



RAISING THE BAR

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

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From the Director: Welcome Readers!

The AccessLex Center for Legal Education Excellence proudly welcomes readers to *Raising the Bar: a publication dedicated to the exchange of evidence-based thinking about the bar exam*.

Welcome law deans, administrators and faculty—all faculty, meaning *all* who teach in our nation’s law schools. Welcome to those doing the difficult and important work in bar exam development, licensing, and bar admissions. Welcome members of the bar and aspiring members. Welcome to all who are committed to a legal profession comprised of knowledgeable, skilled and ethical lawyers from diverse backgrounds.

In April 2018, AccessLex held its inaugural Bar Exam Research Forum. Stakeholders from across the legal education spectrum sat side by side, analyzing pressing issues pertaining to the bar exam. The working sessions yielded more questions than answers, indicating the need for robust information about the processes of drafting and administering bar exams and about how best to prepare graduates to take and pass them: What factors help predict bar success? What does “minimum competency” mean? To what extent does the bar exam protect the public? Participants also creatively and collaboratively considered how we might re-think and re-invent bar exams of the future. Attendees appreciated the Forum because we assembled a group with richly varied perspectives and conducted sessions using a format that allowed for critical reflection and respectful discussion.

Raising the Bar picks up where the Forum left off, continuing efforts to break silos and bridge communication and information gaps, with the goal of devising ways to better prepare students to successfully transition to the profession. *Raising the Bar* will link leaders and thinkers from various corners of the academy and the profession and will include features such as commentaries from distinguished guests, information about bar-related research, publications, conferences, grant opportunities for scholars, and bar scholarships for students, as well as highlights from law school bar success programs.

We are deeply grateful to Dean Erwin Chemerinsky, Dean of University of California Berkeley School of Law and Jesse H. Choper Distinguished Professor of Law, for contributing his thoughtful commentary in this inaugural issue. We also extend profound thanks for contributions to this issue to the National Conference of Bar Examiners which provided an important update

regarding their Testing Task Force; Denver Attorney and veteran bar review lecturer John Moye who offered thought-provoking advice to law faculty, students, and the practicing bar about exam preparation; and Dean Michael Barry and Professor Zoe Niesel who profiled the Law Success Program at St. Mary’s University School of Law. We welcome contributions from readers to continue this community-wide conversation in future issues.

To uphold the values of a society governed by laws, the nation’s law schools must continue to attract and graduate bright, motivated, principled law students from *all* backgrounds. Students need training rooted in evidence-based practices that will prepare them for productive lives after law school. Competency to practice law, indeed the entire professional licensing process, must be managed in ways that are fair, equitable and relevant. These goals will only be achieved if we all come to the table to problem solve together—and when we disagree, which as wise people we will, we discuss and resolve our differences respectfully.

So, thank you, *all* of you, for collectively and collaboratively joining together to raise the bar.

Sincerely,
Sara Berman, Director of Academic and Bar Success Programs
AccessLex Institute

Visit the Director’s SSRN author page at <https://ssrn.com/author=2846291>

Visit the AccessLex SSRN page at <https://www.ssrn.com/link/AccessLex-Institute-RES.html>

Distinguished Thinker Commentary: Dean Erwin Chemerinsky

Making the Bar Exam Meaningful by [Dean Erwin Chemerinsky](#)

Dean and Jesse H. Choper Distinguished Professor of Law, University of California, Berkeley School of Law

Does the bar exam really measure competence to practice law? I am highly skeptical. I have spent a great deal of my career focusing on bar exams. Since 1986, I have lectured for BAR/BRI and from 1989-2017, I volunteered my time twice a year in a program in Los Angeles to help students who have previously failed the bar.

The bar exam measures three things: the ability to memorize and recall a large amount of information that most lawyers will never use; the ability to take a multiple choice test; and the ability to analyze a fact pattern and answer a multiple choice or essay question about it. Only the last seems even slightly relevant to the practice of law.

As to the former, I never have understood why a license to practice law depends on knowing the rule against perpetuities or what happens when there is a conflict between a treaty and an executive agreement. In fact, I never have understood why the bar is a closed book exam. Lawyers always can look up answers before giving advice or taking action.

There is a strong correlation between LSAT scores and bar passage. This is why bar pass rates have such a strong correlation to the ranking of law schools. Elite law schools spend little effort to get their students ready for the bar exam and students there rarely think about the bar exam in choosing their classes. For other law schools, their very existence may depend on finding a way to improve their bar pass rate and the bar exam drives much of how education is done. Yet, there is no reason to believe that the multiple choice test taking ability measures competence to practice law.

I agree that the ability to analyze a fact pattern and write a competent essay reflects skills that lawyers need. Yet, even here I wonder how much the bar exam, as it has existed for decades, is successful in measuring who will be competent at these tasks in law practice. The type of essays used on the bar have no resemblance to what lawyers actually do. Moreover, these are only some of the skills that successful lawyers need. Lawyers also must, among other things, interview and counsel clients, negotiate, and argue. For some attorneys, these

tasks are far more important than anything measured on a bar exam.

But these types of skills are completely ignored because they are far more difficult to assess on a test comprised of multiple choice and short essay questions. The result is a bar exam that does little to really measure who is competent to practice law. This is compounded by states, most notably California, setting “cut scores” without any reason to believe that the passing number is separating those who are competent from those who aren’t.

It is long overdue to reconsider bar exams. For too long, they have been seen as a rite of passage. Those who have passed have no incentive to change them and those who haven’t have no credibility in urging reform. Law schools are perceived as too self-interested as their primary concern is passage by their students.

There is more opportunity for change now than ever before. Thirty-three states now use the Uniform Bar Exam. This is a remarkable development since it began just seven years ago in 2011. My hope is that every state will use it because that would tremendously increase the ability of lawyers to move to a new place without needing to take another bar exam. Having one bar exam for so much of the country creates more ability to focus on the appropriate content of the bar and how to make it a meaningful measure of competence to practice law. My hope is that educators, lawyers, state bars, and bar examiners will join together in this effort to create a far better bar exam.

Organization Updates

NCBE Studying the Bar Exam by the NCBE

We thank the NCBE for sharing the news below in our inaugural issue of Raising the Bar.

In January 2018, the National Conference of Bar Examiners (NCBE) appointed a Testing Task Force charged with undertaking a three-year study of the bar examination. The legal profession, like other professions, is undergoing a period of accelerated change. Some of the changes are brought on by rapid developments in technology that impact both the delivery of legal services and the types of legal problems for which clients seek representation. Technology is also contributing to advances in the science of assessment and testing. NCBE is undertaking this comprehensive and systematic study at this time to ensure that the bar exam keeps pace with developments and changes in the practice of law, legal education, technology, and testing.

The study will identify the core competencies needed for entry-level legal practice in the 21st century, and will consider how those competencies can practically and reliably be assessed. The study will also consider test formats (multiple-choice, essay, performance tests, simulations, etc.), timing (single summative exam versus staged exams), and delivery methods (digital, computer testing centers, etc.). In other words, the Task Force is examining what should be tested, how it should be tested, and when it should be tested.

The Task Force plans to complete its study and submit its report and recommendations to the NCBE Board of Trustees by the end of 2020. Its recommendations will be based upon empirical research and stakeholder input. The Task Force is currently in the final stages of selecting independent research consultants and outlining a research plan. Its study will be designed to include significant input from stakeholders through forums, focus groups, surveys, and other means. The Task Force's website (TestingTaskForce.org) will be one of the main vehicles for sharing news, blogging about relevant topics, soliciting stakeholder input, and publishing research. Those interested in the study are encouraged to sign up to receive updates at TestingTaskForce.org/subscribe. You can also contact the Task Force through its website to express interest in participating as a stakeholder.

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

Conference Corner

- [Society of American Law Teachers \(SALT\) Teaching Conference](#), October 4–6
- [Midwestern Academic Success and Bar Preparation Conference](#), October 12
- [IAALS Educating Tomorrow's Lawyers Conference](#), Nov 1–2
- [7th Annual West Coast Consortium of Academic Support Professionals Conference](#), November 2
- [AccessLex Legal Education Research Symposium](#), November 11–12
- [AccessLex Graduate and Professional Financial Aid Conference](#), November 12–14
- ["Whose Job Is It Anyway: Examining the Role of Legal Writing and Academic Support in Bar Preparation,"](#) December 1
- [New England Consortium of Academic Support Professionals \(NECASP\)](#), December 7
- [Association of American Law Schools \(AALS\) Annual Meeting](#), January 3–6, 2019
 - Joint Workshop: AALS Sections on Academic Support and the Empirical Study of Legal Education and the Legal Profession: ["Circling the Square: Fresh Partnerships to Understand Student Learning through Empirical Studies"](#) (January 3, 2019)
 - Joint Workshop: "Building Bridges between Theory and Practice: Incorporating Lawyering Skills into Doctrinal Courses" (January 5, 2019)

Please email Success@accesslex.org if you know of additional upcoming bar-related conferences with sessions that may interest fellow readers.

Publications, Panels and Postings

Is the time ripe for change? Recent panels and publications on re-thinking law licensing and other bar exam related topics

The bar exam used to be something rarely discussed in law schools, let alone considered from a scholarly perspective. But a growing number of the nation's leading law professors, deans, and organization leaders are now not only discussing but studying and publishing about bar-related issues, including the potential need for and feasibility of re-considering bar exams as we currently know them.

As a vehicle aiming to promote discussion among all stakeholders, this newsletter considers not only evidence-based thinking and research to help today's law students pass today's bar exams, but also commentary of those speaking out about thoughtful change. This quarter, readers will find such thinking in the September 2018 issue of the New York State Bar Journal which includes, among others, [Re-Thinking Law](#)

[Licensing](#) by Dean Emerita Judith Welch Wegner and [How to Build a Better Bar Exam](#) by Professors Andrea ("Andi") Curcio, Carol Chomsky, and Eileen Kaufman, as well as pieces by Dean Emerita Joan Howarth, Dean Patricia White, and others. Articles related to assessment and other areas that affect bar success also appear in the most recent [Winter 2018 issue of the Journal of Legal Education](#). And, the plenary session at this month's SALT Teaching Conference, entitled [Testing for an Inclusive, Just, Client-Centered Profession](#), focuses on bar exam issues from a social justice perspective, considering interlocking systems of law school admissions and attorney licensing, with a panel including Professors Claudia Angelos (NYU), Joan Howarth (UNLV), Eileen Kaufman, (Touro), Deborah Merritt (Ohio State), Alexis Karteron (Rutgers), and Alli Gerkman (IAALS) and Kellye Testy (LSAC).

In addition, the following bar-exam related works have all been recently published:

- Antonette Barilla, [Honoring Our History: The Bench and the Bar as Legal Educators and the Resurrection of Legal Apprenticeships](#), 2 Journal of Experiential Learning 157, 165 (2018).
- Sara Berman, [Integrating Performance Tests into Doctrinal Courses, Skill Courses, and Institutional Benchmark Testing: A Simple Way to Enhance Student Engagement While Furthering Assessment, Bar Passage, and Other ABA Accreditation Objectives](#), 42 J. Legal Prof. 147, 170 (2018).
- Christina Shu Jien Chong, [Battling Biases: How Can Diverse Students Overcome Test Bias on the Multistate Bar Examination](#), 18 U. Md. L.J. Race Relig. Gender & Class 31, 97 (2018).
- Debra Moss Curtis, [They're Digging in the Wrong Place How Learning Outcomes Can Improve Bar Exams and Ensure Practice Ready Attorneys](#), 10 Elon L. Rev. 239, 282 (2018).
- Scott Johns, [A Statistical Exploration: Analyzing the Relationship \(If Any\) between Externship Participation and Bar Exam Scores](#). 42 Okla. City U. L. Rev. 239, 281 (2018).
- Jeffrey S. Kinsler, [Is Bar Exam Failure a Harbinger of Professional Discipline?](#), 91 St. John's L. Rev. 883, 922 (2018).
- Jeffrey S. Kinsler; Jeffrey Omar Usman, [Law Schools, Bar Passage, and under and over-Performing Expectations](#), 36 Quinnipiac L. Rev. 183, 230 (2018).
- Russell A. McClain, [Bottled at the Source: Recapturing the Essence of Academic Support as a Primary Tool of Education Equity for Minority Law Students](#), 18 U. Md. L.J. Race, Religion, Gender & Class 139, 188 (2018).
- Joni Larson, [Getting up to Speed: Understanding the Connection between Learning Outcomes and Assessments in a Doctrinal Course](#), 62 N.Y. L. Sch. L. Rev. 11, 34 (2017).
- Jacqueline M. O'Bryant; Katharine Traylor Schaffzin, [First-Generation Students in Law School: A Proven Success Model](#), 70 Ark. L. Rev. 913, 958 (2018).
- Jerome M. Organ, [Is There Sufficient Human Resource Capacity to Support Robust Professional Identity Formation Learning Outcomes?](#), 14 U. St. Thomas L.J. 285, 458 (2018).

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

Perspectives, Advice, and Tips from the Trenches

In this issue, we are honored to feature important advice from [John Moyer](#), renowned Denver attorney and [IAALS](#) co-founder, who among his many other professional accomplishments lectured nationwide for bar reviews for more than 30 years.

The bar exam is an important exercise to permit admission to the profession where so much depends on the precision of thought, thorough substantive knowledge, logic and persuasive advocacy. It is a reasonable condition of admission to the bar, and students and faculty should respect it; faculty should prepare students to approach it with pride in their ability to excel in those characteristics tested on the bar exam. Students and faculty need to rethink their attitude about it – it is not a substitute for teaching the theory of the law but neither is it a test where theory should be ignored and trick questions are posed to make the process seem more mysterious than it is. Faculties of law schools must recognize their responsibility to teach their students to think like a lawyer and to apply legal principles to a set of facts. Bar examiners should recognize their responsibility to develop a test that genuinely discloses the competency of the student to perform those tasks expected of new lawyers and is an accurate representation of the law — not a trick question that requires a bar review lecturer to point out the chicanery so the students won't stumble over it. With those thoughts in mind,

Law students:

1. The bar exam is your ticket to practicing law. Respect it and prepare for it as thoroughly as you can.
2. You won't know all the answers but you are not expected to. Understand the subject matter and remember the issues that arise in the application of the rules. Show that you can apply what you have identified as the rule. If it is the wrong rule, you'll still get credit for the application.
3. Finish the test. Find the best answer to the problem and move on. If you satisfied advice (1) and (2) the first answer that comes to mind is likely the right answer. Don't over think the questions.

Law school faculty:

1. The bar exam is your student's ticket to practice law. Respect it and prepare the students for it as thoroughly as you can. And tell them that you are doing that so they know you consider it to be as important as it is.
2. Distinguish theory from substance and precedent from first impressions; show the students the various ways law evolves in varied factual contexts. Teach them that the law must be stable but it must not stand still. They'll find the trick questions if they

understand how legal principles can migrate.

3. Take a bar exam yourself. You need to know how the material is presented and understand the psychometrics of the bar exam and use those techniques in our tests so the students are used to those formats.

Practicing lawyers:

1. The bar exam is the student's ticket to the profession. Make success on the bar exam a significant achievement with appropriate rewards.
2. Give your new lawyers time to study and manage their personal lives as they go through the process of studying and testing.
3. Be as proud of passing the bar exam as you are of your degree from law school. It is the capstone of our legal education and should be celebrated!

Bar Success Program Profile

The purpose of this feature is not to endorse particular programs but to cultivate a community dialogue and share ideas about bar success programming. Thank you to Michael Barry, Assistant Dean and Practitioner-in-Residence, and Zoe Niesel, Assistant Professor of law and Director of Law Success, for profiling St. Mary's bar success program in this issue.

During the past two years, St. Mary's University School of Law has undertaken a complete overhaul of its academic support program and created a new Law Success Program that adheres closely to the school's mission to meet each student where she is. To prepare every St. Mary's student for the bar exam, the Law Success Program has instituted several bar preparation strategies, including a ten-year review of all available data to pinpoint best practices for bar success. The bar exam data analysis project has been particularly enlightening in crafting bar preparation strategies. The project has revealed that one of the most important factors in determining a student's chances of passing the bar exam is the amount of work completed in the commercial bar preparation course. Specifically, Law Success data shows that students who passed the bar completed on average 22-23% more of their commercial bar review course. Despite the significance of the commercial course to bar preparation, and ultimately bar passage, St. Mary's students historically were completing only about 62% of the work in the commercial course.

For the July 2018 bar exam, the Law Success Program sought to use data to improve students' awareness about the importance of the commercial bar preparation course and the amount of work needed to maximize chances of passing the bar. In partnership with the senior administration, the Law Success Program held mandatory "graduation meetings" with all members of the graduating class. At those meetings, students received information about the work necessary to prepare for the Bar Exam—specifically setting a minimum threshold of 85% of the work assigned by the commercial bar preparation companies.

While final numbers will be more telling, we believe that sharing data-driven recommendations can in fact modify student behavior during the bar study season. Further, it is possible to communicate the importance of hard work and then see the impact of those messages in student progress in their commercial course. The Law Success Program plans to use this information to craft best practices to beat the bar exam and share those practices with students as attainable benchmarks.

Please email Success@accesslex.org if you would like us to spotlight parts of your bar success program.

Grant Opportunities for Legal Educators

- AccessLex grants <https://www.accesslex.org/grant-program>
- American Association of Law Libraries (AALL) <https://www.aallnet.org/education-training/grants/research-grants/>
- The Lyle Spencer Research Awards <https://www.spencer.org/lyle-spencer-research-awards>

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

Since 2014, AccessLex has awarded numerous grants to universities and institutions committed to improving legal education including bar-related grants such as those listed below. Additional information about AccessLex grants can be found at <https://www.accesslex.org/research/awarded-grants>:

- 2016 - Texas A&M University, Texas Lawyer Study
- 2017 - Washington University School of Law, Relationship Between Coursework and Bar and Employment Outcomes
- 2018 - Indiana University Maurer School of Law, Designing Mindset Interventions that Promote Achievement in Bar Exam Preparation and Performance
- 2018 – State Bar of California, Job Analysis Survey

Bar Exam Resources for Students

Bar Scholarships for law students

- OCWLA Foundation provides the [Bar Stipend Award](#) to worthy law students about to take the bar exam. Offered twice a year, the award is given to the student(s) that best exemplifies the mission of OCWLA, and a commitment to scholarship, community service, advancement of women or women's issues, financial need, and Orange County, California.
- OCWLA Foundation awards a \$1000 [Diversity Stipend](#) to a recent law school graduate with a minority ethnic background and achievements and contributions in scholarship, community service, advancement of diversity or diversity issues. Financial need and connection to Orange County, California are also considered.

Please email Success@accesslex.org with links to information on bar study scholarships for posting in future issues of Raising the Bar.

Bar LibGuide Resources for law students

- <http://wcl.american.libguides.com/barexam>

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

Other Resources for law students

Mental health and wellness relate to bar passage efforts in many ways. [October 10, 2018](#), is Law School Mental Health Day. Among other programs, American University's Washington College of Law will host a YouTube Live event featuring Pennsylvania's Lawyers Concerned for Lawyers Executive Director, who is in recovery with an incredible story to share. The session will run live from 2:00–3:00pm EST and then be available for replay. The YouTube link is <http://auw.cl/tohellandback>.

Continuing the Conversation

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Please email Success@accesslex.org to send your thoughts on potential contributors to and content for future editions of Raising the Bar.

Where's AccessLex? Below are upcoming conferences where AccessLex will present or sponsor events.

- Southern Association of Pre-Law Advisors
- National Pre-Law Diversity Initiatives, Inc.
- National Latina/o Law Student Association
- Equal Justice Works
- National Pre-Law Diversity Initiatives, Inc.
- Society of American Law Teachers
- Association of American Law Schools

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