RAISING THE BAR

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

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What We Know and What We Think We Know in 2021

This Summer's *Raising the Bar* serves as a Resource Guide for those exploring salient research findings regarding academic and bar exam success, and failure.

This information is particularly important as key decision-makers engage in thoughtful reviews of the attorney licensing process. It is also compelling for legal educators committed to continuous improvement of teaching and learning, curriculum and assessment, and the effective training of future professionals.

How we move forward will depend on the data we gather and how effectively we analyze findings from that data, and what information (data-driven and otherwise) and processes we use in making critical choices.

To assist those making decisions about law school admissions, curricular and co-curricular changes to legal education, the bar exam, and the attorney licensing process generally, we have put together a list of claims, with accompanying citations to research in the legal context that support those claims. Note that there is much important and highly relevant research in higher education outside of law that we intentionally did not list here, simply because we did not have space.

Some of the claims listed below are clearer cut than others. Many are limited in scope and thus only applicable to certain law schools, certain types of law school, or certain jurisdictions. It is thus important to carefully read each study when considering its findings in making decisions. The idea behind this list is not for readers to rely on any of the claims as conclusive in every instance, but to assist in providing a snapshot of what we know and think we know today, as we continue crucial conversations in our collective quest to empower tomorrow's lawyers.

I look forward to engaging in robust discussion with all of you, and invite you, as you review the resources listed in this issue, to share additional citations for future resource lists by emailing me at SBerman@accesslex.org.

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RESOURCES FOR BAR SUCCESS

Barriers to Bar Passage

The following lists many of the significant challenges facing law students and bar exam applicants.

Time Barriers

- Insufficient time spent studying because of outside work or caretaking responsibilities, or lack of support network
- Inadequate time management
- Failing to anticipate how much time is needed for bar exam preparation
- Lack of focus or discipline when studying
- Emergency events outside the student's control (e.g., death of a loved one, car accident, or theft of computer)

Knowledge Barriers

- Insufficient knowledge of legal rules and doctrine tested on the exam
- Insufficient memorization of legal rules and doctrine tested on the exam
- Insufficient understanding of how to apply legal rules to fact patterns
- Learning and being taught in ways that do not align with the bar exam assessments
- Self-assessing and being tested in ways that do not align with the bar exam assessments
- Misinterpreting or failing to understand bar exam instructions

Financial Barriers

- Insufficient funds for a bar review course
- Insufficient funds for living expenses during months of bar preparation, including for living and working spaces conducive to intensive study
- Stress or strain associated with financial dependents
- Insufficient funds for bar exam registration fees, travel to and from bar exam testing site, computer equipment, reliable internet connection, and other related expenses
- Anxiety around financial insecurity (e.g., fear of not getting a job after graduation and being unable to repay student loans)
- Unexpected expenses during the bar preparation period

Skills Barriers

- Insufficient foundation in critical reading and effective writing
- Insufficient development of analytical thinking and logical reasoning skills
- Insufficient bar exam writing skills
- Inadequate practice testing, including insufficient analysis of practice tests and answers, failure to thoroughly understand mistakes made and how to remedy them, and starting the process of taking practice tests too late in the bar exam preparation period
- Slow or inaccurate typing skills
- Difficulties completing required analysis within the allotted time constraints
- Difficulties completing required analysis in the mode required (for online exams)
- Insufficient or inefficient memorization skills
- Inflated sense of skills and knowledge (Dunning–Kruger effect)

Health Barriers

- Insufficient sleep

- Sub-optimal diet

- Lack of exercise

- Eyesight issues

- Illnesses and medical emergencies (for self or dependents)

- Drug or alcohol use

- Undiagnosed or unaccommodated learning disabilities

Testing Conditions Barriers

- Intrusive or distracting stimuli (e.g., being too cold or too hot during the exam, being hungry or thirsty during the exam, or noises at test site)

- Stress and anxiety associated with permitted and prohibited items at the testing site and other security protocols

- Insufficient time for breaks, including bathroom breaks or meal breaks

- Stressful or costly commutes to testing sites

- Difficulties with language and cultural nuances of questions, especially for international students and those for whom English is not a first language

- Challenges associated with the closed-book and time-pressured nature of the bar exam

- Challenges associated with remote exams

- Challenges with disabilities accommodations

Stigma, Internalized Bias, Stereotype Threat, and Test Anxiety–Related Barriers

- Belief that one's first-year grades, or other indicia (e.g., incoming LSAT), necessarily predict bar failure

- Identification with a demographic group that disproportionately fails the bar exam

- Fear of failure

- Fear of success (e.g., fear of being responsible for the lives and livelihoods of future clients)

- Heavy cognitive load (i.e., feeling overwhelmed by the amount of material that must be learned and memorized for bar success)

- Perceiving bar performance as a reflection of one's self worth and value

- Failure to identify and manage stress and anxiety issues (e.g., dread or fear of the exam, test anxiety, or belief that one can never do enough to pass the exam)

- Failure to seek help to address mental health issues (due to cultural, familial, or peer pressures against reaching out for help, concerns about moral character and fitness applications, or lack of access to or means to pay for mental health and wellness professionals)

- Law school faculty, staff, and administration lacking awareness of where to direct students for help (i.e., students "falling through the cracks")

- Feeling a sense of not belonging in the law school environment resulting in lack of full engagement in legal education and bar preparation processes

- Insufficient resiliency and grit, especially among students who may not previously have experienced academic setbacks

Bar Preparation Barriers

- Failure to complete work assigned in bar review course

- Exposure to multiple courses or contradictory materials

- Failure to discern substantive knowledge and skills tasks from necessary administrative tasks

- Underdeveloped metacognition

- Inadequate pacing of study and study breaks

- Not maximizing efficiency and learning strategies

- Taking ultimately inefficient shortcuts, such as listening to lectures on double or triple speed, but not actually understanding the material

- Conceptualizing bar review as only memorizing black-letter rules, without learning underlying concepts or how to apply rules to new fact patterns

- Insufficient quantity or quality of practice tests and other self-assessments

- Inadequate self-assessment (e.g., untimed assessments, only practice testing with certain subjects or formats, or failure to review or learn from model answers)

- Inconsistent or irregular review practices

- Relying on a review course that is not pedagogically sound, or not taking a review course at all

- Frustration that the exam requires memorization of rules that applicant is not likely to use or need in practice

- Insufficient accountability (stemming from combination of independent study nature of many courses and insufficient self-directed learner skills)

- Relying on misinformed advice or guidance (e.g., from those who are not aware of current bar exam practices or formats, or those who predict what will and will not be tested)

- Treating the bar exam itself as a "practice test" with the expectation of passing the second time

Resource Guide to Academic and Bar Success

As noted in this issue's **From the Director** *column, below are selected claims that form a foundation for current thinking about bar passage barriers and what may predict, relate to, or promote bar success. They are each accompanied by selected studies and articles that support these claims. Resources under each claim are listed in chronological order by publication date.*

This list is not meant to be exhaustive, but to serve as a starting place to guide readers to relevant resources. The inclusion or omission of any study is neither endorsement nor critique. It is for readers to assess the applicability to specific situations of the claims and resources below, some of which are limited in scope. We look forward to engaging together in robust and ongoing discussion about what we know and what additional research we need to be informed decision-makers in legal education and attorney licensing.

Pre-Admission Predictors of Bar Success

Undergraduate GPAs are positively correlated with bar passage, although the extent and context of the correlation varies.

- Linda F. Wightman, *LSAC National Longitudinal Bar Passage Study* (1998)

- Nicholas Georgakopoulos, *Bar Passage: GPA and LSAT, Not Bar Reviews* (2013)

- Katherine Austin et al., *Will I Pass the Bar Exam?: Predicting Student Success Using LSAT Scores and Law School Performance* (2017)

- Amy Farley et al., *Law Student Success and Supports: Examining Bar Passage and Factors That Contribute to Student Performance* (2018)

- Andrea A. Curcio et al., *Measuring Law Student Success from Admissions Through Bar Passage: More Data the Bench, Bar and Academy Need to Know* (2019)

- Aaron N. Taylor et al., *It's Not Where You Start, It's How You Finish: Predicting Law School and Bar Success* (2021)

LSAT scores are positively correlated with bar passage, although the extent of the correlation varies as does the applicability to particular law schools.

- Linda F. Wightman, *LSAC National Longitudinal Bar Passage Study* (1998)

- Nicholas Georgakopoulos, *Bar Passage: GPA and LSAT, Not Bar Reviews* (2013)

- Scott Johns, *Testing the Testers: The National Conference of Bar Examiners' LSAT Claim and a Roller Coaster Bar Exam Ride* (2016)

- Katherine Austin et al., *Will I Pass the Bar Exam?: Predicting Student Success Using LSAT Scores and Law School Performance* (2017)

- Jerome M. Organ, *Net Tuition Trends by LSAT Category from 2010 to 2014 with Thoughts on Variable Return on Investment* (2017)

- Amy Farley et al., *Law Student Success and Supports: Examining Bar Passage and Factors That Contribute to Student Performance* (2018)

- Andrea A. Curcio et al., *Measuring Law Student Success from Admissions Through Bar Passage: More Data the Bench, Bar and Academy Need to Know* (2019)

- Aaron N. Taylor et al., *It's Not Where You Start, It's How You Finish: Predicting Law School and Bar Success* (2021)

Additional and alternative law school admissions criteria are needed, along with further study of factors predicting law school success.

- Marjorie M. Shultz and Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions* (2011)

- Aaron N. Taylor, *Reimagining Merit as Achievement* (2014)

- John Fordyce et al., *Predicting First-Year Law School Performance: The Influences of Race, Gender, and Undergraduate Major* (2015)

- Alexia Brunet Marks and Scott A. Moss, *What Predicts Law Student Success? A Longitudinal Study Correlating Law Student Applicant Data and Law School Outcomes* (2016)

- David M. Klieger et al., *The Validity of GRE General Test Scores for Predicting Academic Performance at U.S. Law Schools* (2018)

- Erin Thompson, *Law Schools are Failing Students of Color* (2018)

- Aaron N. Taylor, *The Marginalization of Black Aspiring Lawyers* (2019)

Many law students come to law school with major skills deficiencies.

- Rebecca Flanagan, *The Kids Aren't Alright: Rethinking the Law Student Skills Deficit* (2014)

- Brett A. Brosseit, *Charting the Course: An Empirically Based Theory of the Development of Critical Thinking in Law Students* (2016)

- Patricia Grande Montana, *Bridging the Reading Gap in the Law School Classroom* (2017)

Learning During Law School Impacts Bar Passage

Both 1L LGPA and final LGPA positively correlate with bar passage.

- Katherine Austin et al., *Will I Pass the Bar Exam?: Predicting Student Success Using LSAT Scores and Law School Performance* (2017)

- Amy Farley et al., *Law Student Success and Supports: Examining Bar Passage and Factors That Contribute to Student Performance* (2018)

- Andrea A. Curcio et al., *Measuring Law Student Success from Admissions Through Bar Passage: More Data the Bench, Bar and Academy Need to Know* (2019)

- Aaron N. Taylor et al., *It's Not Where You Start, It's How You Finish: Predicting Law School and Bar Success* (2021)

Law school GPA growth is positively correlated with bar passage.

- Aaron N. Taylor et al., *It's Not Where You Start, It's How You Finish: Predicting Law School and Bar Success* (2021)

There is little to no correlation between the number of upper division bar courses and bar passage, though this may vary by law school.

- Douglas K. Rush and Hisako Matsuo, *Does Law School Curriculum Affect Bar Examination Passage? An Empirical Analysis of Factors Related to Bar Examination Passage During the Years 2001 Through 2006 at a Midwestern Law School* (2007)

- New York State Board of Law Examiners and AccessLex Institute, *Analyzing First-Time Bar Exam Passage on the UBE in New York State* (2021)

Experiential learning courses do not have a negative impact on bar passage.

- Scott Johns, *A Statistical Exploration: Analyzing the Relationship (If Any) Between Externship Participation and Bar Exam Scores* (2018)

- Robert R. Kuehn and David R. Moss, *A Study of the Relationship Between Law School Coursework and Bar Exam Outcomes* (2019)

Students may benefit when bar exam preparation begins in 1L and is integrated into doctrinal instruction.

- Suzanne Darrow-Kleinhaus, *Incorporating Bar Pass Strategies into Routine Teaching Practices* (2002)

- Denise Riebe, *A Bar Review for Law Schools: Getting Students on Board to Pass Their Bar Exams* (2007)

- Derek Alphran et al., _Yes We Can, Pass the Bar—University of the District of Columbia, David A. Clarke School of Law Bar Passage Initiatives and Bar Pass Rates—From the Titanic to the Queen Mary!_ (2011)

- Emmeline Paulette Reeves, _Teaching to the Test: The Incorporation of Elements of Bar Exam Preparation in Legal Education_ (2015)

- Sabrina DeFabritiis, _1L Is the New Bar Prep_ (2017)

- Sara Berman, _Integrating Performance Tests into Doctrinal Courses, Skills Courses, and Institutional Benchmark Testing: A Simple Way to Enhance Student Engagement While Furthering Assessment, Bar Passage, and Other ABA Accreditation Objectives_ (2018)

- Aaron N. Taylor et al., _It's Not Where You Start, It's How You Finish: Predicting Law School and Bar Success_ (2021)

Participation in academic success and bar preparation programs improves bar performance.

- Kristine S. Knaplund and Richard H. Sander, _The Art and Science of Academic Support_ (1995)

- Linda Jellum and Emmeline Paulette Reeves, _Cool Data on a Hot Issue: Empirical Evidence That a Law School Bar Support Program Enhances Bar Performance_ (2005)

- Donald H. Zeigler et al., _Curriculum Design and Bar Passage: New York Law School's Experience_ (2010)

- Derek Alphran et al., _Yes We Can, Pass the Bar. University of the District of Columbia, David A. Clarke School of Law Bar Passage Initiatives and Bar Pass Rates—From the Titanic to the Queen Mary!_ (2011)

- Scott Johns, _Empirical Reflections: A Statistical Evaluation of Bar Program Interventions_ (2016)

Extensive time spent on non-law responsibilities such as caring for dependents or working a non-law-related job negatively impacts LGPA and bar passage.

- New York State Board of Law Examiners and AccessLex Institute, _Analyzing First-Time Bar Exam Passage on the UBE in New York State_ (2021)

- Joshua L. Jackson and Tiffane Cochran, Approaching the Bar: An Analysis of Post-Graduation Bar Exam Study Habits (forthcoming 2021)

- Aaron N. Taylor et al., _It's Not Where You Start, It's How You Finish: Predicting Law School and Bar Success_ (2021)

Optimal learning strategies should draw on concepts like metacognition, self-regulated learning, retrieval practice, and spaced repetition.

- Brett A. Brosseit, _Charting the Course: An Empirically Based Theory of the Development of Critical Thinking in Law Students_ (2016)

- Jennifer M. Cooper, _Smarter Law Learning: Using Cognitive Science to Maximize Law Learning_ (2016)

- Gabriel H. Teninbaum, _Spaced Repetition: A Method for Learning More Law in Less Time_ (2017)

- Lea M. Bartsch et al., _The Effects of Refreshing and Elaboration on Working Memory Performance, and Their Contributions to Long-Term Memory Formation_ (2018)

- Jennifer M. Cooper and Regan A. R. Gurung, _Smarter Law Study Habits: An Empirical Analysis of Law Learning Strategies and Relationship with Law GPA_ (2018)

- Louis Schulze, _Using Science to Build Better Learners: One School's Successful Efforts to Raise Its Bar Passage Rates in an Era of Decline_ (2019)

- Raul Ruiz, _Leveraging Noncognitive Skills to Foster Bar Exam Success: An Analysis of the Efficacy of the Bar Passage Program at FIU Law_ (2020)

The systematic assessment of learning outcomes can aid in improving academic and bar success.

- Cara Cunningham Warren, *Achieving the American Bar Association's Pedagogy Mandate: Empowerment in the Midst of a "Perfect Storm"* (2014)

- Mark Albanese and Susan M. Case, *Progress Testing: Critical Analysis and Suggested Practices* (2016)

- Laura Dannebohm and Adam Lamparello, *The Death of Academic Support: Creating a Truly Experiential, Integrated, and Assessment-Driven Academic Success and Bar Preparation Program (Part I of II)* (2016)

- Joni Larson, *Getting Up to Speed: Understanding the Connection Between Learning Outcomes and Assessments in a Doctrinal Course* (2017)

- Daniel Schwarcz and Dion Farganis, *The Impact of Individualized Feedback on Law Student Performance* (2017)

- James McGrath and Andrew P. Morriss, *Assessments All the Way Down* (2018)

Fostering a growth mindset may improve academic and bar performance.

- Rebecca A. Cochran, *Hope, Again: Hope Theory in Bar Exam Preparation* (2010)

- Sarah J. Adams-Schoen, *Of Old Dogs and New Tricks—Can Law Schools Really Fix Students' Fixed Mindsets?* (2014)

- Sue Shapcott et al., *The Jury Is In: Law Schools Foster Students' Fixed Mindsets* (2017)

- Catherine Martin Christopher, *Normalizing Struggle* (2019)

- Victor D. Quintanilla et al., *Evaluating Productive Mindset Interventions that Promote Excellence on California's Bar Exam* (2020)

- Aaron N. Taylor et al., *It's Not Where You Start, It's How You Finish: Predicting Law School and Bar Success* (2021)

Utilizing optimal study methods, such as self-testing and periodic review, improves academic performance. The conventional wisdom on which study methods are effective is not always accurate.

- Jeffrey Minneti, *Work Drive Matters: An Assessment of the Relationship Between Law Students' Work-Related Preferences and Academic Performance* (2016)

- Jennifer M. Cooper and Regan A. R. Gurung, *Smarter Law Study Habits: An Empirical Analysis of Law Learning Strategies and Relationship with Law GPA* (2018)

- Colleen P. Murphy et al., *Note-Taking Mode and Academic Performance in Two Law School Courses* (2019)

- Chance Meyer, *Highlighter Junkies* (2021)

Professional identity formation is important to bar success and to becoming an effective lawyer.

- Kennon M. Sheldon and Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory* (2007)

- Neil W. Hamilton et al., *Empirical Evidence That Legal Education Can Foster Student Professionalism/Professional Formation to Become an Effective Lawyer* (2012)

- Neil W. Hamilton and Jerome M. Organ, *Each Law Student Must Take Increasing Ownership Over Professional Development During Law School* (2018)

- Neil W. Hamilton, *Fostering Student Growth Toward Later Stages of Self-Directed/Self-Regulated Learning and Bar Success* (2020)

Students who feel a strong sense of belonging perform better academically.

- Timothy T. Clydesdale, *A Forked River Runs Through Law School: Toward Understanding Race, Gender, Age, and Related Gaps in Law School Performance and Bar Passage* (2004)

- Erin C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment* (2018)

- Law School Survey of Student Engagement, *The Cost of Women's Success* (2019)

- Louis M. Rocconi et al., *Beyond the Numbers: An Examination of Diverse Interactions in Law School* (2019)

- Law School Survey of Student Engagement, *Diversity and Exclusion* (2020)

- Victor D. Quintanilla et al., *Evaluating Productive Mindset Interventions that Promote Excellence on California's Bar Exam* (2020)

Students from historically underrepresented groups may suffer from imposter syndrome or stereotype threat that in turn affects law school success and bar passage.

- Jonathan P. Feingold and Doug Souza, *Measuring the Racial Unevenness of Law School* (2013)

- Catherine Martin Christopher, *Eye of the Beholder: How Perception Management Can Counter Stereotype Threat among Struggling Law Students* (2015)

- Russell A. McClain, *Helping Our Students Reach Their Full Potential: The Insidious Consequences of Ignoring Stereotype Threat* (2016)

- Christopher Birdsall et al., *Stereotype Threat, Role Models, and Demographic Mismatch in an Elite Professional School Setting* (2018)

Students of color benefit when they see professors, judges, and attorneys who look like them.

- Kellye Y. Testy, *Best Practices for Hiring and Retaining a Diverse Law Faculty* (2011)

- Christopher Birdsall et al., *A Law School Instructor Like Me: Race, Gender, and Ethnicity Dynamics in Law School* (2016)

- Christopher Birdsall et al., *Stereotype Threat, Role Models, and Demographic Mismatch in an Elite Professional School Setting* (2018)

- Renee Nicole Allen et al., *The 'Pink Ghetto' Pipeline: Challenges and Opportunities for Women in Legal Education* (2019)

- Aaron N. Taylor, *The Marginalization of Black Aspiring Lawyers* (2019)

Alcohol and drug use and mental health issues are widespread in law school and many students are reluctant to get help because they fear it will negatively impact their admission to the bar.

- Jerome M. Organ et al., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns* (2016)

Post-Graduate Bar Preparation

Post-graduate bar success programs can improve bar passage rates.

- Scott Johns, *Empirical Reflections: A Statistical Evaluation of Bar Exam Program Interventions* (2016)

- Mario W. Mainero, *We Should Not Rely on Commercial Bar Reviews to Do Our Job: Why Labor-Intensive Comprehensive Bar Examination Preparation Can and Should Be a Part of the Law School Mission* (2016)

Students who take more practice tests, especially under timed conditions, are more likely to pass the bar exam.

- Keith A. Kaufman et al., *Passing the Bar Exam: Psychological, Educational, and Demographic Predictors of Success* (2007)

- Hong Jiang et al., *A Preliminary Study Looking Beyond LSAT and LGPA: Factors During the Bar Study Period That May Affect Bar Exam Passage* (2019)

- Kathleen Elliott Vinson and Sabrina DeFabritiis, *Under Pressure: How Incorporating Time-Pressured Performance Tests Prepares Students for the Bar Exam and Practice* (2019)

- New York State Board of Law Examiners and AccessLex Institute, *Analyzing First-Time Bar Exam Passage on the UBE in New York State* (2021)

Students, including those from historically underrepresented groups, who engage in positive mindset interventions are more likely to pass the bar exam.

- Victor D. Quintanilla et al., _Evaluating Productive Mindset Interventions that Promote Excellence on California's Bar Exam_ (2020)

Costs related to bar preparation are significant and make it more difficult for lower income students to succeed.

- Hong Jiang et al., _A Preliminary Study Looking Beyond LSAT and LGPA: Factors During the Bar Study Period That May Affect Bar Exam Passage_ (2019)

Students who work during the bar preparation period, or have financial difficulties, experience greater challenges with bar passage.

- Stephen P. Klein and Roger Bolus, _Analysis of the 2004 Texas Bar Exam Results by Gender and Racial/Ethnic Group_ (2004)

- Hong Jiang et al., _A Preliminary Study Looking Beyond LSAT and LGPA: Factors During the Bar Study Period That May Affect Bar Exam Passage_ (2019)

- New York State Board of Law Examiners and AccessLex Institute, _Analyzing First-Time Bar Exam Passage on the UBE in New York State_ (2021)

- Joshua L. Jackson and Tiffane Cochran, Approaching the Bar: An Analysis of Post-Graduation Bar Exam Study Habits (forthcoming 2021)

Graduates from historically underrepresented groups often face greater difficulties during the bar preparation period, and this was magnified during the pandemic.

- Sarah J. Schendel, _Listen!: Amplifying the Experiences of Black Law School Graduates in 2020_ (2021)

Mental health and wellness are factors in bar passage.

- Keith A. Kaufman et al., _Passing the Bar Exam: Psychological, Educational, and Demographic Predictors of Success_ (2007)

- Patrick E. Shrout et al., _The Effects of Daily Support Transactions During Acute Stress: Results From a Diary Study of Bar Exam Preparation_ (2013)

- New York State Board of Law Examiners and AccessLex Institute, _Analyzing First-Time Bar Exam Passage on the UBE in New York State_ (2021)

Debate continues regarding how students with learning disabilities should be accommodated on bar exams.

- G.E. Zuriff, _Extra Examination Time for Students with Learning Disabilities: An Examination of the Maximum Potential Thesis_ (2010)

- Neha M. Sampat and Esmé V. Grant, _The Aspiring Attorney with ADHD: Bar Accommodations or a Bar to Practice_ (2013)

- John D. Ranseen, _Reviewing ADHD Accommodations Requests for the Bar Exam: What Has and Has Not Changed over 20 Years_ (2016)

- Ruth Colker, _Test Validity: Faster Is Not Necessarily Better_ (2018)

The relationship between bar exam cut scores and attorney discipline is debated.

- Leslie C. Levin et al., _A Study of the Relationship Between Bar Admissions Data and Subsequent Lawyer Discipline_ (2013)

- Robert Anderson IV and Derek T. Muller, _The High Cost of Lowering the Bar_ (2017)

- Jeffrey S. Kinsler, _Is Bar Exam Failure a Harbinger of Professional Discipline?_ (2017)

- Deborah J. Merritt, _Bar Exam Scores and Lawyer Discipline_ (2017)

- William Wesley Patton, _Admitting Law Graduates by Bar Examination Versus by a Diploma Privilege: A Comparison of Consumer Protection_ (2020)

- Mitchel L. Winick et al., _Examining the California Cut Score: An Empirical Analysis of Minimum Competency, Public Protection, Disparate Impact, and National Standards_ (2020)

- Mitchel L. Winick et al., _A Five-Year Retroactive Analysis of Cut Score Impact: California's Proposed Supervised Provisional License Program_ (2020)

- Kyle Rozema, _Occupational Licensing and Legal Services: Evidence from Diploma Privileges and Lawyer Sanctions_ (2021)

There is a correlation between a jurisdiction's bar exam cut score and its count of licensed minority attorneys.

- Douglas R. Ripkey and Susan M. Case, _A National Look at MBE Performance Differences Among Ethnic Groups_ (2007)

- Mitchel L. Winick et al., _Examining the California Cut Score: An Empirical Analysis of Minimum Competency, Public Protection, Disparate Impact, and National Standards_ (2020)

Debate continues regarding how best to reform attorney licensing.

- Deborah Jones Merritt et al., _Raising the Bar: A Social Science Critique of Recent Increases to Passing Scores on the Bar Exam_ (2001)

- Kristin Booth Glen, _How and Where We Enter: Rethinking Admission to the Legal Profession_ (2002)

- Jayne W. Barnard and Mark Greenspan, _Incremental Bar Admission: Lessons from the Medical Profession_ (2003)

- Jane E. Cross, _The Bar Examination in Black and White: The Black-White Bar Passage Gap and the Implications for Minority Admissions to the Legal Profession_ (2003)

- Lawrence M. Grosberg, _Standardized Clients: A Possible Improvement for the Bar Exam_ (2004)

- Michael Kane et al., _Impact of the Increase in the Passing Score on the New York Bar Examination_ (2006)

- Lorenzo Trujillo, _The Relationship Between Law School and the Bar Exam: A Look at Assessment and Student Success_ (2007)

- Gary S. Rosin, _Unpacking the Bar: Of Cut Scores and Competence_ (2008)

- Ben Bratman, _Improving the Performance of the Performance Test: The Key to Meaningful Bar Exam Reform_ (2014)

- Alli Gerkman and Elena Harman, _Ahead of the Curve: Turning Law Students into Lawyers_ (2015)

- Carol Goforth, _Why the Bar Examination Fails to Raise the Bar_ (2015)

- Joan W. Howarth, _The Case for a Uniform Cut Score_ (2017)

- Debra Moss Vollweiler, _"They're Digging in the Wrong Place": How Learning Outcomes Can Improve Bar Exams and Ensure Practice Ready Attorneys_ (2017)

- Roger Bolus, _Performance Changes on the California Bar Examination: Part 2_ (2018)

- Marsha Griggs, _Building a Better Bar Exam_ (2019)

- Joan W. Howarth and Judith Welch Wegner, _Ringing Changes: Systems Thinking About Legal Licensing_ (2019)

- Claudia Angelos et al., _The Bar Exam and the COVID-19 Pandemic: The Need for Immediate Action_ (2020)

- Deborah Jones Merritt et al., IAALS, _Building a Better Bar_ (2020)

- AccessLex Institute, _Raising the Bar_ (Spring 2021)

- NCBE Testing Task Force, _Final Report of the Testing Task Force_ (2021)

Additional Resources relating to Bar Success may be found in the **AccessLex Resource Collections (ARC) Bar Success Collection**.

Glossary of Bar-Related Terms

AASE: [Association of Academic Support Educators](). AASE's mission is to foster and promote the professional development of its members. This will, in turn, enable and encourage research-based teaching methods that enable law students to excel and to reach their full potential—including graduating, passing the bar, and practicing law.

ABA Disclosures: The ABA mandates that law schools annually report certain data (admissions, enrollment, financial aid, etc.). The ABA Section of Legal Education and Admissions to the Bar publishes this law school disclosure information [here]().

ASP: Academic Support Program or Academic Success Program. These programs vary widely in law schools and provide academic as well as nonacademic support to at-risk law students (and sometimes to entire student population). ASP is the term used for both the program and the professionals (sometimes faculty, but usually staff or administrative positions) who run the programs. Some schools separate ASP and Bar Success, while others join these efforts under one umbrella.

At-risk: Students who are in danger of not succeeding in law school or not passing the bar exam upon graduation. Schools use different measures for what constitutes "at-risk," many having a LGPA cut off (for example, everyone below 2.8 after their first semester might be deemed "at-risk"). Some schools identify incoming law students as "at-risk" based on incoming indicators such as lower LSAT or UGPA score.

Bar Examiner: A [publication of the NCBE]() that focuses on bar admissions and legal education.

Carnegie Report: Seminal study on legal education and the profession. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007). View a summary of the findings [here]().

Character and fitness: All U.S. jurisdictions evaluate prospective attorneys' backgrounds to ensure that they have the moral character required to practice law. Definitions of character and fitness, along with the processes for evaluating them, vary from jurisdiction to jurisdiction. Some jurisdictions use the [services of the NCBE]() for character and fitness.

Cut score: The minimum passing score on the bar exam in a jurisdiction. Cut scores are policy decisions, ideally based on input from psychometricians as well as content experts. *See* Michael T. Kane and Joanne Kane, *Standard Setting 101: Background and Basics for the Bar Admissions Community* (2018).

Daniel Webster Scholar Honors Program: Alternative (non-bar exam) attorney licensing path in [New Hampshire]() focused on experiential learning and practice skills.

Diploma privilege: Alternative attorney licensing path based on graduation from law school, rather than passing a bar exam. Currently [Wisconsin]() is the only state that offers diploma privilege (and only to graduates of Wisconsin schools). Some jurisdictions granted temporary diploma privilege to certain graduates in response to the 2020 COVID pandemic.

Equating: For any examination that is administered in different forms on a recurring basis, there will be slight differences in the difficulty of each administration. Equating is a statistical procedure used to adjust scores to ensure that test-takers are not unfairly penalized (or advantaged) by the difference between the difficulty of the form that was administered to them and previous forms. *See* Mark A. Albanese, [Equating the MBE]() (2015). *See also* **scaling**.

Facial recognition software: Software used for identity verification and required by some jurisdictions administering online bar exams.

LGPA: Law School Grade Point Average

LRW: Legal Research and Writing

LSSSE: Law School Survey of Student Engagement. Organization that provides research products and services centered on the study of the law student experience.

MacCrate Report: Seminal study on legal education and the legal profession. Am. Bar Ass'n, Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (1992). *See also* Roy Stuckey et al., Best Practices for Legal Education (2007) and the **Carnegie Report**.

MBE: Multistate Bar Examination. Standardized six-hour, 200-question multiple choice examination created by NCBE and administered by participating state bar examiners. The MBE covers Constitutional Law, Contracts, Criminal Law and Procedure, Civil Procedure, Evidence, Real Property, and Torts.

MEE: Multistate Essay Examination. Three-hour examination, consisting of six 30-minute essay questions, created by NCBE and administered by participating state bar examiners.

Minimum competence: The threshold level of knowledge, skills, and traits that every lawyer should possess. There are multiple definitions of minimum competence; some emphasize a particular body of knowledge of the law, while others emphasize particular research, writing, and advocacy skills. Recent studies, including IAALS's *Building a Better Bar* and NCBE Testing Task Force's *Practice Analysis*, have attempted to more concretely define minimum competence.

MPRE: Multistate Professional Responsibility Examination. Standardized two-hour, 60-question multiple choice examination for admission as an attorney at law. Prerequisite or co-requisite to the bar examination. Questions are based on the ABA Model Rules of Professional Conduct and the ABA Model Code of Judicial Conduct, as well as controlling constitutional decisions and principles, and in procedural and evidentiary rules.

MPT: Multistate Performance Test. Three-hour examination, consisting of two 90-minute lawyering tasks (such as writing a memo or brief), created by NCBE and administered by participating state bar examiners.

NCBE: National Conference of Bar Examiners. NCBE is a not-for-profit organization that works with other institutions to develop, maintain, and apply uniform standards of education and character for eligibility for admission to the practice of law. NCBE assists bar admission authorities by providing standardized examinations to nearly every jurisdiction in the United States. Current tests that NCBE provides are the MBE, MEE, MPRE, MPT, and UBE.

NextGen Bar Exam: NCBE's project to design and implement a redesigned bar exam by 2025.

State examinations: Exams that a state bar applicant must pass in addition to the exams created by the NCBE. For example, in addition to passing the Uniform Bar Exam (UBE), New York Bar Exam candidates must also take the New York Law Course (NYLC) and pass the New York Law Exam (NYLE).

Reliability: In the bar context, this is used to describe consistency of scores for different administrations. The bar exam's reliability is the degree to which "scores for a group of examinees would be consistent over multiple (theoretical) testing sessions." *See also* **validity**.

Scaling: A statistical procedure used by most U.S. jurisdictions to adjust the scores assigned by the scorers (the "graders") of the written portions of a bar exam. NCBE recommends that jurisdictions scale their written scores to the MBE and also offers such scaling as a service to jurisdictions. *See* Mark A. Albanese, *Scaling: It's Not Just for Fish or Mountains* (2014). *See also* **equating**.

Supervised practice: An alternative approach to attorney licensure in which recent law school graduates practice law under the supervision of a barred attorney.

UBE: Uniform Bar Exam. The Uniform Bar Examination (UBE) is coordinated by NCBE and is composed of the Multistate Essay Examination (MEE), Multistate Performance Test (MPT), and the Multistate Bar Examination (MBE). It is uniformly administered, graded, and scored by user jurisdictions and results in a portable score that can be transferred to other UBE jurisdictions.

UBE portability: Examinees who take the UBE earn a portable score that can be transferred to seek admission in other UBE jurisdictions.

UGPA: Undergraduate Grade Point Average

U.S. News & World Report: Media company that publishes rankings of colleges, law schools, and other educational programs.

Validity: "The extent to which a test measures what it purports to measure, and the degree to which evidence and theory support the interpretations of test scores for particular uses." The validity of a test is "the degree to which evidence and theory support the interpretation of test scores for proposed uses." Am. Educ. Rsch. Ass'n, Am. Psych. Ass'n, and Nat'l Council on Measurement in Educ., Standards for Educational and Psychological Testing 11 (2014). The determination of validity requires the input of both psychometricians and content experts (legal educators and legal professionals, in the case of the bar exam). *See also* **reliability**.

Additional Resources for Additional Resources for Legal and Law School Terminology
https://www.law.gmu.edu/ library/guides/glossary

RECENT ACCESSLEX RESEARCH

Jason Scott is a Senior Research Methodologist at AccessLex Institute.

In addition to regular updates to resources such as Analytix, XploreJD, and the *Legal Education Data Deck*, AccessLex has several research projects underway or recently completed. Below are some highlights.

AccessLex/LSSSE Bar Exam Success Initiative. Phase 1, a study of what factors affect students' academic and bar success was published as a working paper in March and presented at the AERA Annual Conference in April. The chief finding from that report is that law school GPA improvement is associated with greater odds of passing the bar exam. Phase 2 of the initiative began earlier this year and investigates the extent to which changes in "student engagement" relate to academic and bar success and whether improvements in undergraduate GPA are associated with greater academic success.

Nevada Bar Exam Study. Partnering with the University of California-Hastings College of Law, the Nevada Board of Bar Examiners, the State Bar of Nevada, and the Nevada Supreme Court, we are investigating whether bar exam scores are associated with levels of "lawyering effectiveness." In September, we will begin distributing surveys to lawyers who were admitted to the Nevada Bar between 2014 and 2019, asking them for a brief self-assessment and to provide contact information for those that would be able to provide a review of their skills. More information about the study can be found here.

Predicting Law Schools' Bar Success. In two separate projects, we are using ABA 509 and bar outcomes data to (1) explore whether changes in attrition and transfer rates are associated with changes in school bar pass rates, as suggested by Professor Bahadur and his coauthors; and (2) create a regression model that reliably predicts a school's bar passage rate differential to produce a measure of each school's "value added," which can be updated annually.

PUBLICATIONS, POSTS AND PODCASTS

Selected Recent Publications

- Rory D. Bahadur et al., *Reexamining Relative Bar Performance as a Function of Non-Linearity, Heteroscedasticity, and a New Independent Variable*, 52 N.M. L. Rev. (forthcoming 2021).

- Beth A. Brennan, *Explicit Instruction in Legal Education: Boon or Spoon?*, 52 U. Mem. L. Rev. (forthcoming 2022).

- Adam Chilton et al., *Improving the Signal Quality of Grades* (Apr. 3, 2021).

- Steven Foster, *Does the Multistate Bar Exam Validly Measure Attorney Competence?*, 82 Ohio State L.J. Online 31 (2021).

- Kris Franklin and Paula J. Manning, *Make It Work! Teaching Law Students to Get Great Supervision (Even When Supervisors Aren't That Great)* (NYLS Legal Stud. Rsch. Paper No. 3797175, 2021).

- David Adam Friedman, *Do We Need a Bar Exam...For Experienced Lawyers?*, 12 U.C. Irvine L. Rev. (forthcoming 2022).

- Milan Markovic, *In Defense of the Diploma Privilege* (Feb. 22, 2021).

- Mark R. Raymond et al., *The Testing Column: Ensuring Fairness in Assessment*, Bar Exam'r, Spring 2021, at 73.

- Eli Wald, *Formation Without Identity: Avoiding a Wrong Turn in the Professionalism Movement*, 89 UMKC L. Rev. 685 (2021).

Selected Recent Posts and Podcasts

- Ahead of the Curve, *Overcoming Low 1L Grades*, Law.com (Apr. 13, 2021).

- Elizabeth Gil, *INSIGHT: Beyond the Bar Exam—COVID-19's Call to the Legal World*, Bloomberg L. (Aug. 12, 2020).

- Natalie Runyon, *Exploring Diploma Privilege and Alternatives for Attorney Licensure*, Thomson Reuters (Apr. 13, 2021).

- Sam Skolnik, *Bar Exams May Soon Be Easier to Pass, as States Eye Changes*, Bloomberg L. (Mar. 29, 2021).

- Karen Sloan, *COVID-19 Blew Up the Bar Exam. Even Bigger Changes Are Coming.*, Nat'l L.J. (Apr. 1, 2021).

- Debra Cassens Weiss, *Several States Consider Lowering Cut Scores on Bar Exam, Making It Easier to Pass*, ABA J. (Mar. 29, 2021).

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.*

CONFERENCE CORNER

Recordings and Slides from Past Events

- [2020 AccessLex Legal Education Research Symposium](#) (Dec. 3, 2020)

- [Leveraging Student Engagement to Maximize Student Success,](#) AccessLex (Jan. 26, 2021)

- [Law & Leadership Conference](#), BYU Law School (Jan. 29, 2021)

Upcoming Events

- [American Association of Law Libraries Virtual Conference](#) (July 19–23, 2021)

- [Southeastern Association of Law Schools Annual Conference](#) (July 26–Aug. 1, 2021)

- [Online & Hybrid Learning Pedagogy](#), University of Denver Sturm College of Law (Sept. 30–Oct. 2, 2021)

- [AccessLex Legal Education Research Symposium](#) (Nov. 1, 2021)

- [LexCon '21 Financial Capability and Student Success Conference for Graduate and Professional Administrators](#), AccessLex (Nov. 2, 2021)

- [Association for the Study of Higher Education Conference](#) (Nov. 3–6, 2021)

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

INFORMATION ABOUT THE BAR EXAM

General Bar-Related Resources

- [Bar Information Guide](#)

- [ABA Bar Information for Applicants with Disabilities](#)

- [ABA Bar Passage Outcomes](#)

- [ABA Statistics](#)

- [AccessLex Resource Collections: Bar Success](#)

- [LibGuides](#)

- [Bar Exam Results by Jurisdiction](#)

- [NCBE Bar Exam Fundamentals for Legal Educators](#)

- [Collaboratory on Legal Education and Licensing for Practice](#)

Updates from the NCBE's Testing Task Force

- [Testing Task Force Blog](#)

- [Testing Task Force Reports](#)

- [Testing Task Force Presentations](#)

GRANTS AND SCHOLARSHIPS

For Law Students

- AccessLex Law School Scholarship Databank
- ABA Scholarships and Financial Aid
- ABA Grants for Law Students
- MAX by AccessLex®

For Legal Educators and Researchers

- AccessLex Grant Programs
- American Association of Law Libraries (AALL)

OTHER ASP AND BAR SUCCESS RESOURCES

- The Bar Examiner
- The Learning Curve
- CALI Lessons

Please email **RTB@accesslex.org** with information about resources for faculty and students in your jurisdiction.

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