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# THE BAR EXAM ESSAY MAZE: A ROADMAP THROUGH THE TANGLE

BEVERLY MCQUEARY SMITH\*

## INTRODUCTION

This paper focuses on strategies for increasing the likelihood of minority students' success on bar examinations. It seizes on the opportunities and challenges presented by minority students in the legal academy. The paper is divided into three parts. Part One emphasizes what law schools can do to nurture minority students once they are accepted; Part Two examines what can be done to prepare minority students for the examination; and Part Three outlines a model for conducting a bar exam essay writing course for minority law graduates.

## I. THE ROLE OF LAW SCHOOLS FOR MINORITY STUDENTS

Law schools have little, if any, impact on what academic strengths and weaknesses their students bring to the first semester, first year of law school. Nonetheless, unless law school administrators have a sinister or machiavellian motive for admitting minority students, one hopes that each law school wants its minority students to graduate and quickly to pass the bar examination.

Several models for programs to aid minority students exist. The Council on Legal Education Opportunity (CLEO) provides one model. Some law schools conduct academic enhancement programs which emulate the CLEO model. Several panelists today will describe with particularity their schools' programs. The minority student orientation programs based on the CLEO model help, among other things, to acclimatize the students to the rigors, concepts and methodologies of law school. The schools require all or most of their incoming minority students to participate in a special orientation program designed to

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smooth minority students' transition into law school. Minority students who participate in the summer programs oftentimes must forego other opportunities to earn money the summer before they enter law school. If law schools make participation in the program a condition precedent to enrollment, then some minority students get barred from attending the law schools. Thus, law schools seeking to implement such a model ought to take minority students' financial status into consideration before requiring attendance during the summer at a special orientation program.

Northeastern University School of Law in Boston, Massachusetts, offers another model. In 1987, all entering minority students attended an Academic Transition Program seminar for one hour a week throughout the academic year. Northeastern's Academic Transition Program was taught by an adjunct professor to avoid any appearance of impropriety. It shared many of the same programmatic goals as the CLEO-type models. The materials were designed to improve students' abilities to spot issues and to provide a forum in which minority students could develop and test their hypotheses about the concepts they were exploring in their substantive course. Thus, the students could gain the habit of speaking up in their other classes. Students also worked with short fact patterns for which the legal rules were provided so that they could increase their facility for writing responses to essay-type examination questions. Rapid feedback remained a hallmark of the program throughout the year. Students were coddled when necessary and browbeaten when appropriate. Students had their briefs reviewed to ascertain their level of mastery. Students also were exposed to time and stress management skills and techniques. Did Northeastern University's program succeed? Yes, if one measures its success based on the fact that all of the minority student participants in Northeastern's Academic Transition Program graduated on time in June 1990.

Schools seeking to impose such a requirement on their students must address majority students' concerns about an additional benefit being conferred on the minority students, and minority students' misgivings about being stigmatized. Also, as the academic year proceeds, minority students sometimes object to the burden of attending and preparing for an additional course.

## II. PREPARING MINORITY LAW STUDENTS FOR THE BAR

Bar examinations as delineated by several of my colleagues, here today, test law graduates' abilities to master and retain a host of legal rules and to communicate under stress that mastery to bar examiners.

Short of having all law schools become a three-year bar review course, law schools can help increase the likelihood that their minority graduates gain the skills and experiences they need to pass the bar examination.

Minority students in historically white law schools feel and are isolated by majority students. Data suggest that majority students form study groups and exclude minority students from joining. Majority students and professors reveal their biases and bigotry in the classroom in a variety of ways. Majority professors refuse to call on minority students, or call on them for "easy" questions giving rise to an implication that minority students either can not understand or articulate difficult doctrinal concepts. Majority students become inattentive when minority students speak in class. Or, both majority constituencies rely on minority students to be the class experts on the racial issues suggested by the cases or materials.

Thus, the first thing any majority law school should do is to rid classroom instruction of obvious racial bias. Faculty members can assign students to team projects which require students to work together outside of class. Care should be taken to integrate the groups beforehand, so that the minority students do not find themselves without teammates. Faculty members can showcase willing minority students in classroom presentations, provide positive feedback to the minority students' regarding the quality of their presentations or arguments in front of majority students. Positive faculty feedback can serve to promote the majority students' perceptions that the minority students can be valued members of study groups. If faculty members use seating charts, faculty members can assign seats to the students beforehand so as to avoid clannishness and isolation of minority students.

Law schools can promote mentoring programs for minority students so that minority lawyers can provide insights and perspectives of law school to racially isolated minority students in historically white law schools. Law schools should encourage and promote minority student participation in national moot court competitions or national bar association meetings so that they can develop a network of minority law students at other law schools. In short, if an historically white law school lacks a critical mass of minority students or alumni, the law school administration must make an effort to provide minority students with role models or advisors who can provide the minority students with mentors which majority students can find in an office down the hall. Schools can provide the minority student organizations with adequate budgets to invite minority speakers to the law school.

Additionally, minority students oftentimes have to work while attending law school because they lack the financial resources many

of their majority counterparts enjoy. Moreover, if they come from families in which they are the first to graduate college or to attend professional school, they may have extraordinary family obligations throughout their time in law school. Family members may continue to place pressure on them, "the smart ones," to help solve problems or to take care of Aunt Ella's paperwork and the like. Law schools should be prepared to provide adequate financial aid to minority students to reduce the likelihood that the students will undermine their chances for success by working part-time, or worst yet full-time. Law schools should also foster an appreciation for the time-management requirements all students must have to graduate.

### III. MODEL COURSE FOR MINORITY LAW GRADUATES

A bar exam essay writing course should contain many of the features described in Part One. A single lecture on the bar exam will have a minimal impact. A well-designed course should require students to attend for a minimum of three to three and a half hours a week for four to five weeks. Evidence suggests it is easier to work with students before they have taken a bar examination than after they have failed one.

An effective program should make students respect the test the first time and not want to take it again. Students must destroy any ideas that if they flunk it the first time they can always take it again. Students should be given modules in which to master the essay exam writing skills each week. Students should be willing to make a written commitment to do all they can to pass the test the first time.

Students in the course should take a short pre-test or diagnostic test to ascertain their levels of sophistication with essay exam writing. The professor should delete variables like mastery of the particular legal rules needed to solve the problem by simply giving the students the fact pattern and the universe of law to apply.

Throughout the course, students should develop enhanced issue-spotting skills and an analytical framework for tackling bar exam essay questions. Each week, the students should submit written answers to bar exam-type questions taken under exam conditions and receive evaluations of their answers.

The faculty members should provide the students with stress and time management skills to help the students feel empowered during the bar exam preparation ordeal. Basic advice like disconnect your telephone or your doorbell, may help some students identify the time-wasters in their environments. Students may have to find and use different places to study or to avoid former study group partners.

Students must develop a positive mental attitude and a “can-do the first time” approach to the examination; all of them must understand that negative thinking of any kind is unacceptable. Students must appreciate that anger directed toward bar examiners or the test itself wastes too much energy. Students should leave the course with a sense of mastery of the test and a strategy for tackling the bar exam essay question under stress.

