If You Think Law Schools Teach Students to "Think Like a Lawyer"...Think Again!

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Douglas K. Rush, J.D., Ph.D.¹

Introduction

“You teach yourselves the law. I train your mind. You come in here with a skull full of mush, and if you survive, you’ll leave thinking like a lawyer.”

Professor Charles W. Kingsfield, Jr.
The Paper Chase²

Thinking Like a Lawyer

The fictionalized Professor Kingsfield is familiar to almost every lawyer and law student.³ Most point with a mixture of pride and awe to their own memories of having survived a class led by a Kingsfield-like law school professor whose Socratic skills taught them to “think like a lawyer.” Indeed, Professor Wegner, co-author of the Carnegie Report Educating Lawyers: Preparation for the Profession of Law,⁴ has stated that the mythology of the Socratic method of legal instruction and the promise of “thinking like a lawyer” has, for the legal academy, been embraced as a “trope of its core identity.”⁵

Surprisingly, however, there is little agreement among legal scholars concerning what is meant by “thinking like a lawyer.” Wegner describes it as “wicked problem” which is not easily analyzed because it is multi-dimensional; non-linear; subject to trial and error; and has “no stopping rule” because there is no clear point of attainment.⁶ In her key dimension analysis, she

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² See The Paper Chase (Twentieth Century Fox 1973) and The Paper Chase (CBS Television 1978). The quote has long been attributed to John Jay Osborn, Jr. The Paper Chase (1971). The Kingsfield character in the book does not recite those exact words. Instead, those words are spoken in the television show by John Houseman who played the role of Professor Kingsfield in both the Paper Chase movie and television series.
³ Id.
⁶ Id. at 870-71.
concludes that “thinking like a lawyer” is “Legal reasoning (thinking), (about) Law, (like a)
Lawyer.” This statement, without further examination, does not answer the underlying question
of what skills are included in “thinking like a lawyer.”

Wegner described “thinking like a lawyer” as including legal literacy, in fact, the learning
of a new language; and further stated that “legal reasoning lies at heart of ‘thinking like a
lawyer.’” Cohen posits that this new legal language is best learned in law school by the
immersion method. Similarly, Mertz has stated that learning to “think like a lawyer, I suggest,
is in large part a function of learning to read, talk and write like a lawyer.”

Chief Judge Tacha of the United States Court of Appeals for the Tenth Circuit believes
that ‘thinking like a lawyer” is constructive problem solving while Chief Judge Emeritus
Aldisert of the United States Court of Appeals for the Third Circuit states that “thinking like a
lawyer” involves the deductive logic of the syllogism taught by Aristotle.

Ritchie is also a fan of the logic school of “thinking like a lawyer” but he adds rhetoric
as an important component of thinking like a lawyer. Friedland added critical thinking to the
“thinking like a lawyer” mix which he defined as “reasonable and reflective thinking that is
focused upon deciding what to believe or do.”

The American Bar Association’s Section of Legal Education and Admission to the Bar
Pre-Law Committee states that among the skills necessary to succeed in law school and as a
lawyer were “analytic and problem-solving skills; critical reading abilities; [and] writing

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7 Id. at 892.
8 Id. at 895.
skills.” The same guide also holds out the promise that a good legal education will teach students to “think like a lawyer” but states that the analytic and problem solving skills required of lawyers are “not fundamentally different from those employed by other professionals.”

Perhaps, “thinking like a lawyer” is the same as “thinking like a [fill in the blank with physician, accountant, banker, veterinarian, hedge fund manager, etc.]”

Helpfully, Dorf reminds us that “There is no such thing as thinking like a lawyer. There is only clear thinking and confusion.”

Finally, John Quincy Adams described legal logic as “an artificial system of reasoning, exclusively used in the courts of justice, but good for nothing anywhere else.”

**The Socratic Method**

The accepted pedagogy to teach “thinking like a lawyer” skills for the past 140 years has been Professor Langdell’s Socratic instruction based on the case book method. Enamored of the German universities’ nineteenth century scientific approach to the education of doctoral students, Professor Langdell at Harvard Law School, with the encouragement of President Eliot, developed this new approach to legal education. Langdell saw the teaching of law as a “science” and not as a “handicraft.” He proposed to train the minds of law students.

Students would use the scientific method to study case law decisions in order to identify elements of the truth about the law while guided by professors who were masters of the art of the Socratic method. Indeed, Langdell believed that law school faculty members should not have

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16 *Id.*
19 William Shofield, Christopher Columbus Langdell, *American Law Register* 55 o.s., 5 n.s. (1907): 273
20 *The Oxford Companion to American Law* 109 (Kermit L. Hall et al. eds., 2002).
actually practiced law before becoming professors. He famously stated that “What qualifies a person, therefore, to teach law is not experience in the work of a lawyer’s office, not experience in dealing with men, not experience in the trial or argument of causes-not experience, in short, in using law, but experience in learning law.”

President Eliot seconded this observation by stating: “Professor Langdell early advocated the appointment as teachers of law of young men who had no experience whatever in the active profession.”

Langdell set out to staff Harvard with legal scholars of like mind who were free from the corrupting influences of having ever “dealt with men” or having ever “used” the law. Almost all other American law schools quickly fell in line, hired professors who never practiced law, and adopted the Socratic method of instruction using the case book approach.

In spite of criticism directed at that pedagogy it is still widely entrenched in 21st century American law schools. A recent survey found that 97% of first year law classes and a smaller but still substantial number of second and third year law school courses are taught using some version of this method regardless of whether it is referred to as Socratic instruction, Protagorean instruction, dialectic instruction or dialog instruction.

22 Id. at 7.
23 Schofield, supra note 19, at 291 (quoting Address of President Eliot in Report of Ninth Annual Meeting of the Harvard Law School Association, 70 (1895)).
Critics, including Professor Bainbridge at UCLA, have stated that they do not believe that the Socratic method teaches students to “think like lawyers.”27 Professor Leiter goes farther by stating “Philosophy is almost never taught via the Socratic method, so why should law be taught that way.” Especially since he notes that there is “no evidence, as in-- ‘none’—that the Socratic method is an effective teaching tool.”28

Research Question

The question explored by this paper, assuming that we can define what it means to “think like a lawyer,” is do law schools really teach students to do so? Not surprisingly, there is little or no empirical evidence to support the proposition that law schools teach students to “think like a lawyer.” Instead, a strong case can be made that being able to “think like a lawyer” is “both a pre-requisite and a co-requisite” to the study of law.29

But can the “think like a lawyer” skills be learned in law school? If so, it has been suggested by many that those skills are taught in the first year law school courses [Contracts, Torts, Civil Procedure, Property, Constitutional Law] which use the Socratic dialog method and

26 Joseph A. Dickson defended the proper use of the Socratic dialog method of legal instruction which “coaches students to think critically and to present ideas effectively.” Joseph A. Dickinson, Understanding the Socratic Method in Law School Teaching After the Carnegie Foundation’s Educating Lawyers, 31 W. NEW ENG. L. REV. 97, 105 (2009). Friedland reports the findings of a survey of 383 law school faculty members. Steven I. Friedland, How We Teach: A Survey of Teaching Techniques in American Law Schools, 20 SEATTLE U. L. REV. 1, 28 (1996). He found that the Socratic method predominated first year classes and that it or modified Socratic/lecture methods were used extensively in second and third year courses. He also found a wide variety of opinions among faculty members concerning what constituted “thinking like a lawyer.” While not the purpose of his research, Friedland questioned whether the phrase “thinking like a lawyer” is universally understood by faculty and students and whether instruction was aligned toward the same goal. Id. at 20.
27 Stephen M. Bainbridge stated that “the Socratic method does not really teach one to think like a lawyer. At best, it teaches one to think like a litigator.” Stephen M. Bainbridge, Reflections on Twenty Years of Law Teaching, 56 UCLA L. REV. DISCOURSE 13, 16 (2008).
29 Wegner, supra note 5, at 891.
in the upper division “bar exam” courses [e.g., Evidence, Commercial Transactions, Trusts and Estates, etc.] which utilize modified Socratic/lecture methods of instruct.  

The findings of this paper suggest that law schools do not teach students to “think like lawyers.” Instead, prospective law students who believe that they have the “think like a lawyer” skills necessary to succeed in law school self-select law as a course of study. Law schools, abetted by the Law School Admission Council (LSAC), use the Law School Admission Test (LSAT) to prescreen candidates for the desired “think like a lawyer” traits. It should come as no surprise that the LSAT has the highest correlation to law school success as measured by both first year law school grade point averages (FYA) and final law school grade point average (LGPA) and that LGPA is the variable which has the highest correlation with state bar examination passage.

**The Research Studies**

If law schools do teach students to “think like a lawyer,” students who take more of the “think like a lawyer” courses should develop more of the “think like a lawyer” skills than students who take seminars, work on law journals or enroll in clinical programs. This paper will

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30 Dickinson asserted that the dialog based law school pedagogy was a sound strategy for training lawyers. Dickinson, supra note 26, at 102, 113. Friedland found that the majority of law school faculty used the Socratic method in first year classes and that the lecture or modified Socratic method predominated the teaching techniques in second and third year course work. Friedland, supra note 26, at 20-21, 28-29. Krannich found the Socratic method to still exist in most law school classes but questioned the effectiveness of the technique and found it to be a detriment to the actually learning to practice law. Krannich, supra note 24, at 382. Wegner suggested that a rethinking of the use of the Socratic and Case Dialog methods could open space for innovation in upper year law school course work and also “help students master thinking like lawyer more effectively.” Wegner, supra note 5, at 923.


report the findings of empirical examinations of this issue at two American Bar Association (ABA) accredited law schools. It will test whether students who have taken more of the courses designed to instill the “think like a lawyer” skills have greater success on state bar examinations when controlling for the LSAT and undergraduate grade point average (UGPA) upon entry to law school.

Previous studies have shown that students who have the highest “pre-requisite” ability to “think like a lawyer” as measured by the LSAT attain the highest LGPA and those with the highest LGPA have the highest bar examination passage rates.33 The studies conducted by the author of this paper found similar results and further found that taking the “think like a lawyer” courses do not improve law student success on state bar examinations except for a very narrow group of students who ranked in the third quartile of their law school graduating class as measured by law school grade point average. Even so, the effect of taking more courses was minimal for those students in the third quartile. As reported below, the effect of taking more courses explained less than 2% of the difference in bar examination passage rates for students who graduated in the third quarter of their law school class.

Those students who ranked in the first, second or fourth quartile of their graduating class and those students who ranked in the bottom ten percent of their graduating law school class were not benefitted by taking these “think like a lawyer” courses. Taking more of the courses designed to teach students to “think like a lawyer” did not improve their ability to pass state bar examinations. Arguably, these courses did not teach students the “think like a lawyer” skills necessary to succeed on state bar examinations.

33 Dalessandro et al., supra note 31, at 6; Lapina, supra note 31, at 3; Stillwell et al., supra note 31, at 5; Wightman, supra note 31, at 2.
Background

What are the “Think Like a Lawyer” Skills and can they be Measured?

As noted above, there appears to be little agreement on what constitutes “think like a lawyer” skills. One study noted that there was disagreement, even among law school faculty and students, concerning what was meant by “thinking like a lawyer.”\textsuperscript{34} It has been asserted that, legal reasoning “lies at the heart”\textsuperscript{35} of “thinking like a lawyer.” Critical thinking, analytical reasoning and critical reading ability have also been described as important elements in “thinking like a lawyer.”\textsuperscript{36} Is there an instrument which can measure these skills in prospective law students?

In fact, there is such an instrument. It is the Law School Admission Test (LSAT). The LSAC has spent years developing and validating the LSAT as a measure of those skills. It reports on its web site the findings of multiple validation and reliability studies which justify its claim that the LSAT accurately measures the “think like a lawyer” skills.\textsuperscript{37}

The LSAC defines “logical reasoning” as the “ability to think logically.” This is tested by providing “stimulus material” in the form of a paragraph that presents an argument followed by a question requiring the analysis of the argument. Test takers are required to evaluate the evidence

\textsuperscript{34} Friedland, \textit{supra} note 14, at 22.
\textsuperscript{35} Wegner, \textit{supra} note 5, at 895.
\textsuperscript{36} Friedland states that critical thinking is “reasonable and reflective thinking that is focused upon deciding what to believe and or do.” Friedland, \textit{supra} note 14, at 7 (citing Stephen P. Norris, Can We Test Validity for Critical Thinking? 18 Educational Researcher 21, 21 (1989)); Pre-Law Committee of the ABA Section of Legal Education and Admissions to the Bar, http://www.abanet.org/legaled/prelaw/prep.html (last visited June 25, 2010); Law School Admission Council, About the LSAT, http://www.lsac.org/LSAT/about-the-lsat.org (last visited March 8, 2008).
\textsuperscript{37} The Law School Admission Council (LSAC) publishes numerous Technical Reports on its web site http://www.lsac.org/LSACResources/Research/TR.tech-reports.asp which document the validity of the Law School Admissions Test (LSAT) as a predictor of first year law school grade point averages (FYA). See Dalessandro et al., \textit{supra} note 31 and Stillwell, et al., \textit{supra} note 31. The LSAC also advises that the LSAT is designed to measure skills necessary to succeed in law school including reading comprehension, analytical reasoning and logical reasoning. Law School Admission Council, About the LSAT, http://www.lsac.org/jd/LSAT/about-the-LSAT.asp (last visited November 6, 2010). The LSAC also recommends that prospective law students take courses that require analytic/problem solving skills, critical reading ability and writing skills. Law School Admission Council, Preparing for Law School, http://www.lsac.org/JD/Think/preparing-for-law-school.asp (last visited November 6, 2010).
presented in the argument, identify the strengths and weaknesses of the argument and draw conclusions about the argument.38

“Analytical reasoning” problems are described as “logic games.” The problems usually establish some logical relationship between hypothetical people and ask students to deduce logical connections between the individuals to respond to specific questions.39

Finally, the “reading comprehension” section of the LSAT tests the ability of test takers to read and understand unfamiliar material and to answer questions about that material.40

The importance of the LSAT is recognized by the fact that all ABA accredited law schools are required to utilize a standard admissions test for all applicants and that the LSAT is recognized by the ABA as the only approved admissions test.41

**State Bar Examinations**

Each state supreme court is responsible for determining the qualifications of those authorized to practice law within its borders.42 Forty-nine states require law school graduates to pass a bar examination to become licensed to practice law in the state or to be admitted on motion or by reciprocity based on passage of the bar examination in another state.43 Wisconsin automatically admits graduates of in-state law schools on proof of good character and fitness44

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39 Martinson, supra note 38, at 5; Law School Admission Council, supra note 38.
40 Martinson, supra note 38, at 5; Law School Admission Council, supra note 38.
43 Id. at 3, 25, 28.
but requires graduates of out-of-state law schools to take and pass the Wisconsin bar examination to be licensed to practice law.\textsuperscript{45}

The bar examination requirements and the standards for passing the examination vary by state. For the most part, however, there are five components to bar examinations which are typically administered. These components are: the Multistate Bar Examination (MBE)\textsuperscript{46}, the Multistate Essay Examination (MEE)\textsuperscript{47}, a State Essay Examination (SEE)\textsuperscript{48}, the Multistate


\textsuperscript{46} Forty eight states and five foreign jurisdictions required the MBE as part of their bar examinations in 2009. The MBE is a two hundred-question, multiple-choice examination which tests Constitutional Law, Contracts, Criminal Law, Criminal Procedure, Evidence, Real Property and Torts. The test is given in two, three-hour-long sessions on one day. Students answer one hundred questions during each three-hour test period which allows the student an average of 1.8 minutes per question. These jurisdictions required passage of the MBE as a condition for admission to practice law. National Conference of Bar Examiners, supra note 42, at 30.

\textsuperscript{47} Twenty three jurisdictions administered the MEE as part of their state bar examinations in 2009. The MEE offers nine, 30 minute questions covering Business Associations, Corporations and Limited Liability Companies, Conflicts of Law, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Federal Civil Procedure, Real Property, Torts, Trusts and Estates and the uniform Commercial Code. Typically, states administer the MEE as a three-hour examination which consists of six essay questions. The purpose of the MEE is to:

(1) identify issues raised by a hypothetical question; (2) separate material which is relevant from that which is not; (3) present a reasoned analysis of the relevant issues in a clear, concise and well-organized composition; and (4) demonstrate an understanding of the fundamental legal principles relevant to the probable solution of the issues raised by the factual situation. National Conference of Bar Examiners, supra note 42, at 38.

\textsuperscript{48} Individual SEEs are given in many jurisdictions. These examinations vary from one-half a day in length to a day and a half in length. SEEs usually test the subject matter listed in the MEE and additionally test areas of state law not covered by the MEE or material which is unique to the individual state. Such subjects may include state civil procedure, water law, Native American law, oil and gas law and mining law. The typical pattern is for states which have adopted the MEE to require the taking of a SEE to cover areas not covered in the six MEE questions.
Performance Test (MPT)\textsuperscript{49} and the Multistate Professional Responsibility Examination (MPRE).\textsuperscript{50} The MEE and SEE scores are scaled to the MBE score by individual jurisdiction.\textsuperscript{51} 

It has been stated that the bar examination is intended to test legal knowledge and skills which include “reading comprehension and reasoning, identifying and formulating legal issues, organizing information, following directions and the ability to write”\textsuperscript{52} The skills tested on the bar examination are not intended to predict future success as a lawyer, only to test the necessary “skills” of a lawyer at the time of graduation from law school.\textsuperscript{53} These skills sound suspiciously like the skills tested on the LSAT and the “think like a lawyer” skill which law schools purport to teach.

**Do Law Schools Purposely Select Prospective Students who have the Ability to “Think Like a Lawyer” on Admission?**

It has been previously recognized that the ability to “think like a lawyer” is a “pre-requisite” and a “co-requisite” for undertaking legal course work.\textsuperscript{54} The ABA’s Section of Legal Education and Admission to the Bar strongly recommends that students take undergraduate courses which promote analytic, problem solving, critical reading, and writing skills in order to

\textsuperscript{49} Thirty four jurisdictions administered the MPT in 2009. The MPT provides students with a packet of information and students are required to use fundamental lawyering skills to complete a task, such as writing a legal memorandum. *Id.* at 40.

\textsuperscript{50} Forty nine states required the MPRE as part of their state bar examinations in 2009. The sole exception was the State of Washington. The MPRE is an ethics test which examines applicants on the rules of professional conduct. *Id.* at 34.

\textsuperscript{51} This is completed by first determining the mean and standard deviation of the MBE score by jurisdiction. Then the mean and standard deviation is calculated for the jurisdiction’s combined MEE and SEE. Finally, the combined MEE and SEE are rescaled to have the same mean and standard deviation as the MBE. This is done to allow for better comparison between MEE and SEE scores and MBE scores. Susan M. Case, *Demystifying Scaling to the MBE: How’d You Do That?*, *The Bar Examiner*, May 2005, at 45-46, available at http://www.ncbex.org/uploads/user_docrepos/740205_testing.pdf.


\textsuperscript{54} Wegner, *supra* note 5, at 891.
prepare for law school.\textsuperscript{55} The LSAT tests the “think like a lawyer” skills previously attained by undergraduates and law schools heavily rely on the LSAT scores in making admission decisions. In fact, law schools establish law school index scores which combine and weight the LSAT and UGPA and then use those index scores as the principal means of determining whom to admit to law schools.\textsuperscript{56} Additionally, the LSAC maintains an admissions “calculator” by which prospective law students can input their UGPA and LSAT score and find out their likelihood of admission to ABA accredited law schools.\textsuperscript{57}

Let me say this as plainly as I can, using LSAT scores and UGPAs, law schools pre-select those students who already have the “think like a lawyer” skills necessary for success in law schools.

**Do Undergraduate Students who have Developed “Think Like a Lawyer” Skills Self-select to Attend Law School?**

What about prospective law students? Do they self-select? Do the students who already have the “think like a lawyer” skills choose to go to law school? This seems to be the implication of recent studies.

It has been stated that there is a self-selection component to students’ decisions concerning whether to attend college.\textsuperscript{58} Cross and Markus have extensively studied the self-selection process of college students and have found that students develop “self-schemas” in

\textsuperscript{55} ABA Pre-Law Committee, *supra* note 15.
\textsuperscript{58} Lawrence W. Kenny, et al., *Returns to College Education: An Investigation of Self-Selection Bias Based on the Project Talent Data*, 20 INT’L ECON. REV. 775, 775 (1979).
which they view a “possible self” where the skills they already have developed or wish to develop translate into decisions about educational programs and career selections.\textsuperscript{59}

Thorner recognizes that “a natural self-selection” takes place as students choose law schools.\textsuperscript{60} Kuncel and Klieger have extended the knowledge of the law student self-selection phenomena. They found that law students who have knowledge of their LSAT scores self-select law schools appropriate to their ability level.\textsuperscript{61} While not specifically discussing the issue, one implication which can be drawn from their research is that prospective law students who score poorly on the LSAT opt out of applying for or attending law school due to the same self-selection process.

Again, stating the obvious, undergraduate students who have the highest “think like a lawyer” skills, as measured by previous course work, self-schemas, possible selves, UGPA, and LSAT scores apply for admission and attend law school. Those students who do not have the pre-requisite “think like a lawyer” skills either do not apply to law schools or are rejected for admission consideration by law schools due to the students’ demonstrated lack of “think like a lawyer” skills.

**Can we Empirically Measure Whether Law Schools Teach Students to “Think Like Lawyers”?**

We have already shown that college students with the pre-existing ability to “think like a lawyer” self-select themselves for application to law school and that law schools purposely seek out students who already have the “pre-requisite” ability to “think like a lawyer” for admission.

Knowing that, is there a method of determining whether law schools also teach students to “think like lawyers” after admission?

There is a report of one study conducted between 1983 and 1985 which attempted to determine whether graduate education had an effect on reasoning skills. Lehman, Lempert and Nisbett examined the effect of graduate education in law, medicine, psychology and chemistry at the University of Michigan on students’ verbal reasoning, statistical-methodological reasoning and conditional reasoning.\(^\text{62}\) They conducted two separate studies.

In the first, cross-sectional study, they compared reasoning test scores of first year and third year students in the above listed graduate programs in 1983. The second study was a longitudinal study which followed students who entered those programs in 1983 and compared the students’ reasoning test scores in 1983 to their reasoning test scores in the third year in their respective programs.\(^\text{63}\)

The Michigan studies examined three types of reasoning. The verbal ability test measured the ability to recognize arguments, evaluate evidence, and detect analogies. The conditional reasoning test was intended to measure the extent to which the students could solve problems by applying conditional or biconditional reasoning to test causal reasoning ability.\(^\text{64}\) The statistical-methodological reasoning test was intended to measure the ability of the test taker to use conditional logic to solve everyday problems which were similar in nature to the verbal reasoning tests on the Graduate Record Examination.\(^\text{65}\)


\(^{63}\) *Id.* at 434-36.

\(^{64}\) Conditional and biconditional reasoning requires the application of mutually inclusive or exclusive facts to solve problems. An example of this type of question can be found in Appendix A to the Lehman, et al. report. *Id.* at 442.

\(^{65}\) *Id.* at 435.
Both the cross-sectional and the longitudinal study failed to find any statistically significant difference in the change in verbal reasoning scores for law students between beginning law school and completing law school.66 Similarly, law students in both studies showed no statistically significant gain in statistical or methodological reasoning during their years in law school.67 Finally, the cross-sectional study did not demonstrate any significant gain in conditional reasoning scores for law students. The longitudinal study did show a statistically significant gain in law students’ conditional reasoning scores but those gains lagged behind the gains demonstrated by medical or psychology students.68

The results appear to support the proposition that law students at the University of Michigan in the 1980’s were either not gaining significant “think like a lawyer” skills while enrolled in law school or were gaining less of those skills than were gained by medical or psychology students.

The Saint Louis University School of Law and “Big Apple” School of Law Studies

The author of this paper conducted two studies to attempt to determine whether attending law school increased the ability of law students to “think like a lawyer.” The initial study was conducted at the author’s home law school, Saint Louis University School of Law (hereafter “SLU Law”). A replication study was subsequently conducted at a law school in the metropolitan New York City area which the author will identify as the Big Apple School of Law (hereafter “Big Apple Law”). In the studies, the incoming LSAT scores of law students were used as pre-test measures of students’ “think like a lawyer” skills on admission to law school. Similarly, the studies utilized the Missouri and New York bar examinations as post-test measures of “think like a lawyer” ability on graduation.

66 Id. at 437.
67 Id.
68 Id. at 438.
The core law school courses which are tested on state bar examinations are typically taught using the Socratic method or some form of Socratic method combined with lecture and dialog. If the professors in those courses were truly teaching students to “think like a lawyer,” then students who take more of those courses should, after controlling for incoming LSAT scores and UGPA, have a better chance of passing state bar examinations.

The methodology section below will describe how the SLU Law study and the replication study at Big Apple Law were conducted.

**Methodology**

**The Saint Louis University School of Law Study**

**Population of the study**

The population in this study consisted of all graduates from SLU Law between January 2001 and August 2005.\(^69\) SLU Law is a private, Catholic, Jesuit institution which traces its roots to the Saint Louis Law Institute which was founded in 1843. It has been ABA accredited since 1924 and has an approximate total annual enrollment of 625 students in its full-time programs and 240 students in its part-time programs.

The population of the SLU Law study consisted of 828 examination takers who participated in eleven different Missouri bar examinations during this period.\(^70\) The population,

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\(^69\) SLU Law graduates students in January, May and August of each year. All graduates in those years, including J.D. and dual degree (i.e., J.D./M.B.A.) students, were included in the study provided that the Missouri bar examination was the first bar examination taken after graduation.

\(^70\) The Missouri bar examination is given in February and July each year during the study period. This study included graduates who took the Missouri bar examination between February 2001 and February 2006. Some January 2001 graduates took the February 2001 Missouri bar examination and some August 2005 graduates took the February 2006 Missouri bar examination as their first bar examination.
categorized by sex, included 430 males (51.9%) and 398 females (49.1%).\textsuperscript{71} The population included 624 students (75.4%) who began their studies as full-time students and 202 who began as part-time students (24.4%).\textsuperscript{72} Two students in the study could not be identified by whether they first entered the full-time or part-time program. The study included 729 Caucasians (88.0%), 47 African Americans (5.7%), 16 Asians/Pacific Islanders (1.9%), 10 Mexicans/Hispanics (1.2%), 7 Indians/Pakistanis (0.8%) and 19 Native Americans/Other/Unknown/Missing (2.3%).\textsuperscript{73}

**SLU Law curriculum**

The law school curriculum at SLU Law is typical of curricula at American Bar Association approved law schools.\textsuperscript{74} First year students were required to take thirty semester hours of core course work which included Contracts, Federal Civil Procedure, Torts, Property,

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\textsuperscript{71} Gender classification was based on the graduates' self identification on their applications to the Law School Data Assembly Service (LSDAS) which compiles transcripts, letters of recommendation and Law School Admission Test (LSAT) scores and which provides a report of this data to law schools to which the applicants apply.

\textsuperscript{72} SLU Law admits students only in the fall semester each year. Approximately 235-245 full-time students and 75-95 part-time students are admitted each year. Full-time and part-time students are allowed to transfer between the programs after their first two semesters and may change their status as full- or part-time students in each semester thereafter, depending on the number of credit hours in which they have enrolled. Part-time students take between 8-11 credit hours per semester. Full-time students take between 12-17 credit hours per semester. Student categorization in this study is based on the status of the student at initial enrollment.

\textsuperscript{73} The race variable was coded based on the graduate's self-identification on the LSDAS report. Six categories were coded for the race variable in this study: Caucasian, African American, Asian/Pacific Islander, Indian/Pakistani, Mexican/Hispanic and Other/Unknown/Missing. Mexican/Chicano/Chicana were combined with Hispanic because of the small number of graduates (10) in those categories. Similarly, Native American/Alaskan Native were combined with the Other/Unknown/Missing due to the small number of graduates (19) in those categories. Where the graduate did not indicate his or her race on the LSDAS report, the graduate's race was determined by reviewing the graduate's law school application or other law school data.

Constitutional Law I, Criminal Law and Legal Research and Writing. All of these subjects except Legal Research and Writing were tested on the Missouri bar examinations.

Following completion of the thirty semester hours of required courses, SLU Law students were required to complete sixty-one additional semester hours of course work to obtain their Juris Doctor degree. The additional sixty-one hours of course work were elective with the exception that students had to complete a three semester hour course in Legal Profession (an ethics course) and they were required to take a two hour seminar which concluded with the drafting of a major research paper on a topic related to the seminar.

SLU Law students were not required to take additional course work in topics which were tested on the Missouri bar examination. The SLU Law faculty and administration encouraged students to take as many of these courses as possible under the assumption that taking these courses would improve the students’ ability to pass the Missouri bar examination.

Effective with the beginning of the 2005 academic year, the SLU Law faculty adopted a policy which mandated that second and third year students with first year law grade point averages (FYLPGA) which placed them in roughly the bottom ten percent of their law school class take at least four of these bar subject matter elective courses each semester. Before the adoption of this policy, recent graduates of the SLU Law had taken as few as three or as many as fourteen of these elective bar examination subject matter courses (M = 8.79, S.D. 1.55).

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77 Saint Louis University School of Law, supra note 75, at 68-74.
78 SLU Law offers the following elective courses in subject areas which are tested on the Missouri bar examination: Administrative Law, Business Associations, Commercial Transactions, Conflicts of Law, Remedies, Family Law, Missouri Civil Procedure, Secured Transactions, Trusts and Estates, Evidence, Real Estate Transactions, Criminal Procedure I, Criminal Procedure II, Constitutional Law II, Federal Courts and First Amendment. These subjects cover forty-eight semester hours of course work. Id. at 73, 111-12.
79 Id.
However, prior to this study, there had never been a statistical examination of those graduates to determine whether taking more of the bar examination subject matter elective courses improved the bar examination passage rate. In other words, were students who took more of those courses more likely to pass the Missouri bar examination than students who took fewer of those courses?

**Data collection**

The SLU Law study used archived data available at the School of Law. SLU Law compiles a list of each academic year’s graduates and assigns a class rank to them based on their cumulative grade point average (LGPA) for all of the course work completed during law school. This is commonly known as the student’s “class rank.”

The Missouri bar examination was given in February and July of each year. The Missouri Board of Law Examiners reports the names of SLU Law graduates who took the Missouri bar examination and whether they passed or failed the exam. Thus, it is possible to compare SLU Law graduates’ “class rank” and LGPA with their success in passing the Missouri bar examination.

SLU Law student files contain original copies of the students’ law school applications, undergraduate transcripts, LSAT test scores, law school transcripts and miscellaneous documents. Computerized databases also provide law school courses taken and grade transcripts for all SLU Law graduates. Additional computer databases exist which contain demographic information on each SLU Law student.

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80 Typically, between 225-275 students graduate and are ranked each academic year. Thus, the top graduate would be ranked “1 of 250” for classes with 250 students. Conversely, the bottom student in that class would be ranked “250 of 250.”
The Missouri bar examination

During the period of this study, the Missouri bar examination consisted of two parts: the Multistate Bar Examination (MBE) and the Essay Examination (EE). The EE consisted of a Missouri Essay (ME) component, the Multistate Essay Examination (MEE) and the Multistate Performance Test (MPT). Applicants were also required to pass the Multistate Professional Responsibility Examination (MPRE) and a character and fitness investigation to gain admission to the Missouri bar. This study only analyzed whether students "passed" or "failed" the Missouri bar examination which consisted of the MBE and the EE.

The Missouri bar examination was administered by the Missouri Board of Law Examiners, which was appointed and authorized by the Supreme Court of Missouri to determine the qualifications and fitness of applicants for admission to the Missouri bar. Approximately 75% of the SLU Law graduates took the Missouri bar examination as their first bar examination during the study period. The Missouri Board of Law Examiners reported the identities of students who passed or failed each bar examination to SLU Law. 81

Variables

The variables collected in this study were obtained by inspecting Law School Data Assembly Service (LSDAS) reports and SLU Law data bases and files. The SLU Law graduates’ undergraduate grade point averages (UGPA) were determined by inspecting the LSDAS reports. 82

81 This study did not include graduates who took the bar examination in other states as their first bar examination and did not include graduates who retook the examination after failing the bar examination on their first attempt.

82 That report included in its calculation all grades for undergraduate course work completed and was not limited to the grades earned at the undergraduate institution from which the graduate received his or her undergraduate degree.
The graduates’ LSAT scores were also determined by inspecting the LSDAS reports.83 The average LSAT score was recorded in cases where a SLU Law graduate took multiple LSAT tests.84

The class rank variable was coded based on the graduates’ final law school grade point averages (LGPA). All SLU Law graduates during a calendar year were ranked together based on their LGPA regardless of whether they graduated in January, May or August. Graduates whose final LGPA placed them in the 1st-25th percentile of their graduating class were assigned to the "First Quartile;" graduates whose final LGPA placed them in the 26th-50th percentile were assigned to the "Second Quartile;" graduates whose final LGPA placed them in the 51st-75th percentile were assigned to the "Third Quartile;" and graduates whose final LGPA placed them in the 76th -100th percentile were assigned the "Fourth Quartile."

Graduates were assigned to the "Bottom Ten Percent-Yes" category if their final LGPA placed them between the 91st and 100th percentile of their graduating class. They were assigned to the "Bottom Ten Percent-No" category if their final LGPA placed them in the 1st-90th percentile of their graduating class. It should be noted that graduates who were coded as "Bottom Ten Percent-Yes" also appear in the "Fourth Quartile" category as "Bottom Ten Percent-Yes" is a subset of the "Fourth Quartile."

83 The LSAC administers the LSAT. It states in its Interpretive Guide for LSAT Score Users (2006) that tests are graded on a 120-180 point scale. Law School Admission Council, LSAC Report No. 2006-2, http://www.members.lsac.org (last visited June 10, 2008). Score results are normally distributed and have the same meaning from one administration to another based on the statistical process of equating. Equated scores represent a comparable level of ability between test-takers regardless of when the test was taken, even though the average ability of test-takers on one test may exceed the average ability of those taking a different test. The LSAC reports that the LSAT is highly reliable; meaning that it would be reproducible for a given test-taker regardless of the date the test is taken. The reliability coefficient, measured on a scale from 0-1, has consistently been at least 0.9. The larger the reliability coefficient, the more consistent a test-taker’s results should be.

84 The requirement to report average LSAT scores to the ABA and LSAC was changed in December 2005. Law schools may now report the highest LSAT score when reporting data on their incoming class. Id. The SLU Law study used the average of the scores for multiple LSAT test-takers for the purpose of uniformity in analysis.
All SLU Law graduates were required to take the core 30 hour first year curriculum which consisted of Contracts, Torts, Criminal Law, Federal Civil Procedure, Constitutional Law I, Property and Legal Research and Writing. All of these subjects (except for Legal Research and Writing) were tested on the bar examination in Missouri.

SLU Law graduates may have also elected to take the following upper division courses whose subject matter is also tested on the Missouri bar examination: Administrative Law, Business Associations, Commercial Transactions, Conflicts of Law, Constitutional Law II, Criminal Procedure, Evidence, Family Law, First Amendment, Missouri Civil Procedure, Real Estate Transactions, Remedies, Secured Transactions and Trusts and Estates. Given that all graduates are required to take the core 30 hour first year curriculum, the variable collected in this study was the total number of elective, upper division bar examination subject matter courses (hereafter “bar courses”) taken by each graduate.

The SLU Law study did not attempt to correlate the graduate’s ability to pass individual sections tested on the Missouri bar examination with whether the graduate took the underlying bar examination subject matter course while in law school because some subject areas are tested on multiple parts of the bar examination; some subject areas are tested at various weights or not tested at all on bar examinations in different years; and because bar examination test scores on individual subject areas are not released for individual test-takers unless that test-taker specifically authorizes the release of that data. Analysis of results on individual bar examination subject areas would be based on an incomplete database.
Data analysis

It has been well established that bar examination passage rates are correlated with the student’s LSAT test score, the student’s UGPA, and the student’s LGPA.\textsuperscript{85}

Binary logistic regression was conducted to analyze whether the independent variables were related to bar examination passage. Logistic regression is a technique to express the relationship between several quantitative or dichotomous categorical independent variables and a single dichotomous categorical dependent variable when controlling for the effect of the individual independent variables.\textsuperscript{86} In the SLU Law study, the dependent variable was bar examination passage, yes or no. The independent variables were the graduates’ incoming LSAT scores, UGPAs, their LGPAs at graduation, and the number of upper division, elective bar examination subject matter courses taken.

The regression was run separately for those students who ranked in the second, third and fourth quartile of graduates and also separately run for those students who graduated in the bottom ten percent of their class to determine the effect of the independent variables on bar examination passage for each group.

Logistic regression was not run for SLU Law graduates who ranked in the first quartile of their graduating class because all such students passed the Missouri bar examination during the period of this study. This was true in spite of the fact that the number of bar courses taken varied widely for this group of graduates (\(M = 8.73, \text{S.D.} = 1.46\)).


\textsuperscript{86} DAVID C. HOWELL, STATISTICAL METHODS FOR PSYCHOLOGY 583 (5th ed. 2002).
The calculations used in this study were performed using the Statistical Program for Social Sciences (SPSS), version 16.0. The statistical tests were conducted at a .05 significance level. In this study, a finding of a significant result on the binary logistic regression test was reported as a "relationship" or was reported as a variable which is a "predictor" of bar examination passage.

It has been noted that for very large samples, even very small differences between groups can become statistically significant. However, a finding of statistical significance may not have any practical significance.\(^8^7\) Lempert cautioned that statistical significance tells a researcher nothing that matters beyond that the results are not likely due to chance.\(^8^8\) Effect size, sometimes called “strength of association,” is used to indicate the proportion of variation in the dependent variable that is explained by the independent variable.\(^8^9\)

As discussed more fully below, the SLU Law study found that taking more elective bar examination subject matter courses was a statistically significant predictor of bar examination passage only for graduates who ranked in the third quartile of their graduating class (Wald $\chi^2 = 5.638$, p. = .018).

A follow up independent t-Test was conducted for those students in order to calculate an effect size to determine the proportion of the variance in bar examination passage which was explained by taking additional courses ($M_{pass} = 9.0182$, S.D. = 1.52; $M_{fail} = 8.17$, S.D. = 1.87; $t$ (198) = 2.875, p = .004). An eta squared ($\eta^2$) calculation disclosed an effect size of only .014. In other words, taking more upper division, elective bar examination subject matter courses

\(^{89}\) Julie Pallant, SPSS Survival Manual 207-08 (2nd ed. 2005);
explained only 1.4% of the difference in bar examination passage rates for third quartile graduates. This would be considered to be a small effect.\textsuperscript{90}

**Findings of the Saint Louis University Study**

There was no statistically significant relationship between the number of bar examination subject matter courses taken and bar examination passage for graduates of Saint Louis University School of Law who rank in the second and fourth quartile or for graduates who rank in the bottom ten percent of their class.

Logistic regression was conducted separately for the second, third and fourth quartiles of SLU Law graduates as well as for those graduates who ranked in the bottom ten percent of their SLU Law class. Logistic regression could not be conducted for first quartile graduates because all such graduates passed the Missouri bar examination during the period of the study.

The omnibus test of the model for second quartile graduates was found to be statistically significant (Omnibus $\chi^2 = 13.275$, $p = .010$), but the Hosmer and Lemeshow test indicated a poor model fit ($\chi^2 = 31.543$, $p < .001$). The Cox & Snell (0.58) and Nagelkerke (.188) pseudo $R^2$ values showed that the model only accounted for between 5.8% and 18.8% in the variance in bar examination passage for second quartile graduates.

Logistic regression analysis of second quartile graduates revealed that neither LGPA (Wald $\chi^2 = 1.981$, $p = .159$); UGPA (Wald $\chi^2 = .607$, $p = .436$); or the number of upper division, elective bar examination subject matter courses taken (Wald $\chi^2 = 1.164$, $p = .281$) were statistically significant predictors of bar examination passage. The only statistically significant predictor of bar examination passage for second quartile graduates was LSAT scores (Wald $\chi^2 = 9.623$, $p = .002$).

\textsuperscript{90} JACOB COHEN, STATISTICAL POWER ANALYSIS FOR THE BEHAVIORAL SCIENCES 25 (1988).
The logistic regression was then conducted on the data for the third quartile graduates. The regression model was found to be a statistically significant predictor of bar examination passage for those graduates (Omnibus $\chi^2 = 19.478$, $p = .001$). The Hosmer and Lemeshow test also found the model to be a valuable predictor of bar examination passage ($\chi^2 = 8.545$, $p = .382$). The Cox & Snell (.095) and Nagelkerke (.159) pseudo R² values found that between 9.5% and 15.9% of the variance in bar examination passage for third quartile graduates was explained by the model.

Both LGPA (Wald $\chi^2 = 5.813$, $p = .016$) and the number of elective, upper division, bar examination subject matter courses taken (Wald $\chi^2 = 5.638$, $p = .018$) were found to be statistically significant predictors of bar examination passage for third quartile graduates. UGPA (Wald $\chi^2 = 2.219$, $p = .136$) and LSAT scores (Wald $\chi^2 = 1.639$, $p = .200$) were not found to be statistically significant predictors of bar examination passage for third quartile graduates. However, as described above, the $\eta^2$ effect size of the difference in the number of bar courses taken only accounted for 1.4% of the variation in bar examination passage for third quartile graduates.

The logistic regression model was then run for test-takers who ranked in the fourth quartile of their graduating classes. The omnibus test of model coefficients found the model to be a statistically significant predictor of bar examination passage (Omnibus $\chi^2 = 49.865$, $p < .001$) and the Hosmer and Lemeshow test found model validity ($\chi^2 = 8.921$, $p = .349$). The Cox & Snell (.239) and Nagelkerke (.318) pseudo R² values found that between 23.9% and 31.8% of the variance in bar examination passage for fourth quartile graduates was explained by the model.
Logistic regression analysis of fourth quartile test-takers found that LGPA (Wald $\chi^2 = 16.550$, $p < .001$) and LSAT scores (Wald $\chi^2 = 16.794$, $p < .001$) were statistically significant predictors of bar examination passage. UGPA (Wald $\chi^2 = .009$, $p = .926$) and elective, upper division, bar examination subject matter courses taken (Wald $\chi^2 = 3.572$, $p = .059$) were found to not be statistically significant predictors of bar examination passage for fourth quartile graduates.

Finally, the logistic regression model was run for graduates who ranked in the bottom ten percent of their graduating classes. The omnibus test of model coefficients found the model to be a statistically significant predictor of bar examination passage for bottom ten percent graduates (Omnibus $\chi^2 = 17.075$, $p = .002$). The Hosmer and Lemeshow test demonstrated model validity ($\chi^2 = 11.691$, $p = .166$). The Cox & Snell (.214) and Nagelkerke (.307) pseudo R² values found that between 21.4% and 30.7% of the variance in bar examination passage for bottom ten percent graduates was explained by the model.

LGPA (Wald $\chi^2 = 4.436$, $p = .035$) and LSAT scores (Wald $\chi^2 = 6.558$, $p = .01$) were found to be statistically significant predictors of Missouri bar examination passage for graduates who ranked in the bottom ten percent of their graduating classes. UGPA (Wald $\chi^2 = .220$, $p = .639$) and the number of elective, upper division, bar examination subject matter courses taken (Wald $\chi^2 = .632$, $p = .427$) were found to not be significant predictors of Missouri bar examination passage for bottom 10% graduates.

**SLU Law Summary Findings**

When the data was examined by class rank by law school quartile, the number of bar examination subject matter courses taken was only a statistically significant predictor of bar examination passage for third quartile graduates (Wald $\chi^2 = 5.638$, $p = .018$). The number of such courses taken was not a statistically significant predictor of bar examination passage for
second quartile graduates (Wald $\chi^2 = 1.164$, $p = .281$); for fourth quartile graduates (Wald $\chi^2 = 3.572$, $p = .059$); or for graduates who ranked in the bottom ten percent of their law school class (Wald $\chi^2 = .632$, $p = .427$).

It is significant to note that the bar examination failure problem is especially acute for graduates in the fourth quartile and for graduates who ranked in the bottom ten percent of their law school class. One hundred percent of SLU Law graduates who ranked in the top quartile of their law school classes passed the Missouri bar examination on their first attempt during the period of this study. Ninety-five percent of second quartile graduates passed the Missouri bar examination on their first attempt. Eighty-three percent of third quartile SLU Law graduates passed the Missouri bar examination on their first attempt. The passage rate for fourth quartile graduates dropped to forty-six percent. The passage rate for graduates who ranked in the bottom ten percent of their class was an abysmal twenty-seven percent.

The Big Apple School of Law Replication Study

A replication study was carried out using data supplied by Big Apple School of Law (Big Apple Law) to test the validity of the statistical results obtained in the SLU Law study. Big Apple Law is a private, non-sectarian institution which is one of the colleges of a larger university. Big Apple Law had approximately 1,200 students in full-time and part time instructional programs leading to the degree of Juris Doctor. Big Apple Law is accredited by the American Bar Association.

The replication study was conducted using data for 2006 graduates of the Big Apple Law who took the July 2006 New York state bar examination as their first state bar examination. Similar to other ABA accredited law schools, Big Apple Law had a first year required curriculum which included courses covering Contracts, Torts, Real Property, Constitutional Law,
Criminal Law and Criminal Procedure. Students in the second and third years of their legal education at the Big Apple Law were free to take elective courses.

**Big Apple Law Replication Study Population**

The Big Apple Law replication study collected data on 241 graduates who took the July 2006 New York bar examination as their first bar exam. The study included 121 males (50.2%), 114 females (47.3%) and 6 graduates (2.5%) whose sex was unknown. The population included 147 Caucasians (61.0%), 12 African Americans (5.0%), 16 Hispanic/Chicano/a (6.6%), 11 Asian/Pacific Islanders (4.6%), 1 Native American/Alaska Native (0.4%), and 54 graduates (22.0%) whose race was unknown or missing. 207 of the graduates (85.9%) entered Big Apple Law as full-time students, 28 entered as part-time student (11.6%), and data on status was missing for 6 graduates (2.5%).

**The New York Bar Examination**

The New York bar examination included the Multistate Bar Examination (MBE) which included questions covering Contracts, Torts, Constitutional Law, Criminal Law, Evidence and Real Property. The New York state bar essay examination section (SEE) included questions concerning another 14 subject areas whose content was included in elective, upper division courses offered by Big Apple Law. The methodology for the Big Apple Law replication study was similar to the SLU Law study with the exception that only one year of Big Apple Law graduates were included in the study and the study only collected data from one administration of the New York bar examination.

**Big Apple Law Replication Study Variables**

The independent variables in the Big Apple Law replication study were LSAT Scores, UGPA, LGPA and the number of elective, upper division, bar examination subject matter courses taken by Big Apple Law graduates who took the July 2006 administration of the New
York bar examination. The dependent variable was whether the graduates passed or failed the New York bar examination on their first attempt.

**Big Apple Law Replication Study Findings**

Logistic regression was conducted on test takers segregated by quartiles to determine whether there was a relationship between LGPA, LSAT scores, UGPA, and number of elective, upper division, bar examination subject matter courses taken and New York bar examination passage when controlling for the other variables. An analysis of first quartile ranked graduates was not conducted due to the fact that only one first quartile graduate failed the New York bar examination which provides insufficient data for meaningful interpretation.

Logistic regression revealed that the number of bar courses taken was not a statistically significant predictor of bar examination passage for graduates who ranked in the second (Wald $\chi^2 = .118, p = .732$) or fourth quartiles (Wald $\chi^2 = .224, p = .224$). There was a statistically significant relationship between the number of bar examination courses taken and bar examination passage for graduates who ranked in the third quartile of their graduating class (Wald $\chi^2 = 3.939, p = .047$).

This replicates the results of the SLU Law study. The only other statistically significant variables when controlling for the effect of other variables was LGPA for the third quartile graduates (Wald $\chi^2 = 10.668, p = .001$) and for the fourth quartile graduates (Wald $\chi^2 = 8.925, p = .003$).

Finally, logistic regression was conducted to examine whether there was a relationship between these variables and bar examination passage for graduates who ranked in the bottom 10% of their graduating class. Caution must be exercised in reviewing these results due to the small number of such graduates who passed when compared to those who failed the examination.
(2 pass (6.9%), 27 fail (93.1%)). The model for those graduates who ranked in the bottom 10% was found to be of questionable significance (Omnibus $\chi^2 = 6.710$, $p = 0.152$; Hosmer & Lemeshow = .906, $p = .999$). That model accounted for between 20.7% and 52.3% of the difference in bar examination passage (Cox & Snell = .207, Nagelkerke = .523). The number of bar examination courses taken was not found to be a statistically significant predictor of bar examination passage for those students who graduated in the bottom ten percent of their Big Apple Law class (Wald $\chi^2 = .169$, $p = .681$).

The model for those graduates who ranked above the bottom 10% was found to be significant (Omnibus $\chi^2 = 69.333$, $p < .001$; Hosmer & Lemeshow = 8.479, $p = .388$). This model accounted for between 29.1% and 43.4% of the difference in bar examination passage (Cox & Snell = .291, Nagelkerke = .434). LGPA was the only statistically significant variable for graduates who were not ranked in the bottom 10% of their class (Wald $\chi^2 = 31.702$, $p < .001$). The number of bar examination subject matter courses taken was found to not be a predictor of bar examination passage for students who graduated in the upper 90% of their class (Wald $\chi^2 = 2.149$, $p = .143$).

**Discussion and Conclusion**

Wegner reminded us that teaching students to “think like a lawyer” has become a “trope” of the core identity of American law schools.\(^{91}\) For over 100 years, law school faculty and deans have recited this mantra. The Socratic method or modified dialog/lecture method of instruction using the case book method has also been the accepted law school pedagogy since the 1870’s when it was developed by Professor Langdell at Harvard.

It has also been an accepted tenet that the dialectic, dialog or Socratic method of legal instruction teaches students those “think like a lawyer” skills. There is some disagreement about

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\(^{91}\) Wegner, *supra* note 4, at 891.
what it means to “think like a lawyer.” Perhaps this is because most law school faculty members are molded in the Langdell tradition of never having actually practiced law for a living.\textsuperscript{92} Consensus does appear to have developed that the “think like a lawyer” skills include critical thinking, analytical reasoning and reading comprehension.

However, in spite of the claims of a scientific methodology to law school pedagogy, there is no empirical evidence to support the belief that the Socratic method is an effective teaching tool or that law schools actually teach their students to “think like lawyers.” What has become increasingly obvious is that prospective law students arrive at law schools already armed with the skills to “think like a lawyer.” Wegner recognized that “thinking like a lawyer” is both a pre-requisite and a co-requisite for law school attendance.\textsuperscript{93}

Prospective law students self-select to attend law school. Students self-select their course of education.\textsuperscript{94} Those with the most highly developed “think like a lawyer” skills have “possible selves” in which their “self-schemas” leads them to law school enrollment.\textsuperscript{95} Those students who have already developed “think like a lawyer” skills choose to apply to appropriate law schools.\textsuperscript{96} Arguably, those without those skills choose other educational programs.

The studies reported in this paper suggest that law schools do not teach students to “think like lawyers.” Instead, law schools purposefully select prospective students who have already developed the “think like a lawyer” skill set. The LSAT has been designed and validated to measure “think like a lawyer” skills in prospective law students.\textsuperscript{97} Prospective law students are cautioned by the American Bar Association and the Law School Admission Council to take

\textsuperscript{92} Pardon my cynicism, but having actually practiced law for twenty-five years, I don’t consider spending a year or two clerking for a federal judge or spending a similar amount of time buried in the library of a major New York law firm to be the actual practice of law.
\textsuperscript{93} Id.
\textsuperscript{94} Kenny, et al., supra note 58, at 775.
\textsuperscript{95} Cross, et al., supra note 59, at 424.
\textsuperscript{96} Kuncel, et al., supra note 61, at 590.
\textsuperscript{97} LSAC, supra note 36.
undergraduate courses which will help them develop the “think like a lawyer” skills. Law schools use the LSAT and UGPA data to develop index scores which they use to select students who have already demonstrated the desired “think like a lawyer” skills.

There is surprisingly little empirical research on whether law students actually develop logic and reasoning skills while in law school. One study conducted over twenty years ago at the University of Michigan found that law students do not improve verbal reasoning, statistical or methodological reasoning skills in law school. Furthermore, the cross sectional component of the study found that law students did not develop conditional reasoning skills. The longitudinal portion of the study found that one class of law students improved their conditional reasoning skills but not as much as did the medical or psychology students in the study. Perhaps this justifies the American Bar Associations assertion that “thinking like a lawyer” is not fundamentally different that thinking like other professionals.

The findings of the SLU Law and the Big Apple Law studies reported above lend further evidence to the proposition that law schools do not teach their students to “think like lawyers.” If law schools truly teach those skills to their students it would be expected that the skills are being taught in the courses which are tested on bar examinations and which are taught using the Socratic, dialectic or dialog method of instruction. Presumably, students who take more of these bar courses will develop higher “think like a lawyer” skills and, therefore, have greater success in passing state bar examinations.

In fact, the findings of these studies demonstrate that for law students who graduated in the second, and fourth quartiles and law students who graduated in the bottom ten percent of

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98 LSAC, supra note 57.
99 LSAC, supra note 56.
100 Lehman, et al., supra note 62, at 434-36.
101 ABA Prelaw, supra note 15.
their class that taking more of the “think like a lawyer” bar courses did not improve their ability to pass state bar examinations. It can also be argued that the same holds true for students who graduated in the first quartile of their law school class because only one such student in either study failed a state bar examination. This was true even though first quartile students took vastly different numbers of the “think like a lawyer” courses.

There was a statistically significant difference in bar exam passage rates based on the number of those courses taken by law students who ranked in the third quartile of their graduating class. For those students, taking more bar courses improved their ability to pass state bar examinations. However, taking more bar courses explained less than 2% of the difference in the passage rate on the bar examination for third quartile students. Clearly, something else is happening which separates the students who pass from the students who fail state bar examinations.

The author suggests that what is happening is that most, if not all, students enter law school with a certain level of “think like a lawyer” skills due to self-selection by the students and purposeful selection by the law schools. Those students with the greatest “pre-requisite” “think like a lawyer” skills do better than those with lesser amounts of those skills. Students with the most “think like a lawyer” skills achieve higher LGPAs and pass bar examinations at a higher rate than students with lesser amounts of “think like a lawyer” skills regardless of which courses they take while in law school.

With apologies to Professor Langdell and generations of law school professors and deans, the empirical evidence demonstrates that law schools do not teach their students to “think like a lawyer.”