

# RAISING THE BAR

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

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## FROM THE DIRECTOR

I am writing this message on Rosh Hashanah, the Jewish New Year, knowing it will be published as we welcome the year 2020. The new year brings new opportunities for self-assessment and for deep reflection about how to improve going forward.

I frequently advise students to find and hold fast to their “why.” I say this because evidence and experience suggest that learning with purpose is more effective than learning in a vacuum. I ask students to write out why they are attending law school, to identify the transferable skills they are developing, and to explicitly articulate their reasons for wanting a law license.

What about our “why”? Why have many of us devoted entire careers to law schools, law students and legal education? What can we contribute to the thoughtful evolution of teaching and learning, scholarship and service, and to the legal licensing process of the future? And, why do so many of us advocate so staunchly for a course of study and professional development that still leaves many with too much debt and often not yet equipped with the skills needed in today’s and tomorrow’s workforce?

One answer may be implicit in the words “still” and “yet”: we have work to do. The world is changing; we have choices about how we will welcome such changes—prepared, thoughtfully, and with evidence-based best practices, or scrambling to keep up?

During a panel I recently moderated at the [2019 Denver Online Pedagogy conference](#) (titled “The Future Is Here”), deans and faculty from eight ABA law schools joined in picturing the law school of 2030. The discussion produced innovative, daring ideas; panelists questioned much of the status quo, articulated visions for better teaching and learning, and proposed creative solutions to a myriad of challenges facing law schools of today and tomorrow.

Just as the times we live and learn in are evolving, so too is my professional “why.” It is also nuanced. But, two themes remain clear: First, I wish to live in a society that includes robust and respectful argument, that thoughtfully distinguishes fact from opinion, and is populated with many well-educated voices who have been well-trained to understand and respect the rule of law. Second, I believe in law schools—re-imagined and changing to be sure, but vibrant, relevant and strong.

If we assume the future will bring a mix of interconnected unknowns (linking law to every aspect of human development), then perhaps tomorrow’s law schools will become thriving, collaborative (hybrid or online) learning centers where bright minds train as nimble intellectual “mountaineers,” prepared with excellent communication, analytical, problem-solving, and other skills needed to guide us on the treacherous paths ahead. And, just as mountaineers master rugged or unfamiliar terrain with practical and theoretical training, future law students will learn actively by doing; perhaps we will design experiential training to simultaneously fill access-to-justice gaps while mastering lawyering skills; maybe capstone programs will put law students in charge of deep learning about government and justice systems by teaching a citizenry in need of a civics education. Much is possible if we adapt and leverage our own problem-solving skills; failure to adapt may be, as H.G. Wells put it, to perish.

And so, I wish us all a happy and healthy 2020. May the spirit of creative problem solving abound! I renew my commitment to joining with stakeholders from all law schools, the profession, and professional licensing bodies nationwide, to collaborate on, adopt, and assess evidence-based best practices so that legal education and student success efforts will continue to empower all of the next generation of lawyers (or mountaineers, as the case may be).



Sara Berman, Esq.

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

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## DISTINGUISHED THINKER COMMENTARY

### All Along the Watch Tower: Toward a Holistic Approach to Our Students' Learning Journeys

*Kellye Y. Testy, President and CEO of the Law  
School Admission Council*

In legal education, we often fail to appreciate that our students' learning journeys do not start nor end with law school. As a result, we risk our students feeling like the protagonist in the Dylan song borrowed for my title: "too much confusion ... can't get no relief!"

On the front end, it's hardly an even playing field. For starters, we admit students without any prescribed preparatory curriculum whatsoever—welcoming math alongside music, English alongside economics, and so on. Not only do our students come in with very different disciplinary backgrounds, they also arrive with very different levels of educational preparation more generally. Some come from rigorous high school and/or college programs, whereas others have had very little exposure to the critical thinking skills law school requires. Some have had significant work experience that has honed their cognitive and noncognitive skills, whereas others come to law school more as "fifth-year seniors." Importantly, our students also come through our doors with the complex intersectional elements of their diverse social locations.

On the back end, it may be even more uneven. Our students head into very different lines of work after graduation, some with well-formed systems of continued professional development and others with very little support. Yes, there are CLE requirements, but those, too, are uneven in quality and very disconnected from the legal academy. Unlike many other professions, where there are advanced certifications, law has few. Rather, we pretend being a lawyer is an "on/off" switch despite a world of increasingly highly specialized careers.

To build the strength of our profession and the rule of law, we need to focus much more holistically on the entire learning journey, starting from pre-law, to enrollment, into law school itself, to licensure, and on into the profession. Aligning our goals and our strategies all along this "watchtower" will add much more value for our students and they, in turn, can do the same for the varied clients and causes they serve.

What would a more holistic focus entail? This is a big topic and one that I will be treating in more detail in a forthcoming law review article, but let me highlight a starting point here.

We are unlikely to get each of our students to the same finish line—whether measured by the bar exam or otherwise—if we do not address the uneven preparation in the skills required for law school success. The good news is that we know what those skills are because we have decades of research and data from LSAC's skills analysis studies that show clearly the [skills students need for law school success](#). We use these studies to design the LSAT, and thus they are the same skills it assesses. While the LSAT is the only consistent assessment we have in an otherwise incomparable array of student preparation for law school, we need to use it for more than admission decisions. We need to use it diagnostically to provide the academic support our students require to make the most of their time in law school. Our innovative digital format, together with a new approach to the writing assessment, makes it increasingly possible for schools to use this information to benefit our students.

Why is this step so important? First, as educators, we owe it to our students to meet them where they are and help them grow as much as possible. Second, as advocates for equity, we must realize that access is not enough if our profession is going to mirror the diversity of society; rather, we must focus on attainment as well. LSAC's [origin](#) is rooted in breaking down barriers to law school admission—but that first step of access has always been in the service of ensuring that the future of our justice system reflects all those it serves. For that reason, we must focus holistically not only on access but also on attainment of the skills needed to thrive in law school, at licensure, and in the many stages of career.

To support an enhanced focus all along the "watchtower," LSAC is turning its considerable experience and expertise in assessment into providing products and platforms that can help our schools support students' entire learning journeys from pre-law through career. Assessment is part of learning and the more we can collapse the distance between the two, the more we will see our students thrive. In the coming months, we will have more to share about the many ways we can support our schools' goals of helping their students develop not only the fundamental skills of critical thinking, logical and analytical reasoning, reading comprehension, and writing, but also the adjacent skills required for career success including teamwork, time and project management, and leadership.

*Continued from page 3*

We applaud our many fellow travelers, including the editor of this publication, Sara Berman. She and other academic support professionals in legal education well understand the potential benefits of the holistic approach I put forth here. We will be working with a number of experts and organizations to think broadly about how to bring forth the most innovative assessment tools and strategies to help our member law schools in the months ahead. I am eager to hear from you if you or your organization would like to get involved. You can always reach me at [ktesty@LSAC.org](mailto:ktesty@LSAC.org).

## ORGANIZATION UPDATES

*We are delighted to include updates in this issue from the American Bar Association's Law Student Division and Young Lawyers Division.*

The [ABA Law Student Division](#) provides tools and resources to help law students succeed in school and beyond. ABA membership is free for students, and it includes access to your choice of up to five ABA practice specialty groups. You can upgrade your membership for \$25 annually to access benefits, perks, opportunities and discounts you can't get anywhere else. The Law Student Division publishes Student Lawyer magazine, which offers law students the guidance they need to get through law school and begin their legal career.

The [ABA Young Lawyers Division](#) provides new attorneys with opportunities to build a national network of colleagues, develop their subject matter expertise, and access critical tools to help navigate their careers. Membership includes complimentary access to unlimited on-demand CLE through the ABA's new CLE library. The Division offers two publications, [TYL Magazine](#) and [After the Bar](#), to help guide new lawyers through the early stages of their legal careers with job search tips, career advice, stress management, public service opportunities, and financial planning strategies.

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

# RE-IMAGINING THE BAR EXAM

*In the inaugural column in this series, which will explore the future of the bar exam, we are pleased to feature this follow-up commentary from Deborah Merritt, who first wrote on Bloom's taxonomy and the bar exam as a Distinguished Commentator in the [Summer 2019 issue](#) of *Raising the Bar*.*

## A ReBloomed Bar Exam

*Deborah Jones Merritt is a Distinguished University Professor and John Deaver Drinko Chair in Law at The Ohio State University. Merritt served on the ABA Commission on the Future of Legal Education from 2017–2019.*

In the [Summer 2019 issue of this newsletter](#), I explained how a flaw in Bloom's taxonomy has distorted our understanding of legal competence and the bar exam. I called for a "reBloomed" exam that would better protect the public by testing "more analysis and application, without requiring as much memorization." Since then, several readers have asked if I could offer more specific ideas about how to reBloom the bar exam. I'm happy to do so, with one key caveat.

The caveat is this: To design a bar exam that best protects the public, we need to understand more about the work that new lawyers do and the way they acquire the knowledge and skills needed for that work. The NCBE just completed [a national practice analysis survey](#) that will provide rich data on the first point. The [Institute for the Advancement of the American Legal System](#) (IAALS) and I are conducting a complementary study, [Building a Better Bar: Capturing Minimum Competence](#), that will shed more light on the second question. A team of dedicated and distinguished researchers from twelve states are assisting us with that study, and AccessLex has provided essential research support.

These research projects, along with future initiatives, will provide ongoing insights into how the bar exam should be structured. But based on the existing literature, combined with insights from cognitive science and other professions, I offer six preliminary thoughts about how to reBloom the bar exam.

First, I would focus more of the exam on case files like the ones currently used in the MPT. These files most closely

match the work that new lawyers do—and the steps in Bloom's taxonomy that they employ. New lawyers obtain information about a client, locate relevant legal resources, and work directly with those resources to address the client's problem. The MPT case files mimic this cognitive process more directly than other parts of the current exam.

Increasing the use of case files need not undercut the reliability or efficiency offered by multiple-choice questions: It is quite feasible to craft multiple-choice questions that probe a candidate's understanding of the legal materials in a file, as well as their ability to apply those materials to the client's situation.

Second, for exam sections that do not include case files, I would allow test-takers to refer to personal outlines and/or an online database. The MBE, MEE, and similar state-based questions do more than test comprehension of basic legal principles; they require test-takers to remember detailed provisions of statutory sections, procedural rules, and case law. New lawyers do not—and should not—answer questions like that from memory. A reBloomed bar exam should test a candidate's ability to find a legal principle and apply that principle to a client's case, not the ability to recall a memorized principle and apply it to a case.

Third, I would expand the time given to candidates to answer exam questions. Time-pressured bar exams stem from Bloom's faulty focus on recall; those exams do not reflect either the reality of today's law practice or the advances in cognitive science made since Bloom's day. Professional analysis and application, which appear on the higher levels of Bloom's pyramid, require time and thought: Those are the minimum competencies that the bar exam should assess. Clients who want quick, facile advice can turn to computers. They deserve more from live lawyers.

Fourth, I would divide the bar exam into multiple components, offer each component several times a year, and allow candidates to choose when to take each component. We already do this with the MPRE. A component-based bar exam would assure that candidates retain more of what they study after the exam is over: The cognitive science literature shows that stepped tests promote retention far better than a single, high-stakes exam.

Fifth, I would test a broader range of the skills that new lawyers rely upon. Bloom's fixation on recall has constrained our concept of minimum competence. The current bar exam, like so many other tests, focuses

too much on memorized knowledge and too little on essential skills. Ongoing research will tell us what skills lawyers need to serve clients in our rapidly changing profession, as well as the ways in which they acquire those skills. Other professions, meanwhile, are modeling innovative ways to assess those skills. In-person simulations, online exercises, portfolios, boot camps—and even traditional essays—can all play a role in determining whether new lawyers have the twenty-first-century skills they need to serve clients competently.

Finally, I would think creatively about new means of assessment—as well as about offering candidates a choice of assessment tracks. “Paper and pencil” exams, along with Bloom’s taxonomy, have dominated testing for more than half a century. Aspiring lawyers still take a bar exam with a format that resembles tests given fifty years ago in grade school. We have much more sophisticated tools for measuring professional competence today, as well as a deeper understanding of how that competence develops.

ReBlooming the bar exam requires collaboration among NCBE, state supreme courts, and researchers from both law and cognitive science. Twentieth-century approaches no longer protect the public: they allow some incompetent lawyers to practice, while failing too many others who would serve clients well. But by drawing upon modern research, we can create an evidence-based bar exam that fulfills our professional commitment to serve clients and the community.

## CONFERENCE CORNER

Upcoming conferences with sessions related to academic and bar success:

- [AALS Annual Meeting](#) (Washington, DC, January 2–5), including:
  - Focus groups targeting ASP and legal writing faculty (contact Dean Emerita, [Joan Howarth](#) and Dean Emerita, [Judith Wegner](#) for details)
  - Panel: *The Next Generation of Assessment: Non-Cognitive, Diagnostic, and Formative Assessment for Law School Success* (January 5)
- 8<sup>th</sup> Annual Southwestern Consortium of Academic Support Professionals Workshop (Texas Tech, March 6)
- Second Annual Midwestern Academic Support Conference (Chicago Kent School of Law, March 13)
- [Conference on Clinical Legal Education](#) (AALS, May 3–6)
- Seventh Biennial Conference on the Teaching of Transactional Law and Skills (Emory University, June 5–6)
- [Institute for Law Teaching and Learning Summer 2020 Conference: Effective Instruction in Online and Hybrid Legal Education](#) (University of Arkansas at Little Rock, June 11–13)
- [LWI Biennial Conference](#) (Georgetown University, July 15–18)

Please email [Success@accesslex.org](mailto:Success@accesslex.org) about upcoming bar-related conferences and conferences with bar exam-related sessions that may interest Raising the Bar readers.

## RESEARCH SPOTLIGHT

*In this new column series, Raising the Bar features summaries of important advances in research related to academic and bar success.*

### Productive Mindset Interventions Mitigate Psychological Friction and Improve Well-Being for Bar Exam Takers

*Victor D. Quintanilla, Indiana University Bicentennial Professor, Professor of Law at Indiana University's Maurer School of Law, co-Director of the Center for Law, Society & Culture; Dr. Sam Erman, Professor of Law at the University of Southern California Gould School of Law\**

By participating in a brief productive mindset intervention, prospective lawyers improved their well-being and performance on the California Bar Exam. Those are the initial results of the research conducted by our interdisciplinary, multi-institutional research team with support from AccessLex Institute and in partnership with the State Bar of California. It did so by mitigating psychological friction and helping test takers reframe stressful experiences. This column discusses our findings and the implications for efforts to make evidence-based gains in bar exam performance, well-being, and attorney licensure systems.<sup>1</sup>

### Psychological Friction Impedes Performance on the Bar Exam

Productive mindsets matter in law school and during bar exam preparation. They are important ingredients for success, alongside a high-quality legal education and adequate financial aid. Worries about ability, potential, belonging, and performance are pervasive and occur for all students during the transition into law school, within law school classes, and while preparing for the bar exam. These worries create psychological friction preventing students from achieving their potential.<sup>2</sup> They drain students' executive functioning

and cognitive resources, which lowers persistence and performance on standardized exams, among other harms.<sup>3</sup>

Worries about ability and potential are exacerbated when a person endorses a fixed mindset, which is the belief that intelligence is fixed and that one's potential cannot be changed. Contrast this pessimistic view of the malleability of human characteristics<sup>4</sup> with the growth mindset belief that intelligence is malleable and that potential can be developed and improved with effort and learning. Fixed mindsets cause people to interpret struggle as a sign that they have reached the limits of their ability. The result is lower motivation to persist when studying and lower performance on high-stakes exams.

Worries about fit and connection with others reflect a concern with social belonging. These worries can interfere with intellectual achievement, self-control, test performance, and well-being.

In stressful situations such as the bar exam, a stress-is-debilitating mindset can cause worries about being stressed that then undermine performance. In contrast, a stress-is-enhancing mindset can improve outcomes, such as learning and growth.<sup>5</sup> Brief exercises designed to generate such adaptive stress mindsets can improve learning and performance.<sup>6</sup>

Prospective lawyers face considerable psychological friction when preparing for the bar exam, our research shows. These conclusions flowed from a variety of qualitative and quantitative methods, including surveys, randomized-controlled trials, and focus groups. For example, focus groups revealed that people studying for the California bar exam experienced marked stress and anxiety. They worried about failing, having too much to memorize and too little time to do it, lacking focus, and tackling subjects not studied in law school. The demands of studying also strained their relationships, reduced their self-care, and impinged on the work hours they needed to make ends meet. Applicants reported poor sleep, anxiety attacks, consumption of

<sup>1</sup> Joan W. Howarth and Judith Welch Wegner, *Ringling Changes: Systems Thinking About Legal Licensing*, 13 FIA L. REV. 383 (2019); James C. Coyle, *Report of the National Task Force on Lawyer Well-Being and the Role of the Bar Admissions Community in the Lawyer Well-Being Movement*, 87 THE BAR EXAMINER 8 (2018).

<sup>2</sup> Mary C. Murphy, Claude M. Steele, and James J. Gross, *Signaling Threat: How Situational Cues Affect Women in Math, Science, and Engineering Settings*, 18 PSYCHOLOGICAL SCIENCE 879 (2007).

<sup>3</sup> Gregory M. Walton and Geoffrey L. Cohen, *A Question of Belonging: Race, Social Fit, and Achievement*, 92 J. PERSONALITY & SOCIAL PSYCHOLOGY 82 (2007); Gregory M. Walton and Geoffrey L. Cohen, *A Brief Social-Belonging Intervention Improves Academic and Health Outcomes of Minority Students*, 331 SCIENCE 1447 (2011).

<sup>4</sup> See, e.g., Carol S. Dweck, *MINDSET: THE NEW PSYCHOLOGY OF SUCCESS* (2006).

<sup>5</sup> Alia J. Crum, Peter Salovey, and Shawn Achor, *Rethinking Stress: The Role of Mindsets in Determining the Stress Response*, 104 J. PERSONALITY & SOCIAL PSYCHOLOGY 716 (2013).

<sup>6</sup> See, e.g., Alia J. Crum, et al., *The Role of Stress Mindsets in Shaping Cognitive, Emotional, and Psychological Responses to Challenging and Threatening Stress*, 30 ANXIETY, STRESS & COPING 379 (2017).



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junk food and alcohol, reduced time with loved ones, and lack of exercise. Their interpersonal relationships suffered, which reduced their well-being and made stress and anxiety harder to handle. These and related psychological factors affected performance on California's bar exam. We also found that confidence in one's ability to pass the exam predicted stronger performance, whereas limiting beliefs about one's potential to succeed and the feeling that one does not have what it takes to meet the demands of preparing for the exam predicted weaker performance.

## **Reducing Psychological Friction and Improving Well-Being Enhances Performance**

To improve test takers' experiences and performance, we developed a productive mindset intervention that helps bar exam takers interpret challenges, obstacles, and negative psychological experiences as common, surmountable, and even useful. The program reframes test takers' struggles as learning (not failure), challenges (not threats), and guides to productive (not futile) investments of effort and attention.

The program began in mid-March 2018, by inviting bar exam registrants to opt in. Participants consented to the program and to analysis of their bar exam results. To create a randomized-controlled trial (RCT), enrollees were divided to ensure random dispersal between conditions of student traits such as GPA and demographic details. In May, participants gained access to an online learning program that included an introductory film, audio, written stories from prior test takers, and a module in which participants wrote letters telling future test takers how to use the program's insights and strategies.

## **Initial Analyses Indicate that the Program Is Effective**

The program produced promising initial results. The estimated probability of passing the bar exam in the treatment condition increased by a range between 7.4 percent and 18.2 percent, controlling for LSAT and depending upon the test of efficacy used, compared to the control condition.

The lower end of the efficacy range resulted from our intent-to-treat (ITT) analysis of enrollees in the program. Researchers often consider this type of analysis to be a conservative test, as it includes all who enroll in a program regardless of whether they actually begin or

complete it. Thus, our analysis compared test takers assigned to the treatment or control condition (i.e., those who received the link to begin the online program), regardless of whether they clicked the link to begin. It also included enrollees for whom the program was not specifically tailored: repeat test takers, graduates of foreign law schools, and out-of-state attorneys. As is recommended, we controlled for participants' prior standardized test performance on the LSAT. The resulting estimated probability of passing the bar exam was 7.4 percent higher in the treatment than the control condition.

The upper end of our efficacy range resulted from analyzing the average-treatment effect (ATE) of the productive mindset intervention by recent U.S. law graduates who completed the entire program. Only U.S. law graduates taking the bar exam for the first time were included in the analysis, and only if they completed all video and written modules of the program (watching introductory films, listening to audio clips, reading stories from prior test takers, and writing their own letters to future test takers). We again controlled for LSAT. The estimated probability of passing the bar exam was 18.2 percent higher in the treatment than in the control condition. Specifically, the estimated probability of passing the bar exam in the treatment condition was 68.0 percent, whereas in the control condition, it was 49.8 percent.

This beneficial effect of the program appears to hold across all demographic groups of U.S. law graduates; yet, as the sample size in the average-treatment effect (ATE) analysis was modest, replication is important. As such, we replicated the program with a larger sample on the July 2019 California bar exam and are analyzing second-year results.

## **Wise Psychological Interventions and Lawyer Well-Being**

Consistent with other well-designed psychological interventions, our productive mindset intervention uses a brief, scalable program to enhance performance and well-being. Our initial analyses suggest that enrollees gained confidence handling stress and came to endorse more adaptive mindsets toward mistakes and stress while studying. These benefits suggest that productive mindset interventions can be beneficially combined with current efforts to improve bar exams and attorney licensure systems.



## Making the Program Widely Available

What's next? Given the benefits of this brief online productive mindset intervention, our next step is to continue our successful collaboration with the State Bar of California and to partner with additional state bar associations that wish to make this program available to their own bar exam takers.

*\*This research program is being conducted in collaboration with: Dr. Mary C. Murphy (co-PI, Indiana University–Bloomington), Dr. Greg Walton (co-PI, Stanford University), Elizabeth Bodamer (Indiana University–Bloomington, American Bar Foundation), Shannon Brady (Wake Forest University), Evelyn Carter (UCLA BruinX), Trisha Dehrone (University of Massachusetts Amherst), Dorainne Levy (Indiana University–Bloomington), Heidi Williams (Indiana University–Bloomington), and Nedim Yel (Indiana University–Bloomington), and supported by funding from AccessLex Institute.*

## FEATURED PUBLICATION SUMMARY

*Robert R. Kuehn, Professor of Law and Associate Dean for Clinical Education, Washington University in St. Louis–School of Law*

The recent declines in bar exam passage rates triggered speculation that the declines are being driven by law students taking more experiential courses and fewer bar-subject matter courses. These concerns arose in the absence of any empirical study linking certain coursework to bar exam failure.

In research funded in part by AccessLex, we undertook a study to address this speculation about the relationship between law school coursework and bar exam outcomes. In an upcoming article in the *Journal of Legal Education*, we report the results of our large-scale study of the courses of over 3,800 graduates from two law schools and the relationship between their experiential and bar-subject coursework and bar exam outcomes over a ten-year period.<sup>7</sup>

At both schools, the number of experiential courses or credits taken by a student did not correlate with bar passage, positively or negatively. Enrollment in bar courses correlated positively with passage, but the correlation was modest and significant only for students whose class rank placed them at heightened risk of bar failure. Even for those students, the marginal benefit of additional bar-related courses was not statistically significant once the student had taken approximately the average number of bar courses at that school. The study results indicate that efforts to improve bar passage rates by capping experiential credits are not supported by empirical evidence and that requiring bar-subject courses for students at comparable law schools would appear justified, if at all, only when targeted at students whose class rank places them at enhanced risk of bar exam failure.

If you would like a summary of your recently published article to be featured in an upcoming issue, please email [Success@accesslex.org](mailto:Success@accesslex.org).

<sup>7</sup> Robert R. Kuehn and David R. Moss, [A Study of the Relationship Between Law School Coursework and Bar Exam Outcomes](#), 68 J. LEGAL EDUC. (2019, forthcoming).

## PERSPECTIVES ON STUDENT SUCCESS

*We are pleased to present the following reflections on student success in law school and the bar from four different commentators.*

### Law School is a Lot Like Learning to Play the Piano

*Jonathan Bridges, Assistant Professor of Law, University of North Texas at Dallas*

I like to tell my students each semester that law school is a lot like learning to play the piano. It isn't enough just to know the music. Knowing is only half of what's required. Come recital day, you have to perform. And the only way to be ready to perform is to practice. By the way, I was a colossal failure as a piano student. Not that I didn't have ANY musical talent. My older brother (same genes) actually became decent. But not me. Likely because I was relentlessly focused on not practicing.

Back to law. Come test day, they have to perform. And it isn't enough to just know stuff. They have to practice using what they know to maximize their abilities as performers. That's my explanation for giving a quiz in every class every day. And the students pretty much buy in. At least it seems so from their comments on course evaluations.

Usually it's just two short questions. Always multiple choice. We take these quizzes at the beginning of class just for participation points. And then we take them again at the end of class, this time for a small grade that counts (That way I can see whether I'm helping or hurting!).

This actually accomplishes quite a bit of work for us. It incentivizes reading for—and paying attention in—our classes. It helps to focus and clarify classroom discussion. It keeps track of attendance and disincentivizes tardiness. It gives students sample questions to review before exams. And it tells us, in real time, whether each student is catching on or falling behind.

It also jibes with cutting-edge learning research, which says low-stakes quizzing is the boss. And it makes accreditors and administrators happy, since it satisfies any requirement for formative assessments. But most important is this: The quiz questions create a need for students to put newly acquired knowledge to immediate use. Again and again and again. You might call that "practice."

### Salon Sparks Stress Filled Memories of the Bar Exam

*Gary Norman, Chair, Maryland Commission on Civil Rights*

An attendee at one of my salons inquired as to my experience with the bar exam. While I experienced a positive record in obtaining modifications to the exams, I can state, as Chair at the Maryland Commission on Civil Rights, that access to the legal profession—in law school admissions, in licensure, and in equal job opportunity—remains occasionally disappointing.

I first sat for the bar exam in the summer after I obtained my JD. In 2005, I sat again as a full-time practicing lawyer. In both circumstances, the evolving nature of technology arguably shaped my experience.

In 2000, I lived that summer after law school preparing for that dreaded exam. To study the bar review materials that vendors provided in book-based form, I listened to tape cassettes. By 2005, I used CDs to access the materials. As technology evolved, bar review materials shifted more and more online, requiring bar review vendors to keep up with the meaning of modifications. Regrettably, litigation also proved necessary to update certain bar review materials.

I approached my interactions with the state-level point person in Ohio and in Maryland as a win-win goal: receiving reasonable modifications. As far as memory serves, the request for medical documentation of my disability did not seem demanding. Although, I understand that, at least in the past, those with invisible disabilities have been frustrated with the prying requests of bar examiners. Finally, the date for me to sit for the exam arrived.

When compared to the spartan accommodations of the majority, I enjoyed comfortable accommodations sitting for the exam in a private hotel room. Extra time on the bar exam and a reader/scribe facilitated the transfer of my knowledge to the score sheets and blue books required to receive a thin envelope. I wonder if it would have been as easy a road if I had requested to complete the exam via a laptop with a screen-reader. Oddly, in the first and second decades of this century, blind people have sometimes encountered appalling problems when requesting to utilize adaptive hardware or software.

In Maryland, blind people have previously encountered problems with utilizing their screen-reader on the multistate portion of the exam—although not on the essays.

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(Note: A modification for one person with a disability may not make sense for another person with a disability; for instance, fellow blind people may require or may desire differing modifications to the bar exam.)

In sum, I recognize that professional licensure proves no small feat for any of us—disabled or not. People with disabilities sometimes encounter, however, unique, even what seem as insurmountable, challenges due to a lack of societal evolution.

## The Journey

*Johnnie Nguyen, National Chair, ABA's Law Student Division*

My parents, both of whom were refugees of the Vietnam War, instilled in me at an early age that education is the key to prosperity and freedom. I believe that anyone who commits to the journey of becoming a lawyer carries this principle within them. My confidence in this belief stems from having the opportunity to personally meet hundreds of law student leaders across the world, exchanging stories about our ambitions, values and passions.

However, this journey is not for the weary or the faint at heart—it takes a robust level of discipline and resilience to tread through the rigorous academic and personal burdens that the profession carries. As a result, my team, the American Bar Association's Law Student Division Council (ABA LSD), is determined to make this path more navigable and accessible to all law students. While we do plan to address student loan debt, sexual harassment in the workplace, and many other issues affecting law students, our priority this year will be mental health and wellness.

My team and I are working incredibly hard to ensure that our tenure is substantive, meaningful, and will leave a positive impact on law students. (This past October, for example, partnering with the ABA's Commission on Lawyer Assistance Programs (CoLAP), the ABA LSD announced our national mental health awareness and fundraising initiative.) However, we need all of the help we can get. If you'd like to share your ideas about how to help law students nationally, or want law student input on issues you're working on, please feel encouraged to reach out to me at [Johnnie.Nguyen@colorado.edu](mailto:Johnnie.Nguyen@colorado.edu).



## Smarter, Not Lower

James Hardy, Lead Deputy Public Defender, Colorado State Public Defender—Appellate Division

Ten years ago, when I was what I'd now call a "baby public defender," I wrote a "point/counterpoint" piece for my state law journal advocating for an easier bar exam.<sup>8</sup> My position was the "counterpoint," in favor of "lowering the bar," possibly because of the perception that the intended audience of admitted attorneys would resist the notion of lowering the standards they had already met.

Specifically, I proposed changing the bar exam's format to test more practice skills and put less emphasis on general—and sometimes archaic—legal knowledge. One vehicle I suggested for doing this was expanding the MPT to encompass most or all of the exam. Another was creating specialized bar exams testing only the specific area of law in which the bar applicant intended to practice.

I suggested that, contrary to popular belief, the world needed more lawyers. In particular, the world needed more trained specialty lawyers. And the world especially needed more lawyers serving underprivileged and under-resourced communities. The latter point, at least, remains true.<sup>9</sup>

Fast forward to today and we have an economic recovery entering its tenth year, alternating between lukewarm and boiling, particularly when it comes to the jobless rate. Do we still need more lawyers? Would making the bar exam less demanding (or perhaps just more relevant) assist in that goal?

Yes and no. We are experiencing an historically low bar exam passage rate.<sup>10</sup> Simultaneously, we are experiencing one of the tightest job markets in recent history.<sup>11</sup> It's debatable whether "lowering the bar," as it were, would provide more skilled practitioners to fill needy markets or, on the contrary, would simply flood the market for highly-compensated lawyer jobs with less than stellar applicants.

Today, rather than lowering the bar, we need to (in the cliched tech market jargon) "smarten" it to target the niches and needs left unfulfilled by the marketplace. A few suggestions:

- Computers and algorithms are taking legal jobs.<sup>12</sup> Short of a Luddite 2.0 revolution or full-bore apocalypse, this trend is irreversible and will increase exponentially. A "smart" bar exam would focus on the narrowing—but still vibrant and essential—skill sets at which humans excel and our smart machines don't—at least, not yet.
- A smarter bar exam would therefore need to engage in progressive research to determine which legal subjects and practice areas will be most affected by the growth of automation into occupations previously filled by human knowledge workers. In other words, which lawyers are most at risk of being replaced by robots.
- Likewise, a smarter bar exam will need research into which legal jobs are most needed in terms of social utility and most in demand by employers. Such research requires geographical and jurisdictional specificity. In the atomized future in which we are already living, market needs are more localized.
- While I have no data to support my beliefs, my gut tells me that conversational, narrative, relational, ethical, and reputational skills are the ones at which human lawyers still outperform smart machines and computers. And there is still some space for human judgment, though algorithms and the ubiquity and increasing affordability of big data may eventually replace a lot of the decision-making work currently performed by biological lawyers.

I'm no futurist, merely a public defender and appellate lawyer hoping my generation and my legal job will both outlast machine-made obsolescence. Nonetheless, if the goal of the twenty-first-century bar exam is to sort those humans who still have the skills to practice law from those who do not, a smart bar exam should focus on the areas in which humans remain uniquely skilled.

We welcome submissions for future Perspectives on Student Success columns at [Success@accesslex.org](mailto:Success@accesslex.org).

<sup>8</sup> James S. Hardy, *Lowering the Bar: Why We Should Test Skills, Not Abstracts*, 38 COLO. LAW. 93 (2009).

<sup>9</sup> See, e.g., Richard A. Oppel, Jr. and Jugal K. Patel, [One Lawyer, 194 Felony Cases, and No Time](#), THE NEW YORK TIMES, January 31, 2019; Theodore Schoneman, [Overworked and Underpaid: America's Public Defender Crisis](#), FORDHAM POLITICAL REVIEW, September 19, 2018.

<sup>10</sup> See, e.g., Karen Sloan, [The Big Fail: Why Bar Pass Rates Have Sunk to Record Lows](#), LAW.COM, April 14, 2019.

<sup>11</sup> See, e.g., Jeanna Smialek, [A Hot Job Market is Causing Labor Pains for State Governments](#), THE NEW YORK TIMES, August 30, 2019.

<sup>12</sup> See, e.g., Steve Lohr, [A.I. is Doing Legal Work. But it Won't Replace Lawyers. Yet](#), March 19, 2017, THE NEW YORK TIMES; Luke Dormehl, [Replaced by Robots: 10 Jobs That Could Be Hit Hard by the A.I. Revolution](#), DIGITAL TRENDS, November 4, 2018.

# BAR SUCCESS PROGRAM PROFILES

*We are grateful to Professor Liam Skilling and Professor Wanda Temm for writing about the bar preparation programs at their institutions.*

## Equitable Remedies: A Doctrinal-Early Bar Prep Hybrid

*Dr. Liam Skilling, Director of the Evening Part Time Program and Academic Success, University of Hawai'i William S. Richardson School of Law*

Since 2013, I have taught Equitable Remedies as an early bar prep course. Originally bar support was housed in a doctrinal course to circumvent opposition to offering a course designed to help at-risk students prepare for the bar exam. In the intervening years, resistance to explicit bar preparation courses has declined as bar passage rates fluctuated. Nonetheless, I have maintained the content and title of the course (the course actually covers legal remedies as well, but the title seems apropos for an ASP course). I believe it is more challenging, relevant, and engaging for students to grapple with new concepts in addition to reviewing for the bar; I find the material more interesting to teach in this form; and I think that "Equitable Remedies" looks better on a transcript than "Advanced Analytical Reasoning" or something similar.

So, what distinguishes Equitable Remedies from other doctrinal courses and classifies it as an early bar preparation course?

**Flipped classroom model.** A significant portion of the direct instruction in the course is delivered via prerecorded lectures, some is provided by a commercial bar vendor and some I record myself. Using video lectures prepares students for a significant medium for receiving information while studying for the bar exam. More importantly, it frees class time for active and engaged learning activities like writing exercises, collaborative work and retrieval practice.

**Spaced repetition and retrieval practice.** I teach the course in a three-hour block on Saturdays so that both full-time day and evening part-time program students can enroll. Every class session includes practice and formative assessment in the form of a MEE or MPT-style essay or a set of multiple-choice questions.

In this way, students become familiar with the format and substance of bar questions. Too many graduates are reluctant to attempt MEE essays until they learn the law; in Equitable Remedies, beginning with the first class, students write essays as a way to learn the law. Key topics are reinforced and refined through repetition. For example, in the first class session I teach commonly tested concepts related to mortgages. These concepts are reviewed and retaught four to six times during the semester while reviewing specific multiple-choice questions.

**Reflection on metacognition, self-regulation, and educational resilience.** Another distinctive aspect of the course is that students are required to create and present a bar preparation portfolio, reflecting on their work in the course and describing in detail the path they anticipate leading to success on the bar exam. Each portfolio includes one MPT and three MEE essays that the students have revised based on feedback from peers and from me. Portfolios also include at least ten student-created multiple-choice questions with explanations of the right and wrong answer choices. These components of the portfolio encourage students to apply metacognition and self-regulation to their bar study.

Preparing for the bar exam is a grueling process for even high-achieving students. For our students who are at-risk for a variety of reasons—low socioeconomic status, academic challenges during law school, learning differences, being the first in their family to attend law school, financial and family responsibilities—the bar exam is a threat, not only to their future professional goals, but also to their identity and sense of self-worth.

To help foster educational resilience, the portfolio also includes a personalized action plan, wellness plan and schedule based on a self-assessment of potential challenges and strengths specific to each student. Students are encouraged to frame their portfolios in the context of what inspired them to come to law school and how they intend to use their licenses for the benefit of themselves, their families, and their communities. In this way, the portfolios encourage graduates to construct a positive, future-focused, purposeful narrative about the process of preparing for the bar exam.

## Trust the Process

*Professor Wanda M. Temm, Director Bar Preparation Program, University of Missouri-Kansas City School of Law*

Our attitude towards bar prep is simple and straightforward. Every single student that graduates from our law school has already proven that they have the skills they need to pass the bar exam. They might need a little fine-tuning, but the skills are there. What they do not have is a game plan and confidence. The UMKC Bar Prep Program provides them with that game plan and builds that confidence.

The program is designed to assist students in their skill development for all types of bar exam questions, to teach strategies and tactics to handle questions in each topic area, and to assist students in understanding the various facets of bar preparation, including time management and stress relief. Part of that stress relief is to empower the students with the knowledge that our system has now worked for over 1,400 graduates and to trust the process because it works. Classes on strategies are held once or twice a week. Two to three practice essays are completed each week. Three half-day practice exams are given with an emphasis on MPT questions. All essays and MPTs are graded by law faculty involved in the program. Faculty hold individual conferences with students as needed. Doing weekly essays keeps students on track with their preparation. Our feedback informs them about the areas that require more concentration. The pieces fit together so each student that actively participates improves to have the best chance to be successful.

In addition, two for-credit classes have been developed to assist with skill development. One is a week-long mini-term course for one credit hour that focuses solely on the MBE with casebook faculty lecturing on their topics and students using AdaptiBar. Over the one-week time period, students increased their pre-test score to their post-test score by an average of 13.4 percentage points. The other course is a semester course for at-risk students.

A critical component of our success was a shift in law school culture to be supportive of our students in their bar preparation. I inform faculty when to email individual students to offer encouragement during stressful times. The dean, faculty and staff have a send-off for the students at our last class to encourage them for the last two weeks of study—providing students with survival kits with note cards, chocolate, pens, protein bars, a

UMKC pencil sharpener, and the right size plastic bag the bar requires to keep their wallet and keys in during the exam. The law school young alumni association provides lunch on both days of the bar exam.

Students who actively participate in the UMKC Bar Prep Program routinely pass the bar at a statistically higher rate than students that do not participate, usually reaching a pass rate above 95% and regularly reaching 100%. Trusting the process works.

*The purpose of this feature is not to endorse particular programs but to cultivate a community dialogue and share ideas about bar success programming.*

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



# PUBLICATIONS, POSTS AND PODCASTS

Below are selected, recent bar-related publications.

## Publications

- Katelyn Albrecht, *et al.*, [\*Wellness as Practice, Not Product: A Collaborative Approach to Fostering a Healthier, Happier Law School Community\*](#), 59 SANTA CLARA L. REV. 369 (2019).
- R. Lisle Baker, [\*Integrating Positive Psychology into Legal Education\*](#), 48 SW. L. REV. 295 (2019).
- Louis Deslauriers *et al.*, [\*Measuring Actual Learning Versus Feeling of Learning in Response to Being Actively Engaged in the Classroom\*](#), 116 PROCEEDINGS NAT'L ACAD. SCI. 19,251 (2019).
- Amy N. Farley *et al.*, [\*A Deeper Look at Bar Success: The Relationship Between Law Student Success, Academic Performance, and Student Characteristics\*](#), 16 J. EMPIRICAL LEGAL STUD. 605 (2019).
- DeShun Harris, [\*Office Hours Are Not Obsolete: Fostering Learning through One-on-One Student Meetings\*](#), 57 DUQ. L. REV. 43 (2019).
- Neil W. Hamilton, [\*Connecting Prospective Law Students' Goals to the Competencies that Clients and Legal Employers Need to Achieve More Competent Graduates and Stronger Applicant Pools and Employment Outcomes\*](#), 9 ST. MARY'S J. LEGAL MAL. & ETHICS (2019, forthcoming).
- Neil W. Hamilton, [\*The Major Transitions in Professional Formation and Development from Being a Student to Being a Lawyer Present Opportunities to Benefit the Students and the Law School\*](#), 72 BAYLOR L. REV. (2019, forthcoming).
- Hong Jiang, Andrea A. Curcio, and Kim D'Haene, [\*A Preliminary Study Looking Beyond LSAT and LGPA: Factors During the Bar Study Period That May Affect Bar Exam Passage\*](#) (2019).
- Peter A. Joy, [\*Challenges to Legal Education, Clinical Legal Education, and Clinical Scholarship\*](#), 26 CLINICAL L. REV. 237 (2019).
- Robert R. Kuehn and David R. Moss, [\*A Study of the Relationship between Law School Coursework and Bar Exam Outcomes\*](#), 68 J. LEGAL EDUC. (2019, forthcoming).
- Norman Otto Stockmeyer, [\*The Uniform Bar Exam: Whither Michigan?\*](#), 98 MICH. BAR J. 46 (2019).

## Selected Posts and Podcasts

- Posts on [Law School Academic Support Blog](#)
- Sara Berman, "Fostering Student Success:" ["Part I: Challenges Posed by Changing Times and Changing Culture;"](#) ["Part II: Possible Actionable Steps to Encourage Growth Mindsets"](#) (Best Practices for Legal Education)
- Scott Johns, ["A Federal Court Ruling on Bar Exam Accommodations in New York"](#) (Law School Academic Support Blog)
- Dan Rodriguez, ["Toward Evidence-Based Legal Education Reform: First, Let's Experiment"](#) (Legal Evolution)
- [The Path to Law Student Well Being](#) (American Bar Association CoLAP)

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

## RESOURCES FOR LEGAL EDUCATORS AND LAW STUDENTS

- [AccessLex Resource Collections: The ARC Bar Success Collection](#)
- [LibGuides](#)
- [Bar and other selected law student scholarships](#)
- [ABA Scholarships and Financial Aid](#)
- [ABA Bar Information for Applicants with Disabilities](#)
- [ABA Grants for Law Students](#)
- Grant Opportunities for Legal Educators and Researchers
  - [AccessLex Grant Programs](#)
  - [American Association of Law Libraries \(AALL\)](#)

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

## ANNOUNCEMENTS

- [Brian Gallini named new Dean of Willamette University College of Law](#)
- [Chalana M. Scales-Ferguson named new Director of Academic Success at University of Missouri School of Law](#)
- With the support of a grant from AccessLex Institute, [The Center for Computer-Assisted Legal Instruction](#) (CALI) has launched the [Law School Success Fellowship](#) to create [online tutorials](#) covering subjects critical to student success in law school. The [lessons](#) can be incorporated into existing academic support curricula, assigned by faculty, or used independently by students.

## CONTINUING THE CONVERSATION

In future issues we will feature and profile the interventions that have been shown to be effective in mitigating the barriers that were featured in last fall's issue of *Raising the Bar*. Stay tuned!

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