

Defining the Gravamen: The Bar Reform Movement

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I. INTRODUCTION

There has been of late a rush of activities and a quickening of movement towards effecting reforms in the admission process of the Philippine Bar, more particularly in proposing fundamental changes to the Bar Examinations. The Supreme Court has spearheaded roundtable discussions around the country on reforms to the Bar Examinations¹ and belatedly began to constitute the Legal Education Board. While this paper was being finalized, the author obtained a copy of the *Report on the Assessment/Visitation Activity Conducted by the Technical Panel on Legal Education on all the Law Schools*, submitted formally by the Commission on Higher Education (CHED) to the Supreme Court on 14 January 2004,² which generally reflects an unsavory image of the law school system in the country.

Likewise at the time of writing, the Supreme Court issued its Resolution, dated 04 February 2004, concerning the leakage of the questions in Mercantile Law subject in the 2003 Bar Examinations,³ which saw the nullification of the bar examination on the subject and the formal conduct of investigation by an Investigating Committee. The Resolution, adopting the findings of the Investigating Committee, decreed the disbarment of the associate lawyer of the examiner in Mercantile Law, whose act of downloading the questions from the computer of his superior (the examiner) and leaking them to friends was deemed to constitute “a criminal act of larceny.” The Court also reprimanded the examiner with a requirement “to make a written APOLOGY to the Court for the public scandal he brought upon it as a result of his negligence and lack of due care in preparing and safeguarding his proposed test questions in mercantile law,”⁴ and withheld the payment of any honorarium.

The objective of this paper is to evaluate the leading articles, papers and reports that have been submitted or published on reforms in the admission process in the Bar, to flesh out the main or essential direction that the movement is taking, and to evaluate on whether such direction is compatible with the underlying Philippine situation.

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1. The conferences are held under the theme “*Examining the Bar Examinations: Roundtable Discussion on the Bar Examination Reforms.*” The Luzon Conference was held on 06 February 2004 at the Pan Pacific Hotel, Ermita, Manila.
 2. The formal Turn-Over Ceremony to the Supreme Court was held on 14 January 2004, at The Manila Hotel Centennial Pavilion.
 3. *In re* 2003 Bar Examinations, Bar Matter No. 1222 (Feb. 4, 2004).
 4. *Id.*

II. THE BAR AND ITS SOCIAL ROLE

Unless there is a more fundamental movement towards changing the role of the Bar in the context of Philippine society (and the position is that there is no such call at present), any reform in the Bar admissions process must be consistent with the mandated role of Filipino lawyers in society. Succinctly, under the Code of Professional Responsibility, every licensed lawyer has the solemn duty to:

- a) Uphold the Constitution, obey laws and promote the respect for the laws and legal process; render legal services in the most professional manner; and participate in, and keep abreast with development of the legal system;⁵
- b) Uphold the integrity and dignity of the legal profession, support the integrated bar; conduct himself in the most professional manner towards his colleagues; and shall refrain from any unauthorized practice of law;⁶
- c) Exercise candor, fairness, good faith and observe and maintain respect due to, the courts; assist in the speedy and efficient administration of justice, relying on the merits of his cause and avoiding impropriety which influence, or give the appearance of influencing, the courts;⁷
- d) Maintain fidelity to the cause of, exercise competence, diligence, and zeal within the bounds of the law, in the service of, observe candor, fairness and loyalty to, his clients and the latter's properties that come to his possession; at all times preserving the confidence and secrets of his clients, charging only fair and reasonable fees, never refusing service to the needy; and withdraw his services only for good cause.⁸

In essence, it is in the highest interest of society and its institutions that only individuals who have the intellectual and moral character to the practice of the noble legal profession should be admitted to the Bar.⁹ The whole

5. CODE OF PROFESSIONAL RESPONSIBILITY, Chapter 1, The Lawyer and Society.

6. *Id.* Chapter 2, The Lawyer and the Legal Profession.

7. *Id.* Chapter 3, The Lawyer and the Courts.

8. *Id.* Chapter 4, The Lawyer and the Client.

9. *Id.* See *Barrientos v. Daarol*, 218 SCRA 30 (1993). As stated by the Supreme Court: "The practice of law is a privilege accorded only to those who measure up to the exacting standards of mental and moral fitness... The ancient and learned profession of law exacts from its members the highest standard of morality. The members are, in fact, enjoined to aid in guarding the Bar against the admission of candidates unfit or unqualified because deficient in either

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process of ensuring quality Bar membership goes into the law school system (legal education), Bar admissions, integration and discipline of the Bar, and continuing legal education.

The process of integrating the bar has long been a settled matter in this jurisdiction with the long-standing existence of the Integrated Bar of the Philippines.¹⁰ Bar discipline is currently under the supervision of the Bar Confidant of the Supreme Court and the Integrated Bar of the Philippines. Continuing legal education is covered by the Mandatory Continuing Legal Education Program.¹¹ What remains in flux would essentially be our system of legal education and the Bar Examinations.

In 1992, Republic Act No. 7662, otherwise known as the *Legal Education Reform Act of 1993*,¹² provided for the creation of the Legal Education Board (LEB) with the powers to “administer the legal education system in the country; to supervise the law schools... to set the standards of accreditations for law schools... to accredit law schools that meet the standards of accreditation... to prescribe the basic curricula for the course study aligned to the requirements for admission to the Bar, law practice and social consciousness... to establish a law practice internship as a requirement for taking the Bar... [and] to adopt a system of continuing legal education.”¹³ However, the Board was never constituted, and it was only on 24 September 2003, that the Supreme Court issued a resolution endorsing to the Judicial and Bar Council (JBC) the opening of nominations for the chairman and members of the LEB.

moral character or education. As officers of the court lawyers must not only in fact be of good moral character but must also be seen to be of good moral character and must lead life in accordance with the highest moral standards of the community.”

10. The Supreme Court Resolution of Jan. 9, 1973 (*In the Matter of the Integration of the Bar of the Philippines*) created the Integrated Bar of the Philippines and governed by Rule 139-A of the RULES OF COURT.
11. The Resolution of Aug. 22, 2002 in Bar Matter No. 850, the Supreme Court adopted the *Rules on Mandatory Continuing Legal Education for Members of the Integrated Bar of the Philippines* (MCLE Rules) in order that throughout the career of lawyers in the country “they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law.” Administrative Order No. 113-2003 established the Mandatory Continuing Legal Education Office (effective Aug. 15, 2003).
12. An Act Providing for Reforms in the Legal Education, Creating for the Purpose, A Legal Education Board and for Other purposes, Republic Act No. 7662 (1993).
13. *Id.* § 7, ¶ a-e.

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A fairly large amount of literature has been written on the state of our bar examinations process, and recommendations on how to pursue such reforms. The unanimous consensus is that *there is undoubtedly a need to reform our Bar Examinations system*. And yet it seems that the perceived ills and consequently the recommend reforms do not have the same focus or thrust. There is a need to understand and to arrive at a consensus of *what is wrong with the system, what needs to be achieved* and then be able to agree as to *the best ways of achieving reforms*.

To complicate matters, there seems to be a strong belief that the structure of the Bar Examinations in the Philippines has dictated the caricature and character of Philippine legal education. For example, in his article entitled *The State of Philippine Legal Education Revisited*,¹⁴ Dean Mariano F. Magsalin, Jr. of the Arellano University School of Law strongly posits that: “*The bar examination system should be re-examined. The Filipino pre-occupation with bar results as indicators of the success of the candidates and his law school should be downplayed.*”¹⁵ He further writes:

At present, schools are constrained from shunning the bar-oriented approach and tailoring their curriculum to conform to the demands of the ‘real world’ as to do so will most probably lead to poor bar results. At the very least, there should be a reduction in the number of subjects in the bar or a shift in the emphasis in the examination to general principles and fundamental concepts that every law student should know to prepare him for the legal profession. This will unclog the law curriculum of so many core subjects that should otherwise be considered as electives as they pertain to specialized fields. This will also effectively return the curriculum making functions to law schools to which it rightfully belongs. After all, institutions of higher learning are supposed to enjoy academic freedom, which includes the right to determine ‘what may be taught.’¹⁶

This “tail-wagging-the-dog” position has often led to the wrong assumption that reforming the Bar Examination system would be the key to effecting a reform of the Philippine legal education system.

III. THE BAR EXAMINATIONS REFORM MOVEMENT

In order to arrive at a proper synthesis chore of this paper, it is important to properly evaluate the major papers that have been published and have become the basis of reactions and roundtable discussions on Bar

14. Mariano F. Magsalin Jr., *The State of Philippine Legal Education Revisited*, 4 ARELLANO LAW AND POLICY REVIEW 38 [hereinafter Magsalin].

15. *Id.* (emphasis supplied).

16. *Id.* at 54.

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Examinations reforms. The analysis presented in this essay will focus on the following papers:

- (a) The article published by Justice Irene R. Cortes, entitled *Legal Education: The Bar Examination As A Qualifying Process*.¹⁷
- (b) The Final Report of the Special Study Group on Bar Examination Reform;
- (c) The paper of Justice Vicente V. Mendoza, entitled *Toward Meaningful Reforms in the Bar Examinations*.¹⁸

A. The Cortes Recommendations

Based on the systems used in other jurisdictions, Justice Irene R. Cortes opens her article with the observation that “[b]ar examinations are not indispensable requisites for admission to the legal profession.”¹⁹ She professes that the “avowed objectives” of the Bar Examinations are “a determination of the examinee’s”:

- (a) Logical reasoning;
- (b) Thorough knowledge of fundamental principles of law and their application;
- (c) Ability to analyze and solve legal problems; and
- (d) Ability to communicate in precise language.²⁰

Her critique of the Bar Examinations, published in 1978, showed that the system then followed did not live-up to such “avowed objectives” in that:

- (a) There were no uniform guidelines to the examiners and there was “absence of a clearly defined policy with the possible exception of maximum security to keep the questions from leaking out, a problem that plagues the whole exercise and produced tales of the cloak and dagger variety;”²¹

17. Justice Irene R. Cortes, *Legal Education: The Bar Examination As A Qualifying Process*, 53 PHIL. L.J. 130 (1978) [hereinafter Cortes].

18. Justice Vicente V. Mendoza, *Toward Meaningful Reforms in the Bar Examinations*, 48 ATENEO L.J. 585 (2003) (companion article) [hereinafter Mendoza Reforms].

19. *Id.* at 130.

20. *See id.* at 134-35.

21. *Id.* at 140.

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(b) By far too much stress has been laid on extracting specific information directly by questions calling for definition, enumeration, and differentiation, which emphasized memory work.

The style of formulating questions leaves much room for improvement. The questions tend to be simplistic and expository. Instead of determining the examinees' logical reasoning and ability to analyze facts and apply the fundamental principles of law to the solution of the issues raised, the questions probe the capacity to memorize a plethora of details which in no time at all the examinees will likely discard for being obsolete, and which may never be of any use in the actual work a lawyer will have to do.²²

What seems more critical in the article is the observation that the Bar Examinations, as then structured, did not allow for proper scientific evaluation, thus:

Despite their shortcomings undue emphasis is given to the bar examinations. They are on series of examinations and a single day of indisposition could write off for a year, the chances of an otherwise promising candidate, no matter how excellent his academic record, how first rate his mind or great his potential for the legal profession. The blot in his record will stay. *If the examinations were perfected and proven instruments, if performance in them were correlated with scientific precision to performance as members of the legal profession, there would be justification for the status accorded the examination in the scheme of legal education. But this has not been done.*²³

She agrees with the position that the Philippine Bar Examinations have adversely affected the legal education and training system in our country, thus:

In the Philippines bar examinations have become institutionalized and have acquired in the popular mind a mystique all [on] its own. It has assumed such a dominant place in the legal education subculture as to obscure other objectives ostensibly pursued. The fanfare accompanying the release of the results of the examinations is an example of the emphasis popularly attached to these tests. It has been invested with glamour but has not been untouched by scandal.

If these were all, it could be of passing duration. But the influence of bar examinations on legal training is of far more reaching proportions since it reaches out to the entire period of training which an aspirant for admission to the bar in this jurisdiction of necessity has to undergo....²⁴

x x x

As things go in most law schools these examinations divert attention from the higher objectives of legal education and from preparing students to

22. *Id.* at 141.

23. *Id.* at 142-43 (emphasis supplied).

24. *Id.* at 132 (emphasis supplied).

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meet the expectations which society has and will increasingly have in the legal profession.²⁵

Justice Cortes made the following recommendations, which has been outlined in the Special Study Group on Bar Examination Reforms' Final Report:²⁶

1. Law schools must direct their attention to their announced objectives and not allow passing the bar examinations to become the principal goal;²⁷
2. Law schools cannot discharge the responsibility entrusted to them by narrowly confining their efforts towards success in the bar examinations, and must train future lawyers to be *well-rounded* and *forward-looking* and should relate legal education to other disciplines like economics, sociology, and psychiatry, through joint programs of study, seminars, research or other arrangements;²⁸
3. A more *realistic approach* will have to be adopted in teaching the law. Instead of attempting to cover all the law there is, which cannot be accomplished without unduly prolonging the course, a more realistic approach could be adopted to enable students of law *to learn to master laws on their own*, after learning the technique of how this can be done in a course of study planned for intensive and thorough training;²⁹
4. All components that make up the law school will need to be geared to accelerated needs—faculty, curriculum, library, methods of instructions, and facilities. A *selective process* for admission of students will have to be adopted as well;³⁰
5. *The Bar Examinations as qualifying tests for admission to the Bar should be abolished.* However, three essential preconditions need to be satisfied:
 - (a) A system of accreditation for law schools should be established so that only graduates of schools consistently maintaining minimum standards of adequate legal training are admitted to membership in the legal profession;

25. *Id.* at 143 (emphasis supplied).

26. Special Study Group on Bar Examination Reforms, Final Report (Sept. 18, 2000) (on file with the author) [hereinafter SSG Report].

27. *See id.* at 66.

28. *See id.* at 67.

29. *See id.*

30. *Id.* (emphasis supplied).

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- (b) Annual examinations for every level of law classes should be drawn up by a competent and impartial body of examiners and administered simultaneously in all these schools;
- (c) A system of apprenticeship or practical training for one year out of four in an area of the student's preference should be a requirement for completion of the law degree. For the academic work completed, a bachelor or jurisprudence degree could be conferred. There will likewise be a rating of performance for the practicum.³¹

In essence, the Cortes Recommendations are nothing short of a demand for a paradigm shift: a complete dismantling of the Bar Examinations system in our country, anchored on the following beliefs: (a) that qualifying competent members to the Bar is best achieved during the formal legal education process being undertaken in the various law schools of the country and it is there where the reforms have to be made; and (b) that the Bar Examinations system in this country has been a stumbling block towards properly qualifying members to the Bar.

It should be noted however, that the second precondition given by Justice Cortes is essentially a “chopping-up” of the Bar Examinations system and integrating it into annual qualifying exams to move through the four-years of law studies. Such process would definitely be more costly since they have to be administered by a competent and impartial body of examiners but may just multiply across a greater range the very same problems experienced in the Bar Examinations system.

B. The SSG Final Report

On 21 March 2000, the Supreme Court created the Special Study Group on Bar Examination Reforms (SSG) under the aegis of the Philippine Judicial Academy, which was tasked to “conduct studies on steps to further safeguard the integrity of the Bar Examinations and make them effective tools in measuring the adequacy of the law curriculum and the quality of the instruction given by law schools.”³²

On 18 September 2000, the SSG Final Report was submitted to the Supreme Court, but only after conducting broad-based consultations with, surveys coming from, law professors, law deans, law associations, and selected resource persons. Essentially, the SSG Recommendations were as follows:

31. *Id.* (emphasis supplied).

32. *Id.* at 1.

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1. *Proper qualifications of candidates*, which included recommendations some of which were adopted in the Bar Examinations system:
 - a) publication of candidates' names;
 - b) refusing persons to be admitted as candidates who lack any of the pre-requisites for admission under the rules of courts;
 - c) certification by law dean that a candidate has no derogatory record while in school;
 - d) permanent disqualification of candidates who has unsuccessfully taken six (6) examinations; and
 - e) retention of the rule of disqualification of a candidate who obtains a grade below 50% in any subject.³³
2. *Bar Examinations Proper Reforms*:
 - a) Rejection of the proposal to hold two examinations each year;
 - b) Scheduling subjects with heavier weights ahead of those with lesser weight;
 - c) Re-evaluated the subjects covered and the weights to be given (e.g., increasing Civil Law to 20% and Legal Ethics to 6%, while decreasing Labor Law to 5%, and introducing Practical Exercises at 4%); and
 - d) Restructuring the exams to allow automated or mechanical corrections of answers.³⁴
3. *Reforms for Law Schools*:
 - a) Mandatory Law School Admission Test;
 - b) Accreditation and supervision of Law Schools by the Supreme Court;
 - c) Suspension/cancellation of authority to operate law school for failure to produce a successful Bar examinee for three (3) consecutive years; and
 - d) Penalizing unethical and undesirable practices (e.g., "Bar Operations", attempts to vitiate the integrity and confidentiality of the Bar Examination process, boisterous and unruly conduct in the immediate vicinity of the Bar Examinations).³⁵

33. *See id.* at 3-4.

34. *See id.* at 4-6.

35. *See id.* at 7.

4. Proposal “that the results of the Bar Examinations take the form of ‘Pass’ or ‘Fail’ for all examinees. Only the names of those who passed shall be officially released for publication.”³⁶

The SSG Final Report points to what it terms as the “paradoxical situation” between legal education and the Bar Examinations process, thus:

While the Bar Examinations are meant principally to test the eligibility of a candidate for the practice of law, paradoxically, the very existence of the examination has stymied in a significant manner legal education. Many if not most law schools have made of passing the Bar Examinations the principal, or even sole objective of legal education. This has without doubt impoverished legal education and constricted its scope to the possible items that may be asked in the Bar Examinations. It is also suggested that law schools prepare their students for law-related work, aside from the practice of law.³⁷

The observations of the SSG Final Report on the deleterious effects of the Bar Examinations on Philippine legal education system are couched in such strong language that one would ask why the SSG did not also recommend the abolition of the examination process altogether. In fact, as a whole, the SSG Final Report’s Recommendations are geared towards strengthening the Bar Examination system in this country. The proposal to transform the results of the Bar Examinations to “Pass/Fail”—although the Final Report does not say so explicitly—would be in line with the move to “de-glamorize” the Bar Examinations.

C. *The Mendoza Reforms*

One of the more exhaustive papers written on the subject is the paper published by Justice Vicente V. Mendoza entitled *Toward Meaningful Reforms in the Bar Examinations*,³⁸ and published shortly after his retirement from the Supreme Court and after having chaired the 2002 Bar Examinations. The paper is accompanied by a primer which addresses key issues related to the recommendations.

Unlike the Cortes Recommendations, the paper of Justice Mendoza actually rests on the thesis that the Bar Examinations shall continue to constitute the best gauge to determine fitness of candidates to be admitted to the Bar, thus:

For almost a century now, the bar examinations have been the primary gauge of an applicant’s preparation for the practice of law in this country. *It is inconceivable that some other mechanism can be devised in the near future to*

36. *Id.* at 9.

37. *Id.* at 7-8 (emphasis supplied).

38. Mendoza Reforms, *supra* note 18.

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replace the bar examinations. Thirty years ago a proposal was made for the abolition of the bar examinations and the establishment in their place of a system of accreditation under which only graduates of accredited law schools would be admitted to law practice. This proposal somewhat resembles the system of licensing attorneys, based on the attainment of an academic degree during the Spanish regime. The proposal, while reported to have gained adherents shortly after it was made in 1975, in the end fizzled out.³⁹

Indeed, the Mendoza Recommendations are intended to promote the integrity of the Bar Examinations by enhancing the grading procedures and practices so that they become *consistent, reliable, and equitable*. He divides his recommendations into three categories, thus:

1. *Structural and Policy Reforms:*

- Appointment of a tenured Board of Bar Examiners;
- Creation of readership panels for each subject to address issue of bias or subjectivity;
- Creation of Advisory Committee to assist the Board and the Supreme Court and to address related issues in legal education to better prepare law school graduates in taking the bar examinations; and
- Provision for character and fitness investigation as a prerequisite for taking the bar examinations.⁴⁰

2. *Changes in Design and Construction of Test Questions:*

- Introduction of objective multiple-choice questions;
- Formulation of essay test questions and “model” essays; and
- Introduction of performance testing by way of revising and improving the essay examination of Legal Ethics and Practical Exercises.⁴¹

3. *Methodological Reforms:*

- Adoption of the calibration method to correct variations in the level of test difficulty and grade leniency;
- Consideration of alternative methodologies, such as scaling, to promote test equity and further standardize levels of test difficulty and grade interpretation; and

39. *Id.* at 590 (emphasis supplied).

40. *See id.* at 597.

41. *See id.* at 590.

- Further computerization or automation of the bar examinations to facilitate application, testing, and reporting procedures.⁴²

A reading of the paper would lead one to the clear conclusion that Justice Mendoza does not consider the Bar Examinations system *per se* as having undermined legal education in this country, nor does he feel that there is a need to whittle down the “pomp and glory” that is associated with the Bar Examinations. On the contrary, the Mendoza Reforms seek to modernize the Philippine Bar Examinations⁴³ to make them “a more reliable, equitable, and reasonable measure of legal competency,”⁴⁴ and to promote their integrity.

To a great extent, the Mendoza Reforms would address the main concern of Justice Cortes in the inadequacy of the Bar Examinations to be *perfected and proven instruments* so that “performance in them were correlated with scientific precision to performance as members of the legal profession.”⁴⁵

D. Subsequent Papers and Reactions

Since the release of the *Mendoza Reforms*, many lawyers, law deans and law associations have given their comments and inputs on the subject of bar reforms. The Supreme Court, perhaps goaded on by the scandal brought about by the leakage of Mercantile Law questions in the 2003 Bar Examinations, undertook roundtable discussions to guide it in pursuing reforms. The oral and written discussions seem to present a more emotional response to the issues, underlying our “love it, hate it” attitude towards the Bar Examinations, and the status of our country in the world arena.

To illustrate, in his published article,⁴⁶ Dean Magsalin recommends that “[t]he recommendations of former Justice Vicente V. Mendoza on bar reforms should be implemented.”⁴⁷ Nevertheless, he posits that “[t]he bar examination system should be re-examined. The Filipino pre-occupation with bar results as indicators of the success of the candidate and his law

42. *See id.*

43. *Id.* at 587. “Significant developments in the field of educational testing and measurement, as well as in the administration of bar examinations elsewhere, particularly the United States, underscore the need to introduce practical reform in Philippine bar examinations.”

44. *Id.* at 589.

45. *Id.* at 590.

46. Magsalin, *supra* note 14, at 38.

47. *Id.*

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school should be downplayed.”⁴⁸ The *Mendoza Reforms* do not wish to downplay the results of the annual bar examinations, but on the contrary seek to make them of the highest quality, thus:

The integrity of any professional examination is enhanced by grading procedures and practices which are consistent, reliable, and equitable.... The expected outcome is that, over time, the passing standards for bar admissions will be consistent, reasonable, more reliable, and representative of demonstrated performance without sacrificing the acceptability of these standards to the bar examining authority.⁴⁹

Dr. Raul C. Pangalangan, the Dean of the U.P. College of Law, in his 3 April 2003 memorandum addressed to Justice Jose Vitug, the Chairman of the Supreme Court's Committee on Legal Education and Bar Matters, submitted his comments to the Mendoza Reforms, whereby in summary he agreed “with the proposal to replace the present structure built around the secret and solitary bar examiner, with a tenured and publicly known Board of Examiners.”⁵⁰ Dr. Pangalangan prefaces his memo by describing the function of the Bar Examinations thus:

The bar exam, in order to serve its purpose, must identify and measure the core knowledge and skills required of any person admitted into the practice of law.⁵¹

Dr. Pangalangan succinctly describes the “essence” of the Mendoza Reforms as follows:

Finally, the Mendoza Reforms identify the problem of the lack of ‘reliability’ of the bar exam as a test of professional competence. When subjective questions are asked by a solitary examiner, and examiners are changed each year, there are no systematic opportunities to hand down critiques from year to year, no scientific way to evaluate the soundness of the exam questions, and finally no ‘institutional memory’, so that each new examiner tends to repeat the same mistakes year-in, year-out. The only systemic check is the Bar Chairman, and even he/she is changed each year.⁵²

48. *Id.*

49. *Id.*

50. Memorandum from Raul C. Pangalangan, to Justice Jose Vitug (Apr. 3, 2003) (on file with the author) [hereinafter Pangalangan Memorandum].

51. *Id.*

52. *Id.*

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The Philippine Association of Law Professors (PALP) disagreed with the Mendoza proposals for the creation of Board of Bar Examiners and the Methodological Reforms.⁵³ PALP posited that:

The creation of such a Board will only complicate the system of Bar Examinations. The ideal secrecy of the identities of bar examiners will be compromised. More, the Bar questions could easily find their ways to the road of leakages. The country is too small. The 'padrino' syndrome can easily undermine the bar system. The creation of the Board will have more disadvantages than advantages.⁵⁴

With respect to the Mendoza proposals on Methodological Reforms, PALP takes the position that "such reforms require more preparation. It will be ideal if we have a permanent Board of Bar Examiners whose members may be trained purposely for that matter. Since the PALP does not agree to the creation of a Board of Examiners, it need not elucidate on the matter anymore."⁵⁵

The Integrated Bar of the Philippines, through its National President, Atty. Teofilo S. Pilando, Jr.,⁵⁶ in commenting on the Mendoza Reforms, essentially summarized the Mendoza paper, and gave the following concerns:

- They agreed with the structural reforms in the Mendoza paper if the integrity of the examination questions can be assured;
- The costs of implementation of the Mendoza Reforms are also a concern, that would allow a transition period;
- The structural reform proposed that there be a Character & Fitness Investigation to be conducted before an applicant is allowed to take the bar examination, the Report does not elaborate much on the proposed questionnaire; and
- The additional procedure of scaling to equalize the current examination with previous ones may not justify the complication and cost, considering all the other proposed reforms, which likewise should do away with the additional procedure required for the appeal mechanism.⁵⁷

53. Memorandum from Philippine Association of Law Professors, to Justice Jose Vitug (2003) (on file with the author) [hereinafter PALP Memorandum].

54. *Id.*

55. *Id.*

56. Memorandum from the Integrated Bar of the Philippines, to Justice Jose Vitug (Apr. 2, 2003) (on file with the author) [IBP Memorandum].

57. *Id.*

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In the 2 April 2003 letter of Chairperson Ester Albano Garcia,⁵⁸ the CHED effectively praised to high-heavens the Mendoza Reforms and informed the Supreme Court that its Technical Panel for Legal Education would be coming out shortly with the *Results of the Write-up of the Assessment Activity on all the Law Schools*.

IV. BAR EXAMINATIONS AS THE CULPRIT

From where the author stands, i.e., from the experience of the *Ateneo de Manila University Law School* (ALS), he cannot agree with the oft-repeated conclusion that the Bar Examinations system in the Philippines has singularly undermined Philippine legal education. The author believes that many people make the mistake of concluding that the Bar Examinations results lead the way; rather, the truth is that the results in the Bar Examinations are merely reflective of the state of Philippine legal education and that de-glamorizing the Bar Examinations, or even abolishing them outright, would not result in the sought fruits of bar reforms, but would rather promote a “race to the bottom.”

There now seems to be two levels of discussions that pervade the Bar Examinations system of our country: the first position looks at the Bar Examinations, and the pomp and pageantry that is associated with it, as the main cause by which Philippine legal education has suffered the—“culprit theory”. The other position, on the other hand, considers the Bar Examination as still constituting the best gauge of determining not only of the performance of our law schools, but also as the best means to determine who are intellectually qualified to be admitted to the practice of law. The second category does not consider the Bar Examinations and the enhancement of its role in Bar admission, as necessarily affecting adversely the Philippine educational system, and that the shortcomings of Philippine law schools are borne out by their own internal problems, and not necessarily the result of glamorizing the Bar Examinations.

The *Cortes Recommendations* clearly fall into the first category, while the *Mendoza Reforms* fits into the second category. To a great extent, the *SSG Final Report* considers the central role that the Bar Examinations must continue to play in determining the methods by which we admit qualified individuals to the practice of law, but it points out, although without pointing to supporting facts, that “the very existence of the examination has stymied in a significant manner legal education. Many, if not most, law

58. Memorandum from Ester Albano Garcia, to Justice Jose Vitug (Apr. 2, 2003) (on file with the author).

schools have made passing the Bar Examinations the principal, or even sole objective of legal education.”⁵⁹

The article of Dean Magsalin in essence belongs also to the first category although it may also recommend the adoption of the Mendoza Reforms. He writes: “the single most important factor that has inhibited the growth of the Philippine legal education system into a robust network of modernized quality educational institution is the bar examination orientation.”⁶⁰

A. What Are the Objectives of the Bar Examinations?

As Justice Cortes points out, the avowed objectives of the Bar Examinations is determining the examinees’ logical reasoning, thorough knowledge of fundamental principles of law and their applications, ability to analyze and solve legal problems, and ability to communicate in precise language. In other words, like any other examination, the Bar Examinations are meant to determine whether a graduate of law has learned enough law to allow him or her to be set forth into the actual practice of law.

The reviewing for, and the taking of, the Bar Examinations are meant to gauge compliance with the minimum criteria—75% passing average, without getting below 50% in any subject—and is not meant to transform a candidate into an excellent persona, nor guarantee him success in his practice. This position is in contrast with the observation of Justice Cortes:

Despite their shortcomings undue emphasis is given to the bar examinations... Again it would be most enlightening to undertake a hard-nosed study of the ‘achievers’ in the examinations and demonstrate how they have fared subsequently as members of the profession. On the other hand there are celebrated cases of public knowledge of some who did not do well or even flunked the bar examinations but turned out to be brilliant law practitioners and legal luminaries.⁶¹

Even if the Bar Examinations system were as perfect as the Mendoza Reforms would have them, they cannot be considered a gauge of the future success of bar candidates—whether they pass or not—for many factors other than intellectual brilliance or even eloquence determine the success of each individual. Just as graduation from college is not a representation that the graduate is now fully equipped with all skills to take on the work or profession for which he was educated, those who successfully pass the Bar Examinations are deemed to have the theoretical and intellectual capabilities to learn the real skills of lawyering, as only actual practice can do.

59. SSG Final Report, *supra* note 26, at 7.

60. Magsalin, *supra* note 14, at 48.

61. CORTES, *supra* NOTE 17, AT 142-43.

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The author believes that the more relevant issue is whether the Bar Examinations have managed to prevent entry into the legal profession, law graduates who have not even inculcated fundamental knowledge of the law and its application, and therefore unfit to be licensed to take on the rigors of a noble profession.

B. Gauging Moral Fitness in Bar Examinations

The PALP, in its reaction paper to the *Mendoza Reforms*, recommended that Legal and Judicial Ethics “should not be regarded as a minor subject. It is supposed to be the crowning glory of the legal and judicial professions. It must be given the needed emphasis it deserves to promote an honest, effective and efficient administration of justice where lawyers, prosecutors and judges work together.”⁶² The position seems to consider that the Bar Examinations should be able to determine moral fitness for the practice of law. The author disagrees with such position.

Bar Examinations can never determine the moral fitness of an individual. The only thing they can do is to determine whether the candidate has intellectually imbibed the fundamentals of legal and judicial ethics, for to be informed is to be forewarned. The devil can use the words in the Bible itself to do his evil deeds.

The determination of moral fitness of a candidate is certainly an essential aspect of the admission to the Bar, that is why the *SSG Final Report* recommended the publication of the names of all candidates to be able to obtain complaints from the public, and the *Mendoza Reforms* recommended that a thorough Character & Fitness investigation be conducted of each candidate. But both recommendations are only included *in the process of applying to take the Bar Examinations*. The reason why the *Mendoza Reforms* did not deal with the matter exhaustively was because it deals with the issues at hand, which are reforms in the Bar Examinations proper, prompting the IBP to complain in its reaction letter that “the Report does not elaborate much on the proposed questionnaire”⁶³ covering the structural reform proposed that there be a Character & Fitness investigation to be conducted before an applicant is allowed to take the Bar Examinations.

C. The Mystique and Glamour of the Bar Examinations

Until we can afford to do away completely with the Bar Examinations as the main test towards admission into the legal practice, then there is no avoiding the glamour, the pomp and glory, of the Philippine Bar Examinations. It is a function of the market, and generally, one cannot beat the market, and all

62. PALP Memorandum, *supra* note 53.

63. IBP Memorandum, *supra* note 56.

efforts to control it artificially can only bring dire consequences. Justice Cortes aptly observes in her article:

In the Philippines, bar examinations have become institutionalized and have acquired in the popular mind a mystique all its own... It is not necessary for this purpose to repeat the Supreme Court rules governing applicants for the examinations. It is enough to say that to qualify for the test, the examinees' credentials must show completion of the prescribed courses of study leading to as well as during the regular law course. The format of the examination, the interval in which the specified subjects are given, the precautions taken to insure the integrity of the examination, including the secrecy maintained, until the examinations, most recently given, as to the identity of the members of the committee of bar examiners appointed by the Supreme Court. All these contribute to the mystique.⁶⁴

Every reform recommended for the Bar Examinations system—except that of its abolition, although the Cortes critique on the Bar Examinations are consistent with the reforms recommended by the Mendoza paper—is meant to strengthen such system, making it more exacting in its demands, and thereby making it more glamorous and mystical in the process. Like gold which stands the test of fire, and like diamonds whose brilliance is rare, a more reformed Bar Examination would produce rare commodities—successful bar candidates—and would thereby only add an ever increasing demand in the marketplace.

For example, where Justice Cortes complained in 1978 that the bar questions were “highly reminiscent of quiz shows,”⁶⁵ “laid on extracting specific information directly by questions calling for definition, enumeration, and differentiation,”⁶⁶ or were “mere copies of decisions of courts,”⁶⁷ or “tended to be simplistic and expository;”⁶⁸ Dr. Pangalangan could describe the present state of bar questions now to be able to “gauge the examinee’s mastery of legal doctrine, and his ability to apply the law to concrete fact situations.”⁶⁹ Thus:

More recently, at least in the past decade, bar examiners have been advised by successive Bar Chairmen to ask *problem-based*, *essay-type* questions, and avoid ‘*objective-type*’ questions, e.g., those that entail rote-memory (e.g., definitions, enumerations, fill-in-the-blanks) or pertain to obscure points of law.⁷⁰

64. *Id.* at 132-33.

65. *Id.* at 136.

66. *Id.* at 140.

67. *Id.* at 140-41.

68. *Id.* at 141.

69. Pangalangan Memorandum, *supra* note 50.

70. *Id.* at 2.

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The adoption of the Mendoza Reforms to introduce multiple-choice questions in the Bar Examinations, is universally considered to further toughen the whole process. PALP agreed with “the introduction of multiple-choice type of examinations where the examinees are given at least four (4) alternatives to choose from. Such examinations will promote and enhance precision in thinking of the examinees. While students, they will be trained to be precise in meeting legal problems. Definition of terms may be enveloped in this type of examinations.”⁷¹

Dr. Pangalangan personally finds multiple-choice questions “difficult to make and which will require ‘bouncing off’ on colleagues.”⁷² Dean Andres D. Bautista, reacting for PALS, relates: “On a personal note however, I took the multiple choice exam when I sat for the New York State bar and found the same challenging, thought provoking and fair.”⁷³

The author, in his classes at the Ateneo has experienced over the years that when multiple-choice questions are given, the scores have tended to be much lower than in essay type problems. By and large, the Mendoza Reforms do not intend to make the Bar Examinations a much easier task for candidates, but rather to make the results more reliable, consistent from year-to-year, and to facilitate the whole process of testing, grading and reporting the results.

There is also a universal condemnation at any attempt or activity to “cheapen” the results of the Bar Examinations. The *Pangalangan Memorandum* points to the danger of leakages and corruption of having tenured examiners and readers:

Publicly identifying the examiners and readers will open the floodgates to new sources of ‘bar tips’, and new opportunities for personal pressures and politicking. The examiners and readers will find it impossible to resist culturally-ingrained expectations. Secrecy is still the best guarantee against leakages.⁷⁴

The PALP disagreed with the Mendoza proposals for the creation of Board of Bar Examiners and the Methodological Reforms, pointing out that “[t]he creation of such a Board will only complicate the system of Bar Examinations. The ideal secrecy of the identities of bar examiners will be

71. PALP Memorandum, *supra* note 53.

72. Pangalangan Memorandum, *supra* note 50.

73. Statement of the Philippine Association of Law Schools (Apr. 3, 2003) (on file with the author).

74. Pangalangan Memorandum, *supra* note 50. The memo describes the rational behind the *solitary bar examiner system* (whose identity is kept secret for the year): (a) The need for confidentiality of exam questions, given the history of bar exam scandals, leakages and favoritism; (b) The need for uniformity of standards in grading the answers.

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compromised... the Bar questions could easily find their ways to the road of leakages... The 'padrino' syndrome can easily undermine the bar system."⁷⁵

Meanwhile, the Philippine Bar Association (PBA) published its position on the matter, thus:

PBA adopts the position that any changes in the conduct of bar examinations should address the problem of leakage and not dampen the desire to excel and be recognized for excellence, which is human nature. The ban on 'bar operations' and assemblies during the examinations might also raise constitutional issues. A security protocol should be institutionalized; not only the examiner but also his staff should be bound by the oath of confidentiality and subject to sanctions and penalties.⁷⁶

The SSG Final Report contained serious recommendations on safeguarding *the integrity of the Bar Examinations*, which include disqualification of candidates who have taken unsuccessfully six (6) Bar Examinations, maintaining the rule of disqualification of a candidate who obtains a grade below fifty percent (50%) in any subject, recommending the suspension or cancellation of the authority of law schools that fail to produce a successful Bar examinee for three (3) consecutive years, promulgations of guidelines to penalize bar operations and attempts to vitiate the integrity and confidentiality of the Bar Examinations process.

Only recently, in its Resolution in *In re 2003 Bar Examinations*,⁷⁷ the Supreme Court stated that "[t]he Court, certainly will not countenance any act or conduct that can impair not only the integrity of the Bar Examinations but the trust reposed on the Court."⁷⁸ All these indicate the high esteem that Philippine society places on the Bar Examinations system.

Meanwhile, Dean Magsalin emphasized that "[t]he bar examination system should be re-examined. The Filipino pre-occupation with bar results as indicators of the success of the candidate and his law school should be downplayed."⁷⁹ He further posits that the Bar Examinations system should "do away with the practice of determining the bar 'topnotchers' and replace it with pass/fail marks... [and that the] proposal could help in de-emphasizing and de-glamorizing the bar examinations and in bringing back the stress in legal education to preparing students for law practice and the

75. PALP Memorandum, *supra* note 53.

76. PHILIPPINE BAR ASSOCIATION NEWSLETTER (Feb. 2004).

77. *In re 2003 Bar Examinations*, Court Resolution on the Subject of Mercantile Law dated September 29, 2003, available at http://www.supremecourt.gov.ph/announce/bar_reso92903.htm (last accessed on March 7, 2004).

78. *Id.*

79. Magsalin, *supra* note 14, at 53.

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many responsibilities it entails.”⁸⁰ To the same effect is the recommendation in the SSG Final Report to adopt the “pass/fail” grading system in determining who are the successful candidates in Bar Examination.

The problem with all these efforts is the failure to address the real market *need* that must find its *supply*. There is a need for the Supreme Court to maintain the prestige and integrity of the Bar Examinations to ensure that only the truly qualified candidates—as by definition they are supposed to be a select few—should be admitted to the practice of law. There is a need for the market to be able to gauge on a year-to-year basis who among the recent crops represent the best and brightest so that appropriate *prices* for their talents and potentials can be fixed. The results of the Bar Examinations, competitive and reliable, provide each year the more reliable test of technical competence and potential for successful practice.

For example, if the “pass/fail” grading system is adopted so that there would be no *top-ten* category, then the market will seek some other way to interpret the Bar results that fit their needs, such as the media seeking out and publishing who among the law schools have the highest passing average, which would then indicate the *best* batch among the recent candidates. In a free-market system, *competition*, as the Bar Examinations are, promotes the best interests of the consuming public.

The only way to de-glamorize the Bar Examinations is to make them irrelevant or to cheapen them. The Supreme Court could make the bar questions very easy so that passing percentage becomes consistently high every year; or they just set arbitrarily the passing percentage to accommodate an pre-determined number of successful candidates, say 1,200 every year. That is the quickest way to de-glamorize the Bar Examinations and beat the market’s insatiable appetite of treating the Bar Examinations as though they were a beauty contest. But Philippine society then runs the risk of having an abundance of incompetent lawyers lurking in every nook and corner of each community, doing more folly than good. Consider that even today, society complains of the moral and/or intellectual unfitness of many practicing lawyers, who are *all* successful passers of concededly the most difficult set of government examinations; what greater disservice to society can happen if we further weaken, “de-glamorize”, and “de-emphasize” the Bar Examinations? It is then worth repeating what Dr. Pangalangan stated in his memorandum:

We therefore need a qualifying exam to protect the public from the incompetent, and to ensure that only the fit are able to offer legal services. The bar exam, in order to serve its purpose, must identify and measure the

80. *Id.* at 55.

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core knowledge and skills required of any person admitted into the practice of law.⁸¹

In other words, the very role of the Bar Examinations in the system of admission to the Bar, essentially makes it *glamorous*—as all other licensure exams given by the PRC are—and every reform pursued to make them a more reliable, equitable, and reasonable measure of legal competency adds to their mystique. This is the consequence that inheres in the market: the harder it is to obtain, i.e. passing the Bar Examinations, the higher the price and prestige that is associated with obtaining it.

The real issue therefore is whether the Bar Examination systems, and the glamour and mystique that inheres in it, has really done harm to Philippine legal education. This is the main issue that this paper seeks to address, since it goes into the very *integrity* of the Bar Examinations system.

IV. TESTING THE THESIS

Perhaps it is the height of irony that how well their law graduates have performed in the Bar Examinations is the primary measurement of the effectiveness and ranking of law schools in the Philippines. Consider what Dean Magsalin writes:

The biggest number of applicants ever to take the bar examinations was 5,453 in 1963 followed by 4,698 in 2000 and 4,659 in 2002. From the listing of schools whose graduates took the bar examination from 1992 to 2002 and the number of their graduates who passed the bar examinations, it can be easily seen that there are many schools that have dismally failed to prepare their students for these examinations. Twenty-six of seventy-five law schools had a zero passing average at least twice, with two schools having zero average at least eight times, during the 11-year period. Only around fifteen schools have managed to consistently produce annually at least 15 new lawyers with seven schools having at least 35 new lawyers a year.⁸²

In the reaction letter of CHED to the Mendoza Reforms, it confirms that law schools in the Philippines number a little over 100 to date. Yet, the Statistical Data sheets published each year by the Supreme Court on the results of the Bar Examination, from 1991 to 2002 show that only the following number of schools are able to “send” candidates to take the Bar Examinations, thus:

TABLE A
STATISTICAL DATA

81. Pangalangan Memorandum, *supra* note 53.

82. Citing Supreme Court Bar Confidant Statistical Data, 1992–2002.

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| NUMBER OF LAW SCHOOLS HAVING CANDIDATES TAKING THE BAR EXAMINATIONS | |
|---|-----------|
| 1991 - 59 | 1997 - 73 |
| 1992 - 59 | 1998 - 77 |
| 1993 - 59 | 1999 - 75 |
| 1994 - 60 | 2000 - 77 |
| 1995 - 61 | 2001 - 78 |
| 1996 - 65 | 2002 - 81 |

For Year 2002, although there are more than a hundred law schools operating and monitored by CHED, only 81 law schools in the country are even able to qualify candidates to take the Bar Examinations. The data also indicate that over the years, more and more law schools are being set-up throughout the archipelago, which raises the specter that the demand for legal education continues to increase every year, perhaps because the market demand for lawyers is not adequately met. Thus, in his memo, Dr. Pangalangan posits the proposition that the “function of the Bar Examinations is to supply the need for a minimum number of brand-new lawyers (say about 800) every year to render legal services to the Filipino public.”⁸³

A. How Should We Measure “Good” Law Schools?

In his article, Dean Magsalin decries that “[t]he principal yardstick used to measure the success of law schools in the Philippines is the performance of its graduates in the bar examination. All other factors that make for a quality educational institution, are practically brushed aside.”⁸⁴

He then cites the practice in the United States where at least four entities that rank the performance of accredited law schools, of which the U.S. News is “the most popular among the rankings, and uses a variation of criteria, such a reputation among academics, reputation among lawyers and judges, LSAT score and UGPA statistics, expenditures per student for instructions, library, and supporting student services, expenditures per student on financial aid, indirect costs, and overhead, total number of volumes, microfilm, microfiche, and titles in the law library, students-to-faculty ration, percentage of employed nine months later; and bar passage rate.”⁸⁵

83. Pangalangan Memorandum, *supra* note 50.

84. Magsalin, *supra* note 14, at 48.

85. *See id.*

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Nevertheless, the good dean does not say “who” brushes aside “[a]ll other factors that make for a quality educational institution.”⁸⁶ Moreover, he adds that “[a] continuing adherence to the bar-oriented approach has only served to promote the status quo, favoring certain institutions but stunting the growth and development of other law schools and Philippine legal education, as a whole.”⁸⁷ He goes on to write:

The present bar examinations system has been with the Philippines for almost a century. Despite its obvious shortcomings, reforms have come few and far in between. *For the past forty years, it is an established fact that only three law schools (the ‘Big Three’ [Ateneo de Manila, University of the Philippines, and San Beda College]) have dominated the bar examinations in both bar passing average and number of bar topnotchers. If no drastic reforms are initiated, it is to be expected that the same three law schools will continue to be considered as the ‘best’ in the country even if they do not necessarily measure up to the standards used by U.S. News in ranking the top law schools, as discussed earlier.*⁸⁸

The foregoing statements, which perhaps allude to the ALS, are quite serious propositions, and one should thank the good dean for having been candid to state them, perhaps bringing to fore what has been common consensus among many other leading minds in our society. The thesis seems to us quite clear: that the Big Three law schools have done well in the Bar Examinations the past four decades, and will continue to be considered the best law schools on the basis of their Bar performance, even if they do not necessarily measure up to the standards used by U.S. News in ranking the top law schools. The clear presumption also is that there are other Philippine law schools, who *do* measure up to the standards used by U.S. News standards, who nevertheless do not perform well in the Bar Examinations, but are better than the Big Three, although will never be recognized as such.

It is doubtful whether the Bar performance, although certainly a big factor in judging the performance of law schools, as it should be, for lack of better gauge, is the only factor *to the exclusion of all other factors*, in judging the *success of law schools* in the Philippines. In a developing country like ours, *one of the primary measures of success* of a law school can truly be the success of its graduates and the contribution that they do to society. First and foremost, law graduates must be able to hurdle the Bar Examinations in order to get a license to practice law and serve society as lawyers. No amount of compliance by a law school with the other factors in the U.S. News standards would amount to anything, if its graduates cannot even pass the Bar Examinations and become licensed lawyers.

86. *Id.*

87. *Id.* at 50.

88. *Id.* (emphasis supplied).

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Secondly, good or stupendous results in the Bar Examinations can only go a certain length, because in the end the market will be able to judge whether the graduates of a law school do have the competence and the skill to be reasonably good lawyers. If the law graduates of Ateneo, University of the Philippines (UP), and San Beda College continue to be the preferred candidates for hiring by law firms, multinational companies, government agencies, which is an important factor in the U.S. News standards, and thereby dominate the legal service for leading projects and legal cases in Philippine society, it is because over the years, the steady stream of qualified graduates who day-in-day-out render competent service have validated such reputation among academics, lawyers and judges, which also happen to be important factors under the U.S. News standards. In other words, if good Bar performance is all that the Big Three law schools had going for them, then all the “other law schools” who are really better would have dominated the market for lawyers, simply because the market must continue to depend on real competence to handle real and serious projects and cases. That is not what seems to be what the market says.

We nevertheless commend Dean Magsalin’s observations and recommend them to the Philippine Association of Law Schools (PALS) to come up with its own criteria to properly rank its law school members in order to allow a system by which it is not only the performance in the Bar Examinations that the market and the public can reliably judge and rank the various law schools operating in the country.

B. What Are the Proper Components of a “Good” Legal Education System?

For the Philippine setting, the realistic measure of a good law school is what is spelled out in the recommended reforms categorized as “what system should be found in the law school operations.”

The Cortes Recommendations include a system of accreditation of law schools consistently maintaining minimum standards of adequate legal training; annual examinations for every level of law classes; a system of apprenticeship or practical training and what degree could be conferred. There will likewise be a rating of performance for the practicum. She also adds: “All components that make up the law school will need to be geared to accelerated needs—faculty, curriculum, library, methods of instruction, and facilities. A selective process for admission of students will have to be adopted, as well.”⁸⁹

The SSG Final Report also has the practically allied recommendations to those of the Cortes Recommendations, thus:

- Mandatory Law School Admissions Test;

89. Cortes, *supra* note 17, at 145.

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- Accreditation and Supervision of Law Schools by the Supreme Court;
- Suspension or cancellation by the Supreme Court of authority to operate for law schools who fail to produce a successful Bar Examinee for three (3) consecutive years; and
- Urging law schools to include in their curriculum a program on clinical legal education and apprenticeship program in the judiciary, prosecution service and law offices.⁹⁰

Dean Magsalin also recommends the accreditation system for law schools and stresses the need to constitute the Board of Legal Education under Republic Act No. 7662, which is mandated to undertake such accreditation.⁹¹ He also recommends the restrictive entrance examination for law schools, the establishment of core of full-time faculty members to address the need for selective learning; encouraging critical and doctrinal research activities; the use of course syllabi to complement the case approach and Socratic method in recitation; and access to adequate learning tools and facilities, such as a complete local and international law library, enough bundled computers and legal software, and individual faculty rooms for consultations with professors.⁹²

It seems to be the thesis of the three studies mentioned above that the recommended reforms for the legal educational system are at odds with the very nature of the Bar Examination system, or that to battle the ill-effects of the Bar Examination system, the reforms become necessary. To put matters in context, the SSG Final Report says:

While the Bar Examinations are meant principally to test the eligibility of a candidate for the practice of law, paradoxically, the very existence of the examination has stymied in a significant manner legal education. Many if not most law schools have made of passing the Bar Examinations the principal, or even sole objective of legal education. *This has without doubt impoverished legal education* and constricted its scope to the possible items that may be asked in the Bar Examinations.⁹³

Dean Magsalin writes that because of “[t]he Filipino pre-occupation with bar results as indicators of the success of the candidates and his law school,”⁹⁴ then consequently “[a]t present, schools are constrained from shunning the bar-oriented approach and tailoring their curriculum to

90. See SSG Report, *supra* note 26, at 7-8.

91. Magsalin, *supra* note 14, at 55.

92. See *id.* at 53-54.

93. SSG Report, *supra* note 26, at 7 (emphasis supplied).

94. Magsalin, *supra* note 14, at 53.

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conform to the demands of the ‘real world.’”⁹⁵ One should also consider what Justice Cortes wrote in her 1978 article:

To begin with, the law schools themselves need to direct their attention to the attainment of their announced objectives. Passing the bar examinations has never admittedly been an end in itself, but what has developed in most schools is that it has become the principal goal. The curriculum, the methods of instruction, the review courses in the fourth year—all contribute to emphasize this.⁹⁶

The author hereby places the ALS system and experience on the discussion table to debunk the thesis.

VI. THE ATENEO SITUATION

Based on his own experience at the ALS, the author has come to the following propositions:

- That the results of the Bar Examinations over the past decades do reflect the low state of Philippine legal education as a whole;
- The Bar Examinations have not caused such deterioration, but rather the results do indicate that not complying with the law schools’ true missions has caused such deterioration, and it is reflected in the results of the Bar Examinations; and
- When law schools remain faithful to their mission and primary objectives of training their students to become lawyers, advocates and leaders, it is more likely that their graduates perform well in the Bar Examinations.

Even before the *Magsalin* article was published, it has been the standard fare to accuse ALS as one of the leading law schools that over-emphasizes the taking of Bar Examinations. When an institution of learning and training has as its main clientele law students who would be future applicants for a government licensure examination, it is sheer irresponsibility if that institution’s students are not even fit to pass the very licensure examination meant to determine who would be authorized and qualified to exercise such profession. Such an irresponsible institution deserves no less than being closed down. ALS, as a responsible law school, takes the prospects of its graduates taking the Bar Examination seriously, as any responsible law school should; but never to the exclusion of other primary responsibilities. Consider the ALS Mission:

MISSION

95. *Id.*

96. Cortes, *supra* note 17, at 144-45.

The Ateneo School of Law is established to help form and develop good and committed Catholic lawyers.

The Ateneo believes that a Catholic lawyer is not one who merely knows the provisions of law and is skilled in the handling of cases before the courts. He must be more than that. He must also have a good grasp of the nature and ends of law. He must have the ability to think logically and to express himself clearly and forcefully. More important yet, he must realize his necessary role in the administration of justice and in the promotion of good order in society. Hence, when he accepts cases, or assumes a position of responsibility, his primordial consideration is the cause of justice and the establishment or the restoration of harmony among the people affected. Moreover, he should be prepared to act as counselor and administrator, as an organizer of men, an adviser on human relations, and as a leader and reformer. He should be sensitive to the changes in society and committed to meet the needs of his countrymen. Finally, a good Catholic lawyer is one who is as upright as he is competent, and dedicated to the service of God and his fellow men.⁹⁷

97. This has been the operating Mission of ALS for the most part during the period covered (1990 to 2002). In 2001, under the aegis of Fr. Joaquin G. Bernas, S.J., the ALS Mission has been rephrased to read as follows:

MISSION

The Ateneo Law School is a Catholic and Jesuit institution situated within the larger Ateneo de Manila University.

As a Catholic school it is committed to making in an institutional manner a Christian presence in the legal world by fidelity to the Christian message as it comes through the Church and by service to others, especially to the underprivileged.

As a Jesuit institution it shares in the core mission of all Jesuit institutions as this has been delineated by the 34th General Congregation, the most recent (1995) and the highest legislative assembly of the Jesuit Order. The 34th General Congregation placed all Jesuit institutions within the framework of the Church's overall mission of evangelization understood not only as proclamation of the Christian faith but also as life witness especially to a faith that accomplishes justice.

As a school of law, the Ateneo Law School's mission is the formation of men and women not only skilled in the science and art of the law but also imbued with a burning passion for justice and the fervent desire to serve others.

Towards the accomplishment of its mission as a school in the service of the legal profession, the Ateneo Law School insists on intellectual rigor in the tradition of Jesuit education. Intellectual rigor demands, *inter alia*, a thorough grasp of the nature and ends of law, the ability to

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Has Ateneo graduates' good, if not excellent, performance in the Bar Examinations the past decade compromised ALS's pursuit of its mission? The facts show that ALS has been uncompromising in the pursuit of its mission as the leading law school in the country.

ALS not only has the Human Rights Center which has been at the forefront of human rights advocacy both here in the Philippines and abroad since 1986, it also continues to be one of the two Philippine law school-participants to the Jessup Moot Court Competitions, together with the UP College of Law, which exposes its participants to leading international doctrines and issues. But more importantly, and this is where the crux of the test lies, since 1990, ALS has been the only law school in the entire Philippine archipelago that offers the degree of Juris Doctor (J.D.).⁹⁸

Entry in the J.D. Program requires that each applicant must take the Law Aptitude Examinations. Annually more than 1,200 apply for and take the entrance examinations, and only a select group 250 successful applicants are admitted to the First Year level, or roughly six sections, only after the Admissions Committee has gone through each of the records and recommendations of each applicant. The high demands of the Ateneo system on the study of the Law, which is governed by *Rules on Scholastic Responsibilities* and QPI rules, is indicated by the attrition figures:

- (a) On average, after only the first semester in First Year, about fifty (50) students would not qualify to proceed to second semester studies;
- (b) On average, of the original 250 Freshmen students, only about 150 to 180 students would proceed to Second Year level (roughly 4 sections); and
- (c) On average, only about 100 to 110 students graduate with the J.D. degree to qualify them to take the Bar Examinations.

The J.D. Program requires that for a student to graduate, he must:

- (a) Take and pass 133 units of "core" subjects, not only on substantive and remedial law courses, but also a rich composition of ethics and philosophy courses (e.g., *Philosophy of Law, Legal Profession, Theology*

express legal conviction in forceful oral and written communication, and sensitivity to the role of law as an instrument of service towards individuals and of social engineering.

Towards the accomplishment of its Catholic and Jesuit mission, the Law School integrates into its program opportunities for the deepening and maturing of Christian commitment and for participation in social mobilization for the creation of a more just social order.

98. Since 2002, a joint 5-year J.D./M.B.A. program has been offered through a joint collaboration between Far Eastern University and De La Salle University.

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and the Law, Social Philosophy, Legal Ethics, and Problem Areas in Legal Ethics);

(b) During the Junior and Senior Levels to:

- Take and pass twenty-two (22) units of Elective Courses from varied offerings each semester (e.g., *Arbitration Laws, Clinical Legal Education I and II, Collective Bargaining and Alternative Dispute Resolutions, Estate Planning, Environmental Laws, Gender and the Law, Human Rights, Information Technology Laws, International Economic Law, Securities Practice, Negotiation Seminar, etc.*);
- Do during the summer breaks a total of 240 hours (4 units) of Apprenticeship with the courts, government agencies, law firms, or as human rights volunteers; and

(c) A Senior student must prepare and defend before a panel a thesis on a subject of law which is considered novel, and requires extensive discussion and analysis of legal principles and cases relevant to the thesis proposal (six units).

The ALS J.D. Program, and the demand for excellence from both the professors and the students, therefore coincides closely with what the proponents recommend would be the ideal system of legal education in this country. Has the pursuit of the J.D. Program come in conflict with the thrust towards preparing Ateneo graduates for the Bar Examinations? The figures tell the true story (*see* TABLE B).

TABLE B

SUMMARY PERFORMANCE IN THE BAR EXAMINATIONS
ATENEO de MANILA LAW SCHOOL
(WITH COMPARATIVE FIGURES FOR UP LAW AND SBC LAW)
TWELVE (12) YEAR PERIOD FROM 1991 TO 2002

| Year | Candidates | Number Passed | Passing | UP-SBC Compared | National Figures* | ALS Top Ten Finishes |
|------|------------|---------------|---------|-----------------------------|------------------------|----------------------|
| 1991 | 123 | 104 | 84.55% | SBC - 61.94% UP - 60.61% | 3,194 569 17.81% | 1, 2, 8 |
| 1992 | 131 | 101 | 77.10% | SBC - 64.32% UP - 60.44% | 2,892 499 17.25% | 1, 2, 4, 5, 7, 10 |
| 1993 | 140 | 118 | 84.29% | UP - 63.33% SBC - 63.28% | 3,348 725 21.65% | 1, 3, 5, 8, 10 |

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| | | | | | | |
|------|-----|-----|----------|-------------------------------|--------------------------|-----------------------------|
| 1994 | 119 | 106 | 89.08% | SBC - 81.60% UP - 79.58% | 3,337 1,030 30.87% | 2, 5, 6, 7, 8, 9, 10, 10 |
| 1995 | 128 | 111 | 86.72% | SBC - 82.14% UP - 80.14% | 3,194 967 30.28% | 6 |
| 1996 | 134 | 128 | 95.52% | SBC - 86.81% UP - 87.76% | 3,900 1,217 31.21% | 2, 3, 5 |
| 1997 | 129 | 103 | 79.84%** | UP - 75.63% SBC - 83.33%** | 3,921 710 18.11% | 4, 6, 8 |
| 1998 | 147 | 130 | 88.44%** | SBC - 94.51%** UP - 92.75% | 3,697 1,465 39.63% | 6, 9, 10 |
| 1999 | 115 | 99 | 86.09% | SBC - 82.72% UP - 75.27% | 3,978 660 16.59% | 1, 2, 3, 4, 7, 10 |
| 2000 | 98 | 90 | 91.84% | SBC - 85.71% UP - 73.44% | 4,698 979 20.84% | 3, 9 |
| 2001 | 110 | 107 | 97.27% | SBC - 92.06% UP - 88.07% | 3,849 1,266 32.89% | 2, 3, 5, 9 |
| 2002 | 117 | 103 | 88.03% | SBC - 83.33% UP - 80.67% | 4,659 917 19.68% | 2, 4, 4, 5, 7, 10 |

12- year Averages:

ALS - 87.40% SBC - 80.15% UP - 76.47% NATIONAL: 24.73%

Notes:

1. The column on National Figures (*) indicate the following in succession: the total number of candidates who took the Bar Examinations for that year; the number of candidates who passed; and the national passing average for that year.
2. Except for Years 1997 and 1998, (**) ATENEO DE MANILA LAW SCHOOL (ALS) has lead in average passing of candidates for the covered period of twelve (12) years.
3. Over the last twelve (12) years, the national passing average is at 24.73%, while that of the ALS has been at 87.41%.

The above table indicates the historical performance of ALS, compared with two other members of “The Big Three”—UP College of Law and San Beda College of Law—covering the period of twelve (12) years (from 1991 to 2002), which coincides with the period when the ALS J.D. Program had been thoroughly in place.

For the each of the past twelve years since 1991, ALS candidates garnered top-ten placers in each year, with Number 1 placing in four years:

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1991, 1992, 1993, and 1999. For the same period, and except for Years 1997 and 1998, ALS has lead in average passing of candidates. ALS has also maintained the highest percentage of passing for its graduates at 87.71%, which is quite an achievement compared to the national average passing of 24.73% for the covered period.

When ALS's average passing percentage 87.71% is compared to those of its nearest consistent rivals, San Beda College of Law, with an average of 80.15%, and the UP College of Law, with an average passing of 76.47%, and one considers as well that ALS candidates over the past twelve years have had to take the Bar Examinations only after earning a J.D. Degree, requiring a thorough research, preparation and defense of a thesis on a major issue in law and 240 hours of apprenticeship work (while much of the same time is spent by students of other law schools to concentrate on review courses), then the figures contravene the thesis that a responsible and serious preparation of students for the Bar Examinations, detracts a law school from its true mission in the system of legal education.

From the figures found in Table B, the conclusion goes further: By and large, the results of the Bar Examinations through the decades have demonstrated that good performance in the examinations reflect the quality of the legal education in the various law schools. For if, as the thesis goes, it is true that law schools all over the country have concentrated all their efforts at legal education towards preparing their law students to hurdle the Bar Examinations, then the statistics should be the opposite of what we have. Law graduates all over the country should be passing the Bar Examinations in greater numbers and at higher percentages, simply because they are the product of single-minded efforts by their law schools to prepare them to take and pass the examinations.

VII. THE CHED FINDINGS AND RECOMMENDATIONS

When the author belatedly obtained a copy of the CHED Report on the Assessment/Visitation Activity Conducted on the Law Schools,⁹⁹ he was elated to find that essentially the findings in the Report do not support the Bar-Examinations-as-the-culprit theory.

The Report findings of the *main problems besetting law schools* had nothing to do with any inordinate attention to the Bar Examinations, but inadequacy of their internal systems, thus:

99. Much of the Report is devoted to an "assessment report" for each of the 104 law schools visited by the Technical Panel Committee throughout the country covering the following topics: administrative profile, faculty, curriculum, Instructional Standards, Physical Facilities, Admission and Retention Policies.

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- (a) Lack of faculty competent to teach the courses and their lack of training on how to properly convey knowledge in the field of law they are handling;
- (b) No standard syllabus as per requirement of DECS Order No. 27, s. 1989;
- (c) Law students' incompetence in the written and spoken language, and the absence of law aptitude examination;
- (d) That majority of law students are working students with barely enough time to read the lessons and cases assigned to them, and some of whom enroll merely for purpose of promotion in work;
- (e) Students' feeling of being shortchanged when their professors are unable to teach them law subjects properly;
- (f) Lack of qualitative assessment of the Law Program being implemented in the law schools for a long period of time to obtain an in-depth analysis of the reasons for the low passing percentage in the Bar Examination by law graduates;
- (g) Insufficient library facilities in most law schools;
- (h) Indifference of school administrators and their non-responsive attitudes to the requirements of their law schools;
- (i) Part-time service of majority of law school Deans, no hands-on policy and leave the running of the law school to their administrative staff and not even to a College Secretary or Faculty member; and
- (j) Lack of funding resources to undertake development projects for the law school and in most cases, running a law school is a losing business enterprise.

The Report also considered the factors of what constitute "good" law schools:

(a) *Bar Performance* - Those that have been consistently performing well in the Bar Examinations remain to be the producers of higher percentages of passing rates and they share similar policies such as:

- Rigid admission/screening process;
- Maintenance of high level of academic performance in their law subjects;
- Adoption of a quotient point index to remain in the law school;
- Hiring of deans with pro-active hands-on management style; and

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- Infusion of financial resources to the Law Library to better equip the faculty and students with the mass of legal knowledge, data and materials to enhance their skills and aptitude in the field of laws.

(b) *Full-time Dean* - Law school with a Dean who devotes material time to the genuine needs and problems of his law school, takes time out to inform the school administrators of the status of the law school operations, monitors the performance of faculty and students, attends to the special requirements of the Law Library, ensures the improvement of the school's facilities and other related matters; and

(c) *Financial Resources* - Since the Law School in most cases is being subsidized by the other undergraduate courses with overflowing enrolments, most stay afloat and are operated with no serious efforts to advance or improve the general status of the law school and student performance.

Contrary to the stance of many of the articles treated in this paper, the CHED Report considers consistent good performance in the Bar Examinations as one of the hallmarks of a *good* law school, and in fact reflective of the fact that the components of a good legal education system are being in place.

The Report then makes the following recommendations:

(a) The need for a more *permanent body* of legal experts to oversee, supervise, and monitor the law schools and to improve and develop the Law Curriculum/Law Program so as to produce competent, world-class lawyers with a proper sense of ethical values in exercising their profession, i.e., the Legal Education Board;

(b) The need for new Policy Standards on the Law Program that will take into account several major developments in the field of law during the past decade and the trend towards globalization of the practice of profession; and

(c) There must be more purposive and directed action towards the improvement of the following areas:

- Standardized syllabus;
- Faculty accreditation;
- Serious faculty evaluation;
- Generation of funds to develop the law libraries;
- Rationalizing the Open Admission Policy;
- Law Aptitude Test at the National level;
- Rigid standards in Law student performance;

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- Adopting a QPI to maintain academic standing;
- Full-time Dean and College Secretary, Law Librarian;
- Integration of Law Faculty into Faculty Development Program of the University or College; and
- Development of system of accreditation for the Law Faculty.

VIII. LEAVETAKING

What remains unresolved in all the oral and written discussions on Bar reforms, is whether the call for “world standards” for both our legal education system and our Bar Examinations system, is beneficial towards the Philippine situation, where poverty and privation abound.

Dean Magsalin calls for no less than the application of U.S. standards in measuring and ranking Philippine law schools, and the integration of technology into legal education and law practice. The Mendoza Reforms essentially are meant to bring our Bar Examinations system at par with the U.S. practice. If the leading Philippine law schools heed the call to the “road less traveled, of challenge, fortitude and determination, looking to ultimate success and achievement,”¹⁰⁰ then it may lead to greater chasm between the classes in our society. Then we would have the specter of not only the “Big Three” and other successful law schools widening the gap against the greater bulk of the lower ranked schools, but more so “[m]any of the latter schools, their students and graduates, will continue to be the subject of some form of discrimination not only in government but also in the private sector.”¹⁰¹ And, as Dean Magsalin writes, ironically, many of these schools and their graduates are in the provinces and far-flung areas where good lawyers are most needed.¹⁰²

If, as the CHED Report confirms, the operation of law schools is almost always a financially losing operations, then why have not the market forces worked to lessen the number of law schools in the country, and in fact they tend to increase over the years? The answer can only be that there is a *market need*, or perhaps even a *market demand*, for lawyers of even the most meager competence to be responsive and to serve the greater majority of the Filipinos who are poor.

Even at the Ateneo, there is an internal debate that is ongoing: whether the high-quality legal education to which it exposes its students ultimately

100. Magsalin, *supra* note 14, at 55.

101. *Id.* at 50.

102. *Id.*

lead its graduates to work mainly for multinational companies and the cream of Philippine society, where their high-end knowledge and skills are best flexed and employed. The march towards globalization and adoption of best-practice standards, which by definition are western standards as it has been debated in the fields of commerce and economics, would also open up the same issues in the area of Bar reforms *vis-à-vis* the ill effects they have on the greater majority of the populace of a poor country like the Philippines.

Fortunately, that is not the main thrust of this paper, and those issues will have to be considered more exhaustively in another study.