



# RAISING THE BAR

EVIDENCE-BASED THINKING ABOUT THE BAR EXAM

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# FROM THE DIRECTOR

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During this summer of bar preparation, I hope that we might consider how the lessons we impart to our students can inform our work. Coaching students in the skill of legal analysis is often the greatest hurdle of bar preparation. A student who exhibits poor legal analysis is typically a student who fails to engage the facts. This student might restate a memorized premise of law followed directly by a conclusion — skipping over the analysis entirely. But when we train students to engage the facts of a depicted reality, we ask them to hold up each provided fact. In doing so, they can declare with confidence what that fact means under the law we equip them to engage in, and demonstrate their legal analysis which results in points on the bar exam and compelling arguments in practice. Often students struggle wielding the authority to declare the meaning of facts under the law. After three years of Socratic classrooms, assigned class rankings, and job listings that preclude 90% of the applicant population, it's unsurprising that these students struggle when asked to assert their authority and voice as a legal practitioner when all other indicators suggest that they lack what it takes to practice the law.

As we consider our work, I believe we can crib from the lessons we give our students. First, we can question our profession's premises. A repeated assertion begins to sound like a reliable premise or, at a minimum, a premise that we memorize and ourselves then repeat. But like the bald concepts of law that our students utter in the hopes of engaging in meaningful analysis, true analysis requires the application to facts. We might ask ourselves, as we ask our students: What are the facts of our work? What is the nature of these facts? How do these facts hold up against the repeated premises of our work? Academic support program (ASP) educators are consistently those people in the law school building with the greatest access to facts and data about the law student learning experience. This means that the analysis and insight and, importantly, research questions raised by ASP educators are reliable and potentially transformative. But these insights can only lead to impact when they are voiced and investigated. Just as the cumulative effect of the learning environment can undermine student confidence in their newfound legal voice, our work environments can cause us to question the value of our perspective as educators and advocates. This is particularly true of newcomers to the profession.

While navigating the summer of bar preparation, I hope that all ASP and bar prep colleagues will consider the absolute value of their work and their voices. As you continue to gain insight and raise inquiries about legal education and licensing, know that AccessLex is here to support you. I look forward to partnering with you.



Joel Chanvisanuruk, M.P.A., J.D.

Director, Programs for Academic and Bar Success  
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# DISTINGUISHED COMMENTARIES

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## Why Detroit Mercy Law Chose Criterion-Referenced Assessment Over Grading Curves

*Michelle Richards is an Associate Professor of Law, and Paula J. Manning is a Professor of Law and Assistant Dean for Academic Success and Bar Preparation. They teach at University of Detroit Mercy School of Law.*

As is typical in most law schools, Detroit Mercy Law employed a norm-referenced assessment system, namely a grading curve, that evaluated student performance in relation to the performance of other students in the class. In 2021, in light of faculty concerns that the grading curve was negatively impacting student motivation and effort, did not accurately reflect student's acquisition of knowledge and skills, and did not provide accurate or sufficient data for assessing whether students were achieving course learning outcomes for purposes of assessing the program of study, the faculty began examining alternate grading systems. The faculty ultimately voted to transition to criterion-referenced assessment (CRA) for all courses beginning in the fall of 2023.

CRA uses specific standards, which are described to students in advance of any assessment, to evaluate student performance. Rather than ranking students in relation to how they perform relative to other students in the class, CRA allows students' grades to be based on each student's individual performance in relation to the standards set by the professor about the level of knowledge or competency expected in each course. If the primary purpose of legal education is to prepare students for entry into the legal profession, and in support of that goal, to provide students with information about whether they have acquired the skills needed to practice law competently and successfully, an assessment and grading policy should inform students about their progress toward that goal.





In reaching its decision, the Detroit Mercy Law faculty considered the Carnegie Report and Best Practices for Legal Education, both of which favor criterion-referenced grading as a more reliable assessment method for evaluating student acquisition of knowledge and skills.<sup>1</sup> The faculty also noted that the ABA shift toward outcome measures was in part based on criticism of law school grading systems and a desire to encourage greater use of formative assessment and criterion-referenced, rather than norm-referenced, grading.<sup>2</sup> Scholars from the humanizing legal education movement, whose work has long highlighted the negative effects of grade curves on law student well-being, and the value of criterion-referenced grading for encouraging the deep learning created by intrinsic motivation was also persuasive.<sup>3</sup> At the end of its evaluation, the Detroit Mercy Law faculty concluded that “[i]f the goal of legal education is not merely to sort, but to ‘produce as many individuals proficient in legal reasoning and competent practice as possible,’”<sup>4</sup> CRA should be the method by which students are evaluated.

The faculty is confident that a successful switch to CRA will foster a more collaborative learning environment that will support the skills essential to developing good lawyers. Moreover, because CRA provides the ability to both collect and communicate more meaningful information about student performance and promotes a healthy learning atmosphere, it is the hope of the Detroit Mercy Law faculty that this change will also positively impact law students’ motivation, mindset, and preparation for law school and the bar exam.



1 William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* 169 (Jossey-Bass 2007) [hereinafter *Carnegie Report*]; Roy Stuckey et al., *Best Practices for Legal Education: A Vision and a Road Map* 245 (Clin. Leg. Educ. Assn. 2007).

2 See Section of Legal Educ. & Admissions to the Bar, Am. Bar Assn., *Report of the Outcome Measures Committee* 6–11 (July 27, 2008).

3 Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 Washburn L.J. 247, 274, 297–99 (2008); Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. Rev. 879, 892 (1997); Leslie M. Rose, *Norm-Referenced Grading in the Age of Carnegie: Why Criteria-Referenced Grading Is More Consistent with Current Trends in Legal Education and How Legal Writing Can Lead the Way*, 17 J. Legal Writing Inst. 123 (2011); see also Rebecca Flanagan, *Lucifer Goes to Law School: Towards Explaining and Minimizing Law Student Peer-to-Peer Harassment and Intimidation*, 47 Washburn L.J. 453, 461–464 (2008); Susan Grover, *Personal Integration and Outsider Status as Factors in Law Student Well-Being*, 47 Washburn L.J. 419, 427 (2008).

4 *Carnegie Report*, *supra* note 1, at 168.

# RESEARCH SPOTLIGHT

## How Are Bar Exam Results Reported?

Nachman N. Gutowski is the Director of the Academic Success Program and Assistant Professor-in-Residence at William S. Boyd School of Law University of Nevada, Las Vegas. More of his writing on this subject can be found in Nachman N. Gutowski, ***STOP THE COUNT: The Historically Discriminatory Nature of the Bar Exam Requires Adjustments in How Bar Passage Rates Are Reported, If at All***, 21 *Seattle J. Soc. Just.* 589 (2023) and Nachman N. Gutowski and Kayla S. Bell, ***How Are Bar Exam Results Reported? A National Guide*** (February 1, 2023).

Once the February and July bar exams are finished, then begins the waiting game for bar results. Nationally:

- 45 of the 56 jurisdictions provide a public release of bar passage results
- 41 utilize the Uniform Bar Exam (passing score ranges 260-280 out of 400)
- 40 include a public list of passers
  - 35 release a list of names of passing examinees
  - Five release an anonymized list
- 36 provide an overall pass rate
- 28 provide data on first-time takers (though definitions are inconsistent)
- 22 provide data on repeat-takers
  - 13 provide basic data
  - Nine provide detailed data (e.g., attempt number)
- 21 provide additional information such as in-state, out-of-state, and ABA-accreditation status
- 19 identify the school from which examinees graduated
  - 12 identify in-state schools only
  - Four identify all schools nationally
  - Three identify something in between

What should become readily apparent is that where press releases exist, they vary wildly in their scope, content, and even definitional starting point for terms as simple as “first time.” These public-facing releases are used and relied upon by students, administrators, and others to make a wide variety of decisions and inferences related to law schools. Factors such as how strong a school’s educational program is, whether to transfer to a school with “better” results, and even fundraising opportunities are impacted. The reality is that these numbers are compiled and presented by what are otherwise reliable entities and are therefore taken at face value, after a cursory glance, and without any additional context or time for clarification.

However, these reports have been known to be error prone, as well as susceptible to manipulation and gamification. By identifying how and what a jurisdiction reports, schools can, and do, adjust how they respond to those identifiers. From encouraging students to postpone, sitting in a separate jurisdiction first, splitting an exam, or even targeting transfer students to “change their denominator,” these releases breed issues. This is all made worse when we consider the schools which tend to “underperform” contain high numbers of students who are otherwise diversifying the legal profession. To disparage and present potentially misleading or incomplete data, particularly when attached to a specific school or first-time status, serves no reasonably meaningful purposes. Would it be nice to have all students pass on the first attempt? Sure. Unfortunately it is not possible, nor is it required by the ABA, nor even an indicator of a better attorney. Let’s stop pretending otherwise.

The Bar Passage standard for accreditation by the American Bar Association is Standard 316. While a handful of states have the option for state or regional accreditation of law schools as well, the ABA remains the default and accepted standard for all 56 jurisdictions. With a massive increase in jurisdictions adopting the UBE, and the current wide range of potential scores, there is another problem that is rising to the surface. A school may have its students fail on their first attempt in a high cut-score jurisdiction, say 270 or higher, yet be able to instantaneously transfer that score to another lower score state. This means that on the annual required ABA reporting questionnaire, it is plausible and even reasonably conceivable for a school to have a 0% first-time pass rate, yet on the same form report 100% ultimate bar passage. This is possible with the same students, only having sat for a single UBE test. Yet anyone who would look at the public press release would surely come to the conclusion that the school is in trouble. Furthermore, with recent changes in *U.S. News & World Report* ranking metrics placing significantly increased focus on first time bar passage rates, and utilizing ‘public information,’ this topic is timely.

The solutions are straightforward. First, every jurisdiction who publishes any public data should do an inventory of what they release and understand why they are doing so, as well as what impact it has. Desire to provide public information on successful candidates is easily achieved by releasing only a public list of passing examinees. Many states already do this. Additional percentages, particularly as they relate to first-time or school specific data, are not adding anything helpful and are causing harm. Those jurisdictions which provide school specific information under the guise of helping potential students make “informed” decisions about the law schools are out of line with their authority and mandate. Sufficient data already exists through the ABA. Second, the ABA needs to remove all reference to first-time status in their questionnaire now that it is no longer part of the accreditation standard. Less ideally, but alternatively, the ABA needs to clarify and adjust their language to include UBE examinees who transfer their score after a single sitting. Finally, if a law school generated bar passage reporting requirement remains in place (it shouldn’t — the ABA should collect this information from the jurisdictions and the NCBE directly, and leave the schools out of it), the NCBE must proactively provide all data they have about UBE transfer examinees, for free, to the schools. This is particularly important information within the first two years of graduation.



## Building Belonging: Proven Methods to Decrease Attrition and Best Serve Law Students

*Leila Lawlor is the Director of the LL.M. Program, Study-Abroad Program, and Academic Success Program at Georgia State University College of Law. The full article will be published in the Tennessee Law Review in early 2024.*

A crucial task for legal educators is to determine how to retain our students, especially those who may be most vulnerable to attrition — first-generation students and students of color. This article looks at nine similarly situated ABA-accredited law schools and assesses these schools’ success at retaining their students. The nine schools are all public, operate both part-time and full-time J.D. programs, generally enjoy above average diversity, and have somewhat similar national rankings. The nine schools also report similar median LSAT scores and undergraduate GPAs of recent incoming classes. The overall attrition rates and attrition rates for students of color vary somewhat among these schools; however, taken as a whole, the nine schools show a downward trend in attrition over the last 11 years. The number of law school applications has increased within the last few years, a trend seen both nationally and within the schools studied for this article. This upward trend in the number of applications has enabled law school admissions teams to be more selective. Because of this development, incoming classes in these nine schools have generally shown a corresponding upward trend in median LSAT scores and undergraduate GPAs, a trend which may partially explain the simultaneous decrease in attrition; however, the reduction in attrition can also be tied to increased, intentional efforts to retain students. These efforts have focused mostly on 1L students, as the great majority of law school attrition occurs at the end of the 1L academic year.

Interviews were conducted with the nine schools’ academic success directors, other law school administrators and faculty, and alumni to determine methods that are most effective in retaining students. These successful methods can be divided into three general categories: (1) providing friendly, readily available, visible assistance to students with pending needs; (2) incorporating specific, important lessons in academic success programming; and (3) intentionally building an immediate, caring community. Within each of these three categories, specific approaches and procedures were identified. A practical, hands-on model of best practices was developed from this study of successful institutions and from the guidance of experienced law school educators, administrators, and alumni.



# What Is Quality? Advancing Value-Added Approaches to Assessing Law School Bar Exam Performance

Jason M. Scott is Director of Research at AccessLex Institute. A full version of this paper (under peer review) can be found [here](#) and a shorter version [here](#).

When evaluating law schools, how is “quality” defined? And just as importantly, how is it measured? These questions have gained greater consideration in light of the recent *U.S. News* rankings boycott and new and heightened critiques of its methodology.

We propose an alternative to the *U.S. News* law school rankings by defining the value of a law school program as the difference between its likely bar pass rate differential and the pass rate differential its graduates achieve. When the difference between these two values is positive, the school overperforms its expectations, and vice versa. Unlike conventional rankings, like *U.S. News*, that assign ranked values to law schools based on the characteristics of their incoming classes (for example, LSAT scores and undergraduate GPA), we utilize these preadmission characteristics to determine a baseline measure of a law school’s selectivity. We then use this measure of law school selectivity to determine the estimated bar exam pass rate for that law school. Finally, we compare this estimated pass rate with the actual pass rate of the institution. This is meaningful as the difference between the estimated and actual pass rate is what remains unexplained and is what we define as the value that a law school program adds to its students’ chances of passing the bar exam.

There are additional steps and benefits to our value-added approach that warrant elaboration. For one, our value-added approach includes law school attrition and transfer-in data to better estimate predicted pass rate differentials at the time of admission. Second, by focusing on the difference between predicted and actual pass rate differentials of individual schools, we effectively control for variations between jurisdictions’ bar exam composition and cut scores.

To construct our value-added models, we use the data for cohorts that entered in 2010–2015 at 186 ABA-accredited law schools. To capture overall value added (VA), we rank each school by its VA for each year and then average those ranks. The top 25 schools are listed in Box 1.

**BOX 1**  
**Top 25 Value-Add Schools**  
 Based on Average Rank of Value Add 2013-2018

- |                                     |  |
|-------------------------------------|--|
| 1. Nova Southeastern University     | 14. Distict of Columbia                  |
| 2. Widener Commonwealth             | 15. University of Tennessee              |
| 3. Willamette University            | 16. University of Arkansas - Little Rock |
| 4. Florida International University | 16. Saint Louis University               |
| 5. Roger Williams University        | 18. University of St. Thomas (Minnesota) |
| 6. Texas Southern University        | 19. University of Missouri-Kansas City   |
| 7. University of Illinois           | 19. Quinnipiac University                |
| 8. University of South Dakota       | 21. Atlanta’s John Marshall Law School   |
| 9. Northern Illinois University     | 21. University of Arizona                |
| 10. Washington and Lee University   | 21. Mississippi College                  |
| 11. Campbell University             | 24. Brooklyn Law School                  |
| 11. University of Toledo            | 24. University of Wyoming                |
| 13. Ohio Northern University        |  |



Most notably, we find that:

- Not a single T14 school is on the list of our Top 25 Value-Add Schools. This means that according to our methods, institutions that are commonly considered the top law schools by traditional rankings do not have the highest value-added for their students.
- Two of six HBCU law schools are listed among our Top 25 (Texas Southern University, 6<sup>th</sup>; and District of Columbia Law, 14<sup>th</sup>), and two others are in the top two-thirds of the averaged rankings: Southern University, 88<sup>th</sup>; and Howard University, 124<sup>th</sup>.

Although schools with higher median LSAT scores and median undergraduate GPAs (UGPAs) tend to have greater pass differentials (e.g., T14 schools), this does not mean that students possessing lower LSAT scores or UGPAs are predisposed to pass or fail the bar exam. Quite the contrary, our results show that what certain law schools do on a day-to-day basis drives student success on the bar exam.

Our findings have many useful applications, but two applications are at the forefront: 1) non-compliance with ABA Standard 316, and 2) the use of holistic measures of law school quality.

First, if a law school is found in non-compliance with Standard 316, the school could use its value add as a metric of achievement. Some law schools admit students with below-average admissions criteria or racially/ethnically underrepresented students as part of a commitment to diversity, equity, and inclusion. Our value-added assessment provides access-oriented law schools with evidence that they are contributing significant value to their students and the profession, even if their overall two-year pass rate falls short of 75 percent.

Second, our value-added approach does not punish schools for admitting candidates with low admission test scores and likewise does not privilege those that mainly admit students with already high academic achievement. We argue that quality should be measured not by the characteristics of the admitted students or the reputation of the school, but instead by the ability of schools to prepare their students for the bar exam, a required step on the path to becoming a legal professional. We plan to extend this work to include employment outcomes later this year.

# ORGANIZATION UPDATE

## Association of Academic Support Educators (AASE)

*Ashley M. London is an Assistant Professor of Law and Director of Bar Studies at the Thomas R. Kline School of Law of Duquesne University and the current AASE president.*

The Association of Academic Support Educators (AASE) was proud to celebrate its 10<sup>th</sup> anniversary at the annual conference this May at Santa Clara University School of Law in Santa Clara, California. AASE is the only national non-profit organization dedicated to supporting the professional development of academic success educators, who work to ensure legal education is accessible to all students.

This year's conference focused on one of the biggest changes facing law schools, students, and educators today — the NextGen bar examination. Promulgated by the National Conference of Bar Examiners (NCBE), this new lawyer licensing exam is purportedly launching in 2026. If the exam measures both legal knowledge and skills “holistically through a mix of item formats,” as stated on the NCBE website, the work of both academic support and bar preparation professionals becomes even more critical for law schools. Always student-centered, these professionals serve on the frontlines of legal pedagogical and curricular reforms at law schools across the country and are the experts in the field who can help their law schools and students rise to meet this challenge.

AASE is committed to staying abreast of the developments with the NextGen exam. Its Bar Advocacy Committee, chaired by Professor Marsha Griggs of Saint Louis University School of Law, is working tirelessly to ensure the most up-to-date information and knowledge about NextGen is made available to its entire membership. In May 2023, the AASE Bar Advocacy Committee hosted a special moderated Q&A session with the NCBE, which focused on the rollout, scoring, and training for the NextGen Exam. The academic support community is uniquely positioned to help law schools transition to the new bar exam format.

In addition to conference programming, AASE's unique partnership with AccessLex to provide AASE Faculty Scholarships to enhance the professional development of all academic support faculty and staff members continues to assist in producing compelling and relevant scholarship. Scholarship is the currency of the realm in legal academia, and by subsidizing the important contributions from ASP and bar preparation professionals, AccessLex helps elevate the importance of legal pedagogy as a study, as well as promote the career trajectory of the authors. As a result of this program, its mentoring component, and the scholarship produced by its recipients, a number of us have moved from non-tenured or staff positions at our law schools to the tenure track.



Moving into our next decade, I'd like to take a moment to encourage all ASP and bar preparation professionals to get to know us a little better. In spite of all of our successes over the past decade, we have yet more to accomplish. As an AASE founder, former president, and long-term member, Jamie Kleppetsch, Assistant Professor of Legal Practice at the DePaul University College of Law, noted in her May 3 Law School Academic Support [blog post](#), “We have done a lot in our short life, but we still have more work to do.” Goals such as creating our own journal (an idea we have batted around since 2015) can only be realized if we work together and forge ahead with vision and combined strength.

Our Bi-Annual Diversity Conference will be held October 11-13, 2023, at the American University Washington College of Law in Washington, D.C. AASE's commitment to diversity, equity, and inclusion in the legal profession and the legal academy has been a cornerstone of our existence. In fact, academic support is rooted in the efforts of law schools to diversify the profession. We continue to stand at the frontlines today. In the words of Russell McClain, former AASE president and now the Dean for Diversity and Inclusion and Director for the Academic Achievement Program of the University of Maryland Carey School of Law, in his [post](#) on the Law School Academic Support blog, “We are purveyors of growth mindset, bulwarks against stereotype threat, sowers of academic and social belonging, defenders from imposter syndrome, and catalysts of self-efficacy and high aspirations.”

As ASP and bar preparation professionals, we are used to being the ones providing support to our students and our institutions. AASE is an organization that supports us! We always need the fresh ideas and perspectives of new members on our committees such as our Assessment Committee, which produced a comprehensive survey of ASP and bar preparation programs, salaries, and more this year. There is a place for you at AASE. Looking forward to meeting you and working with you as we continue to grow this important academic discipline!

For more information about AASE, our conferences, and our committees, please [visit our website](#).



# CONFERENCE CORNER

- [American Association of Law Libraries Annual Meeting](#) (July 15-18)
- [Southeastern Association of Law Schools Conference](#) (July 23-29)
- [Legal Education's Next Generation: Embracing Online, ChatGPT and Technology in Pedagogy and Practice](#) (September 21-23)
- [AccessLex Legal Education Research Symposium](#) (November 7-8)
- [LexCon '23 Financial Capability and Student Success Conference for Graduate and Professional Administrators](#) (November 8-10)
- [Association for the Study of Higher Education Annual Conference](#) (November 15-18)

Please email [RTB@accesslex.org](mailto:RTB@accesslex.org) about upcoming bar-related conferences.

# PUBLICATIONS AND POSTS

- Joe Buffington, [\*Conditional Answers to Multiple-Choice Questions: Three Linguistic Problems \(and Solutions\) for "If"\*](#), 69 J. Legal Educ. 384 (2023).
- Catherine Martin Christopher, [\*Toward a Modern Diploma Privilege: Assessing Experiential Education\*](#) (2023).
- Scott DeVito et al., [\*Onerous Disabilities and Burdens: An Empirical Study of the Bar Examination's Disparate Impact on Applicants From Communities of Color\*](#), Pace L. Rev. (forthcoming 2023).
- Jane Bloom Gris  & Dorothy Evensen, [\*Getting It Right From the Start\*](#), Tenn. L. Rev. (forthcoming 2023).
- Rachel Gurvich et al., [\*Reimagining Langdell's Legacy: Puncturing the Equilibrium in Law School Pedagogy\*](#), 101 N.C. L. Rev. (forthcoming 2023).
- O.J. Salinas, [\*Secondary Courses Taught by Secondary Faculty: A \(Personal\) Call to Fully Integrate Skills Faculty and Skills Courses Into the Law School Curriculum Ahead of the NextGen Bar Exam\*](#), 107 Minn. L. Rev. (forthcoming 2023).
- Jason M. Scott et al., [\*Protecting Diversity: Can We Afford to Throw Out Grutter Before Its Expiration Date?\*](#) (2023).
- Jason M. Scott et al., [\*Putting the Bar Exam to the Test: An Examination of the Predictive Validity of Bar Exam Outcomes on Lawyering Effectiveness\*](#) (2023).
- Donald Tobin, [\*A Preliminary Analysis of the New U.S. News Law School Rankings\*](#), TaxProf Blog (May 10, 2023).
- Paige Wilson, [\*Beyond the U.S. News & World Report "Best Law Schools" Ranking\*](#) (May 16, 2023).

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

# 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 Bar Passage Outcomes](#)
- [ABA Statistics](#)
- [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](#)
- [AccessLex® Student Loan Calculator](#)
- [MAX by AccessLex®](#)
- [ABA Scholarships and Financial Aid](#)

## 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](#)
- [CALI Lessons](#)

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

# JOIN THE CONVERSATION

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### ***Raising the Bar***

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