



EMPOWERING THE NEXT GENERATION OF LAWYERS®

# RAISING THE BAR

A PUBLICATION DEDICATED TO THE EXCHANGE OF EVIDENCE-BASED THINKING ABOUT THE BAR EXAM

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## FROM THE DIRECTOR

Humans too often face crises in extremes—we either come together and collectively solve problems, or we point fingers and splinter. This dynamic plays out in families, institutions, and communities. As many of us simultaneously experience deep loss and massive change, we can face today's crises by unifying or dividing. I urge us to choose the former.

This does not mean that we must agree. As lawyers, we are trained to logically analyze issues, and when we disagree, to do so respectfully and thoughtfully, in a fact-based manner. When I joined AccessLex in 2018, I created [Raising the Bar](#) (RTB) as a forum for precisely such respectful disagreement. I saw RTB as a much-needed space to convene a wide range of thought leaders and stakeholders (students, staff, educators of all statuses, deans, bar examiners, scholars, and practicing attorneys) to constructively engage as a community in the civil exchange of evidence-based ideas about the bar exam.

Some wondered why the bar exam deserved such attention. One answer was that pass rates had fallen, creating too many heavily indebted students who could not pay back student loans, and too often driving important law school decisions from whom to admit to curriculum design and subject matter coverage. Another answer was that racial disparities in testing were being exposed.

Of course I could not have known in 2018 that a worldwide pandemic would massively alter legal education and disrupt the attorney licensing process. But I and others who had long studied and written about the bar exam knew that change was inevitable. Prior to the pandemic, many state boards of bar examiners, the NCBE, IAALS, and others had undertaken studies to improve bar exams. Efforts were in place to better define and better measure minimum competency to practice law, including several funded by AccessLex. Knowing change

was coming, I knew we needed a place to join together to share information, think critically and collectively, and respectfully disagree.

Inspiration for creating RTB as a community forum came from many influences, including public television programs that aired during another tumultuous time for our country. [Fred Friendly Seminars](#) brought viewers into a national classroom, where high-profile law professors questioned high level leaders—including former presidents, supreme court justices, police chiefs, military leaders, and medical experts—about critically important issues. Many of these issues, such as health care, immigration reform, bioterrorism, the right to die, election and campaign spending reform, and presidential succession remain as urgent now as they were then. Springboarding from realistic hypotheticals, the professor-moderators grilled panelists to facilitate insightful problem solving from dozens of different informed perspectives. Some readers may remember [The Constitution: That Delicate Balance](#) and [Ethics in America](#), among the award-winning televised panels.

Part of what drove journalist Fred Friendly to create these seminars was an effort to ease tense conflicts in the early 1970s between journalists and judges. [“Our job,” Friendly said, “is not to make up anyone’s mind, but to open minds—to make the agony of decision-making so intense that you can escape only by thinking.”](#) We are today's decision-makers. And no issue today requires greater respect, attention, and action than that of repairing harms caused on the basis of race in our nation. Nothing demands more thoughtful discussion and collective hard work to ensure that we move forward and realize a future where access, diversity, and inclusion are realities. To those ends, we are thankful to all who contributed to this Fall 2020 RTB issue, which is dedicated to the intersection of race and the bar exam.

We are honored to feature many distinguished thinkers including Professors Jane Cross, Meera Deo, Olympia Duhart, DeShun Harris, and Russell McClain.

## DISTINGUISHED THINKER COMMENTARIES

We also thank Professor Joni Wiredu for her insightful Program Profile of the AUWCL academic and bar success program; the Association of Academic Support Educators (AASE) for its members' invaluable contributions to legal education and for this quarter's Organization Update; and Professors Victor Quintanilla and Sam Erman and their colleague Michael Frisby for this issue's Research Spotlight, previewing important research on bar exam cut scores and their impact on disparities and diversity in the legal profession.

I am also deeply thankful to my visionary boss—scholar, thinker, and AccessLex Center for Legal Education Excellence Executive Director, Aaron Taylor, for his thoughtful contribution to this issue.

Last but not least, thank you, Readers. I am hopeful that with our commitment to the respectful exchange of ideas we will come together to face the tough problems ahead and usher in a new post-pandemic era of unity.



Sara Berman, Esq.

Director, Programs for Academic and Bar Success  
AccessLex Center for Legal Education Excellence®

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### Time for Greater Change: The Bar Exam in Black and White

*Jane E. Cross is the Director of Caribbean Law Programs and Professor at Nova Southeastern University, Shepard Broad College of Law.*

Echoing the chants of Black Lives Matter is the rejoinder that [Black Lawyers Matter](#). Systemic racism also constricts the pipeline of [black students entering into](#) and [graduating from law schools](#). As discussed in my 2004 article, [The Bar Examination in Black and White](#), the phenomenon of the Black-White Bar Passage Gap continues to depress the number of black lawyers. Despite slow increases in Black law student enrollment, a [recent ABA study](#) revealed that the percentage of black lawyers has stalled at 5% for the last 10 years. In the past few months, advocates for [diploma privilege](#) have asserted that the elimination of biased, outdated bar examinations could accelerate the diversification of the legal profession. Yet, in the midst of [bar exam sittings being delayed or administered online](#) due to COVID-19, to quote John Lewis "[it is my hope that we are on our way to greater change](#)." That change will require, at a minimum, a continued investigation of the racial inequities in bar exam results.

### The Power of Student Engagement and the Power of LSSSE

*Meera E. Deo is the Director of the Law School Survey of Student Engagement (LSSSE), Professor at the Thomas Jefferson School of Law, and the William H. Neukom Fellows Research Chair in Diversity and Law at the American Bar Foundation. We thank her for this update on LSSSE.*

The Law School Survey of Student Engagement (LSSSE) measures the effects of law school engagement on student preferences, satisfaction, and outcomes. Our annual survey, administered in partnership with law schools, has gathered data for over 15 years on everything from how

students spend their time to the frequency and quality of their interactions with faculty, staff, and classmates. LSSSE now boasts perhaps the largest dataset in legal education, with nearly 400,000 responses from students from over 200 law schools.

We were prepared when the American Bar Association (ABA) adopted [Standard 315](#), which requires institutions to conduct “ongoing evaluation of the law school’s program of legal education, learning outcomes, and assessment methods.” LSSSE can help with that! We not only give schools an easy way to map 60 relevant questions from our survey onto ABA requirements using our Accreditation Toolkit, but also provide detailed school-specific data in a fully prepared [Accreditation Report](#). With these tools in place, law schools have come to recognize that assessment and outcomes data are critical to evaluating student competency. Deans from 150 schools recently [issued a statement](#) that the ABA should similarly require schools to “provide training and education around bias, cultural competence, and anti-racism.” Clearly, being thoughtful about issues of diversity and practicing anti-racism are essential tools for today’s lawyers.

What if schools were similarly mandated to collect data on engagement? Volumes of research support the many ways in which engagement with campus life improves student outcomes. The data suggest that the type of engagement is not nearly as important as being engaged in some way, either inside or outside the classroom. Whether students participate in the Black Law Students Association, join moot court, or regularly attend speaker events, those who engage in law school tend to have better grades as well as higher overall satisfaction rates. In addition, LSSSE data reveal that participating in journals, joining moot court, and working with faculty members outside of class all positively correlate with final law school GPA—a strong predictor of bar performance. We expect higher bar pass rates and greater professional success from highly-engaged students—all because they invest in campus life.

Today, with classes mostly online, opportunities for in-person engagement have fallen. Yet the need for engagement is greater than ever with fewer occasions to socialize, network, or connect with others in the usual ways. Schools that regularly join LSSSE can monitor trends over time and make programmatic adjustments to meet the shifting needs of students as circumstances change. And in the past year, virtually all of our circumstances have changed dramatically. Schools that partner with LSSSE can continue to monitor engagement patterns and consider new opportunities to keep students invested. While mandatory reporting on engagement would make even better national data available, dozens of schools participate in LSSSE every year because they know how useful the data can be. Especially now, schools should prioritize engagement, both recognizing how it facilitates success and measuring it to support our students in law school, bar pass, and practice.

To learn more about LSSSE or join our survey, visit us at: [www.lssse.indiana.edu](http://www.lssse.indiana.edu).

## Pandemic Bar Exam Challenges Exacerbate Barriers for First-Generation Law Students

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It is called a “bar” exam for a reason.

The comprehensive test is not just a test of knowledge, analysis and skills. Even in the best times, it is also a test of endurance and discipline. But the exam is further saddled with the limitations that mark most standardized tests—an implicit cultural bias toward privileged people from educated, wealthier families.<sup>1</sup>

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<sup>1</sup> Andrea A. Curcio, [A Better Bar: Why and How the Bar Exam Should Change](#), 81 NEB. L. REV. 363, 381 n.75 (2002). Even the National Council of Bar Examiners (NCBE) has acknowledged that these differences in average performance on the bar exam exist across racial/ethnic groups. NCBE, [BAR ADMISSIONS DURING THE COVID-19 PANDEMIC: EVALUATING OPTIONS FOR THE CLASS OF 2020](#) 1, 6 (2020). The NCBE stated that these disparities exist across many standardized testing contexts and are “the result of deeply rooted societal problems that create unequal educational (and other) experiences and opportunities.” *Id.* at 7.



During a pandemic—where disparities created by structural inequalities are laid bare—the bar exam presents new obstacles. For first-generation law students, those whose parents did not attend professional school, these new burdens are yet another entry barrier to a profession best served by members from all backgrounds. To be sure, all 2020 law school graduates are confronted with unprecedented challenges. After concluding law school during a once-in-a-generation global pandemic, they had to process the turmoil fueled by America’s long-overdue reckoning on race. And even as law school loans mount, law school graduates are facing widespread unemployment.<sup>2</sup>

For first-generation law students these challenges are often exacerbated by thin resources, low financial reserves and limited mentoring opportunities. Further, the day-to-day experiences of many first-generation law students may be marked by multi-generational housing and the need to work during bar preparation. Economic disparities<sup>3</sup> coupled with differing social, cultural and educational<sup>4</sup> backgrounds make a tough road even more difficult.

But the pandemic has created an opportunity to re-create the landscape for legal education and licensing models. To continue the important work of diversifying the legal profession, we must all think creatively to build new paths to the profession, not ignore the barriers right in front of us. Bar examiners should consider these special challenges as they evaluate the best path forward for all test-takers, especially those who are first in their families to attend law school.

## Antiracist Strategies to Increase Licensure for Minorities

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Ibram X. Kendi explains in his book, *How to Be an Antiracist*,<sup>5</sup> a racist is someone who supports racist policies through both action and inaction or by projecting racist ideas. In contrast, an antiracist is someone who supports antiracist policies by both action or projecting antiracist ideas. In this paradigm, you are either racist or antiracist, but there is no category or middle ground of “not racist.” Thus, as it relates to systems, structures, or policies, when someone supports, by action or inaction, policies, systems, or structures that create a disparate impact on the basis of race, it is racist. Those who support and empower policies, systems, and structures that are designed to eliminate and dismantle racial disparities are antiracist. Antiracism requires one to be educated about the problem and then to work actively toward a solution.

### **Antiracist Step 1: Identify and Describe the Disparity in Bar Passage Between Whites and Minorities**

For decades, there has been a documented disparity of bar passage between Whites and Black and Latino test takers. For example, in 1997, an article in *The Bar Examiner*, published by the National Conference of Bar Examiners (NCBE), found that White bar exam test takers' first-time pass rates were 30% higher than that for Black bar exam test takers.<sup>6</sup> The Law School Admissions

<sup>2</sup> In the first 90 days of COVID-19, unemployment rates in the United States surpassed those previously held during the two years of the Great Recession. Rakesh Kochhar, *Unemployment Rose Higher in Three Months of COVID-19 Than It Did in Two Years of the Great Recession*, PEW RES. CENTER (June 11, 2020). The unemployment rate peaked at 10.6% during the Great Recession, which ran from the end of 2007 to the beginning of 2010; it exceeded 14.4% during the first three months of the COVID-19 pandemic. *Id.*

<sup>3</sup> Ninety-three percent of first-generation law students borrow money to finance their legal education; compared to 84 percent of their peers who are continuing education. Jessica Tomer, *First-Generation Law Students: Struggles, Solutions and Schools That Care*, NAT'L JURIST (Mar. 22, 2019). First-generation law students also tend to borrow more money than their counterparts. *Id.*

<sup>4</sup> “Parental education is a common proxy not only for family income but for future educational success, with the children of highly educated parents generally drawing on class privilege and extra resources to achieve at high levels.” Jakki Petzold, *LSSSE Annual Results 2019: The Cost of Women’s Success (Part 2)*, LSSSE (Feb. 26, 2020).

<sup>5</sup> IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* (2019).

<sup>6</sup> Stephen P. Klein & Roger Bolus, *The Size and Source of Differences in Bar Exam Passing Rates Among Racial and Ethnic Groups*, B. EXAMINER, Nov. 1997, at 9.

Council (LSAC) conducted a longitudinal study that found minorities are less likely than Whites to succeed on the bar exam on the first try.<sup>7</sup> California posts its bar passage rates by race and for the July 2018 exam the ABA schools saw the following first-time passage rates: White 69.5%, Black 45.1%, Hispanic 56.3%, Asian 66.4%, and Other Minority 47.8% (designations by California).<sup>8</sup> And most recently the February 2020 exam pass rates for California ABA schools were White 51.7%, Black 5.0%, Hispanic 30.6%, Asian 42.2%, and Other 43.2% (and Declined to Answer 42.9%).<sup>9</sup>

Despite these studies and the data, bar exams have become much more standardized with the increasing use of the Uniform Bar Exam, an exam created by the NCBE. In continuing with the bar exam, most assert the bar exam is a fair test. As it relates to minorities, Stephen P. Klein and Roger Bolus argued in their article, *The Size and Source of Differences in Bar Exam Passing Rates Among Racial and Ethnic Groups*, that minorities are less likely to pass the first time because they are less prepared for the exam as evidenced by lower law school grade point averages.<sup>10</sup> This is seemingly supported by the California's Bar Exam Report which found that minorities with the same credentials (i.e., law school grade point average) will pass at the same rates.<sup>11</sup> Klein and Bolus also argued that minorities may take several tries but will eventually pass with more studying.<sup>12</sup> Arguably, the issue is not always the need to study more, but for many, limited access to resources such as time, money, and access to knowledge (e.g., the implicit norms undergirding the exam).<sup>13</sup> The defenses of an exam with a clear disparity reinforces the racist idea that Blacks (and other minorities) are intellectually inferior to Whites. As Kendi states in his book, "Whites and Asians

at the top and Blacks and Latinx at the bottom—creates a racial hierarchy, with its implication that the racial gap in test scores means something is wrong with the Black and Latinx test takers and not the tests."<sup>14</sup>

## **Antiracist Step 2: Work Actively Toward a Solution for Licensing More Minorities**

It is not enough to identify and describe a policy, system, or structure that is racist. Antiracism requires power and change. Today with COVID-19 arising to disrupt bar exams, many inside the profession are becoming more vocal about the utility of bar exams. And the increased recognition of the Black Lives Matter movement has thrust issues related to race to the forefront.

Action is needed to eliminate the disparities of licensing between Whites and minorities. An antiracist approach to the bar exam is necessary to evaluate and adopt options to eliminate disparities in licensure; these options include eliminating the exam, altering the exam, or utilizing other (or additional) mechanisms for licensure. Several articles have addressed the ways in which the licensing process can be changed.<sup>15</sup> Those advocating for elimination of the exam have argued for diploma privilege whether as a temporary response to COVID-19 or permanently. It would allow for graduates of law schools to practice without the need to take a bar exam. Others have argued for altering the exam by reducing the passing score or introducing different test methods or content. Finally, some have argued for alternative methods for licensure that eliminate the exam for some other model (e.g., apprenticeship). Even in altering the exam or introducing alternative schemes for licensure, it must be done carefully to avoid introducing conditions that still create a disparate impact on minorities. California has taken a step to alter its

7 Linda F. Wightman, [LSAC National Longitudinal Bar Passage Study](#), LSAC RES. REP. SERIES (1998).

8 STATE BAR OF CALIFORNIA, [GENERAL STATISTICS REPORT: JULY 2018 CALIFORNIA BAR EXAMINATION](#) 1, 2 (2018).

9 STATE BAR OF CALIFORNIA, [GENERAL STATISTICS REPORT: FEBRUARY 2020 CALIFORNIA BAR EXAMINATION](#) 1, 2 (2020).

10 Klein & Bolus, *supra* note 6 at 12.

11 ROGER BOLUS, [PERFORMANCE CHANGES ON THE CALIFORNIA BAR EXAMINATION: PART 2](#), 61 (2018).

12 Klein & Bolus, *supra* note 6 at 8–9.

13 Christina Shu Jien Chong, [Battling Biases: How Can Diverse Students Overcome Test Bias on the Multistate Bar Examination](#), 18 U. MD. L. J. RACE, RELIGION, GENDER & CLASS 31 (2018).

14 KENDI, *supra* note 5 at 102.

15 Marsha Griggs, [Building a Better Bar Exam](#), 7 TEX. A&M L. REV. 1 (2019).

exam by lowering the passing score, which many hope will result in more minorities passing the exam.<sup>16</sup> Because of the disparities, more state bar examiners and other stakeholders should invest time and energy into disbanding the existing licensing system (and its supporting policies) to develop antiracist policies that result in the licensure of more minority applicants.

## A Call for Support for Our Graduates in these Unprecedented Times

*Russell A. McClain is a Law School Professor, the Associate Dean for Diversity and Inclusion, and Director of the Academic Achievement and Bar Preparation Program at the University of Maryland Francis King Carey School of Law, and a recent past president of the Association of Academic Support Educators.*

“Unprecedented”—a word we hear so much these days. We are suffering through a once-in-a-century, worldwide pandemic—one that discriminates, affecting poor people and people of color worse than others. We have seen explicit, live video recordings of Black men being killed by police and private citizens—this against the backdrop of many more killings, harms, and indignities against Black and brown men and women—and against those with intersectional identities that have not been recorded. (This is not a new phenomenon, but the attention we are paying to it is.) We are facing a serious economic crisis, just as we started to equalize after the Great Recession a little over a decade ago. And political divisiveness is at an all-time high. Unprecedented.

Against this backdrop, our most recent law school graduates must try to take bar exams in what may be the most unstable bar exam environment ever. Will there even be a bar exam? When? Will it be in person? Will there be diploma privilege? Will it be the regular exam or some different model? Will I have a stable internet connection? How will it be graded? Will

the bar examiners understand how difficult this has been for all of us? Is anyone advocating on our behalf?

These questions illustrate the unique and overwhelming burdens for our graduates. We must find ways to support them beyond mastering the substance and skills necessary to perform adequately on a standardized test, including being particularly mindful about caring for their emotional and psychological needs.

And, in light of the prominence that concerns about racial and social injustice have in this moment, we should focus specific support on our graduates who come from underrepresented backgrounds. While all our students and graduates are suffering, graduates from marginalized groups bear an inordinate cognitive load. Imagine what it feels like to bear all the stress and anxiety caused by this year’s uncertain bar exam circumstances. Now imagine that stress and anxiety on steroids, exacerbated by wondering whether your life matters, whether you truly belong in this society, and whether racial and social justice gains of the last 50 years are eroding before your eyes. It is overwhelming.

Let us commit to doing what we can to help our graduates survive these next few months—doing more than teaching them IRAC, scaffolding, and time management. If we can lessen their load, just a little, perhaps their giftedness can emerge.

## Why I Feel Optimistic in the Midst of Chaos

*Aaron N. Taylor is the Executive Director of the AccessLex Center for Legal Education Excellence.*

I recently heard Camille Nelson, dean of the University of Hawaii at Manoa William S. Richardson School of Law, refer to current times as “the new abnormal.” That struck me as an apt characterization. While we know our way of life has been altered forever, everything still feels...well...abnormal. I am still adjusting to mask

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16 Maura Dolan, [California Is Easing Its Bar Exam Score, Which Critics Argue Fails to Measure Ability](#), LA TIMES (July 26, 2020).

wearing and social distancing. At times, I have felt frustrated, anxious, even fearful. But underlying those feelings has been a persistent optimism.

The pandemic is forcing us to consider new ways of doing things. Whether it is the manner in which law schools were forced to quickly and chaotically adapt to emergency remote teaching and now offer large portions of their curricula online or whether it is how jurisdictions have been forced to consider alternative content, formats, and means of administering their bar exams, there seems to be much to be optimistic, if not excited, about.

Change is scary, particularly forced change. But scarier to me is the reflexive adherence to status quos that we know are ineffective, inequitable, and sometimes harmful. We should view the abnormal nature of the moment as an opportunity to engage in reasoned, even if somewhat chaotic, experimentation and learn from those efforts through evaluation, assessment, and reflection. I am optimistic that once the new abnormal becomes simply the normal, legal education will be better positioned to serve the contemporary needs of our students and the profession most of them will one day enter.

## RE-IMAGINING THE BAR EXAM AND OTHER PATHS TO LICENSURE

### An Open Letter on the 2020 Bar Exam from Law Deans

*This letter reproduced here below was originally published on Medium. For a full list of signatories, please see the original letter [here](#).*

The disruption faced by the law school class of 2020 was significant and will be long lasting. These newest members of the legal profession endured a truncated final semester, a laser fast shift to remote learning, changed grading policies, abrupt moves out of campus housing,

and canceled in-person graduation ceremonies. The luckiest among this group had resources, financial, familial, and otherwise to weather this massive disruption and move into the summer prepared to study for the bar exam and start their careers in earnest. Others, however, have dealt with and are still dealing with housing and food insecurity; inadequate access to technology; lost income; anxiety and strain over how to pay their bills; sickness or the threat of serious illness due to underlying health issues (themselves or loved ones) and even the death of loved ones in some cases; and a mounting lack of clarity about whether and when a bar exam would be available for them to take.

Now, those we are welcoming into our profession are dealing with an increasingly absurd set of decisions about the bar exam. Despite surges in COVID-19 cases in several parts of the country, about 20 states currently plan to hold in-person bar exams, creating potential public health calamities for bar takers, proctors, and the friends, family, and strangers that all of these people will come into contact with when the bar ends. A small number of states have already indicated that they will give a remote bar exam in October, a choice replete with its own significant drawbacks and complications, while others remain silent on how things will proceed.

In the midst of all of this uncertainty, thousands of law school graduates who hope to soon become lawyers are trying to make plans, care for families, pay their rent, and study for a bar exam to be offered on some future date, perhaps under conditions that could result in contracting a deadly virus. As is always the case, it is the most vulnerable among our recent grads who bear the worst of this uncertainty—those who carefully budgeted to be able to study for the bar exam in July are now scrambling to find an income source to tide them over until October or later. Often, this same group, many first-generation college or law school grads from lower income or poor backgrounds, took out enormous debt hoping that a legal education would alter their life circumstances. For them, a “mere” two month-delay, not to mention any period longer than that,



could lead to financial ruin. The caregivers whose ability to study was hampered by their school-aged children who were not in school or camp for months and may remain out of school through the fall. Those with unstable wi-fi signals who planned to take live bar classes and found all of those classes moved online. Those whose job offers hinged on the ability to take an exam in July and/or becoming licensed to practice law in the fall.

The bar exam is touted as a necessary measure to protect the public from lawyers who would provide incompetent representation to members of the public, thereby harming their interests. But the success that Wisconsin has had with diploma privilege provides reliable, longitudinal data that demonstrates that legal education without high stakes examination can protect the public from harm. Members of the public in Wisconsin do not suffer harm from lawyer incompetence at a rate higher than jurisdictions that administer a bar examination.

Far too often, the bar exam measures privilege and opportunity, rather than competency to practice law. This privilege includes being able to study for months without the necessity to work; being able to pay thousands of dollars for a commercial bar preparation course; and being able to have a safe and comfortable place to study day-after-day without the disruption of caregiving responsibilities. The conditions under which graduates are now trying to persevere guarantees that existing inequalities—built in large part on race, class, disability status, and gender—will be exacerbated.

Add to that storm an environment that even those of us who are Black law school deans, placing us among the most privileged of our racial group in terms of education and income, are struggling to focus and concentrate on the countless tasks and demands in front of us in our jobs. Of course, racial discrimination, police brutality and violence, and the devaluation of Black life are not news to us, or to many Black students, but the constant visual reminder of how little our lives are valued in this society and how much the law enables our lives to be devalued by deadly as well as non-lethal violence, layered on top of a pandemic that has

devastated many Black families, take a huge toll on the body and the spirit. Couple that with the sudden awakenings of our non-Black colleagues, peers, and acquaintances to the reality of the racism in our lives, which in itself is painful, and it is not hard to understand why any Black law graduate would be particularly disadvantaged with bar preparation this summer and fall of 2020.

Furthermore, the history of bar exams is one replete with examples of discrimination and anti-Black racism. The use of bar exams to exclude people from the practice of law coincided with periods of heightened immigration and with the success of Black people joining the legal profession. Even today, the bar exam disproportionately excludes people of color from the legal profession. As members of this profession, we are disturbed by the history of the bar exam and the current work of racial exclusion that it performs in the best of times. We write this letter to call to the attention of the high Courts that govern the profession in each jurisdiction, the possible outcome that strict adherence to the bar exam will achieve. It will likely frustrate the entry of people of color and impoverished people from every demographic from the legal profession. Propping up a tool born from a racist past will not only impose a predictably disparate impact on people of color and impoverished people; it also seems both unnecessary and cruel.

When the dust has settled on this incredibly difficult season, we hope that the conversations about better ways to license attorneys that have been taking place for many years will be had with greater urgency. But, in the meantime, some form of diploma privilege that allows new lawyers to have a sense of certainty and a solid ground to stand on is the most compassionate choice for high Courts and bar examiners to make. This is especially so because the results of any exam given this year cannot help but be wildly skewed and unreliable given race, class, and gender-based inequalities in the ability to prepare for and take the test. To be clear, diploma privilege can and should still require a character and fitness review and might also include enhanced

CLE requirements, supervision requirements, and other measures to support our new colleagues and the public we all serve.

As deans leading law schools through this global pandemic and into a new future for legal education, we are committed to reimagining a legal profession that more closely resembles the diversity of our country. The path to that future does not end with diploma privilege for the class of 2020, but such an equitable privilege for all is a good start.

Please email [RTB@accesslex.org](mailto:RTB@accesslex.org) with your submissions regarding reimagining the bar exam and the lawyer licensing process.

# RESEARCH SPOTLIGHT

## An Empirical Study of Bar Exam Cut Scores and Their Impact on Disparities and Diversity in the Legal Profession

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This research program is being conducted in collaboration with Dr. Nedin Yel, and benefited from helpful conversations with an advisory committee organized by Dean Mitchel Winick of Monterey College of Law and funding from AccessLex Institute.

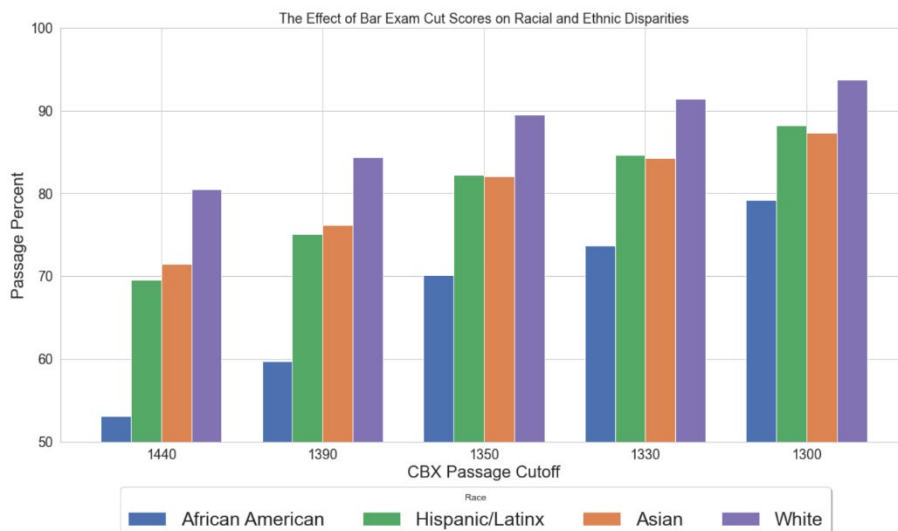
The choice of a bar exam passing score (“cut score”) is also a choice about the legal profession’s racial and ethnic makeup. That is the finding of our recent empirical study of all California bar exam takers across 11 years of exams, research we plan to publish in future articles and reports.

The analysis rests on our unique dataset: all attempts by all applicants across 21 consecutive administrations of the California bar exam between 2009 and 2019 (n = 143,198 unique bar exams taken, including n = 85,727 unique examinees). We determined which examinees during the period passed (or would have passed with the scores they earned) at the actual 1440 cut score and at simulated cut scores of 1300, 1330, 1350, and 1390.

The actual cut score of 1440 produced stark racial and ethnic disparities. Whereas 80.5% of White applicants eventually passed the bar exam during the period, just 53.1% of Black applicants did. Put differently, 46.9% of Black applicants never passed the exam even after repeated attempts, compared to just 19.5% of White applicants. That left a Black/White gap of 27.4%. Large Latinx/White (11.0%) and Asian/White (9.0%) gaps in passage rates also existed.

A lower cut score would have substantially reduced the racial and ethnic impacts of the bar exam, as revealed in the figures below. If California had selected the national median cut score of 1350 in 2009, for example, 89.5% of White applicants and 70.1% of Black applicants would have passed, meaning that the Black/

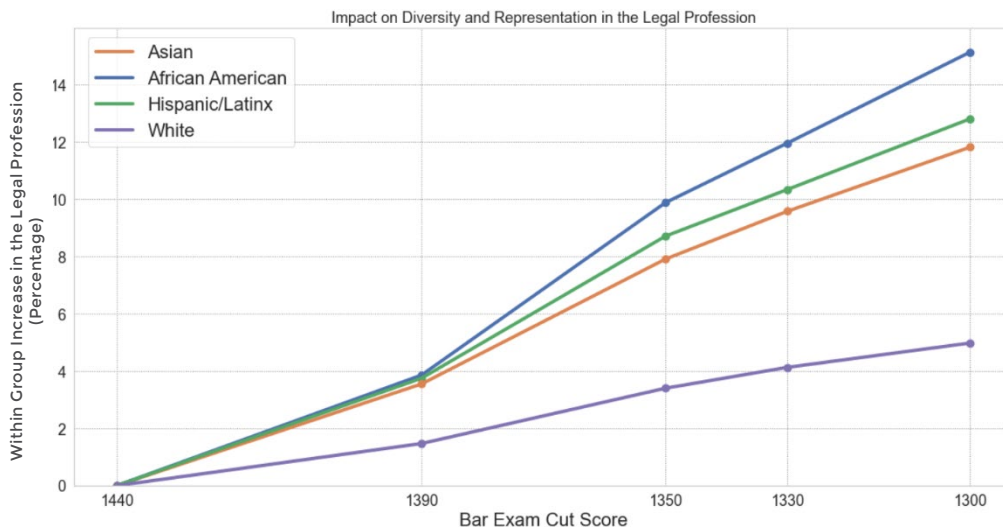
**Figure 1. The Effect of Bar Exam Cut Scores on Racial and Ethnic Disparities**



White gap would have closed by nearly 30%. Similar reductions would have occurred in the Latino/White and Asian/White gaps. Setting the cut score at 1300, as some states have done, would have reduced all three gaps by nearly half. The selection of a cut score also impacts the representation of people of color among newly admitted attorneys and, ultimately, cascades to affect their representation in the legal profession. For example, if California had selected a cut

score of 1350 in 2009, this change would have resulted in an increase of 753 Black lawyers passing the bar exam across these 11 years of exams, increasing the inflow of newly licensed Black lawyers by 32.1 percent. Combining this inflow of newly licensed Black attorneys with the total number of active Black lawyers in California, we found that the selection of a 1350 cut score in 2009 would have resulted in a 9.9% increase in the total number of Black lawyers in California.

**Figure 2. Effect of Bar Exam Cut Scores on Relevant Percent Increase in Racial/Ethnic Representation in the Legal Profession**

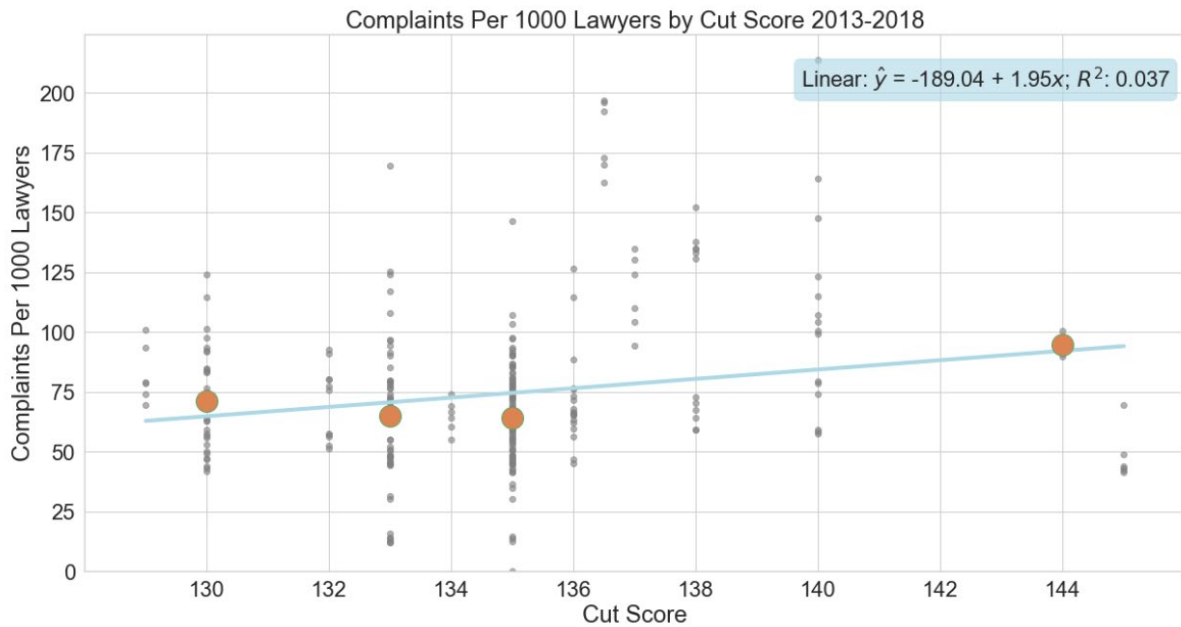


Does the selection of a lower cut score harm the public? We next examined whether the selection of an exam cut score correlates with the number of 1) complaints brought by members of the public against attorneys, 2) attorneys formally charged after probable cause determinations, and/or 3) attorneys subjected to discipline in a jurisdiction, collecting this data from publicly available reports of the ABA Survey on Lawyer Discipline Systems. We gathered this data for all jurisdictions included within these reports and across the most recent six years available: 2013 –

2018, and standardized each of these indicators to compare the data across jurisdictions, placing each in the form of per 1,000 attorneys, and treating each state’s annual reporting as a separate observation. Ultimately, we found no significant relationship between the selection of an exam cut score and these three indicators. We observed no correlation between the selection of a cut score and the number of complaints brought by members of the public or the number of attorneys disciplined in that jurisdiction.



**Figure 3. Linear Fit for the Number of Complaints Filed per 1,000 Lawyers 2013-2018**



What's next? We will be describing these results in forthcoming publications.

Please submit a summary of your study and findings to [RTB@accesslex.org](mailto:RTB@accesslex.org) if you would like us to spotlight your bar-related research in a future issue.

## PROGRAM PROFILE

### At American University Washington College of Law, Community is Power

*Joni Wiredu is a Professor and the Senior Director of Academic Excellence at American University Washington College of Law.*

This summer has seen its share of panic, disbelief, and heartache. Through it all, academic and bar exam support professionals have counseled bar-exam-takers on the rapidly changing deadlines, postponements, cancellations, and online bar exams. Now we are faced with continuing bar exam support while planning to welcome new and returning students to a virtual learning environment.

The Office of Academic Excellence (OAE) at American University Washington College of Law (AUWCL) is no exception to this new normal. Like many academic and bar exam support offices across the country, we now face two months in which our academic and bar exam worlds will collide. However, with creative thinking and community support, we are excited and ready to face our new challenges.

Our office mission is to support student achievement from matriculation through graduation and beyond. Beyond. How will we ever get through this “beyond?”

As the sixth largest law school in the country, WCL graduates approximately 400 JD students per year; each summer, therefore, our office has to support 400 new graduates who sit for bar exams in more than 20 jurisdictions, while also preparing to provide academic support to 400 incoming 1Ls and 800 rising 2L and 3L students.

This summer has been like a game of “whack-a-mole” as we try to anticipate bar examiners’ decisions to provide timely advice for students as they start and stop, and start again, their bar studies. In an effort to continue services and support of our 2020 graduates, the Office of

Academic Excellence turned to its community of faculty, staff, and alumni. And boy, did they rise to the occasion.

Our Bar Coaches initiative included faculty, staff, and alumni volunteers who facilitated bar exam readiness through bi-weekly communications that offered individualized support, study strategies, and referrals to OAE resources.

With the support of AUWCL’s Office of Online Learning, we automatically enrolled all recent graduates in our OAE Summer Bar support online program. The program has included essay simulations, debriefs, and feedback, mock bar exams, MPT simulations, professor bar exam office hours, virtual study breaks, and “Final Push” sessions. In addition, OAE team members counseled graduates through their decisions to delay or continue their studies, while also helping to modify study plans and preparation strategies as timelines and exam modalities shifted (and shifted, and shifted). In fact, our home state’s bar timeline has shifted so far that our annual bar exam awareness month, OctoBAR, will include an actual bar exam.

As we carry our summer load into the fall semester, we look forward to welcoming the class of 2024 and greeting our returning students with virtual support and programming with an emphasis on remote learning strategies.

As I reflect on our response to these uncertain times, I am proud to be a member of a community that steps up and embraces the mission of going **beyond** in its support of students and alumni.

Please contribute to the collective and growing body of knowledge about academic and bar success efforts by submitting a profile of programming at your law school to [RTB@accesslex.org](mailto:RTB@accesslex.org) for possible inclusion in future issues of *Raising the Bar*.

## ORGANIZATION UPDATE

*We are grateful to the Association of Academic Support Educators ([AASE](#)) for this update.*

Since 2013, the Association of Academic Support Educators (AASE) has been an organization dedicated to providing resources, professional development, and leadership opportunities for academic support and bar preparation professionals. The mission of AASE is to foster and promote the professional development of its members and to encourage research-based teaching methods that enable law students to excel and to reach their full potential—including graduating, passing the bar, and practicing law. It represents 297 members from over 181 law schools in the United States and Canada.

AASE serves its members with programs and conferences and through opportunities for mentorship, support for members in their scholarly projects, and opportunities for service on committees that provide the lifeblood to the organization. Members gather each year at its conferences for professional growth. The conferences typically provide many concurrent and plenary sessions dedicated to topics related to academic support and bar preparation and the professional growth of academic support educators. A special diversity conference is held biennially. The most recent diversity conference was held October 3-4, 2019 at DePaul University College of Law in Chicago, IL. AASE has hosted an annual conference since its first conference in 2013. After canceling the May 2020 annual conference due to COVID-19, AASE looks forward to hosting its members in May 2021 at American University, Washington College of Law.

Even with the disruptions of COVID-19, AASE continues to work on behalf of its members. In its commitment to diversity, it recently wrote a joint statement on racial injustice with the AALS Section on Academic Support Programs stating its commitment to making legal education accessible to all law students and supporting academic

support educators. The organization has also created a task force committee dedicated to serving our membership's changing needs as a result of COVID-19 and creating policies that allow our organization to pivot in the face of any future disruptions. Its members have seen continued support of their scholarly projects, plans are being made for programs and conferences, and the organization is dedicated to continued service to its members and improvement of resources such as revamping the website.

For more information about AASE, please visit [their website](#).

Please email [RTB@accesslex.org](mailto:RTB@accesslex.org) with bar-related updates from your organization.

## CONFERENCE CORNER

We typically feature upcoming conferences here with sessions related to academic and bar success. This issue includes upcoming conferences and selected past conferences with recorded sessions:

- [2020: Vision for Leadership Conference](#) (Sept. 14-17, 2020)
- [ASHE Virtual Conference](#) (Nov. 18-21, 2020)
- [AccessLex Legal Education Research Symposium](#) (Dec. 3, 2020)
- [LexCon@Home: Student Success, Your Success](#) (Dec. 10, 2020)
- [SALT Virtual Series: Social Justice in Action](#) (monthly sessions)
- [AALS Annual Meeting](#) (Jan. 5-9, 2021)

Please email [RTB@accesslex.org](mailto:RTB@accesslex.org) with links and information about upcoming conferences with bar exam and licensing-related sessions.

# PUBLICATIONS AND POSTS

Below are selected recent bar-related publications, and other publications and posts that focus on the intersection of race and the bar exam. We also refer readers to the many important posts on various legal education listservs (ASP, LRW, Associate Deans, Deans, Law Librarians, etc.), the [Law School Academic Support Blog](#), the [Best Practices for Legal Education](#) blog, [TaxProf Blog](#), and on a host of social media sites, including the Facebook group *Pandemic Pedagogy: Law Teaching in the Time of COVID-19*.

## Selected Publications

- ACCESSLEX INSTITUTE, [ROADMAP TO ENROLLING DIVERSE LAW SCHOOL CLASSES, VOLUME 4: CONTEXTUALIZING ADMISSION FACTORS](#) (2020).
- Renee Nicole Allen, *From Academic Freedom to Cancel Culture: Silencing Black Women in the Legal Academy*, 68 UCLA L. REV. (forthcoming).
- Renee Nicole Allen & DeShun Harris, [#SocialJustice: Combatting Implicit Bias in an Age of Millennials, Colorblindness, & Microaggressions](#), 18 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 1 (2018).
- Claudia Angelos et al., [Diploma Privilege and the Constitution](#), 73 SMU L. REV. FORUM 168 (2020).
- Christina Shu Jien Chong, [Battling Biases: How Can Diverse Students Overcome Test Bias on the Multistate Bar Examination](#), 18 U. MD. L. J. RACE, RELIGION, GENDER & CLASS 31 (2018).
- Timothy T. Clydesdale, [A Forked River Runs Through Law School: Toward Understanding Race, Gender, Age, and Related Gaps in Law School Performance and Bar Passage](#), 29 LAW & SOC. INQUIRY 711 (2004).
- Jane E. Cross, [The Bar Examination in Black and White: The Black-White Bar Passage Gap and the Implications for Minority Admissions to the Legal Profession](#), 18 NAT'L BLACK L.J. 63 (2004).
- Marsha Griggs, [An Epic Fail](#), 64 HOWARD L. J. (forthcoming 2020).
- Joan W. Howarth, [The Professional Responsibility Case for Valid Nondiscriminatory Bar Exams](#), GEO. J. LEGAL ETHICS (forthcoming).
- Cecil J. Hunt II, [Guests in Another's House: An Analysis of Racially Disparate Bar Performance](#), 23 FLA. ST. U. L. REV. 721 (1996).
- William C. Kidder, [The Bar Examination and the Dream Deferred: A Critical Analysis of the MBE, Social Closure, and Racial and Ethnic Stratification](#), 29 LAW & SOC. INQUIRY 547 (2004).
- NAT'L DISABLED L. STUDENT ASS'N, [REPORT ON CONCERNS REGARDING ONLINE ADMINISTRATION OF BAR EXAMS](#) (2020).
- Rogelio Lasso, [A Blueprint for Using Assessments to Achieve Learning Outcomes and Improve Student's Learning](#), 12 ELON L. REV. 1 (2020).
- Kyle Rozema, [Does the Bar Exam Protect the Public?](#) (2020).
- Diana Simon, [Laughing Your Way to Academic Success: Can Laughter Impact Learning and Well-Being in the Law School Classroom and are there Cross-Cultural Differences?](#), ARIZ. LEGAL STUD. DISCUSSION PAPER NO. 20-35 (2020).
- STATE BAR OF CALIFORNIA, [REPORT CARD ON THE DIVERSITY OF CALIFORNIA'S LEGAL PROFESSION](#) (2020).



# RESOURCES FOR LEGAL EDUCATORS AND LAW STUDENTS

## Selected Posts and Podcasts

- Michael Abramowicz, [\*Predictive Test Scores and Diploma Privilege\*](#), VOLOKH CONSPIRACY (July 14, 2020).
- Jennifer S. Bard, [\*Let's Take This Period of Unprecedented Change to Consider How Grading Practices Can Affect Issues of Diversity and Inclusion in Our Law Schools\*](#), BEST PRACTICES FOR LEGAL EDUC. (June 8, 2020).
- Josh Blackman, [\*The Elephant in the Room for the Diploma Privilege Debate\*](#), VOLOKH CONSPIRACY (July 23, 2020).
- [\*Florida's 12 Law Schools Form New Consortium for Racial Justice\*](#), BARRY U. (June 29, 2020).
- Pilar Margarita Hernández Escontrías, [\*The Pandemic Is Proving the Bar Exam Is Unjust and Unnecessary\*](#), SLATE (July 23, 2020).
- Lauren Hutton-Work & Rae Guyse, [\*Requiring a Bar Exam in 2020 Perpetuates Systemic Inequities in the Legal System\*](#), APPEAL (July 6, 2020).
- JURIST Editorial Board, [\*The Diploma Privilege Manifesto\*](#), JURIST (July 9, 2020).
- Beth Kaimowitz, [\*Black Lives Matter and the Bar Exam\*](#), LAW SCH. ACAD. SUPPORT BLOG (June 14, 2020).
- Kent D. Lollis, [\*Living, Working, and Achieving While Black\*](#), LAW:FULLY (June 16, 2020).
- Kavya Parsa & Maya Furukawa, [\*The Bar\(rier\) Exam: Privilege, Mental Health, and the UBE\*](#), JURIST (July 31, 2020).
- SALT, [\*Episode 3: Joan Howarth on Reforming the Bar Exam\*](#), TEACHING SOCIAL JUSTICE (2020).

## General Bar-Related Resources

- [AccessLex Resource Collections: Bar Success](#)
- [LibGuides](#)
- [ABA Bar Information for Applicants with Disabilities](#)
- [The Comprehensive Guide to Bar Admission Requirements, 2020](#)
- [The Bar Examiner](#)

## Grants and Scholarships for Law Students

- [Scholarships and Grants for Bar Examination Preparation](#)
- [ABA Scholarships and Financial Aid](#)

## Grant Opportunities for Legal Educators and Researchers

- [AccessLex Grant Programs](#)
- [American Association of Law Libraries \(AALL\)](#)

## Updates from the NCBE

- [Testing Task Force Blog](#)
- [Testing Task Force Research](#)

## Pandemic-Related Licensing Information

- [Barcovid19.org](#)
- [NCBE](#)

Please email [RTB@accesslex.org](mailto:RTB@accesslex.org) with recent and forthcoming bar-related publications, posts, and podcasts to be included in future issues of *Raising the Bar*.

## Selected Diversity and Inclusion Resources

- [AccessLex Resource Collections: Diversity and Inclusion](#)
- [ABA Diversity and Inclusion Center](#)
- [Law Deans Antiracist Clearinghouse Project](#)
- [NALP Diversity Best Practices Guide](#)

## Distance Learning Resources

- [AccessLex Distance Learning Resources](#)
- [CALL Resources for Law Faculty on Remote Teaching Due to Coronavirus](#)
- [Recommendations for Online Teaching](#)

## Skills Resources for Law Students

- [CALL Law School Success Lessons](#)

## Mental Health Resources for Law Students

- National Mental Health Day – October 10, 2020.
- The ABA Law Student Division’s official National Mental Health Day at law schools is observed on the same day mental health initiatives are spotlighted across the country. Look for programming at law schools nationwide.

Please email [RTB@accesslex.org](mailto:RTB@accesslex.org) with information about resources for faculty and students in your jurisdiction.

## CONTINUING THE CONVERSATION

In an upcoming issue, we will feature highlights of recently completed and ongoing AccessLex-funded bar-related research, and information about our grant programs.

Please email us at [RTB@accesslex.org](mailto:RTB@accesslex.org) if you have content you wish us to consider for possible publication in an upcoming issue. We accept submissions on a rolling basis, year-round.

**Click [here](#) to subscribe to future issues of *Raising the Bar*.**



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