

RAISING THE BAR

EVIDENCE-BASED THINKING ABOUT THE BAR EXAM

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FROM THE DIRECTOR

This issue of *Raising the Bar* focuses on the bar exam. Given the degree of flux in our field, an apt title for this issue could be *Confronting Change when Everything Keeps Changing*. Even as each development in the realm of bar preparation, bar exams and, ultimately, bar success represent new chances to increase opportunities — it's fair for professionals working in this world to silently wish for some things to stay the same, if just for a moment. In those moments we should note first that many things today are unsteady. A decrease in professional and personal capacity is a valid response to unsteady times, as is a wish for stillness. Next, we may remind ourselves that in the universe of legal education and attorney licensing many things *have* stayed the same and are long overdue for change. Importantly we can acknowledge that these new approaches that, cumulatively, may overwhelm, result from a body of research into our shared work. Indeed, some of our colleagues have devoted their careers to researching and enacting the changes that we are now navigating. For these colleagues, simply maintaining the idea that change was possible required tenacity. In those moments when the scope of change threatens to overwhelm us, it is our choice to continue to engage in this work. In doing so, we demonstrate both respect for those who pioneered our field of work and commitment to the success of our students and, ultimately, the profession.

I invite you to respond to our present times with engagement. Either with the engagement necessary to preserve and sustain your professional and personal capacity, or engagement in sharing your responses to items, like those in this publication, with colleagues, students, and us. As your capacity allows, we look forward to your continued engagement in our shared work.



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DISTINGUISHED THINKER COMMENTARY

Experiential Paths to Licensure

Brian R. Gallini is Dean of Willamette University College of Law.

Attorney licensure and legal education are poised to [change dramatically in Oregon](#).

On January 13th, the [Oregon Supreme Court](#) unanimously approved “in concept” two new alternative pathways to attorney licensure. The court’s vote paves the way for law graduates to demonstrate their competency and career readiness through methods other than the traditional bar exam. Rather than pay thousands of dollars for prep courses and spend hours studying for a test that does not measure or assess the skills expected of newly-licensed lawyers, future lawyers will have the option to demonstrate their qualifications through experiential learning or supervised practice. These alternatives will empower law schools to focus more heavily on teaching students skills that the public needs and employers want, rather than on strategies for passing a standardized test.

This is not to say that we should put aside the bar exam entirely — for now. Examinees who earn a qualifying cut score on the Uniform Bar Exam can “port” that score to other states where that examinee’s score would qualify as passing. Stated differently, a particular score on the Uniform Bar Exam can allow an examinee to choose from a range of states to practice in. At present, no reform effort boasts similar reciprocity options.

For that reason, as we move forward with plans to implement alternative pathways to attorney licensure here in Oregon, future lawyers can still choose to sit for the traditional exam. But they will also have the option to participate in a two-year curriculum-based experiential pathway to licensure (Oregon Experiential Pathway), or demonstrate minimum competence for licensure by engaging in 1,000 to 1,500 hours of supervised legal practice. All three pathways require and benefit from oversight by the Oregon Board of Bar Examiners.

But these reform efforts in Oregon are not anomalous. [New York](#), [Minnesota](#), [Washington](#), [Utah](#), and [California](#) — to name a few jurisdictions — are actively studying the prospect of adopting alternatives to the bar exam. To be sure, there are those who maintain that the current bar is the ultimate demonstration of minimum competence and serves to

protect the public. But I have found in hundreds of conversations about this topic over the past two years that for many lawyers, there is a subtext — if they suffered through the bar exam, new lawyers must too.

Ironically, those same critics often complain, perhaps justifiably, that law school did not teach them how to practice law; instead, they learned it during their first job. And now they're the ones doing the teaching after they hire new lawyers. They lament that the curriculum in law school could have better prepared them to take on the tasks of a newly-licensed lawyer.

Fair point. At present, a significant portion of legal education is delivered through traditional podium teaching. And there remains an important role for that. But too much reliance on that traditional method is problematic. After all, we don't teach pilots to walk around the plane and memorize its instruments, but never fly it. Similarly, in medicine, we don't have prospective surgeons talk about the skills needed for a particular procedure. Rather, they practice. Has anyone ever mastered a musical instrument by attending lectures about how to play it? No. In legal education, for whatever reason, we're mostly walking and talking about practicing law and not actually *practicing law*.

Therein lies the reform within the reform. Curricular reform will improve the legal system for the public, for the profession, and for new lawyers. We have the potential to reform attorney licensure while simultaneously driving historic curricular reform in legal education. Establishing an experiential pathway to licensure, as monitored by a board of bar examiners, would enable the completion and assessment of certain practice-based skill requirements, including, for example, document drafting (transactional or litigation-focused), simulated client interviews, trial practice exercises, or mock settlement conferences. That is, offering an experiential pathway to licensure would incentivize and inspire law schools to broaden curricular offerings designed to support students' growth in the skills necessary for the practice of law.

Offering an alternative to the bar exam marks a seismic shift in the thinking around attorney licensure — thinking that began years, and years, and years ago. To understand this shift, a baseline explanation of the current licensing regime is in order. The current iteration of the bar exam suffers from inconsistent approaches to the most basic of question: what does it mean to pass? Some states have adopted the Uniform Bar Exam, an exam that hardly boasts uniformity; although the content of the exam in those jurisdictions is uniform, what it means to pass is not.

Consider also that the traditional bar exam is offered just twice a year — once in July and once in February. The July cycle draws the most registrants simply because it's often closest in proximity to examinees' law school graduation. In a best-case scenario, a passing examinee will study for three months, spend two days taking the exam, and three months waiting for their results. But examinees who cannot put their lives on hold for six months are at a distinct disadvantage; indeed, students with families or those who otherwise must work to subsist are at increased risk of failure. Additionally, examinees are ineligible for student loan support to cover the thousands of dollars it costs to pay for exam registration fees, preparation courses, and basic living expenses like housing and food. Younger examinees who lack established credit learn the hard way that they are not eligible for a competitive private loan.

Does this current, expensive system achieve what it claims — to assure that new attorneys demonstrate “minimum competence” to practice law? The answer is unclear at best. According to the [Institute for Advancement of the American Legal System](#) (IAALS), “[t]he unfortunate reality is that, although the bar exam has existed for more than a century, there has never been an agreed-upon, evidence-based definition of minimum competence.” Still, leaders in higher education have acknowledged for years that multiple-choice tests do not measure skill and potential. The bar exam therefore is more of a costly barrier to a successful legal career than a predictor of a successful one.

Add to that the unacceptable racial disparities among students who pass the bar exam. According to [data from the American Bar Association](#), in 2020 — the same year law graduates in five states were granted temporary diploma privilege due to the COVID-19 pandemic — about 87% of white students passed the bar exam on their first try, whereas only about 66% of Black students and 76% of Hispanic students passed on their first try. For many, this data was unsurprising and merely confirmed long-held concerns about the [perpetuation of the bar’s exclusionary roots](#). Black and Hispanic law graduates made up only a small fraction of all test-takers to begin with, so this unjustifiable differential exacerbates a [crisis in the profession](#).

Against that troubling backdrop, the temporary diploma privilege granted to some law graduates during the pandemic provides important evidence that the bar exam does not predict success as an attorney. Employers recognized that the bar exam was an unnecessary qualification and put their money on it by [hiring graduates on the basis of their diploma alone](#). More than 1,000 new lawyers were hired without sitting for the test in 2020. Employers and court officials not only appreciated that those students could work sooner after graduation, but also that they didn’t need to rely on exam results to make decisions about their competence and preparation. Notably, Wisconsin figured all of this out decades ago by offering pure diploma privilege to graduates of the state’s law schools, and [evidence shows no effect on incidence of attorney misconduct, as some might fear](#).

All things considered, ending the bar exam’s monopoly on licensure will empower law schools to train new lawyers for the 21st century using more rigorous assessment measures that are both more equitable and better tied to the work of newly-licensed lawyers. And as calls for alternatives to the bar exam continue to grow, I hope that leaders in our profession will champion similar change in other states.

Lawyer Professional Identity Formation Takes a Village

Jim Leipold has led NALP as its Executive Director for the past 18 years and is preparing to retire from his role this fall.

When he speaks to a group, NALP President Karl Riehl often likes to ask the rhetorical question, “Who here is responsible for diversity, equity, and inclusion in your law school or law firm?” After a pause, he makes the point that everyone’s hand should be up. We are all responsible for diversity, equity, and inclusion. He recently used the same line of questioning about lawyer and law student well-being. Who among you is responsible?

Of course, his point is that we are all responsible for well-being — both our own and that of the lawyers and law students we work with. I am going to extend this somewhat tortured rhetorical device to open this column by asking all of you, who is responsible for lawyer professional identity formation in our law students? My belief is that we are all responsible. It takes a village to grow law students into fully-fledged lawyers, and it doesn’t happen without the deliberate collaboration and cooperation of all the players and operations in the law school.

The American Bar Association’s [recent revisions](#) to accreditation Standard 303 provide law schools with an opportunity to reexamine and recommit to that deliberate school-wide collaboration. Standard 303(b) has been revised to require that “A law school shall provide substantial opportunities to students for: ... (3) the development of a professional identity.” New Interpretation 303-5 goes on to say that “Professional identity focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society. The development of a professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice. Because developing a professional identity requires reflection and growth over time, students should have frequent opportunities for such development during each year of law school and in a variety of courses and co-curricular and professional development activities.”

Law student professional identity formation is complex, blending the mastery of professional responsibility, self-directed learning, a duty of care to society, cross-cultural awareness and communication skills, and taking personal responsibility for self-care and well-being, among other things. As the Halloran Center for Ethical Leadership in the Professions’ Neil Hamilton and Louis Bilonis explain in a [recent *NALP Bulletin+* article](#):

A law school should help each student to understand, internalize, and demonstrate:

1. A deep responsibility and care orientation to others, especially the client;
2. Ownership of continuous professional development toward excellence at the major competencies that clients, employers, and the legal system need;
3. Well-being practices; and
4. Client-centered relational skills, problem-solving, and good judgment that ground each student’s responsibility to and care for the client.

(Look for Part 2 of this article series in the June 2022 edition focusing on action steps and the benefits for law students, law schools, and the legal profession.)

No one person, class, or office in the law school can accomplish all of this. No single clinic or externship can mold a law student into a lawyer. The process must involve everyone in the law school building. Every encounter that law students have in the law school should be an intentional part of this professional identity formation process. Each encounter every law student has in the building should be professional, and every staff and faculty member should be modeling a mature professional identity in all they do, and the expectation should be established from the very beginning of the first year that similar professional conduct is expected of every law student. Admission office professionals are often the first contacts that pre-law students have with the institution, even before they are admitted, and professional identity formation begins there, and continues through orientation, the first year of law school classes, the first encounter with the career services professionals, and on and on. The encounters students have with the dean of students' office, the registrar, academic support, student organizations, externships and internships, summer work, and bar prep, all contribute to the cumulative formation of professional identity that each student will build for themselves.

The revisions to ABA Standard 303 provide each law school with an opportunity to rethink its commitment to a deliberately collaborative, collective, continuous law student professional identity formation project that is intentional and inclusive while involving everyone in the building. The specifics of the project will differ at every law school as mission, location, values, and market position drive the particulars, but the understanding of the shared responsibility for the outcomes, the graduation of young lawyers with a strong sense of professional identity and an ownership of their own ongoing, lifelong professional development, is the shared goal of all law schools. Each of us has a role to play in ensuring the success of that collective endeavor.

ORGANIZATION UPDATES

The Next Generation of the Bar Exam

Sophie S. Martin is Director of Communications, Education and Outreach for the National Conference of Bar Examiners.

The National Conference of Bar Examiners (NCBE) has reached an important milestone in development of the next generation of the bar exam: publication of the preliminary [Content Scope Outlines](#) for public review and comment. The Content Scope Outlines delineate the topics and lawyering tasks that will be assessed within the eight Foundational Concepts and Principles and the seven Foundational Skills identified as most essential in NCBE’s wide-ranging practice analysis. The public comment period for the outlines closed on April 18.

394 stakeholders — including law school deans, faculty, and administrators; practicing attorneys; judges and justices; law students; and bar examiners and admission staff — submitted comments on the outlines, which were accessed on our website more than 1,600 times. The Implementation Steering Committee will now review the comments and evaluate whether revisions should be made to the outlines based on the feedback that was provided. If changes are made, NCBE will inform stakeholders, and the revised Content Scope Outlines will be published on our website.

The Content Scope Outlines are the first step in preparing the Test Content Specifications — the “blueprint” for the new exam — which will be published in late 2024. The Test Content Specifications will provide more details, such as the sources of law for the topics tested, the weighting or emphasis of the subjects/topics and skills, and sample test questions illustrating how the knowledge and skills may be tested in an integrated design. Additional annotations about what is covered within subjects/topics may also be added. Finally, the organization and structure of the Test Content Specifications may be different than the organization and structure of the Content Scope Outlines.

The most noticeable change to the content planned for the new exam is the number of subjects tested, which will decrease from 12 to 8: civil procedure, contract law (including Article 2 of the Uniform Commercial Code), evidence, torts, business associations (including agency), constitutional law (including proceedings before administrative agencies), criminal law and constitutional protections of accused persons, and real property. The new exam will no longer test conflict of laws, family law, trusts and estates, or secured transactions, and will test some legal concepts more deeply than others.

The preliminary Content Scope Outlines reflect the work of NCBE's Content Scope Committee, a group of 21 dedicated legal professionals, including legal educators, law school deans, practicing attorneys, and bar examiners. In considering the breadth of topics to be covered within each subject, the Content Scope Committee primarily considered the following three factors:

- Frequency: How often is a newly licensed lawyer (defined as one who has practiced for fewer than three years) likely to encounter the topic in general entry-level practice (loosely defined as solo practice or working at a full-service law firm)?
- Universality: How likely is a newly licensed lawyer to encounter the topic in more specialized types of entry-level practice?
- Risk: How likely is it that there will be serious consequences if a newly licensed lawyer does not have any knowledge of the topic when it arises?

The most significant change to the exam content, however, is the planned expansion of the skills to be tested. "Stakeholders have indicated that the bar exam should test fewer subjects in order to focus on testing more lawyering skills," said NCBE President Judith Gundersen. "The new bar exam will be administered on computers, which allows us to build more dynamic question sets and test skills beyond those included on the current exam. The addition of these essential skills is one of the most exciting and challenging changes planned for the new bar exam."

The current bar exam already tests important lawyering skills in legal writing, issue spotting, and legal analysis. The skills to be assessed on the new bar exam have been expanded to include legal research, investigation and evaluation, client counseling and advising, negotiation and dispute resolution, and client relationship and management. The expansion of skills testing will require development of new question types; as a result, the current bar exam format will be retired in the coming years, and a new format, featuring integrated sets of questions (likely a combination of short-answer, multiple-choice, and longer legal drafting questions) is in development.

The publication of the outlines is the latest milestone in a process that began in 2018, when NCBE embarked on a multiyear study of the current bar exam. During that study, nearly 15,000 practicing lawyers and stakeholders from bar admission agencies and the legal academy responded to a nationwide practice analysis survey to identify the knowledge and skills that are necessary for effective practice by newly licensed attorneys.

"Members of the legal community from all US jurisdictions participated, making this a truly nationwide practice analysis survey of the opinions of the US legal community," said Hon. Cynthia L. Martin, who sits on the Missouri Court of Appeals, Western District, and chairs the committee charged with overseeing development of the new exam.

In addition to the practice analysis survey, the study included listening sessions with stakeholders and collaborative input from committees composed of bar examiners and legal educators about possible changes to the bar exam. The study was built on the premise that "all options were on the table," said Martin. "Participants were given free rein to reimagine the bar exam to best reflect the knowledge, skills, and abilities needed by new attorneys in

a changing profession.” Notably, said Martin, “among several independent reports on the content best tested on the exam, there was significant consensus, regardless of the agency conducting the study.”

NCBE is currently in the process of developing and evaluating prototypes of new item types and item sets for the next generation exam, with a plan to begin pilot testing this summer. Throughout the spring, NCBE staff have met with jurisdiction leaders, including bar examiners, justices, and administrators from all U.S. jurisdictions, to discuss progress on exam development.

For more information on the development of the next generation of the bar exam, please visit <https://nextgenbarexam.ncbex.org/>. To sign up to receive email updates and announcements, visit <https://nextgenbarexam.ncbex.org/subscribe/>.

BAR SUCCESS PROGRAM PROFILE

Tina Schindler is Director of Bar Preparation and Associate Professor of Law for Academic Success and Bar Preparation at Southwestern Law School.

After surviving some trying times, including some lower bar pass rates (38% in 2016), Southwestern decided to completely revamp their bar prep program in an effort to provide their students with opportunities to promote success both in law school and on the bar exam. Success does not just ride on one change or one course. Rather, it consists of the perfect good storm that yields positive results (just as the perfect bad storm can lead to catastrophe). The school made a variety of changes, with a major focus on creating new innovative and adaptive curriculum to help support the students in their final year of law school (essentially making part of their final year akin to an early bar prep course). To do this, the school hired a new Assistant Dean of Bar Preparation, followed by several professors and a new Director of Bar Preparation.

Three new courses and an entire program emerged from this transition, yielding the highest bar pass rate the school had seen in 26 years (85% in 2020). First, in 2018 we created a course to develop the students' bar writing skills. This new course used a flipped classroom and hands-on active learning approach. The class was strategically designed to focus on the most heavily tested subjects, topics, and bar test taking skills. The course incorporated innovative learning techniques such as Canvas H5P exercises (an interactive Canvas resource that allows a professor to create quizzes, written exercises, etc.) with instant feedback, hypos and in class timed essay simulations, bingo games and crossword puzzles to review the law, and much more. Students reported they found the class very helpful, and subsequently the students' written bar scores increased dramatically. After implementing this course, our written scores for the CA bar exam increased from -39 (our differential with the ABA written average) to -1 (almost equal to the ABA average, which includes bar takers from ALL ABA approved law schools).

Then, the next year in 2019, we completely revamped the existing MBE course to have skills and strategies the first focus. Again, the course strategically covered heavily tested topics, but the class focus was primarily on how to effectively solve MBE questions, avoid common decoys, gain fact pattern recognition, troubleshoot problem areas, and study efficiently. Similar to the written class, there are classes with fun games like Jeopardy to encourage rule understanding and memorization. Since implementing this course, our MBE scores have also improved and continue to head in an upward trajectory.

We also created a Remedies course to aid students in writing in their second year. The students write several essays and get feedback. This second-year course follows the first

year Foundations course where students learn law school basics and can further improve and hone their writing skills. At this time, all bar programming has been upgraded to have a supportive, skills based, hands on practice orientation.

In all of our bar courses, the in-class slides are animated to walk the students through each step to approach an essay, PT, or MBE question. This animation provides students with the ability to follow the steps in real time and reinforce the process, making it a habit for when they practice on their own.

In addition to these courses, we've created an early bar prep program where students are provided opportunities for extra performance test and essay writing practice with written feedback, as well as free access to MBE questions to practice (they are given access their first year through the bar exam). We also created specific Canvas courses for all bar takers with extra support for all portions of the bar exam, ranging from general bar exam information, troubleshooting MBE shortfalls videos, tackling performance tests for those still struggling, to mindset resources and much more.

Post-graduation, students also get an individual bar coach (a member of our academic and bar success team is assigned to each student), they get additional personalized feedback on essays and performance tests, and they are provided incentives (such as \$250 Amazon gift cards if they complete 1,000 MBE questions before they graduate law school) to maximize their efforts.

Providing these new courses and fostering relationships between students and their bar coach has encouraged buy-in, resulting in more students doing their bar prep work during the intensive program. Our studies show that our students who do more than 90% of their work during bar prep after taking our program, pass the bar at 94%. The key is keeping them working hard, motivating them, yet not crossing that burnout line. We've had two solid successful years with this new programming in full effect, so our goal is to continue the cycle (wash, rinse, repeat).

RESEARCH SPOTLIGHTS

An Empirical Analysis of Racial Bias in the Uniform Bar Examination

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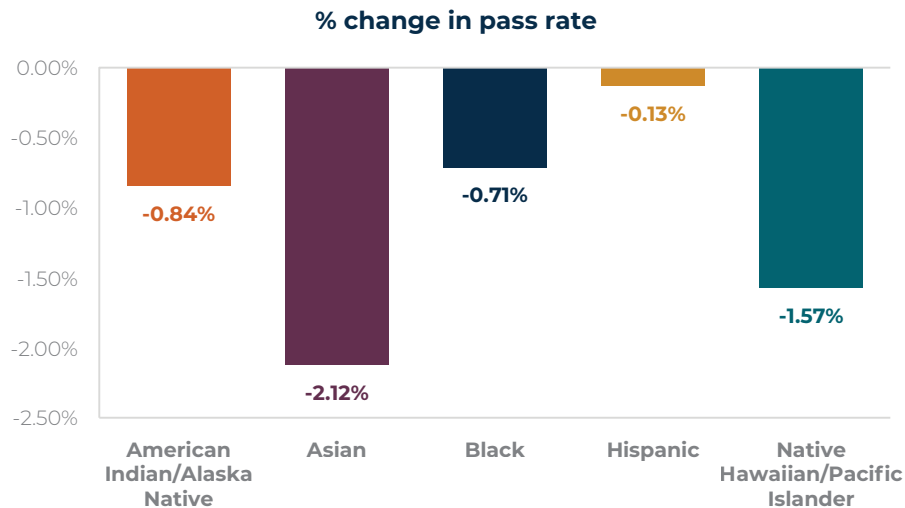
There are many possible explanations for why the legal profession remains one of the least diverse in the United States. [Our study identifies one such explanation](#) — the bar examination. We found that a school's reported first-time bar pass rate in Uniform Bar Examination (UBE) jurisdictions decreases as the percentage of students who come from Black, Indigenous, People of Color (BIPOC) communities increases. (Because we accounted for key factors, our result indicates that the problem arises due to intrinsic bias in the exam itself.) As a result, BIPOC graduates from ABA-accredited law schools either enter the profession at lower rates than their White colleagues or are delayed from entering the profession as they retake the bar exam.

That bar examination pass rates are negatively correlated with race and ethnicity is unsurprising in light of the long history of the use of admission standards to exclude immigrants and persons from BIPOC communities from the practice of law. This disparity continues despite the fact that, starting in the late 1980s, a number of state bar commissions were formed with the goal of addressing this problem. Currently, despite collecting relevant data, state bar associations, the American Bar Association (ABA), law schools, and state Supreme Courts continue to withhold data on this issue. At present, the ABA has only just begun to publish national data on race and bar passage rates. Moreover, California is the only U.S. jurisdiction that provides pass rates by race and ethnicity in its reported statistics.

Given this paucity of data, we developed a methodology to measure the impact of race and ethnicity on bar pass rates using school-level data reported by ABA-accredited law schools. Our data included information for the years 2012 to 2019 as to each school's first-time bar pass rate by jurisdiction, class 50th percentile LSAT score, race, ethnicity, geographic location, and law school rank. To ensure both a large enough dataset and uniformity as to the meaning of the bar pass rate, we limited the data to schools from UBE jurisdictions during periods where that jurisdiction tested using the UBE.

As Figure 1 shows, our data indicates that when a school increases the proportion of students from BIPOC communities in its class, the UBE first-time bar passage rate declines.¹

Figure 1. Effect of a one percent increase in ethnic/racial group on UBE first-time pass rate.



Because we have accounted for relevant factors that could mask the true relationship between race/ethnicity and bar passage, these results demonstrate that race and ethnicity play a role in UBE bar passage and, as a result, the bar exam itself plays a role in the lack of diversity in the legal profession.

Because our data is at the level of the school, not the level of the individual student, it is not possible to precisely understand the relationship between race/ethnicity and bar pass rates. Nor is it possible to suggest targeted solutions to the problem. We are in the process of requesting student-level data from law schools but have encountered stiff resistance despite our use of strong privacy measures guaranteeing student and school anonymity. While we continue this effort, we believe it may not prove fruitful and have begun implementing other methods of gathering the relevant data.

¹ The results in Figure 1 for Black bar exam takers are statistically significant at the 99% confidence level, the results for Asian takers are at the 95% confidence level, and the results for all other race or ethnic groups are not statistically significant because they fell below the 90% confidence level.

Study Finds Priorities Shifted During Pandemic for Law School Deans

Katie Kempner is a Data Analyst and Project Specialist at the Association of American Law Schools (AALS). Jeff Allum is the Director of the American Law School Dean Study.

As legal education reaches another watershed moment, understanding the challenges and opportunities facing American law school leadership has become more important than ever. Many are wondering how law schools will continue to evolve in the wake of a period when the pandemic forced them to rethink modes of instruction, the nation struggled to provide equal justice under the law, and our government was coping with the aftermath of January 6, when a mob took over the U.S. Capitol on the very day Congress was to certify the results of the 2020 presidential election.

The [*American Law School Dean Study*](#), based primarily on a survey of current and former law school deans at AALS member and fee-paid law schools, aimed to answer questions about dean career paths, the processes by which individuals are recruited and selected for deanships, and the most pressing challenges law school deans are facing today.

In addition to shedding light on dean selection processes and preparation for the job, the study, which was made possible by funding from AccessLex Institute, ETS, and LSAC, yielded a number of findings of interest to the broader legal education community. First, the ways in which deans allocate their time dramatically changed between 2019 and 2020. In 2019, just 11% of current deans spent a lot of time on crisis management; in 2020, this increased to 88%. The same trend appears with time spent on diversity, equity and inclusion, with just 16% of deans reporting they spent a lot of time on this in 2019 compared to 79% in 2020. Deans also spent more time in 2020 on budget and financial management and student life and conduct issues. Other tasks, like alumni relations and fundraising, were less likely to consume a lot of time in 2020 than in 2019. These changes confirm that the effects of the COVID-19 pandemic were felt broadly in law schools across the country.

In addition to changing the ways in which deans spend their time, the last two years also resulted in a number of innovations deans believe will be part of the future of legal education: some online teaching, remote work arrangements for some faculty and staff, and more opportunities for engagement with the wider legal community. Deans most frequently cited online teaching as the innovation most likely to continue. They provided examples such as creating new ways to deliver content, using flipped classrooms, creating podcasts, and rethinking student assessments. Some deans also see work from home and other online modalities for faculty and staff as something that may continue beyond the immediate pandemic period.

Despite the fact that so many deans have needed to spend a lot of time focused on crisis management, deans still consider their most important responsibilities to be fundraising and development (69%) and budget and financial management (61%). Strategic planning (32%), improving outcomes for graduates (32%), and attention to diversity, equity, and inclusion (28%) were also important responsibilities. Deans reported that they think their university leadership and faculties also view fundraising and development and budget and financial management as the most important responsibilities of the dean.

These and other findings of the *American Law School Dean Study* demonstrate that law schools across the country are continuing to adapt to the new normal, with deans and faculty facing new demands on time and energy and innovating as needed to meet them. At the same time, law school leadership must still focus on the consistent need for steady financial management and development efforts to ensure their institutions continue to thrive.

Approaching the Bar: An Analysis of Post-Graduation Bar Exam Study Habits

Joshua Jackson is a Senior Research Analyst at AccessLex Institute.

In 2017, AccessLex Institute recruited 107 graduates of 17 California law schools to participate in [a study](#) which sought to explain how time management and study practices could impact first-time performance on the bar exam. Students submitted information on their study habits and non-academic activities in the 50 days immediately preceding their bar exam and recorded their activities in time diaries. See figure for an example of how the activities were recorded.

We used this data to examine how factors such as average daily study hours, number of daily study sessions, and employment affect students' chances of passing the bar. Notable findings include:

- Average daily study hours are strongly related to bar passage, although some diminishing returns occur after about eight study hours.
- The more hours spent studying, the less likely students were to report experiencing psychological barriers such as being distracted or anxious during the bar exam.
- Studying in the morning is more effective than studying in the afternoon, which is more effective than studying during the evening or late at night.
- Breaking up studying into multiple daily sessions strongly increases chances of bar passage. Even if students take only one half-hour break during eight hours of studying, they receive a substantial boost in study effectiveness.

TIME	WED. 6/15	THURS. 6/16
7:00 am	Breakfast	Sleep
8:00 am	Study	Exercise
9:00 am	Study	Study
10:00 am	Study	Study
11:00 am	Work	Television

This study is unique in its assessment of how non-academic activities affect bar performance. Students include employment, commuting, personal care, sleep, leisure, and caregiving in their time diaries, allowing us to examine how time spent on each also affects bar passage.

The results indicate that personal care and caregiving generally do not reduce students' chances of passing, but excessive time spent on leisure, employment, and sleep harms bar performance.

These findings and others from the report offer students a clear and quantified guide for effectively using their time to maximize their chances of passing the bar exam. Many students believe the most effective strategy is simply to study as much as possible, but the best solution is more complicated than that. The chances of passing the bar continue to increase as more time is spent studying, but a point of diminishing returns does occur, and students are likely better off incorporating breaks and some leisure into their daily study routines than cramming as many hours as possible at one time into a study session.

Most law students spend three years, incredible effort, and hundreds of thousands of dollars to enter the legal profession, which culminates in them sitting for the bar exam. These results collectively offer students a clear picture on how they can use their time studying for the bar exam to ensure all of those resources turn into a rewarding legal career.

Are Law Schools Cream-Skimming to Bolster Their Bar Exam Pass Rates?

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With the adoption of the revised Standard 316, many law schools are looking for the “silver bullet” for improving bar passage rates. One of the most widely touted of these may be the bar preparation program at [Florida International University College of Law](#). Many bar success directors and staff have felt the pressure to adopt a similar program at their institutions. But in 2020, Professor Rory Bahadur questioned in [“Blinded by Science? A Reexamination of the Bar Ninja and Silver Bullet Bar Program Cryptids”](#) whether the results published by FIU Law might be driven by academic attrition and the transferring in of higher performing students rather than the school’s bar preparation program.

In a recently completed study, AccessLex used ABA Standard 509 data to examine the extent to which attrition, transfer-in, and transfer-out rates affect institutional first-time bar passage differential (“pass differential”). This study moved beyond the initial work done by [Professor Bahadur and his colleagues](#), which focused largely on comparing the attrition and transfer rates at each of those schools identified as top performers in an earlier work by [Professor Jeffrey Kinsler](#) to a group of “similar” law schools. Although that analysis revealed some stark differences in the attrition and transfer rates, it did not examine whether and to what extent those rates are related to bar passage.

Our study takes the next step: using a method called “fixed effects” regression; we compare each school to itself over the course of four years (graduating classes of 2016–2019) to examine how the changes in a school’s attrition and transfer rates relate to changes in its bar passage differential. Bar passage differential captures how well a school’s students perform on the bar exam across all jurisdictions relative to other takers from ABA law schools in those same jurisdictions.

A positive number means the school's graduates perform better than the average; a negative number means they perform worse than the average. Our research demonstrated four key findings.

First, when attrition, transfer-in, and transfer-out rates increase, bar passage differential tends to remain constant or diminish.

Second, when a school increases both its attrition and transfer-in rates, its pass differential does not vary meaningfully. The exception to this rule is when the changes in attrition are exceedingly large, roughly a 9 percentage point swing. This means that, in order for a school to meaningfully move the pass differential needle, it would need to increase its attrition rate by a substantial margin. Therefore, our analysis demonstrates that an increase of attrition or transfer-in rates, in the range experienced by the vast majority of law schools, does not translate, respectively, into an increase or decrease of pass differential on par with the expected change.

Third, schools with lower *U.S. News* rankings tend to lose more students to transfer. Schools with the highest rankings have lower transfer-out rates.

Lastly, we found that the effects of attrition and transfer-in rates do not vary by whether a school is geographically near other law schools with higher/lower *U.S. News* rankings; that is, the size and direction of the effect is the same regardless of whether a school is located in close proximity to others with higher, similar, or lower rankings.

Our study concludes that Professor Bahadur's theory is an interesting thesis that is worthy of attention and, if true, would bear significant ramifications for law schools and bar success professionals. However, our research only finds limited evidence to support this notion: attrition rates are modestly positively associated with pass differential; transfer-in rates are weakly negatively associated.

CONFERENCE CORNER

- [Legal Writing Institute Biennial Conference](#) (July 20–23, 2022)
- [Southeastern Association of Law Schools Annual Conference](#) (July 28–Aug. 2, 2022)
- [Online and Hybrid Learning Conference](#) (Sept. 22–24, 2022)
- [AccessLex Legal Education Research Symposium](#) (Nov. 7–8, 2022)
- [LexCon '22 Financial Capability and Student Success Conference for Graduate and Professional Administrators](#) (Nov. 8–10, 2022)
- [Association for the Study of Higher Education Annual Conference](#) (Nov. 16–19, 2022)

Please email RTB@accesslex.org about upcoming bar-related conferences.

PUBLICATIONS AND POSTS

- Daniel Bowman & Teresa Miguel-Stearns, *Arizona's Diploma Privilege: There...and Back Again?*, ARIZ. ATT'Y (forthcoming in Fall 2022).
- Susan L. Brooks et al., *Moving Toward a Competency-Based Model for Fostering Law Students' Relational Skills*, 28 CLINICAL L. REV. 369 (2022).
- Carol L. Chomsky et al., *A Merritt-orious Path for Lawyer Licensing*, 82 OHIO ST. L.J. 883 (2021).
- Adam N. Eckart, *Litigation Bias*, 101 OR. L. REV. (forthcoming).
- NEIL W. HAMILTON & LOUIS D. BILIONIS, *LAW STUDENT PROFESSIONAL DEVELOPMENT AND FORMATION* (2022).
- Neil W. Hamilton & Jerome M. Organ, *Learning Outcomes that Law Schools Have Adopted: Seizing the Opportunity to Help Students, Legal Employers, Clients, and the Law School*, 69 J. LEGAL EDUC. (forthcoming 2022).
- Leslie C. Levin, *The Politics of Bar Admission: Lessons from the Pandemic*, 50 HOFSTRA L. REV. 81 (2021).
- NAT'L CONF. OF BAR EXAM'RS, *CONTENT SCOPE OUTLINES FOR PUBLIC COMMENT* (2022).
- Sherod Thaxton, *A Comment on Sander and Steinbuch's "Mismatch and Bar Passage: A School-Specific Analysis"* (UCLA Sch. of Law, Public Law Research Paper No. 22-12, 2022).
- Stephanie Francis Ward, *In Recently Released Data, ABA Parses Out Bar Passage Rates by Race, Ethnicity, and Gender*, ABA J. (May 2, 2022).

Please email RTB@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

Information about the Bar Exam

- [AccessLex Resource Collections: Bar Success](#)
- [ABA Bar Information for Applicants with Disabilities](#)
- [ABA Statistics/Bar Passage Outcomes](#)
- [Bar Exam Results by Jurisdiction](#)
- [Bar Admission Guide](#)
- [NCBE Bar Exam Fundamentals for Legal Educators](#)
- [NCBE NextGen: Bar Exam of the Future](#)

Student Resources

- [AccessLex Law School Scholarship Databank](#)
- [ABA Grants for Law Students](#)
- [ABA Scholarships and Financial Aid](#)
- [MAX by AccessLex](#)

Research Grants

- [AccessLex Bar Success Intervention Grant Program](#)
- [AccessLex Bar Success Research Grant Program](#)
- [American Association of Law Libraries \(AALL\)](#)

ASP and Bar Success Resources

- [The Bar Examiner](#)
- [The Learning Curve](#)
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Congratulations to the 2022 AccessLex-Association of Academic Support Educators (AASE) ASP Faculty Scholars.

For a second year, AASE and AccessLex have renewed their mutual commitment to supporting new voices in research and academic writing among Academic Support and Bar Success professionals through the ASP Faculty Scholars Program. The ASP Faculty Scholars Program awards five scholars with research funding and mentorship to develop a proposed research article with the goals of contributing to scholarship in the field and advancing the status of ASP and Bar Success Educators in legal academia. 2022 Scholars will present their works-in-progress at next year's Annual AASE Conference, with final publication drafts anticipated by the end of the 2023.

This year's Scholars and their proposed research projects are:

- Marta Baffy, University of Baltimore School of Law
Communicating Like a Lawyer: Using Insights from Language Pedagogy to Teach Law Students
- Chelsea Baldwin, Washburn University
Do No Harm: Misapplied Therapeutic Methods in Legal Education
- Brittany Raposa, Roger Williams University School of Law
The Empathetic Method: Fostering Equity, Inclusion, and Belonging in Legal Education
- Nancy (Nyla) Millar, Widener University Delaware Law School
Nurturing the Internal GPS: Why and How Law Schools Should Encourage Students to Develop Their Intuition
- Juan Carlos Ibarra, University of San Francisco School of Law
Teaching Racial Justice as Legal Analysis in Property Law

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