Working to Improve: A Plan of Action for Improving the Bar Exam Pass Rate

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I. INTRODUCTION

The bar examination (more familiarly called the "bar exam," or "the bar") is the culmination of the first phase of legal study for most aspiring lawyers. That phase is the two and one-half to four or more years of study in law school. The bar exam, in one format or another, is required in American jurisdictions as a condition of obtaining a license to practice law. There are some law school graduates who never take a bar exam after their law school education. This may be for various reasons, including that fact that these graduates choose not to practice law. The bar exam indeed helps to show the distinction between those who have merely graduated...
from law school and those who are admitted and licensed to practice. This article is not concerned with those law school graduates who do not take the bar.

The extended phase of legal education for most lawyers may have two components. The first component is the knowledge that these practitioners will acquire over a lifetime from their practice of law. The second is continuing legal education in those jurisdictions which require it.

The bar exam looms quickly for aspiring practitioners. It must usually be faced just weeks after graduation from law school. The bar is a major hurdle after law school, with consequential and substantial pressure on the examinee. This is because the exam must be passed so that the graduate can be licensed to practice law. There may be added pressures on the prospective bar examinee. As an example, future employment, even the beginning of a good career may hinge on passing the bar.

Those few weeks between law school graduation and the bar exam are a time for major anxiety. Time is precious and must be used wisely. The graduate must take the time to prepare well for the examination. This can often require balancing important preparation time with the time demands of employment as well as with the ordinary demands of a personal life. Those long hours of study and preparation leading up to the bar exam, as well as taking the exam itself, are not usually remembered by lawyers with fondness. The stress of preparation for and taking the exam is increased by the long and anxious wait for the results.

Even less fondly remembered are those occasions when a person does not pass the bar. Such an event means not only the renewed high anxiety of another intense study period and of having to retake the exam, but it also may include personal frustration and concerns about employment. Some firms may not look favorably on a prospective employee who has to take the bar more than once, or on an employee who must again take long hours, days or even weeks off to prepare for the examination. The examinee may also need the income from his or her employment to pay law school

3. Jarvis, supra note 1, at 395.
4. Continuing legal education (CLE) is compulsory in several states as a condition of maintaining a license to practice law. Usually an attorney must attend classes and obtain a certain number of CLE credits over a fixed period. In Minnesota, for example, the requirement is forty-five CLE credits every three years.
5. Jarvis, supra note 1, at 388.
debts, particularly loans which inevitably come due soon after graduation. Because the examinee must then work, it becomes even more difficult to devote time to study for the exam. One’s personal life suffers enormously under these conditions. Frustration and apprehension can become a continuing state of being for someone who has to take the bar over again.\(^6\)

This article considers the bar exam from a law school perspective. Law schools are not typically the forum for a student to learn about the bar. Law schools teach the law, but only a very few offer any form of instruction about the bar examination itself.\(^7\) William Mitchell College of Law is one of those few American law schools which offer a regular bar exam preparation program.\(^8\)

We will look at the need for law school bar exam preparation programs as a step toward the reduction of anxiety and improvement of the bar pass rate for some aspiring practitioners. The article will look at the composition and history of the bar exam, then move onto some core issues. Why did William Mitchell College of Law start preparing its graduating students for the bar exam? How did Mitchell’s bar preparation program evolve and show success? What does the future hold for this program?

II. BACKGROUND

The bar exam was originally an oral examination, often given before a judge of the court in which one sought to be admitted to practice.\(^9\) In 1855, the Massachusetts Court of Common Pleas instituted a written bar exam.\(^10\) While this form of bar exam did not initially continue after 1859, it was eventually revived as an addition to the written exam. Written bar exams were introduced in 1876 in

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6. Jarvis, supra note 1, at 387-88 (offering numerous citations to works which describe the pain of re-taking the bar).
7. Law schools may not offer bar examination preparation programs for credit under American Bar Association rules. However, law schools may offer non-credit programs of instruction on the bar examination.
8. There are at least twelve schools offering such programs as of the date of this article. A survey of 175 law schools found that, of 152 schools responding, eleven had a bar examination preparation program. Richard Cabrera & Stephanie Zeman, Law School Academic Support Programs-A Survey of Available Academic Support Programs for the New Century, 26 WM. MITCHELL L. REV. 205, 210 (2000). One other school, Hamline University School of Law in St. Paul, Minnesota, started a program in 1999.
10. Id.
Massachusetts and 1877 in New York.\textsuperscript{11}

The history of the bar exam in Minnesota is similar to other states. The Minnesota bar was first an oral exam taken in open court.\textsuperscript{12} Starting in 1891, the Minnesota bar changed to two days of written essays and a one day oral exam.\textsuperscript{13} The oral portion of the Minnesota bar exam was dropped in 1925, but the written essay exam was extended to three days.\textsuperscript{14} It was not until 1962 that Minnesota's written bar exam was reduced to two days of essays.\textsuperscript{15} As noted below, the Minnesota bar exam changed again in 1977.

The purpose of the bar examination is to test the competence of the aspiring lawyer.\textsuperscript{16} Almost 125 years after the first written bar, that test of competence has grown to be a two or three-day process which can have several components.\textsuperscript{17} One of those components may be a separate Professional Responsibility exam, which is required in many jurisdictions. This exam, which is often not given on the same schedule as the rest of the bar, is called the Multistate Professional Responsibility Examination (MPRE).\textsuperscript{18} The MPRE may be taken, in every jurisdiction save one, while a person is still a student in law school.\textsuperscript{19}

The bar exam as tested today in the fifty United States and the District of Columbia includes a set of essay questions. The individual jurisdictions test prospective licensed lawyers on various subjects which are determined by each state's bar examiners. Essay questions on these subjects vary in length from state to state.\textsuperscript{20}

The bar exam in most states will also have a multiple choice

\textsuperscript{11} Id.
\textsuperscript{12} MINNESOTA STATE BAR ASSOCIATION, For the Record: 150 Years of Law and Lawyers in Minnesota 132 (July 1999).
\textsuperscript{13} Id. at 130.
\textsuperscript{14} Id. at 132.
\textsuperscript{15} Id.
\textsuperscript{16} E.g., Cecil J. Hunt, Guests in Another's House: An Analysis of Racially Disparate Bar Performance, 23 FLA. ST. U. L. Rev. 721, 767-68 (Winter 1996) (explaining that the state's goal in testing bar exam is to ensure minimum competence to practice law). Some question whether the exam truly does test competency. \textit{See infra} note 50.
\textsuperscript{17} 28 STUDENT LAWYER 37, 37-43 (Feb. 2000) (providing an annual directory of state bar examinations, including description of components tested).
\textsuperscript{18} The MPRE is a two-hour, fifty question, multiple choice exam. The MPRE was tested in forty-two jurisdictions as of 1996. Jarvis, \textit{supra} note 1, at 384.
\textsuperscript{19} Id.
\textsuperscript{20} E.g., 9 NATIONAL JURIST 36, 36-46 (March 2000) (providing bar exam information for the 50 states and the District of Columbia; for example, Washington State has 18 essay questions over two days).
This is the Multistate Bar Exam (MBE), which the Chicago-based National Conference of Bar Examiners (NCBE) introduced in 1972. This 200 question exam is tested over the course of one day. One hundred questions are tested over three hours during the morning of the MBE, and one hundred more for three hours in the afternoon. The MBE tests just six subjects. These subjects are Torts, Property, Contracts, Criminal Law and Procedure, Evidence, and Constitutional Law.

A third, recent, portion of the bar exam in some states is known as the performance test. This form of bar examination began in Alaska in 1982 and was added to that state's bar exam in order "to measure lawyering skills that are not adequately tested by the other, traditional portions of the exam." The performance test examines lawyer competency by use of simulated practice situations which present a hypothetical file of facts and library of laws. Examinees use this material to demonstrate that they can do legal and factual analysis, be aware of professional responsibility issues, and solve problems. The NCBE introduced a Multistate Performance Test (MPT) in the 1990's. Twenty-one states now use the MPT as part of their bar exam.

A few jurisdictions now use the Multistate Essay Exam (MEE) as all or part of the essay portion of their bar exam. The MEE was introduced by the NCBE in July 1988. The MEE consists of six thirty-minute essay questions which tests six main subject areas: "business organizations (agency, partnership and corporations), commercial transactions (commercial paper, sales and secured transactions), conflict of law, family law, federal civil procedure, and wills, estates and trusts (including future interests)."

The Minnesota Bar Exam has, since 1977, consisted of two parts. These are an eight-question essay portion, which is tested

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22. Jarvis, supra note 1, at 378.
24. Id.
25. Supra note 17, at 37-43 (announcing that Minnesota will introduce the MPT as part of its bar exam in February, 2001).
26. Id. (Twelve states used the MEE as of February, 2000).
27. Jarvis, supra note 1, at 383-84.
28. Id. at 383.
29. Supra note 12 (clarifying that For the Record claims the MBE was intro
III. THE NEED FOR BAR EXAM PREPARATION

The concern among law schools is, or should be, the pass rate of their graduates. This would be a legitimate concern, despite any other consideration, as the eventual goal of a legal education is to have new attorneys enter the profession. The pass rate on the bar exam in the fifty states and the District of Columbia varies widely. While some schools may boast high pass rates, even they have some graduates who do not pass the first time they take the bar. Few schools have a one hundred percent pass rate. In fact, about a third of all law schools in a 1997 survey, the most recent available, had pass rates below their state bar’s pass rate.

A particular concern, for a number of years, has been for the bar pass rate of minority candidates for bar admission. This con-

duced in Minnesota in 1977, but the Minnesota Board of Law Examiners states that the MBE was introduced in 1980).


31. However, the authors of one study concluded that the bar exam served an economic purpose as it was beneficial in screening out attorneys who might not be competitive in the market. Malcolm Getz, John Siegfried & Terry Calvani, Competition at the Bar: The Correlation Between the Bar Examination Pass Rate and the Profitability of Practice, 67 VA. L. REV. 863, 863-67 (1981).

32. For an example, schools like the University of Chicago School of Law or Harvard University Law School, with ninety-seven and ninety-six percent pass rates respectively, had three and four percent of their graduates fail to pass the bar. Luczycki, supra note 30, at 22.

33. Only one school, Marquette University School of Law, had a 100% pass rate in the survey examined for this article. Id.

34. The range of pass rates, in the year surveyed, varied from 22% for a school whose graduates primarily took the bar in a state which had an overall pass rate of 72% to 100% for a school whose primary exam-taking state had a pass rate of 85%. Id.

35. E.g., Russell L. Jones, The Legal Profession: Can Minorities Succeed?, 12 T. MARSHALL L. REV. 347, 347, 355 (1987) (citing, in part, Dannye Holley & Thomas Kleven, Minorities and the Legal Profession: Current Plaudities, Current Barriers, 12 T. MARSHALL L. REV. 299, 329-30, 322 (1987) (commenting that there has been attention to the plight of minorities in the profession for a “decade and a half,” and the bar exam is seen as a “major barrier” to entry of Blacks and Hispanics into the pro-
cern is logical as the number of minority attorneys has always been disproportionate to the minority share of the population. This fact has resulted in a number of studies and articles with conclusions that may not have been entirely supportable.

There have been several theories for the disproportionate bar pass rate for minorities, with some writers suggesting that the bar exam is discriminatory or the result of certain educational "barriers." The majority of writers on this subject made good efforts to describe and support their theories, which all had strong and important points to make. However, the most notable reason to state that these conclusions lacked complete support was the fact that they were based on incomplete information.

Professors Holley and Kleven, for example, surveyed forty state bar examining agencies to request information on the bar pass rate for ethnic minorities. Only five state agencies were able to provide that data, while the other states did not collect or would not provide such information. Holley and Kleven thus had to estimate the bar pass rate, which they concluded was eighty-five to ninety percent for all takers and sixty to sixty-five percent for Blacks. One part of their calculation was based on data that indicated, for example, that Blacks and Hispanics obtained about seven percent of law degrees in the early 1980s but only five to six percent became lawyers. Professors Holley and Kleven later made a second study of the minority bar pass rate.

These authors admitted in their new study that their 1987 conclusions came from "meager and scattered information from the

39. E.g., Daniel O. Bernstine, Minority Law Students and the Bar Examination: Are Law Schools Doing Enough?, 58 BAR EXAMINER 10, 10-11 (Aug. 1989). Dean Bernstine examined anecdotal data to highlight his perception of the bar pass problem; the only hard data he had was an internal study at one law school.
40. Holley, supra note 36, at 325-29.
41. Id. at 332.
42. Id.
law schools, lawsuits, and anecdotal information." \(^{44}\) "Virtually no published data existed" on minority bar pass rates when the 1987 Holley and Kleven study was taken. \(^{45}\) This was also true in 1990, when the fifty states and the District of Columbia were surveyed by the same team. That inquiry brought usable data from only three states. \(^{46}\) Even so-called research scientists attempted to study the minority pass rate using this incomplete data. \(^{47}\)

While the concern for the pass rate of minority law school graduates continued to exist for educators and members of the bar, the lack of sufficient data made it difficult to undertake any actions to address the issue. \(^{48}\) Certainly, some possible solutions were proposed. These included bar exam reform \(^{49}\) and legal challenges to the bar, on such basis as the failure to test competency \(^{50}\) or disparate racial impact. \(^{51}\) Other solutions included changes in legal education, such as revision of admissions practices \(^{52}\) and use of bar exam preparation programs. \(^{53}\)

IV. THE LAW SCHOOL ADMISSION COUNCIL STUDY

One fact was apparent that being that "conjecture and rumor" gave "no substantial support or justification for assertions about"

\(^{44}\) Id. at 486.  
^{45}\) Id.  
^{46}\) Id. at 487.  
^{47}\) Stephen P. Klein, Disparities in Bar Exam Pass Rates Among Racial/Ethnic Groups: Their Size, Source, and Implications, 16 T. MARSHALL L. REV. 517 (1991). Klein, then a senior research scientist with the Rand Corporation relied on data from only three states to support his conclusions. Id. at 517.  
^{48}\) Henry Ramsey, Jr., Symposium: National Conference on Minority Bar Passage: Bridging the Gap Between Theory and Practice, 16 T. MARSHALL L. REV. 419, 421-23 (1991) (suggesting the need to know the real data about the pass rate to know why there may be a problem and what to do about it).  
^{49}\) Holley, supra note 36, at 339-41.  
^{50}\) Whether the bar really tests competency is an entire sub-issue. It has often been said that the bar exam, despite the claims of the bar examiners, cannot really test competency but is only a test of doctrinal learning. Supra note 16, Hunt supra at 767-68 (claiming that the bar exam is just a "rite of passage," an exit exam from law school); Jones, supra note 35, at 354 (contesting that the bar does not test competence, only highlights those who have mastered the art of law exam); Jeffrey M. Duban, The Bar Exam as a Test of Competence: The Idea Whose Time Never Came, 63 N.Y. St. B. J. 34, 36-39 (July/Aug. 1991) (citing Nebraska Chief Justice Norman Krivosha, who said the bar exam could not test competence as that can only be shown after a lawyer has been in practice).  
^{51}\) E.g., Vaughns, supra note 38, at 440-52.  
^{52}\) E.g., Klein, supra note 47, at 528; Vaughns, supra note 38, at 453-475.  
^{53}\) Holley, supra note 36, at 496.
the minority bar pass rate.\textsuperscript{54} The lack of good data thus prompted the Law School Admission Council (LSAC) Bar Passage Study (LSAC Study) in the early 1990s.\textsuperscript{55}

The LSAC Study was established "to obtain complete and accurate information about bar passage rates" for all graduates of ABA-approved law schools.\textsuperscript{56} One goal of the study was to gather the evidence that had not been available to persons who studied the pass rate issue. An aspirational goal of the LSAC Study was to answer any question about the reason for inadequate minority performance on the bar, if any indications of poor performance could be found.\textsuperscript{57}

The LSAC Study was completed in 1998. The study examined the bar exam results for more than 23,000 students who had entered law school in 1991.\textsuperscript{58} Data for the study was obtained from law schools, boards of bar examiners, and the students themselves.\textsuperscript{59} Of the then-172 ABA-approved, U.S. mainland law schools, 163 (95\%) participated in the study.\textsuperscript{60} The study found first time bar exam pass rates for 1991's students of color ranged from seventy-eight to ninety-two percent.\textsuperscript{61} The eventual bar exam pass rate for all examinees of color was 84.7 \%, and for all study participants it was 94.8\%.\textsuperscript{62}

Among minority examinees, ninety-four to ninety-seven percent passed the first or second time they took the bar and ninety-nine percent passed by the third time.\textsuperscript{63} Ethnicity did not contribute to any significant interaction with either Law School Aptitude Test (LSAT) score or law school grades.\textsuperscript{64} This meant that there was no difference between ethnic groups in the relationship between LSAT and law school grade point average (GPA) and bar

\begin{itemize}
\item \textsuperscript{54} Ramsey, supra note 48, at 421.
\item \textsuperscript{55} Id. at 421-22. The study was later titled the "LSAC National Longitudinal Bar Passage Study." Id.
\item \textsuperscript{56} Id. at 421 (citing Henry Ramsey, Jr., Law Graduates, Law Schools and Bar Passage Rates, 60 BAR EXAMINER 21 (Feb. 1991)).
\item \textsuperscript{57} Id. at 421-22.
\item \textsuperscript{58} LAW SCHOOL ADMISSION COUNCIL, LSAC National Longitudinal Bar Passage Study, viii (1998).
\item \textsuperscript{59} Id.
\item \textsuperscript{60} Id. at v.
\item \textsuperscript{61} Id. at viii.
\item \textsuperscript{62} Id.
\item \textsuperscript{63} Id.
\item \textsuperscript{64} Id. at xii.
\end{itemize}
pass rate. 65

One other important fact emerged from the LSAC Study. This was that both law school grade point average and LSAT score "were the strongest predictors of bar exam passage." 66 After ten years of study, with now-sufficient data, the LSAC Study reached the same conclusion found by Dean Bernstine in examining one law school's pass rate. 67

V. THE WILLIAM MITCHELL EXPERIENCE

William Mitchell College of Law began to consider the bar exam performance for of its all students as early as 1987. This self-examination was prompted by anecdotal information, which suggested that there was a very low bar pass rate for Mitchell's minority graduates. That possible poor performance led to a program which attempted to address the issue.

The author, whose own experience with the bar examination had been less than pleasant, devised the Mitchell program. The program was based on a study of the Minnesota exam and the steps necessary for passing the test. This study was based, in part, on a review of the techniques of a bar exam preparation program which was conducted by the Minnesota Minority Lawyers Association (MMLA) from the 1970s to the 1990s. 68 The MMLA program, which the author was a part of in 1986, consisted of around ten weeks of Saturday lectures on exam-taking and practice exam writing.

This program was intended to build a solid foundation to enable examinees to succeed on the bar. As it was conducted concurrent with the commercial, substantive bar review course, the MMLA program was able to build on the subject matter lessons by providing practical application of them. The MMLA program was highly respected in Minnesota and quite successful in its efforts. 69

65. Id. (meaning no difference appeared between white and minority examinees).
66. Id.
68. The MMLA program began around 1977 or 1978, according to long-time members of the Association. It was started by volunteers and attorney-members of the MMLA, with the assistance of one or two people who had experienced a similar program in Chicago.
69. Based on anecdotal information, while some MMLA program participants took the bar more than once, the great majority of them eventually passed and were admitted in Minnesota. The MMLA program ceased operation in the mid-
Without taking the time, then, to study the bar pass rate at Mitchell, the author commenced a bar preparation program in April 1987. The project was originally undertaken on the assumption, taken both from experience and from the MMLA model, that bar examinees need coaching in the process of taking the bar. The substance would be left to the bar reviewers and the law schools. The Mitchell bar preparation program thus addressed the general issue of the process of taking the bar exam and how to make that process a little easier for the school's examinees.

The first workshops were not minority-specific. The reason for this was that, in 1987, William Mitchell typically had a five or six percent minority population in its student body. For this reason, the number of minority graduates in any semester was always small.

The first bar preparation program given in the Spring of 1987 at William Mitchell was a seventy-five minute lecture on bar exam-taking techniques. There was no time in that semester's schedule to do more. In the Fall of 1987, a new series of lectures was provided for Mitchell's graduating students. One lecture was given each semester, entitled the "Bar Preparation Workshop" (BPW). These lectures were ninety-minute information sessions which were open to everyone, and which stressed basic techniques for bar exam study and for taking the bar. Invitation to the BPW was by use of internal school media, with minority students receiving an individual letter of invitation. Attendance at these workshops varied between twenty and fifty students per session from 1987 to 1990. Minority student attendance was very small at these lectures, in fact almost nonexistent.

Results from the first workshops were not officially tallied. Anecdotal information, received from former students, was very positive and indicated that many, if not most, of them passed the bar on the first attempt. The comments of these students were uniformly supportive of the workshops and offered information on study methods that worked for them. This information was then incorporated into the program in order to deliver the best preparation methods that experience could provide. The positive comments were also made known to prospective students in order to attract their attendance. Eventually, the BPW consisted of data from the MMLA program, successful tips from former students, 1990s. Efforts are being made by the Minnesota minority bars to start a new bar preparation program.

70. This figure currently averages around twelve percent.
and sets of relevant handout materials such as annotated essay questions and answers and sample MBE questions and answers.

Commencing in 1988, individual students who had not passed the bar the first time, and who had not attended a BPW session, began to seek assistance. These students received intensive work on Minnesota essays, which included assignment of released questions and individual critique of their answers. The students also received tips on good bar exam preparation techniques and a schedule for preparation for the MBE.71 No hard data has been maintained on the bar pass rate for these students. Anecdotally, it is known that, of the eleven or twelve students assisted to date,72 all have passed the bar (even though two of them took it more than twice).

It is worth noting that the majority of these individually-coached examinees were older graduates of Mitchell. The individual exam coaching had a positive effect on these persons, and they responded with positive evaluations of the program. Much later, the LSAC Study data was to indicate that older graduates had a reduced chance of passing the bar the first time, or eventually.73 Further, the more often one re-took the exam, the less likely it was that a person would pass.74 The logical conclusion from this data was that individual, intensive bar preparation coaching of older examinees may be one key to their chances of passing the bar.

In 1991, the workshops became the Bar Exam Workshops (BEW). They now began to include voluntary written exercises, which consisted of students answering old Minnesota essays and turning them in for critique. Having taken action to address the bar pass rate, where none existed, William Mitchell's program began a program of improvements which continued through the 1990s.

In 1993 and 1994 an attempt was made to expand the workshops in order to directly address the pass rate of Mitchell's minority graduates. That rate was similar to the national first-time pass

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71. Through personal practice, working with individuals, and working with other persons who taught bar preparation, it was determined that an examinee should take a minimum of 3500 MBE practice questions before the actual exam. A schedule for taking these practice questions was devised and given to all bar preparation students. See the Appendix below. The number of practice questions now recommended is over 4,000.
73. LSAC Study at 56.
74. Id. at 51.
rate reported in the literature at that time. The available data came from figures released by the Minnesota bar examiners and indicated a first time pass rate for Mitchell's minority students of about fifty percent. The new plan was an ambitious one.

It was unofficially decided to expand the BEW into a twelve-week, summer Saturday program that would be offered only to minority students. Minority students were invited to spend six weeks during each of their first two law school summers studying the process of taking the bar exam. The program was based on the six Multistate Bar Exam subjects, which were determined to have been tested on forty-seven percent of the Minnesota essays during the 1980s. Students were to be shown some substance by practicing attorneys, as a refresher. They would then be given weekly exercises in essay reading and writing, and in reading and answering the MBE questions.

This workshop failed largely because of its timing. The students were unable to regularly attend on summer Saturdays and all eventually dropped out of the program. This version of the workshop was not offered after 1994. The shorter version, given each semester and still based on exam process only, continued to be offered. This program continued to receive and incorporate feedback from former attendees. Again, nothing was done to measure the effect of the workshops other than to accept anecdotal data.

The next effort to improve the bar preparation program at William Mitchell came as a result of a new internal study which was completed in early 1995. This study looked at the bar performance of all minority students who had been admitted to Mitchell, and who had taken the Minnesota bar, between 1982 and 1992. The study found that 298 minority students had been admitted during that period. Of that number, 157 had taken the Minnesota bar, between 1982 and 1992. The study found that 298 minority students had been admitted during that period. Of that number, 157 had taken the Minnesota bar, seventy-five went elsewhere to take the bar, and sixty-six had not yet graduated.

The first-time pass rate for the 157 Minnesota examinees was just under forty-five percent. The study also found that the eventual pass rate for all minority graduates from William Mitchell, after more than one administration of the bar, was about 74.5%. A factor that was examined in this study was the LSAT score of the stu-

75. Jones, supra note 35.
76. This number was heavily influenced by a low pass rate for persons admitted in the early years of the study. Those who were admitted later did better on the bar.
The study did not look at law school GPA. Low LSAT score alone did not appear to be a factor in bar exam failure as sixty-three percent of those with an LSAT score under 135 passed the first time, as did sixty-eight percent of those with a score between 135 and 147. The data from the internal pass rate study was our first indication of the real figures for what had been previously an anecdotal-identified problem.

The inability to keep minority students in the summer version of the BEW, as well as their continuing low participation in the regular, weekday program, prompted further changes in the workshop. The decision was made in 1996 to expand the continuing version of the program. In addition to minority students, the BEW would also have a new group to focus on. This focus was the result of another internal bar pass rate study at Mitchell.

James Brooks, William Mitchell's Dean of Students, has maintained an ongoing review of the bar pass rate for all Mitchell graduates since 1990. This data gave a new direction to the work of the BEW when it revealed the fact that the lowest twenty percent (quintile) of each graduating class had the lowest Minnesota bar pass rate. While not surprising, the rate of failure was of concern. Between 1990 and 1992, the pass rate for this lowest quintile was under forty-two percent. It was noted that the lowest quintile of the graduating class at William Mitchell did not contain all of the minority graduates of the College.

The pass rate for the four higher quintiles during the 1990 to 1992 period was just under ninety percent. That rate usually included a 100% pass rate for the top two or three quintiles. The minority pass rate on the Minnesota exam rose during the period of the internal pass rate study. Those who were admitted in the later 1980s and early 1990s were graduating higher in the class and passing within the higher quintile limits. Again because of the small number of minority graduates each semester, and because these persons were not all in the lowest quintile, the Brooks study indicated that more non-minorities were not passing the Minnesota bar.

The decision to expand the Bar Exam Workshop was supported by the faculty and dean. In 1996 the workshop grew to four hours of instruction spread over two sessions. More examples of the process of essay writing and of answering MBE questions were delivered to the students. A three-part, 200-page manual of study information, including test examples, was given as part of the pro-
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gram. The students were also provided a history of what was tested on the Minnesota essay exam. As before, only anecdotal information was obtained in order to gauge the success of the workshop.

The new Bar Exam Workshop (BEW) was increased to six weekly, two-hour sessions starting in the Fall of 1997. This is the basis of the current version of the program. The BEW is now scheduled as a regular offering during registration for each semester's classes. The BEW is free to graduating seniors, who take the class in the semester of their graduation, and no credit is given for it. Each week's class centers around one of the six MBE subjects. These continue to be the most frequently tested subjects on the Minnesota essays.

The BEW classes do not teach any substantive law; there is no time in the short workshop schedule to do so. This is still left to faculty and the commercial bar reviewers. Students taking the BEW have available to them a short outline of each substantive course, which they are urged to review before the class. The BEW only provides a quick overview of the subject areas in order to indicate the more frequently tested concepts within them.

The classes instruct students in the process of studying for and taking the essay and MBE portions of the exam. A portion of each workshop is devoted to subjects such as time management, critical reading skills, bar-focused writing, and use of resources. The workshops then key in on how the essay and MBE portions of the exam are tested using former exam questions as examples, some of which are annotated with explanatory comments. Students are also provided information on study methods and schedules, including an intensive, effective MBE study plan. Since Fall of 1999,

77. This history is updated each time the bar is administered. It is also the basis for an educated "guess" as to what will be tested on the next bar. The bar reviewers have done this, with the same information, for years. Our commercial guess has predicted correctly four to six of the eight subjects tested by each exam since 1988, and 8 of the subjects in February 1998 and February 1999. Students are cautioned not to rely on this "guess."

78. Those who do not pass the exam are told they may return and go through the BEW again if they wish.

79. As of February 2000, the six MBE subjects had been tested in forty-six percent of all Minnesota essays since 1982.

80. See the BEW Syllabus in the Appendix below.

81. This schedule, which follows the Syllabus in the Appendix, was developed by the author and others who have taught bar preparation in Minnesota since 1987. Anecdotal information indicated the success of this schedule, including the fact that persons who have retaken the bar and used this schedule have all (as far as can be determined) passed the bar. See also infra note 72.

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the workshop also includes a seventh session devoted to the Multi-state Performance Test, which Minnesota will add to its bar in February 2001.  

The BEW ends with a MiniBar Exam which is conducted on the Saturday morning immediately following the seven-week program. The MiniBar is one-fourth of the regular bar exam. It consists of two essay questions, which take ninety minutes to write, and fifty MBE questions, which also take ninety minutes. Actual questions, released by the Minnesota examiners and the NCBE, are used. The essays are scored on a simple, seven-point system and are individually critiqued. The MBE questions receive one point each. The actual bar is scored by a scaled system, which assigns certain weight to each portion of the exam and adds the two scores for the final result. The BEW scoring system is just a simple total of the sixty-four possible points.

One thing the various bar workshops have always taught is that an MBE score over 140 (scaled) points would be likely to be enough (with a decent scaled Minnesota essay score) to ensure passing the bar. This assertion is the result of personal experience, reinforced by the experiences of former workshop students and colleagues who have taught bar preparation programs. Thus it was gratifying to learn that the LSAC Study confirmed what we had been teaching since 1987.

The first expanded BEW took place in the Fall of 1997. About thirty students registered for the workshop. Although the focus of the program was intended to be students in the lowest quintile, all students in the next (January) graduating class were invited to participate. The lowest quintile students received a special letter of invitation to attend the workshops.

This letter described the historical low pass rate for that quintile and urged students to take advantage of the workshop offering.

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82. Supra note 25. (explaining the MPT will replace two Minnesota essays and will take ninety minutes to complete).

83. A practice MPT is given during the last class. It is individually reviewed and critiqued.

84. Seven points is the value assigned by the Minnesota bar examiners to each essay. The BEW scoring system is not based on the same seven points, but is similar.

85. This scoring system is explained with more particularity in the first session of the BEW.

86. LSAC Study at 25 (reporting mean MBE scores for those passing the bar the first time were almost all above 140, and those not passing did not have scores in excess of 135).
The dean of the law school signed the letter.

Only three of the first thirty workshop students came from the lowest quintile group. On inquiry, the students who did not attend either did not believe the workshop could help them or could not make the time for it. Similarly, minority students, who also received a special invitation letter, did not attend in any number.

The first offering of the BEW was structured to include out-of-class assignments. These were MBE and essay questions that the students were to answer and return for critique. It quickly became apparent that this assignment was too ambitious, as none of the students completed the first exercises and a number of them began to drop out of the program.

Their reasons were rather uniform. As final-year students, just about to graduate, they were more interested in completing the required, credited class work of their last semester. In addition, some had work and family commitments, which did not enable them to complete the requirements of the workshop.

The result of all this was that attendance steadily dropped off until only five people completed the entire workshop. None of these took the MiniBar Exam. Since it was apparent that the volume of work demanded by the BEW was unrealistic in view of the other commitments of the students, a major revision of the required work was undertaken before the Spring 1998 session.

Thirty-five students registered for the Spring 1998 BEW. Most of them stayed through the first three or four weeks of lecture, then they began to drop out of the program. Inquiries determined that the mid-semester timing of the program did not work for many students as they had graduation to prepare for and, again, substantive classwork to complete. Four students finished the program and one took the MiniBar Exam with average results. That student passed the bar exam on the first attempt.

The BEW was refined further prior to its Fall 1998 offering. The class was moved to earlier in the semester and some in-class exercises were added. Special letters of invitation were still sent to the students in the lowest quintile of the graduating class. Thirty students registered for the BEW, though only one came from the lowest quintile.

This time, students were advised at the beginning that the program was mainly lecture and that it could become tedious, but that the instructions and examples given could be valuable. Some students did drop out over the next weeks, but a core group of
eleven stayed through the whole program. Of these, three took the Mini-Bar with fair to good results. Two passed the Minnesota bar the first time.

The Spring 1999 BEW had a 100% success rate. That is, nine out of thirty-five students either attended four or more classes or attended that many classes and also took the MiniBar, and then passed the bar on the first attempt. Four of these students were from the lowest quintile. Others in that group had registered for the program, but dropped out over the six weeks.

The Fall 1999 class had eight of twenty-eight students who attended four or more classes. Four of them also took the MiniBar. The April 2000 results showed that all four passed. The Spring 2000 class was a little disappointing. As many as a dozen students attended four or more classes, but only one person took the MiniBar. In Fall 1999 and Spring 2000, several persons from the lowest quintile entered, and then dropped out of the program.

Where the figures above indicate more persons completing the program than passed the bar, the disparity is a result of persons taking the bar outside of Minnesota or not taking the bar at all. The one disappointing fact about the program is its attendance. Typically, twenty-five to thirty students register for the BEW, but only six approximately stay through it all and take the MiniBar. Lowest quintile students account for only a very few of each semester’s attendees. Minority student attendees are even fewer.

The objective of the Bar Exam Workshops, and the earlier Bar Preparation Workshops, has always been skills reinforcement. Experience tells us that the reason most people fail is not lack of substantive knowledge, but the failure to correctly apply substance to the exam’s hypotheticals. This is confirmed by the bar examiners, who regularly lecture during one of the BEW sessions. We have tried to offer the best program possible, with the particular skills the bar requires being delivered in the best manner available.

To meet our goals, we have continued to restructure the bar workshops. We have increased their duration and the number of sessions, and solicited information from our former students as to the best preparation methods. Practical steps for us have included out of class exercises and, when these did not work, in-class exercises. The MiniBar has been refined several times and we have now added instruction and practice in the MPT. In the immediate fu-

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87. This is borne out by the personal experience of reviewing failed exams.
ture, and beyond, we want to deliver an even better BEW. We also want to deliver the workshop to those of our students who may need it most. To that end, in-class writing exercises have increased and closely mirror the essays tested by the Minnesota examiners. The MPT writing exercises will also increase. Every attempt is being made in this program to deliver instruction in the critical areas of careful reading and understanding, and in directed writing.

We are also in the process of putting the instructional material for William Mitchell Bar Exam Workshop on the College website. The BEW will be an interactive learning program as one of the school’s “Web Courses in a Box.” In the website, BEW students will be able to access some of the textual material, obtain practice tests, take the tests and deliver them for review, and have set times for interactive discussion with the course leader. In this way, we hope the dropout rate for the program is reduced and that more students, particularly minorities and those in the lowest quintile, take part in it each semester.

At this point, the Bar Exam Workshop remains a regular offering at registration for students in their last semester of school. The content and timing of the program are now adjusted to better fit the schedules of the senior students. Anecdotal information, as well as written evaluations, indicates that the BEW is beneficial for the students. The information and skills training it delivers are very helpful as preparation for the bar exam. So far, the number of students who have completed the program and the MiniBar is small for a good statistical study, but its success is beginning to show. We can now claim a pass rate for BEW students of ninety-seven percent, and hope to keep that number high.

Our plans for the immediate future seek to improve the service the BEW delivers, and deliver them to more students so as to keep that pass rate up.

VI. CONCLUSION

We want the number of students who take the full BEW to grow over the next two to three years and trust that a larger number of positive results can then be quantified. With some proof of continuing success, we hope that more of the lowest quintile students can be attracted to the BEW. We also want to ensure that our

88. This has grown to a handout set of over 250 pages, most of which are given to students in book form.
minority students can take full advantage of this offering. Our future adjustments to the program will work to help promote that cause and to continue to show the good impact that can come from a law school-based bar preparation program.

VII. APPENDIX


Syllabus
William Mitchell College of Law
Bar Exam Workshop

Course Objectives:
The course is intended to include the following:

1. Weekly self-review of a subject, and a very short in-class discussion highlighting what the bar might cover in testing that subject,
2. A general survey of the Bar Exam, including history, creation of questions, and the grading process;
3. Scrutiny of essay questions and of the requirements for a ‘good’ Bar Exam essay answer; this includes in-class reviews of examples and short practice essays in each of the subjects covered in the workshop;
4. examination of the MBE, including question patterns, deciphering, answer selection, with in-class reviews and sample questions in each of the workshop subjects;
5. review of the Multistate Performance Test, with examples and a short practice MPT;
6. concluding MiniBar Exam, individually graded.

Syllabus
I. Text for the class will be the BarBri “Conviser Mini-Review.” If students do not have this book from BarBri, it can be borrowed from the office just for the course and returned after the MiniBar. There will also be weekly handouts which will include sample bar exam questions.
II. Weekly assignment #1: read the Mini Review outline(s) for the workshop subject that is to be covered that week.
III. Weekly assignment #2 (voluntary): complete one practice essay question (or ten MBE questions) for individual critique and turn the assignment in to Student Services or Richard Cabrera by
noon the Monday after the class.

IV. Weekly: please be prompt for class and the MiniBar; note that all former students who passed the bar after taking this workshop attended at least 5 workshop sessions and also took the MiniBar Exam.

V. Noon classes are 12-1:20, Room 125; evening classes are 6:30-8:00, room 223; the Mini-Bar is 3 hours long and is scheduled for Saturday, November 4, 2000 at 10:00 AM in a room to be announced.

VI. We will try to follow this schedule:

9/13 noon and 6:30 Torts:
1. Review bar exam history and process;
2. Describe bar exam grading;
3. Torts overview;
4. Study Tips;
5. Examine sample MBE questions and answers;
6. Examine sample essay question and answer;
7. Practice exam and discussion.

9/20 noon and 6:30 Contracts:
1. Discuss study skills;
2. Review MBE testing;
3. Contracts overview;
4. Examine sample MBE questions and answers;
5. Examine sample essay question and answer;
6. Practice exam and discussion.

10/4** noon and 6:30 Property:
1. Meet a Bar Exam grader, discussion, questions;
2. Discuss clarity, focus in essay writing;
3. Property overview;
4. Examine sample MBE questions and answers;
5. Examine sample essay question and answer;
6. Practice exam and discussion.

10/11 noon and 6:30 Evidence:
1. Closer examination of the MBE, patterns:
2. Scoring tips;
3. Evidence overview;
4. Examine sample MBE questions and answers;

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5. Examine sample essay question and answer;
6. Practice exam and discussion.

10/18 noon and 6:30 Constitutional Law:
1. Closer examination of the essay, issue-spotting;
2. Review study and preparation tips;
3. Constitutional Law overview;
4. Examine sample MBE questions and answers;
5. Examine sample essay question and answer;
6. Practice exam and discussion.

10/25 noon and 6:30 Criminal Law:
1. General review of workshop;
2. Criminal Law overview;
3. Examine sample MBE questions and answers;
4. Examine sample essay question and answer;
5. Practice exam and discussion.

11/1 noon and 6:30 Performance Test:
1. Examine structure and grading process for MPT;
2. Review sample MPT, discuss resources;
3. Practice Performance Test.

3/18 MiniBar Exam
2 Essay Questions: 90 minutes
50 MBE Questions: 90 minutes

180 minutes (3 hours)

** I will be out of the state on school business September 27, so class will skip one week.

SUGGESTED MBE PRACTICE SCHEDULE

(Assumes minimum 50 days of study)

DAY 1-15: 50 MBEs PER DAY=750 (minimum 90 minutes*)
16-30: 75 PER DAY 1125 (min. 135 minutes)
31-40 100 PER DAY 1000 (min. 180 minutes)
41-50 125 PER DAY 1250 (min. 225 minutes)

* In addition to the time taken for answering the MBEs, as noted above, daily time must also be set aside for grading your
practice test and reviewing the answers. Reviewing is important to help repeat the substantive answer and key your understanding of those concepts you might need to study further. Review also helps you sharpen your process of elimination skills.

Remember, though the sacrifices including the time requirement for this form of MBE practice are high, so too are the rewards for success on the bar exam.
