

1L IS THE NEW BAR PREP

SABRINA DEFABRITIIS[†]

ABSTRACT

Law school graduates, in growing numbers, are failing the bar exam. This reality is all the more staggering when we consider that these graduates have been preparing for the bar exam since their first year of law school. First-year legal-writing courses teach students specific fundamental skills that are the foundation for success on the bar exam. This Article provides the perspective that the goal of passing the bar exam and teaching law students to think and write like lawyers is a symbiotic relationship. It directly analyzes the correlation between the fundamental skills associated with thinking like a lawyer and successful bar-essay writing.

The question then becomes, if law schools are teaching these skills, why do students continue to struggle with the bar exam? To answer that question, this Article analyzes the challenges law students face when they are required to apply the skills learned in an earlier context to a later assignment. Without proper instruction and sustained practice, it is unrealistic to expect law students to retain the skills necessary to solve one legal problem and then later apply those same skills to solve a different problem. This Article emphasizes how law schools have a duty to bridge the gap and foster the transfer of learning from the first year of law school to bar preparation. To guide law schools in better preparing their students for passing the bar exam, this Article concludes with a comprehensive approach detailing how law faculties can facilitate the transfer of fundamental skills from the beginning to the end of law school.

“By failing to prepare, you are preparing to fail.” -Benjamin Franklin

[†] Sabrina DeFabritiis, B.S. Boston College, J.D. Suffolk University Law School, is a Professor of Legal Writing and the Director of Bar Programs and Initiatives at Suffolk University Law School in Boston, Massachusetts, where she teaches in the first-year Legal Practice Skills Program and the Bar Preparation Program. Thank you to Merry Sheehan for her assistance in researching for this Article. Thank you to Professor Kathleen Elliott Vinson and Everett Chambers for their insightful feedback on this Article.

I. INTRODUCTION

“I make you two promises: first, you will work much harder in this class than you ever wanted to at this point in your law school career; second, this class will prepare you for what is to come next in your career more than anything else that you are doing right now.” I say this to my students at the beginning of their first-year legal-writing course and again in a for-credit bar preparation course during their final semester of law school. While the courses and time-periods in law school may seem worlds apart, at their core, the skills we teach our students in their first-year legal-writing course, in terms of writing, professionalism, and practice skills in general, lay the foundation for success on the bar exam.¹

Why is it, then, that law school graduates, in growing numbers, continue to struggle with passing the bar exam?² It may be in part the result of a false presumption that the fundamental skills taught during a law student’s first year need not be explicitly connected and carried through to upper-level courses.³ This presumption is further fueled by the pejorative connotation associated with teaching to the bar. The stigma of teaching to the bar “stems from a belief that academically rigorous schools do not need such preparation because the quality of legal instruction should be sufficient to ensure bar passage.”⁴

Despite the offense that law faculties take to this notion, the bar exam, for better or worse, is a reality for the majority of law school graduates.⁵ Ultimate success for many law students is measured by

1. See *infra* note 167 and accompanying text (discussing foundation needed for bar exam).

2. See The Bar Exam’r, *2015 Statistics*, NAT’L CONF. B. EXAMINERS (Mar. 2016), <http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F195> (comparing ten years of state bar passage rates). National bar passage rates for first-time takers dropped below 80% in 2008, and then saw a steady drop totaling an 8% decline between 2013 and 2015, falling to a low of 70% in 2015. See *id.*

3. See Tonya Kowalski, *Toward a Pedagogy for Teaching Legal Writing in Law School Clinics*, 17 CLINICAL L. REV. 285, 290 (2010) (discussing lack of transfer).

4. See Lorenzo A. Trujillo, *The Relationship Between Law School and the Bar Exam: A Look at Assessment and Student Success*, 78 U. COLO. L. REV. 69, 72 (2007).

5. See Emmeline Paulette Reeves, *Teaching to the Test: The Incorporation of Elements of Bar Exam Preparation in Legal Education*, 64 J. LEGAL EDUC. 645, 646 (2015) (accepting premise that majority of law students sit for bar exam); Denise Riebe, *A Bar Review for All Law Schools: Getting Students on Board to Pass Their Bar Exams*, 45 BRANDEIS L.J. 269, 282 (2007) (noting regardless of exam’s effectiveness, it remains a reality for students); Margo Melli, *Passing the Bar, A Brief History of the Bar Exam Standards*, 21 U. WIS. L. SCH. F. GARGOYLE 1, 3-4 (1990), <http://gargoyle.law.wisc.edu/wp-uploads/2014/02/volume21issue1.pdf> (identifying Wisconsin as the only state that does not require a bar exam of in-state applicants); *2015 Law Graduate Employment Data*, ABA SEC. LEGAL EDUC. & ADMISSIONS TO B. (Apr. 26, 2016), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_law_graduate_employment_data.authcheckdam.pdf (reporting graduate

the ability to competently practice in the legal profession, which first requires passing the bar.⁶ Therefore, law schools have a duty to not only enhance their teaching in order to achieve the objectives of a traditional law school education, but also to better prepare their students for the bar exam.⁷ This duty is all the more crucial in light of the recent American Bar Association (“ABA”) proposed rule to tighten the bar exam passage standard that schools must meet in order to maintain accreditation.⁸ If passed, this new rule would mandate that at least seventy-five percent of a law school’s alumni pass the bar within two years of graduation, rather than the current five-year period.⁹ The proposed rule will also eliminate two provisions: (1) a provision that allows law schools to meet the bar exam passage standard if its first-time bar pass rate is within fifteen percent of the statewide average, and (2) a provision enabling law schools to meet the standard based on data from only seventy percent of graduates.¹⁰

This Article is not a blanket endorsement of the bar exam; rather, it provides the perspective that the goals of passing the bar exam and teaching law students to think and write like lawyers are symbiotic rather than oppositional. This perspective is consistent with Revised ABA Standard 301(a), which provides that the new goal of legal education is to prepare “its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as a member of the legal profession.”¹¹ Preparing students to pass the bar exam need not “convert law schools into bar exam schools,” but rather

data from 2015). In 2015, 39,984 students graduated law school; in that same year, 39,955 first-time applicants sat for the July 2015 bar exam. *See id.*

6. *See* Kowalski, *supra* note 3, at 286 (promoting teaching methods that result in an educational experience that prepares students for the practice of law); *see also* Christopher W. Holiman, *Leaving No Law Student Left Behind: Learning to Learn in the Age of No Child Left Behind*, 58 *How. L.J.* 195, 221 (2014) (explaining how members of legal profession expect significant number of students to be able to pass bar exam upon graduation).

7. *See* Reeves, *supra* note 5 (explaining how incorporating elements of bar exam into curriculum makes law school more efficient).

8. *See* Karen Sloan, *Tighter Bar-Pass Rule Adopted by ABA Accrediting Body*, *LAW.COM* (Oct. 21, 2016), <http://www.law.com/sites/almstaff/2016/10/21/tighter-bar-pass-rule-adopted-by-aba-accrediting-body/?sreturn=20161007085939>. *See id.*

9. *See id.*; Rebecca White Berch et al., *ABA Standards for Approval of Law Schools Matters for Notice and Comment*, *AM. B. ASS’N SEC. LEGAL EDUC. & ADMISSIONS TO B.* (Mar. 25, 2016), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20160325_notice_and_comment_memo.authcheckdam.pdf (discussing revised ABA Rules pertaining to law school accreditation regarding bar passage rates).

10. *See id.* (discussing changes to ABA rule eliminating existing safeguards).

11. *Program of Legal Education*, in *ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 15* (2016-2017), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_standards_chapter3.authcheckdam.pdf [hereinafter *ABA Program of Legal Education*].

serves to enhance the preparedness of legal professionals of the future.¹² Part II of this Article addresses the concept of thinking like a lawyer and the skills new lawyers should have when they begin to practice law. Part III demonstrates how first-year legal-writing courses lay the foundation of the fundamental skills necessary for the practice of law. Part IV first provides a brief history of the bar exam and its component parts. It then discusses the applicability of the fundamental skills identified in Parts II and III to bar-essay writing. Part V examines the challenges law students face when they are required to apply the skills learned in an earlier context to a later assignment. Finally, Part VI provides a comprehensive approach to bar exam strategies that law faculties can employ throughout law school, as well as more specific suggestions on how to help students transfer the skills learned during their first year to help them pass the bar exam.

II. THINK LIKE A LAWYER

Law schools are professional institutions with the purpose of producing “graduates who possess the skills, knowledge, and values necessary to be successful legal professionals.”¹³ An often-cited goal of legal educators is to teach students to think like lawyers.¹⁴ While this goal is unanimously accepted, there is less uniformity as to the exact definition of what it means to think like a lawyer.¹⁵ There are some who describe the skill as the ability to think “with care and precision, distinguish good arguments from bad, and analyze the facts and evidence presented in the case.”¹⁶ There are also some who focus on the importance of language and an “understanding that words can have

12. See Riebe, *supra* note 5, at 289 (explaining that bar preparation in law school prepares students to become effective attorneys); Holiman, *supra* note 6, at 235 (noting that incorporating test-taking strategies and substantive, practical learning into law school will prepare students for bar exam).

13. See Riebe, *supra* note 5, at 283.

14. Phyllis Goldfarb, *Back to the Future of Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 279, 285 (2012) (noting purpose of traditional first-year curriculum is to cultivate thinking like lawyer).

15. See Cara Cunningham Warren, *Achieving the American Bar Association’s Pedagogy Mandate: Empowerment in the Midst of a “Perfect Storm”*, 14 CONN. PUB. INT. L.J. 67, 72 (2014) (emphasizing no record on what new lawyers should be able to do or know on first day). In the history of legal education in the United States, there is no record of any concerted effort to consider what new lawyers should know how to be able to do in their first day of practice or to design a program of instruction to achieve these goals. *Id.* (citing Roy Stuckey et al., BEST PRACTICE FOR LEGAL EDUCATION 2 (1st ed. 2007)).

16. See Carol Goforth, *Why the Bar Examination Fails to Raise the Bar*, 42 OHIO N.U. L. REV. 47, 59, 84-85 (2015) (quoting Paula Davis-Laack, *Think This Way and That Way: Developing Mental Resilience*, 87 WIS. L. REV. 41, 41 (2014)).

myriad meanings and can often be manipulated.”¹⁷ And there are others who focus on the ability to identify and diagnose problems, generate alternative solutions, develop and implement a plan of action, keep an open mind, and think strategically.¹⁸

In the broadest sense, thinking like a lawyer means “thinking logically and precisely about issues that arise in a legal context.”¹⁹ That is what law schools do. They do not teach their students to memorize laws; rather, they impart them with the knowledge of how to use legal doctrine.²⁰ “[R]eal-world lawyering is not simply about ‘knowledge of substantive law.’”²¹ Recent graduates must arrive at their new careers with the ability to think like a lawyer and do so independently with little help from senior attorneys.²²

To achieve this level of independence, new lawyers must bring with them certain fundamental skills. While legal professions vary in scope, there is consistency in the fundamental skills that new lawyers are expected to bring with them, including the ability to think critically, read critically, and communicate clearly and effectively.²³ New lawyers must be able to use deductive, inductive, and analogical reasoning so that they can effectively contemplate, process, and understand information.²⁴ Empirical research conducted using practicing

17. ANNE-MARIE SLAUGHTER, ON THINKING LIKE A LAWYER (2002), <https://www.princeton.edu/~slaught/Commentary/On%20Thinking%20Like%20a%20Lawyer.pdf> (last visited Oct. 10, 2017).

18. See Goforth, *supra* note 16, at 84 (providing different views on what it means to think like a lawyer).

19. See Goldfarb, *supra* note 14, at 284-85 (explaining what thinking like lawyer entails).

20. See Holiman *supra* note 6, at 211 n.110 (noting law school is more than memorization, it requires active thought and problem solving).

21. Adam Lamparello & Charles E. MacLean, *Experiential Legal Writing: The New Approach to Practicing Like a Lawyer*, 39 J. LEGAL PROF. 135, 141 (2015) (quoting Kathleen Elliott Vinson, *Improving Legal Writing: A Life-Long Learning Process and Continuing Professional Challenge*, 21 TOURO L. REV. 507, 507-08 (2005)).

22. See Jeffrey D. Jackson, *Socrates and Langdell in Legal Writing: Is the Socratic Method a Proper Tool for Legal Writing Courses?*, 43 CAL. W. L. REV. 267, 278 (2007) (discussing how new lawyers should walk through the door ready to think like lawyers independently); James Etienne Viator, *Legal Education's Perfect Storm: Law Students' Poor Writing and Legal Analysis Skills Collide with Dismal Employment Prospects, Creating the Urgent Need to Reconfigure the First-Year Curriculum*, 61 CATH. U. L. REV. 735, 750 (2012) (explaining successful new attorneys take responsibility in figuring out answers independently).

23. See Anthony S. Niedwiecki, *Lawyers and Learning: A Metacognitive Approach to Legal Education*, 13 WIDENER L. REV. 33, 58-60 (2006); Sally Kane, *Competitive and Attractive Legal Skills for Job Seekers*, BALANCE (Aug. 3, 2016), <https://www.thebalance.com/top-ten-legal-skills-2164595> (identifying core legal skills required in most legal positions).

24. See Niedwiecki, *supra* note 23; Kane, *supra* note 23. These positions are consistent with the MacCrate Report's finding as to the skills and values desirable of practitioners, including problem solving, legal analysis and reasoning, factual investigation, communication, and organizational skills. See also *Legal Education and Professional*

attorneys supports these positions and further demonstrates that employers prefer attorneys who have strong fundamental practice skills, including effective written and oral communication skills, research, problem solving, and analytical skills, as well as professional skills, including a strong work ethic, willingness to take the initiative, and the ability to adapt to the demands of supervisors.²⁵

Consistent with the concept of thinking like a lawyer and employers' expectations of the fundamental skills new associates should bring with them, it is evident that effective and successful legal education requires the development of both fundamental practice and professional skills.²⁶ The foundation for these skills is laid in the first-year curriculum. First-year legal-writing courses teach, foster, and help students begin to master many of the fundamental skills commonly identified as necessary for the practice of law, including the ability to read critically, recognize material facts, identify issues, synthesize rules, analyze issues, apply legal principles to the material facts, and present a comprehensive and concise final product in a timely fashion.²⁷

Development—An Educational Continuum, AM. B. ASS'N SEC. LEGAL EDUC. & ADMISSIONS TO B. (July 1992), [http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_macrate_report\).authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_macrate_report).authcheckdam.pdf) [hereinafter *MacCrate Report*] (identifying fundamental skills lawyers should have).

25. See, e.g., Susan Wawrose, *What Do Legal Employers Want to See in New Graduates? Using Focus Groups to Find Out*, 39 OHIO N.U. L. REV. 505, 515, 522 (2013); Neil W. Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competencies Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S.C. L. REV. 567 (2014); Susan Swaim Daicoff, *Lawyer, Form Thyself: Professional Identity Formation Strategies in Legal Education Through "Soft Skills" Training, Ethics, and Experiential Courses*, 27 REGENT U. L. REV. 205 (2015). See also Majorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 L. & SOC. INQUIRY 620 (2011) (presenting data on effective lawyering skills). Professors Marjorie Shultz and Sheldon Zedeck's empirical study, which developed lawyering effectiveness factors, further supports the fact that law firms seek recent graduates who have a range of skills and abilities such as: analysis and reasoning, creativity, problem solving, practical judgment, fact finding, writing, questioning, organizing, stress management, diligence, self-development, and the ability to see the world through the eyes of others. See *id.*

26. See Holiman, *supra* note 6, at 224-25 (noting ABA requirements on what to teach during law school).

27. See David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105, 142-43 (2003) (listing skills law students learn from their first-year legal writing course). See generally Debra Harris & Susan D. Susman, *Towards a More Perfect Union: Using Lawyering Pedagogy to Enhance Legal Writing Courses*, 49 J. LEGAL EDUC. 185 (1999) (discussing substance and structure of first-year legal writing courses).

III. FIRST-YEAR LEGAL WRITING

Historically viewed as a mere recordation of previous analysis and graded on how correctly that analysis was reproduced, modern-day legal writing has evolved and is now “viewed as part of the process that creates legal meaning.”²⁸ Central to this process and the first-year writing course is the analytical memorandum.²⁹ Almost all law schools have incorporated the fundamental skill of memorandum writing into their first-year curriculum.³⁰ Presently, legal writing is commonly taught as a one-year course with objective analysis in the first semester and persuasive analysis in the second.³¹ In the fall semester, students learn formal analysis and produce one or more objective memoranda.³² In the spring semester, the class adapts the skills they learned in the fall to persuasively advocate in the form of a dispositive motion or an appellate brief.³³ Throughout the year, while the course focuses on developing writing and research skills, it also weaves in the importance of professionalism and practice skills.³⁴

Legal-writing courses provide students with an understanding of the relationship between facts and law. Through the use of deductive pedagogy, students learn to think critically about facts and law so they can solve legal problems.³⁵ Many legal-writing courses use a pro-

28. See Tamra Alexander, Jula Hughes & Rebekah Culberson, *Two Professors, Three Opinions, One Lesson Plan?*, 6 CAN. LEGAL EDUC. ANN. REV. 63, 75-76 (2011) (explaining change in teaching legal writing); Kowalski, *supra* note 3, at 312-13 (discussing legal writing pedagogy).

29. See Alexander et al., *supra* note 28, at 76 (explaining that the analytical memorandum generates understanding and clearer connection between the student and his or her draft).

30. See *id.* The Association of Legal Writing Directors (“ALWD”) and Legal Writing Institute (“LWI”) recently released a survey revealing that almost all writing programs include required courses in both the first and second semesters of the first year of law school. See George Mader et al., *2014 National Survey Results*, REP. ANN. LEGAL WRITING SURV. (2014), <http://www.alwd.org/wp-content/uploads/2014/07/2014-Survey-Report-Final.pdf> (reporting results of national survey on law school legal writing programs).

31. See Mader et al., *supra* note 30.

32. See *id.* (reporting statistic on first-year legal writing assignments). The office memorandum remained the most common written assignment with 98% of responders reporting that they required an office memo. See *id.* Other common writing assignments included appellate briefs, client letters, pretrial briefs, and email memos. See *id.*

33. See Kowalski, *supra* note 3, at 310 (discussing structure of first-year legal-writing course).

34. See *id.* (identifying skills commonly taught in first-year legal-writing courses). See generally Kathleen Elliott Vinson, *Legal Practice Skills Program Student Handbook*, SUFFOLK U. L. SCH. (2017-2018), http://www.suffolk.edu/documents/Law%20LPS/LPS_Student_Handbook_2017_18.pdf [hereinafter *Student Handbook*] (identifying the professionalism component of the first-year course at Suffolk Law School).

35. See Romantz, *supra* note 27, at 137 (explaining deductive pedagogy trains students to master array of skills).

cess-oriented approach.³⁶ For both the objective and persuasive memoranda, first-year law students are taught that, rather than a product, writing is a process with conscious consideration for: (1) purpose of the document; (2) the reader's expectations; (3) a thorough review of the facts; (4) identification of the issue(s) presented; (5) research in preparation for writing; (6) the importance of an outline and drafts of the writing to strengthen organization and substance; and (6) the requirements of working within prescribed page limits and time constraints.³⁷

The process begins by requiring students to follow detailed instructions that are essential for identification and resolution of the client's legal issue. Students are required to solve the problem through the effective application and manipulation of facts and law. Consistent with the deductive approach, professors first introduce the concept, explain it, and then allow students to practice it.³⁸

Students are first introduced to the requirements of a complete office memorandum.³⁹ Novice legal writers benefit from an appreciation of the whole before they begin to write.⁴⁰ Several subsequent classes are devoted to breaking the memorandum down into increasingly smaller pieces, then reassembling them into the final product.⁴¹ For each memorandum assigned, professors break down the various analytical and writing processes into smaller components, reducing them to puzzle pieces. Students study and practice the components and then reassemble and finesse them into an organized whole. As students work through the writing process, professors provide gui-

36. See Kowalski, *supra* note 3, at 310-12 (discussing writing pedagogy as focusing on the thinking/writing process); Carol McCrehan Parker, *The Signature Pedagogy of Legal Writing*, 16 LEGAL WRITING J. LEGAL WRITING INST. 463, 465-66 (2010); Mary Beth Beazley, *Better Writing, Better Thinking: Using Legal Writing Pedagogy in the "CaseBook" Classroom (Without Grading Papers)*, 10 LEGAL WRITING J. LEGAL WRITING INST. 23, 48 (2004) (describing process method approach allows feedback before final draft, among other things).

37. See Parker, *supra* note 36, at 465-66.

38. See Romantz, *supra* note 27, at 137 (explaining process of deductive pedagogy).

39. For example, students are often assigned a closed universe objective memorandum early in the fall semester. The research is provided, leaving students to focus on the writing. Students are taught that the discussion section of an objective memorandum is generally comprised of five parts: (1) a conclusion; (2) a rule; (3) an explanation; (4) an analysis or application; and (5) a conclusion. Throughout the spring semester, students adapt these component parts of an objective discussion section to a persuasive argument section. See DAVID S. ROMANTZ & KATHLEEN ELLIOTT VINSON, LEGAL ANALYSIS: THE FUNDAMENTAL SKILL 121 (2d ed. 2009) (laying out structure of the discussion section of objective memo); see also Kowalski, *supra* note 3, at 313-14 (discussing approach to teaching legal writing).

40. See Kowalski, *supra* note 3, at 313-14 (discussing step-by-step approach in which novices engage).

41. See *id.* (discussing paradigms by which professors break down and then reassemble the whole).

dance in planning, writing, and polishing before the final product is completed.⁴² For each step, students focus on the piece's individual requirements and the role it plays in the memorandum.

A. CRITICAL READING AND ORGANIZATION

Before the writing begins, students are taught to critically read the law and facts. Critical reading has been defined as "teaching students to think while reading."⁴³ It is an active process that requires students to learn what they are looking for and think about or question what they find.⁴⁴ Critical reading of the applicable law and precedent is essential for a student's understanding of the legal issue. Similarly, students must continue to read their client's facts, presented through narrative or interview format, throughout the writing process so that they can discern the relevant from the irrelevant and properly analyze their client's issue.

Organization is a core skill that is woven throughout the course. While focusing on the purpose of the piece as well as the need and expectations of the reader, students learn that strong substance, with the purpose of educating and/or persuading the reader, will be ineffective if it lacks organization.⁴⁵ When dealing with multiple issues, students must make organizational choices early in the writing process to determine the threshold issue and the best organizational structure for the memorandum.⁴⁶

B. AUDIENCE EXPECTATIONS

Novice legal writers are taught to begin at the end.⁴⁷ Legal writing is more purposeful and reader-focused than what most first-year students have experienced before entering law school.⁴⁸ The reader's

42. In working with students through the various components that will ultimately form the complete memorandum, professors have an opportunity to triage students' thinking and writing process. *See id.* (discussing professors' involvement in the writing process). *See generally* Beazley, *supra* note 36.

43. Debra Moss Curtis & Judith R. Karp, "In a Case, in a Book, They Will Not Take a Second Look!": *Critical Reading in the Legal Writing Classroom*, 41 WILLAMETTE L. REV. 293, 296 (2005) (quoting Norma Decker Collins, *Teaching Critical Reading Through Literature*, WORLD EDUC., <http://library.educationworld.net/a7/a7-100.html> (last visited Oct. 10, 2017)).

44. *See id.* at 296-97.

45. For support, *see supra* note 39 and accompanying text.

46. *See* LINDA H. EDWARDS, *LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION* 156-57 (6th ed. 2014).

47. *See* ROMANTZ & VINSON, *supra* note 39, at 121 (discussing the importance of beginning with the conclusion).

48. *See* Sherri Lee Keene, *Are We There Yet? Aligning the Expectations and Realities of Gaining Competency in Legal Writing*, 53 DUQ. L. REV. 99, 102 (2015); Debra Harris & Susan D. Susman, *Towards a More Perfect Union: Using Lawyering Pedagogy*

needs and expectations dictate much of the form, structure, and content of the document the writer creates.⁴⁹ Accordingly, students must adapt to the new reality that legal writing begins with the ultimate conclusion. Beginning with an affirmative statement gives the reader a direct answer to the issue discussed throughout the memorandum.⁵⁰ Beginning with the conclusion also provides the reader with context as to the analysis that is to come.⁵¹ Making the connection between the conclusion and analysis is crucial. While the memorandum should begin with a conclusion, that alone is insufficient to answer the legal question. A well-organized and substantive analysis is essential to the legal memorandum.⁵²

C. UNDERSTANDING THE LAW

After priming the reader with the conclusion, students can then move on to synthesizing and explaining the rule that governs the issue.⁵³ Students are generally discouraged from merely quoting the rule word for word; rather, they should show an understanding of the applicable rule.⁵⁴ The goal here is twofold: first, to educate the reader on the applicable law; and second, to do so in a clear manner so the reader can begin to appreciate the legal principle that is later applied in the analysis.⁵⁵ Extraneous parts of the rule that do not impact the particular issue analyzed in the memorandum should be omitted. Next, this general rule must be explained to show the reader how precedent courts and other authoritative sources have interpreted and applied similar issues.⁵⁶ Students must present these authoritative sources in a way that allows the reader to understand the source without providing extraneous information that is irrelevant to the issues

to *Enhance Legal Writing Courses*, 49 J. LEGAL EDUC. 185, 186-87 (1999); LINDA H. EDWARDS, LEGAL WRITING AND ANALYSIS, 71-72 (4th ed. 2015).

49. See Beazley, *supra* note 36, at 53 (describing two contexts in writers' encounter with readers' thinking).

50. See ROMANTZ & VINSON, *supra* note 39 (discussing reason for beginning with the conclusion).

51. See *id.*

52. See Alexander et al., *supra* note 28, at 67-68 (listing professors' opinions on an excellent memorandum). A good memorandum demonstrates an ability to reach a concisely and clearly reasoned conclusion that is effectively communicated to the intended audience. To do so, the legal issue and factual problem must be identified and analyzed effectively while accurately using the law. *Id.*

53. See *id.* at 69 (discussing professor-preferred order of memoranda discussion).

54. See CHRISTINE COUGHLIN, JOAN MALMUD & SANDY PATRICK, A LAWYER WRITES: A PRACTICAL GUIDE TO LEGAL ANALYSIS 200-01 (1st ed. 2008).

55. See *id.* at 201.

56. See ROMANTZ & VINSON, *supra* note 39, at 45-48 (explaining the need for a discussion of the material facts, holding, and reasoning from a precedent case).

discussed in the student's memorandum.⁵⁷ In educating the reader on these sources, students must also think ahead to the information they will need to support their analysis. Rather than presenting an over-inclusive statement of the source, students are taught to make conscientious choices and focus their attention on the outcome-determinative facts and reasoning in the precedent that will support their analysis.

D. LEGAL ANALYSIS

After understanding the synthesized rule and its past applications, the writer is now prepared to shift the discussion to the client's case.⁵⁸ In the analysis, students are taught to clearly connect the law to the particular facts of their client's case.⁵⁹ This application serves to substantively prove the conclusion that the student set forth at the beginning of the discussion or argument.⁶⁰ In order to prove their conclusion to the reader, students must present a balanced analysis of law and fact. Students indicate that their greatest difficulty in a writing assignment is working through the analysis section of the memorandum.⁶¹ While students are generally able to identify the relevant legal sources that are applicable to their own facts, the skill of using the law and facts together "to effectively support a legal argument" is far more elusive.⁶² Novice legal writers are conclusory in their analysis and support their arguments by merely comparing the legal rule or precedent to the desired conclusion in their own set of facts.⁶³ During the first-year legal-writing course, a significant amount of time is spent developing students' writing skills in order for them to learn how to balance the applicable law and relevant client facts to properly prove their conclusion.

57. See *id.* at 123 (discussing case synthesis). This requires students to be critical readers and develop the ability to separate the relevant from the irrelevant. While particular facts may be relevant to the legal sources as a whole they may be irrelevant to the issue the memorandum addresses. *Id.*

58. See COUGHLIN, MALMUD & PATRICK, *supra* note 54, at 129.

59. See ROMANTZ & VINSON, *supra* note 39, at 125-26 (discussing relationship between the rule explanation and legal application demonstrated through analysis); Stephanie Roberts Hartung & Shailini Jandial George, *Promoting In-Depth Analysis: A Three-Part Approach to Teaching the Analogical Reasoning to Novice Legal Writers*, 39 CUMB. L. REV. 685, 688-91 (2008-2009) (discussing the structure of analysis section of the objective memorandum).

60. See COUGHLIN, MALMUD & PATRICK, *supra* note 54, at 129.

61. See Alexander et al., *supra* note 28, at 87 (discussing student questionnaire answers).

62. See Hartung & George, *supra* note 59, at 686 (describing challenges students face in structuring their analysis).

63. See *id.*

Throughout the course, students are given a considerable amount of guidance.⁶⁴ The use of explicit instruction, formative assessments, and active learning techniques such as in-class exercises and writing assignments, group exercises, and peer review gives students ample opportunities to develop strong legal-writing skills in their first year.⁶⁵ Professors provide written feedback on common problems as well as specific problems reflected in individual student papers.⁶⁶ This detailed written feedback allows students to identify errors in organization, rule synthesis, explanation, and analysis.⁶⁷ Effective professor-written feedback contains a reasonable amount of detail so that the student understands not only what he or she did well, but also what went wrong, why it went wrong, and how to improve.⁶⁸ This feedback allows students the opportunity to work on the respective individual parts of their writing, thereby improving the whole.⁶⁹ Additionally, students have the opportunity to work one-on-one with their professor through student conferences.⁷⁰ Having reviewed the written feedback and met with the professor to discuss the writing, students then have the opportunity to rewrite assignments to correct deficiencies, improve their skills, and demonstrate mastery of the writing process.⁷¹

The skills taught in a first-year legal-writing course not only focus on strengthening students' writing abilities so that they can be competent legal writers, but they also focus on imparting students with soft skills to better prepare them for the practice of law.⁷² These soft skills include the ability to work independently, as collaboration is generally

64. See Keene, *supra* note 48, at 116.

65. See Christine Ver Ploeg & Jim Hilbert, *Project-Based Learning and ADR Education: One Model for Teaching ADR Students to Problem Solve for Real*, 11 APPALACHIAN J.L. 157, 158 (2012) (discussing how the first year of law school teaches interactive learning and problem-solving skills required for lawyers); Jackson, *supra* note 22, at 275 (noting legal-writing courses are capable of spending more time on active learning due to size). "[T]he legal profession requires more emphasis on hands-on, interactive learning where students solve problems (and not just read cases) and perform work that is similar to the types of tasks that will be expected of them as lawyers." Ver Ploeg & Hilbert, *supra* note 65.

66. See Mader et al., *supra* note 30 (identifying common methods of providing feedback as including common comments, individual feedback written on papers as well as comments provided during student conferences).

67. See Romantz, *supra* note 27, at 144 (describing how written feedback improves students' performance).

68. See Kowalski, *supra* note 3, at 316-17 (explaining constructive critique).

69. See Beazley, *supra* note 36, at 48 (describing benefit of process method).

70. See Mader et al., *supra* note 30 (identifying conferences as common methods of providing feedback).

71. See Romantz, *supra* note 27, at 144 (explaining benefit in critiquing students and then allowing rewrite).

72. See Kowalski, *supra* note 3, at 311 (discussing emphasis placed on professionalism in the second half of the first-year course).

discouraged when students write their objective and persuasive memoranda.⁷³ As a result of this need for independence, students must be self-reliant and self-motivated.⁷⁴ They must create a writing schedule and stick to it so they can meet deadlines.⁷⁵ “[T]ime constraints reflect the realities of the legal profession, where lawyers deal with deadlines on a daily basis, regardless of the area in which they practice.”⁷⁶ Students must also unlearn some of the informal writing habits that technology has instilled.⁷⁷ They must appreciate that the legal memorandum is a formal writing that prescribes page limits, requires clear and concise writing, avoids the use of legalese, and avoids informalities such as contractions, slang, and overuse of acronyms.⁷⁸ At the end of their first-year legal-writing course, students should have a strong grasp of the fundamental skills necessary to write like a lawyer and an appreciation for the practical skills necessary to enter into the profession.⁷⁹

IV. THE BAR EXAM

A. BRIEF OVERVIEW OF THE BAR EXAM

The foundation of good legal writing taught in the first year of law school forms an equally solid foundation for bar essay writing. Before addressing the applicability of these fundamental skills, it must be noted that there is no shortage of debate as to the merits, or lack

73. See Vinson, *supra* note 34 (banning collaboration on graded writing assignments).

74. See Holiman, *supra* note 6, at 232 (quoting Timothy W. Floyd et al., *Beyond Chalk and Talk: The Law Classroom of the Future*, 38 OHIO N.U. L. REV. 257, 258 (2011)) (“Learning is best when students are self-regulat[ed], engaged, and motivated. . . .”); Warren, *supra* note 15, at 74 (noting law schools need to produce graduates with excellent self-regulated skills). After graduation, students are not able “to depend on others for critique and feedback. For this reason, law schools must produce graduates who possess excellent self-directed learning skills.” *Id.* (quoting ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 43, 93-94 (2007)).

75. See Vinson, *supra* note 34 (setting forth late assignment policy).

76. Trujillo, *supra* note 4, at 86.

77. See Niedwiecki, *supra* note 23; see also Dyane O’Leary, *Legal Writing Matters: Legal Texting*, ROAD TO 1L (Aug. 12, 2016), http://theroadto1l.blogs.law.suffolk.edu/legal_writing_matters/legal-writing-matters-legal-texting/ (discussing professionalism in the age of texting).

78. See Sean Flammer, *Persuading Judges: An Empirical Analysis of Writing Style, Persuasion, and the Use of Plain English*, 16 LEGAL WRITING J. LEGAL WRITING INST. 183 (2010) (analyzing what it means to write in “plain English” and what is the most effective writing style).

79. See Michael J. Cedrone, *The Developmental Path of The Lawyer*, 41 CAP. U. L. REV. 779, 829 (2013) (quoting J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 58 (1994)). “Learning to write as a lawyer writes means, in a very real sense, becoming a lawyer.” *Id.*

thereof, of the bar exam.⁸⁰ Critics of the bar exam argue that the exam fails to test the skills relevant to the successful practice of law, as well as the skills that effectively measure competence.⁸¹ They argue that the exam focuses on memorization and that the artificial conditions do not represent the practice of law.⁸² Conversely, proponents of the bar exam believe that the exam properly tests minimal competency in terms of lawyering skills, general or broad rather than specific areas of law, and application rather than memorization.⁸³ This dichotomy should come as no surprise when we consider that we are discussing an exam whose written form is over 260 years old.⁸⁴

The written bar exam dates back to 1855.⁸⁵ Massachusetts was the first state to move from an oral to a written exam.⁸⁶ The Massachusetts Court of Common Pleas required candidates who could not show three years of legal study to pass a written exam.⁸⁷ Shortly thereafter, several states began to experiment with a written bar

80. See Reeves, *supra* note 5 (noting surplus of written opinions about merits of bar exam).

81. See Trujillo, *supra* note 4, at 77-78 (noting that the bar exam ignores skills essential for career in law).

82. See *id.* at 78.

83. See *id.* at 85-86; NAT'L CONF. OF BAR EXAM'RS & AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS (Erica Moesher & Claire J. Guback eds., 2016), <http://www.ncbex.org/pubs/bar-admissions-guide/2017/mobile/index.html> [hereinafter NCBE & ABA GUIDE] (setting forth aspirational goals for guidance towards a uniform practice of bar admission). The Code of Recommended Standards for Bar Examiners recognizes that the exam should test an applicant's ability

to identify legal issues in a statement of facts, such as may be encountered in the practice of law, to engage in a reasoned analysis of the issues, and to arrive at a logical solution by the application of fundamental legal principles, in a manner which demonstrates a thorough understanding of these principles. The examination should not be designed primarily to test for information, memory, or experience. Its purpose is to protect the public, not to limit the number of lawyers admitted to practice.

Id. at ix.

84. See Riebe, *supra* note 5, at 273 (noting bar exam dates back to mid-1800s); Robert M. Jarvis, *An Anecdotal History of the Bar Exam*, 9 GEO. J. LEGAL ETHICS 359, 374 (1996) (setting forth history of the bar exam from first administration in the 1800s).

85. See Riebe, *supra* note 5, at 273 (noting age of bar exam); Jarvis, *supra* note 84; Melli, *supra* note 5 (noting how most bar exams were originally conducted orally, either before a judge of the court to which admission was sought or by one or more lawyers already admitted to the court).

86. See Riebe, *supra* note 5, at 273 (noting Massachusetts started written bar exam in 1855); Jarvis, *supra* note 84 (discussing shift from oral to written bar).

87. See Jarvis, *supra* note 84 (explaining structure of early bar exam); Riebe, *supra* note 5, at 273 (explaining no more diploma privilege). "In the 1920s, the ABA rejected the diploma privilege, stating that every candidate should be subject to an exam by a public authority." *Id.* This position has been consistently reaffirmed. See *id.* But see Wis. Ct. Sys. (Nov. 8, 2016), <https://www.wicourts.gov/services/attorney/bar.htm> (maintaining diploma privilege for University of Wisconsin Law School and Marquette University Law School graduates and allowing them to practice in state without sitting for bar exam).

exam.⁸⁸ Early in the twentieth century, the ABA, concerned with the existing low and inconsistent standards, began looking into a national structure to unify bar examiners.⁸⁹ As a result, the National Conference of Bar Examiners (“NCBE”) was founded in 1931 to provide a national organization through which state boards of bar examiners could cooperate with each other, the law school community, and the organized bar.⁹⁰

What we have come to know as the modern-day bar exam is less than fifty years old.⁹¹ This change resulted, in part, from the growing number of applicants and in recognition that most other professions, including medicine, accounting, and engineering, require their members to meet minimum national standards, at least in part through multiple choice exams.⁹² In 1972, the NCBE administered the first Multistate Bar Exam (“MBE”).⁹³ Most recently updated in February 2015, the MBE is a two hundred multiple-choice question exam comprised of seven subject areas, including: civil procedure, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts.⁹⁴ The MBE is a six-hour exam with the stated purpose of assessing “the extent to which an examinee can apply fundamental legal principles and legal reasoning to analyze given fact patterns.”⁹⁵

Less than ten years after the introduction of the MBE, the NCBE, in response to a desire by state bar examiners to test applicants’ broad knowledge of ethics, introduced the Multistate Professional Responsibility Exam (“MPRE”).⁹⁶ The MPRE is a two-hour, sixty-question,

88. See Jarvis, *supra* note 84 (delineating national shift from oral to written bar).

89. See Melli, *supra* note 5 (explaining reasons for move to national standardized exam).

90. Jarvis, *supra* note 84, at 378 (discussing creation of the NCBE); see also NCBE & ABA GUIDE, *supra* note 83, at vii (discussing creation of the NCBE). To further the goal of creating “uniformity of objectives and practices in bar admission throughout the United States,” the ABA, NCBE, and the Association of American Law Schools, promulgated the Code of Recommended Standards for Bar Examiners. See *id.* This code provides recommendations to state authorities in their execution of duties relating to admission to the bar. See *id.*

91. See Jarvis, *supra* note 84, at 378 (discussing transition for oral state specific bar exams to national standardized exam); Melli, *supra* note 5 (explaining creation of national standardized exam).

92. See Melli, *supra* note 5, at 4 (identifying other professions that require standardized exams).

93. See *id.* (recounting inception of multiple choice questions into the bar exam).

94. See Nat’l Conf. of Bar Exam’rs, *Preparing For The MBE*, MULTISTATE B. EXAMINATION, <http://www.ncbex.org/exams/mbe/preparing/> (last visited Nov. 27, 2015) [hereinafter NCBE MBE Article] (introducing general areas of law tested on the MBE).

95. Nat’l Conf. of Bar Exam’rs, *Jurisdictions Administering The MBE*, MULTISTATE B. EXAMINATION, <http://www.ncbex.org/exams/mbe> (last visited Oct. 12, 2017). Presently, the MBE is administered in all states and territories except for Louisiana and Puerto Rico. See *id.*

96. See Melli, *supra* note 5 (explaining purpose for incorporating ethics component into the national standardized exam).

multiple-choice examination designed to measure an applicant's knowledge and understanding of established standards related to the professional conduct of lawyers.⁹⁷ While not administered as part of the bar exam, every jurisdiction except for Maryland, Wisconsin, and Puerto Rico requires its applicants to pass the MPRE.⁹⁸

Most recently, the NCBE developed the Multistate Performance Test ("MPT") using, in part, the list of fundamental skills identified in the MacCrate Report.⁹⁹ The MPT, first administered in 1997, was designed to measure an applicant's ability to use fundamental lawyering skills by requiring the applicant to complete a task that a new lawyer should be able to perform.¹⁰⁰ The specific assignment for the applicant is provided in memorandum format and sent from a supervising attorney, as is common in practice.¹⁰¹

The test is comprised of two ninety-minute document files that require the applicant to sort through detailed factual materials, analyze various sources of law, apply the material facts to the applicable law to resolve a client problem, communicate effectively in writing, and complete a lawyering task within the provided time constraints.¹⁰² The MPT is not a test of substantive knowledge; rather, it is designed to evaluate certain fundamental skills lawyers are expected to demonstrate regardless of the area of law in which the skills are applied.¹⁰³

Despite the continuing evolution of the bar exam, essays have remained a principle component of the exam as they have served the examiners well in assessing an applicant's ability to analyze facts, reason logically, and apply principles of law.¹⁰⁴ As such, they remain

97. See Nat'l Conf. of Bar Exam'rs, *Jurisdictions Requiring the MPRE*, MULTISTATE B. EXAMINATION, <http://www.ncbex.org/exams/mpre/> (last visited Oct. 12, 2017) (explaining structure of the MPRE).

98. See *id.* In lieu of a passing score on the MPRE, Connecticut and New Jersey accept successful completion of a law school course on professional responsibility. See *id.* Conversely, in Massachusetts, Iowa, and Rhode Island, receiving a passing score on the MPRE is a prerequisite to sitting for the bar exam. See *id.*

99. See Marcia Kuechenmeister, *Admission to the Bar: We've Come a Long Way*, B. EXAMINER, Feb. 1999, at 31 (examining the characteristics of the MBE, MEE, and MPT and their holistic use to strengthen the validity of the bar exam).

100. See *id.* at 30-33 (discussing purpose of the MPT).

101. See *id.* (explaining structure of the MPT).

102. See *id.* (introducing process in which applicant must engage in order to complete MPT).

103. See Nat'l Conf. of Bar Exam'rs, *Jurisdictions Administering the MPT*, MULTISTATE B. EXAMINATION, <http://www.ncbex.org/exams/mpt/> (last visited Oct. 12, 2017) (explaining substance and purpose of the MPT).

104. See Kuechenmeister, *supra* note 99, at 29 (explaining purpose of MEE). While the bar exam varies by jurisdiction, each bar exam tests the candidate's ability to write. See *id.* Some states weigh the essays more heavily than multistate. See *id.*; Nat'l Conf. of Bar Exam'rs, *Instructions for Taking the MEE*, MULTISTATE B. EXAMINATION, <http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F25> (last visited Oct. 12, 2017)

a significant component of the bar exams administered in all jurisdictions.¹⁰⁵ The NCBE has consistently discouraged states from administering exams focusing on mere memorization of the law.¹⁰⁶ Instead, it has promoted the use of written exams that use hypothetical fact patterns, which test multiple interrelated legal problems and require an analysis of law and fact.¹⁰⁷ While many states continue to administer essays that test state-specific laws, states have also had the option since 1988 to adopt the Multistate Essay Exam (“MEE”) in whole or in part.¹⁰⁸ The MEE consists of six thirty-minute questions covering twelve areas of law that vary from exam to exam; some questions may include issues in more than one area of law with some overlap with the areas tested on the MBE.¹⁰⁹

Each question consists of a narrative description of a legal problem followed by one or more related questions.¹¹⁰ The MEE requires the applicant to demonstrate an ability to communicate effectively in writing.¹¹¹ As defined by the examiners:

[hereinafter *MEE Instructions*] (identifying percentage of bar exam allocated to essays by each state). *See also* Chaney v. State Bar of Cal., 386 F.2d 962, 964 (4th Cir. 1967) (holding state bar examiners had right to use essay examination as qualification standard for applicants to show that they have “capacity to analyze general legal knowledge” and to make application thereto of such general legal knowledge as graduates of accredited law schools are expected to possess).

105. *See* Kuechenmeister, *supra* note 99, at 29-30 (explaining the structure of the MEE).

106. *See* Melli, *supra* note 5 (explaining that expectation is demonstrated understanding of the law rather than mere memorization).

107. *See id.* (demonstrating how bar exam structure provides an opportunity for applicants to show their understanding of law and its application to a given set of facts).

108. *See* Kuechenmeister, *supra* note 99, at 29-30 (explaining the options states have in structuring their essay portion of the bar exam). States have flexibility in selecting from a set of seven MEEs offered by the NCBE for any one bar administration. *See id.*

109. Judith A. Gundersen, *MEE and MPT Test Development: A Walk Through from First Draft to Administration*, B. EXAMINER, June 2015, at 29. *See also* Kuechenmeister, *supra* note 99, at 29-30 (discussing substance of MEE); Nat’l Conf. of Bar Exam’rs, *Preparing for the MEE*, MULTISTATE B. EXAMINATION, <http://www.ncbex.org/exams/mee/preparing/> (last visited Oct. 12, 2017) [hereinafter *Preparing for MEE*] (detailing areas tested on MEE). The article states that:

Areas of law that may be covered on the MEE include the following: Business Associations (Agency and Partnership; Corporations and Limited Liability Companies), Civil Procedure, Conflict of Laws, Constitutional Law, Contracts (including Article 2 [Sales] of the Uniform Commercial Code), Criminal Law and Procedure, Evidence, Family Law, Real Property, Torts, Trusts and Estates (Decedents’ Estates; Trusts and Future Interests), and Article 9 (Secured Transactions) of the Uniform Commercial Code. Some questions may include issues in more than one area of law.

Id.

110. *See* Kuechenmeister, *supra* note 99, at 29-30 (discussing substance and structure of the MEE).

111. *See* Gundersen, *supra* note 109; Nat’l Conf. of Bar Exam’rs, *Jurisdictions Administering the MEE*, MULTISTATE B. EXAMINATION, <http://www.ncbex.org/exams/mee/>

The purpose of the MEE, is to test the examinee's ability to (1) identify legal issues raised by a hypothetical factual situation; (2) separate material which is relevant from that which is not; (3) present a reasoned analysis of the relevant issues in a clear, concise, and well-organized composition; and (4) demonstrate an understanding of the fundamental legal principles relevant to the probable solution of the issues raised by the factual situation.¹¹²

Through the use of state-developed essay questions, the MBE, MPRE, MPT, and MEE bar examiners have a variety of examination formats through which to assess an applicant's competence to practice law.¹¹³ Self-proclaimed as an exam of minimal competency, the bar exam is intended to provide the public with assurances that those entrusted with a law license meet a minimum threshold.¹¹⁴ Therefore, the test questions "measure minimum competence for entry-level lawyers in a wide range of areas."¹¹⁵ The bar exam does not test, nor would it be realistic for it to test, all of the skills associated with the

(last visited Oct. 12, 2017) [hereinafter *Administering MEE*] (explaining purpose of the MEE in the context of the bar exam).

112. *Administering MEE*, *supra* note 111.

113. See Kuechenmeister, *supra* note 99, at 33-36 (explaining choices examiners have in constructing their state's bar exam). UBE states use MBE, MPT, and MEE. See Nat'l Conf. of Bar Exam'rs, *Jurisdictions that Have Adopted the UBE*, MULTISTATE B. EXAMINATION, <http://www.ncbex.org/exams/ube/> (last visited Oct. 12, 2017). As of December 2016, twenty-six states have adopted the UBE. Non-UBE states, along with the MBE, can choose to use one or two MPTs, the MEE, as well as essays that test state specific law. See Trujillo, *supra* note 4, at 74 (analyzing different purpose of the MBE, MEE, and MPT). The MBE measures an applicant's ability to apply broad knowledge; the MEE measures depth of knowledge on a specific topic and the ability to synthesize that knowledge; the MPT measures practical skills; and the MPRE measures an applicant's understanding of ethical and professional responsibilities. See *Tyler v. Vickery*, 517 F.2d 1089, 1101 (5th Cir. 1975) (acknowledging that bar exam tests skills necessary for practice). States have a legitimate and substantial interest in excluding from the practice of law those persons who do not meet its standards of minimal competence. See *Tyler*, 517 F.2d at 1101. The bar exam, consisting of multiple choice and essay questions, tests skills and knowledge which have a "logical, apparent relationship" to those necessary for the practice of law. See *id.*

114. See Riebe, *supra* note 5, at 273 (explaining purpose of bar exam is consumer protection); Trujillo, *supra* note 4, at 74 (noting if bar exam tests are too narrow, then the public is not protected from incompetent lawyers); *Tyler*, 517 F.2d at 1102 (acknowledging that bar exam tests minimal competency to practice). Both the essay and MBE portions of the bar exam are designed solely to assess the legal competence of bar examinees. See *id.* While the passing score standing alone might have no significance, it represents the examiners' considered judgment as to "minimal competence required to practice law," the precise quality the examination attempts to measure. See *id.*

115. Trujillo, *supra* note 4, at 74. See also NCBE & ABA GUIDE, *supra* note 83, at ix (explaining purpose of MBE questions). The Code of Recommended Standards for Bar Examiners recommends that the selection of subjects for bar examination questions "should be upon the basic and fundamental subjects that are regularly taught in law schools." *Id.*

practice of law.¹¹⁶ In order to avoid the risk of narrowing the skills tested, and thereby preclude applicants from sufficient opportunities to demonstrate their competence, the bar exam focuses on testing a broad base of legal knowledge and skills that are the foundation for success in legal practice.¹¹⁷

B. BAR ESSAY WRITING

As introduced in Part II, competencies necessary to think like a lawyer and, therefore, practice law include: the ability to read critically; identify legal issues; analyze material facts; apply legal rules to client facts; reason logically; organize information; perform under time constraints; follow direction; and communicate effectively in writing.¹¹⁸ These same skills, as discussed in Part III, are developed in first-year legal-writing courses to produce strong writing skills necessary for the practice of law, and these skills apply equally to those necessary to write successful bar exam essays.¹¹⁹ Bar exam essays are an exercise in critical reading.¹²⁰ They test the quality and reasonableness of the fundamental skills necessary to think and write like a lawyer.¹²¹ This is evidenced in both the information provided by the NCBE as well as individual state boards.

116. See Trujillo, *supra* note 4, at 85-86 (explaining examiners identified skills accurately tested in standardized tests and test those skills on bar exam); Riebe, *supra* note 5, at 281 (explaining not all lawyering skills are tested on the bar exam); Suzanne Darow-Kleinhaus, *A Response to the Society of American Law Teachers Statement on the Bar Exam*, 54 J. LEGAL EDUC. 442 (2004); Tyler, 517 F.2d at 1102 (reasoning that criticism as to range of legal skills and subject matter tested on bar exam does not prove that it should be eliminated, only that there is room for improvement).

117. See Riebe, *supra* note 5, at 279 (listing fundamental skills essential to practice of law, all tested on bar exam); Trujillo, *supra* note 4, at 74 (noting competencies necessary for effective legal practice are tested).

118. See Riebe, *supra* note 5, at 279 (listing competencies needed for practice of law and passing bar exam). See generally Kuechenmeister, *supra* note 99 (explaining how the three components of the bar exam test an applicant's ability to practice law).

119. While this Article focuses on the fundamental skills taught in first-year legal-writing courses and their applicability to bar essay writing, these skills are also relevant, in many respects, to the MBE, MPT, and bar exam as a whole. See Riebe, *supra* note 5, at 279 (listing same skills needed for bar exam and practice of law); Trujillo, *supra* note 4, at 85-86 (listing skills tested on bar exam). Through the essays, the bar exam tests many of the fundamental skills that should have been learned in law school.

120. See *MEE Instructions*, *supra* note 104 (emphasizing the importance of carefully reading the question).

121. See 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 U.D.C. L. REV. 9, 28 (2011). An applicant is tested on his or her judgment in organizing and identifying issues, recognizing and analyzing key facts, and applying relevant legal principle to those facts. See *id.*

The NCBE instructions for the MEE emphasize the importance of carefully reading the question.¹²² An applicant's ability to reason and analyze is determined by his or her showing an "understanding of the facts, a recognition of the issues included, a knowledge of the applicable principles of law, and reasoning by which [he or she] arrive[s] at [his or her] conclusion."¹²³ Less value is given to the conclusion than to how the examinee arrived at the conclusion.¹²⁴ The writing must be clear, concise, and complete.¹²⁵ Applicants are discouraged from assuming facts that do not appear in the question and from volunteering irrelevant or immaterial information.¹²⁶

In addition to the NCBE instructions, several individual state board of bar examiner websites provide insight into the skills necessary to write bar essays.¹²⁷ While there are variations in the amount of information that the state examiners provide, there is an overwhelming consistency in the skills examiners expect applicants to demonstrate in their essays.¹²⁸ Bar examiners recognize that the essays are designed to test the applicant's ability to think, write, and express himself or herself "logically in a lawyer-like manner."¹²⁹ The

122. See *MEE Instructions*, *supra* note 104 (addressing the need to critically read the question and not make assumptions).

123. See *id.* (setting forth what an applicant must display in their essays).

124. See *id.* (deemphasizing the conclusion reached by an applicant).

125. See *id.* (emphasizing the need for organization).

126. See *id.* (encouraging applicants to frame their answer in accordance to the facts presented).

127. For further discussion, see *infra* notes 129-167 and accompanying text.

128. State bar examiner sites vary considerably with respect to essay resources that are available to applicants. Some states provide virtually no information as to bar essay questions and answers (Alabama, <https://admissions.alabar.org/appinfo.action?id=1>; Arizona, <http://www.azcourts.gov/cld/Attorney-Admissions>; Oklahoma, <http://www.okb.com/Default.aspx>; Wisconsin, <https://www.wicourts.gov/courts/offices/bbe.htm>). A handful of states have past essay questions available for review (Delaware, <http://courts.delaware.gov/bbe/questions.aspx>; Illinois, <https://www.ilbaradmissions.org/resource>; Louisiana, <https://www.lasbca.org/BarExam/>). Yet other states provide questions accompanied with sample or best answers (Arkansas, <https://courts.arkansas.gov/administration/professional-programs/bar-exam>; Florida, https://www.floridabarexam.org/_85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/6bcc10f3f7fd1f70852580d800648ce2; Georgia, <https://www.gabaradmissions.org/essay-and-mpt-questions-and-selected-answers>; Michigan, <http://courts.mi.gov/courts/michigansupremecourt/ble/pages/default.aspx>; Minnesota, <https://www.ble.mn.gov/bar-exam/representative-good-answers/>; Mississippi, https://courts.ms.gov/baradmissions/baradmissions_msquestionsanalyses.html; Nevada, <https://www.nvbar.org/for-lawyers/admissions/bar-exam/model-answers/>).

129. *Essay Answers*, HAW. ST. JUDICIARY, http://www.courts.state.hi.us/legal_references/essay_answers (last visited Oct. 12, 2017) [hereinafter *Hawaii Essay Answers*]. See also *A Message from the Georgia Board of Bar Examiners on Preparing for the Georgia Bar Exam*, SUP. CT. GA. OFF. B. ADMISSIONS (Sept. 2006), <https://www.gabaradmissions.org/message-on-preparing-for-the-ga-bar-exam?keyword=questions> [hereinafter *Georgia Bar Tips*] (acknowledging that bar exam essays require applicants to write like lawyers); Geoffrey R. Bok, *Tips for Writing the Essay Examination*, MASS. B. EXAMINATION, <http://www.mass.gov/courts/docs/bbe/essaysuggestions.pdf> (last visited

skills bar examiners identify as necessary for an applicant to write a passing bar essay include: the ability to recognize and understand the issues presented in the legal problem, analyze facts, discern the material from the immaterial, and apply the material facts to the applicable principles of law in an organized and timely manner.¹³⁰ These critical skills are organized and discussed in greater detail throughout the following six categories: (1) Think First, Write Second; (2) Answer the Question Asked in an Organized Manner; (3) Identify all of the Issues; (4) Analysis, Analysis, Analysis; (5) Understand the Law; and (6) Use Proper English.

1. *Think First, Write Second*

Applicants should think before they write.¹³¹ Examiners emphasize the importance of essay organization and prioritizing issues. Applicants are encouraged to spend more time organizing and outlining the answer than writing the answer.¹³² Many low scores are due to misreading or misinterpreting the facts.¹³³ Therefore, applicants should carefully and critically read the question and digest the facts before beginning to write an answer.¹³⁴

Nov. 27, 2016) (describing purpose of bar essays is for applicant to express himself or herself like a lawyer); *Tips for Essay Examination*, BOARD. L. EXAMINERS ST. N.C., <https://ncble.org/tips-for-essay-examination/> (last visited Oct. 12, 2017) [hereinafter *North Carolina Bar Tips*] (focusing the applicant's attention on the "ability to articulate and classify the problem presented . . ." to state it in lawyer-like fashion). *But see Bar Examination Frequently Asked Questions*, OR. ST. BOARD B. EXAMINERS, https://www.osbar.org/_docs/admissions/Q&A.pdf (last visited Oct. 12, 2017) [hereinafter *Oregon Bar Questions*] ("While examiners do not seek superficial answers, they likewise do not expect law review articles. *The purpose of the bar examination is to test minimum legal competence, not to identify and rank the best legal scholars.*") (emphasis in original).

130. See generally *Description and Tips on the Written Test for the General Bar Exam*, MD. CTS., <http://www.mdcourts.gov/ble/pdfs/gbtips.pdf> (last visited Oct. 12, 2017) [hereinafter *Maryland Bar Tips*] (providing suggestions for successfully answering essay questions); *NH Bar Admissions: Frequently Asked Questions*, N.H. JUD. BRANCH, <http://www.courts.state.nh.us/nhbar/faq.htm#q3> (last visited Oct. 2, 2017) (explaining the purpose of the MEE as giving applicants the opportunity to prove that they can think like lawyers); *North Carolina Tips*, *supra* note 129.

131. Bok, *supra* note 129. See also *North Carolina Tips*, *supra* note 129 (emphasizing the need for the applicant to understand the question before they write an answer); *Georgia Bar Tips*, *supra* note 129.

132. See *id.* (explaining the need of an applicant to prioritize issues).

133. See *id.* (explaining that incorrect analysis may be the result of misreading the facts); *Maryland Bar Tips*, *supra* note 130; *North Carolina Bar Tips*, *supra* note 129.

134. See *Georgia Bar Tips*, *supra* note 129 (emphasizing the importance of critically reading the facts).

2. Answer the Question Asked in an Organized Manner

Applicants must follow instructions and organize their answer.¹³⁵ Critical to large-scale organization is the applicant's ability to frame his or her answer in accordance with the call of the question.¹³⁶ Some bar essays ask open-ended questions such as, "What are the rights of the parties?"¹³⁷ This broad, sometimes referred to as anemic, call requires the applicant to spend extra time determining the relevant parties, claims, and defenses, and thereafter organizing an answer so that it flows logically without too much overlap.¹³⁸ Through this process, applicants are mindful of prioritizing the issues. Some bar essay questions end with requiring the applicant to address a numbered set of issues. Applicants should address these issues in the order they are presented and must number their responses so that they correspond to the numbered issues.¹³⁹ Applicants should not leave examiners guessing at which part of the question is being answered.¹⁴⁰

Essay answers should be organized in terms of relevance and importance to the legal problem tested; "if the main principle of law related to a particular issue is thrown in at the end of a list of three or four other viable but less pertinent points, it suggests a lack of clear legal analysis."¹⁴¹ At least one state's board of bar examiners connects these skills directly to successful lawyering, recognizing that "the problems in the practice of law are the inability of a lawyer to recognize a number of viable points related to a problem and to distinguish those points which are important from those which are insignificant."¹⁴²

135. See *Maryland Bar Tips*, *supra* note 130. While the examiners do not espouse a preferred formula for the answering of questions, applicants are told to "use the logic and analysis appropriate to the facts given and for the question posed." *North Carolina Bar Tips*, *supra* note 129. "The main object is just to express yourself in a coherent, organized, and lawyerly fashion." *Id.*

136. See generally *Selected Answers*, TEX. BOARD L. EXAMINERS, <https://ble.texas.gov/selected-answers> (last visited Oct. 12, 2017) (stressing the importance of beginning the answer in a way that mirrors the call of the question).

137. See *Essay Questions from Prior Bar Exams*, MASS. CT. SYS., <http://www.mass.gov/courts/court-info/sjc/attorneys-bar-applicants/bbe/bar-exam-info/essay-questions-from-prior-bar-exams.html> (last visited Oct. 12, 2017) (revealing that most Massachusetts essay questions end in a broad call).

138. See generally *Maryland Bar Tips*, *supra* note 130; *North Carolina Bar Tips*, *supra* note 129 (emphasizing the need for the applicant to organize and outline before writing).

139. See *Georgia Bar Tips*, *supra* note 129 (discussing proper organization of essay answer requires the applicant to answer the subparts in the order presented).

140. See *id.* (explaining the importance of organization).

141. See *id.* (emphasizing the importance of prioritizing issues).

142. See *id.* (explaining that the skills tested on the bar exam relate directly to those necessary for the successful practice of law).

3. *Identify all of the Issues*

Applicants must identify issues. The ability to identify issues raised by the question is an important skill to master in order to write a passing bar essay, but mere identification of an issue without analysis is unlikely to result in a passing grade.¹⁴³ Examiners encourage applicants to identify and discuss as many issues as are relevant and responsive to the question, rather than just presenting a lengthy analysis of one issue.¹⁴⁴ Applicants are strongly discouraged from volunteering information or discussing legal doctrines that are not necessary or pertinent to the solution of the problem.¹⁴⁵ Additionally, applicants must answer the question the examiners have posed and not the question the applicant wishes the examiners had asked. Examiners caution that if an applicant misses an issue, he or she is likely to go astray in his or her analysis, resulting in the discussion of perhaps correct legal principles that are nonetheless irrelevant to the legal problem presented in the question.¹⁴⁶

4. *Analysis, Analysis, Analysis*

Applicants must analyze. Emphasis is placed on the applicant's demonstrated ability to analyze the problem and to reason logically and clearly, rather than upon any objective standard of "correctness" or "incorrectness" of the final conclusion reached.¹⁴⁷ The manner in which other applicants apply relevant legal principles might be handled differently, resulting in different conclusions.¹⁴⁸ Irrespective of what conclusions are reached, in order to receive a passing score, the applicant must present the analysis of legal principles in a logical and

143. See *Bar Examination Grading Standards and Procedures*, IDAHO ST. B. (Mar. 5, 2012), https://isb.idaho.gov/pdf/admissions/grading_standards.pdf [hereinafter *Idaho Standards and Procedures*] (explaining that issue identification and analysis are essential skills for success on bar essays).

144. See Bok, *supra* note 129 (explaining the need to identify as many issues as are responsive to the call of the question); *Oregon Bar Questions*, *supra* note 129 (discouraging applicants from limiting their analysis to only one or two issues when several are tested).

145. See *Hawaii Essay Answers*, *supra* note 129 (instructing that points will only be given for law that is relevant to the issues tested).

146. See *Georgia Bar Tips*, *supra* note 129 (emphasizing importance of identifying issues tested in light of facts presented).

147. See *Idaho Standards and Procedures*, *supra* note 143 (explaining that points are awarded for correct analysis rather than a correct conclusion); Trujillo, *supra* note 4, at 86 (noting credit is given to a well-reasoned analysis regardless of an incorrect conclusion). Greater weight is given to the analysis rather than simply "knowing" a particular rule. Trujillo, *supra* note 4, at 86 (quoting Darrow-Kleinhaus, *supra* note 116, at 445). "[C]redit is given . . . for well-reasoned analyses of the issues and legal principles involved even though the final conclusion may be incorrect." *Id.*

148. See *Georgia Bar Tips*, *supra* note 129 (deemphasizing the conclusion reached so long as the analysis applies the correct law to the material facts).

well-organized manner.¹⁴⁹ This is true even though a grader may disagree with the analytical approach or the conclusions reached.¹⁵⁰

The method by which applicants arrive at their conclusion is of the greatest importance.¹⁵¹ Rather than focusing on the conclusion itself, which alone will result in little to no points, applicants must focus on providing a complete statement of the reasoning that led to their conclusions.¹⁵² The grader is looking for confirmation that if this applicant is entrusted with a law license to be a lawyer, he or she will be able to function like one.¹⁵³ A good use of the facts—showing how the material facts are relevant to the applicable law—is an excellent way for applicants to demonstrate their legal analysis to the bar examiner.¹⁵⁴ This, in part, shows the grader that the applicant can “reason like a lawyer.”¹⁵⁵ Nonetheless, applicants are instructed to not repeat facts just to show that they have read the question.¹⁵⁶ The use of outcome-determinative facts should be limited in the answer and only used where they are essential to the application of legal principles.¹⁵⁷ It is the analysis behind the conclusion that shows the grader that an applicant can work through a legal problem in a lawyer-like way.¹⁵⁸

5. *Understand the Law*

Applicants must understand the law, not merely memorize it. Examiners are not interested in knowing how many rules of law an ap-

149. See *id.* (emphasizing the need for strong analysis). The Georgia Board of Bar Examiners analogizes to the fact that “many of the cases before the Supreme Court of the United States are decided on a 5-4 basis; therefore, four distinguished jurists did not have the ‘right answer.’” *Id.* Thus, reemphasizing that “the method by which the applicant arrives at the answer is of the greatest importance,” the examiners are “less interested in where one ends up than how one got there.” *Id.*

150. See *Idaho Standards and Procedures*, *supra* note 143 (focusing the applicant’s attention on the analysis rather than the conclusion).

151. See *Georgia Bar Tips*, *supra* note 129 (emphasizing the need to show the application of law to facts rather than just blanket assertions).

152. See *Hawaii Essay Answers*, *supra* note 129 (explaining that points are awarded for analysis, not conclusions).

153. See *North Carolina Bar Tips*, *supra* note 129 (connecting the skills tested on the essay portion of the bar exam to the skills necessary for the successful practice of law).

154. See *Georgia Bar Tips*, *supra* note 129 (emphasizing the need to show the application of law to facts).

155. See *id.* (explaining that application of law on bar essays is akin to what lawyers do in practice).

156. See *id.* (instructing that facts should only be repeated when necessary for analysis); *North Carolina Bar Tips*, *supra* note 129 (same).

157. See *Georgia Bar Tips*, *supra* note 129 (explaining the proper use of facts in bar essays).

158. See *North Carolina Bar Tips*, *supra* note 129 (connecting the analysis in a bar essay to the applicant’s ability to think like a lawyer).

plicant has learned; instead, examiners base their grading on how the applicable rules are applied to the facts provided.¹⁵⁹ Examiners expect essay answers to demonstrate a proficiency in knowing, understanding, using, and applying the legal principles rather than merely memorizing the law.¹⁶⁰ While examiners do have an expectation that a well-prepared applicant will have a broad, working knowledge of fundamental rules and principles of law, that is not the sole factor in governing the applicant's success or failure.¹⁶¹ Time constraints along with the pressure of a continuous examination are additional factors examiners consider in assigning a grade.¹⁶²

6. Use Proper English

Applicants must properly and effectively use the English language. Essential to the presentation of a clear and concise answer is the proper use of the English language, including punctuation, paragraphing, and sentence structure.¹⁶³ Applicants should avoid making reference to personal experiences or beliefs.¹⁶⁴ Colloquialisms, slang, and other "street language" should also be avoided.¹⁶⁵ Bar essays are formal pieces of writing; therefore, the applicant should avoid using abbreviations, especially those commonly used for note taking.¹⁶⁶

159. See Bok, *supra* note 129 (explaining that applicants should not merely restate the law without connecting it to material facts).

160. See *Hawaii Essay Answers*, *supra* note 129 (emphasizing the importance of application rather than mere restatement of the law); *Maryland Bar Tips*, *supra* note 130; *Oregon Bar Questions*, *supra* note 129.

161. See *Idaho Standards and Procedures*, *supra* note 143 (deemphasizing the importance of perfect recitation of the law).

162. See *id.* (explaining that precise knowledge of the rule alone will not be the sole factor that governs whether the applicant passes).

163. See generally *Maryland Bar Tips*, *supra* note 130; *Georgia Bar Tips*, *supra* note 129 (emphasizing the essential nature of clear and concise answer); Bok, *supra* note 129 (requiring applicants to express themselves clearly "as a lawyer should" and avoid "meaningless, rambling statements"). But see *Idaho Standards and Procedures*, *supra* note 143 (focusing on analysis rather than perfect grammar). In providing guidance to graders, the Idaho examiners state:

The grader must also understand that a bar examination is not a test in English composition. While bad grammar and poor spelling may adversely affect an applicant's ability to develop and express properly the legal issues and principles involved in question and result in a low grade, no reduction in grade should be made for errors in grammar, spelling, and the like per se.

Id.

164. See *Georgia Bar Tips*, *supra* note 129 (explaining answer should focus on facts presented in the question not outside circumstances).

165. See *id.* (emphasizing that the bar exam is "a serious exercise for all concerned"); *Maryland Bar Tips*, *supra* note 130 (requiring use of "proper, clear, and effective English"); Bok, *supra* note 129 (discouraging use of "flippancy and slang").

166. See *Georgia Bar Tips*, *supra* note 129 (providing example of "D for defendant, P for plaintiff, etc."). Overuse of acronyms, abbreviations or other shorthand notations

V. TRANSFERRING SKILLS FROM FIRST YEAR TO BAR PREP

The similarity between the fundamental skills necessary for the practice of law taught in first-year legal-writing courses and the skills necessary to write a successful bar exam essay demonstrate that learning to think and write like a lawyer is the key to passing the bar exam.¹⁶⁷ The question then becomes, if law schools are teaching these skills, why do students continue to struggle with the bar exam? It is as if the transition from law student to bar applicant results in atrophy or collective amnesia.¹⁶⁸

This notion of legal-writing atrophy or collective amnesia as to the skills taught at one point in the learning process and necessary for recall at a later time is not exclusive to the bar exam.¹⁶⁹ Students overlook new applications for knowledge learned in previous situations and sometimes appear to regress when asked to change context.¹⁷⁰ Legal writing professors see this reality in its simplest form when students who excelled in organization and analysis in the objective memorandum taught during the fall semester lose the ability to perform at the same level on the persuasive memorandum taught in the spring semester.¹⁷¹ In successive memorandum assignments, many students find it difficult to transfer the necessary skills learned from the analysis of one legal problem to the analysis of a different type of legal problem.¹⁷² Without proper instruction, the students lack the ability to generalize the analysis from one legal problem to a different legal problem.¹⁷³ The change in context makes it difficult for students to appreciate that the analytical process is similar for both assignments.¹⁷⁴ This difficulty in transferring knowledge, while part

may confuse the examiner and make it challenging to follow the applicant's reasoning. *See id.*

167. *See* Trujillo, *supra* note 4, at 85 (discussing skills fundamental to practicing law are tested on bar exam).

168. *See* Kowalski, *supra* note 3, at 289-90 (introducing the challenges of transferring skills from one context to another).

169. *See* Lamparello & MacLean, *supra* note 21, at 162 (providing sample hypotheticals that demonstrate legal-writing atrophy); Kowalski, *supra* note 3, at 289-90 (applying concept of writing atrophy in the law school clinical context).

170. *See id.* at 289-90 (introducing transfer theory as applicable to the clinical context).

171. *See id.* (discussing students' inability to transfer skills taught in fall semester as applicable to objective memo writing to spring semester as applicable to persuasive brief writing).

172. *See* Bruce Ching, *Nonlegal Analogies in the LRW Classroom*, 8 PERSP.: TEACHING LEGAL RES. & WRITING 26 (1999) (briefly introducing challenge of transfer that students face when approaching new writing assignments).

173. *See id.* (identifying students' inability to generalize from one memo to another because of their inability to distinguish between context and process).

174. *See id.* (discussing approach to rectifying disconnect between context and process).

of the learning process, results in considerable frustration by professors and students when students are unable to apply what they have already learned to a new assignment.¹⁷⁵ Following the first submission, with feedback and practice, students will generally regain, and often surpass, their fall semester performance.¹⁷⁶

When students leave the legal-writing classroom, they continue to struggle with new legal-writing assignments that vary in substance and form from the work they previously completed.¹⁷⁷ They “do not adapt easily when they are called upon to make additional considerations in their analysis and writing”¹⁷⁸ It would be easy to blame this effect on the strength, or lack thereof, of the first-year writing program; however, student atrophy may have less to do with quality of instruction or ability to learn and more to do with the failure of the curriculum to foster the transfer of learning from one program to another.¹⁷⁹

Much has been written on the transfer of learning, a theory that acknowledges that the mind may not recognize applications for previous learning in new situations due to the change in learning or context.¹⁸⁰ Transfer is characterized as “near,” referring to transfer between similar contexts, and “far,” referring to transfer between contexts that on their face appear unrelated to one another.¹⁸¹ Practically, what this means is that it is difficult for students to connect what they learned in one course or context to a new context or application.¹⁸²

When students learn, their knowledge is encoded according to the context in which it was obtained.¹⁸³ Context is specific, so when a student learns to write a memorandum in a legal-writing course, he or she is likely to connect that knowledge to the specific circumstances and factors surrounding that particular learning experience, assign-

175. See Keene, *supra* note 48, at 77.

176. See Kowalski, *supra* note 3, at 290 (discussing how use of feedback can help students apply similar skills to different contexts).

177. See *id.* (explaining how transfer of skills is magnified when students are required to apply what they learned in classroom to different assignment presented in different context).

178. See Keene, *supra* note 48, at 130.

179. See Kowalski, *supra* note 3, at 311 (discussing how gaps between the first- and third-year curriculum impact student learning and skill transfer).

180. See *id.* at 290-91 (introducing transfer theory).

181. See David N. Perkins & Gavriel Salomon, *Transfer of Learning*, in INTERNATIONAL ENCYCLOPEDIA OF EDUCATION 4 (2d ed. 1992).

182. See Alexander et al., *supra* note 28, at 77 (explaining transfer of learning theory).

183. See Kowalski, *supra* note 3, at 323-24 (discussing learning theory); WANDA M. TEMM, CLEARING THE LAST HURDLE: MAPPING SUCCESS ON THE BAR EXAM 13-14 (2015) (discussing encoding in the context of bar exam preparation).

ment, class, and perhaps even professor.¹⁸⁴ When a student is then tasked with a new assignment, unless cued to recognize the similarity in the first-year experience, he or she may be unable to recognize that the information previously learned is equally applicable to this new task.¹⁸⁵ Law schools generally do not require an upper-level curriculum that allows students to develop their legal writing and practice skills with the same rigor as the first-year courses do.¹⁸⁶ And those few courses that allow students to develop their writing skills fail to make the connection to first-year courses and fail to present the information in a generalized format to help students understand the applicability of the previously learned information to the new assignment.¹⁸⁷

It is a challenge for students to transfer skills from one semester to the next, i.e., from objective to persuasive writing, so when the contexts are even further apart, it is much harder for the brain to recognize that learning stored in an earlier schema is appropriate for recall and application in the new situation.¹⁸⁸ This distance between first-year legal writing and preparing for the bar exam is exacerbated by a disconnect created when professors and practitioners tell law students that the bar exam neither tests the skills learned in law school nor those necessary for the practice of law.¹⁸⁹ This disassociation, coupled with the “lack of significant, repetitive work experience makes virtually every new assignment so novel and complex that it qualifies as a ‘far’ transfer, regardless of it constituting a ‘near’ transfer” in light of the similarity in skill.¹⁹⁰

184. See Alexander et al., *supra* note 28, at 77 (noting changed environment, subject matter, format, or classroom, makes writing memoranda in another class difficult).

185. See Kowalski, *supra* note 3, at 324 (explaining how faculties can help students make connections to previously learned skills).

186. See generally Mader et al., *supra* note 30.

187. See Christian C. Day, *Law Schools Can Solve the “Bar Pass Problem”*—“Do the Work!,” 40 CAL. W. L. REV. 321, 334 (2004) (discussing reasons why students are ill-prepared for the bar exam as a result of not having developed sufficient writing skills “nor demonstrated the minimal analytical and time management skills that are tested on the bar”).

188. See Kowalski, *supra* note 3, at 289-90 (discussing transfer theory); Warren, *supra* note 15, at 88 (explaining how professors must teach students how to determine where to file information in brain). The brain organizes information in schemata; the key is to help students determine which existing schema to store the new information or how to expand an existing schema to incorporate new material. To the extent the material is encoded and appropriately stored into the brain’s schema, the expectation is that the student will be able to recall the information for future use. See *id.* (explaining how a schema works).

189. See generally Trujillo, *supra* note 4 and accompanying text.

190. See Kowalski, *supra* note 3, at 323 (explaining how even related tasks become disassociated when a connection is not made by the professor).

Students need help in connecting prior learning to new contexts.¹⁹¹ They need substantive content beyond the first year of law school; students need “[twenty-first] century competencies,” including cognitive skills of critical thinking and problem solving, and interpersonal skills of organization and responsibility.¹⁹² These competencies require “systematic instruction and sustained practice.”¹⁹³ Legal-writing pedagogy suggests a focus on both “process goals and on teaching to enhance the transfer of learning.”¹⁹⁴ Strategies should be actively employed to eliminate, where possible, inconsistency in learning and “minimize the impact of any remaining inconsistencies.”¹⁹⁵ Professors can help students transfer information learned in one context to another by anticipating future application of the skill, generalizing the skill so that it can be abstracted and applied in future contexts, and teaching the art of analogy so that students can recognize abstract and creative connections between law and facts.¹⁹⁶ The end goal is deeper learning, a “process through which an individual becomes capable of taking what is learned in one situation and applying it to new situations.”¹⁹⁷ This will allow students to transfer what they learned to solve new problems.¹⁹⁸ To achieve this deeper learning, professors must teach students to recognize that existing skills apply to new situations, therefore placing the student in a better position to recall those skills and then determine how to use them appro-

191. See Alexander et al., *supra* note 28, at 77 (describing how students need help seeing future contexts).

192. See Tracy A. Thomas, *Teaching Remedies as Problem-Solving: Keeping It Real*, 57 *ST. LOUIS U. L.J.* 673, 686-87 (2013) (listing competencies students need to facilitate deeper learning).

193. Thomas, *supra* note 192. See Perkins & Salomon, *supra* note 181, at 6. Transfer may depend on extensive practice of the skill in question in a variety of contexts. This will result in a stored bundle of skills more easily evoked in new situations. See *id.* The ABA’s Standard 314, “Assessment of Student Learning,” requires that law schools use “both formative and summative assessment methods . . . to measure and improve student learning and provide meaningful feedback to students.” *Revised Standards for Approval of Law Schools*, AM. B. ASS’N SEC. LEGAL EDUC. & ADMISSIONS TO B. 22 (Aug. 2014), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201406_revised_standards_clean_copy.authcheckdam.pdf [hereinafter *Revised Standards*].

194. See Alexander et al., *supra* note 28, at 74.

195. See *id.* at 64.

196. See *id.* at 77-78 (citing ROBIN FOGARTY, DAVID PERKINS & JOHN BARRELL, *HOW TO TEACH FOR TRANSFER* 67 (1992)).

197. Thomas, *supra* note 192, at 686 (quoting NAT’L RESEARCH COUNCIL OF THE NAT’L ACADS., *EDUCATION FOR LIFE AND WORK: DEVELOPING TRANSFERABLE KNOWLEDGE AND SKILLS IN THE 21ST CENTURY* 29, 33 (James W. Pellegrino & Margaret L. Hilton eds., 2012)).

198. See *id.* (explaining difference between deeper learning and other types of learning).

privately for the change in circumstance.¹⁹⁹ Lastly, professors must teach students how to connect their previous legal-writing instructions and experiences to the bar exam.²⁰⁰

VI. BRIDGING THE GAP

Most professors are successful in helping their students obtain and store knowledge throughout their course; however, taking the next step to ensure that the students will be able to recall and apply the knowledge in a different context has proven more challenging.²⁰¹ First-year legal-writing professors spend a significant amount of time teaching law students the fundamental skills necessary for strong legal writing, thereby laying the foundation for bar essay writing.²⁰² These skills need to be shepherded through the remaining years of law school so that students can continue to reinforce the connection between what is taught in law school, its application to the practice of law, and its usefulness to achieving success on the bar exam.

A. EMPHASIZING THE FUNDAMENTAL SKILLS AND THE BAR EXAM IN THE FIRST YEAR OF LAW SCHOOL

In order to be able to understand the substance and skill necessary to succeed on the bar exam, law students must first appreciate how the exam will impact their foreseeable future. Law students should be introduced to the bar exam before their first year of law school begins. Starting at first-year orientation, law schools should be consistently emphasizing the importance of the bar exam.²⁰³ Students need to be informed of the state-specific nature, or lack thereof, of the bar exam, prerequisites to sitting for the exam, resources that the law school provides its students to support bar preparation, and the cost of a commercial bar review course.²⁰⁴ By introducing them to the bar exam early, students will be in a better position to take control of the process and plan accordingly. Students must understand that

199. See Alexander et al., *supra* note 28, at 77 (detailing ways in which professors can teach students how to transfer learning).

200. See generally Kowalski, *supra* note 3 (discussing professors' roles in teaching students to transfer skills learned in a previous context to a later assignment).

201. See Kowalski, *supra* note 3, at 291 (citing ROBERT E. HASKELL, TRANSFER OF LEARNING: COGNITION, INSTRUCTION AND REASONING xiii (2001)). "Despite the importance of transfer of learning, research findings over the past nine decades clearly show that as individuals, and as educational institutions, we have failed to achieve transfer of learning on any significant level." *Id.*

202. See Keene, *supra* note 48, at 111.

203. See Trujillo, *supra* note 4, at 109 (noting how mastering essential tools for bar exam starts at opening meeting); TEMM, *supra* note 183, at 1 (suggesting preparation for the bar exam begins at law school orientation).

204. See Trujillo, *supra* note 4, at 112-13.

the bar exam is like a full-time job; therefore, “personal and financial affairs need to be in order” so that focus can be solely on the bar exam.²⁰⁵

Once the first year of law school begins, first-year professors can help students anticipate future learning while laying the foundation for the fundamental skills necessary for success on the bar exam. When teaching the analytical memorandum, legal-writing professors can anticipate how the application of the skills learned in their course will transfer to the students’ future internships, the students’ future clerkships, the bar exam, and ultimately, to legal practice. Professors should expressly tell students that the critical reading, rule synthesis, analytical, and organizational skills that they are learning and applying in their first-year legal-writing course are equally applicable to the bar exam and legal practice.²⁰⁶ By doing so, and by generalizing the process during the skill-training experience, students will be better able to understand how to call upon skills learned in one context as applicable in a different context.²⁰⁷ The more skilled a student becomes in the art of “abstract and creative connections between rules and fact patterns, the more likely that his or her mind will search related schemas for knowledge that can be used to solve the problem at hand.”²⁰⁸

More specifically, first-year legal-writing courses can add a bar exam-like essay to their curriculum. By building upon the law that students have researched and learned for their objective or persuasive memorandum, professors can create a new set of facts for students to analyze. These new facts can be presented to students in narrative format ending with a call of questions similar to bar exam essays. Students can complete this assignment during part of a class, thereby mimicking the thirty to forty-five minute time limit imposed by most states on individual essays. Professors can then review the essay with the class, taking students through the critical reading, spotting the important issues, organizing an outline, as well as going through the substance of a well-written essay. An assessment such as this can establish a direct connection between the skills learned in the first-year

205. See *id.* at 113. The cost is small compared to failing the bar exam, and making a six-figure investment in legal education inoperable for a period of six months. See *id.*

206. See Warren, *supra* note 15, at 92 (“Professors should be explicit”).

207. See Kowalski, *supra* note 3, at 292-93; Ching, *supra* note 172. “Transfer strategies can also take much more subtle and abstract forms, [including] teaching students the art of generalization during their skills training experiences, so that they understand how to draw upon skills in negotiation when writing a good demand letter.” See *id.*

208. See Kowalski, *supra* note 3, at 324 (discussing students’ ability to develop the skill of transferring knowledge learned in one context and later applying it to a different context).

legal-writing course and those necessary for success on bar exam essays.²⁰⁹

Students generally receive less written feedback on assignments in most other law school courses than they do in their legal-writing course.²¹⁰ Aside from the final grade itself, law students “receive minimum feedback regarding how they performed on their final exams in doctrinal” courses.²¹¹ As a result, students have minimal opportunities to develop and improve their exam-taking skills.²¹² First-year students need the opportunity to engage in multiple formative assessments²¹³ throughout the year in order for them to build their exam taking skills as well as their confidence.²¹⁴ The use of practice problems may be done in the classroom or as a take-home with in-class review to allow students to assess their analytical and writing skills beyond the legal writing classroom.²¹⁵ Professors can help students immensely by deconstructing law school exams.²¹⁶ “During this process, the student can hone [in on his or] her issue spotting, analytical skills, and writing skills, all of which are essential to pass the bar exam.”²¹⁷ This will also help to further generalize the fundamental skills students are taught in their first-year legal-writing course so that they draw upon them and apply them in different contexts.²¹⁸ These practice problems can be used to help students understand the importance of following the call of the question, critically reading dense fact patterns, identifying issues, and analyzing and organizing

209. See Warren, *supra* note 15, at 87 (having students work actively with the material promotes encoding, allowing them to transfer material from working memory to long-term memory).

210. See Mader et al., *supra* note 30.

211. See Holiman, *supra* note 6, at 219 (noting minimal information given to students regarding exam).

212. See *id.* at 232.

213. See Reeves, *supra* note 5, at 647-48 (discussing the nature of formative assessments as serving an instructional function rather than an evaluative function). This is also consistent with ABA Revised Standards 301 and 302. See *ABA Program of Legal Education*, *supra* note 11.

214. See Holiman, *supra* note 6, at 232 (noting how students need multiple assessments to help them succeed); Reeves, *supra* note 5, at 647 (explaining increased use of formative assessments creates additional opportunities for students to practice application of law to facts and to receive feedback on those efforts).

215. See Holiman, *supra* note 6, at 232 (explaining how students can assess weaknesses on their own).

216. See Trujillo, *supra* note 4, at 111 (noting professors reviewing exam with student who did poorly helps student immensely).

217. *Id.*

218. See Kowalski, *supra* note 3, at 326 (explaining how skills can be generalized when taught to make it easier for later application in different contexts); Niedwiecki, *supra* note 23. The use of formative assessment can improve the metacognitive skills of law students so they are more successful at transferring their learning to the new and novel situations they will encounter in the practice of law. Niedwiecki, *supra* note 23.

those issues in a timely fashion.²¹⁹ Having done so, effective final-exam essays can be used as a summative assessment to evaluate the substantive and analytical skills law students need to succeed as a lawyer and pass the bar exam.²²⁰

B. IDENTIFYING STUDENTS AT RISK AND CREATING SELF-REGULATED LEARNERS

Law schools are aware of their students' likelihood of success on the bar exam from the moment that they are admitted.²²¹ Undergraduate grade point averages ("UGPA") and Law School Admission Test ("LSAT") scores are good indicators of which students are at risk of failing.²²² As students progress through their first year, their first-year grades provide another solid indication of who is at risk.²²³ Therefore, for students that enter law school with a low UGPA, a weak LSAT score, and first-year grades that reflect poor analytical skills, their success on the bar exam is, in part, a product of how well the law school provided the necessary academic support.²²⁴

These students need to know that they are at risk of failing the bar exam. Fair warning will give students an opportunity to change their study habits before it is too late.²²⁵ Students who fail the bar do not fail because they did not memorize enough rules.²²⁶ Students fail because they "cannot identify legal issues," are incapable of separating the "relevant from the irrelevant facts," and lack the "ability to properly organize and analyze the legal issue."²²⁷ Students who succeed

219. See Thomas, *supra* note 192, at 685 (explaining benefits of using bar problems in law school courses).

220. See Trujillo, *supra* note 4, at 111 (explaining professor can show student issues missed, wrong analysis, and explain how to improve).

221. See Susan M. Case, *Failing the Bar Exam – Who's at Fault?*, B. EXAMINER, Sept. 2013, at 33 (discussing the use of undergraduate GPA and LSAT score to determine bar passage).

222. *Id.*

223. See *id.* (identifying first-year grades as a predictor of bar passage).

224. See Laura Dannebohm & Adam Lamparello, *The Death of Academic Support: Creating a Truly Experiential, Integrated, and Assessment-Driven Academic Success and Bar Preparation Program (Part I of II)*, 42 MITCHELL HAMLINE L. REV. 110, 111 (2016) (quoting Elizabeth Rindskopf Parker & Sarah E. Redfield, *Law Schools Cannot Be Effective in Isolation*, 2005 BYU EDUC. & L.J. 1, 44 (2005)). ABA Revised Standard 309(b) requires law schools to offer academic support that provides students with a reasonable opportunity to succeed. See *Revised Standards*, *supra* note 193.

225. See Trujillo, *supra* note 4, at 112 (quoting Day, *supra* note 187, at 343) (noting schools must give low-ranking students honest assessments of their skills and academic abilities).

226. See *id.* at 86-87 (quoting Darrow-Kleinhaus, *supra* note 116, at 447) (explaining students fail because they cannot recognize a rule when it assumes a different form or appears in language slightly different than how they learned it).

227. See *id.*; Reeves, *supra* note 5, at 649 (listing "sub skills" required for proper legal analysis).

on the bar exam do so because they have learned to read carefully and actively.²²⁸ They have learned the law and are able to use that knowledge to write well-reasoned arguments based on an analysis of the relevant issues and an application of the law to the facts.²²⁹ Law schools should support their students by requiring a curriculum for those at risk of failing the bar exam.²³⁰ This curriculum should include courses that will help students in continuing to develop and apply the fundamental skills that are taught in their first-year legal-writing course to different contexts.²³¹

This curriculum should foster an environment where students continue to develop as self-regulated learners.²³² The goal of self-regulated learning is to teach students to “take control over their own learning.”²³³ Self-regulated learners engage in a continuing process of assessments.²³⁴ First, students create a plan for their learning and appreciate that the mastery of particular concepts marks when work is complete.²³⁵ Rather than focusing on what will be tested on a particular exam or how long the assigned reading will take, students’ focus should be on understanding the assigned material.²³⁶ Students must then perform the work as planned. Performance is accomplished through achieving mastery, not by simply going through the motions of the assigned task.²³⁷ Finally, students must reflect on and evaluate their results to determine what aspects of the plan worked and what aspects did not so that they can adapt the plan as they move forward and complete similar tasks.²³⁸ By engaging in this process, self-regulated learners achieve a deeper level of learning, which makes them more likely to transfer information from one assignment

228. See generally Trujillo, *supra* note 4.

229. See *id.* at 85-86 (listing requirements for passing bar exam).

230. See *supra* note 242 and accompanying text for further discussion.

231. See Kowalski, *supra* note 3, at 292 (explaining professor and course materials can “achieve surprising amount of continuity simply by reminding students to remember and apply previous training”). In addition to substance, students need to continue to develop the practice skills that are introduced in their first-year legal-writing course allowing them to become independent self-motivators who can meet deadlines.

232. See Alphan et al., *supra* note 121, at 18 (explaining self-regulated learners and self-efficacy are “part of the overall goal of helping students foster a culture of success”).

233. See Warren, *supra* note 15, at 89. This control is essential when graduates are studying for the bar exam because they will not be able to rely on their professors for guidance and feedback in the same way they did when they were students.

234. See *id.* at 90-91.

235. See *id.*

236. See *id.*

237. See *id.*

238. See *id.*

to another as they continue through law school, prepare for the bar exam, and engage in the practice of law.²³⁹

C. PREPARING STUDENTS BEFORE THEY PREPARE FOR THE BAR EXAM

Commercial bar review courses play a role in bar passage, but the post-graduation course alone is insufficient if students come to it without the fundamental skills that should have been acquired in law school.²⁴⁰ In order to better prepare their students for the bar exam, some law schools have created specific bar-support programs in addition to academic support.²⁴¹ In bar-support programs, whether individually or in partnership with commercial bar review companies, law schools have begun to offer bar-preparation courses during the traditional academic year.²⁴² These courses provide several benefits to stu-

239. See *id.* at 74; Cheryl B. Preston et al., *Teaching “Thinking Like A Lawyer”*: *Metacognition and Law Students*, 2014 BYU L. REV. 1053, 1056 n.4 (2014). “An expert thinker does not reinvent the wheel but transfers knowledge of information and skill previously acquired to the task at hand and then identifies what additional knowledge is required.” *Id.*

240. Commercial courses provide students with a cohesive package of the rules tested in that particular jurisdiction’s bar exam. But the review course, as its name implies, is simply a review of the substance and skills necessary to succeed with a presumption that the student learned this material in law school. See Riebe, *supra* note 5, at 315 n.348 (noting commercial bar review courses are not meant to cultivate analytical or writing skills); Alphan et al., *supra* note 121.

241. See Alphan et al., *supra* note 121.

242. Suffolk University Law School offers a graded, for-credit bar review course in partnership with Barbri. The course is co-taught by Suffolk faculty as well as national lecturers and is offered to students in their final semester before graduation. The course focuses on the skill and substance necessary for success on bar exam multiple choice and essay questions. The course gives students the opportunity practice over 200 MBE questions and twelve essay questions. Students receive detailed and individualized feedback throughout the course focused on improving their approach to MBE questions and as to the substance and organization of their essays. See, e.g., *Master Course List*, ATLANTA’S JOHN MARSHALL L. SCH. (2014-2015), <http://www.johnmarshall.edu/ajmls-students/academic-affairs/course-descriptions/> (John Marshall offers “Advanced Bar Studies[, which] provid[es] students with an intensive review of selected legal material routinely tested on the bar exam, and uses problems and exercises in a bar exam format to familiarize students with techniques for answering multiple choice (MBE) questions and analyzing, organizing, and writing essay and multistate performance (MPT) questions”); *Bar Preparation*, BARRY U. DWAYNE O. ANDREAS SCH. L., <https://www.barry.edu/law/future-students/academic-program/bar-preparation.html> (last visited Oct. 12, 2017) (“Barry University School of Law Bar Preparation Program offers an array of bar-focused workshops, bar preparation classes and one-on-one counseling and tutoring”); *Bar Preparation*, BYU L., http://www.law2.byu.edu/site/current-students/bar_prep (last visited Oct. 12, 2017) (“BYU Law School’s Bar Preparation Program focuses on helping 3Ls start thinking about and preparing for the bar early in their final year of law school. The program then offers several preparation Seminars which focus on the details of the bar and introduce students to the types of questions that they’ll see on the actual bar exam.”); *Course Descriptions*, GEO. MASON U. ANTONIN SCALIA L. SCH., <http://www.law.gmu.edu/academics/courses> (last visited Oct. 12, 2017) (George Mason offers a Legal Fundamentals course, “which is open to students in their final year, offers a substantive review of topics typically covered on the bar exam, along with practice

dents.²⁴³ In these courses, students have the opportunity to practice and receive feedback on the MBE, MPT, and bar exam essay questions.²⁴⁴ Professors have the ability to guide students through the systematic approach to critically reading and answering bar exam questions. Through this systematic approach, professors can help students make direct connections between the fundamental skills taught in their first-year legal-writing course and the skills necessary to succeed on the bar exam.

Less tangible benefits come in the form of the confidence students gain when they have the opportunity to prepare for the bar exam before they graduate. Through increased opportunities for assessment in preparation for taking the bar exam, students are able to see their potential for success and believe in their ability to overcome obstacles in learning.²⁴⁵ Motivating students to learn and to take charge of their learning process is critical in shaping their attitudes towards the bar exam.²⁴⁶ As the course focuses on enhancing student awareness of the skill and substance necessary to tackle the bar exam, there is an increase in student motivation to pass the exam.²⁴⁷ “Building and reinforcing self-esteem and self-confidence” is an important skill to develop and foster during the bar preparation process.²⁴⁸ As a result, students are less anxious about the bar exam and more confident with their ability to pass.²⁴⁹

Beyond the classroom, the goal of bar-support programs should be twofold: to help students prepare for the bar exam and to keep law

exams and individual counseling on study techniques”); *Perspectives in Legal Analysis and Writing Supplemental Bar Preparation Course*, MAURICE A. DEANE SCH. L. HOFSTRA L., <http://law.hofstra.edu/currentstudents/academicssuccessprogram/barexamprep/perspectives/index.html> (last visited Oct. 12, 2017) (Hofstra Law offers a Perspectives in Legal Analysis and Writing course, which builds on the analytical, writing and organizational skills necessary to enhance a student’s ability to prepare for the Bar Exam.); *Bar Examination Information*, VAL. U. L., <http://www.valpo.edu/law/current-students/c-academics/c-academic-success-program/bar-examination-information> (last visited Oct. 12, 2017) (Valparaiso Law offers a course “designed to teach upper level analytical thinking and writing for the bar exam and for the practice of law. Students will sharpen skills through a review of selected topics within multistate bar exam subjects. Through the use of problems and exercises in a bar exam format, students will become familiar with techniques for answering MBE, MPT, as well as analyzing, organizing, and writing essay questions”).

243. See Holiman, *supra* note 6, at 222 (explaining bar courses in law school provide students with an introduction to material they will need to master before they sit for the Bar exam).

244. See *supra* note 242 and accompanying text.

245. See Alphan et al., *supra* note 121, at 19.

246. See *id.*; Riebe, *supra* note 5, at 306 (explaining bar passage statistics do not determine students’ bar passage). “[S]tudents’ individual aptitudes, efforts, and attitudes will determine whether they pass their bar exam, not bar passage statistics.” *Id.*

247. See Alphan et al., *supra* note 121, at 19.

248. See *id.*

249. See Thomas, *supra* note 192, at 685 (listing benefits of bar-support programs).

school faculties informed on the bar exam. These programs should provide students with relevant bar exam information throughout the students' entire law school career with the goal of making students more aware of the requirements or prerequisites to sitting for the exam, introducing students to areas of law that are going to be tested, and raising awareness of bar exam preparation.²⁵⁰ Bar-support programs can serve as an additional resource by partnering with state board of bar examiners to provide students with state specific bar exam requirements.²⁵¹ Similarly, having the law school faculty teach the bar-support programs should keep them up-to-date on the evolving nature of the bar exam so that they can then better generalize and acknowledge some of the skills taught in their courses as relevant to the bar exam.²⁵² As students transition from graduate to bar applicant, bar-support faculty can provide continuity by supplementing the work students are doing in their commercial bar review courses through additional workshops and resources.²⁵³

250. See generally Alphan et al., *supra* note 121 (discussing various types of assistance that a bar-support program can provide).

251. At Suffolk University Law School, students are required to attend a 2L orientation led by a representative from the Massachusetts Board of Bar Examiners and those that teach in the bar support program to inform on the component parts and prerequisites to sitting for the Massachusetts Bar Exam. At the University of Maryland and the University of Baltimore Schools of Law, the Maryland Board of Law Examiners meets with law students to discuss the structure of the Bar examination and to explain the characteristics of a good answer to a bar examination question and how to prepare to take the examination. See *Maryland Bar Tips*, *supra* note 130.

252. See Trujillo, *supra* note 4, at 110 (explaining how professors should acknowledge the bar exam and be able to answer questions or direct students to those that can effectively and accurately answer questions).

253. At Suffolk, students studying for the bar exam have the opportunity to participate in additional MBE and essay workshops scheduled to supplement the work they are doing in their commercial bar review course. Bar-support faculty should introduce students (and faculty) to additional resources such as the sample questions available on the NCBE and state specific bar examiner website. MEE questions are available on the NCBE website from February 2007 through July 2011. See *Preparing for MEE*, *supra* note 109. Other years of questions and analyses prepared by the examiners are available for purchase. See Nat'l Conf. of Bar Exam'rs, *NCBE Study Aids Store*, MULTISTATE B. EXAMINATION, <http://store.ncbex.org/mee/> (last visited Oct. 12, 2017). State Bar Examiner sites vary considerably with respect to essay resources that are available to applicants. See *supra* note 128 and accompanying text (discussing the difference in availability of essay resources to bar applicants).

