

Curriculum Design and Bar Passage: New York Law School's Experience

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Introduction

From one decade to the next, New York Law School graduates taking the New York State bar exam for the first time passed at a rate well below the statewide average. In recent years, however, established patterns were shattered. Between 2005 and 2008, the school's bar pass rate jumped more than twenty points. The Summer 2008 pass rate of 93.6 percent exceeded the statewide average by more than ten points. Improvement in the third and fourth quartiles was stunning. For example, students in the bottom quartile improved their pass rate from 19.4 percent in 2003 to 83.5 percent in 2008. This article discusses how we achieved such remarkable success, and, along the way, grappled with the painful problem of low-performing students by not merely improving their test scores but also taking tough steps to address their intellectual rigor and capacity to practice law.

In 1997, the school began in earnest to address our perennially low bar pass rate. These efforts culminated in 2003 with the full implementation of the Comprehensive Curriculum Program (Program). Students participating in the Program take intensive Legal Method courses in their second and final semesters. The second semester course, called "Principles of Legal Analysis" (Principles), is designed to improve basic analytical skills necessary for subsequent learning—including how to state legal rules accurately, how to identify and analyze legally relevant facts, how to identify ambiguity in legal rules and make arguments to resolve ambiguity, and how to apply legal rules to a set of facts. Students who take Principles and whose cumulative grade point average (GPA) places them in the bottom quartile of their section at the end of the first year must fulfill the remaining requirements of the Program,

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called the “Guided Curriculum.”¹ Students in the bottom 10 percent of the day class at the end of the first year must take fewer credits each semester and extend their law study for an additional semester.²

In their final semester, all Program students take a required four-credit course called “Consolidated Legal Analysis” (Consolidated Analysis). It revisits many of the basic analytical skills addressed in Principles. Students analyze problems developed from materials covered in core curricular courses and write answers to questions requiring application of these doctrines to varied fact patterns, as required on the bar. We require these Legal Method “bookends” based on the hypothesis that students ranked in the bottom of the class have not adequately internalized the components and basic structures of legal analysis. Principles intervenes to help develop those skills when first semester grades identify the students who most need assistance so that they can learn more effectively during their remaining time in law school. Consolidated Analysis, as the name suggests, is designed to consolidate weaker students’ grasp of fundamental analytical skills just before they graduate.

Between the Legal Method bookends, Program students must take the remaining courses required of all J.D. students and a substantial array of additional required courses. These include courses covering material heavily tested on the bar exam, as well as conceptually challenging courses that will help develop students’ analytical capabilities. We establish these additional requirements to ensure these students do not avoid challenging courses necessary to the development of well-rounded, competent law graduates. Students also are required to choose from lists of carefully selected doctrinal and skills electives. The doctrinal electives address core subjects; the skills electives help develop competence in written and oral analysis and advocacy. Finally, students may choose a few credits from a list of authorized electives chosen to provide a chance to pursue their interests within a framework of guided judgment. This Program evolved over time and many steps were needed to put it fully in place, as detailed in the first three parts of this article.

Part I describes early efforts to address our low bar pass rate. Part II reviews the development of the Program and related reforms to provide a sense of the full debate underlying the difficult choices made by faculty and administration in designing it. Part III describes the Program’s implementation, and Part IV presents the results.

1. Similarly ranked evening students take Principles in their third semester; those ranked in the bottom quartile at the end of the third semester are subject to the remaining requirements of the Guided Curriculum.
2. Evening students ranked in the bottom decile at the end of their fourth semester are not required to stretch their program out over an additional semester. Thus, the final semester is the sixth semester for full-time Program students, the seventh semester for Extended Program students, and the eighth semester for evening students.

I. The Beginnings

Over the years, New York Law School students passed the New York State bar exam at a rate significantly lower than the statewide average. Between 1991 and 1996, for example, the school's pass rate for first-time takers ranged from 3.3 percent to 10.8 percent below the statewide average. The average shortfall for this six-year period was 7.3 percent. The average school pass rate during this period was 74 percent. The performance of students in the bottom quartile (less than 30 percent passed) and the bottom decile (approximately 10 percent passed) was of particular and ongoing concern.

In 1997, Dean Harry Wellington initiated a concerted effort to improve these numbers.³ He convened a committee chaired by Professor Randolph Jonakait to study the problem and suggest solutions. Mindful of the adage about not reinventing the wheel, the committee reviewed the literature. An important article by Kristine S. Knaplund and Richard H. Sander of the UCLA School of Law made clear we would not find easy answers.⁴ While many law schools offered academic support programs, virtually none of the programs had been rigorously evaluated. Knaplund and Sander found that “[t]he existing literature evaluating academic support in law schools suffers from so many methodological flaws that it offers no convincing evidence of either success or failure.”⁵ The authors used “more or less systematic methods”⁶ for testing the many support programs at UCLA.⁷ A course taught in the spring of students’ first year had the most success in improving student performance, both short-term and long-term. Several versions of the course were taught by different professors. The most successful version had a moderate positive effect on student grades in the semester it was offered and an even stronger positive effect on student grades in the second and third years.⁸

At first blush, offering a course modeled on UCLA’s most successful first-spring course seemed a good idea. Committee members, however, voiced many concerns. First, did we have the resources to offer the course?⁹ Second,

3. New York Law School had tried to improve student performance in law school courses and on the bar exam. We offered a summer program to give students with lower entry credentials a head start, tutorials, and a voluntary bar preparation program during the final semester of law school. While worthwhile, these programs were piecemeal and were not evaluated to determine whether they improved student performance.
4. Kristine S. Knaplund & Richard H. Sander, *The Art and Science of Academic Support*, 45 *J. Legal Educ.* 157 (1995).
5. *Id.* at 159.
6. *Id.*
7. In 1995, UCLA offered seven different academic support programs, including a pre-law school summer program, weekly review sessions conducted by upper-class students, first-year exam workshops, a “first-spring” course, a course for students on academic probation, faculty-led study groups, and one-on-one faculty tutoring. *Id.* at 169.
8. *Id.* at 174-79.
9. New York Law School student performance in law school and on the bar exam suggested that many students needed such a course. In the late 1990s, the school admitted approximately

was the UCLA format transferable to our school? Would the course have the same positive effect here that it had there?¹⁰ Third, would the UCLA course fit our curriculum?¹¹

The committee proceeded cautiously. We decided to teach a first spring course to the bottom forty students (by first semester grades) in one day section as an experiment.¹² Knaplund and Sander stressed the need for a control group to gather meaningful data: “To determine how effective any program is, one must compare people who have taken the program with people who have not. An ideal control group should be identical to the test group in every way except for program participation.”¹³ Our students are assigned to the first-year day sections at random, stratified by LSAT, undergraduate grade point average, gender and ethnicity. Thus, the bottom forty students in the other two day sections could serve as good control groups.¹⁴

The committee sought to incorporate in our new course, called “Principles of Legal Analysis,” the elements that Knaplund and Sander believed were the most important to the success of the UCLA course.¹⁵ The course was to be three credits and taught by a full-time professor in two relatively small sections of twenty students each.¹⁶ The course would focus on fundamental skills and concepts essential to analyzing the legal significance of facts (identifying and stating applicable rules, identifying relevant facts, identifying and resolving

480 students each year divided into three day sections and one evening section. Offering the course to a substantial portion of the first-year class would require several teachers.

10. Knaplund and Sander repeatedly cautioned that their results were “bounded by the experience of a single institution” with a “distinct culture, student body, and curriculum.” Knaplund & Sander, *supra* note 4, at 159, 202. Measured by the LSAT, UCLA students are much stronger than New York Law School students. For example, the median 1995 LSAT score for UCLA’s entering class was 162; the median LSAT for NYLS was 154. U.S. News & World Report, March 18, 1996, at 82, 86.
11. Professor Knaplund’s detailed description of the course revealed that it was used as a vehicle for UCLA’s first-year moot court program in addition to offering academic support. Knaplund & Sander, *supra* note 4, at 229 (App. B). At New York Law School, moot court is a part of the second semester Legal Writing course. Other practical problems abounded. If some students took this course, what would they give up? When would they make up the missed course? If the students took the missed course as a group, how would that affect our grade curve?
12. Forty students constituted approximately one-third of a New York Law School first-year day section at that time. Section size has been reduced to approximately 110 students, and the bottom one-third of each day section currently are enrolled in this course.
13. Knaplund & Sander *supra* note 4, at 163.
14. We decided to make the course required for the experimental section. Knaplund and Sander rightly note that it is difficult to develop good control groups when program participation is partly or wholly voluntary. *Id.*
15. Knaplund & Sander, *supra* note 4, at 202–204.
16. After an extensive search, the faculty appointed Prof. Elaine P. Mills as director of the Academic Skills Program to teach Principles; she has since retired from that position.

ambiguities in the meaning of the legal rules, and applying those rules to the facts) and presenting that analysis in writing. The course also would focus on exercises tied to doctrinal courses taken by the students during the spring semester.¹⁷ The professor would give the students repeated practice in applying the skills they were taught coupled with timely verbal and written feedback. Professor Kris Franklin, who has taught Principles for many years, describes the course as follows:

[It] is an intense course. The hallmark...is drill-repeated practice of legal analysis under time pressure. It entails tackling an essay exam every week, all semester. Professors work with those who teach core classes, so students see an overlap in the material they are learning. It is a commitment the entire faculty has made. These weekly drills give professors an opportunity to provide personal attention. They pinpoint where the students need the most help and what they need to build on so they can do consistently better work.

After much discussion, the Committee decided not to reveal how students were chosen for the experimental section. Those supporting the decision argued that revealing how students were chosen would stigmatize them and invade their privacy. Those opposed predicted that secrecy would create uncertainty and anger. Students in the experimental section would resent being wrenched from their regular program to take a remedial course. Secrecy would focus more rather than less attention on Principles, and most students eventually would figure out how the experimental section was chosen. An attempt at secrecy might make students feel more embarrassed, as if they had something to hide. The secrecy policy ultimately caused many of the problems its opponents predicted and the policy was scrapped in favor of full disclosure when the Comprehensive Curriculum Program was introduced.¹⁸

Principles was taught for five semesters, beginning in Spring, 1999. It was taught to an experimental first year day section in Spring 1999, 2000, and 2001.¹⁹ In January 1999, we examined the LSAT scores and the first fall GPAs of the bottom forty students in the experimental and control sections to verify, at the outset of the study, that the sections were similar with respect to these measures. Analysis of variance procedures showed no significant differences among the sections.²⁰ The results at the end of the Spring 1999 semester were encouraging. As shown in Table 1, the mean GPA of the experimental section was 2.51; the mean GPAs of the control sections were 2.26 and 2.21, a significant difference. This pattern repeated in the experimental and control sections in

17. The doctrinal courses were Contracts II, Criminal Law and Property.
18. Full disclosure, however, does not automatically eliminate anxiety and anger. How we attempt to deal with these problems is described in the text accompanying notes 35, 36 *infra*.
19. Principles also was taught to the bottom forty students in the second-year night class in Fall, 1999 and 2000. Because there were no control groups, data were not similarly analyzed for these classes.
20. The experimental and control groups taking Principles in Spring 2000 and 2001 also had no significant differences in mean LSAT scores and GPAs.

Spring 2000 and 2001, with the students in the experimental section achieving significantly higher second semester grades than students in the control groups.²¹

Table 1: NYLS Mean 1st Term GPA, Mean 2nd Term GPA and Third Year Mean Cumulative GPA for Students in the Bottom 40 by Year and Large Day Section

Entering Class Year	Section	N	Mean 1 st Term Fall GPA (SD)	Mean 2 nd Term Spring GPA (SD)	Mean Cum GPA (SD) After 3 Years
1998	A	40	2.15 (.28)	2.26 (.33)	2.52 (.21)
	B	41	2.18 (.38)	2.21 (.34)	2.50 (.26)
	C Principles	40	2.26 (.29)	2.51* (.27)	2.57 (.25)
1999	A	41	2.25 (.27)	2.41 (.50)	2.69 (.21)
	B Principles	39	2.27 (.28)	2.62* (.44)	2.67 (.28)
	C	42	2.23 (.22)	2.31 (.49)	2.57 (.25)
2000	A	40	2.11 (.42)	2.03 (.48)	2.46** (.30)
	B	40	2.32* (.30)	2.35 (.56)	2.66 (.31)
	C Principles	40	2.17 (.28)	2.53* (.48)	2.65 (.28)

*Significantly higher ($p < .05$) ** trend lower ($p < .09$)

Along with Principles, the school adopted new policies. First, we mandated closed book exams in all required courses.²² The New York State bar exam is entirely closed book, and we reasoned that the more practice students have with that format, the better. Closed book exams also encourage students to learn and to synthesize course material, rather than counting on notes and outlines to provide answers during exams. Second, we encouraged faculty to use multiple-choice questions for a significant portion of their exams. The multi-state bar exam is entirely multiple choice, and the New York State exam also has multiple-choice questions. Third, we reformed the first-year curriculum by assigning all first-semester students to a “small” section (about forty students) in either Civil Procedure or Torts in their first year. These courses require two significant writing exercises, one of which is a mid-term examination that is graded by the professor and returned with feedback.

21. Table 1 also shows that the differences between the experimental and control groups diminished over the ensuing two years of their legal education. These data are discussed *infra* in the text accompanying notes 25 and 32.

22. Professors are allowed to provide clean copies of relevant statutes, codes, and rules as exam supplements.

The school took additional steps in 1999 and 2000 to address our concerns that our weakest students were not developing the analytical skills to pass the bar or to practice law competently.²³ Professor Joseph Marino was hired in 1999 to teach a new, four-credit, third-year elective, New York Law in National Perspective (Perspectives). The course, first taught in Spring 2000, focuses on legal rules and doctrines from core curricular courses and on writing essay questions similar to those on the bar exam. For students in the third quartile of the 2000 graduating class, the results of the summer bar exam showed a significant association between students who took this course and passing the exam ($p < .003$).²⁴

In Fall 2000, Richard Matasar became dean and led the institution through a year of intense self-examination and innovation. One working group, chaired by Professors David Chang, Donald H. Zeigler, and Aleta Estreicher, addressed the chronic problems of our weaker students. It was this working group that first considered, at Dean Matasar's suggestion, requiring students in the bottom 10 percent or 15 percent of the first-year class to extend their law school program, taking a reduced course load each semester, and, consequently, remaining in school for an extra semester. The bar pass rate of the bottom 10 percent of the graduating class was truly abysmal, as is the case at many law schools. The pass rate was sometimes in the single digits and never more than 20 percent. Sending students forth with so little chance of passing the bar seemed cruel, perhaps even immoral. Radical intervention was required. On the assumption that many of our weakest students would end up as solo practitioners, and with the dean's encouragement, the working group also proposed requiring these students to take courses to prepare them for general practice, such as basic principles of drafting legal documents and law office management.²⁵

II. Developing the Comprehensive Curriculum Program: Issues, Options, Debate, and Decisions

The "General Practice Committee" continued to work in the 2001-2002 school year with Professor David Chang as chair. Committee members generally agreed that we needed a comprehensive program extending over the entire law school career of our weakest students. The committee met often, and a wide range of proposals were considered. Should we tighten our

23. We were spurred on by a 1999 bar pass rate for first-time takers of 57.8 percent, which was 17.2 percent below the statewide average for that year.
24. An association, of course, is not a causal relationship. In addition, these results are muddled because Perspectives was an elective course. The self-selected participants may have been a more motivated, hard-working group than the students who did not take the course. We were nonetheless encouraged by these results.
25. The General Practice concept continued through the first proposal to the faculty from the Committee discussed in the next section. The concept was controversial. It was dropped when the Career Services staff informed us that almost none of the students in the bottom of the graduating class became solo practitioners in the years immediately following their graduation.

academic standards to dismiss more students at the end of their first semester or first year? Should lower-ranked students who remained be required to stay longer, and, if so, what percentage? Should more core courses be required for these students? Should their choices be circumscribed to ensure they take courses designed to improve their analytical skills and help them pass the bar? Should a second semester be added to Professor Marino's course, and should his courses be mandatory for the students in the bottom half of the class? Should the curriculum be shaped to prepare these students for careers as solo general practitioners?

And what of Principles? In Spring 2001, the faculty voted to end the Principles experiment. Professor Elaine Mills, who had been teaching it, was reassigned to teach a one-credit course entitled "Applied Analysis" to the entire first year class. Professor Mills patterned the class after Principles and taught it in the 2001–2002 school year.²⁶ Part of the reason for ending Principles was that while students in the experimental sections did better academically than students in the control sections in the Principles semester, the difference between the experimental and control sections diminished in subsequent semesters. As shown in Table 1 above, the 1999 Principles section's mean cumulative GPA upon graduation in 2001 was 2.57; the control sections' numbers were 2.50 and 2.52. Subsequent analysis suggested, however, that attrition patterns in the experimental and control groups masked differences in GPA. Principles students persisted and graduated at a higher rate than did members of the control groups. The Principles cohort was laden with lower GPA students, while the corresponding students from the control groups were dismissed or chose to leave school.

In November 2001, a bombshell landed in the committee's deliberations. The 1999 Principles section passed the bar at an extraordinarily high rate compared to the control sections. As shown in Table 2, of the twenty-six Principles students taking the bar, eighteen passed and eight failed, for a pass rate of 69 percent. Students in the two control groups passed at a rate of 55 percent and 36 percent.

26. Those opposed to ending the Principles experiment argued that Applied Analysis misapplied our limited remedial resources by expending them on the top half of the class, which had no problem passing the bar.

**Table 2: NYLS July 2001 NY Bar Exam Results
for Bottom 40 by Large Day Sections**

Section	Pass	Pass Rate (percent)
A	9/25	36
B	12/22	55
C Principles	18/26	69
Total	39/73	53

Although we were not at all sure these numbers would be repeated in 2002 and 2003, the 2001 results led the committee to consider instituting Principles for the bottom forty students in all of the first year sections.

Also in Fall 2001, based on the hypothesis that our weakest students could benefit from a focused review of analytical fundamentals during their final semester, the faculty approved a new elective called Consolidated Legal Analysis. Like Principles, Consolidated Analysis engages students with intense practice of the skills required for analyzing the legal significance of facts and presenting such analyses in writing. Based on the doctrines studied during Perspectives, Consolidated Analysis requires students to write bar exam-style essays and provides them with individualized critiques. It was first taught in Spring 2002.

After countless committee meetings and discussion at several full faculty meetings, in May 2002, the faculty approved a comprehensive program with the following elements:

- Principles was instituted as a required course for the bottom forty students in each day section as identified by first semester grades and for the bottom forty students in the evening section as identified by grades at the end of the first year.
- The Perspectives-Consolidated Analysis sequence was required for all students who took Principles and whose GPA placed them in the bottom 25 percent of their sections after the second semester for day students and after the third semester for night students.
- All students in the bottom 25 percent of the class, identified as indicated above, were required to satisfy the requirements of the guided curriculum.

The guided curriculum restricted student choices and steered them in course selection. The goal was to ensure that students took a rigorous academic program best designed to enhance their analytical and writing skills and increase their chances of passing the bar.²⁷ The guided curriculum had the following elements:

- The students were required to take twenty-seven credits of course work beyond the courses required of all students. Principles (which they had already taken), Perspectives, and Consolidated Analysis accounted for eleven of these additional credits. Corporations, Wills, Trusts and Future Interests, Individual Federal Income Tax, and New York Practice accounted for the balance.
- The students were required to take a minimum number of doctrinal and skills electives from approved lists to be proposed for final faculty adoption in Fall, 2002.
- The bottom 10 percent of day division students were required to extend their law school study over seven semesters rather than the ordinary six semesters. Other students in the Comprehensive Curriculum Program were to be strongly encouraged to follow this course. No evening students were required to stay an extra semester.²⁸

Finally, faculty approval of the Comprehensive Curriculum Program was conditioned on a review of the school's attrition policies and rules.

III. Implementing the Comprehensive Curriculum Program

We tried to anticipate the many challenges we would face in implementing the Comprehensive Curriculum Program. We needed to describe it in the school's promotional and admissions materials so all entering students would be on notice of its existence. We needed to hire several new faculty members to teach Principles and Applied Analysis, which was by now a two-credit course taught to all students in the fall of their first year. Day students took Principles in lieu of the Lawyering course, which was deferred until their fourth semester. Evening students took Principles in lieu of Constitutional Law I, which was deferred until their fifth semester. Students were allowed to "grade out" of the Program if they achieved a cumulative GPA of 3.00 or above at the end of their fourth or any subsequent semester. The school decided not to require additional tuition for students staying an extra semester beyond the regular tuition for the four remaining semesters of law school. The maximum number of credits a full-time student may take in one semester at the school is sixteen; Program students may not take an overload of credits in any semester. Extended Program students may not take more than thirteen credits in any semester. Program students are allowed to take courses that are not on the approved lists, but the credits do not count toward the eighty-six credits required to graduate, and total credits in any one semester may not

27. This decision was supported by institutional data that demonstrated that students ranked in the bottom of the class completed such courses at rates lower than those ranked higher.

28. The regular night program is eight semesters. Requiring a ninth semester seemed impractical.

exceed the allowed total of sixteen. Finally, all of these rules and many others must be implemented by the Academic Affairs staff. This requires individual consultation with the ninety or so new students assigned to the guided curriculum each year, as well as the 200 or so upperclass students continuing in the program.²⁹

During the 2002-2003 and 2003-2004 school years, we put program components in place and gathered additional data. In December 2002, the faculty approved lists of courses for the guided curriculum. In addition to the required courses added as a part of the original plan, Program students are required to take three courses from a list of doctrinal electives³⁰ and three courses from a list of skills electives.³¹ They are allowed to take the remaining credits for graduation from these lists or from a list of supplemental electives.³²

Professor Kris Franklin joined the faculty in Fall 2002, and taught Applied Analysis as a two-credit course to the entire first year class. Professors Susan Abraham and Elizabeth Rosen came on board in Fall 2003, and with Franklin taught Applied Analysis. In Spring 2004, these three professors taught Principles to the bottom forty students in each day section as contemplated under the Program.³³

Meanwhile, we gathered data concerning the performance of the experimental and control groups who took Principles in Spring 2000, and 2001. As shown in Table 1 above, the significantly higher mean GPA of the experimental groups at the end of the Spring semester diminished over the next two years.³⁴ In addition, as shown in Table 3, the 2000 and 2001 experimental sections did not out-perform the control groups on the bar exam to the same

29. Assistant Dean Victoria L. Eastus and her associates (Kirk Burkhalter, Haley Meade, and Sondra Downing), along with Registrar Oral Hope and his staff, shoulder this burden.
30. The doctrinal electives are all three credit courses that address core subjects. These electives include Administrative Law, Bankruptcy, Criminal Procedure: Investigation; Employment Discrimination; Employment Law; Family Law; Federal Courts/Federal Systems; Real Estate Transactions & Finance; Remedies; Sales and Payment Systems; and Secured Transactions.
31. The skills electives include Advanced Appellate Advocacy (3 credits); Alternative Dispute Resolution (2); Intellectual Property Licensing & Drafting (all sections) (2); Legal Research, Advanced (2 or 3); Memo and Brief Writing for Lawyers (2); Negotiating, Counseling, Interviewing (4); Statutory Interpretation (2); Trial Advocacy (3); Writing Skills for Lawyers (3). The skills electives also include the following drafting courses: Contracts (2); Corporate Documents (2); General Principles (2); Judicial Opinions (2); Legislation (2); Litigation (2); Real Estate Documents (2); Wills & Trusts (2).
32. The list of supplemental electives approved by the faculty is set forth in http://www.nylsedu/academics/jd_programs/jd_course_of_studycomprehensive_curriculum_program.
33. Principles was taught in sections of twenty students.
34. As shown in Table 1, for the 2000 groups, the experimental section's mean cumulative GPA at the end of three years was 2.67; the control groups' numbers were 2.69 and 2.57. For the 2001 groups, the experimental section's mean cumulative GPA after three years was 2.65, while the control groups' numbers were 2.46 (trend lower $p < .09$) and 2.66.

extent as the 1999 experimental group. Given the law school's proximity to Ground Zero, the events of September 11th affected completion and graduation patterns.

Table 3: NYLS July NY Bar Examination Results for Bottom 40 by Large Day Sections for 1999 and 2000 Entering Classes

Entering Class Year	Section	Pass	Pass Rate (percent)
1999	A	19/26	73
	B Principles	14/23	61
	C	10/26	39
	Total	43/75	57
2000	A	8/18	44
	B	9/24	37
	C Principles	13/24	54
	Total	30/62	48

The Spring 2000 experimental group passed the July 2002 bar exam at a 61 percent rate. The control group's rates were 73 percent and 39 percent. The Spring 2001 experimental group passed the July 2003 bar exam at a 54 percent rate. The control groups' rates were 37 percent and 44 percent. Although the experimental sections did well, these results confirmed our belief that Principles alone could not do the whole job, and that a more comprehensive program was necessary to our ultimate success.

Professor Marino also began to give Consolidated Analysis students substantial additional individual instruction. In 2003, Consolidated Analysis introduced small class sections, and in 2004, the small sections added five hours of one-on-one tutoring by adjunct instructors. Professor Marino has trained and supervises seven adjuncts doing this work. The Perspectives-Consolidated Analysis sequence became mandatory for Program students in 2004-2005.³⁵

35. It is difficult to measure the impact of Perspectives and Consolidated Analysis on bar passage for the 2002, 2003, and 2004 exams. The course was an elective during those years. Students taking the course may have been more highly motivated than students who did not take the course. Thus, students taking the course might have passed the bar at a higher rate than those who didn't take it, even without the course. A large portion of the graduating class enrolled in Perspectives each year, but only a handful enrolled in Consolidated. Overall bar pass comparisons between those taking Perspectives and those not taking the course are virtually meaningless because we actively discouraged students in the top half of the class

Finally, the school revised its attrition policies. We sought to dismiss more failing students at the end of the first semester rather than allowing them to linger until the end of the first year. Early dismissal saves students money and is more humane. It also helps ensure that Principles is taught to students who are more likely to benefit from the course. Under the old rules, students with a GPA below 1.5 at the end of the first semester or below 2.0 at the end of the first year were put on academic probation and were allowed to meet with the faculty Academic Status Committee. The Committee had discretion to dismiss these students or to allow them to continue.

A study was conducted to determine the eventual academic fate of students earning GPAs below 2.0 at the end of the first semester. We learned that students with first term GPAs below 1.75 were, with few exceptions, dismissed at the end of the first year. Most students who earned GPAs barely high enough to continue at the school eventually were dismissed, withdrew, or graduated and failed the bar exam. Under the new rules, students are automatically dismissed if they have a GPA below 1.75 at the end of first semester or below 1.9 at the end of the first year. Dismissed students are allowed to reapply to the school but if readmitted they must repeat the first year and attain a first semester GPA of at least 2.2 to continue. Students with a GPA between 1.9 and 1.99 at the end of the first year are presumptively dismissed, although they may be allowed to continue by the Academic Status Committee under the terms of the Program.³⁶ We believe these rule changes resulted in earlier attrition, although it is difficult to be certain because so many factors contribute to attrition.³⁷

from signing up. Results by quartile for the 2002 bar showed a trend toward significance in the third quartile ($p < .092$), with those who completed Perspectives associated with a higher bar pass rate. Results of Chi-Square tests for enrollment in Perspectives and 2003 bar exam results examined by quartile showed no significant associations between the course and 2003 bar results, although students who completed it passed at a higher rate in each quartile than students not taking the course. Results of Chi-Square tests for enrollment in Perspectives and bar exam results in 2004 examined by quartile showed a significant association ($p < .002$) between the course and bar passage in the fourth quartile. Students who completed the course in the fourth quartile passed at a 38 percent rate, while those who did not take the course passed at a 6 percent rate.

36. The Committee may retain such a student “upon a finding that the student’s grades were a result not of the student’s failure to grasp the essentials of legal analysis, but of external and temporary circumstances that hindered the student’s performance.” *New York Law School Student Handbook, 2006–2007, Academic Standing Rules 52–53.*
37. Whether the new rules achieved these goals is unclear. The new rules took effect for the class entering in Fall 2003. The impact of the new rule was, that while total first year dismissals remained essentially unchanged, a higher number of students were dismissed at the end of the first semester. After the first semester, twenty students in the entering class of 2003 were dismissed. For the entering class of 2002, eight students were dismissed after the first semester. For both years, a total of twenty-eight and thirty-two students respectively were dismissed. For the entering class of 2004, fifteen were dismissed at the end of the first semester and twelve at the end of the second semester, for a total of twenty-seven. The results of this policy were discussed in the planning phase and the lost tuition for one semester from ten or so students was a cost we were willing to absorb.

The full Comprehensive Curriculum Program was in place for students entering in Fall 2003, and thereafter. The bottom one-third of students in each day section takes Principles in Spring of their first year; the bottom one-third in the evening section takes it in their third semester. Students who take Principles and whose GPA places them in the bottom 25 percent of their sections at the end of the first year (the end of the third semester for evening students) must fulfill the requirements of the guided curriculum, including Perspectives and Consolidated Analysis. Students in the bottom 10 percent of the day class at the end of the first year must stretch their law school study over seven semesters.

The faculty also had to make the program transparent. The Program is publicized in admissions materials and students are told how people are chosen at each stage. As a practical matter, it would be impossible to conduct a program of this magnitude with so many required components without telling students why they were in it. Being open about the selection criteria makes it easier to sell the program to students. The faculty and administrators running the program give it a positive spin. At each stage, students are told that the program is designed to make them better lawyers and help them pass the bar.³⁸

Despite our efforts to reduce stigma, some students are embarrassed to be in the program. Others chafe under the course restrictions of the guided curriculum. Some students in the bottom 10 percent complain about staying for an extra semester. The Academic Affairs staff and the Registrar bear the brunt of student resentment. Our substantial improvement in bar passage, particularly in the lower half of the class, helps deflect at least some student anger.

Faculty anxiety remained high as we waited for the entering class of 2003 to go through the entire Comprehensive Curriculum Program and to take the bar in 2006. Our bar pass rate stayed below the statewide average in 2003, 2004, and 2005.³⁹ One encouraging sign was that students in the fourth quartile showed some improvement during those years.⁴⁰

38. Interestingly, some students who are not in the bottom one-third of their section after first semester complain because they are *not* in the program. In addition, in Spring 2008, we observed, for the first time, students who were not required to take Consolidated Analysis electing to do so.

39. The school and state pass rates (in percent) for first-time takers of the July bar exams from 2003–2005 are as follows:

	<u>2003</u>	<u>2004</u>	<u>2005</u>
NYLS	71.4	66.2	72.4
NYS	77.6	77.0	76.0

40. While the pass rate for the fourth quartile dipped to 19.4 percent in 2003, it rose to 30.1 percent in 2004 and to 43.3 percent in 2005.

IV. The Results

The 2006 bar exam results were cause for celebration. The 2007 results were even better, and the 2008 results improved on 2007. The school's overall pass rate increased dramatically each year and exceeded the New York State rate each year. The third and fourth quartiles showed substantial improvements year by year. In addition, the Extended Program graduates passed the February bar in 2007, 2008, and 2009 at a remarkably high rate.

The overall results for first-time takers of the July 2006–2008 bar exams are presented in Tables 4, 5, and 6 below. February 2007, 2008, and 2009 exam results are set forth in Tables 7, 8, and 9. The quartile pass rates for the July 2005–2008 exams are set forth in Graph 1. As shown in Table 4, the 2006 first-time taker pass rate for the school jumped to 83.8 percent (from 72.4 percent in 2005) and was 4.4 percent higher than the New York State first-time taker pass rate of 79.4 percent.⁴¹ When the February 2007 bar results for the Extended Program graduates were folded into the July 2006 results, the pass rate declined by 0.6 percent.

Table 4: NYLS July 2006 NY Bar Exam Results by First-Time Takers, Program Graduates, May 2006 Graduates, July 2006 with February 2007 Extended Program Folded In and NYS 1st Time Pass Rate

July 2006	Pass	Pass (percent)	NY State 1 st Time Pass (percent)
First-Time Takers	294/351	83.8	79.4
Program Graduates	18/22	81.8	
May 2006 Graduates	284/339	83.8	
July 2006 + Feb 2007 Extended Program	302/363	83.2	

The pass rate rose again in 2007 to 90.2 percent, which was 11.1 percent over the New York State pass rate of 79.1 percent that year. Again, when the February 2008 bar results for the Extended Program graduates were folded into the July 2007 results, the school's pass rate declined by only 0.6 percent.

41. Admissions policies did not change over the period of this report. Further, while the median LSAT scores for the entering classes fluctuated within a narrow band, at the highest level in the early 1990s the first-time pass rate was still below the state level for first-time takers.

Table 5: NYLS July 2007 NY Bar Exam Results by First-Time Takers, Program Graduates, May 2007 Graduates, July 2007 and February 2008 Extended Program Folded In and NYS 1st Time Pass Rate

July 2007	Pass	Pass (percent)	NY State 1 st Time Pass Rate (percent)
First-Time Takers	267/296	90.2	79.1
Program Graduates	21/32	66	
May 2007 Graduates	266/294	90.5	
July 2007 + Feb 2008 Extended Program Graduates	285/317	89.9	

The pass rate went to 93.6 percent for the July 2008 bar, exceeding the New York State rate for the third year in a row. When the February 2009 bar pass results for the Extended Program graduates were folded into the July 2008 results, the school pass rate declined by only 1.3 percent.

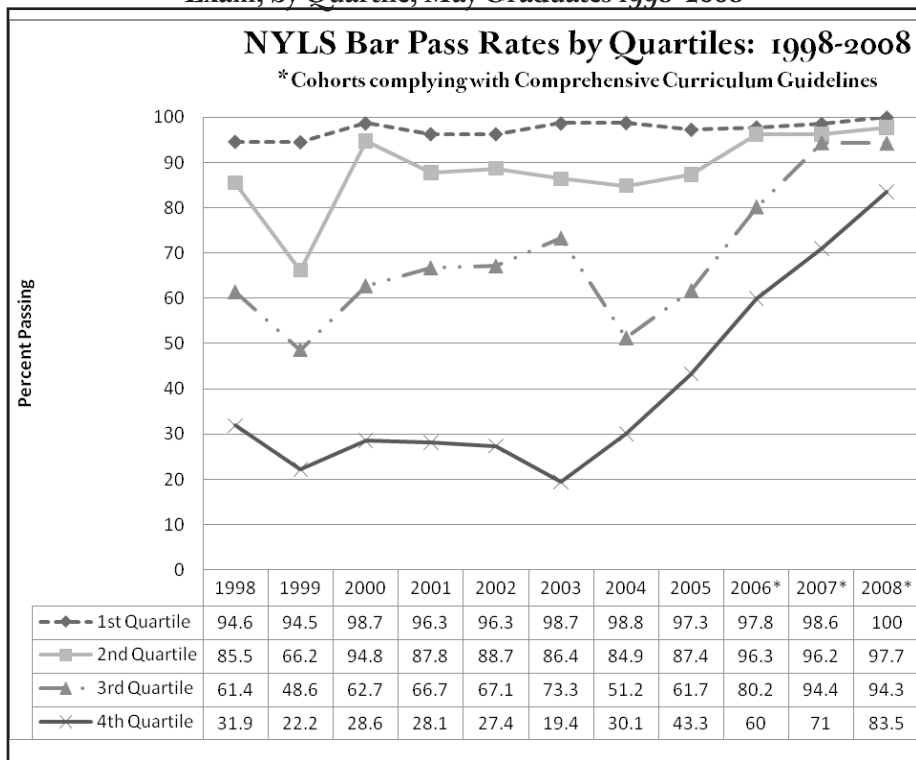
Table 6: NYLS July 2008 NY Bar Exam Results by First-Time Takers, Program Graduates, May 2008 Graduates Extended Program Graduates Folded In and NYS 1st Time Pass Rate

July 2008	Pass	Pass (percent)	NY State 1 st Time Pass Rate (percent)
First-Time Takers	336/359	93.6	83.2
Program Graduates	37/42	88	
May 2008 Graduates	333/354	94.1	
July 2008 + Feb 2009 Extended Program Graduates	350/377	92.8	

In addition, May graduates participating in the full Comprehensive Curriculum Program performed well on the exams.⁴² Recall that Program students are those who fall in the bottom quarter of their class at the end of the first year. Although these students passed only at a 66 percent rate on the July 2007 bar, they passed at an 81.8 percent rate in 2006 and an 88 percent rate in 2008.⁴³

Graph 1 shows the dramatic improvement in the performance of the third and fourth quartiles.

Graph 1: NYLS Bar Exam Pass Rate, NY Bar Exam, by Quartile, May Graduates 1998-2008



42. The July 2009 bar results were lower for New York State overall, and for New York Law School. The New York Law School pass rate for the first time takers was 83.6 percent, which exceeded the statewide average of 80 percent by 3.6 percent. The students in the Comprehensive Program passed the bar at a rate 17 percent higher than their similarly ranked classmates.
43. The number of Program graduates taking the bar may seem small, but many students in the bottom of the class do not complete the entire program, graduate, and take the bar. Only those students who take Principles in their second semester (approximately thirty-five to forty students per section) and who score in the bottom 25 percent of their class at the end of the first year are required to take the Guided Curriculum. In addition, the bottom 10 percent of the class at the end of the first year (Extended Program students) are required to take an extra semester to complete the program and do not take the July bar.

The pass rates in these quartiles showed large gains year by year. The third quartile rose from 61.7 percent in 2005, the last group before the Comprehensive Curriculum Program was fully implemented, to 94.3 percent in 2008. The fourth quartile rose from a 43.3 percent pass rate in 2005 to an 83.5 percent pass rate in 2008.

Tables 7, 8, and 9 show the results of the February bar exams in 2007, 2008, and 2009.

Table 7: NYLS February 2007 NY Bar Exam Results by First-Time Takers, Second-Time Takers, February 2007 Graduates, Extended Program Graduates and NYS 1st Time Pass Rate

February 2007	Pass	Pass (percent)	NY State 1 st Time Pass Rate (percent)
First-Time Takers	36/55	65.5	61.1
2 nd Time Takers	24/45	53.3	
February 2007 Graduates	29/42	69	
Extended Program Graduates	18/24	75	

Table 8: NYLS February 2008 NY Bar Exam Results by First-Time Takers, Second-Time Takers, February 2008 Graduates, Extended Program Graduates and NYS 1st Time Pass Rate

February 2008	Pass	Pass (percent)	NY State 1 st Time Pass Rate (percent)
First-Time Takers	51/65	78.5	64
2 nd Time Takers	23/29*	79.3	
February 2008 Graduates	41/49	83.7	
Extended Program Graduates	19/23	82.6	

*second-time takers: Comprehensive Curriculum Program passed at (8/9) 89 percent; non-Program passed at (15/20) 75 percent

Table 9: NYLS February 2009 NY Bar Exam Results by First-Time Takers, Second-Time Takers, February 2009 Graduates, Extended Program Graduates and NYS 1st Time Pass Rate

February 2009	Pass	Pass (percent)	NY State 1 st Time Pass Rate (percent)
First-Time Takers	46/67	68.7	60.4
2 nd Time Takers	9/20	45	
February 2007 Graduates	37/54	68.5	
Extended Program Graduates	17/23	73.3	

Several groups of students at the school take the February bar: mid-year graduates, May graduates who decided not to take the July bar, and May graduates who failed the July bar. On all three exams, the school pass rate for first-time takers exceeded the New York State pass rate—by 4.4 percent in 2007, 14.5 percent in 2008, and 8.3 percent in 2009. The pass rate for second-time takers jumped dramatically, from 53.3 percent in 2007 to 79.3 percent in 2008, but then dropped to 45 percent. The increase in 2008 appears attributable in part to the fact that Program students who failed the bar the first time passed on their second try at a high 89 percent rate.

Tables 4, 5, and 6 also show that the school's increased overall bar pass rates on the July 2006, 2007, and 2008 bar exams was minimally attributable to our requirement that the day students in the bottom 10 percent of the day class at the end of the first year extend their studies over seven semesters. Because these students do not graduate with their class in May, they cannot take the summer bar exam and must instead take the bar the following February. Approximately thirty-five to forty students are in the bottom 10 percent of the day class at the end of the first year. A few are dismissed, others withdraw for personal or academic reasons, a small number may place out, and most graduate. Of those, the majority take the February bar exam, while a few do not take a bar or decide to take the bar exam the following July. Thirty-nine students who entered in Fall 2003 were in the bottom 10 percent of the class at the end of the first year. Of those students, only twenty-five participated in the full Program and extended their program over seven semesters. Twenty-four took the February 2007 bar exam.⁴⁴ As Table 7 shows, they passed at a 75 percent rate. Table 4 shows that if the results for Extended Program students taking the February 2007 bar are combined with the results for the May 2006 graduates taking the July 2006 exam, the overall pass rate is 83.2 percent, only 0.6 percent lower than the pass rate for May 2006 graduates. Table 5 shows the same 0.6 percent difference between the pass rate for May 2007 graduates and the pass rate for those graduates combined with the Extended Program

44. For the class that entered in Fall 2003, thirty-nine placed in day, three placed out academically, four withdrew, twenty-five graduated, and twenty-four took the February, 2007, bar exam.

students taking the February 2008 exam. Table 6 shows only a 1.3 percent difference between the pass rate for May 2008 graduates and the pass rate for those graduates plus the Extended Program students taking the February 2009 bar. Thus, the school's substantial improvement in summer bar passage is not the result of deferring our weakest students to the February bar.

Requiring an extra semester of study for the bottom 10 percent of the class was probably the most controversial element of the Comprehensive Program. Students who fail the bar on the first try often pass on the second. Faculty opposed to requiring the extra semester argued that the students might be better off graduating on time, taking and failing the summer bar, and then taking the February bar with the benefit of learning from the first try. Data show, however, that our graduates taking the bar for the second time in February from 1998 to 2005 passed at an average rate of 46 percent. The pass rate for second-time takers from the school in February 2007, was only 53.5 percent. As noted above, the students who took the extra semester passed the February 2007 bar at a 75 percent rate, the February 2008 bar at an 82.6 percent rate, and the February 2009 bar at a 73.3 percent rate. These results suggest that Extended Program students pass the February bar at a higher rate than they would have if they had graduated in May, failed the July bar, and taken the bar for a second time in February.

Conclusion

New York Law School's bar pass rate has improved dramatically since we implemented the Comprehensive Program. We believe it is responsible for at least some of that improvement. Much of the data we have presented suggests a causal relationship, but proving that assertion is difficult. It is even more difficult to establish a relationship between particular elements of the program—such as Principles, Perspectives, the guided curriculum, Consolidated Analysis, or the extra semester—and a higher bar pass rate.

It also seems likely that the compulsory nature of the Program, with its many required elements, has contributed to its success. Our experience over the years has been that weaker students are in denial about their chances of passing the bar. Presenting these students the statistics showing that they have a poor chance of passing and offering them voluntary programs simply does not get their attention. The students who need such programs the most tend not to participate. The Comprehensive Curriculum Program gets students' attention. Principles and Consolidated Analysis are like boot camp. Intervening in their curriculum by requiring additional courses and even requiring an extra semester for some, palpably demonstrates to students our insistence that all graduates attain a certain level of competence. We hope the Program makes it harder for lower-performing students to drift along in a state of denial.

The school's experience also suggests that a successful program to improve the competence and bar pass rates of students ranked in the bottom of the class should have many components that extend throughout law school. The Comprehensive Curriculum Program was developed methodically based on routine institutional research conducted over many years. It incorporates early intervention, rigorous training in analysis and reasoning skills, a guided curriculum, reinforcement of legal analysis, and, for some, an extra semester of study. We believe it has improved the competence of our students and has helped them achieve success on the bar exam and, we venture to guess, in law practice.