



RAISING THE BAR

A publication dedicated to the exchange of evidence-based thinking about the bar exam

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From the Director

Why do people fail the bar? Some graduates fail because they don't study enough—plain and simple. Others study hard but nonetheless, for a variety of reasons, do not develop sufficient content mastery. Some do not possess requisite competencies in critical reading, effective writing, logical analysis and time management. And too many still fail because of financial challenges and/or psychological barriers, barriers that often may be prevented or mitigated.

No single magic wand can overcome *all* challenges, but solutions exist, and most law schools are exploring and implementing changes. Yes, more needs to be done to leverage learning science, place a higher value on the art of great teaching (teaching that both inspires and insists on great learning), and admit that teaching with an awareness of how and what is tested on the bar exam is *not* “teaching to the test” in any pejorative sense, but is simply good responsible teaching. But, thankfully, the legal academy is now engaged in thoughtful discussion about student success in law school and on the bar exam.

Legal educators, researchers, bar examiners, and the practicing bar are also thoughtfully discussing what we really want students to learn in law school. Are we content with bar exams that do not test empathy or listening skills, and do not emphasize problem solving (indispensable in law practice), but do require highly developed memorization skills (hardly needed in today's smartphone age)?

Another disconnect: students live in a society that offers endless electronic overload, rewards multi-tasking, and prizes the immediacy of response times, yet 1) *they are tested on bar exams* in a manner that requires two fully focused days, comprised of long blocks of critical reading and deep thinking, and 2) *they will enter a profession* that, at least to some extent, depends on (and a world that needs) evidence-based, thoughtful reflection. How can we wisely bridge these divides?

Law schools must continue laudable self-examination efforts. But we must also critically examine, assess and hold accountable all the entities that teach law students during and *after* they graduate. Admissions testing entities, bar examiners and law schools all submit to rigorous auditing. But, significant teaching and learning takes place in the post-graduate test preparation context. Who is watching then?

For his important and timely thoughts on the bar exam, I am deeply thankful to our Distinguished Commentator

Barry Currier, Managing Director of the Section of Legal Education & Admissions to the Bar at the ABA for sharing his wisdom and call for open-minded discussion, even when, and perhaps especially when, we disagree.

I am also delighted to thank our many other contributors to this *Raising the Bar* issue. We are especially fortunate to include two law school program profiles—one from Ryan Dooley, Assistant Dean for Academic Affairs, and Allie Robbins, Associate Professor of Law at CUNY Law School, profiling their Pipeline to Justice Program; and a second from Bryan McDermott, Director for Academic Affairs from the Columbus School of Law at Catholic University, profiling the law school's Summer Bar Prep Program. Sharing knowledge about what is and is not working to improve bar pass rates is critical to the success of the entire legal academy. Thank you to faculty at CUNY and Catholic for detailing some of the important work you are doing to help students!

We are also fortunate to have an organization update from NALSAP (the National Association of Law Student Affairs Professionals) as it prepares for its third annual conference in June; reflections from ASP leaders Laurie Zimet, Director of Academic Support of the University of California–Hastings, and Haley Meade, Director of Irene Diamond Professional Skills Center of CUNY School of Law, on the award given to David Nadvorney, Director of Academic Support Program of CUNY School of Law, by the AALS Section on Academic Support; and a special perspective on the importance of student feedback from Professor Daniel Schwarcz, the Fredrikson and Byron Professor of Law at the University of Minnesota Law School. This issue also features news on bar exam-related research grant funding opportunities, upcoming conferences, student resources, recently published scholarship, LibGuides, and more.

All the best until July,



Sara Berman, Esq.

Director, Programs for Academic and Bar Success
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Distinguished Thinker Commentary:

Regulation and the Bar Examination

Barry Currier, Managing Director of the ABA Section of Legal Education & Admissions to the Bar

From my regulatory perch as the Managing Director of Accreditation and Legal Education at the ABA, I see two first-level questions related to the bar exam:

- (1) Should passing a bar exam be required for admission to practice?
- (2) Should the ABA law school accreditation standards have a bar passage standard?

For me, it is “yes” to both.

Few (some, but few) argue that a licensing exam should disappear altogether. There are alternatives: (a) the diploma privilege, or an expanded version of it that incorporates a law-school administered “articling” experience; (b) requiring a person seeking admission to be sponsored by members of the bar, who would attest to the applicant’s competence and readiness to be admitted to the profession; or (c) letting anyone hang out a shingle and practice law, with the marketplace sorting out the qualified from the not qualified. All are unattractive for a host of reasons. Are there others which are not a version of one of these?

Few (maybe more, but still few) would argue that an outcomes-based bar passage standard should not be part of the accreditation standards. An alternative might be a much more robust public reporting of bar exam outcomes by schools, but no standard requiring a law school’s graduates to have passed the bar at a certain percentage over a set period as a matter of accreditation.

I agree that more detailed disclosures are a good idea. But for me, however, more disclosure is a complement to an outcomes-based bar exam passage standard, not a substitute for a standard. While a J.D. is a wonderful education for lots of purposes, it is primarily education and training for becoming a lawyer.

There is no better way to assess whether a law school is meeting the requirement of ABA Standard 301(a) that a law school is maintaining a “rigorous program of legal education that prepares its students ... for admission to the bar” than to measure whether the school’s graduates who take a bar exam pass it at a reasonable rate. Standard 301(a) does not say that

a law school must maintain “some sort of a legal education program;” it says a “rigorous program” that “prepares” students “for admission to the bar.” In my conversations on this matter, I hear little disagreement on this fundamental point.

The hard work is getting the bar exam itself right, so it is an appropriate test of a sound legal education program, and then determining what is a reasonable passing percentage to require. For many years, there was little discussion about this. However, as bar pass rates have declined in recent years, these questions have come into sharp focus. And the conversations have become more urgent and, often, contentious.

As the discussion unfolds, we need to spend more time, with open minds, exploring what is a complex set of issues, rather than going to our corners and coming out swinging—the law schools blaming the bar exam and the bar examiner community blaming the law schools for declining pass rates. The problems might stem from law school admissions practices, the work/study habits of students who enroll, the legal education programs offered by law schools, the bar review courses, the development of the bar exam, grading of the exam, and the passing (“cut”) scores adopted by the jurisdictions. Truth is, the problem of declining bar passage rates is no doubt due to a combination of these factors.

There is plenty of blame to go around. There is also plenty of opportunity, given the wisdom and experience of those in the conversations, to figure this out. Our students and the public are counting on us to be less entrenched in our respective positions and more committed to the common enterprise of providing well-educated and qualified lawyers to do the legal work that needs to be done in this country.

These views are mine and are not offered on behalf of the Council or the Section of Legal Education and Admissions to the Bar. I can say, however, for myself and for the Council, that we are ready and willing to roll up our sleeves and be part of the dialogue. I appreciate the opportunity to share my take on this important matter.

Organization Updates

NALSAP Supports Student Services and Academic Success Professionals by the National Association of Law Student Affairs Professionals (NALSAP)

Performing one of the most critical, student-facing functions in law schools, student affairs professionals play a great role in the academic and bar success of law students. We welcome their voice in this issue.

Since 2016, NALSAP has served as the professional home for student affairs professionals by providing leadership, professional development and student affairs resources. A not-for-profit membership organization, NALSAP has quickly grown to over 450 professional members and approximately 100 institutional members, representing law schools across the United States and Canada. NALSAP has hosted two national conferences and will host the Third Annual NALSAP Conference June 12–14, 2019, in Washington D.C. at American University, Washington College of Law.

Many student affairs professionals also support law students academically—sometimes because their job description explicitly includes academic support responsibilities, but also because there is a natural overlap between what is happening inside and outside the classroom. At the 2019 NALSAP Conference, two sessions will focus on the bar exam and academic support. The first, *Raising the Bar: The Role of Law Student Well-Being in Passing the Bar Exam*, will inform and engage participants in a discussion of the mental, emotional and physical challenges students face in law school and during bar study that can impact their exam performance. The second, *ASP and Student Affairs Overlap: Effective Techniques for Collaboration*, will bring together professionals working within student affairs who also work extensively with academic support and bar exam programming to explore areas ripe for collaboration. The 2019 Conference will also provide another 20+ concurrent and plenary sessions on a variety of topics relating to supporting law students and professional development for those who work in the law school setting.

In addition to being the professional home for those working in law school student affairs, NALSAP seeks to raise awareness about issues impacting law students and provide support for research and writing relating

to law students, law schools and the legal profession. For more information about NALSAP and the 2019 Conference, please visit www.nalsap.org.

Please email Success@accesslex.org with bar-related updates from your organization.

Conference Corner

- [Annual Association of Academic Support Educators Conference](#), May 21–23
- [Association of Legal Writing Directors 2019 Biennial Conference](#), May 29–31
- [Institute for Law Teaching and Learning Summer Conference](#), June 3–5
- [Third Annual National Association of Law Student Affairs Professionals Conference](#), June 11–14

Please email Success@accesslex.org if you know of additional upcoming bar-related conferences or other conferences with bar-exam related sessions that may interest *Raising the Bar* readers.

Publications and Posts

Recent publications

- Heidi K. Brown, [The Introverted Lawyer](#), (2017).
- Catherine M. Christopher, [Tackling the Texas Essays](#), (2018).
- Ruth Colker, [Test Validity: Faster is Not Necessarily Better](#), (2019, Forthcoming).
- Nicholas A. Mirkay & Palma Joy Strand, [Disruptive Leadership in Legal Education](#), (2018).
- Rachel F. Moran, [The Three Ages of Modern American Lawyering and the Current Crisis in the Legal Profession and Legal Education](#), 58 Santa Clara L. Rev. 453 (2019).
- Colleen P. Murphy et al., [Note-Taking Mode and Academic Performance in Two Law School Courses](#), (2018).
- Julie A. Oseid, [Talk Less, Smile More](#), J. of Legal Ed.; U of St. Thomas (Minnesota) Legal Studies Research Paper No. 18-28. (2019, Forthcoming).
- Herbert N. Ramy, [Succeeding in Law School: The Torts Workbook](#), (2018).

Please email bar-related publications for inclusion in future issues of *Raising the Bar* to Success@accesslex.org.

Perspectives and Advice

Law Schools Should Give Earlier, More Constructive, Feedback to Students, by Professor Daniel Schwarcz

We thank Professor Daniel Schwarcz, the Fredrikson & Byron Professor of Law at the University of Minnesota Law School for contributing his perspective in the important piece below on student feedback.

For well over a century, students' grades in most law school classes have been based exclusively on end-of-semester exams. Many weeks—if not months—after these exams are complete and the classes are concluded, law students typically receive a single piece of feedback consisting of a letter grade. Other than these end-of-semester grades, students—particularly during their formative first-year of law school—generally do not receive any systematic, individualized feedback regarding their understanding and mastery of the material in any of their “core” doctrinal classes.

In *The Impact of Individualized Feedback on Law Student Performance*, 67 J. L. & Educ. 139 (2017), Dion Farganis and I find that this traditional approach to law school pedagogy is problematic. We document evidence that individualized feedback provided to a student in one class can improve that student's performance in his or her other first-year classes. Our findings are based on a natural experiment that arose from the occasional grouping together of first-year students into “double section” first-year classes. We found that, in these double section classes, students who had previously or concurrently had a class providing individualized feedback consistently outperformed students who had not received any such feedback. The effect of this feedback “boost” is both statistically significant and hardly trivial in magnitude, approaching about 1/3 of a grade increment, even after controlling for a student's LSAT score, undergraduate GPA, gender, race, and country of birth. What is more, the impact of feedback appears particularly strong for the students who are most at risk of performing poorly in their first-year classes.

These findings have important implications for law schools across the country. First, they suggest that providing better feedback to law students can improve their legal skill set. Because our results show that students perform better in law school classes that are different from those in which they receive feedback, they cannot be dismissed as documenting the impact of “teaching to the test.” At worst, our findings suggest that providing students with feedback improves their ability

to take law school exams in general. This is significant, because law school exams do a relatively good (albeit imperfect) job of testing skills that really matter to practicing lawyers. These skills include communicating clearly in writing, recognizing important legal issues, synthesizing applicable legal precedent, identifying key relevant facts, and developing policy arguments in support of specific outcomes.

Second, our results suggest that providing more individualized feedback to students can have important distributional consequences as well, by improving the performance of students who would otherwise be at the lower end of the law school grade distribution. Not only might this expand their employment options, but it could also help those students get more out of law school by enhancing their ability to study effectively and reducing the sense of frustration that some students at the bottom of their class feel throughout law school. This, in turn, might well improve law schools' bar passage rates, an increasing problem in these turbulent times for legal education.

To be sure, providing more feedback to law students is hardly costless. But, at the very least, law schools should systematically provide first-year law students with individualized feedback in at least one “core” doctrinal first-year class before final exams. Indeed, it was this limited intervention that improved students' performance in their other classes in our study. Moreover, the costs of this intervention are minimal. It would also eliminate the possibility that some students are unfairly disadvantaged by not being assigned any professors who provide individualized feedback. For some law schools, this reform would simply require more thoughtful assignment of professors to individual sections, so that there is an even distribution of professors who have already adopted the practice of giving individualized feedback. For other law schools, some instructors would indeed have to take on a heavier burden in connection with their teaching. But even in a law school class of 80 students, it would probably take an instructor about 40 additional hours to provide individualized feedback to students on their written work product. Moreover, professors who do not have even this much time to carve out of their schedules can provide individualized feedback through alternative methods, such as multiple-choice exams or teaching assistants. Given the large cost of law school tuition and the still-challenging job market facing many new law school graduates, law schools owe their students at least this much.

Bar Success Program Profiles

Thank you to Ryan Dooley, Assistant Dean for Academic Affairs, and Allie Robbins, Associate Professor of Law at CUNY School of Law, for providing the following profile of The CUNY School of Law Pipeline to Justice Program.

On a warm spring day, a group of grammar school students spent part of their day at the CUNY School of Law to learn more about the study and practice of social justice lawyering. As part of the event, the 5th graders were shown images of people and asked to identify whether the individuals in the photos were lawyers. When the students were shown the photo of a white male in a suit, the students vociferously identified this individual as an attorney. In contrast, when the students were shown a photo of Thurgood Marshall, not a single student raised their hand and the students' faces expressed doubt and uncertainty. Finally, a young man in the back of the room raised his hand and stated that the photo of Thurgood was not that of a lawyer, but rather the photo of a criminal. When asked what had inspired the student to draw that conclusion, the student innocently stated that "you could just see it in his face." In that moment, the detrimental impact of institutional racism and white supremacy was on full display — as was the need for an even greater response than a half-day field trip to a law school.

Over the past several years, experiences like the one described above have reminded CUNY Law School's staff and faculty that key tenants of the school's founding pedagogy—community building and individual support—are not only still relevant, but are more important than ever. The CUNY School of Law Pipeline to Justice Program was founded in 2006 with a commitment to diversifying the legal profession with lawyers committed to public interest law. What started as an opportunity to provide access to students initially denied law school admission through the general admissions process has evolved to include an ever-growing undergraduate outreach initiative, robust LSAT and pre-law advising, holistic support for matriculated students, an expanding bar mentoring program, and an alumni association and professional network. Given the varied and unceasing obstacles that exist for every student on the path to and through law school, CUNY Law realizes that the responses to these obstacles must be myriad, consistent and—to the extent possible—tailored to the needs of each individual student. Through personal relationships with students that commence on the very first day of the program, Pipeline faculty seek to ameliorate the pernicious roles that stereotype threat

and impostor syndrome play in inhibiting the success of students traditionally underrepresented in the legal profession.

The core of the Pipeline to Justice Program is a two-part intensive pre-law course. The first part focuses on LSAT preparation, while part two emphasizes critical reading and legal analysis. Students receive individual feedback on their work, and meet one-on-one with Pipeline faculty. In addition, there are social and cohort-building events throughout the program. Additionally, Pipeline faculty go to an LSAT testing location to provide pencils and encouragement to Pipeline students as they go into the exam. This community-building work continues throughout the students' time in law school. Pipeline faculty continues to meet with students and monitor their progress throughout their law school careers. There are mentoring opportunities, social gatherings, and group reflection and meditation sessions. Pipeline students wear specially designed sashes at graduation, a testament to their pride in the program. As one Pipeline to Justice student put it, these students are "Pipe for Life."

This individual and community work continues even after graduation, as students prepare for the bar exam. CUNY Law has a bar mentor program for all of our graduates. Students are paired with a specially trained faculty member or alum who meets with them each week, provides feedback on written work, and discusses their overall study progress. Pipeline students are often paired with a Pipeline faculty member as a bar mentor, so that the mentoring relationship that helped them succeed on the LSAT and throughout law school can continue as they prepare for the bar exam. While the focus of the mentor program is on exam preparation, it goes far beyond that. We have found housing for students who lose their homes (or get bed bugs) in the middle of bar exam prep, we have found temporary homes for students' pets, and we have even had a mentor call a mentee's parents to tell them that it was ok that she didn't have a job lined up yet, and that her priority should be studying for the bar exam. In addition, we provide bar study scholarships to students who need assistance with covering the costs of bar admission fees, commercial bar review courses, living expenses during the bar study period, childcare, and other costs, so that they can forego work, and focus on studying full-time. CUNY Law's full-time social worker is also available to work with students from the first day of Pipeline through the bar exam.

Through myriad assistive services, positive reinforcement, mentorship, and rigorous academic preparation, professors and administrators help students transform doubt into confidence, obstacles into opportunities, and academic setbacks into academic success. These supportive services help students transition from a pre-law program, through the stages of law school, graduation, and the bar exam. They provide students with constant reinforcement and a place to go when dealing with the changes involved in each stage of their legal education. At CUNY School of Law, they have allowed people who were initially denied admission to law school the opportunity to succeed in law school, graduate and pass the bar exam. Even more importantly, it has allowed individuals who come from communities that are traditionally underrepresented in the legal profession to become lawyers, fulfilling their dreams of changing the world.

Thank you to Bryan McDermott, Director for Academic Affairs at Catholic University, for sharing the profile below describing some of bar preparation programming offered by the Columbus School of Law.

In the summer of 2017, in conjunction with a multitude of efforts to increase bar passage, Catholic University started a Summer Bar Prep Program to supplement our students' commercial prep courses. Our goal and purpose are not to teach them the law but rather provide the support necessary to succeed on the exam. Every Tuesday and Thursday, from the end of May to mid-July, recent graduates (and any other alums taking the bar) are invited to the school for a free catered lunch and two bar exam essay questions to complete. Each bar taker is paired with an alumni-grader who gives written feedback on every essay submitted. The one-on-one partnership creates a sense of accountability and provides the bar taker with a mentor, individualized attention, and quick and helpful feedback. We do not expect the alums to remember the intricate aspects of each subject, rather we give them a detailed grading rubric with which they are able to provide meaningful and constructive feedback. We found that consistent review of a bar taker's writing, by the same grader, helps identify common mistakes and trends which might otherwise go unnoticed and unaddressed.

Every graduate is allowed to attend, free of charge. For those unable to come to school, every aspect (minus the food) is available online. There is no obligation to participate, no minimum number of essays to submit, and no guilt in just taking a free meal back to your study room without writing an essay. We want our students to know that they are not in this alone, and even though they graduated we are still there to support them.

In the first two years of the program we have seen an increase in passage rates across the board. In 2017, 37% of the spring graduating class submitted at least 1 essay. In 2018 that increased to 62% of the graduating class—with a fairly equal distribution based on GPAs. We did not enact any major changes between the two years, other than share the bar passage rates from 2017 with the class of 2018 and encourage them to submit as many essays as possible. We found that while all who participated appeared to benefit from the program, those who submitted 8 or more essays exhibited the highest passage rates.

In 2017 those who submitted at least 1 essay, regardless of GPA, passed the bar at a rate of 81%. If they submitted 8 or more essays the passage rate jumped to 94%. In 2018,

even with significantly more participants, the spring graduates who submitted at least 1 essay passed at a rate of 90%. Those who submitted 8 or more essays passed at a rate of 93%, all regardless of final law school GPA.

We believe that these passage rates are a testament to the curricular programming implemented by the school, the availability of a supplemental program, and the hard work and dedication of the students as they prep for the bar. We recognize that studying for the bar is an intense and stressful period for our graduates and there is a fine line between overwhelming and support when additional work is introduced. It appears that the combination of writing actual essay questions, meaningful feedback, free food, and camaraderie amongst bar takers seems to have struck the appropriate balance with our students.

Please email Success@accesslex.org to submit a bar success program profile for possible publication in future newsletter issues. Note that the purpose of this feature is not to endorse particular programs but to cultivate a community dialogue and share ideas about bar success programming.

Grant Opportunities for Legal Educators

[AccessLex Institute Bar Success Grant Program](#) — accepting LOIs from May 1–31.

Please email Success@accesslex.org with links to information about grant opportunities and calls for papers regarding bar-related research.

Faculty Profile

The following are two reflections on the 2019 AALS Section on Academic Support Award winner David Nadvorney, City University of New York School of Law, the first by Professor Laurie Zimet, Director of Academic Support, University of California – Hastings, and the second by Professor Haley A. Meade, Director of Irene Diamond Professional Skills Center, CUNY School of Law.

Professor Zimet—David was a pioneer in legal education and bar preparation. Early on, he understood that excellent teaching had to occur in courses across the curriculum and not isolated in academic support programs. He set the model for observing professors teaching classes and providing feedback on their pedagogy. David had a vision of student learning that included the whole person and individual goals and interests. He was committed to teaching and the academic support profession. He helped many of us understand politics in the Academy. He also counseled how to go with, under, over, and around those politics to best help students.

The more things change, the more they stay the same. Change the above past tense to present tense and you see the longstanding and current contributions of this master teacher.

Two David stories: As mentioned above, he developed a reputation for providing advice to professors about their classroom teaching. At some point, David was walking on the faculty floor and he heard, not kindly, “Here comes the teaching police,” which, of course to me, was the biggest compliment. The other story involved David working in a group of faculty and administrators planning the Law School’s Orientation. There was much discussion and at some point, the others started disagreeing about how many days Orientation should be—3, 4, a week? David said, “Well, if you define your goals for Orientation, that will tell you how many days you need.” Someone looked up and said, “Goals, shmoals, if we talk about goals all day, we will never get out of here.”

As a circle in the square of legal education, David remains among our most thoughtful and generous role models. Thanks to him for providing our foundation and continuing to build on it each year.

Professor Meade—David Nadvorney has been the Director of Academic Support at CUNY School of Law for nearly 30 years. In that role he has helped countless students from underrepresented communities become lawyers, and he built a groundbreaking academic support program which integrates doctrine and skill. David created a true collaboration with faculty—sitting in on all first-year doctrinal classes—

which was unheard of at the time. He is an academic support trailblazer who has left an indelible impression on the ASP community and his colleagues and students at CUNY.

It makes perfect sense that David received this year’s AALS Section on Academic Support Award, which recognizes outstanding members of the academic support community who’ve made significant and longstanding contributions to the development of academic support. Without a doubt, the field of academic support simply would not be what it is today without David and his noteworthy contributions.

David is an authority on critical reading skills; he has presented on numerous topics throughout the years all over the country and around the world; he has an extensive history of scholarship; he was significantly involved in the planning of LSAC’s training workshops for many years; and he is a founding member of the AALS Section on Academic Support. However, maybe David’s most meaningful contribution has been his invaluable and unending support and mentorship of other academic support folks and his colleagues at CUNY. He was described by one fellow ASPer as “endlessly encouraging.” His colleagues at CUNY have said things like, “He inspired me to fall in love with academic support work, which quickly became my calling,” and “I personally can’t imagine my career without him.” Many of us have been fortunate enough to experience David’s charming enthusiasm to share his knowledge and experience with others whether it’s on the academic support listserv, at a conference or over a cup of coffee.

I feel immeasurably privileged to get to work with him. I couldn’t have asked for a better colleague, mentor or friend.

Please email Success@accesslex.org with suggestions for an upcoming faculty profile.

Academic and Bar Success Resources for Students

[The Path to Law Student Well-Being Podcast Series](#)

Please email Success@accesslex.org with links to bar exam-related and other resources that would be helpful for law students, including information about bar preparation, scholarships, for inclusion in future issues of *Raising the Bar*.

Bar Exam LibGuide Resources for Law Students

- [The Ohio State University](#)
- [Nova Southeastern University](#)

Please email Success@accesslex.org to send us your bar exam LibGuide for inclusion in future issues of *Raising the Bar*.

Continuing the Conversation

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Raising the Bar

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Managing Editor, Ana Cordova