. Glass) is history.

Unfortunately, the level of organizational corruption at the State Bar runs even deeper than mere ultra vires over-

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reaching by the OCTC.

Based on review of the relevant State Bar Act enabling language, whereby the State Bar Court was established, there also seems to be no statutory basis for the State Bar Court to preside over initial bar applicant appeals of adverse moral character determinations. Nor does the Review Department of that entity have any such jurisdiction. But still the machinery of State Bar oppression continues chugging along, tying up hapless bar applicants, like Mr. Glass, in State Bar Court hell for months at a time, and diverting resources from simultaneously-pending attorney disciplinary matters.

No wonder some members of the California state legislature are increasingly skeptical or suspicious of what passes for fair administration of justice by the State Bar.

And then there is the perfidity and economic distortion inherent in California's exclusionary bar admission scheme.

The final imprimatur of the COBE, the so-called "certification" that all California bar admission applicants seek, is something that can be gained only after paying a hefty price (\$667 or \$983) to take the written bar examination, and an additional exaction (\$551) for the distinguishing "privilege" of earning a determination of good moral character (which is secured by means of a pseudo-judicial process that bears almost no resemblance to a lawful judicial proceeding).

By comparison, the current fee (\$435) for filing a civil complaint in an unlimited case in California is less than any of the aforementioned State Bar fees, and also less than the current State Bar Court fee (\$500) for filing an appeal of an adverse moral character determination.

And that highest-of-all-California-civil-court-filing-fees is for a "real" judicial proceeding, in a "real" state court, with a "real" judge -- rather than a faux judicial proceeding in an ad hoc administrative law court that actually lacks subject matter jurisdiction over bar applicant adverse moral character determination appeals.

Compared to the "poll" or "head" taxes that were levied on poor Southern voters during the Jim Crow era, California's bar admission & State Bar Court fee schedules look positively Draconian -- especially in light of the six-figure levels of non-dischargeable student loan indebtedness that beset many bar admission applicants after four years of college and three years of law school.

But that is simply par for the course in a State Bar exclusionary scheme that also continues to lure experienced out-of-state lawyers into taking something called the two-day "Attorneys' Exam" (at the inexplicably-higher cost of \$983), instead of the three-day "General Exam" that is offered (for the lower price of \$667) to applicants not previously-licensed to practice law in any U.S. jurisdiction.

When one realizes that no less brilliant a legal scholar than former Stanford Law School dean Kathleen Sullivan seems unwittingly to have fallen into the "Attorney's Exam" trap, garnering unwanted national attention for herself when she failed to earn a "passing" score on her first attempt at taking the California written bar exam (and was later forced to suffer the ignomy of being rejected for pro hac vice admission in a case pending before the state's Supreme Court)\* you have to ask: "What exactly is California's written bar exam supposed to prove?"

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\* Interestingly, when the BACP asked for a copy of certain court papers, relating to Ms. Sullivan's pro hac vice admission motion, the State Archives reported, in sum and substance, that they had gone missing. But by reading between the lines of the Court's denial of the motion, the biggest nail in Ms. Sullivan's judicial coffin was likely the fact the Court was hard-pressed to justify temporary bar admission for someone who had failed to pass the bar exam, as doing so would have led to accusations of favoritism by the Court for the "better" class of lawyers and disregard for legitimate complaints of the "hoi-polloi."

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Or perhaps better said: "What can bar exam scores prove?"

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If this were a question actually asked on a bar exam, the only proper or "credited" response would have to be:

"Nothing."

There is a global, non-tangential, legally-relevant point to the foregoing discussion, which is integral to the central thesis of BACP members who believe that the only proper resolution, to the question of where to set the cut score for the California written bar exam, is to do away with the cut score entirely.

Which is essentially the same thing as abolishing the exam altogether.

For such an "all-or-nothing" member of BACP, it all boils down to state bar admission applicant-vetting protocols nationwide being unconstitutional "oath tests." As such, they are as unconstitutional as the "test oaths" that some states endeavored to impose on former Confederate sympathizers after the Civil War, before allowing them to serve in public office, or practice certain professions.

Except that, instead of relying on a patently-illegal "test oath" to exclude potential competitors, the State Bar, with tacit approval of the Supreme Court of California, has made a clever attempt (thus far successful) at an end-run around the U.S. Supreme Court's "test oath" ban.

Thus, Stephen Glass was denied his right to practice law in California, not by compelling him to swear a false oath, saying that he had done no wrong in his life, but by subjecting him to a pre-oath investigation, whereby it was assumed, as a matter of sui generis "bar admission law," that Glass (despite having passed the bar exam, both in New York and California) was of insufficiently good moral character automatically to become a member of the State Bar. Which essentially left him thereafter in the unenviable position of having to disprove a presumption of bad moral character.

Not an easy thing to do, as a matter of logic, to disprove a negative hypothesis to a trier of facts.

Which is why legal maxims like "all men are presumed to know the law" (going to the issue of competency) and "innocent until proven guilty" (relevant to the issue of moral character) are cornerstones of Anglo-American jurisprudence.

Except, of course, in bar admission matters. Which is why it is probably fair to say that Mr. Glass was subjected to as high tech a lynching for an uppity reporter as was ever devised by a bar examining committee.

So whither the rule of law in California bar admission proceedings?

When one looks at what actually happens to so-called "successful" bar admission applicants, after the COBE "certifies" them, to the Supreme Court of California, as possessing the requisite competency & fitness to practice law in California, one realizes that the state's current bar admission scheme is both fraud and faade.

In every instance of COBE certification motions, made during the leadership of the current Chief Justice of the Supreme Court of California & her immediate predecessor, the Chief Justice has "rubber-stamped" (in some cases apparently literally) an "order" summarily-granting the COBE's motion for admission (or better-said, permission-for-admission) of tens, hundreds, and even thousands of applicants at one time.

Yet at no time that BACP has been able to identify, during the tenures of the two most recent Chief Justices, has the state's high court made any attempt whatsoever even to try to dress up its ostensibly-judicial actions, with respect to bar admission certification proceedings, in even the barest clothing of due process.

Even simple accessorizations, like a written opinion linking judicial conclusions to applicable law and facts properly-admitted into evidence, or the entertaining of objections and counter-arguments from persons denied certification, would tailor the process to something more appropriate to one of the world's biggest unified court systems.

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Unfortunately, in California, at least when it comes to the bar admission approval process, the emperor wears no clothes. \*\*

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\*\* Or as an older and wiser civil rights attorney might crack, the Supreme Court of California is as naked as a Jay Bird -- an oblique but intentional reference to a Southern State political party primary scheme, disapproved of by the U.S. Supreme Court, that previously was used to deny a potentially-winning place on general election ballots to persons not approved of by state political party heads (analogous here to the members of the COBE, who exercise de facto control over the lists of bar admission applicants whom the Supreme Court periodically grants leave to take the California Oath of Attorney & thereby automatically become, by operation of state constitutional law, a member of the State Bar).

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Instead, the state's Chief Justice (and BACP says this because it has uncovered nothing to indicate that any of the currently-serving associate justices of the Supreme Court of California has ever reviewed the underlying "non-record" evidence upon which the COBE relies in making its certification motions) has blithely-accepted the received wisdom of the State Bar -- which is brought to the attention of Court in the form of third party hearsay certifications, by COBE representatives who have no personal knowledge of the fitness or character of most (or any) of the lucky applicants being "certified."

At bottom, the COBE's periodic "en masse" certifications are (i) supported solely by otherwise inadmissible net opinions, (ii) about individual applicants' future professional competency and moral fitness to practice law, (iii) offered by judicially-unqualified, non-neutral, non-expert witness graders, whose views are based exclusively on (iv) pseudo-scientific inferences, gleaned from written bar examination results that are legally-incapable of proving anything at all about future professional competency.\*\*\*

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\*\*\*Not to mention, of course, the secretive "Star Chamber" or "Minority Report" style votes, by unelected COBE subcommittee members, regarding applicant moral fitness, which also have no legal relevance as predictors of future deviations from lawful conduct.

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If standard COBE operating procedures for introducing evidence of California bar applicant "competency & fitness" to the Supreme Court of California (allegedly sitting as a trial court of original jurisdiction for bar admission matters), were to be used to proffer evidence in, for example, the typical California products liability case, is there any doubt that a state (Frye) or federal (Daubert) trial court would not sustain the inevitable evidentiary objections of opposing counsel?

It is both an irony and a tragedy that California boasts of the nation's largest state-sponsored body of "admitted" private lawyers, a quarter-million strong, each of whom gained admission to the practice of law in California by virtue of having sworn an oath to abide, to the best of his or her ability, in the principles of law set forth in both the U.S. Constitutions and the Constitution of Government of the State of California.

Yet this same group, by collectively seeking to maintain the viability of an exclusionary economic quota scheme, chiefly benefits not the public at large (which continues to suffer from the so-called justice gap), but rather a whole host of lesser sub-groups of the greater commonwealth, including:

(1) bar examination preparation service providers (to whom bar admission applicants shell out thousands of dollars for bar review crash-courses, money that could be better spent either in repaying student loans, or setting up a small solo practice);

(2) professors of the state's better-regarded law schools (which schools have since the early 1900s have contributed greatly to the public misperception that higher formal educational requirements for lawyers are better for all);

(3) the more standardized-testing-savvy graduates of those law schools (whose knack for performing well on the multiple-choice LSAT goes a long way toward giving them the upper hand in bar examination testing environment

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in which approximately a third of one's scaled score on the General Bar Exam is attributable to performance on a timed, 200-question, multiple choice exam); and

(4) incumbent bar members (the immediate beneficiaries of any governmentally-imposed restraints on the free entry of new competitors into the marketplace for legal services).\*\*\*\*

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\*\*\*\*And, lest we forget, the owners of at least some of the hotels located in the immediate vicinity of the convention centers where California's written bar examinations are administered, to anxious applicants coming from remote parts of the state, said owners finding it to their own economic advantage to sharply-raise hotel room prices, up to the maximum permitted by law, during the times when the semi-annual bar examination ordeal is being played out.

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In conclusion, the members of the BACP have, each in their own way, opposed the bullying and hazing rituals that have been used in California for years, under the guise of "protecting the public" (or, as one California court opinion of the 1930s roughly said it, protecting "ignorant Mexicans"), to deny, to tens of thousands of persons, the natural right (indeed, duty) of all human beings, living in civil society, to practice law.

By what constitutional or moral imperative can the State Bar, or the Supreme Court of California, continue to justify abridging that fundamental right?

That remains, at least for some members of the BACP, the real question that must be answered, before the matter at hand can properly be settled.

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**From:** Jmginsberg1@aol.com  
**Sent:** Friday, August 25, 2017 3:58 PM  
**To:** Comment, Public  
**Subject:** 2017 Standard Setting Study and Related Options for Recommendation to  
**Attachments:** state bar scoring letter scanned08252017.pdf

I sent this letter in the body of an email earlier today. Attached is that letter. Is there a link for reading my letter and the other comments received?

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**From:** lsarkisyan89@gmail.com  
**Sent:** Friday, August 25, 2017 2:57 PM  
**To:** Comment, Public  
**Subject:** Bar Exam Written Comments

Dear Committee Members

There is a question posed before you regarding the score for evaluating the bar exam. I as an examinee who is waiting for the November bar results would like for the exam score to be reduced to the 1414.

The score of 1414 may be only a temporary fix. What is necessary is that an OPES examination validation take place and an occupational analysis of the exam. This is necessary to validate the bar exam and determine whether the material being tested and the format being tested are a correct representation of the profession. I do not think that the current examination is a good representative of the profession.

Lawyers review cases, look up codes and apply them. He bar exam tests someone's multiple choice skills, writing abilities and memorization skills. This isn't the legal professional. What is needed and what would eliminate duplication or duplicative examiners or higher test scores if the exam was correctly evaluated to determine if it represents the California standard.

An analysis should be made to determine which component of the examination the student is failing whether MC, essay or performance exam. And the part the student is failing then he/she can retake. Look at the Dental Board of California RDA exam. It is a strain and a hardship on students having to pay a ridiculous amount for an exam to

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only fail and then pass one part but have to retake it again to pass the part they failed. Other state costs are significantly lower , why is it more expensive in California to take an exam.

Just my two cents that the Bar examiners review the exam and conduct an occupational analysis through OPES within Department of Consumer Affairs and the exam score should be reduced to the national average. Enough competition with NY.

From: Herbert Murez <fredaherb@aol.com>  
Sent: Friday, August 25, 2017 1:43 PM  
To: Comment, Public

The State Bar of California  
Committee of Bar Examiners  
180 Howard Street  
San Francisco, CA 94105

Honorable Committee Members:

I write to express my opposition to the proposed easing of the California bar examination. Doing so would hurt the public and the profession. My principal reasons:

The law is an honorable and learned profession. Lawyers are rightly held to a high level of competence and a stringent fiduciary standard. Lowering that level will not persuade more high quality students to make the law their lives chosen career path, nor will it improve the publics attitude towards our profession. There are means of improving competence as well as public esteem, but lowing the entry level to the profession is not one of them.

There is no shortage of attorneys. Every ad for an open position in a law firm draws an avalanche of resumes, curricula vitae and writing samples. An increased influx of newly minted lawyers who have not achieved the academic and analytical competence of presently admitted lawyers will not serve the public nor any potential client. It will make presently admitted unemployed lawyers even less employable. The ones who will be hurt most will be the racial minorities, LGBT people, experienced but elderly lawyers, physically handicapped lawyers, in short all those who are legally protected against discrimination but who still experience it. These quasi-protected persons are still the last ones to get hired and the first ones to be dismissed when the labor supply becomes even more ample than it is now, as greater numbers of less qualified lawyers will swell the available labor pool.

I have not observed any decline in the unlawful practice of law quite the contrary. Areas of legal practice which require both expert knowledge and a total fiduciary obligation to the client are increasingly invaded by unlicensed persons who lack both expertise and fiduciary constraints. Immigration notarios come to mind, as do typing services for bankruptcy petitions, family law papers and the like, as well as stock brokers who advise on and prepare complex estate plans. Greater numbers of less qualified lawyers will not abate these invasions, nor better protect the public against the shoddiness and worse of these unlicensed activities.

I add a short description of my professional life as a lawyer, to show the basis of my foregoing opinions. My State Bar number is 025746. I am now 94 years old. I graduated from a law school which at the time was unaccredited. I had to work fulltime to support myself. I passed the bar examination the first time. I engaged in a general practice, sometimes solo and sometimes in a loose association with others. I no longer accept any client responsibilities, but keep up with what is happening in the law. For some years, I taught law school classes in civil procedure and remedies. Until recently and for about ten years or thereabouts, I heard FINRA arbitrations. In the late 1980s I wanted to be admitted in Nevada, and was told I could not take the bar examination in that state because I had not graduated from an ABA accredited law school. I requested and secured a hearing before the Nevada bar, which ruled that I was not qualified. I petitioned the Supreme Court of Nevada which reversed that ruling on constitutional grounds and modified the rule governing admission of persons like myself. Thereupon I took and passed the Nevada bar examination.

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From: Jmginsberg1@aol.com  
Sent: Friday, August 25, 2017 12:14 PM  
To: Comment, Public  
Cc: jmginsberg1@aol.com  
Subject: 2017 Standard Setting Study and Related Options for Recommendation to Supreme Co

I disagree with the intention to shorten the length of the Bar Exam from three days to two days. The sections of the Exam which most harness the ability to think like a lawyer are the Performance exams. Two three-hour afternoon sessions required intensive analysis of both the law libraries provided and the detailed fact patterns and an astute synthesis to perform the legal document drafting assignments. It was necessary to integrate the principles of law set forth in the set of cases and statutes with the essential, relevant facts. Both the fact patterns and the law library were complex and it was necessary to determine peripheral information and extract only pertinent law and facts. The two Performance Exams counted for 33 1/3% of the total score. Reducing that section to one ninety-minute session counting for a much lesser percentage (at most 25%) depreciates the entire Exam process. The MBE would now comprise 50% of the total score. In other words, knowledge of seven subjects carries the same weight as knowledge of thirteen subjects coverable on the five Essay questions and one truncated Performance exam. Such disparity is marked and disconcerting and contradicts the goal of being knowledgeable in a number of fields of law. This scenario is only avoidable by keeping the length of the Exam at three days and six three-hour sessions leaving intact the most significant sections, the two Performance exams.

In addition, lowering the passing score is a mistake and counterintuitive. Only qualified candidates for the Bar should be admitted to practice. The stated objective of the State Bar Agenda Baseline for passing, to wit, Rudimentary knowledge of a range of legal rules and principles in a number of fields in which many practitioners come into contact cannot be achieved by reducing the number of fields tested and lowering the standard for what constitutes such rudimentary knowledge. The State Bar is essentially acknowledging that a lesser degree of rudimentary knowledge is okay. But if there is a change in that level of such knowledge it should be to a higher degree. Certainly, exams for doctors, architects, engineers, accountants, et. al., are not being made easier for those candidates aspiring to practice in those professions. More rigor and more screening is necessary for qualifying attorney exams not less.

Finally, California law schools would be better institutions for preparing attorneys to be effective practitioners (and competent Bar Exam candidates) if there were less emphasis on Socratic instruction and more focus on multiple practicum courses for students to simulate the kinds of tasks required of lawyers, i.e., drafting complex contracts, preparing on point (and to the point) deposition questioning, arguing enough varied motions to be already sufficiently versed and competent when admitted to the Bar.

In sum, maintaining the status quo of the Bar Exam is the optimum decision otherwise there is the inevitability of debasing the currency by which all California attorneys are measured in admitting inadequately prepared and not competent applicants to the Bar.

From: Lance Bridges [mailto:lancebridges1@gmail.com]  
Sent: Sunday, August 27, 2017 1:50 PM  
To: Michael G. Colantuono <mcolantuono@chwlaw.us>  
Subject: Congratulations From a Law School Classmate

Hi Michael,

Congratulations on your election as President of the California Bar! I am not sure if you remember me from law school - we worked together on the California Law Review and I graduated a year behind you at Boalt Hall.

Besides offering my congratulations, I felt motivated to write to you in relation to one of the issues you will undoubtedly be dealing with during your tenure: the continuing trend of declining bar exam pass rates in California.

## PUBLIC COMMENTS – EMAILS

Two weeks ago, I received an e-mail from Elizabeth Rindskopf Parker soliciting input (via member survey or public comment) on an interim proposal to reduce the California Bar Exam cut score to 1414 pending conclusion of further standard-setting studies. I understand that the Committee of Bar Examiners is looking at conventional approaches to this problem within the scope of its authority. However, I don't believe that changing the cut score or restructuring the bar exam will address the real underlying problem. The real underlying problem has to do with the purpose and future role of the State Bar itself, as an institution. The conundrum of declining bar pass rates presents an opportunity for more radical reforms that could make the California State Bar a nationwide leader and example for other states to follow. But such reforms can only be addressed at the highest levels within the State Bar which is why I am writing to you.

When I was at Boalt, I wrote a paper which looked closely at the monopoly granted to the Bar. Only members of the Bar can practice law; it is illegal for others to do so. The reasons for that monopoly (reaching far back into English history) have eroded for many practice areas. Where powerful business lobbies exist, reforms have been made for example, in California (unlike other states), real estate transactions can be conducted without a lawyer. Nonetheless, the monopoly enjoyed by members of the Bar largely continues. It is justified by protecting the integrity of the judicial system and protecting the public from unscrupulous or incompetent service providers.

However, this protection comes at a price passing a comprehensive bar exam requires years of study and, often, an expensive law degree. Our single-tier system drives up the cost of providing legal services, putting affordable representation in many areas out of reach for most members of the public. It also presents a barrier to entry to many talented individuals who may only desire to practice law in a narrow niche.

Almost 27 years ago while I was a student at Boalt, I proposed that the California State Bar should emulate aspects of the medical profession and move away from a single tier provider approach. Licensed doctors no longer have a monopoly on the practice of medicine. For example, Registered Nurses can practice some types of medicine without a doctor's supervision. Similarly, the State Bar should create a system where registered legal service providers are allowed to practice law in certain areas without supervision by a member of the Bar. Courts could still require that only members of the Bar may practice law before the courts, but a registration system (administered by the State Bar) would allow non-lawyers to provide legal services in many other areas where going to court is not required. This system would be funded by annual registration fees paid by each registered service provider.

The proposal that I originally advanced did not require registered service providers to pass an exam administered by the State Bar. In California, there would still be just one exam - the Bar Exam. The high standard to become a member of the California Bar need not be compromised if a two-tier system is adopted. The California bar exam and the cut score would not need to be changed. In a two-tier system, new career paths, independent of becoming a member of the Bar, would be available for those who do not pass or wish to take the bar exam.

In a two-tier system, concerns regarding unscrupulous practices would be addressed through enforcing a code of conduct and creating a victim restitution fund, both of which would be funded by the new registration fees. As in other service sector jobs, concerns regarding competence would sort themselves out through market mechanisms. Social media and emerging technologies will disseminate information on service quality. Law schools will adapt by offering credentials in the special practice areas permitted to the new class of registered service providers. Most importantly, as a result of competition, legal services in the areas covered by registered service providers (which could include any area not requiring practice before courts) will become more affordable, which will significantly benefit the public.

If you think adoption of a two-tier approach might have merit, I would be happy to work with you or other State Bar leaders to study it more closely. I understand that you have a busy agenda and many priorities. However, I think you also have a great opportunity at hand to create a lasting legacy by transforming the practice of law in California and nationwide. The present single-tier system is an anachronism. Reforming the current system by creating a new tier of registered legal service providers would square better with modern realities and could bring significant beneficial changes to our profession as a whole and the public we serve.

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