

THE REMARKABLY AMBITIOUS EXPERIMENT: A BRIEF HISTORY OF CUNY SCHOOL OF LAW[†]

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“You can start with a high ideal and compromise it all the way down the line and end up as a run-of-the-mill law school, but that’s what didn’t happen,” said Dave Fields, an associate dean. “We didn’t abandon the population. We didn’t abandon the mission. And we’ve improved the outcome.”

But others, like Dinesh Khosla, one of the school’s original dozen or so faculty members, are less sanguine. In Mr. Khosla’s view, in the school’s early years, professors gave students more individual attention, incorporated more of the students’ experiences into the instruction, and were able to accommodate students’ different paces of learning. “Passing the bar is necessary,” he said. “But if law school preparation is focused on passing the bar, then we lose something.”¹

Created in a wave of idealism

Initially, when CUNY Law was created, it was regarded even in mainstream legal circles as “a remarkably ambitious experiment in legal education” “created in a wave of idealism.” Contrasted with schools that take a largely theoretical approach to the law and tend to prepare students solely for the bar exam, many legal scholars said CUNY Law’s original curriculum “represent[ed] the most ambitious reordering of legal education since the 19th century.”² Even U.S. Supreme Court Chief Justice Warren Burger “commended the school for some of its intended curriculum reforms” and sent a telegram to then-Dean Charles Halpern “praising the school’s ‘new approach.’”³ It’s not altogether surprising, given that mainstream legal educators and law firms have long-recognized the need for schools to center legal education on lawyering and practice-oriented skills. This has been the subject of many law review articles and reports, most notably the MacCrate Report and more recently the Carnegie Report, which continue to cite CUNY Law as exemplifying this effort.⁴

[†] This essay is drawn from and expands upon a number of e-mails sent by the author to the Race & Privilege Working Group student membership committee listserv, which were subsequently compiled and re-published amongst materials for the 2012 Luis DeGraffe Racial & Social Justice Orientation. The author is thankful for numerous friends, colleagues and professors at CUNY Law, without whom many of these insights would surely never have occurred. And special thanks to Andrea Bible (‘14) for editorial assistance.

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¹ Karen W. Arenson, *At CUNY Law, a Bit More Gavel*, N.Y. TIMES, Dec. 11, 2000, at B2.

² E.R. Shipp, *CUNY School at Crossroads as its Students Fail the Bar*, N.Y. TIMES, Dec. 26, 1987, Sec. 1, Pg. 11. For a detailed view of this curriculum, see Charles R. Halpern, *A New Direction in Legal Education: The CUNY Law School at Queens College*, 10 NOVA L.J. 549 (1986). See also John M. Farrago, *The Pedagogy of Community: Trust and Responsibility at CUNY Law School*, 10 NOVA L.J. 465 (1986); Howard Lesnick, *The Integration of Responsibility and Values: Legal Education in an Alternative Consciousness of Lawyering and Law*, 10 NOVA L.J. 633 (1986); Vanessa Merton, *The City University of New York Law School: An Insider’s Report*, 12 NOVA L.J. 45 (1987); Joyce E. McConnell, *A Feminist’s Perspective on Liberal Reform of Legal Education*, 14 HARV. WOMEN’S L.J. 77 (1991).

³ Samuel Weiss, *New Ideas at Queens Law School*, N.Y. TIMES, Sept. 30, 1983 at B3.

⁴ AM. BAR ASS’N SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AN EDUCATIONAL CONTINUUM REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) (often referred to as the MacCrate report); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (often referred to as the Carnegie report).

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More critically, a “vast literature now describes the pitfalls of the case method for teaching analytical skills” that began in the 19th century “and its tendency to foster vicarious learning that benefits only a small and exclusive segment of law students.”⁵ Prof. Shirley Lung writes that

the changing demographic of law student bodies has exposed significant fault lines in legal education. In the last decade and a half, law schools have been enriched by a greater mix of students along lines of race, ethnicity, gender, sexual orientation, and age. Many legal educators observe that the traditional Socratic method privileges white male students to the detriment of women, people of color, and others perceived as ‘non-traditional students.’ These groups of students have not been socialized to succeed in the combative discourse of traditional legal education. While many law students, particularly in the first year, experience the Socratic case method as foreign, exclusion and alienation assume special dimensions for students of color and women.

Prof. Dean Spade, the 2009–10 Haywood Burns Chair in Civil Rights, has pointed out that law school is “like a language immersion program, but one in which the language you are learning is the language of rationalizing white supremacy, settler colonialism, patriarchy and capitalism.”⁶

A 2008 Columbia Law study showed a “disturbing” decline in enrollment of students of color in law schools around the country. A special to the *New York Law Journal* pointed to cultural bias in the LSAT exam and its “exaggerated importance” in the annual *U.S. News & World Report* law school rankings.⁷ The article quotes deans and professors around New York State criticizing this trend, including both CUNY Law School Dean Michelle Anderson and Prof. Victor Goode. Anderson said it would fall to campus-based pipeline programs “to make a dent.” Prof. Goode said that “with law schools establishing ever-increasing and mostly unstated applicant cutoff scores . . . applicants who fail to achieve a score of 150 have virtually no chance of entering any of the state’s 15 law schools.”⁸ And Touro Law Prof. Douglas Scherer said law schools’ dependence on higher LSAT scores “demonstrates crass hypocrisy with regard to the expressed commitment to diversity” and therefore serves merely to “weed out” Black, Latino/a and other students of color. Furthermore, the Columbia study found that although the UGPA and LSAT scores of African-American and Chicano/a applicants increased from 2003 to 2008, 61% of African-American applicants and 46% of Chicano/a applicants were denied acceptance at all of the law schools to which they applied, compared with 34% of white applicants.⁹ The decline in

⁵ Shirley Lung, *The Problem Method: No Simple Solution*, 45 WILLAMETTE L. REV. 723, 726 (2009).

⁶ Dean Spade, *For Those Considering Law School*, 6 UNBOUND 111, 114 (2010).

⁷ Thomas Adcock, *Deans, Professors Ponder Reasons For Decline in Minority Enrollment*, N.Y.L.J. Nov. 18, 2008.

⁸ In 2009, Dean Anderson published an article highlighting CUNY Law’s Pipeline to Justice program: Michelle J. Anderson, *Legal Education Reform, Diversity, and Access to Justice*, 61 RUTGERS L. REV. 1011 (2009). In the article, Anderson writes that the LSAT is “only a weak predictor of performance in law school, and it bears no relationship to achievement in the legal profession, whether measured by public service, income, or career satisfaction.” *Id.* at 1014. “Although they give the illusion of being a neutral measurement for comparison, LSAT scores are deeply entwined with privilege in our society.” *Id.* at 1012.

⁹ Press Release, Columbia Law School, *African-American and Mexican-American Enrollment at U.S. Law Schools Continues to Drop, Study Finds* (Jan. 5, 2010). Additionally, at the time of this writing, the Supreme Court recently heard oral argument in *Fisher v. University of Texas at Austin* (No. 11-345), in which a white UT-Austin applicant, Abigail Fisher, argued UT’s use of race in undergraduate admissions decisions is unconstitutional. As Prof. Goode has noted, “many court watchers believe [this case] will lead to the functional end of affirmative action in higher education.” Victor Goode, *Roberts Court May Have Last Word in Long Debate Over Affirmative Action*, http://colorlines.com/archives/2012/10/will_the_roberts_court_end_affirmative_action.html (last visited Oct. 14, 2012).

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enrollment was also cited by Prof. Pamela Edwards as a “motivating factor” in establishing the Center for Diversity in the Legal Profession at CUNY Law.¹⁰

From its inception, it was explicitly part of CUNY’s mission to: enhance the diversity of the bar, and to recruit students from and train lawyers for historically underserved communities.¹¹ However, it does not appear that mainstream commentators were as interested in this aspect of CUNY’s mission. As liberal race discourse tends to do, CUNY’s “diversity” was praised, but its bar passing rate made it an “academically troubled institution.”¹² CUNY’s bar passing rate in 1986 for 110 students was 43% (66% average statewide) and in 1987 for 114 students it was 25% (73% average statewide). Even though, by Nov. 1988, 70% of 1986 graduates had passed, and 50% of 1987 graduates did, there was already a focus on CUNY’s admissions and academic policies cloaked in purportedly neutral ideas about meritocracy and accountability. For example: “CUNY Law School caters to those who might not have enrolled, or been accepted, elsewhere - which partly accounts for its low bar pass rate.”¹³ Thus, CUNY Law was “at a crossroads.”¹⁴ Although it was “[f]ounded amid high expectations that it would signal a new direction in legal education and, at the same time, bring more women and racial minorities into the profession,” critics warned it had to make “dramatic changes in its curriculum and admissions practices” and “accommodate some elements of tradition.”¹⁵

In her article proposing an “experiential, performance-based alternative to the bar exam,” former Dean of CUNY Law Kristen Booth Glen writes that the bar exam is “both misguided in terms of what it purports to do, and pernicious in its effects.”¹⁶ Some of the pernicious effects on students when law schools focus on the bar exam include: impact on admissions decisions (admission of only students who show a high degree of likelihood they will pass the bar exam on their first try), control over curriculum (students are encouraged to take “electives” according to those subjects tested on the bar, thus giving de facto control over curriculum to the bar examiners), and testing the skills of test-taking, not knowledge of the law (not only cramming and rote memorization but artificial constraints such as the average of 1.8 minutes per question for the 200 multiple choice question Multi-State Bar Exam).¹⁷ “We didn’t think that the bar exam is an appropriate hurdle, because it excludes people who should be lawyers and includes people who should not be lawyers. . . . But it’s there nonetheless.”¹⁸

The response to CUNY’s bar pass rate also played out in a tenure battle. At that time, there were six tenured faculty: five white men, and Dean Haywood Burns. In the summer of 1987, six more

¹⁰ CUNY School of Law, Center for Diversity in the Legal Profession, <http://www.law.cuny.edu/clinics/JusticeInitiatives/CDLP.html> (last visited Oct. 14, 2012).

¹¹ CUNY School of Law, Admissions and Aid, <http://www.law.cuny.edu/admissions.html> (last visited July 29, 2012).

¹² Samuel Weiss, *Albany Selects The 4 Campuses It Plans to Close*, N.Y. TIMES, Dec. 16, 1988, at B2.

¹³ David Margolick, *The Law; At the Bar*, N.Y. TIMES, Feb. 19, 1988, at B7.

¹⁴ E.R. Shipp, *CUNY School at Crossroads*, *supra* note 2.

¹⁵ E.R. Shipp, *CUNY Trustees Seek Dismissal Of 2 Teachers*, N.Y. TIMES, Sept. 30, 1988, at B2.

¹⁶ Kristin Booth Glen, *Thinking Out of the Bar Exam Box: A Proposal to “MacCrate” Entry to the Profession*, 23 PACE L. REV. 343, 349 (2003) (discussing the Public Service Bar Alternative Exam (“PSABE”)). *See also* Kristin Booth Glen, *In Defense of PSABE, and Other “Alternative” Thoughts*, 20 GA. ST. U. L. REV. 1029 (2004).

¹⁷ Kristin Booth Glen, *Thinking Out of the Bar Exam Box*, *supra* note 16, at 356-372.

¹⁸ Karen W. Arenson, *At CUNY Law, a Bit More Gavel; Experimental Program Bears Down to Lift Bar Scores*, N.Y. TIMES, Dec. 11, 2000, at B1 (quoting then-Associate Dean for Academic Affairs Mary Lu Bilek).

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faculty (four teachers and two librarians) were evaluated and unanimously recommended for tenure by a joint committee of CUNY Law and Queens College faculty (three members from each).¹⁹ The teachers were Homer LaRue, Vanessa Morton, Rhonda Copelon, Dinesh Khosla, and the librarians were William Mills and Bettie Scott. The bar results came out in Nov. 1987 and shortly after that, then-president of Queens College Shirley Strum Kenny questioned their evaluations on the basis of “teacher effectiveness,” and remanded all 6 back to the joint committee. The law school members of the committee again unanimously voted for all 6, but two Queens College committee members voted against LaRue with 1 abstention (3-2 in all) and 2-1 against Merton (4-2 in all).

Then-CUNY Chancellor Joseph Murphy unilaterally decided LaRue (a labor law specialist and the first Black teacher up for tenure) and Merton (founder of the now-defunct Health in the Workplace clinic which provided representation for injured and disabled workers, and one of two women recommended for tenure) would not be recommended for tenure to the Board of Trustees, and would not be reappointed, in effect terminating them. Both were founding faculty members. A lawsuit was filed in NYS Supreme Court by all but 2 of the 35 faculty (tenured and non-tenured) who “suggested that the ‘real agenda’ of university officials may be to appease ‘influential people within and outside CUNY who have never subscribed to the progressive or innovative goals of this institution.’”²⁰ The court required that LaRue and Merton be reappointed for one year while the tenure issue was resolved, remanding to the joint committee with further instruction on standards, if necessary. The court stated further: “While the Chancellor and the President of Queens College occupy lofty positions in the University hierarchy, they may not proceed in authoritarian fashion.”²¹ The Board of Trustees then violated the court order and dismissed them immediately.²²

Towards a more selective admissions policy

CUNY was given provisional accreditation by the ABA when it opened in 1983, and as the bar passing rate climbed, full accreditation in 1992.²³ But after a one-day site visit and evaluation in 1995, the ABA issued a “sharply critical report” saying CUNY “had failed to deal with its most difficult problems, including admissions, student achievement, grading academic standards, bar passage and placement.”²⁴ Changes were implemented in response, including: moving from a pass-fail grading system with extensive written evaluations to a four-tiered system of honors/satisfactory/credit/fail, reducing the amount of time 1L’s spent in lawyering seminar, and a

¹⁹ The law school, adjacent to Queens College, was not a separate unit within the CUNY structure until 1994.

²⁰ E.R. Shipp, *CUNY Law School Faculty Group Files a Suit on Two Denied Tenure*, N.Y. TIMES, Mar. 18, 1988 at B3.

²¹ *Faculty of City University of New York School at Queens College v. Murphy*, 140 Misc.2d 525, 541 (N.Y. Sup. Ct. 1988) (holding that the Chancellor did not have power to unilaterally deny tenure), *modified* 149 A.D.2d 315 (1st Dep’t 1989).

²² E.R. Shipp, *CUNY Trustees Seek Dismissal*, *supra* note 15. Pursuant to N.Y. Educ. Law § 6212, if a faculty member has served in a teaching position for five successive years and is reappointed for a sixth year, they are accorded tenure. But until that time, a non-tenured teacher, like other probationary government employees, may be discharged or denied reappointment without any reason being given. *Faculty of City University*, 140 Misc.2d at 528.

²³ Dennis Hevesi, *CUNY Law School Gets Vote of Support For Accreditation*, N.Y. TIMES, July 3, 1992, at B4.

²⁴ Karen W. Arenson, *At CUNY Law, a Bit More Gavel*, N.Y. TIMES, Dec. 11, 2000, at B2.

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“more selective admissions policy” “to attract better-qualified students.”²⁵ Two years later the ABA said CUNY Law had made “substantial progress.”

These changes should, perhaps, be situated in the context of broader changes to admissions policies throughout the CUNY system. In 1969, more than 200 Black and Puerto Rican students closed City College by padlocking the gates of the south campus and taking over 17 buildings to force the college to accept more students of color.²⁶ This was the birth of CUNY’s open admissions system. Open admissions began the following year, but in 1976, as the city reeled under the fiscal crisis, tuition was introduced into the CUNY system for the first time and the open admissions policy was limited to only the community colleges in order to cut costs.²⁷ But the 11 senior colleges were able to keep their admissions policies loose enough to “come close to having open admissions.”²⁸

Despite research showing the success of the open admissions policy, especially for people of color, Governor George Pataki, Mayor Rudy Giuliani and the CUNY Board of Trustees began attacking these policies in the mid-1990s.²⁹ In 1996-97, the make-up of the Board of Trustees shifted to a majority of those appointed by Pataki and Giuliani. First, some four-year colleges, such as Baruch College under then-President Matthew Goldstein, began “quietly raising their admissions criteria” after a 1995 change implemented by the Board of Trustees.³⁰ In Mar. 1996, the Board failed to approve a proposal that was “tantamount to ending open admissions.” Several of the trustees and President Goldstein argued that the colleges already had the authority to do so.³¹ Then in May 1996, the Board of Trustees again voted 9-6 on the policy, described at the time as “the most fundamental change in standards since instituting open admissions nearly three decades ago.” Giuliani praised the trustees as “courageous.” Students were able to seek an injunction in NYS Supreme Court on the grounds that the Board adopted the policy in violation of the Open Meetings Law because the meeting room was too small to hold most of the people who wanted to attend, and everyone was removed after the meeting was disrupted by student-protesters.³² The policy was voted on again in Jan. 1997, approved again by a 10-5 margin.³³

²⁵ Ken Myers, *Low Grades From the ABA Spur Unique School to Traditional Path*, NAT’L L.J., May 6, 1996, at 7; Ken Myers, *New Dean Hopes Fund-Raiser Gets CUNY Out of the ‘Bat Cave,’* NAT’L L.J., Nov. 27, 1995, at 13.

²⁶ Karen W. Arenson, *Returning to City College To Revisit a 1969 Struggle*, N.Y. TIMES, Oct. 29, 1999, at B3.

²⁷ Karen W. Arenson, *Top Schools At CUNY Toughen Admissions*, N.Y. TIMES, Feb. 1, 1998, at sec. 1, p. 23. During the fiscal crisis, a “powerful cabal of investment bankers (led by Walter Wriston of Citibank),” refused to refinance New York City’s debt, pushing the city into technical bankruptcy. DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* 45 (2007). New city institutions took over management of the budget, and prioritized paying off bondholders over essential services. *Id.* The effect was to freeze municipal wages, cut back on public employment and social provision (education, public health, public transit) and “to impose user fees,” such as tuition at CUNY. *Id.*

²⁸ Karen W. Arenson, *CUNY To Tighten Admissions Policies at 4-Year Schools*, N.Y. TIMES, May 27, 1998, at A1.

²⁹ Arenson, *Top Schools At CUNY*, *supra* note 27. Karen W. Arenson, *Study Details CUNY Successes From Open-Admissions Policy*, N.Y. TIMES, May 7, 1996, at A1; Karen W. Arenson, *A CUNY Revolutionary Looks Back*, N.Y. TIMES, Mar. 20, 2002, at B9.

³⁰ Karen W. Arenson, *As CUNY Chief Leaves, Trustees Talk of Raising Standards*, N.Y. TIMES, July 20, 1997, at Sec. 1, p. 21.

³¹ Karen W. Arenson, *CUNY Board Fails to Approve Bid to Allow Remedial Cuts*, N.Y. TIMES, Mar. 27, 1998, at B7.

³² Karen W. Arenson, *Judge Halts CUNY Remedial Cutback Efforts*, N.Y. TIMES, Aug. 11, 1998, at B3. CPLR § 5519(a)(1) allows the government to stay, pending appeal, all proceedings to enforce adverse judgment or order (including injunctive relief under Art. 78). In this case, the First Dep’t reversed the automatic stay in about a week. *CUNY Injunction Restored*, N.Y. TIMES, Aug. 18, 1998, at B6.

³³ Karen W. Arenson, *Tougher Standards Are Passed, Again*, N.Y. TIMES, Jan. 26, 1999, at B1.

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Unsurprisingly, enrollment dropped for students of color, with one of the sharpest declines at City College, where Black students made up 40% of the college's undergraduates in 1999, but only 30% in 2006.³⁴

At the same time Giuliani and Pataki were attacking open admissions, they were also attacking welfare recipients. The 1996 federal welfare reform legislation³⁵ expanded welfare-to-work schemes like New York City's, which was already one of the most onerous in the country.³⁶ As a result, thousands of students or would-be students dropped out or did not enroll in CUNY schools in order to comply with the Giuliani administration's onerous "work" requirements. According to a *New York Times* article in 1996, CUNY had "more students on welfare than any other college or university in the state," but within a year, that number dropped 11% from 27,000 to 22,000 of CUNY's 206,500 students.³⁷ "The decline in enrollment is significant, CUNY officials say, because studies show that college gives people on welfare a good chance to get better jobs at higher pay. City officials say that job experience is more important."³⁸

The school has moderated: resistance evaporates over time

In July 1999, the Board of Trustees "anointed" Matthew Goldstein the new Chancellor of CUNY.³⁹ The *New York Times*, highlighting his efforts at making Baruch more selective and cutting remedial classes, called him an "excellent candidate" and "the right leader for CUNY."⁴⁰ After a 50% bar passage rate at the Law School in 2002, changes in admission and academic standing policies were again made, this time at the behest of Chancellor Goldstein who "read the riot act" to then-Dean Glen.⁴¹ The changes included: dismissing 1L's who failed to achieve a 2.0 GPA in their first semester, placing 1L's who achieve between a 2.0 and 2.3 GPA on academic probation, and requiring students after first semester to achieve above a 2.3 GPA, placing those who don't on academic probation for the following semester. In the 2003-04 school year, 48

³⁴ Karen W. Arenson, *CUNY Reports Fewer Blacks At Top Schools*, N.Y. TIMES, Aug. 10, 2006, at B5.

³⁵ Personal Responsibility and Work Opportunity Act, Pub. L. No. 104-193, 100 Stat. 2105 (1996).

³⁶ Stephen Loffredo, *Poverty Law and Community Activism: Notes From a Law School Clinic*, 150 U. PA. L. REV. 173, 187 (2001). "By 1997, New York City had the largest workfare program in the country, with approximately 40,000 welfare recipients consigned to menial workfare positions-sweeping streets, raking leaves, cleaning toilets." *Id.* at 188. Compare Editorial, *Making Workfare Work for Students*, N.Y. TIMES, June 10, 2006, at A16 (describing workfare as "an honorable way out of a system that often encourages endless dependency.")

³⁷ Karen W. Arenson, *Workfare Rules Cause Enrollment to Fall*, CUNY SAYS, N.Y. TIMES, June 1, 1996, at 1.

³⁸ This drop in enrollment prompted the collaboration between the Welfare Rights Initiative at Hunter College and the CUNY Law Economic Justice Project (EJP), formerly the Workfare Advocacy Project, a legal clinic providing representation to CUNY undergraduates at contested welfare hearings to protect their entitlement to benefits. Loffredo, *supra* note 36. Former Dean Kristen Booth Glen, reflecting in 2006, wrote that the "CUNY Board of Trustees is required to approve all courses offered at CUNY institutions, and, at the meeting in which 'Workfare Advocacy' was on the agenda, I was grilled by Giuliani's appointees as to why the Law School should be permitted to 'oppose' the Mayor's policy. Thinking of what Haywood [Burns] would do, I responded that the intent of the course was only to ensure that the law was fairly administered, a result with which I was sure the Mayor himself would agree. The course was approved." Kristin Booth Glen, *To Carry It On: A Decade Of Deaning After Haywood Burns*, 10 N.Y. CITY L. REV. 7, 41 n.162 (2006). Dean Glen's article appeared in a commemoration of Haywood Burns, focusing on the Community Legal Resources Network (CLRN), the Economic Justice Project (EJP), and CUNY Contemplative Urban Lawyering Program (CCULP) as projects that "'carry on' Haywood's hopes and dreams for the Law School." *Id.* at 10. EJP is discussed at 38-45.

³⁹ Karen W. Arenson, *Trustees Anoint CUNY Chief With a Pledge Not to Meddle*, N.Y. TIMES, July 23, 1999, at A1.

⁴⁰ Editorial, *The Right Leader for CUNY*, N.Y. TIMES, July 22, 1999, at A20.

⁴¹ Editorial, *CUNY Before the Bar*, N.Y. Post, Dec. 8, 2002, at 24.

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CUNY Law students were either dismissed or placed on academic probation.⁴² Changes to the admissions policy required that no more than 10 students per year would be admitted with LSAT scores below 145 (the old policy permitted one in four students to score below 145, considering other factors). At the liberal end of the spectrum it was warned that “CUNY Law School, perhaps the last best hope for change in the ossified and jaded world of legal academia, is in trouble,” and at the conservative end: “Let’s face it: Some of the students who get into CUNY Law are not exactly the sharpest blades in the cutlery drawer. . . . The school admits a higher share of poor students, minorities and women than other law schools. But if they can’t pass the bar, what’s the point?”⁴³

After Dean Glen was elected to Manhattan Surrogate’s Court in 2006, Michelle Anderson was selected as Dean of the Law School. The bar passing rate climbed to 55% in 2003 (78% average statewide), 67% in 2004 (77% average statewide), 62% in 2005 (76% statewide average), and 77% in 2006 (79% average statewide). The 2006 passing rate despite a higher cut score on “what is generally regarded as the nation’s toughest bar exam.”⁴⁴ When asked to comment on past bar passing rates as incoming Dean in May 2006, Anderson noted the “substantial changes put into place three years ago by the CUNY Board of Trustees, headed by Chancellor Matthew Goldstein.”⁴⁵ And after the July 2006 score, she said a “combination of things” had increased the passing rate, including a more selective admissions process (*i.e.*, students with higher LSAT and GPA scores), changes in the academic standing policy, curricular changes emphasizing bar intensive courses, along with increased academic support, counseling and the creation of a bar grant program so students would not have to work while preparing for the bar exam.⁴⁶ The *New York Law Journal* noted that “[f]aculty resistance to changes wrought by Judge Glen seems to have evaporated over time, particularly now with a new dean in place.” “The school has moderated, said Professor Penelope Andrews, who said improving bar exam performance was a

⁴² David Andreatta, *CUNY Law’s Better Bar Tab*, N.Y. Post, Nov. 29, 2004, at 22; Carl Campanile, *CUNY to Raise the Bar for Law*, N.Y. Post, Feb. 17, 2003 at 4.

⁴³ Margolick, *supra* note 13; Editorial, *CUNY Before the Bar*, *supra* note 41. See also Editorial, *CUNY Law – Again*, N.Y. POST, Jan. 9, 2012, at 22 (“one of the more dubious components of the City University system”); Editorial, *This School We Don’t Need*, N.Y. POST, May 3, 2003, at 14 (“it’s pretty much a law school for those who don’t stand a chance of being admitted anywhere else”), Editorial, *CUNY Law’s Last Chance?* N.Y. POST, Feb. 19, 2003, at 24 (“Sure, the school gives a chance to students who wouldn’t be given one elsewhere – but to what end, if they can’t pass the bar?”), Editorial, *Close CUNY Law School*, N.Y. POST, Jan. 19, 1999, at 28 (“So here’s an idea: Close CUNY Law School. And throw away the key. . . . Let’s face it: the school has a rotten reputation. Which it richly deserves.”), and Alex Abrams, *The Case Against CUNY Law*, N.Y. DAILY NEWS, June 11, 1996, at 39 (“a disappointing 13-year experiment”).

⁴⁴ The New York Board of Law Examiners (BOLE) raised the “cut score” in 2005 to 665 out of 1000. The deans of the 15 NYS law schools and all of the bar associations opposed the change. The Court of Appeals (which appoints the five-member BOLE) asked for an impact study and declared a moratorium on further increases (another 5 points were going to be added in 2006, and another 5 in 2007). Thomas Adcock, *Higher Bar Exam Requirement Affects Law School Pass Rates*, N.Y.L.J., Jan. 13, 2006, at 43. The study found that raising the cut score would “have a blunt and disparate impact” on students of color. John Caher, *Study: Higher Bar Exam Pass Score Would Hurt Minorities*, Nov. 20, 2006, at 21. And then in Jan. 2007, the Board announced it would hold off on further increases in light of the study. *News In Brief: Bar Exam Board Holds Pass Score at 665*, N.Y.L.J., Jan. 11, 2007, at 29.

⁴⁵ Thomas Adcock, *New dean faces challenges in boosting CUNY’s image*, N.Y.L.J., May 1, 2006, at 44 (noting that Dean Anderson was selected ahead of two “politically connected New Yorkers,” Margarita Rosa (Executive Director of Grand Street Settlement) and Catherine Abate (a former New York State Senator)).

⁴⁶ Thomas Adcock, *Majority of Law Schools Enjoy Increase in Bar Exam Pass Rate*, N.Y.L.J., Dec. 15, 2006, at 29.

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strong priority. I have a sense that we've grown up somewhat. We have to get [bar exam scores] up before anything else. We're dealing with it."⁴⁷

CUNY Law's bar passing rate continued to climb – 83% in 2007 (88% average statewide), 83% in 2008 (91% average statewide), 80% in 2009 (88% average statewide), 73% in 2010 (86% average statewide). After it dropped three points to 70% in 2010 (78% average statewide), Dean Anderson called it a “disappointing and unexpected result” but assured students that the faculty and administration would develop a “strong plan that will support all of our students.”⁴⁸ Three days later, then-Associate Dean Andrews wrote to the student body “to follow up on what was likely a distressing email about our bar passage rate” announcing a new round of punitive curricular changes.⁴⁹ This response was criticized in a unanimous Student Government resolution as the “product of a hasty decision making process that lacked sufficient time for consideration by the Faculty and was devoid of Student input.”⁵⁰ Responding to the resolution, Dean Anderson wrote that the administration and faculty “would not have adopted the new policy if we did not believe that its benefit to this year's graduating class was markedly higher.”⁵¹

But the bar passing rate dropped again in 2011 to 67% (86% statewide average). In response Dean Anderson pledged that the faculty would “deliberate carefully about how to better prepare our students for success on the Bar” and acknowledged that student “perspectives and ideas matter as well. Therefore, I would very much like to hear your thoughts on November 17 during the Student Forum.”⁵² During the Forum, she indicated that going forward the administration and faculty would provide students with a clear, transparent process for responding to student perspectives and ideas on these issues. The only subsequent meeting with students to solicit input was Dean Anderson's “formal presentation” to Student Government. The student body was notified that it was invited to attend less than ten minutes before it was scheduled to begin.⁵³ At the meeting, Anderson said the faculty “all know that it is time for us to take serious, substantial, individual and collective responsibility for the performance of our students,” but it became clear that the two substantive options being considered were once again either changes to the academic standing policies or changes to the admissions policies. Students attending the meeting were given the opportunity to express support for one or the other of those choices.

Later that same day, the Scholastic Standards and Academic Standing Committee (“ASC”) made a number of punitive academic policy recommendations to the faculty.⁵⁴ And although the

⁴⁷ *City University of New York School of Law, Canvassing the Campuses*, N.Y.L.J., Oct. 2006.

⁴⁸ E-mail from Michelle J. Anderson, Dean and Professor of Law, CUNY School of Law (Nov. 8, 2010 9:32 EST).

⁴⁹ The changes required students with grade point averages below 3.0 to take Mastering Core Doctrine, Bar Essay-Writing, Legal Methods and Individual Skills Development (ISD).

⁵⁰ CUNY School of Law Student Gov't, A Resolution to Amend the Academic Policy (Nov. 30, 2010). The resolution was supported by 21 of the 24 student representatives in attendance, with no student members in opposition.

⁵¹ E-mail from Michelle J. Anderson, Dean and Professor of Law, CUNY School of Law (Dec. 1, 2010 11:11 EST).

⁵² E-mail from Michelle J. Anderson, Dean and Professor of Law, CUNY School of Law (Nov. 4, 2011 16:18 EST).

⁵³ E-mail from Student Gov't, CUNY School of Law (Nov. 29, 2011 12:07 EST).

⁵⁴ This round of changes included: (1) requiring first semester students whose GPA is below 2.3 (up from 2.0) to re-start the following year; (2) moving the academic standing “policy marker” from 2.3 to 2.5 GPA for academic probation and dismissal; (3) Amending the Credit/No Credit (a/k/a “Pass/Fail”) policy to require a C+ or better (up from a D or better); (4) Requiring all students to take four or more bar electives, but exempting students with a 3.3

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meeting was moved to the auditorium “to facilitate the interests in the Open Meeting Law” and “to accommodate strong student interest,” students were neither provided with the recommendations in advance of the full faculty meeting, nor even notified of the meeting until several hours before.⁵⁵ Dean Anderson described this “consultative process” as “deeper and more sustained” than the students’ “main channel for input on policy matters” by way of student representation on faculty committees. She described students as having “strong representation” on the ASC and full faculty committee, despite the fact that student “representation” is limited to 2 out of 8 votes of the ASC, and 3 seats out of more than 40 on the full committee. Furthermore, students on academic probation are not permitted to hold seats in student government according to the school’s governance plan. An open letter was signed by 91 alumni questioning this process and the substantive changes, also pledging not to contribute financial resources or allow CUNY to use their work in promotional materials until student concerns were meaningfully addressed.⁵⁶

The policy changes were officially adopted by the Board of Trustees at CUNY Central on December 11, 2011,⁵⁷ but not without protest. Despite being in the midst of final exams, twelve students demonstrated at the executive meeting and called on the Board to adjourn the matter to hold a public hearing and solicit public comment.⁵⁸ While Dean Anderson sat silently, Special Counsel to Chancellor Goldstein, Dave Fields, silenced the students under threat of being removed from the meeting.⁵⁹ The changes were then rubber-stamped without discussion in less than two minutes, and the student-protestors were promptly escorted out.⁶⁰

From bricks and mortar to glass and concrete

As the law school transitioned in 2012 from being “housed in a former junior high school on Main Street in Flushing”⁶¹ to six floors originally built by Citigroup as a corporate training center located “in the shadow of Citigroup’s 50-story office building,”⁶² many questions about the

cumulative GPA or higher by the end of their third semester; (5) Making Mastering Core Doctrine mandatory for all students, except students with a cumulative 3.3 GPA or higher by the end of their fifth semester.

⁵⁵ E-mail from Michelle J. Anderson, Dean and Professor of Law, CUNY School of Law (Dec. 12, 2011 15:11 EST).

⁵⁶ An Open Letter to Administration and Faculty of the City University of New York School of Law Re: recent changes to academic standing policy (Dec. 2, 2011).

⁵⁷ Board of Trustees, City University of New York, *Notice of the Board of Trustees’ Executive Committee Meeting* (Dec. 8, 2011).

⁵⁸ <http://bambuser.com/v/2206882> (last visited Apr. 28, 2012).

⁵⁹ Fields also serves as a special parliamentarian on the faculty of CUNY Law. He recently bequeathed a \$1 million gift to the law school to be “used equally to support student scholarships and faculty and staff development.” Press Release, CUNY School of Law, *Dave Fields Bequeaths \$1 Million to Law School* (Mar. 27, 2012).

⁶⁰ <http://bambuser.com/v/2206890> (last visited Apr. 28, 2012). By way of comparison, perhaps more time was spent deliberating whether or not to award an honorary degree from Hunter College to world-renowned ballerina Heather Watts. <http://bambuser.com/v/2206886> (last visited Apr. 28, 2012).

⁶¹ Paul Goldberger, *A New Design for a New Kind of Law School*, N.Y. TIMES, June 7, 1987, at Sec. 2, Pg. 39. Although the building dated from 1953 – “a typical New York City Board of Education product . . . - a dreary, institutional structure of tan brick on the outside and endless glazed-tile corridors on the inside, more like a set for a movie about the banality of high school than a place in which to study law” – the school’s architecture was chosen to serve its educational goal. *Id.* “At a time when both architecture and the law are fraught [sic] with arrogance, when a sense of professional hubris seems sometimes to have overtaken an entire generation of both architects and lawyers, this project comes as a breath of fresh air.” *Id.*

⁶² Fred A. Bernstein, *At CUNY Law School, Questions on Costly Move*, N.Y. TIMES, Mar. 22, 2010, at A21. *See also* E-mail from Maureen McCafferty on behalf of Dinesh Khosla, Professor of Law, CUNY School of Law (Jan. 22, 2010 9:37 EST). Citigroup was, of course, “the one enterprise that most energetically and at considerable cost

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school's trajectory remain. Unsurprisingly, Dean Anderson said that the "move to this terrific new location will greatly enhance our ability to carry out our mission to diversify the legal profession" and "make an excellent legal education itself accessible to everyone."⁶³

Situated near more than a dozen subway and bus lines, the new building is certainly more accessible for students and clients of the school's legal clinics.⁶⁴ And although it took more than "four generations of CUNY Law students, staff, and faculty . . . engaged in dialogue, organized forums, written letters, and organized meetings," it does boast CUNY Law's first ever gender-neutral multi-stall bathroom, helping to create a safe and welcoming environment and ensure safe and accessible bathrooms for all.⁶⁵ Yet recently, more than 245 students and alumni signed a petition calling on the administration to make the school fully accessible, pointing out "serious accessibility issues for people with disabilities."⁶⁶

Many students are still drawn to CUNY Law to critically engage with scholars and activists committed to social justice about the impact of legal systems, the possibilities for ameliorating the harms they cause, and mounting resistance to the unjust conditions they sustain. This much is clear from, among other things, the success of the 2012 Luis DeGraffe Racial & Social Justice Orientation (formerly the Third World Orientation).⁶⁷ But as former Prof. John Farrago wrote some time ago about his early CUNY Law experience: "If doctrine just *is*, if it is given and unalterable, then one's relation to it is tremendously limited. There is an important difference, therefore, between teaching the substance of the law as an end in itself ('coverage') and teaching it as a means to the end of responsible lawyering."⁶⁸

pushed for the end of *Glass-Steagall*," the New Deal legislation that separated banking from investing, designed to prevent another Great Depression. ROBERT SCHEER, *THE GREAT AMERICAN STICKUP: HOW REAGAN REPUBLICANS AND CLINTON DEMOCRATS ENRICHED WALL STREET WHILE MUGGING MAIN STREET 49-79* (2010). *See also* Andrew Martin & Gretchen Morgenson, *Can Citigroup Carry Its Own Weight?* N.Y. TIMES, Oct. 31, 2009, at B1 (noting that the federal government has bailed out Citi four times in 80 years from a "near death experience").

⁶³ Press Release, CUNY School of Law, *CUNY Trustees Approve New Queens Home for CUNY Law School* (Sept. 29, 2009). *See also* E-mail from Michelle J. Anderson, Dean and Professor of Law, CUNY School of Law (Dec. 11, 2010 15:42 EST) (responding to a Student Government resolution calling for more transparency about the cost of 2 Court Square); CUNY School of Law Student Gov't, Amended Resolution on Purchase Price of 2 Court Square (Feb. 8, 2010); Michelle J. Anderson, *CUNY School of Law Alumni Newsletter* (Mar. 22, 2010), <http://www3.law.cuny.edu/giving-alumni/newsletter/010/2courtsq/> (responding to Bernstein, *supra*, note 62).

⁶⁴ As compared to the location in Flushing which Charles Halpern, first Dean of CUNY Law, described as remote: "the subway system ran nowhere near it and bus connections were slow and erratic." CHARLES HALPERN, *MAKING WAVES AND RIDING THE CURRENTS: ACTIVISM AND THE PRACTICE OF WISDOM* 154 (2008).

⁶⁵ E-mail from OUTLaws, CUNY School of Law (Aug. 19, 2012 22:15 EST).

⁶⁶ Petition to Make CUNY School of Law Fully Accessible (Oct. 1, 2012). Some of these problems include: "doors that are too heavy, a lack of adequate note takers, bad lighting in the classrooms that do not allow students who need to lip read the ability to do so, lack of remote captioning, access to an elevator on the first floor, and a functional door in the front for all to use." E-mail from Christina Castro ('14), Race & Privilege Working Group, CUNY School of Law (Oct. 1, 2012 21:01 EST).

⁶⁷ *See* Luis DeGraffe Racial & Social Justice Orientation | About, <http://cunyrso.wordpress.com/about/> (last visited Oct. 14, 2012). This "incredible free four-day orientation" examined "race, class, gender, and privilege in law and in law school through different activities, including discussions, workshops, games, readings, and films." The twin goals of the orientation were "to build solidarity and support among students of color and other traditionally underrepresented law students" and "to enhance skills among students of color and white students to challenge oppression in law school and in the legal profession." *Id.*

⁶⁸ John M. Farrago, *supra* note 2, at 473-74.