



University of Richmond  
UR Scholarship Repository

Law Faculty Publications

School of Law

2015

# Teaching to the Test: The Incorporation of Elements of the Bar Exam Preparation in Legal Education

Emmeline Paulette Reeves

*University of Richmond*, [epaulett@richmond.edu](mailto:epaulett@richmond.edu)

Follow this and additional works at: <http://scholarship.richmond.edu/law-faculty-publications>

 Part of the [Legal Education Commons](#)

## Recommended Citation

Emmeline Paulette Reeves, *Teaching to the Test: The Incorporation of Elements of Bar Exam Preparation in Legal Education*, J. Legal Educ. 645 (2015)

This Article is brought to you for free and open access by the School of Law at UR Scholarship Repository. It has been accepted for inclusion in Law Faculty Publications by an authorized administrator of UR Scholarship Repository. For more information, please contact [scholarshiprepository@richmond.edu](mailto:scholarshiprepository@richmond.edu).

# Contents

From the Editors..... 521

## **2015 AALS ANNUAL MEETING PRESIDENTIAL ADDRESS**

by Blake D. Morant.....523

## **2015 AALS ANNUAL MEETING KEYNOTE SPEECH**

by Robert C. Post.....530

## **IGNITING LAW TEACHING**

How to be the World's Best Law Professor

by Warren Binford.....542

Reframing the Socratic Method

by Jamie R. Abrams.....562

Law Schools and Technology: Where We Are and  
Where We Are Heading

by Michele Pistone.....586

Re-conceptualizing Doctrinal Teaching: Blending Online Videos  
with In-Class Problem-Solving

by Debora L. Threedy and Aaron Dewald.....605

Practice in the Academy: Creating "Practice Aware" Law Graduates

by Jay Gary Finkelstein.....622

Teaching to the Test: The Incorporation of Elements  
of Bar Exam Preparation in Legal Education

by Emmeline Paulette Reeves.....645

Function, Form, and Strawberries: Subverting Langdell

by Jeremiah A. Ho.....656

## **LSAC STUDENT WRITING COMPETITION**

The Human Side of Law School: The Case for Socializing  
Minority Recruitment and Retention Programs

by Gurney Pearsall.....688

## **AT THE LECTERN**

Between Two Palm Trees: Reading the Constitution in Paradise

by Derek A. Webb.....699

The Three Act Argument: How to Write a Law Article  
That Reads Like a Good Story

by Shari Motro.....707

**BOOK REVIEWS**

*The Glass Cage: Automation and Us*—Nicholas Carr  
Reviewed by Rodger D. Citron .....712

*Nature's Trust: Environmental Law for a New Ecological Age*  
—Mary Christina Wood  
Reviewed by Doug Williams.....715

*Marriage Markets: How Inequality is Remaking the American Family*  
—June Carbone & Naomi Cahn  
Reviewed by Deborah Zalesne and John Guynette.....720

Index

# Teaching to the Test: The Incorporation of Elements of Bar Exam Preparation in Legal Education

Emmeline Paulette Reeves

“*Teaching to the test.*” The phrase has become a largely pejorative label—synonymous with “bad teaching”—in virtually every academic setting. The notion is most often associated with “teaching a scripted, narrowed and dumbed-down curriculum concentrated on memorization of facts and the lower-level thinking skills needed to pass standardized tests.”<sup>1</sup>

This perception is no less true in the context of the traditional law school education, where the emphasis is on teaching students to “think like a lawyer” by the studying of cases and the vetting of legal principles through the time-honored Socratic dialogue in the classroom. The students’ mastery of the doctrine and legal analysis is then measured by a single cumulative exam at the end of the course. Even though the bar exam is a barrier to entry into the profession (at least to the typical career path in the practice of law), the notion of incorporating bar exam preparation into the core curricula of doctrinal courses like Contracts, or Property, or Civil Procedure is somewhat anathema among law professors.<sup>2</sup> Indeed, as one commentator recently noted, “It has always been one of the most insulting epithets that could be leveled against a law school that it is ‘teaching for the bar.’”<sup>3</sup>

**Emmeline Paulette Reeves** is Professor of Academic Success at the University of Richmond School of Law.

1. Gershon M. Ratner, *Why No Child Left Behind Act Needs to Be Restructured to Accomplish Its Goals and How to Do It*, 9 UDC/DCSL L. REV. 1, 16-17 (2007). See also Osamudia R. James, *Opt-Out Education: School Choice as Racial Subordination*, 99 IOWA L. REV. 1083, 1119 (2014) (referring to teaching to test as “problematic behavior” overemphasizing test scores “at the expense of substantive education”); Aaron J. Saiger, *Legislating Accountability: Standards, Sanctions and School District Reform*, 46 WM. & MARY L. REV. 1655, 1680 (2005) (characterizing teaching to test as “counterproductive” and “disruptive to broader educational goals and programs”).
2. See Deanell Reece Tacha, *No Law Student Left Behind*, 24 STAN. L. & POL’Y REV. 353, 359-60 (2013); see also Benjamin H. Barton, *The ABA, the Rules, and Professionalism: The Mechanics of Self-Defeat and a Call for a Return to the Ethical, Moral and Practical Approach of the Canons*, 83 N.C. L. REV. 411, 466-67 (2005) (criticizing the MPRE as incentivizing “teaching to the test” in professional ethics courses).
3. Tacha, *supra* note 2, at 359-60.

This essay is not a defense of the bar exam as the ultimate measure of a new lawyer's ability to think like a lawyer or to practice law. Much has been said and written about the merits, or (more often) the lack thereof,<sup>4</sup> of the modern-day bar exam. Rather than rehash this debate, this essay accepts the premise that the bar exam, with its positive<sup>5</sup> and negative<sup>6</sup> attributes, is a reality for the overwhelming majority of law school graduates, and thus, the question is whether law schools can actually enhance teaching by focusing on that looming reality. In other words, can some degree of "teaching to the test" prove to be a useful strategy both in achieving the aims of the traditional law school education and, at the same time, better preparing students for the bar exam and for their legal careers? In short, the emphatic conclusion of this essay is "yes."

This essay stops far short of advocating for a three-year bar exam course in place of a traditional law school education. It does not even argue for dedicating the final semester of law school to bar exam preparation. Rather, it suggests that the incorporation of elements of bar preparation into the law school curriculum actually can accomplish the dual objectives of, first, making law school education more efficient, *and*, second, enhancing the students' educational experience and grasp of the legal principles and skills necessary for passing the bar and, ultimately, becoming better lawyers.

Specifically, this essay urges law schools and law faculty to consider (1) increasing the emphasis on teaching certain "bar exam skills" (i.e., skills necessary for success on the bar exam) across the law school curriculum, including in doctrinal courses, and (2) deliberately nurturing "will"—motivation, persistence and resilience—in law students.

*Why Teach to the Test? Efficiency and Effectiveness.* It is, perhaps, stating the obvious to mention that the past decade has witnessed a seismic shift in the legal market. In a legal world still largely fueled by the billable hour, and in an economic climate in which businesses increasingly demand the most bang for their bucks, law firms and lawyers are under constant pressure to deliver

4. See Kristin Booth Glen, *Thinking Outside of the Bar Exam Box: A Proposal to "MacCrate" Entry into the Profession*, 23 PACE L. REV. 343, 349 (2003) (critiquing the bar exam as "misguided in terms of what it purports to do, and pernicious in its effects"); Andrea Curcio, et al., Soc'y of Am. Law Teachers, *Society of American Law Teachers Statement on the Bar Exam*, 52 J. LEGAL EDUC. 446 (2002); see also Linda Jellum & 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, 650-56 (2005).
5. See, e.g., Jellum & Reeves, *supra* note 4, at 650-51 (recounting justifications for the bar exam, such as protecting the public from incompetent attorneys).
6. For example, the bar exam overemphasizes memorization. Lorenzo A. Trujillo, *The Relationship between Law School and the Bar Exam: A Look at Assessment and Student Success*, 78 U. COLO. L. REV. 69, 78-79 (2007). The impact of the bar exam on minorities is also a very significant concern, although outside the scope of this essay. See, e.g., Alex M. Johnson, Jr., *Knots in the Pipeline for Prospective Lawyers of Color: The LSAT is Not the Problem and Affirmative Action is Not the Answer*, 24 STAN. L. & POL'Y REV. 379, 413 (2013) (addressing "the obstruction in the pipeline for the production of African-American lawyers created, in part, by the bar examination.").

efficient and effective legal services. Simply stated, lawyers must be adept at delivering more for less: the greatest value for the least cost (which often, in turn, means within the least amount of time). Indeed, “efficiency” and “effectiveness” are perhaps the two most oft-used words that law firm websites now use to describe why they are better than the competition.

Another painfully evident fact of the changing legal market is a tightening of the belt among law firms. Firms—even some of the giants—have been forced into unprecedented downsizing, or have fallen by the wayside altogether. For example, firms that historically saw incoming classes of 30 or 40 first-year lawyers each year now may offer jobs to a half-dozen entry-level lawyers.<sup>7</sup> As a consequence of the job market, law school applications and matriculation have dropped off precipitously.<sup>8</sup>

Just like law firms, law schools are feeling the pressure to respond to changes in the market. Law schools must deliver a superior product, striving to provide the best education possible and to equip students with the competitive advantage to make it in a legal world that demands efficiency and effectiveness. The latest push is for law schools to graduate new lawyers who are “practice-ready,” and in furtherance of that objective, the ABA recently approved new accreditation rules requiring law graduates to have at least six credits of experiential learning.<sup>9</sup>

In the effort to maximize efficiency and effectiveness, law schools should no longer think of skills and doctrine as separate silos, but should strive to merge the two. A hybrid approach that teaches doctrine and, at the same time, develops skills—both “bar exam skills” and the skillset necessary to succeed as lawyers—is *efficient*. It accomplishes more with less.

As further developed below, the “teaching to the test” model suggested in this essay includes, among other things, increasing formative assessment in doctrinal classes. Formative assessments give students feedback during the course, allowing students to improve their learning and performance in that course. Thus, formative assessment serves an instructional function, rather than simply an evaluative function.<sup>10</sup> With such increased opportunities to practice application of law to facts and to receive feedback on those efforts, students learn more doctrine.<sup>11</sup> And, with this same practice and feedback,

7. See generally RICHARD SUSSKIND, *TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* (2013) (discussing radical changes in private legal market); STEPHEN J. HARPER, *THE LAWYER BUBBLE* (2013) (same).

8. Martha Neil, *Law School Applications Down 37 Percent Since 2010; First-year Class Could Be Smallest in 40 Years*, A.B.A. J. (July 22, 2014, 8:25 PM), [http://www.abajournal.com/news/article/law\\_school\\_applications\\_down\\_37\\_percent\\_new\\_lsac\\_survey\\_shows\\_theyve\\_dropped](http://www.abajournal.com/news/article/law_school_applications_down_37_percent_new_lsac_survey_shows_theyve_dropped). Additionally, there are strong cries to reduce the cost of legal education.

9. Paul Caron, *ABA Approves Changes to Law School Accreditation Standards*, TAX PROF BLOG (Aug. 12, 2014, 1:17 PM), [http://taxprof.typepad.com/taxprof\\_blog/2014/08/aba-approves.html](http://taxprof.typepad.com/taxprof_blog/2014/08/aba-approves.html).

10. Carol Springer Sargent & Andrea A. Curcio, *Empirical Evidence that Formative Assessments Improve Final Exams*, 61 J. LEGAL EDUC. 379, 395 (2012).

11. *Id.* at 379.

students *also* improve their skills—issue spotting, legal reasoning and writing. In short, there is substantial potential synergy from teaching bar exam skills and doctrine in a single course.

Going beyond just “more with less,” a second justification for teaching to the test is effectiveness, or enhancement—law schools doing what they do *better*. The hybrid doctrine/skills model expands students’ opportunities to practice legal analysis and promotes active learning. Thus, professors can increase student engagement and improve ultimate learning outcomes by “teaching to the test,” specifically, by making bar exam skills a course goal and implementing frequent formative assessments of those skills.

*Teaching to the Test: Skill and Will.* If one were to endeavor to teach to the test—or to try to teach students to pass the bar exam—the first step might be to consider what is required to pass the test. Conversely, what are the impediments to applicants’ success? Setting aside external impediments (a lack of financial resources, familial responsibilities and so forth, which can be extremely significant for some students), and focusing on internal impediments, many, if not all, of the root causes of failure could be grouped into two categories: “skill” and “will.” Bar applicants fail because of a lack of skills, such as legal reasoning and writing. Logical and analytical reasoning skills are critical to passing the bar exam.<sup>12</sup> Applicants must be able to spot legal issues and solve problems, by applying the correct legal doctrines to the issues presented by a given fact pattern. Even among students with adequate issue-spotting and legal-analysis skills, however, some may still fail because of shortcomings in their ability to articulate, in writing, their analyses in a well-reasoned, straightforward and concise manner (i.e., writing skills).

Additionally, applicants fail because of a lack of will.<sup>13</sup> The term “will” can be defined broadly. It certainly includes lack of motivation, or drive, but it can also include other psychological impediments to success: lack of discipline, lack of resilience, lack of persistence.

*Skill.* Consider the skills necessary to succeed in law school, on the bar and, ultimately, in the practice of law. Perhaps in an ideal world, complete congruity would exist among the skills required for success in these three areas, but we are certainly not there yet.<sup>14</sup> Nevertheless, significant overlap does exist. By focusing on the areas of intersection, law schools can maximize efficiency,

12. The term “skills” in the context of legal education has almost become a term of art, meaning something other than traditional legal analysis and “thinking like a lawyer.” In this essay, however, the term “skills” is used to include issue-spotting and legal reasoning and analysis.
13. To be sure, some students may fail the bar because they simply have not committed enough legal doctrine to memory. This shortcoming, in turn, often may be attributable to deficits in skill (e.g., poor time-management skills) or will (insufficient motivation to commit the time to studying and preparation).
14. An oft-repeated criticism of the bar exam is that fails to test many of the skills necessary for success in law practice. See, e.g., Trujillo, *supra* note 6, at 77 (“The bar exam in its current form does not emphasize, or even test, such crucial topics as legal research, fact investigation, oral communication, counseling of clients, or negotiation.”).

keeping course goals realistic and attainable. Basic skills that fall into these areas of overlap include legal reasoning and analysis and writing.

Legal analysis broadly encompasses a number of “sub-skills.” First, students must learn, within the context of hypothetical fact scenarios and problems, how to distill the relevant facts and discern the relevant legal issues (“issue-spotting”). Students must hone in on the applicable statutory and/or common law. Students must be able to apply the law to the facts to reach the correct conclusion and articulate the reasoning to support their conclusion. These skills, of course, are not unique to Contracts, Torts or any other specific area of law.

In order to teach legal reasoning and analysis, traditional law school pedagogy focuses on the case method and Socratic dialogue in the classroom. Students are assigned one or more cases to study in anticipation of the upcoming class. Then, some unlucky soul is called upon to discuss the case and answer questions in front of his or her professor and peers. To be sure, this methodology teaches students “issue-spotting” and legal reasoning. Students learn the law and application of law to facts.

But, undeniably, there are significant limitations to the Socratic method. First, Socratic dialogue is oral. While oral communication skills are basic and necessary to lawyering, it is just as critical—if not more so—that lawyers be able to communicate through the written word. Depending upon a lawyer’s chosen area of practice, oral communication skills may or may not be essential to his or her specialty; but, regardless of that lawyer’s area of practice, the lawyer undoubtedly will spend much of his or her career preparing written communications. As William Prosser once said, “The average lawyer over the course of a lifetime does more writing than a novelist.”<sup>15</sup>

Although law schools certainly *test* written legal analysis on the typical law school final exam, testing a skill is not the same as teaching it. The most effective teaching of written analysis requires explicit instruction and formative assessment,<sup>16</sup> not simply summative assessment at the end of the course. Of course, all law schools require a course explicitly devoted to legal writing, and law graduates also must have a meaningful upper-level writing experience, but written legal analysis is important enough, both for practice and on the bar exam, to be addressed in doctrinal courses as well. To do so, doctrinal faculty should consider instructing their students on writing for the course and providing their students opportunities to practice written analysis.

15. Teresa Godwin Phelps, *Writing Strategies for Practicing Attorneys*, 23 GONZ. L. REV. 155, 155 (1988) (quoting William L. Prosser, *English As She Is Wrote*, in *ADVOCACY AND THE KING’S ENGLISH* 737, 738 (George Rossman ed., 1960)).

16. Formative assessment serves an instructional function, rather than simply an evaluative function. Formative assessments give students feedback during the course, allowing students to improve their learning and performance in that course. See generally Sargent & Curcio, *supra* note 10.



A second limitation of the Socratic method of teaching legal analysis is that it engages, at most, a single student at a time. All of the other students in the classroom are, at best, passive observers. Although there is certainly value in witnessing the dialogue, it is not the same as participating in it. Learners improve far more through personal participation and practice than through passive observation.

Taking into consideration the skills required for bar exam success and the shortcomings of the traditional law school pedagogy, this essay encourages *supplementing* (as opposed to supplanting) the Socratic method by incorporating problem-based instruction that requires all students to engage regularly in written analysis. Furthermore, law faculty should consider using bar exam-type essay questions as a platform. Requiring all students to write answers to hypotheticals converts the passive observers of the classroom dialogue to active participants.

The model, then, looks like this: Instruction. Practice. Feedback. Repeat. In addition to teaching doctrine, “instruction” incorporates emphasis on the principles of analysis and legal writing. For “practice,” each student writes out an answer to a bar exam-type question. Thus, *each* student applies doctrine, *each* student analyzes and *each* student writes. All students are engaged. Each student is given feedback on her knowledge of the doctrine, the strength of her analysis and the quality of her writing. Finally, in order for students to internalize the feedback and to improve their knowledge of the law and analysis and writing skills, the process is repeated.

Even if one were to agree with the suggestion that law student learning would benefit from increased opportunities to practice legal analysis, one nevertheless might question the use of bar exam-type questions to provide that practice. Admittedly, bar exam essay questions have limitations. For example, bar questions rarely, if ever, implicate policy issues. Bar exam essay questions also tend to require only a fairly surface-level analysis, as compared with traditional law school essay exams. Generally, bar exam essay questions do, however, test issue-spotting, rule knowledge and fact application. Although such questions may not fully replicate all of a doctrinal professor’s learning objectives for her students, as long as bar exam questions mirror at least part of what she expects from them, the use of bar exam-type questions for formative assessment is productive, both for mastering the material in that given course and for preparing for the bar exam.

The nature of the feedback is also important. As educational research has established, not all feedback is equally helpful.<sup>17</sup> The most effective feedback provides an explanation for the answer, rather than simply the correct answer, and also includes information on how to improve.<sup>18</sup> Further, as discussed in

17. *Id.* at 381.

18. *Id.* at 381-82.

more depth below, the tone of the feedback may influence—either positively or negatively—the student’s non-cognitive skills.<sup>19</sup>

Perhaps the greatest objections to incorporating more practice with written legal analysis and more formative assessment into the traditional law school classroom are the opportunity costs in terms of course coverage and the demand on professor time. These concerns are not insignificant. Law professors are under tremendous time constraints to cover substantive doctrine within the finite limitations of a school semester. A doctrinal professor might resist adding multiple formative assessments to her syllabus on the grounds that course coverage would suffer as a result. There are, however, several possible solutions. The professor could require students to complete the assessments outside of class. Alternatively, the professor could employ, at least in small part, the teaching technique of “flipping” the classroom.<sup>20</sup> In a flipped classroom, the instructor moves some instruction that traditionally would be included in class time outside of class. So, for example, the instructor might prerecord a PowerPoint lecture on a particular topic and require the students to watch the lecture on their own time. The instructor thereby frees up some valuable class time for active learning exercises, such as those suggested in this essay.

In addition to classroom time, though, is the concern about the demand on the professor’s time. Law faculty, particularly those pre-tenure, face substantial pressure to engage in scholarly activities outside of teaching. Developing practice questions is time-consuming. Reviewing written answers and providing meaningful feedback to students can be tremendously time-consuming.

Thus, an efficient method for “grading” the written product—providing feedback—is essential. After initial rounds of instruction and practice, one approach to conserving faculty time and resources is for the law professor to provide a grading rubric requiring the students to self-assess or peer-assess. Such a technique likely would achieve the collateral benefit of pushing students toward becoming better self-regulated learners<sup>21</sup>—in other words, taking more responsibility for their own learning and skill development. Additionally, some research suggests that this type of more neutral feedback, in the form of model answers and grading rubrics, actually may be a more effective approach for

19. See *infra* notes 25-29 for a discussion of nurturing “grit” in students. For a thorough and thoughtful discussion of the relationship between feedback and law student psychological well-being and motivation, see Paula J. Manning, *Understanding the Impact of Inadequate Feedback: A Means to Reduce Law Student Psychological Distress, Increase Motivation, and Improve Learning Outcomes*, 43 CUMB. L. REV. 225 (2013).
20. Flipping the classroom is a hot topic in law schools and in the field of education more broadly. It was one of topics explored at the LegalED’s 2014 “Igniting Legal Education” conference. See LEGALED, “Igniting Law Teaching” a TEDx-Styled Conference, <http://legaledweb.com/schedule-igniting-law-teaching-april-4th/> (last visited Jan. 15, 2015); see also Angela Upchurch, *Optimizing the Law School Classroom Through the “Flipped” Classroom Model*, 20 LAW TCHR. 58 (2013).
21. See generally Michael Hunter Schwartz, *Teaching Law Students to be Self-Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447 (2003).

improving student performance than individualized feedback, with specific comments about the student's performance.<sup>22</sup>

Another possible solution is to include multiple-choice questions as part of the formative assessment. Of course, substituting multiple-choice questions does not engage the students in the practice and development of writing skills, but it does have the benefit of engaging the entire class and promoting active learning. Each student practices legal analysis. Each student receives feedback.

In short, by employing a problem-based methodology and requiring students to write out their analysis, law professors can accomplish much: engaging the entire class, stimulating active learning, and developing analytical and writing skills. The result may be improved doctrinal mastery,<sup>23</sup> skills refinement and encouraging students to become lifelong learners. Law schools end up doing more with less.<sup>24</sup> It is efficient and effective.

*Will.* Turning back to the two categories of impediments to student success, all of the skill-based training in the world will not produce a successful student if that student possesses insufficient *will*. This piece of the puzzle is, perhaps, the more difficult and the more intriguing part.

Focusing on the psychological attributes necessary for success, the overlap between law school, the bar and practice may be even greater. Each of these undertakings requires a certain amount of motivation, resilience and persistence. Dr. Angela Lee Duckworth has labeled similar psychological traits as "grit."<sup>25</sup> She defines "grit" as "perseverance and passion for long-term goals," noting that "[g]rit entails working strenuously toward challenges, maintaining effort and interest over years despite failure, adversity, and plateaus in progress."<sup>26</sup> By studying the element of "grit" in a number of different cohorts, from first-year West Point cadets to contestants in the National Spelling Bee, Dr. Duckworth concludes that, across several different

22. Sargent & Curcio, *supra* note 10, at 382. The authors explain that individualized feedback, whether positive or negative, focuses the student's attention on herself, rather than the task, and thereby undermines learning. In their study of the impact of formative assessment on law student performance, most of the feedback consisted of model answers, grading rubrics and self-reflection exercises. *Id.* at 385 n. 4.

23. *Id.* at 395 (reporting on empirical study using regression analysis to measure the impact of formative assessment on student performance on cumulative final exam and concluding that, for approximately 70 percent of class, formative assessments resulted in significant improvement).

24. Law faculty may take issue with this suggestion that law schools would be doing more with "less," as increasing formative assessment would likely require more faculty time devoted to teaching each course. But just as practicing lawyers are under continual pressure to conform to the changing economic times, law school educators must remain open and creative to rethinking approaches to the traditional law school education. Law schools must continually strive to deliver a superior product—more for less—in an ever-increasing competitive market.

25. See Angela L. Duckworth et al., *Grit: Perseverance and Passion for Long Term Goals*, 92 J. PERSONALITY & SOC. PSYCHOL. 1087 (2007).

26. *Id.* at 1087-88.

studies, grit better accounted for success than IQ.<sup>27</sup> As Dr. Duckworth has recognized, *how* to instill grit in students is still largely an open question.<sup>28</sup> She points, however, to a few possibilities, including growth mindset and optimistic explanatory style.<sup>29</sup>

Growth mindset is the view that intelligence is not fixed. Research shows that students who believe that aptitude and intelligence are mutable are better students than those who believe people are born with a finite amount of intelligence. Dr. Carol Dweck, a leading researcher on the relationship between mindset, or one's attitude about ability, and achievement has found that:

In a fixed mindset students believe their basic abilities, their intelligence, their talents, are just fixed traits. They have a certain amount and that's that.... In a growth mindset students understand that their talents and abilities can be developed through effort, good teaching and persistence. They don't necessarily think everyone's the same or anyone can be Einstein, but they believe everyone can get smarter if they work at it.<sup>30</sup>

Explanatory style—or attribution style—refers to the way people explain the events in their lives. Psychologists categorize explanatory style as either optimistic or pessimistic. Individuals with an optimistic explanatory style attribute achievements and positive events to internal causes (their ability, their hard work) and they see these positive events as harbingers of more good things to come. They view setbacks as temporary flukes. On the other hand, those with a pessimistic explanatory style view achievements with skepticism—here, the positive development is the temporary fluke—and they ascribe negative events to internal causes (“I failed because of my shortcomings”).<sup>31</sup>

These psychological traits—mindset and explanatory style—have important implications for legal education and bar passage, not to mention the practice of law. Pessimists are much more likely than optimists to give up in the face of adversity. Similarly, students with fixed mindset avoid challenges and decline

27. For a thought-provoking discussion questioning the desirability of grit in some situations, see Alfie Kohn, *The Downside of “Grit”: What Really Happens When Kids are Pushed to be More Persistent*, ALFIE KOHN (April 6, 2014), <http://www.alfiekohn.org/miscellaneous/grit.htm>.
28. Angela Duckworth, *The Key to Success? Grit*, TED (May 2013), [http://www.ted.com/talks/angela\\_lee\\_duckworth\\_the\\_key\\_to\\_success\\_grit.html](http://www.ted.com/talks/angela_lee_duckworth_the_key_to_success_grit.html); Angela Lec Duckworth & Lauren Eskreis-Winkler, *True Grit*, 26 OBSERVER (April 2013), <http://www.psychologicalscience.org/index.php/publications/observer/2013/april13/true-grit.html>.
29. Duckworth, *supra* note 28 (growth mindset); Duckworth & Eskreis-Winkler, *supra* note 28 (optimistic explanatory style).
30. James Morehead, *Stanford University's Carol Dweck on the Growth Mindset and Education*, ONEDUBLIN.ORG (June 19, 2012), <http://onedublin.org/2012/06/19/stanford-universitys-carol-dweck-on-the-growth-mindset-and-education/>.
31. See, e.g., Martin E.P. Seligman, et al., *Why Lawyers are Unhappy*, 23 CARDOZO L. REV. 33, 40 (2001).

remedial assistance.<sup>32</sup> Students who avoid challenges (e.g., difficult courses), give up easily, and fail to take advantage of extra help (e.g., academic support and bar exam support). These are often the students that barely graduate from law school and then go on to fail the bar.<sup>33</sup>

Additionally, law school may actually foster the fixed mindset belief that intelligence is finite and pessimistic explanatory style. Law student depression and relative lack of well-being is well-documented. One possible cause of such psychological distress may be law school institutions that promote fixed mindset and pessimism.<sup>34</sup>

How can law professors nurture grit in students? How can a growth mindset and optimism be fostered? The answers to these questions may require some level of introspection and self-critical analysis on the part of the individual professor. “We teach who we are.”<sup>35</sup> A teacher’s attitudes toward students’ ability to learn and improve influence her teaching. Accordingly, professors must believe in their students. They must believe that, with effort, students will improve. Thus, if law teachers can adopt a true growth mindset and an optimistic explanatory style, perhaps that will go a long way toward endowing law students with the will—or grit—to succeed in law school, on the bar exam, and in practice.

Another way that law professors can motivate their students is by making the curriculum relevant to the students’ lives and goals. Adults learn more effectively when they appreciate the direct connection between the material they are learning and their own experiences. By including some bar exam-type questions in the curriculum of doctrinal classes, the professor explicitly ties the substantive material and the skills to a reality of the student’s life, i.e., the bar exam. Additionally, making connections whenever possible between the learning objectives of the law school course and the realities of law practice—both in terms of content and tasks—further strengthens that life-learning connection.

32. Carol Dweck studied the relationship between mindset and willingness to take advantage of extra help among incoming students at the University of Hong Kong. Although all classes and textbooks were in English, students with a fixed mindset were much less likely to participate in remedial English courses—even though such a course would clearly be beneficial to their academic endeavors—because of a fear of appearing inadequate. See generally CAROL DWECK, *MINDSET: THE NEW PSYCHOLOGY OF SUCCESS* (2006).
33. An oft-cited study at the University of Virginia found a surprising correlation between pessimism and high achievement in law students. One explanation of this result is that the type of pessimism observed in law students is fundamentally different from the type of pessimism described more generally in the psychological literature. Successful law students (and perhaps lawyers) manage to be cautiously restrained in their expectations while maintaining high motivation, whereas classic pessimists have more of a defeatist, “why bother” attitude and correspondingly low motivation and effort. Corie Rosen Felder, *The Accidental Optimist*, 21 VA. J. SOC. POL’Y & L. 63, 86-87 (2014).
34. Corie Rosen, *The Method and the Message*, 12 NEV. L.J. 160, 176-81 (2011).
35. PARKER PALMER, *THE COURAGE TO TEACH* xi (1998).

Additionally, tapping into the students' goals of bar passage and successful law practice may help foster grit through the focus on *long-term* objectives. "Grit overlaps with achievement aspects of conscientiousness but differs in its emphasis on long-term stamina rather than short-term intensity."<sup>36</sup> For a first-year law student in particular, a professor's explicit acknowledgment for entry into the profession and successful practice as ultimate goals may help nurture grit.

Importantly, this essay is not suggesting coddling students or "dumbing down" the material. To the contrary, students perform best when teachers have high, although attainable, expectations, and when they are given opportunities for success—in other words, a real chance to meet those high expectations.<sup>37</sup> Additionally, the bar exam is challenging. Addressing the question of how to improve law graduates' performance on the bar exam, one commentator recently suggested that requiring students to take *rigorous* courses may improve their performance on the bar.<sup>38</sup> "The key to bar passage [may be] sustained effort throughout law school resulting in consistent solid performance in core/bar-tested subjects."<sup>39</sup> Thus, perhaps the gold standard should be challenging courses taught by faculty who provide students with multiple opportunities to practice written analysis and provide them with meaningful feedback.

### Conclusion

This essay's premise—that teaching to the test can enhance traditional law school teaching—may seem a bit radical. But the ultimate suggestions are actually much more modest. The skills—both those necessary to pass the bar exam and those required to make students better lawyers in practice—can be incorporated into doctrinal courses through a problem-based teaching methodology by simply (1) using bar exam-type questions as a platform, and (2) providing meaningful feedback to students on these practice exercises. Such a methodology, when employed with a message of growth mindset and optimism, can also go a long way in fostering "grit"—the motivation and drive—to succeed in law school, on the bar exam and beyond.

The case for "teaching to the test" should not be overstated. There is no doubt that the bar exam is a mile wide but only an inch deep. Many things go on in law school classrooms that are richer and more valuable than what happens on the bar exam. But if law faculty think about what students need to succeed on the bar exam—both hard skills, such as analytical and writing skill, and will, or grit—and strive to teach those skills and to nurture the belief that aptitude is not fixed, but rather can be increased through effort and good strategies, then teaching to the test just might enhance law school teaching.

36. Duckworth et al., *supra* note 25, at 1089.

37. See Schwartz, *supra* note 21.

38. David Frakt, *Improving Bar Passage Rates for At-risk Students: Learning from Western State*, THE FACULTY LOUNGE (Aug. 21, 2014, 9:22 PM), <http://www.thefacultylounge.org/2014/08/improving-bar-passage-rates-for-at-risk-students-learning-from-western-state.html>.

39. *Id.*