

Passing The Performance Test And MBE  
By Paul Pfau

(This Article appeared in the May, 1996 Issue of the California Law Student Journal)

Achieving passing scores on both the Performance Test and MBE sections of the bar exam may seem for many candidates to be a difficult prospect at best, with passing bar results riding on the outcome.

Having tutored both repeat and first-time bar examinees over the past 23 years, there are a number of fundamental considerations that I strongly advise in preparing for the Performance Test and MBE sections of the bar. I integrate all of these factors into the tutorial programs I design for the applicants I work with at Cal Bar Tutorial Review and recommend that you use them as well regardless of the program that you choose to work with.

They will assist in eliminating many of the typical pitfalls that lead to inconsistent essay results in both bar preparation and performance and hopefully maximize your point potential on these sections of the bar. If you are currently in law school, work to reinforce good writing and Multi-state preparation and Performance Test habits before you graduate. The skills that you develop in anticipation of the bar will lead to an invaluable savings in both your financial and emotional resources.

Although the subject of how to pass the Performance Test and MBE is virtually inexhaustible, here are some fundamental suggestions for you to consider.

#### I. THE NATURE OF THE PERFORMANCE TEST AND MBE

In essence, both the Performance Test and MBE are speed examinations. In contrast, they are not 12 hour exams (such as a college take-home test or research paper) where completion time is essentially unlimited. Nor are they memory exams, another term in educational testing to describe the kind of test where definitions are merely supplied for given terms. This is an initial important consideration, because the process for preparing for these sections should ultimately focus upon the nature of the exam itself, especially given the crucial need to finish your exam on time.

As such, the goals for passing a Performance Test are essentially fourfold: first, to identify the key issues of each question, usually contained in the office file and that will serve to fundamentally give organizational structure to your answer. Second, to review the library's resources with the specific purpose of defining the information to be utilized in your answer. For example, if the library consists of cases, to brief the law and facts, chart the case with the question to which it corresponds, define the case as "pro" or "con" to your position, and finally to prioritize the case in importance which has a bearing on the type of writing style you will utilize in incorporating it into your discussion. Third, to outline your answer and adapt it to the particular format requested. Fourth, to write your answer, employing each of the identifiable

elements of a "lawyer-like" writing style as you do so. Each of these goals are reached in timed stages, with each stage complementary to the next as you progressively develop your answer within the 180 minute time limit.

The goal for passing the MBE is essentially one-dimensional: to complete each of the 100 question sessions of the exam within 180 minutes - an average of 1:48 seconds per question - and to select the so-called "best answer" on about 70% of them. In recent years, with the advent of scaled scoring, the "mean average" for those who pass this section has been at about 132 correct answers out of the 200 questions given between the two sections.

Because each of the Performance Tests respectively contributes almost 13% of the points you need to pass the bar, it is to your advantage to learn how to prepare for and pass this section of the exam in order to maximize the 26% point potential - 520 out of a total 2,000 available - that this section of the bar now totally represents. Because the MBE section represents 34% of your total score - 680 out of a total 2,000 available points - is it also to your advantage to maximize your ability to pass this section.

## II. THE PERFORMANCE TEST AND MBE PREPARATION PROCESS

As noted above, the nature of the Performance Test and MBE as speed examinations should define how you prepare to achieve passing scores on these sections of the bar. In determining what review process is appropriate for you to accomplish this, consider these factors:

### A. Basic Time Management

Effective Performance Test Writing and MBE results begins before you sit down to practice a single exam. Fundamentally, consider designing a bar strategy that apportions about 26% of your total "net available study time" to Performance Test preparation and about 34% of such time to the MBE. Although this figure may be modified given your respective strengths and weaknesses with each of the various MBE subject areas and Performance Test formats, remember that fundamentally the essay section comprises 26% of your total point potential and MBE section 34%. Therefore, be sure to dedicate a proportionately balanced amount of your study time to the perfection of each section's respective test-taking skills.

### B. Be Goal-Oriented With Each Practice Performance Test

Every time you practice a Performance Test question, you should work to concretely improve some element of your writing needs. This means that you both identify problem areas impacting your writing capability and understand how to cure them as well. It is through the consistent reinforcement of effective writing skills, oriented to the refinement and ultimately perfection of each of the goals defined by the different Performance Test stages described earlier, that leads to steady improvement and progress.

In choosing a bar preparation program to improve your Performance Test writing skills, be certain to understand that while generic, "red-pencilled" comments as a source of feedback on your practice exams may be useful, they are usually only descriptive at best. To perfect some

element of your writing style needs, you must have a concrete image in mind of what it is and how to overcome it. Otherwise, the tendency to repeat ineffective writing patterns may often predominate, serving to negatively reinforce lesser standards. For example, while the comments "See Model Answer", "Too Conclusory", or "Use Library Cases More Effectively" may describe a particular reader's impression of your analytical ability, they do not inform you how to cure, let alone perfect the perceived difficulty. It is more instructive to understand a formula for the avoidance of this problem before you practice so that you can progressively work to improve throughout the duration of your bar review. The key: ensure that your bar review process both describes and precisely instructs you how to write a Performance Test. Then, work to challenge your standards in meeting the expectations of the examiners as you concretely improve some element of each practice exam in consistently developing higher standards.

### C. Repetition of Troublesome MBE Questions

Over the many years I have been tutoring bar examinees, it is a common occurrence for candidates to spend too little - or too much - of their study time working to perfect their MBE test-taking skills. Again highlighted here, remember that fundamental to the refinement of your MBE capability is an overall bar preparation strategy that will generally dedicate - and on a steady, consistent basis - about one-third of your total preparation time to this section of the bar exam. After all, this section of the bar comprises 34% of the total point potential of the bar itself.

Equally important, however, is how you spend your MBE preparation time. Merely practicing great numbers of MBE questions is rarely productive in efficiently and effectively improving the specific reading comprehension test-taking skills necessary under exacting, timed conditions. A process virtually fail-safe if followed properly, however, is the continued repetition of what I describe as "troublesome questions" - whether initially answered correctly or incorrectly - until the reason for the so-called "best answer" for each is fully understood. This process over time will dramatically improve your focusing capability, with the complementary refinement of your specific knowledge of the law for each of the MBE subjects.

D. As noted above, be sure to concretely work to improve each of the component elements of style that contributes to the impression with your bar reader that you are "lawyer-like", the general criterion articulated by the bar as the standard governing the analysis of your answer. From my perspective, there are at least ten individual elements of style, the effective combination of which contributes to the overall perception of this standard. The mastery of each should be one of your goals in preparing through practice to write consistently passing scores. Take pride in perfecting the fine art of Performance Test writing through a process that will work to achieve the high standards required by the bar examiners.

### E. The Role of Practice and Review

Mere substantive review is typically insufficient to adequately prepare for all sections of the bar. While it will undoubtedly prepare you to identify many of the so-called "best answers" for the MBE as well as familiarize you with some Performance Test issues, it is unlikely by itself to cause you to pass either of these sections of the bar. Remember that basic time management considerations discussed earlier requires a balanced allocation of your total preparation time for

each section of the bar and that spending an inordinate amount of time in substantive review can be wholly counterproductive. It is therefore crucial to bar preparation that you both practice hypothetical Performance Tests and MBE questions and then spend quality time reviewing the respective model answers to enhance your test-taking skills for each section. Put another way, it is not just the sheer quantity of practice questions that brings improvement, but also the quality of your work with them that will lead to consistently passing scores. The "art of review", for all sections of the bar exam, is as crucial to bar performance as the earlier step of practice is to preparation.

### III. SUMMARY

In perspective, remember that you come to your bar preparation process with whatever strengths and weaknesses you have developed elsewhere. In choosing an appropriate process - bar review program - be sure to investigate and identify how the process will progressively improve your essay writing skills given the nature of the Performance Test as a speed examination. To positively impact the development of your Performance Tests, we understand the nature of your adversary as an exam limited in time, where perfection is measured by your ability to cover the 180 minute distance consistently well no matter the complexity of the file and library, no matter the format requested. For the MBE, the improvement of your reading comprehension and precisely honed substantive understanding learned through increased practice and review is the key. To develop these strengths for both sections of the bar, adopt a balanced approach in working diligently with substantive review, practice of Performance Test and MBE exercises, and quality review.

Commit to a bar preparation process that serves these goals and that instructs you how to achieve them. You can do it, and all the best on your next exam!

PAUL PFAU

Cal Bar Tutorial Review Copyright 2000