



RAISING THE BAR

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

Table of Contents:

From the Director: Sara Berman, Director of Academic and Bar Success.....	2
Distinguished Thinker Commentaries:	
Deborah Merritt, The Ohio State University.....	3
Jennifer Bard, University of Cincinnati.....	4
Organization Updates: National Conference of Bar Examiners: February 2019 MBE Scores.....	4
Conference Corner	5
Publications and Posts	6
Perspectives on Student Success:	
Kandace J. Kukas, Northeastern University School of Law.....	6
Gabriel Teninbaum, Suffolk University Law School.....	7
Bar Success Program Profiles	8
ASP Faculty Updates	8
Academic and Bar Success Resources for Students	9
Grant Opportunities for Legal Educators	9
Continuing the Conversation	9

From the Director Focus on the Silver Lining

Most attorneys recall bar prep as torture and the exam itself as a hazing ritual. I confess, I enjoyed the process. Of course, it was stressful. But, there were distinct positives. First, it was beneficial to comprehensively and simultaneously review multiple subjects previously studied in artificial silos. Client problems do not fall into neat “buckets.” And, while there are noble efforts in the academy to “teach across the curriculum,” much of legal education still lacks connection between subjects. Bar review can be a time to see common threads and interconnected ways of thinking that are necessary to effectively serve clients.

A full six hours of my bar exam was comprised of performance tests—open book, closed universe, skills-based, role-play exams that require applicants to act in a lawyering capacity: demonstrating critical reading, reasoning and writing skills, logically marshalling facts in support of legal arguments/analyses, and producing practice-focused documents. A performance test (“PT”) component has now been adopted by most jurisdictions, though it remains less heavily weighted than essays or multiple-choice questions. Increasing the weight and scope of the PT, and using PTs to test professional responsibility nuances and so-called “soft” as well as “hard” skills, might well enhance the bar exam’s relevance, making the exam a better test of minimum competency to practice law and less a seemingly disconnected rite of passage.

Lastly, knowing that if I had been born in a slightly different place or time I would never have had the right to study law, I felt lucky to attend law school and privileged to sit for the bar. Education generally is a gift too often taken for granted. I see legal education as “a power tool for social change.” To wield this tool, most law graduates must pass a bar exam. And obtaining the license grants a lifetime of potential to do well and do good. So, while future Raising the Bar issues will continue to include thoughtful discussion about bar exam reform, so long as today’s students must pass today’s bar exams, it seems important to at least keep in mind the positives and the (sometimes hidden) silver linings in the bar exam study process.

One of the countless positives about legal education and the profession is the generosity of great thinkers to take the time to respectfully share important ideas, research and findings. We are particularly thankful in this July 2019 issue to Dr. Jennifer Bard, Professor of

Law and Medicine at the University of Cincinnati, and to Professor Deborah Merritt, John Deaver Drinko Chair in Law at the Ohio State University’s Moritz College of Law for Distinguished Commentaries that ask probing questions about both the present and the future of bar examinations. We are also fortunate to include a National Conference of Bar Examiners (NCBE) update from Mark Albanese, Ph.D., Douglas Ripkey, M.S., and Judith Gundersen, NCBE CEO and President, on the rise in MBE scores in February 2019; as well as important perspectives on practical challenges facing bar takers deciding when to take the bar exam and how best to study for it from Kandace Kukas, Assistant Dean and Director of Bar Admission Programs at Northeastern University School of Law, and Gabriel Teninbaum, Professor and Director of the Institute on Legal Innovation and Technology at Suffolk University Law School.

All the best until October,



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

Visit the Director’s [SSRN author page](#)
Visit the AccessLex [SSRN page](#)

Distinguished Thinker Commentaries

This quarter, we are delighted to include two Distinguished Thinker Commentaries by Jennifer Bard and Deborah Merritt. Both scholars raise important questions about legal education and the bar exam, and we have invited them to contribute follow-ups addressing these difficult questions in future issues.

Deborah Jones Merritt, John Deaver Drinko Chair in Law at The Ohio State University's Moritz College of Law; Member, ABA Commission on the Future of Legal Education.

Bloom's Taxonomy and the Bar Exam

More than sixty years ago, a team of educators created a framework for classifying educational outcomes. They arranged those goals in a pyramid, with the simplest outcome (recall of memorized material) at the base and more complex cognitive processes (such as application, analysis, and synthesis) at higher levels. Educators still use this scheme, known as "Bloom's Taxonomy," to set learning goals, plan coursework, and write exams.

The bar examination, like many other tests, follows Bloom's hierarchy. The exam does not test simple recall of legal principles; it requires test takers to move to higher levels of cognition. NCBE President Judith Gundersen implicitly invoked Bloom's Taxonomy when she explained, in an [earlier issue](#) of this newsletter, that "[a]ll MBE and MEE items require some legal knowledge...but also require application and analysis."

Bloom's Taxonomy offers a useful way to characterize different types of cognition. We all agree, for example, that minimally competent lawyers must do more than simply recall legal principles; they must understand those principles, apply them to new fact patterns, and use them to analyze client problems.

The pyramid-like structure of Bloom's Taxonomy, however, reflects a flawed assumption. Bloom and his colleagues assumed that recall must precede application, analysis, and other higher-level skills. They constructed their taxonomy as a progression, presuming that students would memorize material, recall that information from memory, and only then apply or analyze the memorized material.

Cognitive science has shown us that the brain doesn't work that way. Memorization is useful for some subjects, but it's far from essential. Sophisticated thinkers, including

professionals like lawyers, apply rules that reside in their books or smart phones—not in their heads.

Scientists consult formula tables to analyze their lab results. Historians synthesize data from documents, notes, and other sources; they do not first commit the data to memory. Literary experts analyze novels that lie open on their desktops or computer screens. Doctors prescribe medications after consulting databases for the proper dose.

Many test makers, however, retain the belief that memory must precede application, analysis, and other forms of advanced cognition. Our current bar exam reflects this belief: Both the MBE and essay questions require candidates to recall memorized principles. Only the MPT allows test takers to refer to a case file of materials.

This structure is a relic of Bloom's mistake. Aspiring new lawyers do not need to memorize legal principles to demonstrate their competence in applying, analyzing, and synthesizing those principles. Encouraging new lawyers to rely upon memorization, in fact, is dangerous. Judges, legislators, and lawyers use words precisely: The text matters in our profession.

Smart lawyers don't rely upon memory—they check their sources. This is especially true in today's world, where legal authorities are available to anyone with internet access. Lawyers no longer distinguish themselves by the rules they have memorized; they succeed because they know how to find and apply the relevant rules.

Can we design a bar exam that corrects Bloom's faulty assumption? One that reinterprets his taxonomy to recognize that recall need not precede more complex cognitive skills? A "reBloomed" exam would test more analysis and application, without requiring as much memorization. The exam might provide case files for essays and multiple-choice questions, making those components of the exam more like the MPT. Alternatively, examiners could allow students to bring outlines into the exam room—just as lawyers bring notes to court hearings, negotiations, and transactions. We could be even more adventurous, asking candidates to compile portfolios, complete simulations, or research issues under test conditions. All of these approaches would emphasize the higher-order skills that lawyers need, rather than memorized rules that fade quickly from memory.

We're not stuck with a 1950s framework for testing: It's time to refresh both Bloom's Taxonomy and the bar exam.

Distinguished Thinker Commentaries (Cont.d)

Dr. Jennifer Bard, J.D., M.P.H., Ph.D., Professor at the University of Cincinnati School of Law; Professor, Department of Internal Medicine, University of Cincinnati School of Medicine; Visiting Professor, University of Florida Levin College of Law.

Looking Past Bar Failure

The near catastrophic bar failure rates among as many as 10% of accredited law schools has woken the sleeping bear of our professional regulators prompting much needed focus on the causes of bar failure and on the development of systems to improve pass rates. It is natural for the focus to be on the schools attracting the most negative attention but doing so ignores the much larger issue of both declining performance on the MBE and increasing amounts of external academic support required to maintain acceptable bar passage affecting a much larger percentage of law schools. Indeed, many schools with falling bar passage rates evade scrutiny because of state averages suppressed by the schools in the most trouble.

We in legal education have always maintained that the knowledge and skills required to pass the bar exam, after about eight weeks in a post-graduation review course, was the least of what we expected from our students. If, however, it turns out that today's students are requiring far more outside of class instruction to pass the bar exam than they did in the past, why are we not more concerned about the effectiveness of the entire three years of legal education?

Should we not be looking at the falling bar exam rates and the rising need for academic support programs as a "canary in the coal mine" signaling a more pervasive problem? It should not be surprising that a system of education designed for the Harvard Class of 1880 would be at best an inefficient way of training today's students. Medical schools have responded to changes in their profession by completely changing their curriculum and methods of instructions at least three times in the last forty years. Legal education has known for decades that despite our good intentions, many of the students in our classes feel alienated and excluded rather than inspired and energized. Why, then, do we cling so tightly to a structure of education that has never been evaluated? It would be a shame to ignore the light spectacular bar failure rates of a few schools is shining on an educational system that is well overdue for, if not yet reform, at least top to bottom review.

Organization Updates

We thank the NCBE for contributing the following important update.

Mark A. Albanese, Ph.D.; Douglas R. Ripkey, M.S.; and Judith A. Gundersen

February 2019 MBE Scores

We are glad to be able to report some good news about the February 2019 bar exam results: the national MBE mean increased by over a point compared to last February, from 132.8 to 134.0. This is the first time we've seen an increase in the national February MBE mean since 2013.

The composition of the February examinee pool continues to shift. Overall, the percentage of likely repeat test takers increased in February, maintaining a trend that began several years ago—about 69% of February 2019 examinees were likely repeaters, compared to 67% in February 2018 and 62% in February 2012. Likely first-time takers comprised about 22% of all examinees. (Due to limited information, the remaining examinees can't be categorized as either repeaters or first-time takers.)

The likely repeaters can be divided into two main groups—stronger repeaters (those who have likely previously passed a bar exam) and weaker repeaters (those who have likely previously not passed a bar exam). Due in part to the fact that more jurisdictions are adopting the Uniform Bar Examination (UBE), the number of stronger repeaters has decreased and the number of weaker repeaters has gone up in recent years: stronger repeaters constituted 6% of all examinees in February 2019, down from about 7% in February 2018, while weaker repeaters represented about 62% of the total examinee population in February 2019, up from almost 59% in February 2018. (About 1% of examinees are likely repeaters who are unknown to be stronger or weaker repeaters.)

All of these examinee groups performed better on the February exam than the equivalent groups had done in 2018. But the improvement in MBE scores was not the same across the board—and this is where we see a surprising change in recent trends. Compared to February 2018, 2019's likely first-time takers and stronger repeaters increased their performance by about half a point, whereas weaker repeaters' scores

increased by more than 1.5 points. This is noteworthy, given that weaker repeaters in previous administrations have often had smaller score increases or larger score decreases than other categories of examinees.

What does all this portend for July? It's hard to know, in part because there's a lot of information about examinees that we don't have access to: their law school GPAs, what kind of bar preparation they undertook, whether they had to work while preparing for the bar exam, and so on. Nevertheless, members of NCBE's research staff will continue to analyze the data we do have—in part by comparing that data with publicly available LSAT and law school enrollment information—for additional insights about the February bar exam results.

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

Conference Corner

Upcoming conferences with bar-related sessions:

[AALL Annual Meeting and Conference](#), July 13–16

AALS: [Call for Proposals](#)

[Online and Hybrid Learning Pedagogy: Toward Defining Best Practices in Legal Education](#) (University of Denver, Sturm College of Law), September 26–28

[Bi-Annual AASE Diversity Conference](#), October 3–4

Please email Success@accesslex.org about upcoming bar-related conferences and conferences with bar-exam related sessions that may interest *Raising the Bar* readers.

Publications and Posts

Below are selected, recent bar-related publications.

Publications

- Kris Franklin, [Legal Reasoning Case Files](#) (Carolina Academic Press, 2019).
- Marsha Griggs, [Building a Better Bar Exam](#), Forthcoming, TEX. A&M L. REV. (2019).
- Joan W. Howarth & Judith W. Wegner, [Ringling Changes: Systems Thinking About Legal Licensing](#), 13 FIU L. REV. 383 (2019).
- Carrie Menkel-Meadow, [Thinking or Acting Like A Lawyer? What We Don't Know About Legal Education and are Afraid to Ask](#). UC Irvine School of Law Research Paper No. 2019-07.
- C.J. Ryan, [Analyzing Law School Choice](#), Forthcoming, UNIV. ILL. L. REV. (2019).
- Kathleen Elliott Vinson and Sabrina DeFabritiis, [Under Pressure: How Incorporating Time-Pressured Performance Tests Prepares Students for the Bar Exam and Practice](#). Forthcoming, W. VA. L. REV. (2019).

Posts

- Eduardo Briceño and Dawn Young, ["A Growth Mindset for Law School Success"](#) (ABA for Law Students)
- Larry Cunningham and Patricia Salkin, ["The Role of State Law in Legal Education and Attorney Licensing"](#) (New York Law Journal)
- Andi Curcio and Alexis Martinez, ["Assessing Institutional Learning Outcomes Using Rubrics: Lessons Learned"](#) (Best Practices for Legal Education)
- Scott Flaherty, ["The Big Fail Part III: Hiring—Then Firing—as Bar Pass Rates Sink"](#) (Law.com)
- Karen Sloan, ["First-Time Bar Pass Rate Took a Hit in 2018, ABA Data Shows"](#) (Law.com)
- Karen Sloan, ["Law Grads' Job Prospects Should Be Accreditation Factor, Prof Says"](#) (Law.com)
- Karen Sloan, ["The Big Fail: Why Bar Pass Rates Have Sunk to Record Lows"](#) (Law.com)
- Karen Sloan, ["The Big Fail Part II: Law Schools Clamber to Raise Bar Pass Rates"](#) (Law.com)
- Karen Sloan, ["The Big Fail Part IV: Picking Up the Pieces After Flunking the Bar"](#) (Law.com)

Please email Success@accesslex.org with recent and forthcoming bar-related publications to include in future issues of *Raising the Bar*.

Perspectives on Student Success

Kandace J. Kukas, Esq., Assistant Dean and Director of Bar Admission Programs at Northeastern University School of Law

To Sit or Not to Sit: That Is the Question

Choosing whether or not to sit for the bar exam immediately after graduation seems to be a “no-brainer.” Everyone immediately starts commercial bar review courses the day after graduation. Everyone studies eight to ten hours per day and everyone sits for that grueling two to three-day test at the end of July. But is that the best for all candidates? Sometimes it is not. Whether the candidate was a full-time or part-time student should not be determinative, but often the part-time student may want to hold off and take the bar exam during the second administration after graduation, most often February.

What should the candidate or the advisor consider? Below are a few factors for consideration.

Pros for delaying the bar exam until February include the ability to:

- 1. Take the summer off to de-stress.** How quickly or slowly did the candidate make it through school? Did he/she take classes year-round? Do family implications such as children on summer impact the candidate?
- 2. Start slowly in September.** Many part-time candidates cannot take a full two months off work to study. Starting slowly and steadily in September affords the candidate the opportunity to prepare and work through the tested content for several months.
- 3. Ramp up in October and again in December as bar review materials become available.** The candidate can increase study time in late October as early start programs become available and start full bar prep courses on December 1 in order to juggle the work/study/life balance.

Cons for holding off until February include:

- 1. Delayed licensure.** This can have financial implications as well as stature issues with an employer who may not understand or who may hold a delay against a candidate.
- 2. Off-cycle employment.** Legal

position openings generally follow the majority, i.e. July bar takers. February takers are typically licensed in April or May when jobs may not be available.

3. Memory loss. Candidates may forget legal concepts and rules learned in law school and may find recall more challenging than those who take the test in closer proximity to graduation.

The decision of whether to delay or take the bar immediately upon graduation is a personal one. It would be instructive for the academy if studies were undertaken to measure with empirical evidence the weight of the factors listed above and other considerations used to make this important determination.

Gabriel Teninbaum, Professor and Director of the Institute on Legal Innovation and Technology at Suffolk University Law School, and SpacedRepetition.com founder.

Spaced Repetition: A Scientifically Proven Method to Improve Learning and Bar Passage Rates

What is the best way to help law students learn more and pass the bar exam at a higher rate? It turns out that among all existing methods, scientists have identified a single clear answer: *spaced repetition*.

Although spaced repetition has been studied and understood for more than a century, actually using it outside of a lab setting has only become feasible with the advent of smartphones. Since then, it's come on with a bang, and has been called the best way for students to learn according to the [New England Journal of Medicine](#) and [American Psychological Association](#). Its effectiveness has been documented in [hundreds of peer-reviewed, published studies](#).

How does it work? Think of spaced repetition as an updated form of traditional flashcards that, while easy to use, operates on a sophisticated underlying software platform. The method is based on well-studied scientific principles. First, spaced repetition harnesses the "forgetting curve" by prompting users to report how well they know an answer after reviewing it. If a user knows it well, he or she won't see the information again for a longer time; if the user struggled to remember, he or she will be shown it again sooner. Users' learning needs are customized as to content and timing.

Another well-studied scientific principle is critical: the

spacing effect. As long as people review information at the right time (considering their personal forgetting curve), they forget more slowly and need to remind themselves less often. Thus, to memorize a new concept for the long term, one might have to review it a day after first seeing it, but then not again for 3 days and, after that, not for seven days and, after that, not for 30 days and, after that, not for 90 days, and so on. To maximize these benefits, students need only study about 10 minutes a day. While the average user would be expected to remember less than 25% of what they studied a week after reviewing it, with spaced repetition algorithms, it is 92%. It is also more effective and requires less time than cramming.

For law students preparing for the bar exam, these learning science principles suggest that a few minutes a day spread over the summer (or, even better, the 3L year) would convert to near-perfect recall of points of law that the student might otherwise have only a passing familiarity with. Not only does this potentially allow students to score additional points on the bar exam, but the study strategy can serve as a building block for other core bar-related skills, such as the ability to make narrow distinctions or present nuanced arguments and applications of law to facts.

The challenge of improving bar passage rates requires dedicated professionals to guide students and students having access to the resources that will put them on the path to success. When it comes to identifying the tool that will most effectively help them, the science is clear: spaced repetition makes people learn more than any other technique. As more students and schools adopt this method, so too will more students and schools find success on the bar exam.

We welcome submissions for future Perspectives on Student Success columns at Success@accesslex.org.

Bar Success Program Profiles

Previous issues of *Raising the Bar* included profiles of bar success programs at:

- [St. Mary's University School of Law](#)
- [John Marshall Law School](#)
- [CUNY School of Law](#)
- [Catholic University Columbus School of Law](#)

The legal education community learns from one another. The more we all know about ASP and bar success efforts, the better able all of us are to serve law students. *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 for future inclusion in issues of *Raising the Bar*!

ASP Faculty Updates

Just a few of the many achievements among ASP faculty nationwide are recognized below.

- AccessLex congratulates Michael F. Barry, who previously served as Assistant Dean and Practitioner in Residence at St. Mary's University School of Law, on [his new appointment as Dean of South Texas College of Law Houston.](#)
- AccessLex congratulates James McGrath, who previously served as Professor and Associate Dean for Academic Support and Bar Services at Texas A&M University School of Law, [on his new appointment as Dean of Western Michigan University Cooley Law School.](#)
- AccessLex salutes Amy Jarmon, former Assistant Dean for Academic Success Programs at Texas Tech University School of Law, who retired at the end of May. Licensed as an attorney in Virginia and enrolled as a Solicitor for England and Wales, Dean Jarmon previously served as Acting Assistant Dean for Law Student Services, Director of Academic Success Programs and Adjunct Professor at the University of Akron School of Law. Throughout her career, Dean Jarmon worked tirelessly on behalf of academic success faculty as well as law students and aspiring lawyers.
- AccessLex congratulates Mario Mainero, Executive Director of Bar Preparation and Academic Achievement at Chapman University Fowler School of Law, for being [named as the inaugural Gray Family Professor of Law.](#)

Again, these notes recognize but a few of the many important achievements of ASP faculty nationwide. Please email us with ASP and Bar Success faculty updates to include in future issues of *Raising the Bar* at Success@accesslex.org.

Academic and Bar Success Resources for Students

LibGuide

- [Preparing for the Bar Exam](#) (Regent University)

Please email Success@accesslex.org to send us your school's ASP and/or bar success LibGuide for inclusion in future *Raising the Bar* issues.

Podcasts

- [The Path to Law Student Well-Being](#) (Podcast series from ABA)

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

Bar scholarships

- [Central Florida Association for Women Lawyers Bar Study Scholarship](#) (Florida)
- [Latina Lawyers Bar Association Bar Stipend](#) (California)
- [National Native American Bar Association Bar Review Scholarship](#) (Nationwide)
- [Oregon Women Lawyers \(OWLS\) Foundation Bar Exam Grant](#) (Oregon)
- [San Diego La Raza Lawyers Association Scholarship Fund Bar Stipends](#) (California)
- [Washington State Association for Justice Bar Review Scholarships](#) (Washington)

Please email Success@accesslex.org with information about bar exam scholarships in your jurisdiction.

Grant Opportunities for Legal Educators

- Association of American Law Schools: [Legal Scholarship Grants and Resources](#)
- [AccessLex Unsolicited Grant Program](#) (July 1–31)

Please email Success@accesslex.org with information about upcoming grant opportunities for legal educators and researchers.

Continuing the Conversation

In an upcoming issue, we will include a supplement featuring findings from our recent Bar Success Forum and describing major barriers to bar success—and selected interventions that can mitigate or eliminate those barriers.

Quick Poll for all Raising the Bar Readers:

What are the three most significant barriers to bar success?

Please email Success@accesslex.org to let us know what three barriers to bar success you consider to be most significant.

Sara J. Berman, Senior Editor
Rob Hunter, Managing Editor