

# RECENT TRENDS IN LAW SCHOOL CURRICULA: FINDINGS FROM THE 2010 ABA CURRICULUM SURVEY

by Catherine L. Carpenter

Lately, legal education has been on everyone's mind. Interest was fueled in 2007 by the publication of *Educating Lawyers: Preparation for the Profession of Law*<sup>1</sup> and *Best Practices for Legal Education: A Vision and a Road Map*,<sup>2</sup> two influential reports that challenged law schools to create a curriculum that better prepares students to become competent professionals.<sup>3</sup> When these reports are considered with a changing legal market amid an uncertain economy<sup>4</sup>—and with media reports that have highlighted perceived deficiencies in law school curricula<sup>5</sup>—it is not surprising that legal education has become the subject of intense discussion for the academy, bench, and bar.

Given the current scrutiny, it is particularly useful to consider *A Survey of Law School Curricula: 2002–2010*, which offers comprehensive statistical information on significant aspects of current law school curricula as well as comparative curricular information from that time period.<sup>6</sup> The 2010 Survey is the result of a two-year project conducted by the Curriculum Committee of the American Bar Association Section of Legal Education and Admissions to the Bar at the request of Hulett (Bucky) Askew, ABA Consultant on Legal Education. The Survey also serves as a follow-up to its predecessor published in 2004, *A Survey of Law School Curricula: 1992–2002*, which offered comparative curricular information from that decade.<sup>7</sup>

## GOALS OF THE 2010 SURVEY

Several goals shaped the 2010 Survey. First, the Curriculum Committee wanted to update comparative data on curricular trends and changes

first reported in the 2002 Survey. Where possible, the 2010 Survey was also designed to offer more detailed information on items of interest from the prior Survey. Finally, the committee's aim was to broaden the 2002 review to capture changes made in response to the critiques from *Educating Lawyers* and *Best Practices*, as well as to identify changes dictated by new and amended standards from the ABA Standards and Rules of Procedure for Approval of Law Schools.

The 2010 Survey is organized into seven sections:

### **Section One: Requirements for graduation**

Includes credits required, upper-division course requirements, and joint degrees offered by institutions. Newly added to this section are questions about minutes required for graduation and instruction blocks of time that law schools employed.

### **Section Two: First-year course requirements**

Includes course and credit hours and specific questions on first-year Legal Research and Writing. New questions seek more detailed information on first-year elective opportunities and first-year Legal Research and Writing.

### **Section Three: Upper-division curriculum**

Includes core and elective curriculum, skills and clinical offerings, and noted increases and decreases in particular areas of law. New to this section are more detailed questions on clinical offerings.

#### **Section Four: Academic support and bar readiness**

New to the 2010 Survey. Includes voluntary and mandatory academic support programs and courses for first-year and upper-division students. Also included are questions regarding bar preparation courses for credit, subject matter selection, and use of faculty resources.

#### **Section Five: Post-J.D. and non-J.D. degree programs**

Includes subject matter, degrees awarded, and credit allocation.

#### **Section Six: Distance education instruction**

Includes policies permitting distance education instruction, synchronous and asynchronous offerings, and online degrees and programs.

#### **Section Seven: Narratives on curricular change**

Includes reports by law schools on major curricular innovations and changes that have been implemented since 2002 and the influences that inspired these changes.

## **THE DATA WE USED FOR THE 2010 SURVEY**

The data that provided the basis of the 2010 Survey came primarily from two sources: law school responses to the ABA Annual Questionnaire<sup>8</sup> for 2010–2011 and the results from an electronic survey distributed to all law schools in October 2010. The 2010 survey instrument, which contained more than 80 questions, was designed by the ABA Section’s Curriculum Committee in collaboration with the Section’s Office of the Consultant.

Results from responses to the Annual Questionnaire reflect the input of all 200 ABA-

approved law schools in 2010.<sup>9</sup> Results from the 2010 Survey include responses from 167 ABA-approved law schools, which represented 84% of the ABA-approved law schools in 2010. A review of their demographics shows that respondents came from all parts of the country, represented the well established and provisionally approved alike, and had varied enrollment sizes, institutional makeups, and affiliations.

## **2010 SURVEY HIGHLIGHTS OF INTEREST TO THE BENCH AND BAR**

Anecdotal information is always interesting, but objective data can be instructive. The Survey’s collection of detailed statistics on a broad range of topics helps inform the general legal community about current curricular practices and trends in legal education. And for the bench and bar, the 2010 Survey provides empirical data on questions that affect the profession: whether law schools are meeting the challenge to produce practice-ready professionals, whether they are supporting their students through academic support and bar prep resources, and whether they are offering the type of curriculum that fosters strong professional skills and professional identity.

Results of the 2010 Survey—the objective data combined with the narrative responses—reveal that law school faculties were involved in efforts to review and revise their curricula to produce practice-ready professionals. Survey respondents frequently cited *Educating Lawyers* and *Best Practices* as influential in their decision-making processes. A comparison of data from 2002 and 2010 reflects that by 2010, law schools were engaged in experimentation and change at all levels of the curriculum. Results include new programs in professional development, academic support, and bar readiness; increased

doctrinal specializations, including in international law and intellectual property; enhanced experiential learning with a measurable increase in professional skills offerings; and greater emphasis on various kinds of writing across the curriculum.

In addition to creating new programs and courses, law schools have experimented with accelerated programs for graduation following the change in ABA Standards in 2004, which allowed law students to graduate within 24 months.<sup>10</sup>

### **Producing Practice-Ready Professionals**

In growing numbers, law schools reported that curricular changes were impelled by the desire to produce practice-ready professionals. This commitment has taken many forms, including redesigned courses that emphasize legal writing, an increase in professional skills offerings, and retooled courses that boast integrated doctrine and skills. Included within this overarching commitment are two thematic components.

#### *Rise in Prominence of Legal Research and Writing*

One emerging story from the 2010 Survey is the continued rise in prominence of Legal Research and Writing. Under the traditional model described by Donald Jackson and E. Gordon Gee in their 1975 pioneering study on law school curricula, Legal Research and Writing was a first-year course designed with a narrow curricular view and afforded an average of two units.<sup>11</sup> The 2002 Survey observed changes to that model, with law schools affording on average three or four units and broadening the course's scope to include persuasive writing.

By 2010, law schools had reported even greater change. Many law schools were now providing first-year Legal Research and Writing five or six units and had expanded the subject matter of the course to include lawyering skills beyond traditional

advocacy. Additionally, in response to the criticism that the upper-division curriculum was filled with knowledge-based courses to the exclusion of professional skills offerings, respondents reported adding upper-division Legal Research and Writing courses to augment lawyering skills taught in the curriculum.

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**43%** of law schools offered five or six units of first-year Legal Research and Writing.

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#### *Commitment to Professional Skills Education and Professionalism*

Law schools reported an abiding commitment to professional skills education, and that commitment can be seen in recently retooled and redesigned professional skills training with increased live-client clinical opportunities and externship placements, the introduction of professional skills into existing doctrinal courses, and the addition of separate labor-intensive professional skills offerings. Survey respondents reported offering a variety of professional skills courses, and half noted offering 10 or more courses in 2010.

While certain courses such as Trial Advocacy and Alternative Dispute Resolution were widely offered in both 2002 and 2010, other courses grew in popularity. Between 2002 and 2010, Appellate Advocacy grew from 77% in 2002 to 89% in 2010; Arbitration from 50% in 2002 to 60% in 2010; and Interviewing and Counseling from 59% in 2002 to 73% in 2010.

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**50%** of law schools offered 10 or more professional skills courses.

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And in concert is the increased emphasis on professionalism and professional identity. Respondents noted new courses or components to existing courses

on professionalism that were offered not only in the upper division but also in the first year, in an effort to expose students earlier to the various roles and obligations of attorneys. Additionally, by 2010, several law schools had created professional development centers and institutes to address the roles and obligations of the legal profession.

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**85%** of law schools offered in-house live-client clinical opportunities, with an average of three clinics per law school.

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### Academic Support and Bar Readiness

Many law schools reported that, since 2002, they had instituted new academic support or bar preparation courses and programs. Aware of the external pressures associated with the cost of legal education and the changing job market, respondents wrote that they had designed and developed bar preparation courses and enhanced academic support offerings to increase their students' chances of success in law school and on the bar examination.

As of 2010, nearly all respondents provided academic support, in the form of either a program, a course, or both, and nearly three-fourths of respondents offered academic support services to both first-year and upper-division students. If the program

was offered to one group only, that one group was overwhelmingly likely to be first-year students.

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**97%** of law schools offered academic support programs to their students.

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In addition to academic support offerings, nearly half the respondents indicated that by 2010, they offered a bar preparation course for credit. This number of bar preparation courses for credit may be tied quite directly to the repeal in 2008 of ABA Standard 302, Interpretation 302-7, which severely restricted the use of bar preparation courses for credit.<sup>12</sup>

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**49%** of law schools offered bar preparation courses for credit.

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The range of topics in bar preparation courses included multistate essay, multistate multiple-choice, multistate practice/performance, multistate professional responsibility, and state essay—with the most popular topics being multistate multiple-choice and state essay (see Figure 1). For most law schools, the course was voluntary. As illustrated in Figure 2, in two-thirds of the bar preparation courses, full-time faculty resources were used to teach the courses—either alone or in combination with adjunct faculty resources.

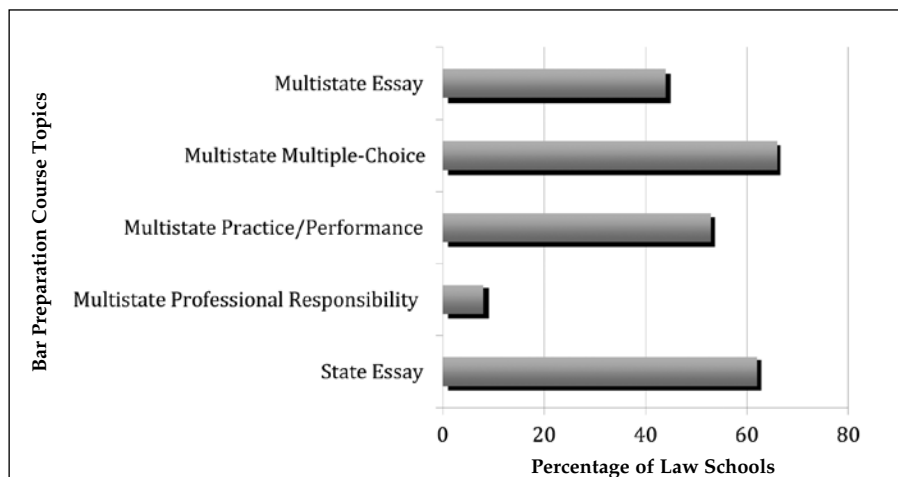
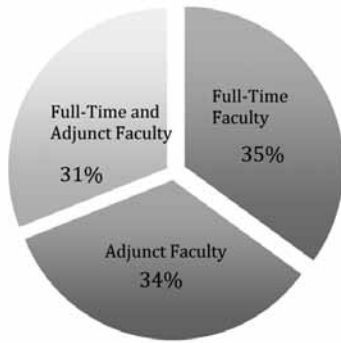


Figure 1: Range of bar preparation course topics among law schools



**Figure 2:** Assigned teaching responsibilities for bar preparation courses

### The Required Curriculum

#### *Fewer Required Courses*

A comparison of law school curricula across the decades reflects less reliance on a required core curriculum in the past two decades than was true prior to the 1990s. In both 2002 and 2010, nearly 25% of law schools reported that they did not require for graduation upper-division courses beyond those mandated by ABA Standard 302 (professional responsibility, upper-division writing, and “other professional skills generally regarded as necessary”).<sup>13</sup>

Commensurate with the move from a highly prescriptive curriculum is the reported increase in upper-division elective opportunities. Specifically, within the 2010 Survey time frame, upper-division course titles increased from 91 titles in 2002 to 132 titles in 2010, representing a 45% increase in upper-division course offerings. Law schools reported significant increases in International Law, Alternative Dispute Resolution,

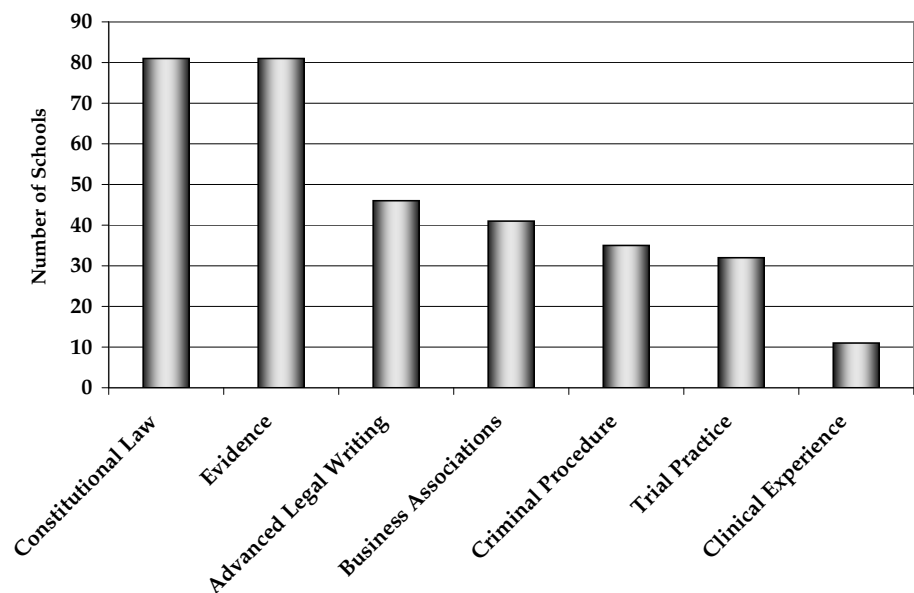
Intellectual Property, Business Law, and Transactional Drafting.

#### *Most Commonly Required Upper-Division Courses*

As was true in 2002, only Constitutional Law and Evidence showed significant support as required doctrinal courses beyond the first year that are not mandated under ABA Standard 302. Each course attracted 50% of respondents (just over 80 schools each). No other doctrinal course, including Business Associations and Criminal Procedure, attracted more than 25% of respondents (fewer than 50 schools for each course, with Clinical Experience being the least-required class, at just over 10 schools). (See Figure 3.)

#### *The “Bar Factor”: The Correlation between Bar Exam Subject Matter and Courses Required for Graduation*

Interestingly, the tested subject matter on bar examinations did not appear to play a prominent role in a law school’s determination of which courses to require for graduation. As was true in the 2002 find-



**Figure 3:** Most commonly required upper-division courses

ings, there is no statistical evidence to suggest that the “bar factor” drove law school curricular decision making on which upper-division courses to require for graduation. The fact that a particular subject was tested on the state bar examination may have served as the impetus for an individual law school to require the course, but on the whole, it did not appear to be the primary motivation to require the course for graduation.

The 2010 Survey provides a detailed explanation of the independent research conducted to arrive at this conclusion. In summary, we selected subjects that were regularly tested on bar examinations across the country but that were not tested on the Multistate Bar Examination.<sup>14</sup> The subjects chosen were Business Associations, Tax, Trusts and Estates (Wills), Remedies, and Family Law. First, we matched each subject to those law school respondents that required the course, identifying whether that subject matter was required in the respondent’s state bar examination. We then determined the extent to which that course was also required by other law schools in the same state. And then we conducted the research in reverse. We surveyed all state bar examinations to determine which state bar examinations tested these subjects, and then we examined the curriculum of each law school in each state that tested the subjects to determine the number of law schools that required the courses for graduation.

Subjects such as Business Associations and Trusts and Estates offer the best illustrations of our findings. Although they were tested on the vast majority of state bar examinations, less than half the law schools required these courses for graduation. And even where a subject such as Tax was tested in a particular jurisdiction, there was no consensus among law schools in that state about whether to

require the course. Similar results were found for all subjects we tested.

This principle held true for law schools whether they had national or regional reputations, were public or private institutions, or were single- or dual-division law schools. Only in the case of newly ABA-accredited law schools—those schools accredited after 2002—did one see a correlation between a school’s required curriculum and state bar exam subject matter coverage. In the case of newly accredited law schools, it is likely that a prescriptive curriculum composed of bar-tested subjects was designed to ensure bar passage sufficient to comply with ABA Standards for full approval.<sup>15</sup> For all other law schools, factors such as faculty resources, pedagogical beliefs, specializations, or faculty politics might have equally influenced the decision on which courses to require.<sup>16</sup>


Although the 2010 Survey concluded that bar examination subject matter did not control the decision on which courses to require for graduation, the 2010 Survey did not examine enrollment patterns for these courses. Called the “informal bar curriculum,” nonrequired bar subjects may nonetheless experience high demand and enrollment despite not being required.<sup>17</sup>

### *Pro Bono Requirements*

One interesting development in the required curriculum is the incremental rise in pro bono service requirements, with 18% of law school respondents in 2010 requiring an average of 35 hours of pro bono service to graduate, which is nearly 10 more hours of service than reported in 2002. Although there were a variety of ways to meet the service obligation, for the majority of respondents, the only way was to volunteer in law-related services.

## CONCLUDING THOUGHTS

Results of the 2010 Survey, both objective data and narrative responses, reveal that law school faculties are engaged in efforts to review and revise their curricula to produce practice-ready professionals. And with wholesale curricular review has come experimentation and change at all levels of the curriculum, including enhanced experiential learning and greater emphasis on various kinds of writing across the curriculum.

Yes, lately legal education has been on everyone's mind as debate intensifies on whether law school curricula in today's changing market are preparing students for the practice of law. *A Survey of Law School Curricula: 2002–2010* offers valuable empirical data on how and whether law schools are meeting the needs of law students today. 

## NOTES

1. WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW*, The Carnegie Foundation for the Advancement of Teaching, Preparation for the Professions (Jossey-Bass 2007) [hereinafter "*Educating Lawyers*"] (criticizing the traditional doctrinal model used to prepare law students for the practice of law).
2. ROY STUCKEY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (Clinical Legal Education Association, 2007) [hereinafter "*Best Practices*"] (offering "a vision of what legal education might become" by articulating seven sets of best practices, from setting goals to assessing both learning and institutional effectiveness), at 1.
3. See *id.* at 19 (encouraging law schools to "expand their educational objectives to more competently serve the needs of their students"); SULLIVAN ET AL., *supra* note 1, at 91 (arguing for changes in the academic setting to integrate "the apprenticeship of practice"). See also Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads*, 44 *IND. L. REV.* 735, 743–744 (2011) (relying, in part, on the criticisms from *Educating Lawyers* and *Best Practices* to argue for a comprehensive approach to reform).
4. See, e.g., Richard A. Matasar, *The Viability of the Law Degree: Cost, Value, and Intrinsic Worth*, 96 *IOWA L. REV.* 1578 (2011) (analyzing the impact of external factors on the value of a law degree); Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 *J. LEGAL EDUC.* 598 (2010) (tracing the effects of the economic recession on legal education).
5. See, e.g., Ashby Jones, *The Boldest Move (To Date) in Legal Curricular Reform?*, *Wall Street Journal Law Blog* (Sept. 9, 2009, 10:52 a.m.), <http://blogs.wsj.com/law/2009/09/09/the-boldest-move-to-date-in-legal-curriculum-reform> (decrying the "redundant" third year of law school classes and suggesting replacing such classes with simulation of real-world experience); David Segal, *So You Want to Learn to Practice Law? Wait Until After You Finish School*, *INT'L HERALD TRIBUNE*, Nov. 22, 2011, at 18 (criticizing the lack of practical, real-world training for law students).
6. A SURVEY OF LAW SCHOOL CURRICULA: 2002–2010 [hereinafter "the 2010 Survey"], to be published in July 2012, will be available on the ABA Section of Legal Education and Admissions to the Bar's website at [http://www.americanbar.org/groups/legal\\_education](http://www.americanbar.org/groups/legal_education).
7. A SURVEY OF LAW SCHOOL CURRICULA: 1992–2002 [hereinafter "the 2002 Survey"] was prompted by the 10-year anniversary of the ABA Section of Legal Education and Admissions to the Bar's report *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* (known as the "MacCrate Report" in recognition of the ABA task force chair, Robert MacCrate) and its articulation of the 10 fundamental lawyering skills that law schools should address.  

A SURVEY OF LAW SCHOOL CURRICULA: 1992–2002 is available at [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/legal\\_education/curriculum\\_survey\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/curriculum_survey_authcheckdam.pdf). For an article by Professor Carpenter on the 2002 Survey findings, see Catherine L. Carpenter, *Recent Developments in Law School Curricula: What Bar Examiners May Want to Know*, *BAR EXAMINER*, Nov. 2005, at 39.
8. The ABA Annual Questionnaire is distributed by the ABA Section of Legal Education and Admissions to the Bar to all law schools fully or conditionally approved by the ABA, as well as those seeking approval. It is designed to collect information on graduation requirements, bar passage and placement, admissions, library facilities, scholarships, administrator and faculty profiles, fiscal data, information technology facilities, and study-abroad programs.
9. In 2010, Annual Questionnaire data for the 200 ABA-approved law schools did not include University of California at Irvine School of Law, which received its provisional approval in 2011.
10. ABA Standard 304(c) enables "the course of study for the J.D. degree [to] be completed *no earlier than 24 months . . .* after a student has commenced law study. . . ." (emphasis added)
11. See DONALD JACKSON & E. GORDON GEE, *FOLLOWING THE LEADER? THE UNEXAMINED CONSENSUS IN LAW SCHOOL CURRICULA*, 15 (Council on Legal Education for Professional Responsibility, 1975) (hypothesizing the average first-year curriculum by taking the average required units in the first year and the corresponding frequency of required subjects among the 127 ABA-approved law schools).
12. A review of the history of bar examination courses for credit under the ABA Standards reveals that these courses have been the subject of changing intentions. Initially, bar examination courses for credit were expressly prohibited under former ABA Standard 302(f), which stated, "A law school may offer a bar examination preparation course, but may not grant credit for the course or require it as a condition for graduation." In 2004, that Standard was repealed and Standard 302, Interpretation 302-7 was added, which

allowed for bar examination courses for credit but restricted the use of the credit: "If a law school grants academic credit for a bar examination preparation course, such credit may not be counted toward the minimum requirements for graduation established in Standard 304. A law school may not require successful completion of a bar examination preparation course as a condition of graduation." That Interpretation was repealed in 2008, affording law schools the ability to offer bar preparation courses for credit without any restrictions on the use of the credit earned.

13. ABA Standard 302(a) states

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

14. Some of the chosen subjects may have been tested, however, on the Multistate Essay Examination (MEE), in those state bar examinations that included the MEE.

15. This correlation was also found in the 2002 Survey, for those law schools accredited after 1992.

16. Whether a required curriculum increases bar passage has been the subject of considerable debate. For some educators, a required curriculum that consists of bar-tested subjects or other sufficiently rigorous courses helps ensure success on the bar examination. But some academics believe that other programmatic features may account for the rising national bar examination scores. See, e.g., Linda Jellum and Emmeline Paulette Reeves, *Cool Data on a Hot Issue: Empirical Evidence that a Law School Bar Support Program Enhances Bar Performance*, 5 NEV. L. J. 646 (2005) (illustrating positive effects of academic support programs by tracking results of their graduates); see also Sonia Bychkov Green, Maureen Staub Kordesh & Julie

M. Spanbauer, *Sailing Against the Wind: How a Pre-Admission Program Can Prepare At-Risk Students for Success in the Journey Through Law School and Beyond*, 39 U. MEM. L. REV. 307 (2009) (praising a pre-admission program at the John Marshall Law School [Chicago] as one factor in the eventual success of its at-risk students on the bar examination).

17. See JACKSON & GEE, *supra* note 11 at 33–39 (examining the required curricula at the 127 ABA-approved law schools in 1975 and acknowledging those courses that were not required but were in high demand because they were tested on the state's bar examination).



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