

# FOR-CREDIT BAR EXAM PREPARATION: A LEGAL WRITING MODEL

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## I. INTRODUCTION: A NEW OPPORTUNITY TO HELP LAW STUDENTS PREPARE FOR THE BAR EXAM

In 2005 the ABA House of Delegates approved a new interpretation of Standard 302 of the Standards for Approval of Law Schools that permits schools to offer a bar exam preparation course for credit.<sup>2</sup> Upon hearing the news, I knew right away that I wanted to create and teach such a course, and that it probably ought to focus on writing.<sup>3</sup>

I was hired by the University of Pittsburgh School of Law in 2002 to teach first-year legal writing and to start a bar exam preparation program.<sup>4</sup> Until spring 2006, the bar preparation program consisted of various voluntary, not-for-credit offerings for third-year students designed to supplement and ease the transition into the standard summer commercial preparation courses. However, the only offerings that attracted large numbers of students were the video lectures on substantive bar subjects presented by the predominant bar exam preparation company in Pennsylvania. A respectable but still small number of students took advantage of opportunities to answer practice MBE questions covering the subjects just taught in a corresponding lecture. However, very few students took advantage of similar opportunities to write answers to practice essay or performance test questions,<sup>5</sup> even though (or perhaps because) I was prepared to provide written feedback or meet individually with students to go over their answers. Moreover, almost all the students who did

write answers to essays or performance tests did so not during scheduled time slots in law school classrooms, which allowed for test-taking conditions, but rather at home, often not even timing themselves.<sup>6</sup>

Worse yet, the students who participated were, in disproportionate numbers, the students who needed the extra help the least—the already academically successful (and therefore typically highly motivated) students. The correlation between law school GPA and bar exam performance is very strong nationally.<sup>7</sup> At Pitt, the statistics reflecting this correlation were and are compelling, with the last several years showing 95 percent or higher passage rates for the top 70 percent of the graduating class, with a gradual drop starting at the bottom 30 percent, and then a precipitous drop at the bottom 10 percent. The dean and I wrote letters every year to the third-year students in the at-risk category strongly urging them to participate in the law school's bar preparation programs. Some did, but just as with the overall student body, most only attended a few substantive lectures and then, despite email pleas and offers of free pizza and drinks, they disappeared from the bar prep radar screen.

Then came the decision from the ABA to allow bar prep courses for credit. Soon thereafter, the law school approved my proposal for a two-credit bar exam preparation course targeted to third-year students. Though under the ABA's standard we could not require students to take the course,<sup>8</sup> we believed the availability of credits would entice students to

enroll and would ensure relatively consistent participation from those that did. In creating the course, however, three fundamental questions had to be addressed: what the course should cover, how to ensure that significant numbers of at-risk students would take it, and how it should be structured. In addition, after teaching the course for the first time, I would want to assess, to the extent possible, how effective it was in increasing the percentage of graduates who were successful on the bar exam. Each of these matters is discussed in turn.

## II. DEPTH OVER BREADTH: CHOOSING TO FOCUS ON THE WRITTEN PORTIONS OF THE BAR EXAMINATION

From its inception, the for-credit course at Pitt was designed to provide at-risk students with instruction and intensive practice in the reading, analysis, outlining, and writing skills critical to effectively answering essay and performance test questions. It was not designed to teach substantive law or the skill of multiple-choice test taking. I chose to focus the course on writing (and, accordingly, name it “Analytical Writing”) for several reasons, some or all of which may be considerations for other law schools: (a) in the jurisdictions where a large majority of our students take the bar exam, and in several other jurisdictions around the country, the written portions of the exam are accorded greater weight in scoring than is the MBE; (b) our recent graduates, and more particularly our recent graduates who failed the bar exam, have performed better on the MBE than on the written portions; and (c) when it comes to bar exam preparation as a subject, my school’s strengths are best suited for helping students prepare for the written portions of the exam, whereas the commercial courses’ strengths are best suited for helping

students digest massive amounts of substantive law and prepare for the MBE.

### A. The Greater Weight Accorded to Written Answers in Many Jurisdictions

Among the 53 United States jurisdictions that administer the MBE,<sup>9</sup> 45 of them require for passing the entire bar examination simply a single passing score that is based on a combination of the score on the MBE and the score on the written questions.<sup>10</sup> Of those 45, 17 accord a greater percentage weight to the score on written questions, and not one accords greater weight to the MBE.<sup>11</sup> In Pennsylvania, the written portions of the bar examination are worth 55 percent of the overall score.<sup>12</sup> In the neighboring states of Ohio and Maryland, where many of Pitt’s students take the bar exam, as well as in Arizona, Arkansas, and Idaho, the written portions are worth two-thirds of the overall score.<sup>13</sup> In California and Montana, the written portions are weighted at 65 percent, and in Maine, they are weighted at just over 63 percent.<sup>14</sup>

### B. Recent Graduates: Performance on MBE vs. Performance on Written Questions<sup>15</sup>

Past years’ statistics on our graduates’ bar exam performance contributed to the decision to focus the bar prep course on writing, and the most recent statistics reinforced that decision. On the July Pennsylvania Bar Examination in 2004, 2005, 2006, and 2007, our graduates’ mean MBE scores surpassed their mean PT/Essay scores,<sup>16</sup> albeit by very slim margins.<sup>17</sup> More importantly, among our graduates who failed the exam in each of those years, the mean MBE score exceeded the mean PT/Essay score by much greater margins.<sup>18</sup> In addition, on those same four exams, our graduates outperformed the mean MBE score for all Pennsylvania takers by a greater margin than they outperformed the mean PT/Essay Examination

score for all takers.<sup>19</sup> While I do not claim to be a statistician, it seems clear enough that, at least through the July 2007 exam, our recent graduates have done better on the MBE than on the more heavily weighted written portions of the exam.

### **C. Relative Strengths of Law Schools and Commercial Bar Preparation Courses**

A logical starting point for most schools when creating a bar exam preparation course is to recognize and take advantage of the relevant strengths of their faculty members. Most law schools that have bar exam preparation programs or courses have tapped academic support specialists<sup>20</sup> or legal writing professors,<sup>21</sup> or have hired new faculty or staff members<sup>22</sup> to handle bar preparation functions. Doctrinal professors are generally less inclined to commit significant time to bar preparation work because of the existing demands of both scholarship and teaching. Moreover, in a bar preparation program, doctrinal professors likely would be called on to do extensive rote lecturing on black letter law, something many of them are not accustomed to or fond of.<sup>23</sup> Accordingly, most law schools are predisposed toward bar exam preparation that focuses more on analysis and writing skills and less on substantive law.<sup>24</sup>

Because nearly all law school graduates take a commercial bar preparation course, it is also important to know the coverage and strengths of the existing commercial courses in the jurisdiction(s) in which most graduates take the exam. Most commercial courses are best known and relied upon for providing comprehensive coverage of multiple areas of substantive law.<sup>25</sup> And in those jurisdictions that administer the MBE, commercial courses usually concentrate on providing instruction in, and extensive practice at, answering MBE questions.

Preparing students for success on a multiple-choice exam like the MBE is not a strength of law professors or law schools. While some professors do administer multiple-choice exams in their law school courses, the multiple-choice exam does not appear to have supplanted or overtaken the essay exam in legal education (as it should not). Moreover, I expect that very few law professors—doctrinal, legal writing, academic support, or otherwise—are expert at the art or technique of effectively preparing for and taking the 200-question MBE. The National Conference of Bar Examiners vigorously protects its copyright on MBE questions from its exams.<sup>26</sup> As a result, the commercial bar preparation companies have to go to significant lengths in an effort to provide their students with practice questions that resemble, in style and substantive coverage, the anticipated MBE questions.<sup>27</sup> It is hard to imagine any law school or law professor taking on that task.

Over the summer, a very large percentage of Pitt's graduates take a standard comprehensive course offered by a commercial bar preparation company. Though such courses cover all components of and subjects tested on the bar exam, most of them focus intensely on the six MBE subjects.<sup>28</sup> Students attend multiple lectures on each of the MBE subjects, answer copious numbers of practice MBE questions, and take at least one simulated MBE.<sup>29</sup>

In contrast, the opportunities in these courses for students to answer practice essay questions and performance tests are relatively minimal. The primary commercial provider in Pennsylvania offers to grade and provide feedback on three practice essays, with deadlines spread throughout the course, and with students writing the essays on their own time.<sup>30</sup> This provider devotes one class to an essay-writing workshop<sup>31</sup> and another to a

performance-test workshop including one in-class practice performance test previously administered in Pennsylvania.<sup>32</sup> Near the end of the course, students take a timed half-day exam that includes four essay questions.<sup>33</sup>

A few days before they were about to take a simulated MBE, and less than one month before the actual exam, I surveyed a number of our May 2007 graduates about how many practice MBE questions and how many full practice essay questions they had taken since graduation.<sup>34</sup> The nearly 100 respondents estimated they had taken, on average, 431 practice MBE questions and 4.2 practice essay questions.<sup>35</sup> These results corroborated what I hear from students every summer when the commercial bar prep course is winding down and the bar exam is growing nearer: they are just beginning to focus their studying on essays and the non-MBE subjects tested on the essays.<sup>36</sup>

To be sure, students should take very large numbers of practice questions in order to prepare adequately for the MBE.<sup>37</sup> Still, in Pennsylvania, the MBE and the written portions of the exam are each administered over six hours,<sup>38</sup> while the written portions receive greater weight in scoring.<sup>39</sup> Without question, those students who take more practice essay and performance test questions will likely have an advantage.

I also asked the students whether they intended to take or had already taken an additional preparation course. Eighty-five percent of the respondents had taken or planned to take a supplemental course that covered only the MBE. In stark contrast, only five percent of the respondents had taken or planned to take a course that covered only the written portions of the exam, in part because there are very few of these courses offered in the local market.

### III. GETTING HELP TO THOSE WHO NEED IT THE MOST

A bar exam preparation course is not going to help increase a law school's bar passage rate unless those in the course include a significant percentage of the students at increased risk of failing the bar exam based on academic performance. Without some type of intervention in the registration process, inertia would likely reign, and just as happened with our not-for-credit programs, the more academically successful students would enroll and too many of the at-risk students would not.

For the sake of offering the course as close in time to the bar exam as possible, I teach it in the spring semester to third-year students. The law school schedules it at a time when there are very few conflicts with other upper-division courses. Prior to the October registration period for spring semester courses, the school reviews two years' worth of grades to identify those third-year students who are at genuine risk of failing the bar exam. Those students who are below a certain GPA threshold (determined by the bar exam performance statistics for the previous year's graduating class)<sup>40</sup> receive a letter under the dean's and my signatures strongly urging them to enroll in the course.<sup>41</sup> During a priority registration period, the registrar enrolls only those students who present the letter. After the priority period passes, the course is opened to all third-year students.

Because of the considerable time involved in reviewing essay answers and meeting multiple times with individual students,<sup>42</sup> for the 2007 course and the upcoming spring 2008 course I set an enrollment cap of 48. Because Pitt has about 250 students in each class, the number of students in the bottom 30 percent of any given class is greater than 48;

however, our yield on the invitation letters has been such that very few, if any, invited students have been unable to take the course if they wanted to. Approximately 40 invited students enrolled in the 2006 course, and subsequently a few non-invited students signed up as well. For the 2007 course, 49 invited students sought to enroll, 48 of whom ended up taking the course.<sup>43</sup>

#### IV. STRUCTURING AND TEACHING THE COURSE

The goal of the two-credit, pass/fail course is to help at-risk students develop techniques for answering written bar exam questions in a time-pressured environment that will increase their chances of receiving a high score on those questions. Though I do provide a general overview of bar exams at the first class, the course is otherwise structured around six practice essay questions and one practice performance test, all drawn from recent actual bar exams.<sup>44</sup>

Most classes are devoted to either administration of a practice question, in a test-taking environment and under a time limit, or review and discussion of a previously administered question and one or more sample answers.<sup>45</sup> Through the repetition of answering multiple practice questions and reviewing their answers, the students discover that written questions on the bar exam, while challenging, are approachable and doable. The hope is that, as a result, the mystique of the bar exam—or at least part of the bar exam—begins to fade, the confidence of the students grows, and their anxiety about bar exam questions decreases.

Of course, for the essay questions, achieving a high score requires knowledge of the tested law. However, we do not review substantive law in the course. To make students aware of the rules of law

tested on the practice essays, I provide them with excised relevant pages from a commercial outline.<sup>46</sup> For the first few essays, in order that students focus more intently on developing techniques for effectively answering essay questions and less on memorizing substantive law, I all but feed them just the rules of law needed to answer the questions, and nothing else. For subsequent essays, in an effort to develop students' issue-spotting skills, the reading assignments are expanded slightly to cover not just the relevant rules of law, but also a small number of other related rules that do not apply to the corresponding essay's fact pattern.<sup>47</sup>

I use the first essay, administered at the second or third class, as a means for introducing students not only to good techniques for *writing* an essay answer, but also to good techniques for reading the question, processing the information, and outlining the answer *before* writing it. To achieve this goal, during the administration of the first essay, students note each step they take leading up to writing their answers (e.g., reading, rereading, outlining) and how much time has elapsed at the end of each of their steps. I also ask students to retain their answers as well as their outlines. Using the first essay and some sample answers to it, I then devote the next two classes to discussing with the students techniques for effectively reading, processing, outlining, and answering the question. In doing so I strongly emphasize that the ultimate goal in developing their techniques must always be *to include in their answers the material that earns points*. In highlighting that goal, I point out what I consider to be the three most important components of a bar exam essay answer: (1) that it answers the question(s) asked, and only the question(s) asked; (2) that it identifies and states the rule(s) of law implicated by the provided facts and question(s) (sometimes known as "issue

spotting"); and (3) that it applies the law in a specific, nonconclusory fashion to the facts, calling explicitly on facts provided by the question and explaining how those facts support the answer given.

Students in the course are exposed to three different means of evaluation and feedback for the assigned essays and the performance test: individual feedback from me, self-evaluation, and peer evaluation. I meet with all students individually to discuss their answers to the second essay, and then again two weeks later to discuss their required rewrites of the second essay and their answers to the third one. These meetings are designed to empower students to effectively evaluate their own answers and, later, those of their peers. Accordingly, although the fourth and fifth essays are discussed in class, students do not receive individual feedback on their answers. Rather, certain classes are devoted to peer review sessions, during which pairs of students exchange answers and then review and discuss each other's work. I provide a check sheet for the students to use as a guide in evaluating a classmate's answer. Following the sixth essay, and again following the performance test, the students do some in-class self-grading exercises, using grading criteria sheets that I provide. I close the semester with one final individual meeting with each student, during which we go over his or her self-graded answers to the sixth essay and the performance test.<sup>48</sup>

## V. REVIEWING STATISTICAL DATA ON THE COURSE'S EFFECTIVENESS

The bottom line with any law school bar exam preparation program is bar passage rate. The students from the inaugural offering of our for-credit bar prep course took the bar exam in July 2006, and fortunately, our pass rates for first-time takers and all takers on that exam did go up by respectable

margins. A year later, on the July 2007 Pennsylvania Bar Examination, our pass rate was almost identical to the rate from 2006.

After the 2006 results came in, I searched for the most simple and straightforward means by which I could get some sense of whether the for-credit course made a difference.<sup>49</sup> Once the results of the various bar exams came in, I did a layperson's statistical analysis. I established the bottom 30 percent of the graduating class as the control group and treated the course as the variable. In other words, I compared the passage rate for the students from the bottom 30 percent of the graduating class who took the course to the passage rate for the students from the bottom 30 percent of the graduating class who did not take the course.<sup>50</sup>

Among July 2006 Pennsylvania Bar Examination takers from the control group, those who took the course passed at a rate of 71 percent (20/28), and those who did not take the course passed at a rate of 53 percent (8/15). When results from all state bar exams taken by our students were included, the percentages moved closer to each other: those from the control group who took the course passed at a rate of 68 percent (26/38), and those who did not passed at a rate of 59 percent (13/22). While these statistics certainly seemed encouraging, they did leave a question as to whether the course was of enough help to students taking an exam other than the Pennsylvania Bar Examination.


However, unlike the results in 2006, the latest results from the July 2007 bar exam revealed a stronger correlation between taking the bar prep course and passing the exam when all state bar exam results were included. Among July 2007 Pennsylvania Bar Examination takers from the control group, those who took the course passed at a rate

of 71.4 percent (20/28), and those who did not take the course passed at a rate of 68.8 percent (11/16). Among takers of all exams from the control group<sup>51</sup> those who took the course passed at a rate of 73.5 percent (25/34), and those who did not pass at a rate of 57.1 percent (12/21). The differing outcomes in 2006 and 2007 suggest to me that whether graduates are taking the Pennsylvania Bar Examination or a different state's exam might not be a meaningful variable.

Looking at only the bottom 10 percent of the graduating class—the students at greatest risk of failing the bar exam—in 2006 there was no statistical indication of a positive impact from the course.<sup>52</sup> In response to this information, the law school decided to change the means by which students are selected for an intensive additional second-year course in legal writing taught by the school's academic support specialist. Recognizing that earlier intervention might help struggling students develop good analysis and writing skills in law school, and therefore perform better on the bar exam as well, the school now encourages those whose first-year grades place them in the bottom 10 percent of the class to enroll in the second-year legal writing course.<sup>53</sup> Fortunately, the bar exam results for 2007 graduates in the bottom 10 percent of the class did reflect a positive correlation between taking the course and passing the exam, though the sampling was necessarily small.<sup>54</sup>

While the bar preparation writing course is certainly a work in progress, student evaluations of it have been very positive. In addition, initial post-exam anecdotal reports from former students suggest that the work they did in the course on reading, outlining, and writing helped them in their commercial bar preparation courses and on the bar exam.<sup>55</sup>

## CONCLUSION

In seeking to supplement the offerings of commercial bar exam preparation courses, law schools are no longer limited to not-for-credit bar preparation programs. As a result, legal education's fledgling teaching specialty of bar exam preparation may have found its wings. Where those wings will take the growing number of law schools that employ bar preparation specialists is still uncertain. One approach, suitable so far for the law school where I teach and arguably suitable for many law schools, is a legal writing model—a model that includes a course focusing on the written portions of the bar exam and leaves MBE preparation to the commercial bar preparation specialists. 

## ENDNOTES

1. The author would like to thank Professors Susan Bakhshian and Michael Madison, and Nancy Bratman for their feedback on earlier drafts of this article, and his research assistant, Nick Cassell, for his supportive empirical research on bar exams and commercial bar exam preparation courses.
2. ABA Standards for the Approval of Law Schools, Interpretation 302-7 (2006-07), available at <http://www.abanet.org/legaled/standards/standards.html> ("If a law school grants academic credit for a bar examination preparation course, such credit may not be counted toward the minimum requirements for graduation established in Standard 304. A law school may not require successful completion of a bar examination preparation course as a condition of graduation.") Previously ABA standard 302(f) provided: "A law school may offer a bar examination course, but may not grant credit for the course or require it as a condition of graduation." John A. Sebert, Memorandum to Deans of ABA Law Schools, et al. 6 (June 8, 2004), <http://www.abanet.org/legaled/standards/standardsdocuments/standardsreview302305commentmemo.doc>.
3. Readers in Washington or Louisiana will find my proposition of focusing on just the written portions of the exam to be unremarkable, as those two jurisdictions administer only written questions on their bar exams. As most readers will know, the bar examination in almost all other states and territories consists of (1) a six-hour, 200-question multiple-choice exam called the Multistate Bar Examination (MBE), which covers Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts, and (2) essay questions requiring applicants to write answers applying legal principles from among a wide array of subjects to a presented fact pattern. Several states also administer one or more performance tests, which are similar to essay questions in that they require written answers applying law to facts, but which are different from essays in that they furnish the applicants with all the needed legal authority (as opposed to requiring

applicants to retrieve it from memory), and call for the writing of a specific document (e.g., a motion for summary judgment, an interoffice memo, a client letter).

4. For several years now, a growing number of law schools have been establishing bar examination preparation programs and courses. See Comm. on Bar Admissions and Lawyer Performance & Richard A. White, *AALS Survey of Law Schools on Programs and Courses Designed to Enhance Bar Examination Performance*, 52 J. LEGAL EDUC. 453, 456 (2002) (noting results of a 2000 survey of law schools showing more than one-third of the responding law schools “sponsor a program, course, or activity designed specifically to improve law graduates’ performance on the bar examination”); see also Denise Riebe, *A Bar Review for Law Schools: Getting Students on Board to Pass Their Bar Exams*, 45 BRANDEIS L.J. 269, 296–97 (2007) (noting results of author’s 2006 survey showing that 80 percent of responding schools offer a bar preparation program).
5. The Pennsylvania Bar Examination, which approximately 70 percent of our graduates take, consists of one performance test, six 45-minute essays, and the MBE. Pennsylvania Board of Law Examiners, *Passing Standards*, [http://www.pabarexam.org/Bar\\_Examination/Passing\\_Standards.htm](http://www.pabarexam.org/Bar_Examination/Passing_Standards.htm) (last visited July 16, 2007). Most of the other states whose exams our students take administer a performance test as well. The only significant exception is New Jersey. See *New Jersey Essay Questions*, <http://www.njbarexams.org/bar-book/aic4.htm> (last visited August 4, 2007). However, almost all of our graduates who take the New Jersey exam also take the Pennsylvania exam.
6. It is not just intuition or my own experience that leads me to believe that administering practice questions under simulated test-taking conditions is the optimum approach. One of the more highly regarded and successful bar exam preparation programs in the country, run by Professor Richard Litvin at Quinnipiac College of Law, involves the administration of mock bar exams under simulated test-taking conditions, followed up by individual conferences to discuss the results. Christian C. Day, *Law Schools Can Solve the “Bar Pass Problem”—“Do the Work!”*, 40 CAL. W. L. REV. 321, 348 (2004) (citing Professor Litvin’s presentation at a 2001 conference on academic assistance and bar exam preparation).
7. Riebe, *supra* note 4, at 284.
8. See ABA Standards for the Approval of Law Schools, Interpretation 302-7, *supra* note 2.
9. Forty-eight states, the District of Columbia, Guam, Northern Mariana Islands, Palau, and the Virgin Islands. See National Conference of Bar Examiners & ABA Section of Legal Education and Admissions to the Bar, *COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 22–24* (2007) (hereafter “COMPREHENSIVE GUIDE”).
10. *Id.* The eight jurisdictions that do not calculate a combined score are Kentucky, South Carolina, Tennessee, Vermont, Virginia, Wyoming, the Northern Mariana Islands, and Palau. *Id.* These jurisdictions use a variety of methods, the most common of which is requiring a separate passing score on each part of the exam. See *id.* at 22–24 (specifying Kentucky, for example, as a state that requires separate passing scores).
11. *Id.* at 23–24 (specifying greater scoring weight on written portions for Arizona, Arkansas, California, Delaware, Idaho, Maine, Maryland, Mississippi, Missouri, Montana, North Carolina, Ohio, and Pennsylvania); Supreme Court of Guam, *Rules Governing Admission to the Practice of Law, Part B, § 6(b)* (2004), available at <http://www.guamsupremecourt.com/BrdLawExam/images/RulesGoverningAdmission,%20revised%2002-09-04.pdf> (specifying greater scoring weight is accorded to the written portions of the exam); telephone interview with Laura Cozen, staff member, Office of the Clerk, Supreme Court of Iowa (July 18, 2007) (same); telephone interview with Patrice Eichman, Director of Admissions, State Bar of Nevada (July 19, 2007) (same); Texas Board of Law Examiners, *Understanding TBE Scoring*, [http://www.ble.state.tx.us/exam\\_info/tbe\\_scoring.htm](http://www.ble.state.tx.us/exam_info/tbe_scoring.htm) (last visited August 4, 2007) (same).

com/BrdLawExam/images/RulesGoverningAdmission,%20revised%2002-09-04.pdf (specifying greater scoring weight is accorded to the written portions of the exam); telephone interview with Laura Cozen, staff member, Office of the Clerk, Supreme Court of Iowa (July 18, 2007) (same); telephone interview with Patrice Eichman, Director of Admissions, State Bar of Nevada (July 19, 2007) (same); Texas Board of Law Examiners, *Understanding TBE Scoring*, [http://www.ble.state.tx.us/exam\\_info/tbe\\_scoring.htm](http://www.ble.state.tx.us/exam_info/tbe_scoring.htm) (last visited August 4, 2007) (same).

Virginia does not appear to require a combined score, but nonetheless it does accord greater weight to the score on the written portions of its exam. *COMPREHENSIVE GUIDE, supra* note 9, at 24. As a result, at least 18 jurisdictions can be said to place greater scoring weight on written questions.

12. The Pennsylvania Board of Law Examiners scales the overall score on all the essays and the performance test (the “PT/Essay Examination” score) to the MBE. Then it weights the PT/Essay Examination score at 55 percent, and the MBE score at 45 percent, before combining them for a total score. Applicants must achieve a combined score of 272 to pass. Pennsylvania Board of Law Examiners, *Passing Standards, supra* note 5.
13. *COMPREHENSIVE GUIDE, supra* note 9, at 22–24.
14. *Id.*
15. The statistics discussed in this section are all from the Pennsylvania Bar Examination. The Pennsylvania Board of Law Examiners routinely provides each law school in Pennsylvania with school-specific and statewide performance statistics for each exam. We do not receive such information from other jurisdictions.
16. This direct comparison of scores can be used because, as discussed *supra* note 12, Pennsylvania scales the PT/Essay score to the MBE.
17. In 2004, the margin was 0.3 percent; in 2005, 0.8 percent; in 2006, 0.6 percent; and in 2007, 0.9 percent. Interestingly, for the same four exams, the statistics for all Pennsylvania Bar Examination takers showed a slightly higher mean PT/Essay score than mean MBE score. These statistics are for all takers, not just first-time takers.
18. In 2004, the margin was 1.3 percent; in 2005, 2.4 percent; in 2006, 2.3 percent; and in 2007, 1.85 percent. These statistics are also for all takers. Among first-time takers who failed, the mean MBE score exceeded the mean PT/Essay score in 2005, 2006, and 2007.
19. In 2004, our graduates exceeded the mean MBE score for all takers by 1.4 percent and exceeded the mean PT/Essay Examination score for all takers by 1 percent. In 2005, our graduates bettered the MBE mean by 1.8 percent and the PT/Essay mean by 0.9 percent. In 2006, they bettered the MBE mean by 1.9 percent and the PT/Essay mean by 1.3 percent. In 2007, they bettered the MBE mean by 2.1 percent and the PT/Essay mean by 1.1 percent.
20. Ellen Yankiver Suni, *Academic Support at the Crossroads: From Minority Retention to Bar Prep and Beyond—Will Academic Support Change Legal Education or Itself Be Fundamentally Changed?*, 73 U. MO. KAN. CITY L. REV. 497, 506–07 (2004). At the Law School Admission Council’s June 2007 Academic Assistance Training Workshop in Miami, which I attended, there was a plenary session entitled “Demystifying the Bar Exam,” followed by multiple breakout sessions on various bar exam preparation topics. Law School Admission Council,

2007 Academic Assistance Training Workshop, "Roots to Grow and Wings to Fly," Program Itinerary (on file with author).

21. I know specifically of at least one school other than my own where a legal writing professor teaches a bar exam writing course: Loyola Law School in Los Angeles. Loyola Law School Course Descriptions, Fundamentals of Bar Exam Writing, <https://technology.lls.edu/courses/index.php?c=4j65> (last visited July 16, 2007).
22. As examples, Capital University Law School employs a professor of bar services whose job entails exclusively bar exam preparation, Capital University Law School Faculty Bios, <http://www.law.capital.edu/Faculty/Bios/ytwiss.asp> (last visited July 16, 2007), and Duquesne University employs a director of bar services, Law Career Services, Bar Preparation, <http://www.law.duq.edu/career/AcaBar.html> (last visited August 4, 2007).
23. See Suni, *supra* note 20, at 506–07. ("At most schools, doctrinal faculty do not see assisting with bar passage as an appropriate part of the faculty's responsibility . . . .") The predominant mode of teaching for doctrinal faculty in substantive law courses at American law schools is the case method. Paul F. Teich, *Research on American Law Teaching: Is There a Case Against the Case System?* 36 J. LEGAL EDUC. 167, 170 (1986). In the case method, professors prod their students to carefully dissect and analyze appeals court opinions in order to actively learn "the inductive method used by lawyers to discern the law." *Id.* Learning the law itself is a byproduct of that process.
24. That certainly is the case at the law school where I teach, which chose to hire a legal writing professor to run its bar preparation programs.
25. See Suzanne Darrow-Kleinhaus, *Incorporating Bar Pass Strategies into Routine Teaching Practices*, 37 GONZ. L. REV. 17, 27 (2002) ("The commercial bar preparation courses . . . provide a comprehensive review of the substantive law. Unfortunately, such courses are not designed to cultivate the analytical and writing skills you need on the [performance test].").
26. This is because NCBE re-uses some of the questions on subsequent MBEs before retiring them in order to equate and scale the test results. *Nat'l Conference of Bar Examiners v. Multistate Legal Studies, Inc.*, 458 F. Supp. 2d 252, 254 (E.D. Pa. 2006) ("Each MBE contains approximately 60 questions from earlier tests to provide a basis for comparing the performance of applicants on one MBE with that of previous groups.") These processes are necessary to ensure fairness because some test forms may be more or less difficult than previous forms. Pennsylvania and several other states make their past essay questions available to the public soon after the exam is over. Pennsylvania also makes available for each question a detailed examiner's analysis, at least one sample answer from an applicant, and a list of grading criteria. See Pennsylvania Board of Law Examiners, Exam Review Material, [http://www.pabarexam.org/Bar\\_Examination/Review\\_Material/Essay\\_QA.htm](http://www.pabarexam.org/Bar_Examination/Review_Material/Essay_QA.htm) (last visited July 16, 2007). I recognize that in some states it may not be possible to obtain copies of past essay questions.
27. At least one company, Multistate Legal Studies, which formerly ran the PMBR preparation course, frequently sent employees to take the MBE and commit to memory the style and substantive coverage of questions. *Multistate Legal Studies*, 458 F. Supp. 2d at 255. A few years ago, PMBR officials copied several MBE questions from a recent exam nearly verbatim and used them in the PMBR course. NCBE sued for copyright infringement and won a \$12 million judgment. *Id.* at 262. For a similar case, see *Nat'l Conf. of Bar Examiners v. Saccuzzo*, 2003 WL 21467772 (S.D. Cal. June 10, 2003) (copyright infringement case in which court entered injunction against bar preparation company that used student recollection of MBE questions in preparing practice questions for its course). Other bar preparation companies purchase sets of former MBE questions that have been retired, which NCBE licenses for a fee. 458 F. Supp. 2d at 254.
28. See Darrow-Kleinhaus, *supra* note 25.
29. Telephone interviews with Annamarie Castellani, Associate Director, BAR/BRI of Pennsylvania (June 20, July 11, and August 2, 2007) (discussing content of BAR/BRI's standard course in Pennsylvania). The six MBE subjects are also essay subjects in almost all jurisdictions, including Pennsylvania, though for the essays, the Pennsylvania Board of Law Examiners expects applicants to answer state law questions according to Pennsylvania law. Pennsylvania Board of Law Examiners, Passing Standards, *supra* note 5. Accordingly, BAR/BRI teaches students the various state law variations from the federal law or "majority rules" that are tested on the MBE.
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
34. All the students surveyed were taking the summer course offered by BAR/BRI of Pennsylvania.
35. A better ratio, of course, would not be 1:1. In a 6-hour format, students should devote no more than 1 minute, 50 seconds to a single MBE question, whereas in Pennsylvania, each essay is allotted 45 minutes, and the performance test is allotted 90 minutes. A ratio of 100 MBE questions to 1 essay question, however, represents a disproportionate discrepancy. I recognize that, closer in time to the exam, the ratio might decrease as students take more essay questions. However, answering practice essay questions so late in the process gives students little time to refine the various skills needed for writing effective essay answers.
36. In Pennsylvania, in addition to the six MBE subjects, the bar exam essays cover business organizations, conflict of laws, UCC Article 2 (sales), employment discrimination, civil procedure, family law, federal income tax, estates and trusts, and professional responsibility. Pennsylvania Board of Law Examiners, Passing Standards, *supra* note 5.
37. Conventional wisdom holds that, because other parts of bar exams are often scaled to the MBE, MBE scores tend to drive overall passage rates. Riebe, *supra* note 4, at 275 n.41. I am not sure I accept this view, especially for state exams where the written portions are weighted more heavily. Nonetheless, my school continues to retain BAR/BRI to present a not-for-credit program introducing all interested third-year students to each part of the bar exam, including the MBE.
38. In many states, written questions constitute a larger portion of the exam in terms of time than does the MBE. In California, for example, 12 out of the exam's 18 hours are devoted to the written portions. The State Bar of California Committee of Bar Examiners/Office of Admissions, Description and Grading of the California Bar Examination 1, <http://www.calbar.ca.gov/calbar/pdfs/admissions/GBX/EX102sf.pdf> (last visited August 4, 2007). The same is true in South Carolina. South Carolina Judicial Department, General Information, <http://www.sccourts.org/bar/index.cfm> (last visited August 4,

2007). In Ohio, three of five half-day sessions over three days are devoted to written portions of the exam. The Supreme Court of Ohio, Rules for the Government of the Bar of Ohio, Rule I, Sec. 5(A) (2007), available at <http://www.sconet.state.oh.us/rules/govbar/default.asp#rulei>.

39. See *supra* Part II-A.
40. For the 2006, 2007, and upcoming spring 2008 course, we chose the bottom 30 percent.
41. The law school does not otherwise publicize the course, though many non-invited students do learn of it.
42. See *infra* Part IV.
43. For the spring 2008 course, the number of invited students who enrolled during the priority period was lower than in previous years. Students will be able to add or drop the course during the first week of the spring semester, and we hope that a few more invited students will add the course.
44. Because nearly one-third of our students take a bar exam other than Pennsylvania's, I have used and intend to continue using bar exam essays from at least three different states. In 2006 and 2007, I used three Pennsylvania questions, two New York questions, and one New Jersey question. Different states do use different styles of questions. Pennsylvania questions present a fact pattern followed by three or four targeted and specific interrogatories (i.e., calls of the question) implicating at least two different areas of law, sometimes three. See Pennsylvania Board of Law Examiners, Essay Questions and Examiners' Analyses, [http://www.pabarexam.org/Bar\\_Examination/Review\\_Material/Essay\\_QA.htm](http://www.pabarexam.org/Bar_Examination/Review_Material/Essay_QA.htm) (last visited August 7, 2007) (providing links to examples). In contrast, in New Jersey, each question covers only one bar subject, and most questions close with a single and rather open-ended call of the question. See Sample Bar Exam Questions and Answers, <http://www.njbarexams.org/exam/oldexams.htm> (last visited August 4, 2007) (providing links to examples). Most New York questions close with multiple specific interrogatories, but unlike Pennsylvania's questions, most address only one bar subject. Past Exam Essay Questions with Sample Candidate Answers, <http://www.nybarexam.org/pastexam.htm> (last visited August 4, 2007) (providing links to examples).

I use a performance test from a recent Pennsylvania exam, as the Pennsylvania Board of Law Examiners drafts its own performance test and makes each one available shortly after its use. Passing Standards, *supra* note 5. Most jurisdictions that administer a performance test use the Multistate Performance Test (MPT) available from NCBE. See National Conference of Bar Examiners, Jurisdictions Using the MPT in 2007, <http://www.ncbex.org/multistate-tests/mpt/mpt-faqs/jurs1/> (last visited August 4, 2007) (listing 33 jurisdictions that use the MPT).

45. I cancel some classes in order to facilitate individual meetings with students to go over their answers.
46. I used Aspen's CRUNCHTIME series.
47. In an effort to mimic the inevitable reality that students will not remember the relevant rule of law for some questions on the actual exam, for a few of the practice essays I intentionally leave some needed rules out of the assigned preparatory reading. In discussing these essays after their administration, I emphasize to the students how they could have deduced a reasonable approximation of the relevant rule(s) of law from the content and context of the facts provided by the question.

48. For those students who request it, I also review their answers to the fourth and fifth essays and go over those during the meeting as well.
49. I am not a statistician, and the analysis in this section is therefore limited. For a more detailed statistical analysis of the impact of a law school bar exam preparation program on exam performance, see Linda Jellum & Emmeline Paulette Reeves, *Cool Data on a Hot Issue: Empirical Evidence That a Law School Bar Support Program Enhances Bar Performance*, 5 NEV. L. J. 646 (2005).
50. Some of the students in the course had, through their third-year grades, moved out of the bottom 30 percent. Hence, I excluded them from the analysis.
51. This includes only takers of exams for which the law school had received results at the time of this article's publication. This included most but not all states.
52. On all July 2006 bar exams, one-third (4/12) of the students from the bottom 10 percent of the class who took the course passed, compared to 43 percent (3/7) of those who did not take the course. While the sampling is too small to be statistically significant, there was still no empirical indication that the course helped the students in the bottom 10 percent.
53. Previously, our academic support specialist invited mostly those students recommended for the course by their legal writing professor.
54. Just over 53 percent (8/15) of 2007 graduates from the bottom 10 percent who took the course passed the bar exam, and under 17 percent (1/6) of those who did not take the course passed.
55. The course and the school's entire bar exam preparation program are, of course, works in progress. Should our overall passage rate change significantly in the future, the school and I might look more closely at the focus of the course and perhaps retain a statistician for a professional assessment.



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