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We Should Not Rely on Commercial Bar Reviews to Do Our Job: Why Labor-Intensive Comprehensive Bar Examination Preparation Can and Should Be a Part of the Law School Mission

*Mario W. Mainero**

ABSTRACT

Increasingly, law school bar passage rates are an important concern for faculty and administration, as well as students. The July 2014 and July 2015 bar exams saw a precipitous drop nationally in bar passage rates, including declines ranging from four to over twenty percentage points. At the same time, there have been declines in applications to law schools, declines in admissions statistics (LSAT and undergraduate GPA), and an empirically demonstrable decline in student preparedness for law school. The confluence of these events portends even greater declines in bar passage if law schools do not rethink how they prepare students for the bar exam. This Article examines developments in academic support and bar preparation programs with an eye toward suggesting models for effective in-house bar preparation programs. Specifically, this Article examines: (1) the evolution of academic support programs in law schools to include bar passage programs, with a brief description of the types of programs that traditionally have been available; (2) the particular difficulty posed by the California Bar Exam; (3) the existing types of supplemental programs, and concerns posed by programs that are limited to “bar tips” or even limited practice exams or substantive lectures, given the increased numbers of “at risk” students due to the increase in underpreparedness; (4) the supplemental program at Chapman University’s Fowler School of Law, including the intensity of effort required of both faculty and

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students in a comprehensive program applicable to all students; and finally, (5) the bar passage results at Chapman University's Fowler School of Law since adoption of a comprehensive supplemental bar passage program, that have been significantly better than would be expected by some commentators, given its ranking and relative youth as a law school. This Article suggests that the traditional focus of academic support programs, including bar preparation programs, that focus largely on perceived "at risk" students, is insufficient in light of the increased numbers of underprepared students. In order to avoid further calamitous declines in bar passage rates, law schools will have to move from traditional academic support models to models that encourage the entire cohort of students to work together, cooperatively, and that apply extensive time and effort to ensure that all students receive the benefit of these programs.

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INTRODUCTION

Recent drops in bar passage rates throughout the country have raised an alarm. As the *Wall Street Journal's* Law Blog put it, “[a] steep decline in bar exam scores on the most recent test has led to an outbreak of finger-pointing over who’s to blame for the downward swing.”¹ But this “steep decline,” ranging from five percentage points in New York² to seven percentage points among ABA-accredited law schools in California,³ to over twenty percentage points in Montana,⁴ raises far more important questions than who is to blame. How should law schools and law school faculties approach the topic of bar passage? Should bar passage be considered something students engage in after graduation, and thus not the concern of a law school administration or faculty? Should the law school curriculum be adapted to conform to topics tested on the bar examination? Should law schools dedicate considerable resources to in-house bar preparation programs, or continue to leave bar preparation largely to commercial reviews? This Article does not seek to answer all of these questions, but in light of this steep decline in bar passage and the decline in both admissions and admissions statistics going forward, it does propose that law schools should adopt comprehensive, labor-intensive, in-house bar preparation programs aimed at all students, rather than leave bar preparation solely to commercial bar reviews or administer limited, targeted programs aimed only at “at risk” students. It also invites a discussion in which others at law schools around the country who work with students on bar preparation might wish to participate.

In an era of declining applications and declining qualifications of applicants,⁵ law schools face significant pressures,

1 Jacob Gershman, *Decline in Bar Exam Scores Sparks War of Words*, WALL ST. J.: L. BLOG (Nov. 10, 2014, 6:45 PM), <http://blogs.wsj.com/law/2014/11/10/decline-in-bar-exam-scores-sparks-war-of-words/> [<http://perma.cc/UM23-JESD>].

2 Tania Karas, *Deans Dismayed by Declines in Bar-Pass Rates*, N.Y. L.J. (Nov. 13, 2014), <http://www.newyorklawjournal.com/id=1202676229642/Deans-Dismayed-by-Declines-in-Bar-Pass-Rates>.

3 Don J. DeBenedictis, *State's Bar Passage Rate Plummets, Tracking National Trend*, DAILY J., Nov. 25, 2014, at 1, 1.

4 Jessica Mayrer, *University of Montana Bar Scores Drop*, MISSOULA INDEP. (Oct. 9, 2014), <http://missoulanews.bigskypress.com/missoula/university-of-montana/Content?oid=2093254> [<http://perma.cc/M22Q-Y88E>].

5 Martha Neil, *Law School Applications Down 37% Since 2010; First Year Class Could Be Smallest in 40 Years*, A.B.A. J. (July 22, 2014, 8:25 PM), http://www.aba-journal.com/news/article/law_school_applications_down_8_percent_new_lsac_survey_shows_theyve_dropped [<http://perma.cc/54EX-NYFZ>]; see also Keith Lee, *Top University Students Avoiding Law School—2014 Edition (Statistics and Graphs)*, ASSOCIATE'S MIND (Mar. 5, 2014), <http://associatesmind.com/2014/03/05/top-university-students-avoiding-law-school-2014-edition-statistics-graphs/> [<http://perma.cc/8UQV-KG6P>].

including the pressure to maintain adequate bar passage rates. It is the thesis of this Article that, in most states, with declining admissions statistics and significant student underpreparedness for law school, law schools should resist relying on commercial bar review companies to provide the sole resource for bar preparation and institute a supplemental in-house bar preparation program with several characteristics.⁶ The program must be available and open to all students. To that end, it should encourage students to be part of a cohesive group all focused on the same goal of bar passage, and it must not differentiate among students based on perceived “risk” or other factors. The program must be highly labor-intensive, so that faculty must demand extensive practice and work by students, and at the same time, faculty must also be prepared to expend considerable time and effort to meet students’ needs. Bar preparation faculty must provide opportunities for prompt feedback on twenty to thirty-five essays per student, in addition to group classes and availability for one-on-one tutoring. In sum, faculty teaching bar preparation must be prepared to expend whatever time it reasonably takes to prepare each class of students, and all members of the class, for the bar examination. This is something that cannot be left to commercial bar review companies. As one researcher has put it, “bar exam study requires more work than a full-time job.”⁷ But just as bar exam study requires more work than a full-time job, bar exam preparation and teaching also requires more work than a full-time job.

Recent adoption of ABA accreditation standards and the interpretations of those standards set objective measures for bar passage.⁸ These measures alternatively include a requirement that: (1) for students who graduated within the five most recently completed years, 75% of those sitting for a bar examination must pass a bar examination over that five-year period, or 75% must pass the bar exam in three of the past five years; or (2) in three of the five most recent calendar years, the first time taker bar passage rate must be not less than fifteen percentage points below the average for all first-time takers from ABA-approved

⁶ First and foremost, of course, students should be focused on general studies in the law and learning through a law school’s normal curriculum. This Article is not focused on changing that curriculum, but on why, in addition, law schools should offer in-house bar preparation programs.

⁷ Denise Riebe, *A Bar Review for Law Schools: Getting Students on Board to Pass Their Bar Exams*, 45 *BRANDEIS L.J.* 269, 307 (2007).

⁸ ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2013–2014 Standard 301(a) (AM. BAR ASS’N 2013), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter3.aut_hcheckdam.pdf [<http://perma.cc/T6WE-8VZJ>]; *id.* Interpretation 301-6.

law schools in the jurisdiction.⁹ In February 2016, the Section of Legal Education and Admission to the Bar's Standards Review Committee approved a further revision of these standards, proposing to amend Standard 316 to clarify and tighten the standard for bar passage to read as follows: "(a) At least 75 percent of a law school's graduates in a calendar year who sat for a bar examination must have passed a bar examination within two years of their date of graduation."¹⁰ While there are further standards to show good cause in progressing toward the meeting of this "one size fits all" standard, the adoption of the clarified standard, reducing the time within a law school must see 75% of its students pass the bar exam, makes the need to improve bar passage rates imperative—it will have a direct effect on accreditation.¹¹ Given the adoption of these standards, it is no surprise that law schools are adopting programs to improve bar passage.

While some recent publications have identified a growing trend in law schools to offer bar preparation programs,¹² none has analyzed in substantial depth what component parts a program should include to be effective. None has done so in view of what appears to be a steep decline in student preparedness for law school, combined with the decline in admissions statistics.¹³

To illustrate what the accreditation standards and interpretations really mean for both law students and law faculty presenting bar preparation programs to their students, this Article focuses on the difficult California Bar Examination—its components, the challenges it poses for applicants, and how to help students achieve success. It also examines the few types of supplemental bar preparation programs currently offered by some law schools. Finally, it examines the supplemental in-house bar preparation program at the author's law school. For the last five years, that law school—Chapman University's Fowler School of Law—has been recognized by more than one author as having

⁹ *Id.* Interpretation 301-6.

¹⁰ AM. BAR ASS'N, STANDARDS REVIEW COMMITTEE 40 (2016), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards_review/2016_02_src_meeting_materials.authcheckdam.pdf [<http://perma.cc/T47K-GWVK>].

¹¹ *Id.*

¹² See, e.g., Aleatra P. Williams, *The Role of Bar Preparation Programs in the Current Legal Education Crisis*, 59 WAYNE L. REV. 383 (2013).

¹³ Rebecca Flanagan, *The Kids Aren't Alright: Rethinking the Law Student Skills Deficit*, 2015 BYU EDUC. & L.J. 135, *passim* (2015). This article is significant because it neatly summarizes important data and observations suggesting the decline in student preparedness for law school, which then poses a challenge in eventually preparing students for the bar examination.

outperformed its predictors and rankings in terms of bar passage.¹⁴

This Article consists of five parts. Part I will briefly discuss the evolution of academic support programs in law schools to include bar preparation programs, with a brief description of the types of programs that traditionally have been available. Part II will examine the particular difficulty posed by the California Bar Exam. Part III will survey in greater specificity the existing types of supplemental programs and explain why programs that are limited to “bar tips,” or even limited practice exams or substantive lectures, are not sufficient in states with a relatively low bar passage rate, given the increased numbers of “at risk” students. Part IV will describe the supplemental program at Chapman University’s Fowler School of Law, and demonstrate the intensity of effort required of both faculty and students in such a comprehensive program. Finally, Part V will show that the bar passage results at Chapman University’s Fowler School of Law since adoption of a comprehensive supplemental bar passage program have been significantly better than would be expected by some commentators, given its ranking and relative youth as a law school.

I. LAW SCHOOL ACADEMIC SUPPORT AND BAR PASSAGE

Bar passage is one facet of the general discipline of academic support in law school. Thus, to understand the development of bar preparation programs, it is first important to briefly review the development of law school academic support programs. Since the advent of law school academic support programs, most programs have focused on mitigating the disadvantages “nontraditional” students face in law schools.¹⁵ Thus, “traditional academic support programs were designed to help a limited, discrete group of students for a limited time.”¹⁶ Eventually, these programs transformed into two types, which often were merged: programs designed to provide assistance to non-traditional students, and programs for students who were deemed, due to demonstrated academic difficulty or lower admissions predictors, to face the risk of academic dismissal.¹⁷

¹⁴ Donald J. Smythe, *Ranking Law Schools Using Reported California Bar Exam Results: Some Observations and Conjectures* 7, 22 (June 10, 2012) (unpublished manuscript), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2085048; Paul Caron, *July 2013 California Bar Exam Results*, TAXPROF BLOG (Jan. 25, 2014), http://taxprof.typepad.com/taxprof_blog/2014/01/july-2013.html [<http://perma.cc/T93M-982X>].

¹⁵ Kristine S. Knaplund & Richard H. Sander, *The Art and Science of Academic Support*, 45 J. LEGAL EDUC. 157, 158–59 (1995).

¹⁶ Flanagan, *supra* note 13, at 171.

¹⁷ *Id.* at 172–74

A. Impact of Labor-Intensiveness of Work and Decline in Student Preparedness on Academic Support Programs

In light of the extensive work this Article proposes in order to generate successful bar preparation programs, it should be noted that a concern expressed by some academic support professionals, such as Professor Flanagan in her article, is that the labor-intensive nature of academic support, which requires significant one-on-one counseling and review,¹⁸ is not well-suited to an expanding population of students served by academic support. For example, when I previously taught as the Director of Academic Support at another institution, each individual meeting with a student took one half-hour—so if just fifty students were in need of academic support in a class of 200, for example, those meetings alone occupied twenty-five hours out of a week—without including the time to review each student's written essays, outlines, or other work product.

Furthermore, the number of students underprepared to enter law school has increased dramatically.¹⁹ Professor Flanagan ably tracks this increased underpreparedness in her recent article.²⁰ She tracks the work of Richard Arum and Josipa Roksa in their publication, *Academically Adrift: Limited Learning on College Campuses*,²¹ and reports that, based on the Collegiate Learning Assessment (“CLA”), a test of “broad competencies” that should be developed in college—such as critical thinking, analytical reasoning, problem solving, and writing—45% of the students studied achieved no significant gains in these competencies by the end of the sophomore year of college.²² This point in time was critical because, as Professor Flanagan writes, “previous studies have found that roughly 63% of the change in critical thinking skills occurs by the sophomore year.”²³ Similarly, Professor Flanagan writes, the Wabash National Study of Liberal Arts Education found that “students made no measurable improvement in critical thinking skills during the first year of college, and thirty percent of students showed no growth or a decline in critical thinking skills after four years of college.”²⁴

¹⁸ *Id.* at 174.

¹⁹ *Id.* at 171 (“The empirical research suggests many students entering law school are unaccustomed to the amount of studying necessary for law school success; do not have the critical thinking and analytical reasoning skills that provide the foundation for ‘thinking like a lawyer,’ and expect grades above a 3.3.”).

²⁰ *Id.*

²¹ RICHARD ARUM & JOSIPA ROKSA, *ACADEMICALLY ADRIFT: LIMITED LEARNING ON COLLEGE CAMPUSES* (2011).

²² *Id.* at 36; Flanagan, *supra* note 13, at 140–41.

²³ Flanagan, *supra* note 13, at 141.

²⁴ *Id.*

One of the most compelling observations identified by Professor Flanagan is also more direct evidence of a decline in student preparedness. From 1961 to 2003, the percentage of college students studying twenty hours or more per week outside of class declined from 67% of students to 20% of students.²⁵ This represented a decline of about ten hours per week in average study time.²⁶ I believe that these data compel the conclusion that students have declined in their possession of the necessary skills, and perhaps work ethic, to succeed in law school.

Between the lack of increase in critical skills during college for a significant segment of the college student population, and the dramatic decrease in time and effort expended in studying, it is no surprise that students are far less prepared for law school than was true two generations ago.

This increase in underprepared students matriculating in law schools poses particular problems for academic support and, ultimately, bar passage. In law schools that have seen an increase in students underprepared to begin law school, there is an increased need for academic support to assist those students in quickly developing the necessary skills to academically succeed in law school. However, often due to lack of resources to fund enough instructors to meet the individualized needs of an increasing number of underprepared students, “[traditional academic support is] ill equipped to provide the necessary instruction and support to the large number of academically underprepared students matriculating at law schools.”²⁷

B. Expansion of Academic Support Programs to Include Bar Preparation

But, even as academic support programs have faced a strain on resources in preparing entering law students, academic support programs also have expanded to address a further issue beyond just law school performance: performance on the bar examination. In response to a 2002 survey by the Association of American Law Schools (“AALS”), 38.9% of all responding ABA-accredited law schools stated that they provided or sponsored activities, programs, or courses designed to enhance bar examination performance; 38.7% of all responding ABA-accredited law schools stated that they provided or sponsored activities, programs, or courses not specifically designed to enhance bar examination performance, but which

²⁵ *Id.* at 152.

²⁶ *Id.*

²⁷ *Id.* at 176.

they believed enhanced such performance.²⁸ While there has been little published empirical data on whether bar preparation programs increase performance, the data that have been published suggest that such programs do increase bar exam passage rates over previous levels.²⁹

As discussed above, academic support is labor-intensive and, thus, requires significant resources. Expanding academic support to bar passage programs is an even greater challenge to a law school's resources. As the number of underprepared law students—for whom undergraduate education has been less one of intellectual rigor and more like a “four-year vacation”—continues to grow,³⁰ law schools should make their bar preparation programs available to their entire student body. One reason to do so is to maintain cohesiveness of the cohort and a mutually supportive atmosphere among all the students.³¹ Furthermore, if law schools indeed lack the increased resources to support additional instructors, as Professor Flanagan suggests,³² academic support professionals may have to simply work more and harder, if necessary, to deliver these programs at an effective level. If academic support professionals need to work more and harder to deliver these bar preparation programs, then they should consider what kinds of programs are most effective.

Despite the demonstrated need for bar preparation programs, little has been done to survey their existence or formats. The 2002 survey by the AALS provided very little in terms of specific descriptions of the nature or content of such programs or activities, except to conform them to four general categories: (1) supplemental programs designed and administered by the law school; (2) programs offered in partnership with commercial bar reviews; (3) bar exam strategies lectures; and (4) individual mentoring and counseling programs.³³

The survey describes supplemental programs only briefly as “multisession programs during spring semester of the third year,” with “typical components” such as lectures in substantive law, sample multiple choice questions, “essay-writing instruction and practice,” and advice on time management and

28 Comm. on Bar Admissions & 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, 457 (2002) [hereinafter *AALS Survey*].

29 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).

30 Flanagan, *supra* note 13, at 171.

31 See *infra* Part III.

32 Flanagan, *supra* note 13, at 174.

33 *AALS Survey*, *supra* note 28, at 461.

outlining.³⁴ This broad definition tells little about the substance of these programs. It does not evaluate particular programs or their components, or critique those programs for their effectiveness or ineffectiveness. Consequently, those of us interested in designing workable bar preparation programs received little, if any, guidance from this survey.

In the context of the third year of law school, when students are still taking substantive classes, or spending significant time on externships, clinics, or similar work, “supplemental” can often mean nothing more than a few weekend sessions, or perhaps one class of several sessions. As a consequence, at some law schools, the bulk of bar exam preparation has traditionally been left to the commercial bar review companies.³⁵ Not surprisingly, these companies have proliferated,³⁶ but as the title of this Article suggests, this is not necessarily the best outcome for students.

Students certainly have choices. As of January 2014, the number of commercial bar preparation resources, reviews, and services was extensive and expensive. There were at least sixteen different bar review courses, three other “tutoring” services, and countless other books and study materials, all costing law students anywhere from \$500 for online MBE products to \$7500 for full-service bar review programs.³⁷

It is my experience, however, that commercial reviews, while valuable, have their limitations, and vary in services, quality, and format. Those that, in essence, *require students to attend* either live sessions or videos and *monitor* students’ attendance and progress are more effective than online applications. Given that students enter law school underprepared, it is my experience that they do not exit law school as expert learners who can be trusted to adequately self-teach using technological aids and online reviews.

The traditional commercial bar review companies such as BarBri have their limitations. For example, in California, which saw 6080, 6485, and 6635 applicants take the July 2011, 2012, and 2013 general bar exams, respectively,³⁸ commercial bar reviews simply are not able to provide much individualized service or feedback. BarBri’s Paced Program assigned only six, eight, six, and five essays that students could turn in to BarBri

³⁴ *Id.*

³⁵ Williams, *supra* note 12, at 395.

³⁶ See *infra* Part III.

³⁷ *Guide to Bar Review Courses*, NAT’L JURIST (Jan. 17, 2014), <http://www.nationaljurist.com/content/guide-bar-review-courses> [<http://perma.cc/GL86-C9DZ>].

³⁸ See *Statistics*, STATE BAR OF CAL., <http://admissions.calbar.ca.gov/Examinations/Statistics.aspx> (last visited Feb. 29, 2016).

for grading in July 2011, 2012, 2013, and 2014, respectively.³⁹ But there are thirteen possible essay subjects on the California Bar Exam,⁴⁰ so students taking BarBri will not, due to resource limitations, receive specific essay feedback, beyond the helpful general essay approach, in a number of subjects. Much of the time, then, students must rely on “self-checking” their work, which is an unreliable means of feedback, since students are not likely to be well-qualified at evaluating their own work, even if they use a “model answer” or other rubric to compare to their work.

Underprepared students require monitoring, often in the form of one-on-one counseling, “to determine the source of their academic challenge and frequently require additional meetings to ameliorate academic deficiencies.”⁴¹ But, as discussed briefly, commercial bar review companies, who sell their product to thousands of students, do not monitor students in order to ensure that those students are doing the work.

Only law school faculty administering an intensive bar preparation program, who have already developed a personal relationship with their students, can deliver the intensive, direct, and personalized feedback needed to compensate for the underpreparedness of students facing a bar examination. The increase in underprepared students—together with a decline in predictors of likelihood of academic success and bar passage by law school matriculants, which tends to result from a decline in applications—likely means that only a program that is committed to serving all of a law school’s graduates with such an intensive and personalized program can make up for the deficiencies of commercial bar reviews and be successful.

As Professor Flanagan has noted, students enter law school with a consumer mentality, focusing “on the end product of the transaction—a satisfactory grade—instead of the process of learning and gaining knowledge.”⁴² But by the time those students graduate from law school, their focus is on a different end product—bar passage. Law schools should work to adequately develop learning and critical thinking skills in students during law school, and avoid over-reliance on commercial bar reviews whose cookie-cutter approaches simply cannot suffice, particularly in states and for students of schools where bar passage is problematic.

³⁹ On file with the author.

⁴⁰ STATE BAR OF CAL., COMM. OF BAR EXAM’RS/OFFICE OF ADMISSIONS, SCOPE OF THE CALIFORNIA BAR EXAMINATION 1 (2015), http://admissions.calbar.ca.gov/Portals/4/documents/gbx/BXScope_R.pdf [<http://perma.cc/K6BQ-RCF9>].

⁴¹ Flanagan, *supra* note 13, at 174.

⁴² *Id.* at 155.

Given that a law school faculty-administered intensive bar preparation program is needed to adequately monitor and assist the increasing number of underprepared law students in preparing for the bar examination, the remainder of this Article will explore the difficulty of bar passage in California and examine the amount of labor it takes to implement a successful in-house supplemental bar preparation program—one that exceeds expectations in terms of student performance. The focus on California is appropriate precisely because of the unusual difficulty of bar passage in that state. If particular methodologies of bar preparation programs can work there, they can certainly work for law schools and students in states with a much less daunting pass rate issue than California.

II. BAR PASSAGE IN CALIFORNIA

The California Bar Examination is generally acknowledged as one of the most difficult bar examinations in the country. It is one of the most difficult based on its three-day format, the length of its written portions, and the kinds of scores needed to pass. This Part focuses on the California experience as a prime example of why there is a need for in-house intensive bar preparation programs, in large part because of the student underpreparedness discussed above.

The California Bar Examination consists of six one-hour essays, two three-hour performance tests, and the Multistate Bar Examination (“MBE”).⁴³ The essays may be from among thirteen different subjects: Business Associations, Federal and California Civil Procedure, Community Property, Constitutional Law, Contracts and Sales, Criminal Law and Procedure, Federal and California Evidence, Professional Responsibility, Real Property, Remedies, Torts, Trusts, and Wills and Succession.⁴⁴

The California Bar Examination is longer than in most states—three days.⁴⁵ Moreover, unlike many states, such as those that use the Uniform Bar Examination (“UBE”),⁴⁶ essays

⁴³ STATE BAR OF CAL., COMM. OF BAR EXAM'RS/OFFICE OF ADMISSIONS, *supra* note 40.

⁴⁴ *Id.*

⁴⁵ Only seven states conduct a three-day bar exam: California, Delaware, Louisiana, Nevada, Ohio, South Carolina, and Texas. Forty-three states and the District of Columbia conduct two-day bar exams. Information on file with author. Due to cost considerations, the California Bar Exam is moving to a two-day exam beginning in July 2017, as recently approved by the California Supreme Court. The format will be revised to include five one-hour essays, one 90-minute performance test, and the MBE. Thus, the significant differences will be that the MBE will now count for 50% of the score, rather than 35%, and the performance test will be a small part of the exam—equivalent to two essays, and thus, worth about 14.3% of the total score, rather than the current 26% of the total score.

⁴⁶ Twenty states use the UBE: Alabama, Alaska, Arizona, Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New

and performance tests in California are much longer. The UBE utilizes the Multistate Essay Exam—six 30-minute essays,⁴⁷ and two Multistate Performance Exams, each of which is 90 minutes in length.⁴⁸ Many other jurisdictions also use essays of 30–40 minutes. For example, the New York Bar Examiners recommend that applicants take 40 minutes to answer each individual essay.⁴⁹ Texas Bar Exam essays are 30 minutes in length.⁵⁰ California, in contrast, requires six 60-minute essays, and two 180-minute performance tests.⁵¹

As a consequence of the structure and length of the California Bar Examination, California applicants are required to know a broader scope of material, and in greater depth. Longer essays allow for a greater exploration of material that, because it is not as intensively covered in a traditional law school curriculum, is less often previously tested during a student's law school years. Thus, instead of knowing one or two general rules, as is often the case on a 30-minute essay, students taking a 60-minute essay must often know several rules, exceptions, and often are faced with “crossover” questions that test multiple subjects. The July 2013 Bar Examination included an essay question that raised the scope of the Thirteenth Amendment,⁵² and the February 2014 Bar Examination included an essay question that raised the scope of lateral support⁵³—neither of which are typically tested law school essay subjects. California exams have also tested Professional Responsibility as a “crossover” topic with subjects ranging from Corporations to Community Property. The length, depth, and breadth of coverage in 60-minute essays poses a particularly difficult challenge to bar applicants.

York, North Dakota, South Carolina, Utah, Vermont, Washington, and Wyoming. See *Jurisdictions That Have Adopted the UBE*, NAT'L CONF. B. EXAMINERS, <http://www.ncbex.org/about-ncbe-exams/ube/> [<http://perma.cc/G7HS-ZX3M>].

⁴⁷ *Jurisdictions Administering the MEE*, NAT'L CONF. B. EXAMINERS, <http://www.ncbex.org/exams/mee/> [<http://perma.cc/9XJB-MT3B>].

⁴⁸ *Jurisdictions Administering the MPT*, NAT'L CONF. B. EXAMINERS, <http://www.ncbex.org/exams/mpt/> [<http://perma.cc/2GJT-J48M>].

⁴⁹ *The New York State Bar Examination*, N.Y. ST. BOARD L. EXAMINERS, <http://www.nybarexam.org/TheBar/TheBar.htm> [<http://perma.cc/BK4Z-Q5SA>].

⁵⁰ *Texas Bar Examination Scoring and Weighting*, TEX. BOARD L. EXAMINERS, http://www.ble.state.tx.us/ExaminationInfoPage/Grading%20Explanation%20as%20of%201-11-08_pdf.pdf [<http://perma.cc/GB3T-EXYX>].

⁵¹ STATE BAR OF CAL., COMM. OF BAR EXAM'RS/OFFICE OF ADMISSIONS, *supra* note 40.

⁵² See STATE BAR OF CAL., CALIFORNIA BAR EXAMINATION 3 (July 2013), http://admissions.calbar.ca.gov/Portals/4/documents/gbx/July2013-CBX_Questions_R.pdf [<http://perma.cc/7VU9-9EJX>].

⁵³ See STATE BAR OF CAL., CALIFORNIA BAR EXAMINATION 43 (Feb. 2014), http://admissions.calbar.ca.gov/Portals/4/documents/gbx/February2014_CBX_Essays_PTs.pdf [<http://perma.cc/L397-NZAE>].

Even more than just the qualitative difference in length of the administration and the writing portions of the California Bar Examination, the raw performance numbers illustrate the difficulty of bar passage in California. The State Bar of California publishes the bar passage numbers, both raw numbers and percentages, for each individual law school, and all references herein to those rates and numbers were compiled by me from the California State Bar website.⁵⁴ The following table illustrates the July bar examination first-time taker pass rates on the California Bar Examination of California ABA-accredited law schools, non-California ABA-accredited law schools, and California non-ABA-accredited law schools over the past eight years.

Year	California ABA	Non-California ABA	California Non-ABA
2007	76%	67%	30%
2008	83%	75%	35%
2009	79%	69%	31%
2010	75%	68%	34%
2011	76%	66%	32%
2012	77%	64%	29%
2013	76%	64%	32%
2014	69%	60%	33%
2015	68%	59%	21%

Almost no other state consistently passes only about two-thirds of out of state ABA-school graduates, and only about three-fourths of in-state ABA graduates.⁵⁵ These percentages, except for the recent drop on the July 2014 Bar Examination, represent an increase from the past. “During the 1980s, the [California] statewide pass rate averaged . . . about 67 percent for first-time takers from ABA-accredited schools [in-state and out of state].”⁵⁶

One reason for the low pass rate in California is the “cut score.” The cut score is the minimum passing score. In California, that score is a scaled 144 out of 200 on the MBE, which is the second highest in the country, second only to Delaware at 145. The average nationwide scaled cut score on the MBE is 135.1, and the median nationwide cut score for the July 2013 bar exam

⁵⁴ The website from which all such statistics were obtained is the Bar Examination Statistics portion of the State Bar of California website, found at <http://admissions.calbar.ca.gov/Examinations/Statistics.aspx>. Within the “Statistics” portion of the web page, the State Bar publishes statistics by test administration.

⁵⁵ See *2011 Statistics*, B. EXAM’R, March 2012, <http://www.ncbex.org/dmsdocument/146> [<http://perma.cc/B538-TUTZ>] (last updated Apr. 9, 2012).

⁵⁶ Knaplund & Sander, *supra* note 15, at 200.

was 135.⁵⁷ Because the cut score is scaled, or curved, that difference of nine between California's cut score and the national mean and median cut scores can represent up to a difference of eleven correct questions needed to pass.⁵⁸ At least one analysis has concluded that an increase of one point in cut score translates generally to a 1.2% decrease in bar passage rate.⁵⁹

Given that the national median and average cut scores are about ten below that of California, this means that California's pass rate will be up to twelve percentage points below the average pass rate in the rest of the country, putting California law students at a general disadvantage in passing the bar exam that is greater than their counterparts nationwide. Thus, while law students' decline in preparedness nationally puts them at greater risk for failing the bar exam, that risk is heightened significantly by the cut score, as reflected by the much lower pass rates in California.

As Professor Flanagan notes, the most selective law schools are the recipients of the most academically prepared students.⁶⁰ Students at the top ranked ABA-accredited California law schools disproportionately, and unsurprisingly, fare better than those at lower-ranked schools. Of the twenty-one ABA-accredited schools in California, nine have been consistently ranked in the top 100 of the *U.S. News and World Report* rankings of law schools (Stanford, UC Berkeley, UCLA, USC, UC Davis, Pepperdine, UC Hastings, University of San Diego, and Loyola).⁶¹ Historically, those nine schools have represented a disproportionate number of the passing applicants, as shown by this chart.

Year	CA ABA	Top 9 CA ABA	Remaining CA ABA	Differential
2007	76%	82.34%	68.04%	-14.30%
2008	83%	86.25%	79.44%	-6.81%
2009	79%	86.15%	70.32%	-15.83%
2010	75%	82.99%	65.57%	-17.42%

⁵⁷ Gary Rosin, *On Illinois and State Bar Exam Difficulty*, FAC. LOUNGE (Apr. 15, 2013, 8:00 AM), <http://www.thefacultyounge.org/2013/04/on-illinois-and-state-bar-exam-difficulty.html> [http://perma.cc/9SJJ-65QG].

⁵⁸ See, e.g., STATE BAR OF CAL., COMM. OF BAR EXAM'RS/OFFICE OF ADMISSIONS, CORRECTED MBE CONVERSION TABLE (Nov. 18, 2011), http://admissions.calbar.ca.gov/Portals/4/documents/CorrectedMBEConversionTable_201107.pdf [http://web.archive.org/web/20141212095454/http://admissions.calbar.ca.gov/Portals/4/documents/CorrectedMBEConversionTable_201107.pdf]. For that year (the July 2011 Bar Examination), a scaled score of 144 represented 128 correct questions, and a scaled score of 135 represented 117 correct questions.

⁵⁹ Rosin, *supra* note 57.

⁶⁰ Flanagan, *supra* note 13, at 175.

⁶¹ *Best Law Schools*, U.S. NEWS & WORLD REP. (2015), <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings?int=992008>.

Year	CA ABA	Top 9 CA ABA	Remaining CA ABA	Differential
2011	76%	80.71%	70.38%	-10.33%
2012	77%	82.51%	70.50%	-12.01%
2013	76%	83.15%	68.49%	-14.66%
2014	69%	79.40%	57.96%	-21.44%
2015	68%	72.10%	63.54%	-8.56%
2007-2015	75.09%	82.08%	66.86%	-15.22%

Based on these results, those nine schools need academic support and supplemental bar preparation programs the least. Students at most of the other ABA-accredited schools in California need this assistance more. Based on the bar passage results, many of these students either are not getting it, or what they are getting is not enough.⁶² This suggests that these schools, in particular, have the most to gain from investing in labor-intensive, in-house faculty-administered bar preparation programs.

While these schools have much to gain from investing in in-house bar preparation programs, that conclusion still begs the question of what kinds of programs are appropriate or helpful. It is not enough to identify the problem: the need for in-house bar preparation programs. Only programs that contain helpful components, and that can actually work to increase bar passage rates, are part of the solution for schools facing challenging bar passage rates. This Article now turns to a discussion of what programs and elements of programs might be most helpful.

III. THE STATE OF SUPPLEMENTAL BAR PREPARATION PROGRAMS TODAY

While there are any number of suggestions concerning how to improve bar passage, ranging from curricular changes to drastically reduced admissions in order to improve selectivity to increased academic support in the first year of law school, the purpose of this Article is to explore supplemental programs directly aimed at improving bar passage as well as discuss both the existing content of such programs, and what might be the

⁶² California also is home to twenty California-accredited, but non-ABA accredited, law schools and twenty-two California non-accredited law schools (five distance learning, seven correspondence, and ten fixed facility), all of whose graduates are permitted to take the California Bar Examination. *Law Schools*, ST. B. CAL., <http://admissions.calbar.ca.gov/Education/LegalEducation/LawSchools.aspx#unaccredited> [<http://perma.cc/8N-CZ-TLSH>]. The pass rate for these law schools is typically quite low: in July 2013 the rate for California-accredited, but non-ABA accredited, law schools was 35.61%, and for California non-accredited law schools was 13.64%. See *Statistics*, *supra* note 38. Since these schools are not attempting to comply with ABA mandates for bar passage—and generally serve students who work full-time or are not qualified to attend ABA-accredited schools—this Article does not seek to address issues of bar passage at these schools.

optimal structure and content of such programs. Thus, this Article is not concerned with the efficacy of changes in curriculum in improving bar passage, or whether curricular adjustments even affect bar passage. The one prominent article on that subject suggested that the *number* of bar-tested courses only statistically significantly affected bar passage for third-quartile graduates.⁶³ But even that study, by limiting itself to one law school in one state, and to the *number* of bar-tested courses rather than which courses were taken, cannot speak to general principles of curricular adjustment and relationship to bar passage. And certainly, the study and its analysis did not purport to examine the efficacy of courses expressly designed to increase bar passage, such as for-credit or post-graduation bar preparation courses.⁶⁴

This Part will examine examples of supplemental bar preparation programs, and seek to identify the most helpful components of a successful program. To do so, it will examine some current programs, other commentators' thoughts on the elements of successful programs, and empirical studies involving current programs.

A. Examples of Current, but Incomplete, Supplemental Bar Preparation Programs

Remarkably, there is very little literature beyond the 2002 AALS survey detailing the components of in-house supplemental bar preparation programs. One of only a few recent articles addressing some related issues is *The Role of Bar Preparation Programs in the Current Legal Education Crisis*, by Professor Aleatra P. Williams of the Charleston School of Law.⁶⁵

Professor Williams referenced the 2002 AALS survey, and identified the same four-type grouping discussed in Part I above.⁶⁶ But as Professor Williams notes, one change that occurred since the 2002 AALS survey was that the ABA

⁶³ Douglas K. Rush & Hisako Matsuo, *Does Law School Curriculum Affect Bar Examination Passage? An Empirical Analysis of Factors Related to Bar Examination Passage During the Years 2001 Through 2006 at a Midwestern Law School*, 57 J. LEGAL EDUC. 224, 228 (2007).

⁶⁴ As discussed herein, most bar preparation courses focus on both substantive law as well as organizational and writing skills.

Clearly other factors are causing the extremely high bar failure rates for graduates who rank in the bottom 10 percent of their graduating class. Further research is warranted in this area. A simplistic approach of forcing the lowest ranked law school students to take more upper division bar examination subject-matter courses will not solve the bar examination failure problem.

Id. at 236.

⁶⁵ Williams, *supra* note 12.

⁶⁶ *Id.* at 401.

standards changed. ABA Standard 302(f) had stated, “A law school may offer a bar examination preparation course, but may not grant credit for the course or require it as a condition for graduation.”⁶⁷ That Standard was replaced in 2004 by Standard 302, which provided the requirements for substantial instruction, including:

(1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession; (2) legal analysis and reasoning, legal research, problem solving, and oral communication; (3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year; (4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession, and (5) the history, goals, structure, values, rules and responsibilities of the legal profession and its members.⁶⁸

At the same time, the ABA adopted Interpretation 302-7, which stated, “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.”⁶⁹ This Interpretation was repealed in 2008.⁷⁰ The result was that there were then no restrictions at all on bar preparation courses being offered for credit in law schools.⁷¹

The number and types of bar exam assistance programs increased, in part, as a result of the release from restrictions on offering course credit for bar preparation courses, but undoubtedly as well due to the pressure to improve bar examination pass rates. Professor Williams identified at least nine such types of bar assistance programs:

intensive personal coaching, for credit bar review courses, heavy load of required courses, state-focused course offerings, bar review focus throughout law school, post-graduation bar exam boot camps, flagging and releasing at-risk law students, critical skills programs focused on analysis and writing, or collaboration with commercial bar review programs.⁷²

⁶⁷ *Id.* at 396.

⁶⁸ Catherine L. Carpenter, *Recent Trends in Law School Curricula: Findings from the 2010 ABA Curriculum Survey*, 81 B. EXAM’R, June 2012, at 6, 13 n.13, http://ncbex.org/assets/media_files/Bar-Examiner/articles/2012/810212beCarpenter.pdf [<http://perma.cc/2B4V-57Y4>].

⁶⁹ *Id.* at 12–13 n.12.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Williams, *supra* note 12, at 401–02.

A survey conducted by the Chapman University Fowler School of Law research librarians has confirmed this wide array of programs. The most prevalent programs are those that make a for-credit course a centerpiece of bar preparation, those that are primarily composed of bar skills workshops, summer programs that include some essay feedback, and those that largely rely on the commercial bar reviews.⁷³ At least two law schools charge their students or graduates to take a post-graduation supplemental bar preparation course.⁷⁴

Professor Williams focused on four programs.⁷⁵ The study was useful, but limited, because it described in a somewhat general way only four programs. These programs utilized methods such as short review classes, some essay grading and feedback, academic attrition, first-year instruction in bar preparation, “bar tips,” and student competitions featuring mock multiple choice questions.

Unfortunately, it is difficult to tell how much work students must put into these programs, and how much feedback they receive. Moreover, some of the methods used strike me as not the best practices. For example, the problem with overusing attrition in any form is that it masks either a failure or unwillingness of the institution to expend the resources or effort necessary to make sure all of its students are being given a real opportunity to pass the bar examination. Some attrition is, of course, necessary, because some students, unfortunately, probably should not be in law school. My argument is not with attrition, per se, but with the manipulation of attrition rates with an eye solely toward bar passage. Simply put, any law school can set its attrition rate high enough to guarantee good bar passage rates, but in doing so it may well abandon its educational mission to too many students.

Furthermore, as Professor Williams observed, a first-year bar preparation course at most reinforces skills,⁷⁶ but it seems that such a course is premature, so that much of the substance, and perhaps some of the skills, will be forgotten by the third year of law school. As one author has written, “I would think schools with [priorities involving bar passage rates] would realize that

⁷³ Survey conducted in August and September 2014. On file with the author.

⁷⁴ See *Bar Preparation*, UMKC SCH. L., <http://law.umkc.edu/academics/bar-prep/> [<http://perma.cc/5EQR-G2Z4>]; *myBAR FAQ's*, ARIZ. SUMMIT L. SCH., <https://www.azsummitlaw.edu/student-resources/student-success-programs/mybar/mybar-faqs> [<http://perma.cc/4C3M-KXNA>].

⁷⁵ The programs were at Campbell University, North Carolina Central University, Nova Southeastern University, and John Marshall School of Law. Williams, *supra* note 12, at 401–07.

⁷⁶ *Id.* at 405.

the first year is a very odd place to teach the details that most people try to remember for the days of the [bar] exam.”⁷⁷

Finally, the difficulty with non-structured MBE testing as described by Professor Williams, whether in the form of a question per week, or competitions, is that, absent a structured and comprehensive discussion of the reasoning behind each question, there is little guarantee that students will absorb both the substantive law and the analysis of patterns in the law necessary to successfully navigate the MBE portion of the bar exam. For this same reason, simply directing students to do thirty or fifty multiple choice questions each night, without feedback beyond a written explanation, is incomplete as a teaching tool. Such a process is no different than the cookie-cutter approach of commercial bar review products, which “target large numbers of students” rather than individual learning styles.⁷⁸

B. Possible Components of Successful and Complete Bar Preparation Programs

Recognizing the large amount of work necessary to implement an effective bar exam preparation program, one academic support professional sought to identify the appropriate features of a for-credit law school bar preparation course.⁷⁹ Denise Riebe addressed five issues: course content; course hours; course methodology; class size, target students, and mandatory v. voluntary classes; and course grading.

Professor Riebe suggests that the course content should include grounding the teaching of learning skills in the substantive law that students need to learn for the bar exam,⁸⁰ with “many opportunities to complete practice questions.”⁸¹ She also recommends incorporating time and stress management concepts into the course.

In my view and experience, one way to do this is to cover one subject per week, with a midterm and final examination, so that students are taught to study subjects more completely at the times they are covered, rather than “cramming” as they might for an ordinary law school class. When an exam is covering six, seven, or eight subjects at one time, students should be taught to prepare each subject early, and then return to review each subject at least weekly. This process mirrors bar exam study: the

⁷⁷ Ethan J. Leib, *Adding Legislation Courses to the First-Year Curriculum*, 58 J. LEGAL EDUC. 166, 176 (2008).

⁷⁸ Riebe, *supra* note 7, at 307–08.

⁷⁹ *Id.* at 326–38.

⁸⁰ *Id.* at 327.

⁸¹ *Id.*

commercial bar reviews cover a subject for two or three days, and students must, on their own, return to those subjects weekly, and increasingly as the bar exam approaches.

Professor Riebe recommends a three- or four-credit course that allots sufficient class time to allow students to complete practice exams, recognizing that the competing demands on law students' time may leave them unable to complete practice questions except in a classroom setting.⁸²

But it seems to me that if the course *requires* completion of the practice question or essay—under threat of a grade penalty, but combined with the incentive of prompt feedback—then students will in fact likely turn in their assignments timely, and will complete even more practice essays than they would otherwise. Professor Riebe, indeed, seems to acknowledge this fact.⁸³

Professor Riebe recommends “occasional” meetings during the bar review preparation period, or, alternatively, “touching base” with students during that period through e-mails or meetings to reinforce the knowledge and skills learned during the academic year.⁸⁴ Thus, Professor Riebe did not address or anticipate significant institutional involvement post-graduation in bar preparation.

In recommending course methodology, Professor Riebe advocates a panoply of different teaching methods, including “active learning, collaborative learning, self-regulated learning, skills instruction, practice opportunities, and peer or professional tutors.”⁸⁵

Professor Riebe primarily focuses on the self-regulated learning process: planning a learning task; performing the learning task; and reflecting on the learning experience.⁸⁶ Similarly, Raymond J. Wlodkowski and Margery B. Ginsberg, in their book, *Teaching Intensive and Accelerated Courses*,⁸⁷ address developing self-efficacy for learning and, like Professor Riebe, identify the importance of planning and self-assessment in learning. But they also point to something Professor Riebe does not address—the importance of prompt feedback:

Prompt feedback while learning leads to stronger feelings of personal control and self-efficacy. This is one of the main reasons some online

⁸² *Id.* at 329.

⁸³ *Id.* at 337 (“Students are honest in admitting their need for ‘carrots and sticks’ to make them do what they know they should do.”).

⁸⁴ *See id.* at 330.

⁸⁵ *Id.* at 330–31.

⁸⁶ *Id.* at 332.

⁸⁷ RAYMOND J. WLODKOWSKI & MARGERY B. GINSBERG, *INTENSIVE AND ACCELERATED COURSES* (2010).

instruction programs can be so powerful for increasing motivation: the computer program can give immediate feedback so that learners have moment-to-moment awareness of their progress in learning . . . [which] . . . gives them a strong sense of control in the learning process.⁸⁸

While essay feedback cannot be moment-to-moment, it can and should be relatively prompt—certainly, in my experience, no more than forty-eight hours. Thus, a hallmark of a good for-credit bar preparation course is not only outside, required essay writing, but prompt feedback, to encourage students to take control of their own learning process.

Professor Riebe focuses her class size and targeting discussion on at-risk students, a common focus in the academic support community.⁸⁹ Her focus, like that of Professor Flanagan, is in part derived from a concern about resources.⁹⁰ Professor Riebe's piece, however, was written in 2006–2007, before much attention was paid to what Professor Flanagan identifies as a general increase in underpreparedness of law students. Not only has there been an increase in underpreparedness, but there has been a steep decline in applications over the last several years. This also has the potential of substantially increasing the pool of “at risk” students. “Applications for the class that begins law school [in 2014] are down 8 percent following double-digit declines the two previous years, according to statistics compiled by the Law School Admission Council. That adds up to a total drop in applications of 37 percent since 2010.”⁹¹ As a consequence, median LSAT and undergraduate GPA numbers have also dropped. “The average decline in median LSAT scores between 2010 and 2013 across U.S. News ‘tiers’ of law schools was 1.54 among top 50 schools, 2.27 among schools ranked 51–99, 2.11 among schools ranked 100–144, and 2.79 among schools ranked alphabetically.”⁹²

This decline in LSAT medians augurs poorly for future bar passage. “For any given cut score, bar passage rates not only fall as law school LSAT scores fall, they fall at increasing rates. Moreover, raising the cut score magnifies this effect.”⁹³ As these

⁸⁸ *Id.* at 86.

⁸⁹ *See, e.g.*, Flanagan, *supra* note 13, at 173.

⁹⁰ “Because resources are limited, targeting at-risk students for participation is necessary at most law schools. Most schools neither want to invest in assisting students who would pass without extra support nor displace resources that could be used for students genuinely at risk.” Riebe, *supra* note 7, at 333.

⁹¹ Neil, *supra* note 5.

⁹² Paul Caron, *Median LSAT Scores for the 2015 U.S. News Law School Rankings*, TAXPROF BLOG (Mar. 5, 2014), http://taxprof.typepad.com/taxprof_blog/2014/03/median-lsat-scores.html [<http://perma.cc/KZ9P-XDG7>].

⁹³ Gary S. Rosin, *Unpacking the Bar: Of Cut Scores and Competence*, 32 J. LEGAL

trends have continued, more and more students are at risk of failing the bar exam, so more and more students should be given the opportunity to participate in supplemental bar preparation courses.⁹⁴

While Professor Riebe concludes that, with respect to a for-credit course, “pass-fail grading may be appropriate,” she also acknowledges that student attitudes, the need for incentives and dis-incentives, and student “self-handicapping behavior . . . might weigh in favor of using grades as an incentive for students to perform the required course work.”⁹⁵ On this, I agree; my experience with students is that ungraded or pass-fail assignments are not met with the same level of effort or seriousness as graded assignments or exams. Given that, as discussed earlier, the bar examination requires more work than a full-time job,⁹⁶ that work should always be approached with seriousness of purpose, something that is more likely when a student’s grade depends on the effort.

As mentioned earlier, Professor Riebe also discusses limiting participation in for-credit courses to at-risk students. I respectfully disagree, because there are other reasons to extend the opportunity to participate in for-credit bar preparation courses to the entire class. For example, participation by most or all of the class from the beginning of the academic year (or semester, depending on whether the course is offered for a full year or semester) will help create a group mentality where everyone is supportive of everyone else, and as a group, everyone is responsible for everyone else. Thus, as a cohort, the entire class can experience the effort and time expenditure necessary for adequate preparation for the bar examination. Even for those top-level students who may not need a bar preparation program, my experience—and at least some belief, perhaps unproven, of others—is that there are intangible benefits, such as increased confidence at the bar exam itself.⁹⁷ Ultimately, I have found, this level of inclusion has led to a common and healthy *esprit de corps* among the entire class.

PROF. 67, 93 (2008).

⁹⁴ In this context, it is particularly concerning to see some law schools charge their law students to participate in a law school supplemental bar preparation program. Unlike tuition, which students can plan for, students generally learn about this extra charge in their third year, as graduation approaches. Such an extra charge beyond tuition, much less the charges of \$600–\$2000 or more, can therefore deter students who may well need the supplemental academic assistance from receiving it. Arizona Summit charges \$2550 and UMKC charges \$600. See *Bar Preparation*, *supra* note 74 *myBAR FAQ's*, *supra* note 74.

⁹⁵ Riebe, *supra* note 7, at 337–38.

⁹⁶ *Id.* at 307.

⁹⁷ Jellum & Reeves, *supra* note 29, at 679–80.

One other result of limiting participation in for-credit courses to at-risk students is that it denies students a choice of classes. Given the importance of the bar examination, denial to some groups of students the choice of whether to take a for-credit bar preparation course is inadvisable. It seems unfair to deny students the opportunity to take courses of their own choosing, particularly if they believe, and it has been demonstrated, that the courses are helpful to them. Indeed, denying the course to some on the basis that they do not need the course can lead to a fracturing of the class and a disincentive later during the pre-bar summer to work together toward the common goal of bar passage for everyone. This fracturing seems to the author to be something that tends to be ignored in the rush among many in the academic support community to focus their efforts primarily on what they perceive to be “at-risk” or even “non-traditional” students. As more and more law students, whatever their background, fall into the “underpreparedness” category, this focus on one discrete group seems less and less productive. Professor Riebe concedes that there is a risk of stigmatizing at-risk students who are placed in academic support classes, but she suggests that “most students, with positive encouragement, are able to disregard stigma issues.”⁹⁸ While there may be some anecdotal evidence of the overcoming of stigma on the part of the students benefiting from the academic support, the effect of stigma goes both ways: students receiving the academic support not granted to others may feel stigmatized, but those not granted the academic support may resent the opportunities given to others. It seems better, particularly when the goal is bar passage, which is an equal and common goal of all the students, to extend support to all the students, and generate a common culture of mutual support and hard work.

As previously discussed, law school bar preparation programs include for-credit courses and supplemental programs offered during the summer before the bar exam. In this context of an overall host of bar preparation programs, Professor Riebe’s discussion largely focuses on a for-credit course offered during the school year, which is a good start, but she does not focus on either the need or the substance of a post-graduation supplemental bar preparation program. But commercial bar review courses, while helpful to some extent, are simply not sufficient in giving enough feedback for many students, particularly those who entered law school underprepared, and remain there even at graduation. Thus, law schools must not

⁹⁸ Riebe, *supra* note 7, at 334.

only evaluate for-credit courses; they must consider offering post-graduation supplemental programs.

For all these reasons, then, it is anachronistic to apply an older model of academic support to contemporary students by limiting programs to for-credit courses, and those courses to certain perceived at-risk groups. Instead, with this ever-increasing decline in preparedness and qualification of students, bar preparation programs must be designed and implemented to apply both before and after graduation, and to all students.

C. Empirical Studies of the Effectiveness of Some Bar Preparation Programs

Whether the bar preparation program utilizes for-credit courses, a summer supplemental program, or both, what is clear from the only empirical studies that have been published is that programs with intensive essay writing practice do increase bar passage. Both the University of Richmond and the University of the District of Columbia David A. Clarke School of Law (“UDC”) instituted bar preparation programs, and these are the two which have published empirical studies of the effectiveness of their programs.⁹⁹

Richmond’s program includes a bar preparation class scheduled for a student’s final semester. It includes a two-hour lecture, time to complete twelve to fifteen multistate questions and one or two essay questions, and review of those questions. Richmond also includes individual tutoring in essay writing, requiring and giving individual feedback on multiple essays.¹⁰⁰

In 2005, UDC instituted a bar preparation program that included several components: a BarBri videotaped lecture series and essay writing workshop; a separate essay writing class taught by members of the law school’s Bar Passage Task Force; PMBR multistate workshops; and the MBE review workshop presented by video by Professor Richard Litvin, then of Quinnipiac University.¹⁰¹ Chapman University’s Fowler School of Law uses a modified version of the Litvin program, taught live by faculty of the law school.¹⁰²

⁹⁹ See Jellum & Reeves, *supra* note 29; see also Derek Alphan, Tanya Washington & Vincent Eagan, *Yes We Can Pass the Bar. University of the District of Columbia, David A. Clarke School of Law Bar Passage Initiatives and Bar Pass Rates—From the Titanic to the Queen Mary!*, 14 UDC/DCSL L. REV. 9 (2011).

¹⁰⁰ Jellum & Reeves, *supra* note 29, at 661–63.

¹⁰¹ Alphan, Washington & Eagan, *supra* note 99, at 21–22.

¹⁰² See *infra* Part IV.

In 2006, after the ABA began allowing bar preparation courses for credit, UDC proposed instituting a bar skills essay writing class for credit.¹⁰³ The “PTEX”-administered essay writing course began in 2007. It is a fourteen-week practicum “that provides an intensive writing experience for students in preparation for the written portions of the bar exam, the essay examination, and the MPT.”¹⁰⁴

In the cases of both the Richmond and UDC programs, they were able to show increases in bar passage. Both programs utilized a chi-square analysis to determine that these increases were statistically significant.

Because Richmond had significant data from both before and after its implementation of a program, Richmond used a proportions test to determine the effect of bar passage. Richmond showed a 6.2 percentage point increase in bar passage overall, with improvements in the third and fourth quartiles of 13.9 percentage points and 20.4 percentage points, respectively. These results were statistically significant using a 0.05 significance level, meaning that the results would not occur randomly more than 5 times out of 100.¹⁰⁵

Richmond also tested the effect of participation in the program, using a chi-square analysis. Applied to the bottom half of the class from July 2001–2004, Richmond found that 83 of 116 program participants (71.55%) passed the bar examination, while only 59 of 106 non-program participants (55.66%) passed the bar examination. Richmond found that this difference was statistically significant, again at the 0.05 significance level.¹⁰⁶

Borrowing from Richmond’s methodology, UDC also determined whether their increase in bar passage was statistically significant. UDC compared bar pass rates from 2003–2006 with those from 2007–2008, which involved application of the more intensive writing skills course. The bar pass rate among all students improved from 51.7% to 69.7% for all students, and from 31.3% to 50.9% for the bottom half of the class.¹⁰⁷

UDC also analyzed and compared performance by those participating in the bar skills program initiated originally in 2003 and PTEX in 2007 with those not participating in those programs. Participation in the bar skills program significantly

103 Alphan, Washington & Eagan, *supra* note 99, at 25.

104 *Id.* at 27.

105 Jellum & Reeves, *supra* note 29, at 672, 679 n.197–99.

106 *Id.* at 678–79.

107 Alphan, Washington & Eagan, *supra* note 99, at 35.

improved the likelihood of bar passage: from 2003–2008, 62.5% of those participating in the bar skills program passed while only 47.8% of those not participating in the bar skills program passed; in the bottom half of the class, during the same period, 46.6% of those participating in the bar skills program passed while only 21.6% of those in the bottom half not participating in the bar skills program passed. Using a chi-square test, both of these results were statistically significant to well below a 0.05 significance level.¹⁰⁸

Participation in the PTEX program did not significantly improve bar passage based on law school GPA, although for the bottom half of the class, there was a slightly better result for participants than for non-participants.¹⁰⁹ However, it appeared that participation in the PTEX essay writing skills program did result in significant improvement based on LSAT scores. For students with an LSAT below 150, those who participated in PTEX passed at a 50.0% rate, while those who did not participate passed at a 31.0% rate. Using the chi-square test, at a 0.05 significance level, this result was significant.

It thus appears that, in those programs that have applied some statistical analysis to their results, their bar passage programs made a significant difference in bar passage. Both of those programs share some common characteristics, the most important of which is a significant focus on improving essay-writing skills, utilizing ample feedback. Both as well gave fairly quick feedback on MBE practice, including in-depth analysis of questions and the possible options.

Extrapolating from and applying these data, it seems fair to conclude that a comprehensive in-house bar preparation program that combines rigorous for-credit courses with a summer supplemental program that includes focus on both essay writing and multistate review, with ample and prompt feedback, should then result in improved bar passage rates. Without more data, however, we cannot be sure which part of the program makes the most difference. As shown below, such a program requires significant time and labor, both on the part of the students and the faculty, but it produces results.

IV. A COMPREHENSIVE EFFORT: CHAPMAN UNIVERSITY'S FOWLER SCHOOL OF LAW

Because the decline in student preparedness and admission statistics is increasing the pool of at-risk students, this Article

¹⁰⁸ *Id.* at 36–37, n.129.

¹⁰⁹ *Id.* at 37–38.

has argued that bar preparation programs require both for-credit courses and supplemental post-graduation bar preparation programs, highly labor-intensive for both students and faculty, and targeted toward all students to develop a cohesive class studying for the bar examination. As demonstrated, it appears that such programs can have a positive effect on bar passage. The final two Parts of this Article describe an example of such a highly labor-intensive program available to all students, and describes empirical evidence of the effectiveness of such a program.

In 2007, Chapman University's School of Law (now named the Fowler School of Law)¹¹⁰ initiated a supplemental bar preparation program, consisting of some essay assistance and MBE practice using a series of videos produced by then-Quinnipiac Law School Professor Richard Litvin. The program was expanded to something approaching its current format during the 2008–2009 academic year, and the results since then have been, with one exception, promising.¹¹¹ Except for an anomalous bar examination pass rate in July 2010, bar passage at Chapman University's Fowler School of Law has exceeded the California ABA school average each year.

This Part has three sections: one detailing the development of the Academic Support Program at Chapman; a second examining the structures and components of the for-credit bar preparation courses offered by Chapman; and a final section examining the structure and components of the post-graduation supplemental bar preparation program at Chapman.

A. Academic Support and Bar Preparation at the Chapman University Fowler School of Law

Since 2004, when Chapman first hired a Director of Academic Achievement, it has been steadily refining its academic support and bar preparation programs, adding new layers across the years in response to the growing need for such services.

Early on, these included three specific programs for academic support: (1) workshops throughout the academic year—and particularly in the first semester—for first-year students, designed to develop the skills needed to succeed in law school; (2) individual tutoring with the Director; and (3) establishment of study groups

¹¹⁰ See Dawn Bonker, *Law School Receives Historic \$55 Million Gift, Naming The Dale E. Fowler School of Law*, CHAP. U.: BLOGS (Aug. 14, 2013), <http://blogs.chapman.edu/happenings/2013/08/14/school-of-law-receives-historic-2nd-largest-reported-gift-to-a-law-school-school-is-named-the-dale-e-fowler-school-of-law/> [<http://perma.cc/UR8P-E6KV>].

¹¹¹ See *infra* Part V.

for first-year classes led by student “Academic Fellows.”¹¹² In addition, Chapman contracted with two commercial bar preparation programs to provide six bar exam workshops for graduating students in the spring semester.

Chapman eventually expanded the Early Bar Preparation Program that included weekend lectures and workshops on bar essay subjects for third-year students during the academic year. It also included some assistance to students and essay review.

Beginning for the 2007–2008 academic year, Chapman also offered a course titled “Legal Writing Skills,” which is required for students who receive a grade of 1.9 or below in either semester of their first-year Legal Research and Writing (“LRW”) course, or where the student’s LRW professor recommends that the student take Legal Writing Skills. Legal Writing Skills is an intensive workshop designed to improve the writing and analytical skills of struggling students. At that time, Chapman also began to offer a course titled, “Legal Analysis Workshop,” focusing largely on the skills required to successfully complete the performance test portion of the California Bar Exam.

Chapman has made several efforts to institutionalize both early bar preparation and continued supplemental bar preparation after graduation as a way of life for Chapman students. To that end, in the fall of 2008, I began teaching a for-credit bar preparation course as an adjunct professor at the law school. I have subsequently progressed through the academic ranks to my current full-time position as Professor of Academic Achievement and Director of Bar Services.¹¹³

B. Chapman’s For-Credit Bar Preparation Courses

In Part III, I advanced the view that a comprehensive bar preparation program should have both for-credit courses and a post-graduation supplemental program. This section addresses the for-credit bar preparation courses. The law school offers two for-credit bar preparation courses: “Legal Analysis Workshop” and “Select Topics in American Law.” Both courses are open to

¹¹² These students are generally selected by the Director of Academic Achievement in consultation with the faculty whom the Academic Fellows would serve, based on the students’ performance in the particular faculty member’s course.

¹¹³ I had formerly been the Associate Dean for Academic Support at Whittier Law School and Chief of Staff to Orange County Supervisor John Moorlach. In the summer of 2009, I also coordinated the Supplemental Bar Preparation Program (described in detail below). In August 2009, I was appointed Visiting Associate Professor of Academic Achievement by the Dean of the Chapman University School of Law, and was re-appointed to that position for the 2010–2011 academic year by the Interim Dean, and given the additional title of Director of Bar Services.

all students, but both courses are required for those students who begin their third year in the bottom quartile.

Legal Analysis Workshop is a three-unit course. Since the 2010–2011 academic year, two sections have been offered in the fall, and two sections have been offered in the spring. In the course, students learn the skills needed to write good three-hour performance tests similar to those given on the California Bar Exam. Each student writes a weekly ungraded, but required, practice performance test on which the instructor provides extensive feedback as to form and content. In addition, students write two midterm examinations and one final examination, each in the form of a three-hour performance test. Students receive written feedback on their examinations, and are also required to meet with their professor for one-on-one discussions of each of their midterm examinations. Historically, about half the students in a graduating class tend to take Legal Analysis Workshop, and most are generally in the bottom half of the class.¹¹⁴

Select Topics in American Law is a three-unit course. One section is offered in the fall, and three sections are offered in the spring. Since the 2009–2010 academic year, three of the four sections each year have been taught by me, and one section, taught in the evening in spring semester, has been taught by another faculty member or an adjunct faculty member with my supervision. About 90% or more of the graduating class historically takes the course,¹¹⁵ with about 105–120 students taking the course from the author and about 20–25 students taking the course from the other faculty member.

The course is primarily directed at essay writing for the California Bar Examination, and covers every identified subject on the examination. Each class session is three hours long. In the first week, students review good techniques for bar examination essay writing, including proper Issue-Rule-Application-Conclusion (“IRAC”) structure, formulation of precise rule statements, thorough use of facts, and proper analytical reasoning, as well as good format, style, and general grammar and syntax issues. In each week thereafter, students are assigned to thoroughly read an outline of the law on the particular week’s subject and to write a take-home essay—a prior California Bar Exam essay—and upload it to the course “TWEN” website for feedback from the professor, which is provided very soon after its submission. In class, the professor begins with an approximately 90-minute lecture on the particular subject, discussing the areas that

¹¹⁴ Records on file with the author.

¹¹⁵ Records on file with the author.

historically tend to be tested on the California essay exam, the applicable black letter law, approaches for analyzing issues presented involving that law, and examples from prior essay exams involving that subject. The class then together reviews, with the professor, the take-home exam, and looks at an example of a passing essay, with the professor pointing out the parts of the essay that were done well and the parts that were not done well. The class then takes one hour and each student writes an in-class essay consisting of another prior California Bar Exam essay in the subject, after which the professor discusses with the class the proper format and content of the in-class essay, individually questioning students to draw them into a discussion of the essay and to give immediate feedback on student wording of the various parts of their essays. The class again reviews an example of a passing essay, with the professor again pointing out the parts of the essay that were done well and the parts that were not done well.

Once class is over, students can download the following items from TWEN each week: (1) lecture notes from the professor, detailing the essay approaches, including black letter law and analysis directions, for the subject just covered; (2) the professor's model answers to both the take-home essay and the in-class essay; and (3) the sample "passing" answers. Students are instructed to learn the material from a subject that week by reviewing the lecture notes and beginning to memorize them, and by reviewing the model answers for structure and form. The faculty explains to students that this duplicates bar study, because commercial bar reviews only cover a subject once, and students are expected to study on their own. Thus, students are instructed to review each set of lecture notes not only the week they are published, but each week thereafter until the midterm or final exam, so that they cumulatively study and memorize each subject, just as if they were doing so while studying for the bar exam. This causes students to avoid "cramming" for the midterm or final examinations, and to develop an early habit of constant and cumulative studying in order to master multiple subjects.

In addition to the twelve take-home essays and twelve in-class essays students are required to write, and for which they receive feedback as discussed above, there is a midterm examination and a final examination, each of which counts for 50% of the student's grade. Each examination is three hours long and consists of three essays, all of which are "cross-over" type essays, covering a minimum of two subjects. The midterm examination covers the following subjects: Contracts and

Sales; Torts; Federal and California Civil Procedure; Criminal Law and Criminal Procedure; and Real Property. The final examination covers the following subjects: Federal and California Evidence; Business Associations (Agency, Partnerships, and Corporations); Constitutional Law; Professional Responsibility; Wills, Trusts, and Estates; Community Property; and Remedies.

Grading in the course is far from liberal. While the maximum median at the law school applicable to upper-level courses of twenty or more students is 3.0, the actual median grade awarded in Select Topics has never exceeded 2.8. In the fall semester, which has a lower population largely consisting of students preparing to take the February Bar Exam, the median over the six years the course has been taught has averaged 2.725. The high grade in the fall semester has averaged 3.48, and the low grade in the fall semester has averaged 1.70. In the spring semester, when well over 100 students take the course, the median over the six years the course has been taught has averaged 2.78. The high grade in the spring semester has averaged 3.74, and the low grade in the spring semester has averaged 1.59.¹¹⁶

As a consequence, the course has developed a reputation among students as being very demanding, requiring a significant amount of work, and very difficult—just as a course preparing students for the rigors of concentrated study for the bar exam should be. Nevertheless, the course has grown from inception in the 2008–2009 academic year where 6 students took it in the fall and 60 in the spring, to one in which 155 students out of 169 bar takers took it in the 2012–2013 academic year and 130 students out of 143 bar takers took it in the 2013–2014 academic year.¹¹⁷

C. Chapman's Supplemental Bar Preparation Program

As discussed earlier, a comprehensive bar preparation program should have both for-credit courses and a post-graduation supplemental program. This section addresses Chapman's post-graduation Supplemental Bar Preparation Program ("Supplemental Program").

At first, the post-graduation supplemental program was rudimentary, with some essay review and essay workshops in the summer of 2007. Beginning in the summer of 2008, the law school began developing a more extensive post-graduation Supplemental Program, designed to supplement whatever commercial bar preparation course in which students were enrolled.

¹¹⁶ Records of grades on file with the author.

¹¹⁷ Records on file with the author.

Originally, the Supplemental Program consisted of two components: (1) mock MBEs and DVD lectures on the MBE subjects given by Professor Richard Litvin of Quinnipiac University Law School, purchased by the law school, administered locally but largely taught long-distance by Professor Litvin; and (2) occasional assigned specific essays with feedback by academic support faculty and several of the LRW professors.

The second component of the Supplemental Program (the essay writing) was improved in the summer of 2009. While the author was still employed as an adjunct professor, he and several others critiqued, with a twenty-four to forty-eight hour turnaround, *any* practice essay submitted to them by students. This essay grading was in addition to the assigned essays that were part of the original program. As a result, many more student essays were graded in the summer of 2009—approximately 900 for 142 first-time takers.

When I was appointed Visiting Associate Professor of Academic Achievement late in the summer of 2009, an institutional commitment was made to improve the Supplemental Program. As Director of Bar Services, I replaced the Litvin program with Chapman's own mock bar exams and live sessions conducted by the Director of Academic Achievement and me. This allows students to ask questions at each session, and each session covers all the multiple choice questions from one of the six subjects on the previous mock bar. There are six sessions after each mock bar—one for each subject (Contracts, Torts, Criminal Law and Procedure, Evidence, Constitutional Law, and Real Property). There are three mock bars, and students' progress is tracked and given to them in written reports that detail which questions they correctly answered and which ones they missed, how well they did on each subject, as well as on important topics in each subject, and how well they did in the morning session and the afternoon session. Students are then given a final 100-question mock bar less than a week before the California Bar Examination.¹¹⁸

In addition, I reformulated the essay writing component of the program. All potential essays may be uploaded by students to the course TWEN website. The adjunct professors who teach Legal Analysis Workshop during the academic year critique performance tests submitted by the students. The author and up to eleven other full-time and adjunct faculty members and other

¹¹⁸ Historically, students average about 52% correct on the first mock bar exam, which is a baseline pre-test; by the end of the Supplemental Program, in each year since it was implemented fully in 2010, students average from 74%–78% correct on the final mock bar exam.

non-faculty graders¹¹⁹ critique all student essays, and return them to students with comments within twenty-four to forty-eight hours. This team critiqued approximately 1700 written submissions from 138 first-time students in summer 2010; 2400 written submissions from 159 first-time students in summer 2011; 3000 written submissions from 157 first-time students in summer 2012; 4450 written submissions from 157 first-time students in summer 2013; and, after reasonable and appropriate caps on the maximum number of reviewable essays per student were instituted,¹²⁰ 2800 written submissions from 130 first-time students in summer 2014.

Students are directed to write an equal number of essays on their own and self-check them. If they have any questions about those essays, particularly given the tendency of commercial bar reviews to write “model” answers that are overly dense, complex, and too long for any student to write in a one-hour time frame, they may contact me to discuss any essay they have written.

I also send frequent e-mails to all the students in the Supplemental Program, discussing substantive issues of law that are frequently tested. Additionally, students may e-mail substantive law questions to me at any time from graduation until the bar examination ends, and I respond promptly so long as the questions are sent between the hours of 7:00 a.m. and 11:00 p.m.

Finally, Chapman also has offered the Supplemental Program to those students taking the February bar examination, beginning in February 2010. That program begins in mid-December, and concludes less than a week before the February bar examination, but is largely identical to the summer program, except that it serves far fewer first-time takers and some repeaters.

The Supplemental Program begins shortly after graduation in May for the July bar examination, and in mid-December for the February bar examination, and is available free to all Chapman graduates, whether they are first-time takers or repeaters, and whether they are taking the California Bar Examination or the bar examination of another state. In each case, the sessions reviewing MBE questions run until about five

119 I select non-faculty graders based on their past law school performance and experience as teaching assistants, and I train them on how to critique essays, always selectively reviewing their critiques to make sure their work is consistent and complete.

120 Prior to the Supplemental Program for the February 2014 Bar Examination, there were no limits on the number of essays students could submit for grading. Currently, students may submit up to thirty essays for grading, and more with the permission of the author.

to six days before the bar examination, and students may submit essays to the team of faculty until late in the afternoon of the Friday before the bar examination, although they may continue to submit essays to me through the morning of the Sunday before the bar examination.

The Supplemental Program requires significant time and labor on the parts of both the students and faculty. If students write thirty essays for grading, plus another thirty or so on their own for self-checking, then they will write sixty essays in about an eight-week period.¹²¹ This means that, in addition to attending an average of twenty hours of classroom instruction from the commercial bar review each week, and six hours of classroom instruction from the Supplemental Program sessions, as well as significant study time outside of the classroom, students are writing an average of more than seven essays per week. As discussed both with respect to the Richmond and UDC programs, and in Part V below, a significant key to passing the bar examination is repeated and intensive writing practice. There is, simply put, no substitute for sustained hard work by both faculty and students, and the program is structured on that reality.

Given that Supplemental Program faculty critique thousands of essays over the eight-week period, they each put in substantial time as well. Generally, I critique about half the essays written by each student, and the remaining team members grade the other half. This means that each grader, other than I, averaged about 205 essays in the summer of 2013, and 127 essays in summer of 2014. I tend to critique up to 2000 essays each summer and, combined with the essays graded in Select Topics over the academic year, grade over 4000 essays per year. This labor-intensive effort is needed when the program seeks to adequately service the entire graduating class, and this amount of labor is necessary no matter how many graders the program can employ.

From the perspective of some academic support professionals, resources are insufficient to adequately provide one-on-one academic assistance to an ever-growing number of at-risk and other students needing such assistance without incurring additional cost,¹²² or asking other faculty for assistance in

¹²¹ Students may begin to turn in essays beginning the first week in January for the February bar examination, and beginning the first week in June for the July bar examination. In both cases, students may turn in essays until 4:00 p.m. on the Friday before the bar examination—which allows time to return all critiqued essays before students pack up to go to a hotel near where they are scheduled to take the bar examination. Thus, on average, students may turn in essays over the course of eight weeks.

¹²² Flanagan, *supra* note 13, at 174–77.

teaching,¹²³ and some academic support faculty complain that they “remain relegated to second-class status, staffed by non-tenure track faculty.”¹²⁴ However, none of these issues is important from the perspective of the students being served. Given the high cost of education, every student has a right to our time and hard work, at whatever level it reasonably takes, to provide the kind of comprehensive and labor-intensive bar preparation program described herein. Moreover, as mentioned earlier and as described in Part V it is more than worthwhile in terms of the results.

V. A DESCRIPTIVE AND STATISTICAL ANALYSIS OF STUDENT PERFORMANCE AT CHAPMAN UNIVERSITY’S FOWLER SCHOOL OF LAW

As mentioned above, once significant pieces of the comprehensive bar preparation program at Chapman were introduced (including the for-credit Select Topics and Legal Analysis Workshop courses as well as the summer Supplemental Program), the results have, with the exception of one anomalous exam administration, been promising.

A. Chapman’s Performance on the California Bar Examination Since Adopting Its Program

As shown by the following chart, Chapman has exceeded the California ABA school average pass rate every July bar examination since 2009 except for one, and has seen its bar passage rates come much closer to those posted by the nine California law schools in the *U.S. News and World Report* Top 100 Law Schools than those posted by the eleven law schools either not yet rated in the so-called third and fourth tiers, and one not-yet rated (UC Irvine).

Year	(1) CA ABA	(2) Top 9 CA ABA	(3) Remaining CA ABA	(3)-(2) Differential	(4) Chapman	(4)-(2) Differential
2009	79%	86.15%	70.32%	-15.83%	80.99%	-5.30%
2010	75%	82.99%	65.57%	-17.42%	69.57%	-13.41%
2011	76%	80.71%	70.38%	-10.33%	79.25%	-1.46%
2012	77%	82.51%	70.50%	-12.01%	81.53%	-0.98%
2013	76%	83.15%	68.49%	-14.66%	77.07%	-6.08%
2014	69%	79.40%	57.96%	-21.44%	74.80%	-5.40%
2015	68%	72.10%	63.54%	-8.56%	71.20%	-0.90%
2009– 2015	73.87%	81.46%	64.98%	-16.48%	76.65%	-4.81%

¹²³ *Id.*

¹²⁴ *Id.* at 174.

As the chart also shows, Chapman exceeded the California ABA school average pass rate on the July 2014 and July 2015 Bar Examinations. In July 2014, when the California ABA school average pass rate dropped significantly, from 76% to 69%,¹²⁵ and bar exam rates dropped nationally,¹²⁶ Chapman's bar passage rate was 75%.¹²⁷ In July 2015, when the California ABA school average pass rate dropped further to 68%, Chapman's bar passage rate was 71.2%.¹²⁸

Chapman's achievement is consistent with the findings of two scholars who have analyzed the data. In his paper, *Ranking Law Schools Using Reported California Bar Exam Results: Some Observations and Conjectures*, Professor Donald Smythe sought to rank law schools based on their bar passage rates, particularly from 2007–2011, and compared those rankings to the *U.S. News and World Report* rankings.¹²⁹ He found that:

in addition to the elite Californian schools, Pepperdine, Loyola, San Francisco, Santa Clara, California Western, Chapman, San Diego, and McGeorge all had California bar passage rates for reported first-time takers of the exam over the period from 2007-2011 which exceeded those of at least three schools that the US News ranked in its top twenty-five.¹³⁰

He also found that:

Chapman is a relatively newly-accredited law school, and it placed only 110th in the US News ranking, but from 2007-2011 its California bar passage rate for reported first-time takers also exceeded the passage rates of many schools that rank in the US News top fifty, and even some in the top twenty-five, as well as San Diego's and McGeorge's [law schools].¹³¹

As Professor Smythe also noted in a footnote, "Chapman's relatively strong showing is also reflected by the favorable comparison with other relatively newly-accredited Californian schools such as La Verne and Western State, which had significantly lower bar passage rates."¹³² Professor Smythe's study was written in 2012, and thus did not take into account Chapman's even stronger performance on the July 2012 and 2013

¹²⁵ For the most recent statistics published by the State Bar of California, see *Statistics*, *supra* note 38.

¹²⁶ See, e.g., Marino Bar Review, *Declining Nationwide Bar Exam Pass Rates*, ABOVE L. (Oct. 27, 2014, 10:15 AM), <http://abovethelaw.com/2014/10/declining-nationwide-bar-exam-pass-rates> [<http://perma.cc/3VKQ-A3BS>]; see also Gershman, *supra* note 1.

¹²⁷ For the most recent statistics published by the State Bar of California, see ABOVE L., *supra* note 126.

¹²⁸ See *id.*

¹²⁹ Smythe, *supra* note 14.

¹³⁰ *Id.* at 21–22.

¹³¹ *Id.* at 22.

¹³² *Id.* at 22 n.33.

bar examinations, when it ranked 7th and 9th among California ABA-accredited law schools, ahead of not only the other five schools with equivalent predictors, but also ahead of law schools such as UC Davis (July 2011 and 2012), UC Hastings (July 2012 and 2013), and Loyola (2012).¹³³

Professor Paul Caron's analysis was completed in January 2014, after the July 2013 bar results were released. He explained that Chapman, with a *U.S. News and World Report* rank of 12th among all 21 California ABA-accredited law schools and 126th overall, outperformed UC Hastings (48th), University of San Diego (68th), Santa Clara (96th), and McGeorge (124th), as well as University of San Francisco (144th).¹³⁴

Indeed, since Chapman adopted its complete supplemental bar preparation program beginning in July 2009, it has exceeded the California ABA school average in six of the seven years. Moreover, in the last five years (2011–2015), Chapman has ranked 8th, 7th, 8th, 9th, and 9th among all California ABA-accredited law schools (21 in total) in pass rate, exceeding at times the pass rates of several of the top 100 ranked law schools in California.¹³⁵

Based on comparisons both with equivalently situated law schools and with California ABA-accredited law schools overall, it would appear that the labor-intensive approach at Chapman, stressing significant practice and immediate feedback, is effective. But are Chapman's results statistically significant?

B. Statistical Analysis of For-Credit Bar Preparation Course at Chapman

As has been noted, virtually the entire graduating class takes the for-credit Select Topics course, and those that do not are at the top of each class, and likely to pass the bar with or without additional assistance. Almost every graduate takes the summer Supplemental Program. As a result, there is no longer a

¹³³ See *Statistics*, *supra* note 38.

¹³⁴ Caron, *supra* note 14.

¹³⁵ For example, in the most recent rankings (2016, ranked in 2015) the University of San Diego School of Law (USD) is ranked 71st by *U.S. News and World Report*, but in the seven years that Chapman has fully implemented its supplemental bar preparation program, it has exceeded USD's pass rate *all but one of the seven years*. UC Hastings College of Law is ranked 59th by *U.S. News and World Report*, but in the seven years that Chapman has fully implemented its supplemental bar preparation program, it has exceeded Hastings' pass rate four times, including July 2014 and July 2015. Similarly, UC Davis School of Law is ranked 31st by *U.S. News and World Report*, but Chapman has exceeded Davis' pass rate twice. Most recently, Pepperdine Law School is ranked 52nd by *U.S. News and World Report*, but in July 2015, Chapman's bar passage rate exceeded that of Pepperdine.

large enough control group of students who do not take Select Topics to run a meaningful statistical analysis. Specifically, in each graduating class, out of 150–169 students, there are no more than 10 or so who do not take Select Topics, and almost all of them are students near the top of the class who, based on historical performance, likely would pass the bar exam with or without Select Topics or any other bar preparation course.¹³⁶ Thus, there is no group large enough each academic year to compare performance in Select Topics against, because there are not enough students who do not take Select Topics to reach a statistically significant conclusion.

However, the first year that Select Topics was offered, only 59 students took it out of a graduating class of 142. Therefore, 83 students did not take Select Topics, which means that the two groups (Select Topics takers and Select Topics non-takers) were each large enough that a meaningful statistical comparison of their relative results on the bar examination could be performed, similar to the studies done by Richmond and UDC.

In academic year 2008–2009, fifty-nine students who subsequently took the July 2009 Bar Examination took Select Topics in American Law. Of those students, fifty-one passed the July 2009 Bar Examination and eight did not. Of the students who subsequently took the July 2009 Bar Examination but did not take Select Topics, sixty-four passed and nineteen did not.

As with the Richmond and UDC studies, a chi-square (χ^2) analysis can be done on this two-by-two distribution. A chi-square analysis tests the relationship between two independent variables—in this case, taking or not taking Select Topics and passing or failing the California Bar Examination. Each variable has two possible outcomes, and thus, there are four possible outcomes: (1) took Select Topics and passed the California Bar Examination; (2) took Select Topics and failed the California Bar Examination; (3) did not take Select Topics and passed the California Bar Examination; and (4) did not take Select Topics and failed the California Bar Examination.

Placing this data into cells looks like this:

	Pass	Fail	Total
Took Select Topics	51	8	59
Did Not Take Select Topics	64	19	83
Total	115	27	142

¹³⁶ Records on file with the author.

The formula for determining chi-square is: $\chi^2 = \sum(o - e)^2/e$. Chi-square sums the squares of the differences in observed frequencies and expected frequencies. The observed frequency is the actual number of students in each cell. The expected frequency is the number of students one would expect in each cell if taking Select Topics had no bearing on bar passage. For example, since 59 students took Select Topics, the expected frequency is 29.5 passing students and 29.5 failing students. The chi-square test results in a number from 0 to infinity. A “0” result, or something near it (the “null hypothesis”), exists when the frequency of results in each cell approaches the expected frequency, in other words, there would be no real effect on passing or failing whether a student did or did not take Select Topics if a chi-square at or near 0 results.

The null hypothesis is that there is no relationship between taking Select Topics and passing the California Bar Examination. Assuming a null hypothesis, as described above, the expected frequency in the cells for “Took Select Topics” is 24.5, and the expected frequency in the cells for “Did Not Take Select Topics” is 41.5.

To determine whether the chi-square result matters and is statistically significant, statisticians determine whether the result would be expected in less than 5% of random occurrences. To determine this, we first decide on the “degrees of freedom,” which refers to the number of cells not being restricted to a single frequency. Once the cell “Pass” is filled, the cell “Fail” is automatically filled, so there is only one degree of freedom. The total degrees of freedom with two variables is the product of the two. Because this is a two by two cell structure, there are total degrees of freedom of $(r-1)(k-1) = 1$. Whether a chi-square result is statistically significant depends on whether the probability that this chi-square value will be exceeded is less than 5%, given the applicable degrees of freedom.

This matrix results in a chi-square of 55.7536. As is typical and accepted, the null hypothesis can be rejected if the chi-square value of 55.7536 exceeds the critical chi-square value within one degree of freedom at the .05 significance level (meaning the result would be expected to occur less than 5% of the time). At the .05 significance level, for one degree of freedom, the chi-square value must exceed 3.84.¹³⁷ A chi-square of 55.75836 in fact suggests that the probability of the bar preparation course having no effect is less than .005 (1/2 of 1%).

¹³⁷ Based on a chi-square table. See, e.g., PERRY E. JACOBSON, JR., INTRODUCTION TO STATISTICAL MEASURES FOR THE SOCIAL AND BEHAVIORAL SCIENCES 601 app. (1976).

Thus, the null hypothesis can be rejected, and it appears that the results are significant: taking Select Topics was helpful in passing the California Bar Examination.¹³⁸

The July 2009 results also suggested significant improvement at the lower quartiles. Based on prior years' performance, the expected pass rate in the third quartile was 69.32%, but the actual pass rate in the third quartile was 86.11%. The expected pass rate in the fourth quartile was 30.30%, but the actual pass rate in the fourth quartile was 50.00%.¹³⁹ These results appear to be significant.

For example, the chi-square matrix for the third quartile is:

	Pass	Fail	Total
Took Select Topics	8	1	9
Did Not Take Select Topics	22	4	26
Total	30	5	35

This matrix results in a chi-square of 5.3429. As noted above, at the .05 significance level, for one degree of freedom, the chi-square value must exceed 3.84. A chi-square of 5.3429 in fact suggests that the probability of the bar preparation course having no effect is less than .025. Thus, for the third quartile, the null hypothesis can be rejected, and it appears that the results are significant: taking Select Topics was helpful to third quartile students in passing the California Bar Examination.¹⁴⁰

C. Adjustments Made Due to the July 2010 Results

As remarked upon earlier, the July 2010 results were disappointing, although somewhat consistent with the national trend suggested by the data provided earlier.¹⁴¹ Chapman's first-time bar passage rate on that administration dropped to 72% for the graduating class, and 70% for all first-time takers.¹⁴²

The July 2010 results may have been an anomaly, due in part to the national decline, which itself may have been due in part to a first-time effort by the largest commercial provider, BarBri, to compete with other companies by offering their

¹³⁸ Calculations on file with the author.

¹³⁹ On file with the author.

¹⁴⁰ Calculations on file with the author.

¹⁴¹ Smythe, *supra* note 14, at 21–22.

¹⁴² Data for the graduating class on file with the author. The first-time pass rate for Chapman overall in July 2010 is also found at STATE BAR OF CAL., GENERAL STATISTICS REPORT: JULY 2010 CALIFORNIA BAR EXAMINATION 4 (2011), <http://admissions.calbar.ca.gov/LinkClick.aspx?fileticket=ECWYhV4t0wE%3d&tabid=2269> [<http://perma.cc/P82D-GFNM>]. The difference is due to several students from earlier classes who took the bar examination but did not participate in any of Chapman's bar preparation programs.

lectures online. At Chapman, this resulted in a large drop in attendance in the regimented BarBri classes. Anecdotally, BarBri officials told the author that they experienced a drop in both attendance in bar review classes and pass rates nationally in July 2010. As a result of the July 2010 results, both BarBri and Chapman now constantly notify students that bar passage rates are lower for students who study online rather than attending classes, which notification has resulted in much more consistent attendance at Chapman for the commercial review “live” lectures in the years since 2010.

This also suggests another reason that law schools should not rely entirely on commercial reviews for preparing their students for the bar examination. Commercial reviews provide a product, but once they are paid, they do not insist that students use the product, nor do they continually urge students to do the work in using the product. While students can track their progress using the commercial reviews’ software, no one will be calling students or meeting with students to push them to do the work. But law schools can be more of a presence in their students’ study lives. Where a law school offers essays and other practice sessions, faculty teaching bar preparation can track student effort and participation and remind students who are not writing enough or whose attendance has fallen to get back on track.

D. Effect of Essay Practice and Feedback: Statistical Analysis

Not only does it appear that Chapman’s bar preparation programs are helpful, but it also seems that essay writing and feedback are a significant factor in the program’s success. The bar passage results suggest that more practice, and thus more intensive work, do in fact translate into higher bar passage for all students. This result, if correct, is another persuasive reason why law schools should take a greater hand in running bar preparation courses that require significant work and are available to all the school’s students.

As discussed in Part IV, because commercial bar reviews often limit significantly the amount of practice essays that can be turned in, since July 2009, Chapman has permitted students to turn in essays and performance tests for twenty-four-hour turnaround in feedback. Until the summer 2014 Supplemental Program, students could turn in as many essays as they wanted. There is now a cap of thirty-five essays per student, which we have determined is a sufficient number from the perspective of the student’s performance and to provide the needed amount of

practice and feedback, while maintaining reasonable logistical limits on faculty labor.

Intuitively, it would seem that the more essays a student writes for feedback, the more likely the student will pass the bar examination. The author decided to test this hypothesis, again using a chi-square analysis applied to a multivariate distribution based on the number of essays submitted on the Supplemental Program TWEN page and bar passage.

Data was available from the 2011, 2012, and 2013 Supplemental Programs through archived TWEN pages. For each student, the number of essays they submitted on TWEN, as well as whether they passed or failed the bar examination on their first attempt, could be tracked. As a consequence, for each of the three years, results could be allocated based on the number of essays submitted, a variable that served as a representative of work ethic in studying for the bar examination. For each of the three years, a 2 x 7 table was created: one variable was bar passage (pass or fail); and the other variable was number of essays submitted (40+; 30–39; 25–29; 20–24; 15–19; 10–14; 0–9).

The tabular results are as follows:

July 2011¹⁴³

Total Essays Submitted	Pass	Fail	Total
40+	9	2	11
30–39	7	3	10
25–29	6	2	8
20–24	7	2	9
15–19	14	0	14
10–14	18	3	21
0–9	64	22	86
Total	125	34	159

The chi-square test for two or more independent samples with one nominal variable is calculated for an r by k contingency table as follows:

$$\chi^2 = \sum_{i=1}^{rk} (o_i^2 / e_i) - n$$

As before, o represents each observed cell frequency, and e represents the expected frequency. Thus, for example, 29 students submitted 25+ total essays, so the expected frequency assuming a null hypothesis in the relationship between essays

¹⁴³ On file with the author.

submitted and bar passage would be 14.5 students in both the “Pass” and “Fail” cells. The n variable means the total number of students who took the July 2011 Bar Examination for the first time—in this case, 159 students.

Applying the formula results in a χ^2 value of 54.4976. The degrees of freedom for a 7 x 2 matrix equals $(7-1)(2-1) = 6$. As is typical and accepted, the null hypothesis can be rejected if the chi-square value of 54.4976 exceeds the critical chi-square value within six degrees of freedom at the .05 significance level. This means that the probability of error is .05 or smaller. At the .05 significance level, for six degrees of freedom, the chi-square value must exceed 12.59. A chi-square of 54.4976 in fact suggests that the probability of error is less than .005 (1/2 of 1%), because it exceeds the critical chi-square value for six degrees of freedom at that level of 18.55. Thus, the null hypothesis can be rejected, and it appears that the results are statistically significant, if not intuitive: writing more and more essays was helpful in passing the California Bar Examination.

The results for July 2012, July 2013, and July 2014 were similar. See the following tables for those examination administrations:

July 2012¹⁴⁴

Total Essays Submitted	Pass	Fail	Total
40+	15	1	16
30–39	16	2	18
25–29	11	0	11
20–24	11	0	11
15–19	18	2	20
10–14	20	7	27
0–9	37	17	54
Total	128	29	157

July 2013¹⁴⁵

Total Essays Submitted	Pass	Fail	Total
40+	34	5	39
30–39	15	4	19
25–29	11	2	13
20–24	13	5	18
15–19	13	2	15
10–14	8	1	9
0–9	24	20	44
Total	118	39	157

¹⁴⁴ On file with the author.

¹⁴⁵ On file with the author.

July 2014¹⁴⁶

Total Essays Submitted	Pass	Fail	Total
40+	10	1	11
30-39	16	3	19
25-29	16	6	22
20-24	11	3	14
15-19	20	1	21
10-14	7	2	9
0-9	14	16	30
Total	94	32	126

The χ^2 values for July 2012, July 2013, and July 2014 are 71.6055556, 35.8839534, and 45.47684, respectively. As was true with the July 2011 exam, there are six degrees of freedom, so that the minimum chi-square value at the 0.05 significance level is 12.59, and the minimum chi-square value at the 0.005 significance level is 18.55. Thus, the results for all four years suggest that the null hypothesis is disproven, and that the results are statistically significant at least to the 0.005 significance level.

Moreover, all four years show the same pattern: high pass rates when students write more than ten essays each, and a markedly lesser success rate at 0-10 essays (a nearly fifteen percentage point drop in the pass rate for those who submitted 1-9 essays and a nearly twenty percentage point drop in the pass rate for those who submitted no essays).¹⁴⁷ I have seen a tendency, particularly with our encouragement, for students to write an almost equal number of essays that they self-check against model answers, so even students who turn in about 10-20 essays in fact write double that number, which partially explains why the success rate increases at the 10 essays or more level.¹⁴⁸ Nevertheless, to insure full coverage among the thirteen or more different essay subjects on the California Bar Examination, I recommend that students turn in at least 20-25 essays for grading, and this study suggests that students who do so will be highly successful.

As noted earlier, Chapman has now instituted a cap on essay submissions of 35 essays per student. The following chart

¹⁴⁶ On file with the author.

¹⁴⁷ See *supra* tabular results chart p. 589 and note 143.

¹⁴⁸ A further explanation may be that, even before students take the Supplemental Program, almost all of them take the for-credit bar preparation course (Select Topics), which requires them to write two essays for each of the twelve subjects, for a total of twenty-four essays. See *supra* Section IV.B. Therefore, most students who succeed write a minimum of nearly thirty-five essays.

illustrates the results for July 2011–2014 for students who wrote more than 35 essays and those who wrote 35 or fewer.

Combined July 2011–2014¹⁴⁹

Total Essays Submitted	Pass	Fail	Total
36+	79	11	90
0–35	386	123	509
Total	465	134	599

Those who wrote 36 or more essays passed at a rate of 87.78%, which is only marginally more than the pass rate for those submitting at least 20 essays. Furthermore, the combined pass rate for those submitting 20–35 essays in that same time period was 82.91% (131 passed and 27 failed),¹⁵⁰ so again, there is only a marginal increase in pass rate for submissions over 35 essays.

These results seem to validate the decision to adopt a cap of 35 submissions per student. By recommending at least 20 essays per student, and capping the number at 35 essays, the program accommodates students who need to be pushed to write as many as 20 essays in order to achieve success on the bar examination, but allows for the highly motivated student who writes a higher number of essays, without over-burdening faculty with too many students writing too many essays.

At the other end, however, as mentioned above, the drop off in success among those who do not write essays or write fewer essays is apparent.

Combined July 2011–2014¹⁵¹

Total Essays Submitted	Pass	Fail	Total
10+	325	60	385
1–9	93	42	135
0	47	32	79
Total	465	134	599

Those who submitted 10 or more essays passed at an overall rate of 84.42% on these three administrations. Those who submitted 1–9 essays passed at an overall rate of 68.89%. Finally, those who submitted no essays (almost all of whom did participate in the Supplemental Program sessions nevertheless)¹⁵²

149 On file with the author.

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passed at an overall rate of 59.49%. Thus, it seems that, at a minimum, turning in at least 10 essays for feedback was a break point for effectiveness in substantially increasing the pass rate to the 80% or better level.

This is confirmed by the chi-square analysis: $\chi^2 = 204.5174$. Since, at the .005 significance level, for two degrees of freedom, the chi-square value must exceed 10.60, the chi-square value of 204.5174 suggests that the probability of error is less than .005 (1/2 of 1%).

Our results also suggest that the group helped the most by this work ethic are third quartile students. This can be shown by the following charts:

July 2014: Third Quartile Students¹⁵³

Total Essays Submitted	Pass	Fail	Total
25+	8	3	11
20-24	4	0	4
15-19	4	1	5
10-14	3	1	4
0-9	5	2	7
Total	24	7	31

July 2013: Third Quartile Students¹⁵⁴

Total Essays Submitted	Pass	Fail	Total
25+	14	2	16
20-24	4	1	5
15-19	5	0	5
10-14	2	0	2
0-9	7	4	11
Total	32	7	39

July 2012: Third Quartile Students¹⁵⁵

Total Essays Submitted	Pass	Fail	Total
25+	10	0	10
20-24	2	0	2
15-19	6	0	6
10-14	11	0	11
0-9	7	3	10
Total	36	3	39

¹⁵³ On file with the author.

¹⁵⁴ On file with the author.

¹⁵⁵ On file with the author.

The chi-square for pass rates by essays submitted by third quartile students in 2014 was 10.35844; the chi-square for pass rates by essays submitted by third quartile students in 2013 was 39.0; and the chi-square for pass rates by essays submitted by third quartile students in 2012 was 99.5. With a minimum chi-square value at the 0.05 significance level of 9.49, and a minimum chi-square value at the 0.005 significance level of 14.26, the results for third quartile students, showing that third quartile students who write 10 or more essays passed at a 93.6% rate in 2012, an 89.3% rate in 2013, and at a 79.17% rate in 2014, are also highly significant.¹⁵⁶ Thus, like students overall, including the first and second quartiles, third quartile students were aided by writing and receiving feedback on more essays.

While fourth quartile students did better by submitting more essays, it appeared as if it required more essay writing for that group. Significant improvement in pass rates was not observed except among those who wrote 25 or more essays for submission. The pass rate for fourth quartile students who wrote 25 or more essays tended to approach (and in 2012 to exceed) a 50% pass rate, as compared to overall pass rates for all students ranging between 77% and 82%.¹⁵⁷

Therefore, the empirical data suggest that there is a range where labor-intensive supplemental bar preparation programs open to all students, particularly those where students are motivated to write substantial numbers of essays and faculty grade substantial numbers of essays in a quick turnaround, are quite productive and helpful to most students. Some students need to be motivated to write enough essays, and some students need to be limited so they do not write too many essays. A program that promises quick feedback to every student who writes between 10 and 35 essays (with encouragement that they submit at least 20 essays) also holds the promise of the greatest opportunity for the greatest range of students to pass the bar examination on the first attempt.

Nevertheless, there may well be limitations on how much of a conclusion we can draw from these results. For example, one could suggest that the number of essays a student submits is highly correlated with work ethic, and thus highly correlated with their law school GPA. This would further suggest that it is whatever other factor made the student a good student that makes it more likely they would pass. It is true that this study does not attempt to control for other factors, such as work ethic,

¹⁵⁶ On file with the author.

¹⁵⁷ On file with the author.

but it does control somewhat for law school GPA. The third quartile pass rates for the July 2009, 2011, 2012, 2013, and 2014 California Bar Examinations have reached 86.11%, 82.05%, 92.31%, 92.05%, and 77.42% respectively.¹⁵⁸ In the several years before adoption of the program, third quartile pass rates approximated 69%.¹⁵⁹ Similarly, while in the several years before adoption of the program, the fourth quartile pass rates ranged between 20% and 30%,¹⁶⁰ those rates for the July 2009, 2011, 2012, and 2013 California Bar Examinations have reached 50.00%, 42.5%, 45.0%, 35.9%, and 40.6%, respectively.¹⁶¹

Still, it cannot be said with certainty that the program, or requiring more essay work, are the sole, or even the primary, contributing factors in the rise of bar passage rates at Chapman. Nevertheless, the analyses that we have done suggest that bar passage has improved and is significantly linked to the programs and the students' work effort at all levels of law school GPA. At a minimum, these results suggest that this is a program that should be looked at as a possible source of ideas for designing bar preparation programs.

Still, no program is perfect, given that it is run by humans, none of whom are perfect. The Chapman program clearly had a tendency to try to deliver too much in terms of services, resulting in the decision to cap the essays that could be submitted. The program still does not have a way to ensure that the students most in need of writing the most essays in fact write them and turn them in. One possible need might be to monitor student essay production on a weekly basis—for those students who are not turning in sufficient essays, send them reminders to increase essay production, or directly meet with those students to urge them, face-to-face, to increase their essay work.

Moreover, the Chapman program could probably benefit from a greater diffusion of effort among the essay graders and among the faculty teaching in the program to ensure a fairer distribution of that effort.

Finally, given the statistical analysis, our message to students can be more tightly honed, so that we can explain with greater clarity how many essays should be written, and why. These results can help us help the students to reach a good balance of effort among class time, study time, outlining, MBE preparation, and essay and performance test writing.

158 On file with the author.

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161 On file with the author.

As I suspect anyone who spends significant time helping students prepare for the bar examination knows, there are some things we can never control: sudden illnesses, family emergencies, emotional catastrophes, relationship breakups, and other factors that affect a student's performance on the bar examination. We hope that, by adopting programs designed to increase practice and feedback, those uncontrollable occurrences will have less of an impact than they otherwise might.

CONCLUSION

In light of the increase in underpreparedness of law students and decrease in admissions statistics, most law schools that are concerned with bar passage should accept the following if they are going to take truly effective steps to provide their students with the best opportunities to pass the bar examination:

- Unlike traditional academic support programs, bar preparation courses and supplemental bar preparation programs must be open to all students, since a greater fraction of the cohort is less prepared than in past years, and therefore, more students are increasingly at risk on the bar examination.
- Students should be made to feel as though they are all one team, rather than differentiating students based on perceived notions of "risk" or other descriptors.
- Faculty and academic support professionals engaged in providing bar preparation courses and services must both demand extensive work, and be prepared to expend significant time and effort themselves.
- Faculty and academic support professionals engaged in providing bar preparation courses and services must provide opportunities for students to write twenty to thirty-five essays for grading during a supplemental bar preparation program, as well as additional personalized and individual assistance, whether in the form of one-on-one tutoring, responsiveness to a multitude of student questions on substantive law, or live structured classes on multistate subjects and multiple choice questions, with classrooms receptive to student discussion of these multiple choice questions.
- If we expect students to treat bar exam study as a "full-time job," then we must ourselves treat it as a full-time job and more, and be willing to expend

whatever time is needed to deliver individualized assistance in writing, analysis, and practice to all of our students.

Law teaching, and particularly preparing students for the bar examination, is more than a job. In fact, it is a calling, and a mission. Given the cost of a legal education, we owe no less to our students than to dedicate *whatever time it takes* to help them get ready. As this Article demonstrates, that expenditure of time—whether it is 50 hours a week or 125 hours a week—seems well worth it to each student who benefits from our effort.

There is no one perfect way to prepare students for the bar examination. Unfortunately, as this Article has indicated, there are not all that many published studies detailing the nuts and bolts of programs, and statistically evaluating them. This leaves us with little information to study and compare the effectiveness of various approaches, and it limits our ability to learn from each other in the academy. We would invite others with bar preparation programs to evaluate their programs as Richmond, UDC, and Chapman have done, and to publish their results. This will allow all of us in the academic support community, as well as law school administrators and faculty, to collectively learn from each other and improve our programs and the delivery of these programs to our students. This is a goal of rising importance and concern as we, as law teachers, prepare to deliver programs to students whose preparedness for law school and qualifications for law school differ markedly from what we have seen in the past.