

THE ROLE OF BAR PREPARATION PROGRAMS IN THE CURRENT LEGAL EDUCATION CRISIS

ALEATRA P. WILLIAMS[†]

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I. INTRODUCTION

In 1948, Julius Cohen wrote,

There are signs of an unusual ferment in American legal education. Law faculties all over the country are busily engaged in re-examining, overhauling, and revamping their . . . curricula; special committees have been created by the Association of American Law Schools for the express purpose of revaluing the

[†] Associate Professor of Law, Charleston School of Law. B.A., 1994, Purdue University; J.D., 1997, University of Oklahoma College of Law; L.L.M., 2006, University of California, Berkeley.

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objectives of legal education; and even the American Bar Association has just launched a comprehensive study of the legal profession to determine, among other things, just “what we are educating [law] students for, and whether the type of education we offer prepares our students for the tasks they perform in the profession.”¹

Professor Cohen wrote the above in reference to a supposed legal education crisis. The sentiments or observations Professor Cohen mentioned nearly sixty-five years ago still ring true today.

Once again, legal education is in an apparent crisis and at a crossroads.² Law faculties and administrations are scrambling to attract and retain quality law students and preparing their students to make it past the biggest test for entry into the legal profession: the bar exam.

In April 2013, the American Bar Association’s (ABA) Task Force on the Future of Education held a meeting.³ The committee debated particular challenges and anxieties present in legal education, including whether there should be greater heterogeneity among law schools related to missions, goals, and program structures, *inter alia*, costs and economics of legal education, and the delivery and regulation of legal education.⁴ The impetus for the mini conference is multi-faceted, but

1. Julius Cohen, *Crisis in Legal Education*, 15 U. CHI. L. REV. 588 (1948).

2. Lincoln Caplan, *An Existential Crisis for Law Schools*, N.Y. TIMES, July 15, 2012, at SR10, (“A growing list of deans acknowledge that legal education is facing an existential crisis, but the transformation to a more sustainable model will be difficult and messy.”); Philip J. Closius, *American Law Schools in Crisis*, BALT. SUN, June 4, 2012 (declaring that the “Golden Age of American legal education is dead”); *see also* Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177, 179 (2012) (noting that the shrinkage of the new lawyer employment market in addition to swelling education costs “produce[s] what many now recognize as a genuine crisis for both law schools and the legal profession”).

3. Karen Sloan, *ABA Eyes Tighter Bar-Passage Rule For Law Schools*, NAT’L L.J. (Apr. 30, 2013, 2:12 PM), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202598162907&ABA_Eyes_Tighter_BarPassage_Rule_for_Law_Schools (quoting Jeffrey Lewis, a professor at Saint Louis University School of Law).

4. ABA Task Force on Legal Education, Agenda for Apr. 24, 2013 Conference, available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/april_2013_schedule_panel_questions.authcheckdam.pdf. The Task Force on the Future of Legal Education started in 2012. Its mission is two-fold: 1) addressing economic issues concerning legal education and 2) recommending actions related to outside forces affecting legal education. Task Force on the Future of Legal Education, *About the Task Force*, A.B.A., http://www.americanbar.org/groups/professional_responsibility/taskforceonthefuturelegal_education.html (last visited Feb. 2, 2014).

mainly to review and, hopefully, strengthen the quality of legal education.⁵

The ABA Task Force met to focus on the future of legal education.⁶ The Task Force discussed the following relevant topics: (1) the primary influences motivating “the current challenges and anxieties in legal education” and forecast for the next four years; (2) the role and structure of the task force to remedy imperfections in the system of legal education as it currently exists; (3) how to draft or modify ABA Standards to tackle the criticisms of the current legal education system; and (4) whether the task force should make recommendations for change, and how those recommendations may be structured in a manner which “promote continuing, institutionalized treatment of challenges and changes in legal education.”⁷

Undoubtedly law schools share these concerns. Virtually all law schools wish to develop programs that inevitably endow their students with a broad range of skills that enable them to be competent members of the legal profession. However, due to multiple factors, such as “generational shifts” or educational gaps, some law students are unable to successfully pass a bar exam.⁸ To address these low bar passage rates, and not run afoul of ABA standards, many law schools, but not all, have restructured their curricula to offer bar exam preparation courses.⁹

5. See AM. BAR ASS'N, *infra* note 92.

6. See ABA Task Force on the Future of Legal Education, *supra* note 4.

7. *Id.*

8. Denise Riebe, *A Bar Review for Law Schools: Getting Students on Board to Pass Their Bar Exams*, 45 BRANDEIS L.J. 269, 270, 285 (2007) (identifying students groups with higher risks of failing a bar exam, including minority students, older students, students who financially support themselves, students with families, students without financial resources to take a commercial bar review course, students who attempt to take two states' bar exams within one test taking administration, and re-takers).

9. The following law schools are illustrative of schools offering some type of in-house bar exam passage programs: APPALACHIAN SCHOOL OF LAW, <http://www.asl.edu/About-ASL/Campus-Life/Resources-and-Services/Academic-Success-Program/Bar-Exam-Preparation/Bar-Preparation-Studies.html> (last visited Feb. 2, 2014); ARIZONA STATE UNIVERSITY SANDRA DAY O'CONNOR SCHOOL OF LAW, <https://www.law.asu.edu/library/RossBlakleyLawLibrary/LawStudents/BarExamResourceGuide.aspx> (last visited Feb. 2, 2014); ARIZONA SUMMIT LAW SCHOOL, <https://www.azsummitlaw.edu/student-resources/student-success-programs/mybar> (last visited Feb. 2, 2014); AVE MARIA SCHOOL OF LAW, <http://www.avemarialaw.edu/academics/BarStrategies> (last visited Feb. 2, 2014); BARRY UNIVERSITY DWAYNE O. ANDREAS SCHOOL OF LAW, <http://www.barry.edu/law/future-students/academic-program/bar-preparation.html> (last visited Feb. 2, 2014); BRIGHAM YOUNG UNIVERSITY LAW SCHOOL, http://www.law2.byu.edu/site/current-students/bar_prep (last visited Feb. 2, 2014); CALIFORNIA WESTERN SCHOOL OF LAW, http://www.cwsl.edu/main/default.asp?nav=academicsupport.asp&body=academic_support/BarReviewHomepage.asp (last visited Feb. 2, 2014); CAMPBELL UNIVERSITY NORMAN

ADRIAN WIGGINS SCHOOL OF LAW, <http://law.campbell.edu/page.cfm?id=412> (last visited Feb. 2, 2014); CAPITAL UNIVERSITY LAW SCHOOL, http://law.capital.edu/Bar_Success_Program/ (last visited Feb. 2, 2014); CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW, <http://law.case.edu/StudentLife/StudentServices/BarExam.aspx> (last visited Feb. 2, 2014); CHAPMAN UNIVERSITY FOWLER SCHOOL OF LAW, <http://www.chapman.edu/LAW/student-resources/bar-preparation/index.aspx> (last visited Feb. 2, 2014); CHARLESTON SCHOOL OF LAW, <http://www.charlestonlaw.edu/Academic-Affairs/Bar-Passage.aspx> (last visited Feb. 2, 2014); CHARLOTTE SCHOOL OF LAW, <http://www.charlottelaw.edu/academics/bar-exam-preparation> (last visited Feb. 2, 2014); UNIVERSITY OF DAYTON SCHOOL OF LAW, http://www.udayton.edu/law/academics/jd_program/bar_passage.php (last visited Feb. 2, 2014); DREXEL UNIVERSITY SCHOOL OF LAW, <http://earlemacklaw.drexel.edu/studentLife/barPrep/> (last visited Feb. 2, 2014); DUQUESNE UNIVERSITY SCHOOL OF LAW, <http://www.duq.edu/academics/schools/law/academic-programs/bar-preparation-program> (last visited Feb. 2, 2014); ELON UNIVERSITY SCHOOL OF LAW, <http://www.elon.edu/e-web/law/students/barexam.xhtml?m=1> (last visited Feb. 2, 2014); FLORIDA A&M COLLEGE OF LAW, <http://law.famu.edu/download/file/Flyer%20Academic%20Success.pdf> (last visited Feb. 2, 2014); JOHN MARSHALL LAW SCHOOL (ILL.), http://www.jmls.edu/academic_achievement/bar-prep-courses.php (last visited Feb. 2, 2014); LEWIS & CLARK LAW SCHOOL (http://law.lclark.edu/student_groups/student_bar_association/student_resources/bar_exam_info.php) (last visited Feb. 2, 2014); LOYOLA LAW SCHOOL (L.A.), <http://www.lls.edu/aboutus/studentcommunity/academicsuccessprograms/> (last visited Feb. 2, 2014); NEW ENGLAND LAW SCHOOL (BOS.), <http://www.nesl.edu/exceptional/barexamprepprogram.cfm> (last visited Feb. 2, 2014); NORTH CAROLINA CENTRAL UNIVERSITY SCHOOL OF LAW, <http://law.nccu.edu/academics/support/> (last visited Feb. 2, 2014); NOVA SOUTHEASTERN UNIVERSITY SHEPARD BROAD LAW CENTER, <http://www.nsulaw.nova.edu/spotlights/barbigstar.cfm> (last visited Feb. 2, 2014); PACE LAW SCHOOL, <http://www.law.pace.edu/preparing-bar-exam> (last visited Feb. 2, 2014); UNIVERSITY OF THE PACIFIC MCGEORGE SCHOOL OF LAW, http://www.mcgeorge.edu/Students/Academics/Academic_Support/Bar_Preparation_and_Mentoring.htm (last visited Feb. 2, 2014); UNIVERSITY OF RICHMOND SCHOOL OF LAW, <http://law.richmond.edu/academics/skills/bar.html> (last visited Feb. 2, 2014); ROGER WILLIAMS UNIVERSITY SCHOOL OF LAW, <http://law.rwu.edu/academics/academic-support/bar-exam-prep> (last visited Feb. 2, 2014); ST. LOUIS UNIVERSITY SCHOOL OF LAW, <http://slu.edu/school-of-law-home/academics/bar-exam-preparation/workshops-and-programs> (last visited Feb. 2, 2014); SANTA CLARA UNIVERSITY SCHOOL OF LAW, <http://law.scu.edu/apd/bar-preparation-series/> (last visited Feb. 2, 2014); SEATTLE UNIVERSITY SCHOOL OF LAW, <http://www.law.seattleu.edu/academics/bar-studies-program> (last visited Feb. 2, 2014); STANFORD UNIVERSITY LAW SCHOOL, <http://www.law.stanford.edu/organizations/offices/office-of-student-affairs> (last visited Feb. 2, 2014); ST. JOHN'S UNIVERSITY SCHOOL OF LAW, http://www.stjohns.edu/sites/default/files/documents/law/student_handbook_2013-14_v3.pdf (last visited Feb. 2, 2014); STETSON UNIVERSITY COLLEGE OF LAW, <http://www.stetson.edu/law/academics/barprep/index.php> (last visited Feb. 2, 2014); SUFFOLK UNIVERSITY LAW SCHOOL, <http://www.suffolk.edu/law/academics/22190.php>

This Article analyzes the legal education crisis. It argues that law schools must squarely identify the issues causing the crisis and then set forth a survival action plan. From time to time, legal educators must ask themselves, “Are we arming our students with the necessary tools for success?”, whether it is in the classroom or beyond. A solution may include offering bar preparation programs for credit.¹⁰ It may not be enough to simply teach doctrinal classes without something further for some current (and future) students. Although there may be some trepidation that devoting too many resources to bar passage programs may result in law schools having to “teach to the test,”¹¹ I argue that offering such programs is a necessary evil, especially in this climate and for the students who are now walking the halls of many law schools.

Part II of this Article focuses on the evolution and causes of the present legal education crisis. Crises precipitate change, which can be

(last visited Feb. 2, 2014); TEXAS A&M UNIVERSITY SCHOOL OF LAW, <http://law.tamu.edu/CurrentStudents/CurrentStudentsHidden/AcademicSupportProgram/t/abid/269/Default.aspx> (last visited Feb. 2, 2014); THOMAS JEFFERSON SCHOOL OF LAW (Cal.), <http://www.tjsl.edu/academics/bar-prep> (last visited Feb. 2, 2014); UNIVERSITY OF CALIFORNIA, DAVIS SCHOOL OF LAW, <http://www.law.ucdavis.edu/current/academic-success/academic-success-services.html> (last visited Feb. 2, 2014); UNIVERSITY OF CALIFORNIA, IRVINE SCHOOL OF LAW, <http://www.law.uci.edu/academics/academic-skills-program.html> (last visited Feb. 2, 2014); UNIVERSITY OF MISSOURI, KANSAS CITY SCHOOL OF LAW, <http://www1.law.umkc.edu/academic/summerenrichment/UMKC-ASP.htm> (last visited Feb. 2, 2014); UNIVERSITY OF NEVADA LAS VEGAS WILLIAM S. BOYD SCHOOL OF LAW, <http://www.law.unlv.edu/alumni/academic-success.html> (last visited Feb. 2, 2014); VALPARAISO UNIVERSITY LAW SCHOOL, <http://www.valpo.edu/law/current-students/c-academics/c-academic-success-program> (last visited Feb. 2, 2014); VERMONT LAW SCHOOL, http://www.vermontlaw.edu/Academics/Academic_Success_Program/Academic_Success_Bar_Passage_Program.htm (last visited Feb. 2, 2014); VILLANOVA UNIVERSITY SCHOOL OF LAW, <http://www1.villanova.edu/villanova/law/currentstudents/barprep.html> (last visited Feb. 2, 2014); WASHBURN UNIVERSITY SCHOOL OF LAW, <http://washburnlaw.edu/career/barexam/> (last visited Feb. 2, 2014); WHITTIER LAW SCHOOL, <https://www.law.whittier.edu/index/connect/alumni/services/bar-preparation-program/> (last visited Feb. 2, 2014); WIDENER UNIVERSITY SCHOOL OF LAW, <http://law.widener.edu/Academics/Programs/barPrograms.aspx> (last visited Feb. 2, 2014); UNIVERSITY OF WISCONSIN LAW SCHOOL, <http://law.wisc.edu/academicenhancement/barexamprep.html> (last visited Feb. 2, 2014). See Leigh Jones, *More Schools Offer Bar Prep Courses*, NAT’L L.J. (Sept. 10, 2008), <http://www.law.com/jsp/article.jsp?id=1202424397151&slreturn=20131016105254>.

10. Riebe, *supra* note 8, at 326-27. See, e.g., CHARLESTON SCH. L., <http://www.charlestonlaw.edu/Academic-Affairs/Bar-Passage.aspx> (last visited Feb. 2, 2014); CHARLOTTE SCH. L., <http://www.charlottelaw.edu/academics/bar-exam-preparation> (last visited Feb. 2, 2014); NOVA SOUTHEASTERN U. SHEPARD BROAD L. CENTER, <http://www.nsulaw.nova.edu/spotlights/barbigstar.cfm> (last visited Feb. 2, 2014); WIDENER U. SCH. L., <http://law.widener.edu/Academics/Programs/barPrograms.aspx> (last visited Feb. 2, 2014).

11. Letter from Co-Presidents of SALT & President of CLEA, *infra* note 121.

beneficial. This crisis may require law schools to make systematic adjustments as well. Part III has a dual purpose. First, it offers a short history of the bar examination and the metamorphosis of law school-sponsored bar preparation programs. Second, Part III discusses the American Bar Association standards that drive law schools' concern for bar passage rates. Part IV showcases the wide array of bar preparation programs that several U.S. law schools offer. Part V concludes by arguing that bar preparation programs are, indeed, necessary if one takes into account all external and internal forces at play.

II. LEGAL EDUCATION IN CRISIS

A. *The Legal Education "Perfect Storm"*

The legal education crisis in many ways mirrors the current U.S. mortgage foreclosure crisis. For example, there was once a "boom" in legal education, with a high number of applicants applying to law school and law students attaining gainful employment upon graduation.¹² Subsequently, however, there was a "bust."¹³ The law school bust happened when permanent, full-time legal jobs shrank, tuition costs skyrocketed, and applications began to fall.¹⁴ Similar to the U.S. mortgage foreclosure crisis, this legal education crisis is escapable—with the passage of time and after reformatory efforts.

There are numerous complications that play a role in this current crisis. One major contribution is disillusionment by law students and

12. See *Law School Class of 2012 Finds More Jobs, Starting Salaries Rise—But Large Class Size Hurts Overall Employment Rate*, NALP (2013), <http://www.nalp.org/uploads/Classof2012SelectedFindings.pdf> (noting that since 1985 there were only two years, 1992 and 1993, with overall employment rates below 84.7%, and noting that the highest level of employment, i.e., "the boom," was in 2007 with 91.9% overall employment); Michael M. Martin & Ian Weinstein, *Harmonizing the Forces Buffeting the Legal Profession*, 85 N.Y.B.J. 58, 59 (2013). See also *Trends in Graduate Employment (1985-2008)*, NALP (July 2009), <http://www.nalp.org/july09trendsgradempl>; *Employment Patterns (1999-2010)*, NALP (Aug. 2011), <http://www.nalp.org/employmentpatterns1999-2010>.

13. See *supra* note 12. See also Debra Cassen Weiss, *Law School Applications Drop Nearly 18 Percent Benefiting Students Seeking Financial Aid*, ABA J. (Aug. 20, 2013, 8:05 AM), http://www.abajournal.com/news/article/law_school_applications_drop_nearly_18_percent_benefiting_students_seeking.

14. Joe Palazzolo, *Law Grads Face Brutal Job Market*, WALL ST. J. (June 25, 2012), <http://online.wsj.com/article/SB10001424052702304458604577486623469958142.html>; Karen Sloan, *Avoiding Law School in Drove*, NAT'L JURIST (Jan. 2013), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202585810784> (stating that there was a 20% decline in applications as of mid-January 2013).

alumna.¹⁵ Law students are graduating with historically high debt loads.¹⁶ Although some students receive aid from parents, many pay for their legal education with federal and private loans.¹⁷

U.S. News & World Report reported that the following ten law schools have the highest graduate debt load in 2013.¹⁸ Students at Thomas Jefferson School of Law in San Diego, California ranked first on the list with a typical debt load of \$168,800.¹⁹ 98% of Thomas Jefferson graduates left law school with educational debt.²⁰ California Western School of Law placed second, where its graduates had debt of up to approximately \$167,867.²¹ Approximately 89% of California Western graduates have some sort of debt.²² Arizona Summit Law School (formerly Phoenix School of Law) ranked third, with students typically graduating with \$162,627 in debt; 97% of its graduates have debt upon graduation.²³ Fourth, Northwestern University's students averaged \$156,791 in post-law school debt; 82% of its students graduate with debt.²⁴ Fifth, students at New York Law School leave law school with roughly \$154,647 of debt; 83% its students graduate with debt.²⁵ Sixth, American University's students may graduate with approximately \$152,659 of debt, with 77% of graduates with debt.²⁶ Seventh, New York University may graduate students with \$149,336 in debt; 81% of its students graduate with debt.²⁷ Southwestern Law School in Los Angeles,

15. Palazzolo, *supra* note 14. See, e.g., Elie Mystal, *Law Students at a Top School Protest Continued Unemployment*, ABOVE THE LAW (Mar. 29, 2011, 4:16 PM), <http://abovethelaw.com/2011/03/law-students-at-a-top-school-protest-continued-unemployment/> (discussing graduates' protests over high debt loads and unemployment and noting that students were selling t-shirts that read "Virginia Law \$40,000 a year and No Job").

16. Debra Cassens Weiss, *Average Debt of Private Law Schools is \$125,000; It's Highest at These Five Schools*, A.B.A. J. (Mar. 28, 2012, 5:29 AM), http://www.abajournal.com/news/article/average_debt_load_of_private_law_grads_is_125k_these_five_schools_lead_to_m/.

17. *Financing Law School*, LAW SCH. ADMISSIONS COUNCIL, <http://www.lsac.org/jd/finance/financial-aid-options.asp>.

18. See *Which Law School Graduates Have the Most Debt?*, U.S. NEWS & WORLD REPORT, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/grad-debt-rankings> (last visited Feb. 2, 2014) [hereinafter *Which Law School Graduates*].

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Which Law School Graduates*, *supra* note 18.

25. *Id.*

26. *Id.*

27. *Id.*

California was eighth.²⁸ Its students may graduate with \$147,976 in debt; around 79% of its graduates leave law school with some debt.²⁹ Georgetown University's graduates placed ninth with \$146,169 of debt; 78% of students graduate with debt.³⁰ Tenth, at Whittier College in Costa Mesa, California, graduates have \$143,536 of debt; at least 92% of its graduates leave law school with some debt.³¹ For 2010, the reported average debt is \$98,500³² or \$125,000³³ nationally, whichever report is most believable.

Despite the crushing debts, students who graduate and pass the bar find themselves unable to procure employment.³⁴ Some reports maintain that merely 55% of graduates in 2011 had obtained full-time, permanent legal jobs within nine months after graduation.³⁵

Several law schools reported less than the average numbers.³⁶ Schools such as Whittier College, University of the District of Columbia, Golden Gate University, Thomas Jefferson School of Law, and Western New England University posted abysmal numbers. Only 17% of Whittier College's graduates obtained full-time, permanent legal employment within nine months after graduation.³⁷ For the University of the District of Columbia, 21% of its graduates obtained full-time, permanent legal employment during the golden period following graduation.³⁸ Golden Gate University reported that only 22% of its graduates obtained full-time, permanent legal employment in nine months following graduation.³⁹ 27% of Thomas Jefferson School of Law's graduates found full-time, permanent legal employment after graduation.⁴⁰ And 30% of Western New England University's graduates attained full-time, permanent employment within nine months following graduation.⁴¹ A number of graduates have sued their law schools based on misleading

28. *Id.*

29. *Id.*

30. *Which Law School Graduates*, *supra* note 18.

31. *Id.*

32. Caplan, *supra* note 2.

33. Weiss, *supra* note 16.

34. *See* Campos, *supra* note 2.

35. Caplan, *supra* note 2; Palazzolo, *supra* note 14.

36. Palazzolo, *supra* note 14.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

employment disclosures.⁴² This problem is intertwined with high debts and affects the application rates as well.

Not all the news is disappointing on the employment front. A few schools reported greater than average employment success. The University of Virginia boasted that 95% of its graduates had acquired full-time, permanent legal employment.⁴³ 94% of Columbia University's graduates had achieved full-time, permanent employment within nine months following graduation.⁴⁴ At Stanford University, 91% of its graduates obtained full-time, permanent legal employment in nine months after graduation.⁴⁵ 90% of graduates at New York University and Harvard found full-time, permanent employment within nine months following graduation.⁴⁶

Due to decreased applications, some law schools might need to accept students with lower educational credentials and test scores than they have in more competitive years.⁴⁷ As such, some law professors have expressed disenchantment or frustration with the current state of affairs regarding the legal education system. Law professors at some institutions are discovering that students are unable to self-sufficiently navigate the rigors of law school. In a recent article, Professor Michele Goodwin stated that “[v]ery bright students now come to college and even law school ill-prepared for critical thinking, rigorous reading, high-level writing, and working independently.”⁴⁸ The Goodwin article

42. See Christopher Polchin, Comment, *Raising the “Bar” on Law School Data Reporting: Solutions to the Transparency Problem*, 117 PENN ST. L. REV. 201 (2012) (citing Complaint at 34-41, *MacDonald v. Thomas M. Cooley L. Sch.*, 880 F. Supp. 2d 785 (W.D. Mich. 2012); Complaint, *Alaburda v. Thomas Jefferson Sch. of Law*, No. 37-2011-000091898-CU-FR-CTL, 2011 WL 2109327 (Cal. App. Dep’t Super. Ct. May 26, 2011); Complaint at 33-40, *Alexandra Gomez-Jimenez v. New York Law Sch.* (No. 652226/2011) (Filed Aug 10, 2011), available at http://lawschooltransparency.com/lawsuits/Gomez-Jimenez_v_NYLS-Summons_and_Complaint.pdf). See also Debra Cassens Weiss, *Law Firms Announce Plans to Sue 15 More Law Schools over Job Stats*, A.B.A. J. (Oct. 5, 2011), http://www.abajournal.com/news/article/law_firms_announce_plans_to_sue_15_more_law_schools_over_job_stats/.

43. Palazzolo, *supra* note 14.

44. *Id.*

45. *Id.*

46. *Id.*

47. See, e.g., Shawn P. O’Connor, *3 Law School Trends to Watch for in 2013*, U.S NEWS & WORLD REPORT (Dec. 31, 2012), <http://www.usnews.com/education/blogs/law-admissions-lowdown/2012/12/31/3-law-school-trends-to-watch-for-in-2013> (arguing that smaller applicant pools give applicants significant leverage in the law school application process).

48. Michele Goodwin, *Law Professors See the Damage Done by ‘No Child Left Behind,’* CHRON. HIGHER EDUC. (Mar. 12, 2013), <http://chronicle.com/blogs/conversation/2013/03/12/law-professors-see-the-damage->

mentioned that professors at highly ranked law schools had to teach students very elemental skills, such as writing a business letter.⁴⁹ Another complaint is “that grading exams is far more difficult now because the writing skills of students are so deficient that each exam requires several reads.”⁵⁰ These law professors do not believe that current law students lack the aptitude to do well in law school, but that a federal education policy known as “No Child Left Behind” hinders the students.⁵¹ The No Child Left Behind policy has a goal of closing educational gaps between disadvantaged children and children in other economic classes.⁵² It has been argued that this policy, though noble, has a misdirected focus in that the focus in determining education equality has been on outcome measures such as performance on standardized tests.⁵³ In essence, under the new policy, elementary and secondary schools changed their teaching methods to “teach to the test” instead of teaching students to use “critical thinking, higher-order reasoning and . . . develop[] . . . creative-writing skills.”⁵⁴

Similarly, judges and prospective employers persistently argue that law school graduates are unprepared to practice law.⁵⁵ During a recent speech at a University of New Hampshire Alumni Dinner, Justice Antonin Scalia expressed his disdain for the current state of legal education.⁵⁶ He asserted that “law schools are increasingly divorced from

done-by-no-child-left-behind/?cid=cr&utm_source=cr&utm_medium=en; see also Philip J. Closius, *American Law Schools in Crisis*, BALT. SUN (Jun. 4, 2012), available at 2013 WLNR 11912892 (stating that because of the declining applications, law schools must “choose between admitting smaller entering classes (and sacrificing revenue) or dealing with a decline in the quality of their students—or both”).

49. Goodwin, *supra* note 48.

50. *Id.*

51. See *id.*; No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425.

52. Pub. L. No. 107-110, 115 Stat. 1425. It is widely believed that the No Child Left Behind policy has been ineffective in other ways. *Promise of No Child Left Behind Falls Short After 10 Years*, U.S.A. TODAY (Jan. 17, 2012), <http://usatoday30.usatoday.com/news/education/story/2012-01-07/no-child-left-behind-anniversary/52430722/1>. One major complaint is that there is far too much stress on math and reading tests, sacrificing a more well-rounded education. *Id.* Additionally, schools have skirted the policy or failed to meet it. *Id.* According to Representative George Miller, who is a lead Democrat on the House Education and Workforce Committee, “schools were being held out as exceeding in their mission, when in fact they were failing many, many of the children in those schools.” *Id.*

53. Goodwin, *supra* note 48.

54. *Id.*

55. See, e.g., BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 160 (2012); ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP* 2 (2007).

56. See Richard Fogal, *Opinion: UNH Law Alum Reacts to Justice Scalia's Remarks*, N.H. B. ASS'N (Apr. 19, 2013), <http://www.nhbar.org/publications/display-news-issue.asp?id=6818>.

the realities of the practice of law” and “law graduates are unprepared for the practice of law.”⁵⁷ Justice Scalia’s assertion echoes the moans of prospective employers.⁵⁸ For several years, prospective employers have been urging law schools to graduate “practice ready” new lawyers, those who are able to enter practice running.⁵⁹

As a result, law school applications have steadily declined.⁶⁰ Increased competition for the most prized law students means that law schools must inevitably consider legal education reformation to bow to the demands of the consumerist market. Schools should focus on how to retain students, create successful graduates, and attract quality prospective students. Admission officers and curriculum committees are now well aware that students are looking to get the biggest bang for their bucks.⁶¹ The “bang” that students likely seek includes low tuition costs, scholarship offers, and bar passage preparation programs.⁶²

B. Law Schools’ Response

Legal education has undergone curricular reformation since the profession began.⁶³ As the economic meltdown continues, law school costs continue to rise while job opportunities deteriorate.⁶⁴ Additionally, law schools’ tuitions have dramatically increased since 1971.⁶⁵ For

57. *Id.*

58. *Id.*

59. STUCKEY, *supra* note 55.

60. Ethan Bronner, *Law School’s Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES, Jan. 30, 2013, at A1, available at http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html?_r=0 (stating that “applications are headed for a 30-year low” and noting a 20% decline in applications from January 2012).

61. *Id.*

62. Anna Smushkovich, *Law Schools Are Big Business; They Should Think Like Businesses When Trying to Attract Students*, FATTED GOOSE (Mar. 11, 2013), <http://fattedgoose.com/2013/03/11/law-schools-are-big-business/>.

63. See *supra* Part II.A.

64. David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 8, 2011, at BU1, available at <http://www.nytimes.com/2011/01/09/business/09law.html?pagewanted=all> (stating that “a generation of J.D.’s face the grimmest job market in decades”); Jordan Weissman, *The Job Crisis at Our Best Law Schools Is Much, Much Worse Than You Think*, ATLANTIC (Apr. 9, 2013), <http://www.theatlantic.com/business/archive/2013/04/the-jobs-crisis-at-our-best-law-schools-is-much-much-worse-than-you-think/274795/>; Campos, *supra* note 2, at 179-80 (describing tuition costs at the University of Michigan Law School from 1984 to date and the University of Colorado Law School from thirty years ago to date and arguing that “[m]any public law schools now charge more in resident tuition than even the most expensive private schools charged,” putting public legal education on the nearly extinct list.).

65. Campos, *supra* note 2 at 180.

example, Harvard Law School cost a mere \$12,386 in 1971.⁶⁶ In 2012, tuition at Harvard Law School increased to \$50,880.⁶⁷ Additionally, the median resident tuition at ABA-accredited public law schools increased from \$3,746 in 1985 to \$19,788 in 2011.⁶⁸ Professor Campos also pointed out that since the mid-1980s private law schools' tuition increased an astonishing 155.8%.⁶⁹

The ABA and administrators need to ask themselves what is the future of legal education and how can legal curricula be reformed to pander to its "consumers" and meet the current needs of the legal community.⁷⁰ To respond to these needs, law schools have implemented bar preparation programs.⁷¹ Some law schools' programs are arming students with critical skills to pass the bar examination, while others are arguably "teaching to the test."⁷² Good law school bar exam preparation programs reinforce the substantive law previously taught and simulate bar exam conditions. They provide students with tactics and much practice.

Law school administrations are aware that bar passage rates do not merely affect the takers. Bar passage rates affect the law school's institution, faculty, and staff.⁷³ There are ABA pressures for consistently poor bar results.⁷⁴ These pressures demand more time and resources to address the problems. Likewise, school rankings might be affected on national law school ranking lists.⁷⁵ Similarly, faculty might become disillusioned by the quality of "kids these days." Satisfactory bar passage rates are an important piece of the puzzle in attracting new students and satisfying graduates. Despite fears, law schools must resist the pull to use pedagogical methods that simply educate students on how to pass the bar

66. *Id.*

67. *Id.*

68. *Id.* (quoting AM. BAR ASS'N, REPORT ON LAW SCHOOL TUITION 1985-2011)

69. *Id.* at 181.

70. *Legal Education Reform Index Factors*, A.B.A., http://www.americanbar.org/advocacy/rule_of_law/publications/assessments/leri/leri_factors.html (last visited Mar. 14, 2014).

71. *See infra* Part IV.

72. Some law schools allow students to take bar preparation course for graduation credit on a voluntary basis, while others are considering making (or have made) the courses required for some. *See Jones, supra* note 9.

73. *See* AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, THE LAW SCHOOL ACCREDITATION PROCESS 8 (2013), *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_revised_accreditation_brochure_web.authcheckdam.pdf.

74. *Id.*

75. *See id.*

exam. Doing so, without more, will leave graduates unarmed to practice the law proficiently.

III. LAW SCHOOL CURRICULAR REFORM

“Law schools bear a fiduciary responsibility to prepare students to pass the bar exam.”⁷⁶

A. History of Bar Preparation Programs

Prior to the 1800s, one became a lawyer through apprenticeships or oral examination.⁷⁷ Those interested in practicing law learned the law under the guidance of a practicing attorney; no examination or specific education was required.⁷⁸ In 1855, Massachusetts initiated the first bar examination.⁷⁹ Historically, law students passed the bar exam through lectures and independent study.⁸⁰ It was noted that “[a]t one time, new law graduates prepared themselves for the bar exam by studying on their own or, in some instances, attending ad hoc lectures given by a local lawyer or judge.”⁸¹

In a 2008 survey, it was uncovered that 38% of students who responded said their schools did not offer any formal bar exam preparation programs.⁸² Nearly “one-third of aspiring lawyers,” according to the survey, “gave their law schools a ‘D’ or ‘F’ in bar exam prep.”⁸³ Students at these schools are left to pursue bar studies on their own or through a commercial bar preparation course, such as BARBRI or Kaplan.⁸⁴

In the 1980s law schools began building academic support programs.⁸⁵ The primary aim of academic support programs was to provide additional support for the influx of minority law students.⁸⁶ By

76. Sloan, *supra* note 3 (quoting Jeffrey Lewis, a professor at Saint Louis University School of Law).

77. Robert M. Jarvis, *An Anecdotal History of the Bar Exam*, 9 GEO. J. LEGAL ETHICS 359, 365, 374 (1996).

78. *Id.* at 366.

79. *Id.* at 374.

80. *Id.* at 370.

81. *Id.*

82. Tarek Fadel, *Law Schools Failing Bar Prep: How Do We Solve the Dilemma*, MS. JD (Jan. 7, 2008, 12:58 PM), <http://ms-jd.org/law-schools-failing-bar-prep-how-do-we-solve-dilemma>.

83. *Id.*

84. See Jarvis, *supra* note 77.

85. Riebe, *supra* note 8, at 290.

86. *Id.*

the mid-1990s, however, more law schools set up academic support offices and broadened the focus to encapsulate *all* at-risk students and academic issues in general.⁸⁷ Bar exam preparation courses were naturally born out of academic support programs.

Pace Law School was one of the first law schools to offer a bar preparation course for credit in 2005.⁸⁸ Pace's offering came three years before the ABA permitted such an offering.⁸⁹ Prior ABA Standard 302(f) specified that "[a] law school may offer a bar examination preparation course, but may not grant credit for the course or require it as a condition of graduation."⁹⁰ Following the repeal of ABA Standard 302(f), more law schools got on board and offered bar preparation courses.⁹¹

B. ABA Standards

The ABA created a standing committee that dealt with legal education and admission to the bar in 1879.⁹² In 1921, the ABA unveiled its initial ABA Standards for Legal Education.⁹³ States soon required applicants for bar admission to have graduated from a law school accredited by the ABA.⁹⁴ Since 1952, the ABA has received the U.S. Department of Education's stamp of approval to make rules and standards granting law school accreditation.⁹⁵ Law schools incorporated ABA Standards on Legal Education or risked being de-accredited.⁹⁶ The ABA set forth new methods of training new lawyers, abandoning the

87. *Id.*

88. *See* Jones, *supra* note 72.

89. *Id.*

90. AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, STANDARDS FOR APPROVAL OF LAW SCH. & INTERPRETATIONS § 302 (f) (1998) (repealed), *quoted in* Maureen Straub Kordesh, *Reinterpreting ABA Standard 302(f) in Light of the Multistate Performance Test*, 30 U. MEM. L. REV. 299, 300 (2000); *see also* Jones, *supra* note 9.

91. *See infra* Part IV.

92. AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, at v (2013) [hereinafter ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS], *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_final_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_body.authcheckdam.pdf.

93. *Id.*

94. Herb D. Vest, *Felling the Giant: Breaking the ABA's Stranglehold on Legal Education in America*, 50 J. LEGAL ED. 494, 497 (2000) ("[B]etween 1927 and 1941—in less than fifteen years—forty-one states came to require applicants to have graduated from an ABA-accredited law school to gain admission to the bar").

95. ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, *supra* note 92, at v.

96. *Id.* at 78 (Rule 13 Action Concerning Apparent Non-Compliance with Standards).

ways of old.⁹⁷ All ABA-accredited law schools now follow uniform rules.⁹⁸

Without question, most law schools have a goal to train students to be competent and practicing attorneys. Once a student completes his law school studies, graduation is the initial step that indicates a student's competency to practice law. In addition to law school graduation, a student must jump another major hurdle on the road to becoming a competent and practicing attorney: he or she must pass a bar examination in the jurisdiction where he or she wishes to practice.⁹⁹ Because this hurdle proves too high for some students, many law schools have adjusted their curriculum to include programs focused on preparing students for passing the bar exam.

Some students struggle to pass the bar exam, especially on the first try.¹⁰⁰ Schools with lower bar exam passage rates run the risk of falling below the ABA standards.¹⁰¹ The ABA is the central body that regulates the standards for most law schools.¹⁰² It maintains rules by which accredited institutions and those seeking accreditation must adhere. Failure to abide by the ABA standards may result in a variety of sanctions or penalties.¹⁰³

Standard 301(a) of the ABA Standards and Rules states that “[a] law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession.”¹⁰⁴ According to the ABA Standards and Rules, one of the factors that illustrates a law school's academic success is a law school's bar passage rate.¹⁰⁵ “Among the factors to be considered in assessing the extent to which a law school complies with this Standard are the rigor of its academic program, including its assessment of student performance, and the bar passage rates of its graduates.”¹⁰⁶

97. Vest, *supra* note 94.

98. *Id.*

99. See, e.g., NAT'L CONFERENCE OF BAR EXAMINERS & AM. BAR ASS'N, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2013 (2014), available at http://www.ncbex.org/assets/media_files/Comp-Guide/CompGuide.pdf.

100. Christian C. Day, *Law Schools Can Solve the “Bar Pass Problem”—“Do the Work!”*, 40 CAL. W.L. REV. 321, 321 (2004) (asserting that bar passage rates have steeply declined since the mid-1990s).

101. ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, *supra* note 92, at 19 (Standard 301(a)).

102. *Id.* at 20-21 (Interpretation 301-6(C)). See *id.* at 78 (Rule 13(b) Action Concerning Apparent Non-Compliance with Standards).

103. *Id.*

104. *Id.*

105. *Id.* at 19-21 (Standard 301 Interpretations).

106. *Id.*

To guide law schools, the ABA has created interpretations to the rules.¹⁰⁷ Interpretation of Standard 301(a) clarifies what is meant by sufficient bar passage rates.¹⁰⁸ Under Interpretation 301-6, a law school must establish that it has satisfied the tests set forth for two groups: 1) "students who graduated from law school within the five most recently completed calendar years" and 2) law schools' first time bar takers must be "no more than 15 points below the average" of first time bar takers from ABA-approved law schools taking the bar exam in the same jurisdiction in "three or more of the five most recently completed calendar years."¹⁰⁹

Regarding the first group, at least 75% of law school graduates who took the bar exam must pass it.¹¹⁰ Alternatively, at least 75% of graduates must cumulatively pass the bar exam in at least three of the five calendar years.¹¹¹

In demonstrating compliance under sections (1) (a) and (b), the school must report bar passage results from as many jurisdictions as necessary to account for at least seventy-five percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency.¹¹²

If the ABA determines that a law school failed to comply, then the school has two years to become compliant or be subjected to Rule 13(b) of the Rules of Procedure for Approval of Law.¹¹³

Under Rule 13(b), once the ABA finds that a law school failed to comply, it will be called before a committee to determine whether the ABA should take "appropriate remedial action."¹¹⁴ The committee may decide to sanction a law school, place it on probation, or remove it from

107. See generally ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, *supra* note 92, at 19-21 (Standard 301 Interpretations regarding the objectives of the requirements of a program of legal education).

108. *Id.* at 19 (Interpretation 301-1).

109. *Id.* at 20 (Interpretation 301-6(A)).

110. *Id.* (Interpretation 301-6(A)(1)(a)-(b)). Interpretation 301-6 states that "(a) 75 percent or more of these graduates who sat for the bar passed a bar examination, or (b) in at least three of these calendar years, 75 percent of the students graduating in those years and sitting for the bar have passed a bar examination." *Id.*

111. *Id.*

112. ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, *supra* note 92, at 20 (Interpretation 301-6(A)).

113. *Id.* at 78 (Rule 13 Action Concerning Apparent Non-Compliance with Standards).

114. *Id.*

the list of ABA-approved law schools.¹¹⁵ Even if a law school is not in compliance, it will be given an additional period of time, not exceeding two years, to show compliance.¹¹⁶ If a law school cannot show compliance after this additional period of time, then the ABA will remove the law school from the list of ABA-approved law schools unless it can show good cause.¹¹⁷

In 2013, the ABA announced that it is considering raising the minimum passage percentage for first time takers from 75% to 80%.¹¹⁸ Under this rule, at least 80% of graduates must pass the bar exam within two years of graduation.¹¹⁹ If a law school fails to meet these standards, it will be out of compliance with Standard 301(a).¹²⁰

C. Minority Law Students Bar Passage Concerns

In response to this announcement by the ABA, the presidents of the Society of American Law Teachers (SALT) and the Clinical Legal Education Association (CLEA) wrote a letter to Jeffrey Lewis, Chairperson of the ABA's Standards Review Committee.¹²¹ In the letter, the co-presidents expressed their concerns with making the bar passage standard more rigorous.¹²² Among their fears is that higher bar passage standards would detrimentally modify law school curricula in ways that would deprive law students of a well-rounded education.¹²³ The co-presidents stated that a higher bar pass rate standard would push law schools "to 'teach to the test' rather than develop their programs to teach and assess the broader ranges of skills for the competent practice of

115. *Id.*

116. *Id.*

117. *Id.* To date, I have not discovered a de-accredited law school due to failure to comply with the ABA's bar passage standards and rules. Currently, there are 203 accredited law schools, four of which are provisionally accredited. *ABA-Approved Law Schools*, A.B.A., http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html (last visited Mar. 14, 2014).

118. Sloan, *supra* note 3.

119. *Id.* "Graduates would have at least two shots at passing the test to help their alma maters meet the eighty percent requirement." *Id.*

120. See ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, *supra* note 92, at 78 (Rule 13 Action Concerning Apparent Non-Compliance with Standards) (governing sanctions for non-compliance with requirements under the ABA Standards).

121. Letter from Co-Presidents of SALT & President of CLEA to Jeffrey Lewis, Chairman of ABA Standards Review Committee (Apr. 8, 2013), *available at* www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/20130417_comment_outcome_measures_clea_salt_i301_6.authcheckdam.pdf.

122. *Id.*

123. *Id.*

law.”¹²⁴ Additionally, SALT and CLEA further discussed their trepidations related to a negative effect on student body diversity.¹²⁵ The co-presidents argued that tougher bar passage rate standards would “undermine efforts to diversify the profession by discouraging schools from seeking to provide access to underrepresented groups.”¹²⁶

Law schools enhanced diversity efforts in the 1990s when they instituted “special admissions programs.”¹²⁷ The ABA also tightened the diversity vice grips by requiring all ABA-accredited schools “to take concrete steps to increase the number of minority lawyers in the profession.”¹²⁸ The Law School Admissions Council (LSAC) completed a survey project in light of arguments that minority law students performed less successfully on the bar exam than their non-minority counterparts.¹²⁹ The 1998 LSAC study revealed the following bar passage rates among ethnic/racial groups: 82.2% of American Indians passed, 91.9% of Asian Americans passed, 77.6% of African Americans passed, 88.4% of Mexican Americans passed, 79.7% of Puerto Ricans passed, 89% of Hispanic Americans passed, and 96.7% of Caucasians passed.¹³⁰ Later, in 2010, “only 61.4% of African American students” passed the bar on the first attempt.¹³¹ More disturbingly, many students who failed the bar exam on the first attempt did not make a second attempt.¹³²

Lack of diversity hurts the legal profession. Ethnic diversity may equal diversity. Additionally, because America is culturally and ethnically diverse,¹³³ legal professionals will likely help a multitude of individuals with diverse backgrounds. Having an understanding of those backgrounds might inform the legal representation. If a byproduct of bar

124. *Id.*

125. *Id.*

126. *Id.*

127. Henry Ramsey, Jr., *Historical Introduction*, in LINDA F. WIGHTMAN, LAW SCH. ADMISSION COUNCIL, LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY, iii, iv (1998), available at <http://www.unc.edu/edp/pdf/NLBPS.pdf>.

128. *Id.*

129. See generally Ramsey, *supra* note 127.

130. Ramsey, *supra* note 127, at viii.

131. Michelle, *The Diversity Challenge*, NAT'L JURIST (Jul. 1, 2010), <http://www.nationaljurist.com/content/diversity-challenge> (citing a 1998 study by Law School Admission Council (LSAC)).

132. *Id.*

133. Rachel Saloom, *Diversity and the Role of the Young Lawyer*, A.B.A., http://www.americanbar.org/publications/young_lawyer_home/young_lawyer_archive/yl_d_tyl_febmar08_saloom.html (last visited Feb. 2, 2014) (stating that clients, who are becoming more diverse, are seeking counselors who can understand their needs).

preparation programs increases all law students' performance on the bar exam, then the legal profession would benefit overall as well.

IV. MODERN BAR PREPARATION PROGRAMS

In 2002, the American Association of Law Schools (AALS) published a survey it conducted concerning programs and courses designed to enhance bar exam performance to all member and fee-paid law schools.¹³⁴ Of the 108 schools that answered the survey, nearly 39% answered that they sponsored courses, activities, or programs designed specifically to improve bar examination performance.¹³⁵ According to the AALS, the programs that schools implemented were supplemental to commercial bar review programs and included (1) school-sponsored and administered bar review programs; (2) bar review programs offered with commercial bar review providers; (3) lectures on bar exam strategies; and (4) "mentoring and counseling programs."¹³⁶ Approximately 39% of law schools offering programs believed that their programs improved bar exam passage rates.¹³⁷ A decade later, perhaps because the stars are all aligned (poor economy, the product of a failed federal education policy, and concerns of more stringent ABA standards on the horizon), law schools must turn their focus to how they prepare students for passing bar examinations.

In 2010, another ABA survey showed that 49% "of law schools offered bar preparation courses for credit."¹³⁸ This rise in programs follows the 2008 repeal of ABA Standard 302 and Interpretation 302-7.¹³⁹ Law school curriculum committees' changes are a clear acknowledgement of the decline in bar passage rates since the mid-1990s.¹⁴⁰

A review of contemporary bar exam preparation programs shows that there is a panoply of programs available. They involve any of the following: intensive personal coaching, for credit bar review courses,

134. Richard A. White, *AALS Survey of Law Schools on Programs and Courses Designed to Enhance Bar Examination Performance*, 52 J. LEGAL EDUC. 453, 453-55 (2002).

135. *Id.*

136. *Id.*

137. *Id.*

138. Catherine L. Carpenter, *Recent Trends in Law School Curricula: Findings from the 2010 ABA Curriculum Survey*, BAR EXAMINER 1, 9 (June 2012), http://www.ncbex.org/assets/media_files/BarExaminer/articles/2012/810212beCarpenter.pdf.

139. *Id.*

140. See Riebe, *supra* note 8.

heavy load of required courses, state-focused course offerings, bar review focus throughout law school, post-graduation bar exam boot camps, flagging and releasing at-risk law students, critical skills programs focused on analysis and writing, or collaboration with commercial bar review programs.¹⁴¹ There is a shift from focusing on bar preparation only during a student's final year of law school and instead maintaining a program from the onset of a student's legal studies.¹⁴²

In February 2012, the National Jurist composed a list of "Best Schools for Bar Exam Preparation."¹⁴³ According to the National Jurist, the top ten law schools for bar exam preparation are 1) Louisiana State University; 2) Campbell University; 3) Stanford University; 4) Wake Forest University; 5) University of California, Berkeley; 6) University of Southern California; 7) North Carolina Central University; 8) Widener University (Penn); 9) University of Washington; and 10) Nova Southeastern University.¹⁴⁴ The list is comprised of law schools whose bar passage rates are higher than students' incoming law school admittance test scores would predict.¹⁴⁵

Though many were not surprised to see law schools like Stanford University or the University of California, Berkeley on the top ten list, schools like Campbell University, North Carolina Central University, and Nova Southeastern were surprises.¹⁴⁶ Most likely, this is because higher rankings in U.S. News & World Report rankings are viewed as determinative of quality of education and thus skills to pass the bar exam.¹⁴⁷ Perhaps this belief is simply elitist, an unfair assumption, or

141. See *infra* Part IV.

142. Carrie May Poniewaz, *Work May be a Virtue, but Not While Preparing for the Bar: Preparation for the Bar Exam Should Itself be a Full-Time Job*, FLA. B. NEWS (Oct. 15, 2008), http://www.floridabar.org/DIVCOM/JN/JNNNews01_WORK.nsf/8c9f13012b96736985256aa900624829/de069ad82cd87ec88525720200583909!OpenDocument.

143. Rebecca Larsen, *Best Schools for Bar Exam Preparation*, NAT'L JURIST, Feb. 2012, at 28-30, available at <http://www.nxtbook.com/nxtbooks/cypress/nationaljurist0212/#/28>.

144. *Id.* The ten law schools with the worst average bar passage rates for 2001, 2002, 2004, 2005, 2006 and 2007 were Western State University, Appalachian School of Law, Texas Southern University, University of the District of Columbia, Howard University, Southern University, Western New England, Thomas Jefferson, University of Denver, and St. Thomas University. The average was based on the difference between the school's bar passage rate compared to the state bar passage rate for that year. See *2009 Raw Data Law School Rankings: Schools' Pass Rate (Descending)*, INTERNET LEGAL RES. GROUP, <https://www.ilrg.com/rankings/law/index.php/1/desc/Bar> (last visited Mar. 14, 2014).

145. Larsen, *supra* note 143, at 30, 32.

146. *Id.* at 34.

147. Cf. AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, *supra* note 73, at 8 ("No rating of law schools beyond the simple statement of their accreditation

true.¹⁴⁸ Even so, Campbell University has shattered beyond its national “ranking” and earned the second highest ranking for bar exam preparation.¹⁴⁹

A. Campbell University School of Law

Campbell University is a law school that emphasizes bar exam preparation from the onset of a law student’s career.¹⁵⁰ It offers multiple workshops that help law students transition into law school and work on rule synthesis and legal analysis.¹⁵¹ In 2010, Campbell University introduced a free summer class to help graduates write bar exam essays.¹⁵² In this course, students attend classes for about an hour two afternoons per week,¹⁵³ and instructors review the students’ written work and grade the students as if a bar examiner graded them.¹⁵⁴ By the end of the program, students write approximately 40 bar exam practice essays.¹⁵⁵

Additionally, Campbell adheres to a strict grade curve.¹⁵⁶ The school measures grading out of a score of 100, not on a 4.0 scale.¹⁵⁷ Campbell uses this scale to determine a law student’s competency and ability to continue with his or her legal studies.¹⁵⁸ At Campbell, an examination score over 75 out of 100 means that a student obtains the same skills as a

status is attempted or advocated by the official organizations in legal education. Qualities that make one kind of school good for one student may not be as important to another. The American Bar Association and its Section of Legal Education and Admissions to the Bar have issued disclaimers of any law school rating system. Prospective law students should consider a variety of factors in making their choice among schools.”).

148. Nancy B. Rapoport, *Changing the Modal Law School: Rethinking U.S. Legal Education in (Most) Schools*, 116 PENN. ST. L. REV. 1119, 1124 (2012). In a recent article, one author noted that U.S. News & World Report’s “rankings imply a precision in differentiating school quality.” *Id.* Perhaps the methodology is confusing and based on factors that do not necessarily denote school quality.

149. Larsen, *supra* note 143, at 30.

150. *See id.* at 34.

151. *Id.*

152. *Id.*

153. *Id.* at 34-35.

154. *Id.* at 35.

155. Larsen, *supra* note 143, at 35.

156. *See Register Policies*, CAMPBELL U., <http://www.campbell.edu/registrar-policies.html#gs> (last visited Mar. 14, 2014) (accessed by clicking “Grading System”).

157. *Campbell University School of Law*, TOP LAW SCH. (Oct. 2009, updated June 2010), <http://www.top-law-schools.com/Campbell-law.html>.

158. *Minimum Academic Standards*, CAMPBELL U., <http://law.campbell.edu/page.cfm?id=396&n=academic-standards> (last visited Feb. 2, 2014).

competent lawyer.¹⁵⁹ On the other hand, a score under 65 requires repetition of the course for receipt of academic credit.¹⁶⁰ The difficult curve causes nearly 11% of students to leave Campbell after their first year.¹⁶¹ The school neither offers nor permits re-examinations.¹⁶² Furthermore, students with patterns of grades in the range of 65 to 74 may be required, at the discretion of the faculty, to repeat an entire semester or academic year in order to ensure competence in core courses.¹⁶³

B. North Carolina Central University

North Carolina Central University admits students with lower LSAT scores after successful completion of a “two-week Performance Based Admissions program.”¹⁶⁴ This tags at-risk students prior to admission and teaches these students skills for law school success.¹⁶⁵ Among its course offerings, North Carolina Central comprised a list of highly recommended courses, which are rooted in subject matters covered on the North Carolina bar exam.¹⁶⁶ Also, students may enroll in a “Distinctions Class.”¹⁶⁷ The Distinctions Class is a three-credit course that focuses on state law and practice bar exam essay questions.¹⁶⁸ Students receive letter grades for their participation.¹⁶⁹ The supervisors of the Distinctions program flag and give special attention to students who underperform in the program.¹⁷⁰

After law school graduation, students at North Carolina Central may participate in an “Invest in Success” bar preparation program, a free program held in early June.¹⁷¹ This program is a collaborative effort

159. *Campbell University School of Law*, *supra* note 157.

160. *Minimum Academic Standards*, *supra* note 158.

161. *Campbell University School of Law*, *supra* note 157.

162. *Minimum Academic Standards*, *supra* note 158.

163. *Id.*

164. Larsen, *supra* note 143, at 36.

165. *Performance Based Admission Program (PBAP)*, N.C. CENT. U. SCH. L., <http://law.nccu.edu/admissions/acceptance-process/pbap/> (last visited Feb. 2, 2014).

166. *Id.*

167. Larsen, *supra* note 143, at 36.

168. *Id.*

169. *Highly Recommended Upper Level Courses*, N.C. CENT. U. SCH. L., <http://law.nccu.edu/academics/curriculum-description/recommended-courses/> (last visited Feb. 2, 2014).

170. *Academic Support*, N.C. CENT. U. SCH. L., <http://law.nccu.edu/academics/support/> (last visited Feb. 2, 2014).

171. Larsen, *supra* note 143, at 36.

between “the Faculty and Academic Support staff.”¹⁷² “[F]aculty members conduct weekly substantive law reviews.”¹⁷³ “Academic support staff works with students to improve their essay . . . writing skills.”¹⁷⁴ The program lasts for six weeks.¹⁷⁵ Students submit practice answers each week and are given feedback.¹⁷⁶

C. Nova Southeastern University

Critical thinking is a crucial skill for succeeding as a law student, performing well on bar exam essays, and practicing as an attorney. Nova Southeastern offers a Critical Skills Program.¹⁷⁷ The Critical Skills Program aids students in improving “the essential legal skills of critical reading, thinking and writing.”¹⁷⁸ The program is composed of “individual and small group sessions, skills workshops, and writing labs.”¹⁷⁹ Instructors of the Critical Skills Program are singularly focused “to assist students in developing and mastering those skills central to success in law school, passing the bar and practicing law.”¹⁸⁰

During a law student’s first year, he or she must take a mandatory bar exam preparation course.¹⁸¹ This class includes training on how to write essays and answer multiple-choice questions.¹⁸² One would imagine that students would have garnered these skills prior to law school. However, perhaps this mandatory course serves as reinforcement for those who have simply lost these skills rather than teaching students new skills. After graduation, Nova Southeastern offers “a free, optional, non-credit course where students are tested weekly on skills needed for” successful passage of the bar exam.¹⁸³ Personal coaches are available to review students’ progress and performance on practice bar exam questions.¹⁸⁴

172. *Academic Support*, *supra* note 170.

173. *Id.*

174. *Id.*

175. Larsen, *supra* note 143, at 36.

176. *Id.*

177. *Id.* at 38.

178. *Critical Skills Program*, NOVA SOUTHEASTERN U., <http://www.nsulaw.nova.edu/csp/> (last visited Feb. 2, 2013).

179. *Id.*

180. *Id.*

181. *See* Larsen, *supra* note 143, at 38.

182. *Id.*

183. *Id.*

184. *Id.*

D. John Marshall School of Law

Although John Marshall School of Law (John Marshall) did not make the National Jurist's list of top ten best bar preparation programs,¹⁸⁵ it has a very noteworthy bar preparation program. For a fee, students may participate in a summer or winter bar preparation course.¹⁸⁶ The summer course focuses on tactics and strategies for passing the bar exam.¹⁸⁷ Students have unfettered access to the classes, as they are videotaped and posted online.¹⁸⁸ Instructors encourage students to complete practice exam essays every week.¹⁸⁹

In addition, prior to graduation, students may participate in six notable programs (among many).¹⁹⁰ The first program is the "Weekly 3L Bar Question" program.¹⁹¹ Students are e-mailed a multiple-choice question at the beginning of each week during the students' final semester.¹⁹² An answer and explanation are then e-mailed to the students at the end of that week.¹⁹³ The second program is "Master the Multistate (formerly BYOB)".¹⁹⁴ The Master the Multistate is an exam that is comprised of 90 multiple-choice questions.¹⁹⁵ Master the Multistate tests on property, evidence, torts, criminal law, constitutional law, and contracts.¹⁹⁶ The idea behind Master the Multistate is to simulate what the bar exam will be like.¹⁹⁷ Third, a similar and fun program is "Bar

185. *Id.* at 30.

186. *Academic Achievement: Multistate Bar Exam Workshops*, J. MARSHALL L. SCH., http://www.jmls.edu/academic_achievement/programs/multistate-workshops.php (last visited Feb. 2, 2014).

187. *Id.*

188. *Id.*

189. *Id.*

190. *Academic Achievement: Bar Preparation Courses*, J. MARSHALL L. SCH., http://www.jmls.edu/academic_achievement/bar-prep-courses.php (last visited Feb. 2, 2014).

191. *Programs: Weekly 3L Bar Question*, J. MARSHALL L. SCH., http://www.jmls.edu/academic_achievement/programs/weekly-3L-bar-question.php (last visited Feb. 2, 2014).

192. *Id.*

193. *Id.* (explaining that "[t]he weekly bar exam question gives students the opportunity to familiarize themselves with typical bar exam questions and the reasoning behind the 'best' answer").

194. *Programs: Master the Multistate (formerly BYOB)*, J. MARSHALL L. SCH., http://www.jmls.edu/academic_achievement/programs/byob.php (last visited Feb. 2, 2014).

195. *Id.*

196. *Id.*

197. *Id.* Students receive "[a] continental breakfast and box lunch." *Id.* The program is free of charge. *Id.*

Madness” based on the NCAA March Madness competition.¹⁹⁸ Participating students are paired against another student in brackets.¹⁹⁹ Students then receive a multiple-choice question based on multistate tested subject matters.²⁰⁰ “The first person [in] the pair to answer correctly [advances] to the next round.”²⁰¹ The process continues for six weeks.²⁰² Semi-finalists receive \$50 each, while finalists win \$75.²⁰³ The winner of the competition wins a gift certificate for dinner for two.²⁰⁴ The fourth program offered is the “Bar (exam that is) and Brunch.”²⁰⁵ The program only allows 40 students to participate during “their final semester of law school.”²⁰⁶ Instructors give instructions on bar exam essay answer formatting and provide feedback on students’ answers.²⁰⁷ This program lasts for six weeks.²⁰⁸ Fifth, “MiniBar” is a program through which instructors administer “six half-hour essay questions and 100 multiple choice questions” in one day.²⁰⁹ The last is the “Bar Tips” (formerly “Kick the Bar in the Butt”) program.²¹⁰ The “Bar Tips” program covers topics such as “How is the MBE Scored, Study Tips for the MBE, Healthy Eating to Provide Energy & Stamina, Quick Exercise Plans, Relaxation and Meditation Techniques to Lower Stress, [and] Items to Bring to the Bar Exam.”²¹¹ It also includes a question and answer session.²¹²

198. *Programs: Bar Madness*, J. MARSHALL L. SCH., http://www.jmls.edu/academic_achievement/programs/bar-madness.php (last visited Feb. 2, 2014).

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Programs: Bar Madness*, *supra* note 198.

205. *Programs: Bar (Exam, that is) and Brunch*, J. MARSHALL L. SCH., http://www.jmls.edu/academic_achievement/programs/bar-and-buffet.php (last visited Oct. 14, 2013).

206. *Id.*

207. *Id.*

208. *Id.*

209. *Programs: Mini Bar*, J. MARSHALL L. SCH., http://www.jmls.edu/academic_achievement/programs/minibar.php (last visited Feb. 2, 2014).

210. *Programs: Bar Tips (formerly Kick the Bar in the Butt)*, J. MARSHALL L. SCH., http://www.jmls.edu/academic_achievement/programs/kick-the-bar.php (last visited Feb. 2, 2014).

211. *Id.*

212. *Id.*

E. Adapting Pedagogy to Bridge Generational Gaps

There are allegations that the academy has “dumbed down” law school by accepting lower quality students.²¹³ An argument for not providing bar preparation programs for credit is the concern that adding such courses is another method of “dumbing down” law school.²¹⁴ Neither statement is accurate; law schools are simply adjusting to the distinctive generation gap that is predominately represented in the classroom, as they must whenever times require it.²¹⁵

Researchers have discovered that each generation has distinctive personas.²¹⁶ A generation “is shaped by events or circumstances according to which phase of life its members occupy at the time.”²¹⁷ Members in a generation have witnessed the same events, developing a general personality.²¹⁸

It is believed that the Baby Boomers, who were born between 1946 and 1964,²¹⁹ have “loudly proclaimed their scorn for the secular blueprints of their parents—institutions, civic participation, and team playing—while seeking inner life, self-perfection, and deeper meaning.”²²⁰ Generation X members were born between 1965 and 1980.²²¹ The breakdown of the family unit due to divorce and failing educational systems formed this generation.²²² The traits of this generation are self-reliance, greater risk taking, distrust of institutions, and entrepreneurship.²²³ The persons in the Millennial Generation were

213. Rapoport, *supra* note 148, at 144.

214. *Cf. id.* (“Instead of our legal writing professors teaching high-level rhetorical analysis, they have to do a fair amount of remedial training in basic writing skills.”).

215. Riebe, *supra* note 8, at 286-89. *See also* Ann Marie Cavazos, *Next Phase Pedagogy Reform for the Twenty-First Century Legal Education: Delivering Competent Lawyers for a Consumer-Driven Market*, 45 CONN. L. REV. 1113, 1149-62 (2013) (outlining the evolution of legal education and pedagogy over the last 200 years).

216. *See generally* WILLIAM STRAUSS & NEIL HOWE, GENERATIONS: THE HISTORY OF AMERICA’S FUTURE, 1584 to 2069 (1991); WILLIAM STRAUSS & NEIL HOWE, THE FOURTH TURNING: AN AMERICAN PROPHECY—WHAT THE CYCLES OF HISTORY TELL US ABOUT AMERICA’S NEXT RENDEZVOUS WITH DESTINY (1997).

217. William Strauss & Neil Howe, *The Next 20 Years: How Customer and Workforce Attitudes Will Evolve*, HARV. BUS. REV., July-Aug. 2007, at 42.

218. *Id.*

219. RICHARD G. MCNEILL JR., ADAPTING TEACHING TO THE MILLENNIAL GENERATION: A CASE STUDY OF A BLENDED/HYBRID COURSE 1 (2011), *available at* http://scholarworks.umass.edu/refereed/ICHRIE_2011/Thursday/3/.

220. Strauss & Howe, *supra* note 217, at 43.

221. MCNEILL, *supra* note 219, at 1.

222. Strauss & Howe, *supra* note 217, at 45.

223. *Id.* at 45, 49.

born between 1982 and 2000.²²⁴ Members of this generation are in multiple phases of their lives; they are in the first years of their careers, professional and graduate schools, college, or secondary or elementary schools.²²⁵ Because Millennials represent the largest faction of law students,²²⁶ it is important to know the characteristics of this generation. An effective communicator or teacher needs to know his or her audience. Especially if education is swaying to the bends of the economy, it is more imperative to understand the consumer's wants and needs.

Social scientists and researchers have narrowed down the top ten core characteristics of the Millennial Generation and the pros and cons of each.²²⁷ The first distinctive characteristic of the generation is that Millennials are technological.²²⁸ Millennials have always had technology in their lives.²²⁹ This is a tremendous benefit in that people view technology as an inseparable aspect of their lives.²³⁰ However, a negative is that generally Millennials have shorter attention spans.²³¹ The second trait of this generation is that they believe they are special—"vital to the nation and to the reformation of the world."²³² This is a noble and aspirational viewpoint. On the other hand, the general sense of entitlement is a negative aspect.²³³ Millennials have high (or even lofty) expectations and become disillusioned if they do not meet those expectations.²³⁴ A third distinction of the Millennial Generation is that they are team-oriented.²³⁵ According to social scientists, collaborative learning is the norm.²³⁶ Millennials have "strong team instincts and tight peer bonds."²³⁷ But the strong teamwork instinct can be a negative aspect at times in that it does not turn off in situations when it is inappropriate, which may result in an accusation of cheating.²³⁸ The fourth

224. MCNEILL, *supra* note 219.

225. *Id.* at 3.

226. Joan Catherine Boal, *Generations X and Y in Law School: Practical Strategies for Teaching the MTV/Google Generation*, 54 LOY. L. REV. 775, 778 (2008).

227. MCNEILL, *supra* note 219, at 3-4.

228. *Id.*

229. *Id.*; see also DON TAPSCOTT, *GROWING UP DIGITAL: THE RISE OF THE NET GENERATION 3* (2009) (dubbing Millennials as the "Net Generation" because they have never known a time without digital technology).

230. See MCNEILL, *supra* note 219, at 3.

231. *Id.* (finding that this generation's attention span is "generally broken into 10 to 15 minute content blocks and supported by multimedia audio and visual components").

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. MCNEILL, *supra* note 219, at 3.

237. *Id.*

238. *Id.*

characteristic is that this generation has “been the focus of the most sweeping youth-protection movement in American history.”²³⁹ Fifth, Millennials are confident.²⁴⁰ Generally, people in this generation are extremely trusting and optimistic.²⁴¹ Millennials also have “palpable emotional connections to parents which can carry forward to teachers and mentors.”²⁴² A negative concern of this characteristic is that Millennials’ high confidence does not allow them to accurately assess themselves or causes them to create impractical expectations.²⁴³ The sixth characteristic of the Millennial Generation is that they are very tolerant of diversity and social differences.²⁴⁴ Seventh, persons in this generation feel tremendous pressure to achieve in all aspects of their lives.²⁴⁵ However, this pressure to sparkle negatively causes performance anxieties and may lead to ethical mishaps in an attempt to excel.²⁴⁶ The eighth distinguishing feature of Millennials is that they have a sense of justice and societal ills.²⁴⁷ Ninth, and connected to the seventh attribute, this generation has high standards of accomplishment due to a history of educational competitiveness.²⁴⁸ Again, these high standards might prompt a Millennial to bypass ethics to reach unrealistic success.²⁴⁹ Finally, and tenth, the Millennial Generation tends to be conventional—adapting and connecting “with their parents’ values” and morals.²⁵⁰ The negative of this attribute is that “group think” rules and creativity is impaired.²⁵¹

239. *Id.* (“Child abuse and child safety became hot topics and best-seller books taught virtues and values. Hollywood replaced the dark movies characteristic of Gen X childhood years with lighter menu. Cable TV and the Internet came under pressure to provide lock devices for children to protect them from the dangerous excess of the new Wild West media world.”).

240. *Id.* at 4.

241. *Id.*

242. MCNEILL, *supra* note 219, at 4.

243. *Id.* There is anecdotal evidence of strong parental reliance. There is a story from a law professor who, much to her horror, received a phone call from a parent for being overly Socratic on a student after the student complained to his parent of being embarrassed in class.

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.* This characteristic is in line with the growing trend of law schools adding a pro bono feature to the curricula.

248. MCNEILL, *supra* note 219, at 4.

249. *Id.*

250. *Id.*

251. *Id.*

F. Supplementary Incentives for Bar Passage Problems

Law schools are getting creative in coaxing students to take advantage of the bar preparation programs offered. The programs usually boil down to cold, hard cash.²⁵² A couple of law schools have unveiled new plans for graduates who have attempted and failed to pass the bar exam after at least one try.²⁵³

Florida Coastal School of Law and Charlotte School of Law both rolled out similar plans in March 2013 to start in fall 2013.²⁵⁴ At Florida Coastal, graduates qualify for a \$10,000 refund after meeting several stringent requirements.²⁵⁵ To receive the refund, graduates must: 1) attend all writing workshops during their first semester, 2) complete a grammar program, 3) attend 95% of bar coaching sessions, 4) complete a practice bar exam, and 5) pass a “law school foundations” course.²⁵⁶ However, the former dean, C. Peter Goplerud, hoped that the refund policy serves as an incentive to work hard, not reward failure.²⁵⁷ He said, “[i]f they do all the things they’re supposed to, we’re not going to be doing anything except saluting successful graduates.”²⁵⁸

Charlotte School of Law offers a program similar to Florida Coastal’s program. Charlotte’s scheme covers graduates who not only fail to pass the North Carolina bar twice but also those who fail the South Carolina Bar twice.²⁵⁹ The Associate Dean for Academics at Charlotte School of Law stated that the program allows students to benefit after performing all the requirements.²⁶⁰ He said, “If you do [the bar exam preparation requirements] and you’re still not successful, something is wrong.”²⁶¹

252. See, e.g., Karen Sloan, *Two Law Schools Offer a Money-Back Guarantee—With Strings Attached*, NAT’L L.J. (Mar. 8, 2013), <http://www.nationallawjournal.com/id=1202591471710/Two-law-schools-offer-a-money-back-guarantee-%26%238212%3B-with-strings-attached->.

253. *Id.*; Debra Cassens Weiss, *Bar Passage or Your Money Back: Law School Offers Partial Refunds to Some Students*, A.B.A. J. (Apr. 25, 2013), http://www.abajournal.com/mobile/article/bar_passage_or_your_money_back_law_school_offers_partial_refunds_to_some_st.

254. Sloan, *supra* note 252.

255. Weiss, *supra* note 253.

256. *Id.*

257. *Id.*

258. *Id.*

259. Sloan, *supra* note 252.

260. *Id.*

261. *Id.* (alteration in original).

Both are hedging bets on the “Assured Outcomes Partnership.”²⁶² This theory calls for a collaboration between students and faculty in ensuring success on the bar exam.²⁶³ The \$10,000 refund serves as a carrot to encourage students “to take full advantage of the academic support and bar preparation services available” at each school.²⁶⁴ Ultimately, both law schools do not want to hand out refunds, but help students work toward a collective goal.²⁶⁵ Additionally, neither program is divorced from reality; there is recognition that “[l]aw school is not for everyone.”²⁶⁶ Some students flunk out in their first year, while some make it through their third year, or even graduation.

New York Law School has also created the “Jump Start” program.²⁶⁷ Under the Jump Start program, students will receive \$500 in cash for signing up for a pre-bar preparation course.²⁶⁸ The program is additional to any commercial bar preparation course.²⁶⁹ Students may use the \$500 to defray the costs of these commercial courses or any purpose the students deem necessary.²⁷⁰ Dean Anthony Crowell stated,

I understand that you all have many demands on you from school and work, but I believe this program is so vital that I have arranged for every student who completes all five sessions to receive \$500 in cash, which I hope you will put towards a bar prep program.²⁷¹

V. CONCLUSION

Nearly half of all law schools believe that bar preparation programs are imperative.²⁷² Law schools that have implemented bar preparation programs have accomplished one major thing: their graduates are passing the bar at rates higher than in previous years.²⁷³ Research reveals two

262. *Id.*

263. *Id.*

264. *Id.*

265. Sloan, *supra* note 252.

266. *Id.*

267. Abby Rogers, *New York Law School is Paying Students to Study for the Bar*, BUS. INSIDER (Feb. 1, 2013), <http://www.businessinsider.com/new-york-law-school-jump-start-program-2013-2>.

268. *Id.*

269. *Id.*

270. *See id.*

271. *Id.*

272. *See* Carpenter, *supra* note 138.

273. *See, e.g.*, Larsen, *supra* note 143.

outcomes related to bar passage programs.²⁷⁴ First, some law schools have shown exponential increases in their bar passage rates due to providing bar preparation programs.²⁷⁵ Second, despite extensive efforts to prepare students to pass the bar examination, some law schools are seeing little improvement.²⁷⁶ So, what does this mean?

Bar preparations programs are fruitful; students who participate in the programs have a greater chance of passing than if they took no bar preparation program at all.²⁷⁷ School-sponsored programs are ideally supplemental to commercial bar preparation courses.²⁷⁸ Thus, students have reinforcements in place. A school-sponsored program can give students an accurate assessment of their standing "in a safe place." Furthermore, school-sponsored programs close economic disparity gaps.²⁷⁹ Without bar preparation programs, some students may not have access to any bar preparation programs at all due to financial constraints. Even though schools may not witness astronomical successes in bar passage now, bar passage programs need to evolve to overcome the issues barring bar passage.

One way to survive the legal education crisis is to focus on the students in the classrooms and prospective students. If stereotypes prove to be true, that there are generational barricades to traditional legal learning methods, then bar review preparation courses are all the more essential.²⁸⁰ Modifying curricula in light of generational shifts is nothing new. It seems as though the ABA modified its standards upon the entry of the Baby Boomer generation into legal education.²⁸¹ In 1973, the ABA promulgated new standards, which replaced the 1921 ABA Standards.²⁸² Likewise, some in the legal education community took a critical look when Generation X entered classrooms.²⁸³

274. *Id.*

275. *See supra* Part IV.

276. *See supra* Part IV.

277. *See supra* Part IV (discussing the top ten schools that have the best preparation for passing the bar).

278. *See supra* notes 134-45 and accompanying text.

279. *See supra* Part IV (discussing how some law schools offer bar preparation courses for free).

280. *See supra* Part IV.E.

281. Michael Ariens, *Law School Branding and the Future of Legal Education*, 34 ST. MARY'S L.J. 301, 313 (2003).

282. *Id.*

283. Joanne Ingham & Robin A. Boyle, *Generation X in Law School: How These Law Students Are Different From Those Who Teach Them*, 56 J. LEGAL EDUC. 281, 289 (2006).

Rightfully or wrongfully, the legal profession measures competence to practice law by the passage of a bar examination.²⁸⁴ In law school, people measure competence or learning outcomes by completing the requisite credit hours and obtaining a minimum grade point average. These two measures must work together.

School-sponsored bar preparation courses, for credit or non-credit, represent an adjustment in the curricula that is appropriately adaptive to the great majority of stereotypical Millennials. By sponsoring bar preparation courses, law schools are able to satisfy a majority of the driving motivations of the Millennial Generation in four ways.²⁸⁵ First, most bar preparation courses implement technology in some manner.²⁸⁶ John Marshall uses email and the Internet to transmit information related to the bar exam.²⁸⁷ Second, bar preparation courses may allow teamwork, especially while studying.²⁸⁸ Third, practice bar exams under bar-simulated conditions would provide students with a more accurate assessment of their abilities.²⁸⁹ Fourth, because the aspiration to excel at high levels creates test-performance anxiety, creating an environment where Millennials are acclimated to similar pressure will hopefully eliminate test anxiety.²⁹⁰

If indeed these are the traits of the majority of today's new law students, then legal education must adapt to meet their needs. Meeting the students' needs will have tremendous benefits for law schools and the legal community. Lawyers protect society; they prevent anarchy and preserve justice.²⁹¹ This is a job that will not cease. Recognizing generational diversity, understanding the differences in how generations learn,²⁹² and perceiving a generation's motivations may furnish the necessary leverage to accomplish institutional goals, such as higher bar passage rates, and provide the impetus to escape the legal crisis.

284. Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Exam Should Change*, 81 NEB. L. REV. 363, 366 (2002) (noting that many wrongfully believe that by requiring bar passage, society is protected from incompetent lawyers).

285. See *supra* Part IV.D.

286. See, e.g., *supra* Part IV.D.

287. See *supra* Part IV.D.

288. See *supra* Part IV (discussing modern approaches to bar preparation).

289. See *supra* Part IV.

290. See *supra* Part IV (discussing modern approaches to bar preparation and listing the best law schools for bar preparation).

291. See generally Kathleen M. Sullivan, *The Good That Lawyers Do*, 4 WASH. U. J.L. & POL'Y 7 (2000) (pointing out the virtues of the legal profession).

292. See LAW SCH. SURVEY OF STUDENT ENGAGEMENT, 2007 ANNUAL SURVEY RESULTS: STUDENT ENGAGEMENT IN LAW SCHOOL: KNOWING OUR STUDENTS 9 (2007), available at http://lsse.iub.edu/2007_Annual_Report/.

Another benefit of offering for-credit bar preparation courses is that these courses would offer more flexibility to focus on other important areas of the curricula. Most law schools are shifting to include more skills-based courses.²⁹³ This shift is vital to make law graduates more practice ready, satisfying the complaints of prospective employers and judges. Furthermore, bar exam preparation programs could help increase diversity in the profession by improving all students' odds of passing the bar exam.²⁹⁴

It is well known that the bar exam does not test students on realistic problems or attorney skills.²⁹⁵ It merely tests students on rote knowledge of "the law."²⁹⁶ Thus, unless the bar exam shifts how it tests applicants, offering bar exam preparation courses permits law schools to not sacrifice teaching its students while offering a broader range of programs that prepare students for practice.

Students are no less qualified than the generations that preceded them. Expectations must be set, though. There are many articles written about teaching Millennials.²⁹⁷ It is true—their life experiences and previous training differ from Baby Boomers or Gen-Xers. Education has always adapted to meet the students where they are. The problems come when a Millennial is in the courtroom of a Baby Boomer or a junior associate to a Gen-Xer. The expectations will be the same under which that previous generation endured. Law schools need to prepare students for these practical realities.

Likewise, one cannot escape the fact that passage rates are very imperative to the lifeline of a law school. If a law school's graduates consistently underperform, then it runs the risk of being unaccredited or damaging its reputation in the legal community and to prospective students. At first blush, programs like those at Florida Coastal School of Law and Charlotte School of Law seem outrageous. However, these programs may very well provide incentives for students to use school resources without sacrificing the quality of legal education. Bar preparation programs do not "teach to the test," but they simply and properly allocate resources that help students uncover tactics and habits to pass the bar.

293. See, e.g., *supra* Part IV.

294. See *supra* Part III.A.

295. Curcio, *supra* note 284.

296. *Id.*

297. See, e.g., MCNEILL, *supra* note 219; Boal, *supra* note 226; TAPSCOTT, *supra* note 229; Ingham & Boyle, *supra* note 283.