

**Blue Ribbon Commission on the Future of the Bar Exam**

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Re: Public Comment for Next Hearing and to Commemorate  
Martin Luther King, Jr. Birthday

To The Commission:

Per prior public comments, the undersigned submits this BRC should recommend adoption of the UBE, reciprocal licensing for all sister-state attorneys with three years of experience regardless of office location and prior experience with the California bar exam, and further provide an alternative pathway for licensing after graduation through an internship program.

In that regard and to commemorate Martin Luther King, Jr.'s birthday and his dream that people should be judged based on the content of their character, please take notice of the following:

1. That Oregon State Bar is taking steps toward eliminating the bar exam by providing an internship alternative according to the attached article written by Joe Patrice for the *Above the Law*.

2. Dr. Peter M. Vishton is an Associate Professor of Psychology at William & Mary. He received his Ph.D. in Psychology and Cognitive Science from Cornell University in 1996. He has published extensively and has provided published lectures, guidebooks, and books for The Teaching Company. In *Outsmart Yourself Brain-Based Strategies to a Better You* (The Teaching Company 2016) Chapter 8, Dr. Vishton provides insights on what cognitive scientists have concluded. He concludes, “[f]or most people, their level of achievement and expertise in a domain is not predicted by any innate characteristic—physical or mental. It is, however, predicted by their level of experience and training.... In the entire multi-billion-dollar industry that is aptitude testing, the correlations that are found between talent and performance are consistently very small. The SAT predicts about nine percent of the variance in freshman grades. That is, if you know a student’s SAT score, you will be about nine percent more accurate at predicting performance than if you just took a guess. See Guidebook, *Id.* at 57 He references the well-known 10,000 rule.

“In general, across a remarkably wide range of endeavors, expertise in some domain is achieved with 10,000 hours of practice. If you have practiced something for 1,000 hours, you are likely to be proficient but not an expert. Something about that 10,000-hour number seems to represent a level of extraordinary achievement of mastery. *Id.* at 58.

Hence, what distinguishes experts from novices (those new to a profession) is not innate talent, IQ or aptitude but experience. As you practice, the task becomes automatic and will switch from broad activation and conscious control to more *focused* activation and unconscious control. The brains of experts are more efficient. They work with greater ease. “The difference between experts and novices is not talent but practice—that is, the difference is quantitative, not qualitative.” *Ibid.* A task, such as writing a legal memo or researching a legal question, which in the beginning may often be difficult for a novice becomes automatic and sub-conscious with 10,000 hours of experience.

Ten thousand hours is equivalent to less than three years of practice (2,000 x 3 plus three years of law school.)

Dr. Vishton is not an outlier. Neuroscientists have studied the brains of experts during fMRI tests and have verified their conclusions. K. Anders Ericsson, Ed., *The Cambridge Handbook of Expertise and Expert Performance* (Cambridge University Press 2006) is the leading pioneer in the cross-disciplinary field of *expertise* and *expert performance*. Cognitive scientists have concluded that it takes 10,000 hours to develop true expertise in any field, taking the brain this long to assimilate all that

it needs to know to achieve true mastery. Experienced experts surpass novices, those new to a profession, in seven major ways: (a) generating the best solution; (b) pattern recognition; (c) qualitative analysis; (d) self-monitoring skills in terms of their ability and knowing what they do not know; (e) choosing appropriate strategies; (f) seeing and exploiting opportunities; and (g) cognitive effort, meaning they work faster, with less effort, and greater control. *Id.* at 27. True expertise is based on pattern recognition skills that are intuitive and develop with experience, much like an athlete's skill increases from beginner, to novice, to professional.

Cognitive scientists have further concluded major scientific and societal advancements are often the product of cross-pollination between fields. Science has proven diversity increases fitness (more minds at work), innovation (creativity), levels of trust, and robustness in organizations; diversity reduces error because all of us together are smarter than any of us individually; it prevents dominant coalitions from taking over because everyone has the opportunity to participate.<sup>1</sup>

Moreover, the question thus naturally arises how do you test someone who is already an expert, a lawyer licensed with more than 10,000 hours of experience as an attorney? Dr. Norman is one of the experts writing a chapter in the *Cambridge Handbook of Expertise and Expert Performance*. Dr. Norman writes:

“Study after study has shown that it is almost impossible to get judges to agree on scores for essay answers.”

*See* “So What Does Guessing the Right Answer Out of Four Have to Do With Competence Anyway?” *The Bar Examiner*, p. 21 (Nov 2008). The answer to this question is reciprocal sister-state attorney licensing.

The State of California provides reciprocal licensing to many learned professions. Patent lawyers, bankruptcy lawyers, and other specialized experienced lawyers are not any different than cardiologists, neurosurgeons, orthopedic surgeons. If California is going to provide reciprocal licensing for an experienced medical doctor, psychiatrist, or someone with a doctorate in psychology from another state, it should provide reciprocal licensing to someone who holds a doctorate of jurisprudence and has three years of experience. What is good for the goose is good for the gander. A person should be judged by the content of their character as demonstrated by prior experience, not a subjective licensing test on which it is impossible to get subjective question readers to agree on.

3. Consistent with the foregoing, this BRC should also take notice that the University of California and the California State University schools have abandoned standardized licensing protocols, such as the SAT. See attached copies of *Los Angeles Times* articles from November 16, 2021 and December 16, 2021..

Thank you for your consideration and attention.

Respectfully submitted,

/s/ Joseph Robert Giannini  
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