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FROM THE DIRECTOR

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.

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AccessLex Center for Legal Education Excellence
Visit the Director’s SSRN author page
Visit the AccessLex SSRN page

DISTINGUISHED COMMENTARIES

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.\(^1\) 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.\(^2\) 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.\(^3\) 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,’” CRA should be the method by which students are evaluated.\(^4\)

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.

4 Carnegie Report, supra note 1, at 168.
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 reported 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 those 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 questionaire 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.
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 predilection 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 its admitted students or the reputation of the school, but instead by the ability of schools to prepare undergraduate GPA), we utilize these preadmission characteristics to determine a baseline measure of the two-year pass rate falls short of 75 percent.

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.

## 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.

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, 6th; and District of Columbia Law, 14th), and two others are in the top two-thirds of the averaged rankings: Southern University, 88th; and Howard University, 124th.

### Box 1

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

1. Nova Southeastern University
2. Widener Commonwealth
3. Williamette University
4. Florida International University
5. Roger Williams University
6. Texas Southern University
7. University of Illinois
8. University of South Dakota
9. Northern Illinois University
10. Washington and Lee University
11. Campbell University
11. University of Toledo
13. Ohio Northern University
14. District of Columbia
15. University of Tennessee
16. University of Arkansas - Little Rock
16. Saint Louis University
18. University of St. Thomas (Minnesota)
19. University of Missouri-Kansas City
19. Quinnipiac University
21. Atlanta’s John Marshall Law School
21. University of Arizona
21. Mississippi College
24. Brooklyn Law School
24. University of Wyoming
The Association of Academic Support Educators (AASE) was proud to celebrate its 10th 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 about upcoming bar-related conferences.

PUBLICATIONS AND POSTS

- 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).

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 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 with information about resources for faculty and students in your jurisdiction.

JOIN THE CONVERSATION

If you would like to see your work, research, or thoughts presented in Raising the Bar, we welcome hearing from you at RTB@accesslex.org.

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