CONCEPT PAPER FOR RE-ENGINEERING LEGAL EDUCATION AND THE BAR EXAMINATION: A proposed radical paradigm shift [1]

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RE-ENGINEERING LEGAL EDUCATION AND THE BAR EXAMINATION. At first glance the sub-title of this concept paper seems to be a redundancy. This is resorted to for emphasis. Of course a paradigm shift is always radical, but this presentation would truly rock the very foundations of the system of legal education and the Bar Examination in the Philippines. What is presented is a systems and integrated approach which looks at legal education as a continuum from preparation for the study of law up to the development of a truly creative sector of the law whose intellectual output could influence legislation and jurisprudence. It is a complete turn-around from the traditional concepts of legal education as well as the Bar Examination to something that is revolutionary.

Let us describe Legal Education and the Bar Examination as a lawyer manufacturing model and the Legal Education Summit as a stockholder's meeting which is called for the purpose of addressing perceived or actual inefficiencies in the present manufacturing model for producing lawyers.

I. The present lawyer manufacturing model. Presently, we have a basic process system which produce a two (2) variant product basic model, an intermediate process that produces a single intermediate product model, and an advance process that produces an advance product model.

The raw materials are the law students that are fed into the physical plant facility (the law school), using a process flow (the law curriculum: the J.D. non-thesis program and the J.D. thesis program), operated by production workers (the law professors), and managed by a manager (the law dean). Before it is released to the market, the basic finished product passes through stringent quality control (the Bar Examination conducted by the Judicial Department). The production process is subject to audit supervision by the industry regulator (the Legal Education Board). As with manufacturing, the physical plant (the law school) undergoes regular inspection checks conducted by the auditor/regulator of the production process (the LEB), for compliance with standards set for the physical plant, the intake of raw materials, with the production processes (the curricular offerings), the efficiency of the factory in producing its products (performance in the Bar examination), the qualification of the factory workers (the law professors), the qualification and effectiveness of the factory manager (the law dean), and other aspects of operating the manufacturing process. The finished product (the lawyer) also undergoes regular maintenance (mandatory continuing legal education) conducted by a consumer protection body (the Supreme Court through accredited MCLE providers).

In the intermediate process, the raw material (the law graduate) undergoes a manufacturing process (the law masteral curriculum) operated by the factory workers (the graduate school law professors), managed by a manager (the graduate school of law dean), with minimum audit checks conducted by the auditor/regulator of the production process (the LEB), for compliance with standards set for the physical plant, the intake of raw materials, with the production processes (the curricular offerings). It is the graduate school of law that exercises quality control over the products produced (the graduates). The advanced process undergoes a similar production cycle sequence to produce D.C.Ls., S.J.Ds., etc.

Of course, some would say, and they might have valid reasons for saying, that the above described manufacturing process is not "at fours" with legal education, and practice of law. While this may be so, this writer believes that the processes involved are similar and there are certain concrete benefits that may be derived from the use of the manufacturing model for analysis.

A. Status of the present lawyer manufacturing model. The lawyer manufacturing industry is composed of 125 law schools as of December 31, 2018. [3] Of this number 115 are with government recognition,[4] three (3) have been downgraded from government recognition to permit status) [5] for being deficient in meeting certain standards while seven (7) [6] are in the process of phase-out and closure of their operations because of inefficient operations and failure to produce any good product for a certain number of years (zero passing percentage of their first time Bar takers). Of the seven (7), five (5) are expected to close operations in AY 2019-2020

From April, 1946 up to the present, the industry has produced a total of 73,711 lawyers.[7] The figure includes those who died in the meantime, those who have been disbarred by the Supreme Court, those who have migrated abroad and those who are not in the active practice of law. If we deduct from the total number of 73,711 lawyers, the 20,539 who passed the Bar from 1946 up to 1964 then we have only an estimated 53,712 potential lawyers who are still in the practice of law. This is so because a lawyer who passed the Bar in 1964 and took his oath at the age of 22 years old would already be 77 years old in 2019. Not all of the 53,712 are engaged in practice of law. Some have since died, a great number are in government, others are in commerce and industry, a few have migrated abroad, are disbarred or even in jail or are not practicing for different reasons. Assuming that 25% of the 53,712 lawyers are not engaged in the active practice of law then there are only about 40,284 practicing lawyers to serve 110 million Filipinos or a ratio of 1 lawyer serving 27,306 persons. This distribution is even lopsided if we consider that most of the lawyers are concentrated in the Metro areas such as Metro Manila, Metro Cebu, Metro Davao, Metro Baguio and other populous urban areas. Furthermore, it is observable that the under represented practice areas are in the field of human rights, marginalized people's rights, criminal law and labor law. This is so because not much money is to be made in these practice areas. It is evident that the anectodal belief that there are too many lawyers does not have any factual basis.

1. Stockholders' complaints. For the longest time, the shareholders have always been up in arms demanding changes to improve the efficiency of the manufacturing model. The hackles of stockholders in any manufacturing industry are raised when they find out there are inefficiencies in the manufacturing process, the rejects and wastage reach alarming proportions such that the few good products that are produced are insufficient to serve the market. The lawyer manufacturing industry is quite inefficient in producing lawyers. For the past three (3) years the number of raw materials that reached the second stage of manufacture is discouraging to say the least. In 2016, only 27.47% law students reach their second year; in 2017 only 11.17% and in 2018 only 12.08%. [8] The resulting output is equally discouraging. Of those who are able to withstand the rigors of law school and are able to graduate only about 20% to 30% good product results after a rigorous quality control with a 70% to 80% reject rate. The reject rates has resulted to an estimated absolute number of 44, 912 bar flunkers[9] over the last ten (10) years.

As in manufacturing, concerns are raised what to do with the rejects (bar flunkers). In short how to salvage or rework the rejects so they could be made useful. Of course, there are exceptional lawyer factories that produce more than 39% good product norm, but these are only about 30 [10] out of 102 law schools in the country. (Refer to Table 1) While they may have good percentage of production output, their manufacturing cost (tuition fees) are exceedingly higher than the others making the cost of the product almost prohibitive. Even then, these factories also experience the same fall out rate for the raw materials going into the main production line. In conclusion, it is submitted that these supposed exceptional lawyer factories are not really that efficient because their raw materials wastage is quite high and their cost of production (tuition fees) are quite high.

Concern was likewise raised over the quality of the raw materials, the capacity of the workforce, the general manager, and the design of the process flow. The above concerns have been raised continuously for the last fifty (50) years or even more.

For additional data please refer to the attached Tables 1 up to 6.

2. Measures previously undertaken. The regulator of the industry and the quality controller have not been deaf to the complaints of the stockholders. At one time, the raw material mix was altered to extract the best quality possible (the shift from a two year preparatory law to a four year bachelor's degree)[11] the process flow (the law curriculum) was tweaked with the end in view of determining the proper combination.[12] At another time, the quality standards (the Bar examination subjects)[13] as well as the manner by which the quality standards are implemented (use of the MCQ method and memorandum writing)[14] were thought to be the solutions. Still at another, the industry regulator, the Department of Education, Culture and Sports was replaced by the Legal Education Board.[15] With the perceived low quality of raw materials, the regulator (LEB) decided to impose stringent quality standard for the raw materials (through the PhiLSAT).[16]

The recommendations arrived during previous stockholders' meetings which were called for the purpose of addressing perceived or actual inefficiencies of the present manufacturing model for producing lawyers seem to have failed.

II. A PROPOSED METHOD FOR ANALYSIS. It appears that the current manufacturing model has failed to efficiently produce the single product that it was designed to produce. There is a waste of raw materials because the raw materials that reach the second stage of the manufacturing process result to a production of only 20% to 30% good product. It is for this reason that there is proposed a systems and unified approach in order to determine how the present lawyer manufacturing model may be re-engineered to make it more efficient and for the end product to be able to perform the functions for which it was designed to do.

A system can be defined as a set of interrelated parts that must work together. In the case of legal education and the Bar examination, the organization for legal education and the Bar examination is viewed as a system composed of subsystems (e.g. the law school, the Bar Examination Committee, the Legal Education Board, the Commission on Higher Education) which in turn are composed of lower subsystems such as the preparatory law system, the law proper system, the Bar examination system, and the advance legal education system, etc.. While the approach emphasizes interrelationship among subsystems such interrelationship results to synergy that creates the concept that the whole is greater than the sum of its individual parts. The synergistic result of the systems approach could be illustrated by a simple formula: 1 + 1 = 3. Hence, from a systems point of view, the output and objectives of the organization as a whole take precedence over any one subsystem and should be optimized even if this requires a less-than-optimum result in one or more subsystems.

An efficient analysis of a manufacturing model looks at all aspects using a systems approach. The lawyer manufacturing model is nothing more than the conversion of inputs into outputs using a transformation design implemented through transformation process thereby adding value. The inputs are the students, the transformation design is the curriculum and the manner of implementing the transformation design is a process known as teaching and the output is a law graduate. This output is subject to stringent quality test known as the Bar examination to determine whether the law graduate could be converted and released for public consumption as an attorney at law.

A. Proposed approach to analysis of the problems confronting legal education and the Bar examination. Under the systems approach, the analysis usually starts from a description of the desired product, after which the manufacturing process is determined which includes the raw material and manpower requirements, how the raw material is converted into the finished product, the manner of management, thence the physical plant or the factor is designed, the standard for product quality is set, manner of

compliance with requlatory rules are likewise set and finally how the finished product is maintained for it to continue performing the purpose for which it was designed.

In the case of our subject for the determination of the curriculum, the parameters of the Bar examination (as well as all the other ancillary activities that should result to a lawyer) the description of the characteristics of a lawyer should first be set. The lawyer submits the following as descriptive of a lawyer:

> "A lawyer is an ethical and cultured person who is empowered, after the requisite licensure examination, to give legal advice, prepare legal documents, and appear before courts because he knows the law, how to apply it to given problem situations using the available applicable technology in order to serve the ends of justice whether in the domestic or international milieu."

1. The Pareto principle as a tool for analysis. A concept that can be applied at all levels and every aspect of decision making, both personal and professional is the Pareto principle. The principle makes reference to the concept of the "significant few." Some things (a few) will be very important in achieving an objective or solving a problem, and other things (the many) will not.

There are a lot of factors that impact the quality of legal education and the Bar examination. Using the Pareto principle, this writer believes that the "significant few" involves the preparatory law course, factors that impact the efficient delivery of learning such as the curriculum, the delivery of learning (method of instruction), and the quality control process (the Bar examination).

The Pareto principle is also referred to as a priority recognition analysis.

2. Sensitivity analysis. This method tests how sensitive a given solution is to a change in one or more of the parameters (i.e., the "numbers") taken as givens in a problem. As applied to the analysis of our problem, we could explore how certain changes might affect a solution. For instance, we hold as constant the subjects in the current model curriculum. How would that affect our output, a lawyer who is an ethical and cultured person empowered, after the requisite licensure examination, to know and interpret the law, apply it to given problem situations using the available applicable technology in order to serve the ends of justice whether in the domestic or international milieu ? Would this lawyer who is the output of the current model curriculum be adequately prepared to apply appropriate technology in order to serve the ends of justice? Would this output of the current model law curriculum be able to operate within the international milieu?

3. Simple version of data analytics. Data analytics is the "high fallutin" term used to describe the process of examining data sets in order to draw conclusions about the information they contain. Data analytics can be separated into quantitative data analysis and qualitative data analysis. The former involves analysis of numerical data with quantifiable variables that can be compared or

measured statistically.

The qualitative approach is more interpretative -- it focuses on understanding the content of non-numerical data like text, images, common phrases, and points of view of justices in their decisions, etc. Any type of information, such as why the retention rate of first year law students is low, why the Bar examination passing percentage for first takers is low, etc., can be subjected to data analytics techniques to get insight that can be used to improve things or make certain decisions. It is not strange for a lawyer to practice data analytics without his knowing that he is doing it. When a lawyer prepares for a case, he engages in data analytics because he gathers data (law and jurisprudence) to be able to make a decision.

More advanced types of data analytics include data mining, which involves sorting through large data sets to identify trends, patterns and relation-ships; predictive analytics, which seeks to predict decisions of courts, student behavior, and other future events; and machine learning, an artificial intelligence technique that uses automated algorithms to churn through data sets more quickly than data scientists can do via conventional analytical modeling. Big data analytics applies data mining, predictive analytics and machine learning tools to sets of big data that often contain unstructured and semi-structured data. Text mining provides a means of analyzing documents, etc., and other text-based content[17-a] such as decisions, opinions, etc.

This writer employed a very simple version of data analytics using the limited informational data that is available.

After applying the above methods as well as other quantitative and qualitative methods of analysis, the writer arrived at the conclusion that the only way to change the system is through a radical paradigm shift. Of course, this writer is the first to admit that he was not able to make an intensive analysis because of the limited period of time. It is possible that a more intensive study could result to a conclusion entirely different from his proposed radical paradigm shift.

III. THE PROPOSED RADICAL PARADIGM SHIFT. Thus, after such analysis, it is proposed that law education should be converted from have a basic process system which produces a two (2) variant product basic model, an intermediate process that produces a single intermediate product model, and an advance process that also produces an advance product model into a continuous and unified three process system that produces two basic product models, an intermediate model and two advanced models.

The proposed manufacturing model is a basic process flow that prepares the raw material and converts the same into a basic product model (preparatory law) and a basic product model with enhancements (counsellor at law); an intermediate process that produces an intermediate product model (Juris Doctor/attorney-at-law), and an advanced process that produces two product models: One with two variants, the first variant a

specialization through a master of laws, and a non-Bar program for professionals, and the second variant, a doctoral program.

A. THE MATERIALS PREPARATION PROCESS that produces the basic product model (the paralegal, legal researcher, court employee, etc.). A preparatory law course is needed that should develop an aptitude for law studies, develop the student as a whole and ethical human being, prepare him for the study of law and introduce him to the basic skills of a lawyer such as legal processes, legislative operations, court operations, people skills, etc. The Civil Service Commission could create a position classification for Legal Assistant with the corresponding civil service examination to qualify the graduate for administrative positions in the judiciary lower than a Clerk of Court position (which requires the civil service eligibility of being a lawyer), such as researcher, docket clerk, court translator, process server, bailiff, sheriff, etc. or as Legal Aide in national and local legislative bodies. A graduate could also be engaged in the private sector as a Legal Assistant, researcher, paralegal, etc. The graduate could also qualify as a mediator or voluntary arbitrator.

There is no separate specific preparation for the raw materials (students entering law school). The Rules of Court merely provides that,

> "*Pre-Law* - No applicant for admission to the bar examination shall be admitted unless he presents a certificate that he has satisfied the Secretary of Education that, before he began the study of law, he had pursued and satisfactorily completed in an authorized and recognized university or college, requiring for admission thereto the completion of a four-year high school course, the course of study prescribed therein for a bachelor's degree in arts or sciences with any of the following subjects as major or field of concentration: political science, logic, English, Spanish, history and economics." (Rule 138, Sec. 6)

That the Legal Education Board has adopted Rule 138, Sec. 6 evident on the inclusion of a provision on Board Prerequisites for Admission to the Basic Law Course, as follows:

> "The Board Shall apply Section 6 of Rule 138 in the following wise: An applicant for admission to the Ll.B. or J.D. program of studies must be a graduate of a bachelor's degree and must have earned at least eighteen (18) units in English, six (6) units in Mathematics, and eighteen (18) units of social science subjects." (LEB Memorandum Order No. 1, Series of 2011, Sec. 16)

This requirement was culled from the required academic units imposed by the then Bureau of Private Schools of the Department of Education, Culture and Sports (DECS):

> "Effective the school year 1961-62, any holder of a four-year Bachelor of Science or Arts degree may be admitted to the regular law course provided he has earned at least 12 units in English, 24 units in Spanish, 6 units in Mathematics, and 18 units in Social

Science. (History, Political Science, Economics, Philosophy)" (Implementing Circular No. 4, Series of 1961)

Other than the requirement of completion of 42 units of English, Mathematics, and Social Sciences, the Legal Education Board no longer requires the issuance of the Certificate of Eligibility into the Law Course, also known as C1, which was previously required by the Bureau of Higher Education of the Department of Education, pursuant to DECS Order No. 27, Series of 1989. This is because the requirement is satisfied upon admission to law studies:

> "For purposes of the present Memorandum Order, the above quoted rule on the requirement of a certification of satisfaction shall be deemed fulfilled upon admission of the student by the Dean of a law, complying with all that may hereunder be provided as well as those set forth in the Rules of Court." (Paragraph 2, Section 15, LEB Memorandum Order No. 1, Series of 2011)

1. A well-crafted preparatory law curriculum could result in the elimination of the PhiLSAT. The regulator (LEB) added a requirement for admission to law school, the Philippine Law School Admission Test (PhiLSAT). The avowed purpose of PhiLSAT and similar tests is to determine whether a person entering law school has the aptitude for law studies. Of course, the Rules of Court and the PhiLSAT requirements are merely the minimum requirements and law schools are not prohibited from adding their own institutional requirements for admission to the school of law. While it is true that administration of a law school admission test has found universal application in other jurisdictions, this writer believes that such a test and other similar tests have resulted to waste of money, time and resources. The reason is that the tests merely tries to determine whether a person has an aptitude for law studies and does not actually prepare a person for law studies.

It is suggested that the PhiLSAT or any aptitude test for the study of law should be dispensed with and replaced with a four (4) year preparatory law program that actually develops the aptitude of a person for law studies.

While this writer makes the suggestion for a requirement of the specially designed Pre-Law course for entry into a school of law, he is not in any way proposing the exclusion from entry into law studies of graduates of other disciplines. These other graduates should likewise be qualified to enter the school of law provided they have undergone the legal clinics and other methods of experiential learning with the courts, the prosecutor's offices, police precincts, government offices tasked with giving permits and licenses, etc., that are required for the pre-law course.

2. It appears that the current Pre-Law requirement under the Rules of Court needs to be amended to meet the objectives of the proposed preparatory law program. The main objective of the proposed four (4) year

preparatory law program is to develop an aptitude for law studies. The specific objectives are:

a. To develop the student, using adult education methods, as a whole man steeped in liberal arts (aesthetics: music, painting, literature, general history, general philosophy, mathematics, logic (mathematical and literary), general ethics, psychology, etc.);

1) The aim of a liberal education**.** "The aim of liberal education is human excellence, both private and public (for man is political animal). Its object is the excellence of man as man and man as a citizen. It regards man as an end, not as a means, and it regards the ends of life, and not the means to it. For this reason, it is the education of free men. Other types of education or training treat men as means to some other end, or at the best concerned with the means of life, with earning a living, and not with its ends.'[18]

2) The substance and method of liberal education. "The substance of liberal education appears to consist in the recognition of basic problems, in knowledge of distinctions and interrelations in subject matter, and in the comprehension of ideas.

Liberal education seeks to clarify the basic problems and to understand the way in which the problem bears upon another. It strives for a grasp of the methods by which solutions can be reached and the formulation of standards for testing solutions proposed, The liberally educated man understands, for example, the relation between the problem of the immortality of the soul and the problem of the best form of government; he understands that the one problem cannot be solved by the same method as the other, and that the test that he will have to bring upon solutions proposed differs from one problem to the other."[19]

3) Liberal education and its role in the general study of law. "The liberally educated man has a mind that can operate well in all fields. He may be a specialist in one field. But he can understand anything important that is said in any field and can see and use the light that it sheds on his own. The liberally educated man is at home in the world of ideas and in the world of practical affairs, too, because he understands the relation of the two."[20]

In the practice of law, a lawyer may be advocating or defending cases involving the push and pull of rights and obligations involving business organizations such as corporations, etc., the practice of the other professions such as engineering, medicine, accounting., etc., and other similar controversies involving diverse fields of human activity. It is thus imperative that a lawyer must first of all be a liberally educated man who is aware of the interrelationships between diverse subjects.

b. To develop the general skills that a lawyer needs in the practice of his profession (appropriate methods of conflict resolution, written and oral communication skills (English and one regional dialect), the general parameters of practice of law, gender sensitivity, etc.), the use of technology, etc.

The Lawyer Core Skills and Values that should be developed during the preparatory law course may include the following:

"1) **Problem Solving Abilities**- Being a problem solver is one of the root skills of any attorney. People hire lawyers because they either have a problem, or are trying to avoid one. Possessing excellent problem solving skills allows the lawyer to find solutions even when none are immediately apparent.

Not all problems are the same. Problem solving goes beyond good ideas that have worked in the past; it is a skill that allows an attorney to sometimes think creatively, finding solutions that are tailored to meet a client's particular needs.

2) **Symptomatic Reading**- Attorneys will have to read a great deal of material when they take on a client. It may be court documents, witness testimony, contracts, case law, or a myriad of other text. It is easy for anyone to skim over the information and take it at face value. Unfortunately this can prove detrimental to a client.

It takes time to read critically with a deal of skepticism. It is this skill that allows the attorney to read case material symptomatically (critically). It safeguards the client from the repercussions from text that may have been written with things slanted with bias, implied statements, or hidden agendas.

3) **Writing Skills**- Having the ability to write well lays a solid foundation for all the documents a lawyer must write such as arguments, contracts, and legal letters. Written communication is a primary way that information is distributed and recorded.

Clear, concise writing removes ambiguity, making intentions known. The legal system requires most communication to be in writing and has very strict guidelines for accuracy. If an attorney is unable to communicate well in writing, it may result in misunderstandings at the least, and damage to the client at the worst.

4) **Conversation/ Articulation Abilities**- Just as writing skills are important, so too are verbal skills. An attorney will find it necessary to shift gears in their verbal communication style. One day, they may need to speak in an authoritative manner with persuasive speech during an important trial. The next day a lawyer may need to meet with a grieving widow requiring sympathetic conversation in reassuring tones. Conversation skills are more than

just the ability to say the right words. The words also need to be said in the right manner.

5) General Investigation/Research Skills- Attorneys have to spend hours investigating and researching information for clients. Attorneys must be able to know how to perform research with speed and accuracy, and confidence in the authority of the source.

If they don't know where to look for the right kind of information, their research may be flawed and inaccurate. If an attorney can't investigate quickly, they may get bogged down and unnecessarily waste a lot of time.

They also must be able to investigate and interview witnesses or other principals in a case. Research may require the ability to get past gatekeepers and gaining access to important sources of information.

6) Organization / Management Skills- The legal system in the *Philippines* has grown more complex in the last century. A commercial land purchase, for instance that at one time may have been completed on a handshake, now may contain hundreds of pages of documents distributed over time; each one representing stages in the purchase process. Keeping track of all the paperwork demands good organizational skills.

The attorney will also need to possess good time management skills. They will need to stay aware of deadlines, meeting schedules, court dates, and travel itinerary. Even simple cases will require some level of calendared items. Most attorneys will have to balance several of cases at once. This requires a high level of time management and organizational skills."[21]

c. To develop specific basic lawyer skills (introduction to law and procedure, organization and jurisdiction of courts, administrative processes, schools of jurisprudence, legal research, legal history, basic legal forms, briefing a case, Code of Professional Responsibility, etc.).

The program should include legal clinics and other methods of experiential learning with the courts, the prosecutor's offices, police precincts, government offices tasked with giving permits and licenses, national or local legislative bodies, etc.

After finishing the four (4) year program the student should be able:

1. To determine whether he would like to pursue further legal studies;
2. To immediately be able to relate the legal knowledge he acquired in preparatory law to the further study of law.
3. To have the necessary tools to participate as part of the support system in the administration of justice (short of practicing law): he

could act as a paralegal, legal aid, legal researcher, mediator, voluntary arbitrator, etc., or as a Legal Aide in national and local legislative bodies.

The Civil Service Commission (CSC) could create a specific job level for the type of skills required by courts (other than those constituting practice of law), or national and local legislative bodies, and conduct an examination for this. Bar flunkers could qualify to take this examination.

1. THE PRE-LAW COURSE CURRICULUM. A panel composed of multi-disciplinary experts in curriculum development should be constituted to devise a pre-law curriculum that meets the main objective of the proposed four (4) year preparatory law program which is to develop an aptitude for law studies. The specific objectives of the program should likewise be addressed by the pre-law curriculum.

2. THE METHOD OF INSTRUCTION IN THE PREPARATORY LAW PROGRAM. It is proposed that at the pre-law level, the method of instruction should be the same as that in the school of law proper. This is usually the Socratic method and the Langdell case method. The pre-law student should also be exposed to legal clinics and other methods of experiential learning.

3. THE PREPARATORY LAW ADMINISTRATION. The preparatory law program should be under the School of Law administered by the Dean. It should not be under any other department because the law program is deemed to include the preparatory law program. This is under the theory that law education is a continuum from pre-law to the completion of studies that would qualify a person to take the Bar examination and be admitted to the practice of law. It likewise extends to all studies that are directly related to the law such as graduate education in law, and the provision of law studies for those who do not intend to practice law.

B. THE BASIC PROCESS that produces the basic product model with enhancements (counsellor-at-law). A two (2) year law proper curriculum with concentration on Human Rights, marginalized people's rights, criminal law, labor law and the procedures attendant to the actions brought in relation to the above subjects. This should prepare the student for the general practice of law in the above subjects.

The requirements for entry to the school of law should include the proposed pre-law course or its equivalent, and such other reasonable requirements as the law school may impose.

1. THE LAW CURRICULUM FOR THE FIRST TWO YEARS LAW PROPER. The process to be undertaken should include enhancements to the basic product model. There is a marked need for the enhanced model if we consider that the areas where the marginalized sectors of society are generally under represented are human rights practice, criminal law practice, labor law

practice, securing basic permits and licenses, etc. Thus, the first year subjects should cover detailed discussion of the laws and procedures attendant to the foregoing subjects, including rules on evidence and procedure, constitutional and statutory rights of the accused, etc. After the first year law proper, the law student could then effectively engage in the student practice of law under Rule 138-A of the Rules of Court with a Level 1 Certification.

During the 2nd year there should be offered and other subjects related to human rights practice, criminal law practice, labor law practice, securing basic permits and licenses, etc.

The proper sequencing of the subjects should be determined by a committee composed of experts in curriculum development with the participation of the stakeholders in legal education.

C. THE INTERMEDIATE PROCESS that produces an intermediate product model (Juris Doctor/attorney-at-law).

Only those who have the intellectual capability, patience and dedication should proceed to the 3rd year and 4th year levels of the law proper studies which should cover the other aspects of the law other than Criminal Law, Human Rights and Labor Law. This program should prepare the student for the general practice of law for all areas of the law such as civil law, commercial law, political law, taxation, etc.

The requirements for entry to the intermediate process should include passing the Bar examination for counsellors-at-law, and such other requirements as the law school may impose.

1. THE LAW CURRICULUM FOR THE 3rd AND 4th YEARS OF LAW PROPER. The general subjects of Civil Law, Commercial Law, Political Law, Taxation, Remedial Law, International Law, Comparative Legal Systems, etc. The 4th year Review Subjects should be eliminated and replaced with other subjects to be determined by a committee of experts in curriculum development with the participation of the stakeholders in legal education.

D. A QUALITY CONTROL STANDARD: A two tier Bar Examination. The first tier is administered to students who have finished the first two years of law to take a Bar Examination which would license them to engage in limited practice law, as counsellors at law, in the areas of Criminal Law, Human Rights and Labor Law before first and second level courts except before Sharia courts, and selected administrative bodies.

The second tier is administered to students who have finished the 3rd and 4th years of law which would license them to engaged general practice law, as attorneys at law, in all areas before all court levels (except before Sharia courts), and all administrative bodies.

1. The Bar Questions. It is proposed that B.M. No. 1161 should be revisited which provides for the nature of the Bar Questions: 40% MCQ and 60%

Essay. However, it is suggested that the 40% MCQ should be a qualification test such that if less than 15% of the 40% is correct then the student is considered failed and not allowed to proceed to the essay test anymore.

2. Regional Bar Examination for the qualificational MCQ Bar examination and Manila site for the essay portion of the Bar examination for both the first tier and second tier Bar examinations. It may be possible to hold the MCQ qualification test in the regions depending upon the number of examinees. There is a large pool of proctors that are available who are experienced in the conduct of MCQ examination type. This is so because the civil examinations as well as the different licensure examinations being conducted by the various regulatory licensing boards of the Professional Regulation Commission are administered on a regional basis.

3. Correction of the answers, the unscorable items. The answers to the Bar questions have always been using the raw score as the basis for grading. This need not be so.

Psychometricians use a concept known as test validity which refers to how well a test measures what it intends to measure.[22] Establishing the validity of a test begins at the test design stage and may extend up to well after test administration.

Unscorable items are those with poor discrimination (i.e., discrimination index of 10 and below) and those that are too easy (i.e., difficulty index of 95 and above) or too difficult (i.e., difficulty index of 10 and below).

The exclusion of unscorable items from the computation of subtest or total scores increases the reliability of the instrument,[23] and theoretically its validity, given that test reliability is a requirement for validity.[24]

Since the subject of tests and measurements is a highly technical subject it is suggested that the Supreme Court engages the services of a licensed psychometrician to give advice on the crafting of questions for the Bar Examination, and the scoring of the answers to ensure the validity of the examination.

E. ADVANCED PROCESS that produces law specialists and experts as well as a pool of non-Bar professionals. A minimum of two years masteral in law program specializing in specific areas of the law is suggested. The completion of this program may be a minimum requirement for admission to professional specialized law societies. The process also produces professionals in other disciplines with a knowledge of the law which they could use in the exercise of their respective professions, short of practicing law.

The process is also intended to produce an advanced degree in law to be referred to as D.C.L., S.J.D. or some other nomenclature.

Entry to the masteral program for specialization should include two years practice of law experience, either on a generalized or particular subject level, and such other reasonable requirements as the law school may impose. Professionals in other disciplines who want training in law could also finish the masteral program but the

program would not qualify them to practice law, but would provide them with enough legal knowledge to apply to the practice of their respective professions. Entry to this type of masteral program would require a basic bachelor's degree and compliance with the school of law's reasonable requirements for entry into the program.

To summarize: It is proposed that there should be a preparatory law course, to remove the PhiLSAT as a requirement for entry into the school of law, to have a basic two year law course covering only human rights, marginalized people's rights, criminal law, labor law and procedures attendant to these subjects, after which the student should be allowed to take a Bar Examination to enable him to have a limited practice of law as a counsellor at law. Thence, if the student is so minded he could continue for another two years to have a generalized knowledge of the other areas of the law. He shall then take another Bar examination to enable him to practice in these other areas and be a full pledged attorney at law. He could specialize in specific areas of the law by enrolling in a masteral program. There should also be a non-Bar masteral program for professionals in the other disciplines who desire an in-depth understanding of the law but without any intention to practice law.

III. ADVANTAGES OF THE PROPOSED PARADIGM SHIFT

A. ADVANTAGES OF THE PREPARATORY LAW

1. Entrants to the Schools of Law would be better prepared for the rigors of law education resulting in lesser drop-outs after the first year law proper.
2. The Preparatory Law graduate would not suffer a culture shock upon entry to the school of law because he/she would have been exposed during the Pre-Law to methods of instruction, manner of conduct of recitation, and the environment in the school of law.
3. There would be no need for a law school qualification test (PhiLSAT) that would merely test the aptitude for law studies. Completion of the pre-law course would develop and enhance the aptitude for law studies.
4. A Level 1 Certified Law Student Practitioner under Rule 138-A, Law Student Practice would be able to perform more efficiently because he is already equipped with basic skills.
5. The deficiencies resulting from the reduction in the bachelor's degree of English subjects, social sciences, Filipino and regional dialects after the K +12 program would be remedied.
6. Law Schools would have additional revenues derived from the Preparatory Law studies.
7. A law school's resources need not be unduly strained considering that the qualifications to teach Pre-Law subjects are not as stringent as those required for those teaching law subjects in the law proper.

8. If the student does not intend or is not able to proceed to law school, he could already be qualified for gainful employment whether in the public or private sector in areas involving the law.

9. There would be created a pool of legal service support services which do not exist at the present.

B. ADVANTAGES OF THE 1st AND 2nd YEARS OF LAW PROPER AND THE FIRST TIER BAR EXAMINATION

1. This program would meet the objectives of some individuals, such as those in the military or police service, who are interested only in the limited practice of law (human rights, criminal law, etc.) or those in the private sector who are interested only in labor laws, etc.

2. The proposal would ease court congestion caused by lack of lawyers.

3. Implementation of the proposal would result to better access to the justice system in geographical areas where there is a paucity of lawyers because there would more Bar passers due to the limited number of Bar subjects.

4. The proposal would address the problem of under representation of the poor, marginalized, deprived, and oppressed sectors of society who do not qualify for representation by the Public Attorney's Office in the areas of criminal and labor law. This is specially true when we consider the delimitation on who could be represented by the PAO.

5. The Supreme Court resolution on speedy trial in criminal cases would require the services of more lawyers.

6. There would be lesser Bar flunkers because of the limited number of Bar subjects and the Bar results may even be released much earlier than the present release.

7. The proposal is economically less burdensome because a person could already engage in limited practice of law after seven (7) years of legal studies (including waiting for the Bar Examination Results) instead of the present system where a person has to wait for a period of about nine (9) years including waiting for the Bar Examination Results before he could practice law.

8. Bar flunkers in previous Bar Examinations may be rehabilitated as they may, subject to certain conditions, be allowed to take the first tier Examination thereby making them useful to society.

9. Legal training would be enhanced if passing the Bar examination for counsellors at law would be a prerequisite for admission to the 3rd year law proper.

C. ADVANTAGES OF THE 3rd AND 4th YEARS OF LAW PROPER AND THE SECOND TIER BAR EXAMINATION

1. There would be more professional subjects to be covered considering that the 4th year review subjects are going to be eliminated.

2. There would be an intensive preparation for the practice of law because more hours are available for Level 2 Certified Law Student Practitioners under Rule 138-A, Law Student Practice which enable them to efficiently perform their functions.

3. The student would have a better perspective about general court procedures because he would already be practicing as a counsellor at law.

4. There may be fewer Bar flunkers because of the limited subjects and the thorough undergraduate law preparation.

IV. SOME OBSERVATIONS ON THE LEGAL EDUCATION BOARD (LEB) AND REP. ACT NO. 7662

A. REGULATION OF LEGAL EDUCATION IS LODGED WITH THE LEGAL EDUCATION BOARD. Historically, the regulation of education, in general, including legal education have been lodged with the Executive Department through the Secretary of Education and not through the Supreme Court. And rightly so because the basic judicial power is the settlement of actual disputes, and under the expanded judicial power the determination of whether there has been grave abuse of discretion.[25] In order to perform its judicial power and for the protection of the public in general, the Constitution has likewise authorized the Supreme Court to promulgate, among others, rules for admission to the practice of law.[26]

In obedience to the constitutional command the Supreme Court promulgated the Rules of Court, Rule 138 which provides specifically:

> "*Additional requirements for other applicants*. — All applicants for admission other than those referred to in the two preceding section shall, before being admitted to the examination, satisfactorily show that they have regularly studied law for four years, and successfully completed all prescribed courses, in a law school or university, officially approved and recognized by the Secretary of Education. The affidavit of the candidate, accompanied by a certificate from the university or school of law, shall be filed as evidence of such facts, and further evidence may be required by the court.
>
> No applicant shall be admitted to the bar examinations unless he has satisfactorily completed the following courses in a law school or university duly recognized by the government: civil law, commercial law, remedial law, criminal law, public and private international law, political law, labor and social legislation, medical jurisprudence, taxation and legal ethics." (Sec. 5)
>
> "*Pre-Law*. — No applicant for admission to the bar examination shall be admitted unless he presents a certificate that he has satisfied the Secretary of Education that, before he began the study of law, he had pursued and satisfactorily completed in an authorized and recognized university or college, requiring for admission thereto the completion of a four-year high school course, the course of study prescribed therein for a bachelor's degree in arts or sciences with any of the following subjects as major or field of concentration: political science, logic, English, Spanish, history and economics." (Sec. 6)

It should be noted that Rule 138 recognizes the primacy of the Executive Department in the matter of legal education except only in the general description of the subjects that should be included in the curriculum and the number of years of study.

Sometime in 1993, the Legislative Department, in the exercise of the prerogative granted to it by the Constitution[27] enacted Rep. Act No. 7662 which created the Legal Education Board to oversee legal education in the country. It could not be said that the act of the Legislative Department in organizing a regulatory body to oversee legal education in the country is an unconstitutional intrusion in the power of the Judicial Department to promulgate rules concerning the admission to the practice of law. We take lessons from In re:Cunanan, 94 Phil. 534 (1954)

> "…. The legislature may and should examine if the existing rules in the admission to the Bar respond to the demands which public interest requires of a Bar endowed with high virtues, culture, training and responsibility. The legislature may, by means of repeal, amendment or supplemental rules, fill up any deficiency that it may find, and the judicial power, which has the inherent responsibility for a good and efficient administration of justice and the supervision of the practice of the legal profession, should consider these reforms as the minimum standards for the elevation of the profession, and see to it that with these reforms the lofty objective that is desired in the exercise of its traditional duty of admitting, suspending, disbarring and reinstating attorneys at law is realized. They are powers which exercised within their proper constitutional limits, are not repugnant, but rather complementary to each other in attaining the establishment of a Bar that would respond to the increasing and exacting necessities of the administration of justice."

There is therefore no dispute that the situs of regulating legal education is lodged with the Legal Education Board (LEB) and to no other.

1. The lack of applicants for vacant positions in the LEB as well as the delay in processing of appointments by the Office of the President has resulted to hold-over of LEB Members with expired term of office.

B. THE POWERS OF LEB ARE NOT DERIVED FROM THE COMMISSION ON HIGHER EDUCATION (CHED) BUT EMANATE FROM REP. ACT No. 7662. This is so because the creation of the Legal Education Board through Republic Act No. 7662 predated the creation of the Commission on Higher Education (CHED).

C. THE CONCEPT OF ACADEMIC FREEDOM IS NOT ABSOLUTE BUT MAY BE SUBJECT TO REASONABLE REGULATION. The LEB was created for the purpose of protecting the public interest through the administration of the legal education system in the Philippines. The conferment on LEB of administrative and supervisory authority over all law schools is reasonably necessary to ensure the highest quality of legal education. The enactment of Republic Act No. 7662, creating LEB was a valid exercise of police power a recognized limitation on academic freedom. There is a valid exercise of police power if the interests of the public generally, as distinguished from those of a particular class, require the interference of the State, and the means employed

are reasonably necessary to the attainment of the object sought to be accomplished and not unduly oppressive upon individuals. [*U.S. v. Toribio*, 15 Phil. 85 (1910)] "Every citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements." [1987 Phil. Constitution, Art. XIV, Sec. 5 (3)]

CONCLUSION:

Reforms in legal education and the Bar Examination should not be cosmetic changes only but should be the result of radical changes in the whole spectrum of legal education and the manner of admission to the practice of law. The writer's submission should be given a serious look and further developed, else legal education and the Bar examination, as well as the delivery of justice and the aegis of the rule of law would remain in its present zombie-like state of the living dead.

A real preparatory law course would prepare students for the study of law, the split law curriculum and the two tier Bar examination would correct the present imbalance of lawyer/client ratio, the advance law courses would develop specialists in the different areas of the law, and an avenue is created for those interested in the law from the non-Bar point of view. Finally, the under represented areas in the practice of law (human rights, marginalized people's rights, criminal law and labor law) would have more opportunities for access to the justice system.

In the discussion of controversial subjects, such as a shift from one manufacturing process to another, what usually comes to mind is the parable of the blind men and the elephant.

"The parable has been used to illustrate a range of truths and fallacies; broadly, the parable implies that one's subjective experience can be true, but that such experience is inherently limited by its failure to account for other truths or a totality of truth. At various times the parable has provided insight into the relativism, opaqueness or inexpressible nature of truth, the behavior of experts in fields of contradicting theories, the need for deeper understanding, and respect for different perspectives on the same object of observation."[28]

"The moral of the parable is that humans have a tendency to claim absolute truth based on their limited, subjective experience as they ignore other people's limited, subjective experiences which may be equally true."[29]

On the other hand, the elephant joke goes:

"Six blind elephants were discussing what men were like. After arguing they decided to find one and determine what it was like by direct experience. The first blind elephant felt the man and declared, 'Men are flat.' After the other blind elephants felt the man on the same place, they agreed" .

The lesson learned from the joke is that, “We have to remember that what we observe is not nature in itself, but nature exposed to our method of questioning.”[30]

The writer hopes that the views he has espoused this afternoon should be taken as simply the views of another blind man or another blind elephant with no intention to supplant but merely supplement the findings and conclusions that may be reached during the various consultations made for this Summit. The above “radical paradigm shift, is likewise put forth bearing in mind the fable of the “Emperor’s new clothes.”

Finally, let us not push David (clad only in sheep’s skin, without a slingshot and a pebble) to confront Goliath.

END NOTES:

1. A paper presented during the July 31, 2019 Legal Education Summit held at the Manila Hotel. The views espoused by this paper do not represent the official position of the LEB but mostly the personal views of the writer. The personal views of the LEB Chairman and some other LEB members are also articulated in the paper.

2. Legal Education Board Member. Lawyer, Certified Public Accountant (CPA), Registered Customs Broker. AB (Econ.), MA (Econ.), LLB, LLM, DCL (C.A.U.). 1st place 1964 Customs Broker Licensure Examination, 4th place 1985 Bar Examination, and 2011 PICPA Hall of Fame Awardee. FORMER: Bar Examiner in Taxation 2011 Bar Examination, Chairman Professional Regulatory Board for CPAs; World Bank Consultant; Consultant for the Philippine Senate, Legal Counsel Senate Blue Ribbon Committee; Consultant for the Philippine Senate during the Estrada Impeachment; Faculty Member: UST Graduate School of Law, and various schools of law; Pre-Bar Reviewer and law professor at various schools of law as well as non-school based review centers, and MCLE Lecturer. Included among the consultants/experts in the Supreme Court 2000 Special Study Group on Bar Examination Reforms; Occupied various positions in manufacturing and logistics operations in various firms such as Plant Operations Manager of the Ford Philippines Ensite Ltd., directing a workforce of almost 800 personnel engaged in the manufacturing and export of stamped parts and sub-assemblies for FORD automobiles.

3. From LEB records.

4. *Ibid.*

5. *Ibid.*

6. *Ibid.*

7. From records of the Office of the Bar Confidant, Supreme Court of the Philippines.

8. From LEB records.

9. The number may not be accurate because the writer merely added the number of flunkers from 2009 to 2018. It is possible that there may be double counting as the same persons who flunked in a particular year are the same who failed in another year or years.

10. Raw data from Office of the Bar Confidant, Supreme Court as summarized by LEB. Please refer to attached Table 1.

11. LEBMO No. 1, series of 2011l Sec. 55

12. 1964 Rules of Court

13. B.M. No. 1161.

14. *Ibid.*

15. Rep. Act No. 7662

16. LEBMO No. 7, series of 2017

17 https://searchdatamanagement.techtarget.com/definition/data-analytics

18. Hutchins, Robert M., The Great Conversation, The Substance of a Liberal Education, Great Books of the Western World, Encyclopaedia Britannica, Inc., 1971, p. 3)

19. *Ibid.*

20. *Ibid.*, p.4

21. https://www.lawyeredu.org/lawyer-skills.html

22. Shultz, K. & Whitney, D. (2005). Measurement theory in action: Case studies and exercises, California Sage Publications, Inc.

23. McMillan, J.H. (2001). Essential concepts for teachers and administrators, California: Corwin Press, Inc.

24. Wasserman, J.D., & Bracken, B.A. (2003). Psychometric characteristics of assessment procedures. In J.R. Graham & J.A. Naglieri (eds), Handbook of Psychology: Assessment psychology, Vol. 10, pp. 43-66) Hoboken, NJ, US: John Wiley & Sons, Inc.)

25. paraphrasing the 1987 Philippine Constitution, Art. VIII, Sec. 1, 2nd par.

26. *Ibid.,* Sec. 5 (5)

27. *Ibid.,* Sec. 2

28. Blind men and an elephant, from Wikipedia, https://en.wikipedia.org/wiki/Blind_men_and_an_elephant)

29. *Ibid.*

30. *Ibid.,* citing *Heisenberg, Werner (1958). Physics and philosophy: the revolution in modern science. Harper. p. 58.*

Annexes:

Table 1. Top Schools whose passing % of 1st takers exceeded the national mean

Table 1
TOP SCHOOLS[1] WHOSE PASSING % OF 1ST TAKERS
EXCEEDED THE NATIONAL MEAN[2]
2014-2018

Passing percentage	No of schools
76.11% to 86.37%	7
50.00% to 70.50%	13
39.58% to 48.94%	10
Total	30

Source of Basic Data: Office of the Bar Confidant, Supreme Court
NOTES:
1. The total field is 102 schools. Excluded are closed schools, those with zero passing percentage for the last five years, and those with less than 25 first time takers for the last five years.
2. The five year national passing percentage mean for first time takers is 38.86%.

Table 2. Bottom schools with zero passing percentage for 1st takers

Table 2
BOTTOM SCHOOLS[1] WITH ZERO PASSING
FOR 1st TAKERS
2014-2018

No. of times with zero passing	No. of schools
Four (4)	4
Three (3)	8
Two (2)	14
One (1)	15
Total	41

Source of Basic Data: Office of the Bar Confidant, Supreme Court
NOTES:
1. The total field is 110 schools. Excluded are closed schools and those who had first takers participating for less than four times.

Table 3. Bottom schools with 10% or less including zero passing for 1st takers

Table 3
BOTTOM SCHOOLS[1] WITH 10% OR LESS
INCLUDING ZERO PASSING FOR 1st TAKERS
2014-2018

No. of times with 10% or below passing	No. of schools
Five (5)	1
Four (4)	8
Three (3)	18
Two (2)	25
One (1)	9
Total	61

Source of Basic Data: Office of the Bar Confidant, Supreme Court
NOTES:

1. The total field is 110 schools. Excluded are closed schools and those who had first takers participating for less than four times.

Table 4. Schools' contribution of new lawyers for the period 2014-2018

Table 4
SCHOOLS [1] CONTRIBUTION OF NEW LAWYERS[2]
2014-2018

% Contribution to Total New Lawyers	No. of schools	% of all schools
50.049%	10	8%
67.141%	20	16%
75.454%	28	22%
90.156%	56	45%
100.000%	126	100%

Source of Basic Data: Office of the Bar Confidant, Supreme Court
NOTES:

1. The total field is 126 schools. Included are closed schools who had candidates who passed during the period. Excluded are closed schools and had no candidate who passed during the period, and newly opened schools who had candidates only for one Bar examination.

2. Includes both 1st takers and repeaters who passed during the period.

Table 5. Schools' contribution of new lawyers arranged by region for the period 2009-2018

Table 5
SCHOOLS [1] CONTRIBUTION OF NEW LAWYERS[2]
ARRANGED BY REGION
2009-2018

	Total No. of New Lawyers	% Contribution to Total New Lawyers	No. of schools	Location of schools
	10,040	60.493%	28	NCR
	2,378	14.328%	48	Rest of Luzon
	2,571	15.491%	29	Visayas
	1,594	9.604	22	Mindanao
Total	16,583		127	

Source of Basic Data: Office of the Bar Confidant, Supreme Court
NOTES:
1. The total field is 130 schools. Included are closed schools who had candidates who passed during the period. Excluded are closed schools and had no candidate who passed during the period, and newly opened schools who had candidates only for one Bar examination. There are three schools that were already closed whose geographical location could not be determined.
2. Includes both 1st takers and repeaters who passed during the period.

Table 6. Schools percentage of passing arranged by region for the period 2009-2018

Table 6
SCHOOLS'[1] PERCENTAGE OF PASSING[2]
ARRANGED BY REGION
2009-2018

	Total No. Of Takers	Total No. of Passers	% of Passing	No. of schools	Location of schools
	28,083	10,040	35.75%	28	NCR
	12,475	2,378	19.06%	48	Rest of Luzon
	11,183	2,571	22.99%	29	Visayas
	9,013	1,594	17.69%	22	Mindanao
Total	60,754	16,583		127	

Source of Basic Data: Office of the Bar Confidant, Supreme Court

NOTES:

1. The total field is 130 schools. Included are closed schools who had candidates who passed during the period. Excluded are closed schools and had no candidate who passed during the period, and newly opened schools who had candidates only for one Bar examination. There are three schools that were already closed whose geographical location could not be determined. The ten (10) year passing mean is 27.12%.

2. Includes both 1st takers and repeaters who passed during the period