

Dear Colleagues in Law:

I am taking the unusual step of writing to all of you, this summer's bartakers as well as those in academe who support them, in a single communication that will, I hope, be continuously forwarded to the point where the message contained here is received by all bartakers. If, along its way, the letter attracts some sponsors, to accelerate its dissemination or amplify its message, so much the better.

In brief, the best kept secret in California bar prep is how to increase the pass rate.

The answer for the past thirty years is that you increase our applicant pool's proficiency on the MBE.

If we ALL subscribe to this objective the resultant increase in the pass rate from such a global effort could well amount to 10-20 points or more, meaning a jump from 43% to 62% (which would merely restore the pass rate to the levels seen in 2008 and, before that, in 1997). This increase would translate into California awarding *over fifteen hundred additional licenses* this November (even assuming a slight drop in the number of general applicants). Allow me to explain.

Since 1987, the California Committee of Bar Examiners has hitched its pass-rate wagon to the MBE performance of its applicant pool thus: once the National Conference of Bar Examiners has equated the degree of difficulty of the present MBE to past administrations of the MBE and determined an appropriate scaling for all present applicants nationwide, our Committee uses its slice of this data to see how well its present general bar applicant pool performed on this MBE in relation to past pools. (BTW, that's why our Committee can, and invariably does, state how well California applicants performed on each MBE in relation to the rest of the nation.) If the present California applicant pool performs better on this MBE than preceding applicant pools did in the past, the California Examiners presume this same applicant pool should also perform equally well on the written section. The grading is not changed—since grading merely rank-orders the individual performances of the pool members on the written section. Then the spread of subjective written section scores are matched, that is, scaled, to the scores achieved on the objective MBE section.

In essence, the *better* our applicant pool – as a whole – scores on the MBE, the *higher* its collective scoring will be for the written section – and the *greater* the number of bar passers. On the flip side, which I have had to state and restate to successive waves of conspiracy-minded applicants, the written section does not and cannot dictate the pass rate.

The bottom line as I like to tell my students is thus: it is the MBE which determines HOW MANY will pass the bar; the written section then determines WHO will pass.

In light of this formulation you might ask why MBE practice is not regularly, if not enthusiastically, emphasized by any and every party involved in bar preparation. I can only deduce that such is not the case due to a shared blind spot, which is the product of a flawed group-think dynamic. In this instance, bar review shares the same foibles and close-mindedness that most students and many schools have

adopted, namely, that passing the bar exam is first and foremost a zero-sum game wherein my (students') opportunity to pass comes only at the expense of taking or keeping that opportunity from another (or all others).

But that is decidedly not the case; nor should we approach the entire exam with that solo attitude. Indeed, it is this very attitude that costs us well over a thousand bar licenses each year. And for you who have labored for years to gain admission to this exam, and for you who have toiled for years to advance your bartakers to this point in their nascent careers, I don't have to spell out the gravity of this matter.

True, the written section is competitive, and purposely exclusive. BUT the MBE is – or should be seen as – collaborative and helpfully inclusive. **Simply put, this means that it is in every reader's best interest for every bar applicant to do as well as possible on the MBE section of the exam.** There is no competitive angle to work when your answer sheets to an objective test are scored by a mechanical scanner. Forget zero-sum; a collaboration of individual effort that contributes to maximized group success is the prime directive.

In this respect the bar examination is like The Hunger Games of literary and cinematic fame. Before the mortal combatants kill their last remaining rival they form alliances to increase their individual odds of eventual success. Likewise, on the bar exam, the entire applicant population must share their MBE advice (e.g., by forwarding this email to classmates and your deans) and encourage one another to produce their best collective MBE performance. Thereafter, the written section will be allowed to determine who qualifies among *a larger lot of winners*. That's WIN-WIN, my friends.

If you, gentle readers, were to shed your misplaced sense of competitiveness, then two out of three applicants could pass instead of less than one in two. Okay, point made.

Assuming you are ready to progress, the next step is to identify the obstacles to achieving our goal of maximizing the pass rate via the MBE. There are three: first, most bar applicants take one nationwide review program; second, many applicants – mainly repeaters, but many first-timers as well – can no longer afford to take a general review program; third, all the programs are enabling – and promoting – the online reception of service.

First, let's tackle the elephant in the room: BarBri. Unfortunately, BarBri, as recently deployed is not greater than the sum of its parts (those being its impressive stable of top legal educators and lecturers); it is lesser due to a mishmash of schedules and an amalgam of course features that operate at cross purposes. For instance, this summer, the BarBri online schedule followed by *most* schools inserts Wills and Trusts study in the middle of the MBE sequence. Suffice to write, BarBri is undercut by its own family of affiliated upsell courses and school-specific services, lecturers and schedules, wherein BarBri appears to be offering more training, guidance and/or feedback than the general course.

Other programs have been similarly guilty. To any deans reading this, you should be able to dictate that your students be provided any upsell courses/workshops available online free of charge as a condition of

the prep program being on campus. Not only are your students personally disadvantaged by having to pay additional hundreds of dollars on top of the thousands for the main course, they are harmed when students without this additional MBE training fail to perform to their maximum – thereby lowering the pass rate and your students’ chances of passing this time.

Each successive class of bartakers succumb to a complacency in their MBE study when they buy into the hype that meaningful, computerized MBE performance comparisons are readily available to measure personal levels of preparedness. This feature is bogus in so many ways that it’s hard to know where to begin. The MBE is not a competitive test; the scanner doesn’t care how you perform in relation to anyone else – it grades your scoresheet just the same. Success on the MBE is you outperforming your LSAT predictor. Besides, California requires the second highest MBE standard in the country (Delaware is one point higher.); so, if you are not well ahead of the national curve, you are not in the California pro league. Conversely, for those bartakers in the 90% pass-rate states, working up to California levels is not necessary. In short, the only comparison worth your time is whether you are now getting right the questions you got wrong two weeks ago (see my MBE Tipsheet for application).

A second instance: when BarBri assigns the reading of a particular subject, it does just/only that: “Read Con Law outline”. In what world do you expect someone to review an entire subject in one afternoon? Why not provide the students with a suggested breakdown of the subject into reading sessions that would allow for better attention and retention? For those students who are text-oriented, read 10-15 pages of the Conviser per study period (morning, afternoon, evening) in sufficient advance of the pertinent lecture(s).

Which leads me to a third, and final, instance regarding the Paced Program. To many students it is simply overwhelming without further advice (which, I guess, is included when a BarBri attendee pays for staff tutoring). To assist students in structuring their time without being overly ‘paced,’ I have attached a Suggested Daily Study Plan to help regimentize their days.

Second. For students who can no longer afford a bar review program, the first priority is to develop a schedule. I have posted a Study Sequence at [MBEInitiative.com](http://MBEInitiative.com). It will address substantive review: order and duration. Late starters can still adopt it by proportionately reducing the first few weeks of review progress. Despite the short shelf life of the front end, the back end of the Sequence can be adapted without more to accommodate several bar review schedules.

Next, you must secure some additional MBE materials. Emanuel’s Strategy & Tactics comes to mind; check *craigslist* for materials as well. Amazon will offer several choices. And the NCBE has four different 100-question compilations (with annotated answers) for sale. Repeaters, the key to improving your MBE score on this next round is to use/supplement with different materials to keep you sharp and avoid dulling your skills with repetitive look-alike questions. (Even first-timers should mix up your question sources as well.)

Obstacle Three. The shift to online review is fraught with danger for the students who cannot maintain disciplined adherence to a schedule; slacking off online is an invitation to fall behind – and stay behind. July, which is typically when you can shift gears to memorize and practice, then becomes a harried round of catch-up. (BTW, the biggest canard in bar review is that you will have the last two weeks free in order to memorize. Truth be told, the last two weeks should see you shifting to practice, practice, practice. In short, start your memorization now – with a dozen-plus rule sets each day.)

For the past six years that BarBri has made all its classes available online, some of its review sites become ghost towns by mid-to-late June. Again, if you implement an MBE practice regimen (3x15) you can let the MBE practice go on autopilot, like a computer subroutine that runs in the background.

Academics, please encourage your charges to implement more, and better, MBE practice this bar season. You have LSAT histories to guide your recommendations.

In a nutshell, big bar review is aimed at a target audience that resides in the top quartile at a school that has a high LSAT-cum-GPA admissions range, i.e., students that are hard-wired to study long hours on top of being good objective test-takers. Beyond this demographic the pacing is daunting and the opportunities to practice writing essays and PTs, let alone follow a daily MBE regimen, dwindle.

I am not saying that any national program is a bad course; I am saying that they could be better. In the meantime, make the program work for you. Here's a K.I.S.S. bit of advice: do 45 MBEs a day in 3 sets of 15 – as first prep exercise of the day; first exercise after lunch; and the last exercise of the day. From my ongoing survey of repeaters this practice easily eclipses the numbers they typically were assigned, or in fact accomplished, during prior bar-prep seasons. That's a starting point; 14 more suggestions are attached.

To ensure that the goal of this missive is realized I need all your help in spreading its message of encouraging all bartakers to diligently pursue more collaborative, more effective and mutually supportive MBE practice. I believe that a quick review of the available literature – or consultation with knowledgeable staff – will confirm that this message is neither naïve nor unfounded. Of course, an expert or blogger with national recognition could more readily push this initiative across the thresholds of our legal academies and into the thousands of carrels they house. I welcome your advocacy. This missive is merely the spark; it needs your breath to bring the fire full flame.

Remember, this letter will probably have to land in 10,000 inboxes – and, for some, more than once.

Never lose sight of our shared, ultimate goal: a 1.5 thousand more California Attorney Licenses awarded this November. May one be yours, and may dozens be claimed by your classmates. Every license is a win for our profession!

Academics, share this message, its attachments, and your own encouragement with your graduates. And ensure that your repeaters are included in any outreach; they need added support to finally close this

chapter in their careers.

Bartakers, read the attachments and incorporate as many of the suggestions as you find apt, and utilize as many of the tools as you find necessary. Find your own routine for successful MBE practice and put it on autopilot. And when you sit in your bar class tomorrow, alert your mates to this initiative and enlist their efforts. And reach out to any repeaters you run across at the library or coffee shop.

Everyone: once you have read the attached suggestions, I trust you will appreciate the mission and recognize the practicality of its advice. After all, this is our job, and its execution is, at its core, the heart of our ethos. Whether your motivation be professional or collegial, or both: please pass this letter forward. You may have my thanks in advance, and, come November, the priceless gratitude of a thousand new attorneys.

In anticipation that we will be collaborating this summer, and in doing so, ensuring the happiness of our greatest number this fall, I have the privilege to be your colleague,

John B. Holtz, Esq.

#### Post Scripts

1. Since all jurisdictions that use the MBE also scale their written component scores to the MBE with the exception of Kentucky, Oklahoma, South Carolina and Wyoming (source: Susan Case, then Director of Testing at NCBE) this message has similar value to the bartakers and their supporters in all but four MBE states. Therefore, please feel free to forward this email to your colleagues nationwide. Maybe we can save several thousand bartakers the agony of having to repeat the exam through no fault of their own.
2. In the event that the MBE practice attachments become detached, or you wish to draft your own personalized message, I have created a website, [MBEInitiative.com](http://MBEInitiative.com), to serve as a repository for these rudimentary guides and worksheets, which, again, are free to all individual bartakers and their academic backers.
3. I offer a mea culpa to those who find this missive strident or unnecessarily critical. My intent throughout was to strike a stark contrast – perhaps inartfully – between business-as-usual and what might be achievable in an enlightened world of bar preparation.

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