



RAISING THE BAR

EVIDENCE-BASED THINKING ABOUT THE BAR EXAM

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FROM THE DIRECTOR

As the calendar changes to a new year, we are reminded of our constant movement toward the future and the change it brings. If we know that change, like the future, is always on the horizon, then we can focus on what we know about the impending change and prepare (time and reflection permitting).

2024 brings us closer to the known change of the NextGen Bar Exam. In preparing for this change, AccessLex Institute is choosing to focus on what we know about the change and what we know from our years of work in the field. To this end, we have launched the Building Bar Skills Initiative, the primary component of which is AccessLex Institute's Building Bar Skills Modules. Members of our Module Building Teams and their important work are highlighted in this issue. Also, be sure to monitor your inboxes for invitations to a second component of the Building Bar Skills Initiative: AccessLex Institute's Building Bar Skills Conference, taking place in Philadelphia in mid-April 2024.

Change is by its nature ambiguous. As we wrestle with the ambiguity of the NextGen Bar Exam, AccessLex Institute will marshal its resources, expertise, and the wisdom and experience of our member law schools to focus on what we can do now. We look forward to sharing our work and collaborating further to support and prepare the next generation of law students.



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

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

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DISTINGUISHED COMMENTARY

Interrogating the 1L Curriculum

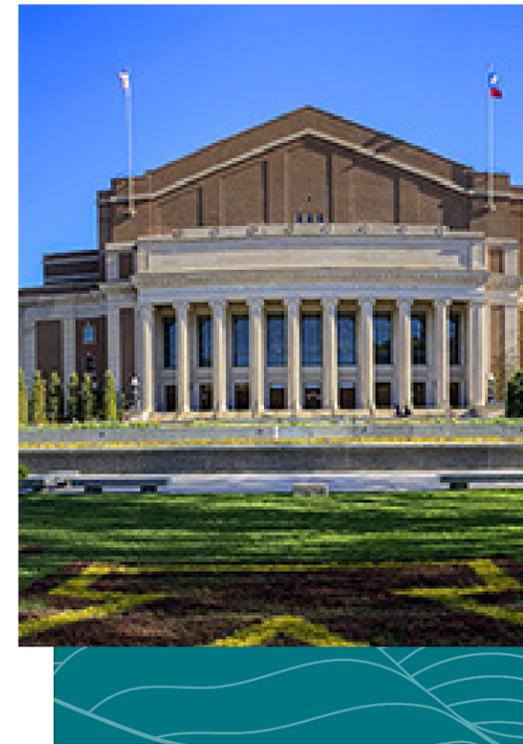
Prentiss Cox is a Professor of Law at the University of Minnesota Law School. His article, [Kill 1L](#), is available for download on SSRN, as is a related empirical study of 1L curricula at U.S. law schools, [1L Curricula in the United States: 2023 Data and Historical Comparison](#).

The central experience of law school is the first year, 1L. Law students are told they are learning the core knowledge and habits of thought needed to understand and practice law. The first year includes the vast majority of the required courses at the vast majority of law schools. 1L grades determine access to many prestigious judicial clerkships and summer employment opportunities. Yet, the Carnegie Report and other important studies critical of legal education pull a punch when it comes to 1L.

Kill 1L argues that law school reform depends on rethinking what we teach and how we teach in the first year. It proposes a new 1L curriculum built around two principles. First, 1L students should understand the development and use of sources of law roughly in proportion to their importance in courts and society. Statutory and regulatory law should be given equal footing with common law, and students should learn the relationship between types of law.

Second, building on excellent scholarship about the overuse and misdirection of the Langdellian case method and Socratic questioning, *Kill 1L* argues that the current 1L curriculum and pedagogy are inefficient and sometimes harmful to lawyers in training. The article makes the case for the development of judgment and deeper professional wisdom in the spaces where legal analysis, fact development, and practice skills intersect.

1L education has budged a bit in the last decade or so. In a 2010 ABA survey, no law school required a 1L course in statutory and regulatory law. Our study of 1L curricula in 2023 found 15% of law schools now require a "leg-reg" course in the first year, typically for three credits. Introductory low credit, non-doctrinal courses using practice simulations, or focused on professionalism or the like, grew substantially in this period. Law schools are slowly — very slowly — moving toward the principles of a new 1L.





The good news for the reform-minded is that we can do more effective teaching with the same resources and with less, but more engaging and illuminating, work for students. This is possible because the current 1L curriculum and pedagogy are inefficient. Bold reform is practical.

The even better news for those who despair about substantial changes in law schools is that outside forces are pushing on the door. The NextGen Bar Exam reflects a substantial shift in thinking about what law students need to know by graduation. Rote memorization of common law doctrine will shrink as a percentage of the bar exam content. In its place, a new type of “integrated question set” will test knowledge in seven categories of practical skills and abilities.

This move from abstract doctrinal learning to the problem-solving approach needed to employ law in practice and policymaking is also reflected in the new law school ranking methodology. Controversial but still powerful, the revised *U.S. News* law school rankings now focus more on student outcomes. Law professors’ evaluations of each other’s worth is half as important in the new ranking system. The weight given bar passage rates by graduated law students has increased more than eight-fold.

Consider a new 1L curriculum that teaches law students the integration of doctrinal and skills knowledge now being demanded by the gatekeepers of the profession. The civil common law doctrine courses (contract, torts, and property) that dominate law school curricula give way to a single course in which the elements of claims are transparently laid out. Students can see in such a unified course how different legal concepts — damage causation, for example — appear in different forms in different common law doctrines. Statutory/regulatory law and legal writing are given equal weight with common law in the fall semester. The interactions between these forms of law can be explicated in this simplified course structure. For example, students can explore the meaning of a statute that incorporates a common law term or the reach of a statute silent about whether it supersedes common law.

Civil procedure and criminal law become a classroom component of a high-credit litigation simulation and writing course that anchors the spring semester. Legal research, reasoning, and writing are woven into this work. Coordinated learning among a few high-credit classes means less appellate case law reading, but more written work product and engagement with the creative potential of law colliding with uncertain facts and client goals.

The profession is more insistent than ever that legal education reflect the reality of how law is employed in courts and society. Rethinking 1L is the most consequential move possible for law schools to meet this moment

RESEARCH SPOTLIGHT

Bad Therapy: “Thinking Like a Lawyer’s” Shortcomings as an Educational Model

Chelsea M. Baldwin is a Visiting Assistant Professor of Law and Assistant Director of Academic Enrichment and Bar Passage at Washburn University School of Law. This piece is a summary of Emotional Harms from the Cognitive Effects of Legal Education, 55 St. Mary’s Law Journal (forthcoming 2024).

At this point, it is uncontroverted that legal education produces an excessive proportion of negative mental health outcomes for its students and former students, who may or may not be licensed attorneys, in the form of reduced mental health, excessive mental illness, propensity to substance abuse, and relational difficulties with other people. There is a robust body of work suggesting some of the circumstances and causal mechanisms that produce these negative outcomes. Building from that work, and the concepts that support our sibling helping professionals, therapists, and counselors, my recent article claims that legal education is fundamentally a course of cognitive-behavioral therapy (CBT) administered without any of the procedural safeguards that exist under the guidance of a therapist.

When asked to describe what law school teaches, most attorneys and law students can respond in four words in less than five seconds, “Thinking like a lawyer.” Elaborating on this shorthand, legal education teaches law students to view the world according to a set of group norms and to rely upon a specific set of tools to solve problems. Legal training then repeatedly reinforces these norms and processes. Training someone to view the world in a different way and to start thinking about situations from an intentionally designated departure point is cognitive restructuring, a form of therapy used by psychologists, therapists, and counselors. However, unlike therapies administered by a therapist or a counselor with an end goal of ameliorating distress resulting from life circumstances or mental illness, legal education changes how people think with little consideration as to the impact those changes have on students’ lives and well-being.

Legal education also demands and produces behavioral changes. Most schools' first-year curriculum is lockstep with minimal autonomy left to the students beyond the decision to enroll or not, attend class or not, and complete assignments or not. This leads to many students internalizing that to behave like a lawyer, they must do what it takes to meet an externally imposed deadline, but without instruction in the many different tools and methods of doing so without harming oneself. Another set of behavioral changes is prompted by instructions to dress "professionally" and to speak "professionally" in practice settings, which wreaks violence on many students striving to meet it because of the often-unexamined cultural assumptions that masquerade as "professional." As an example, there has been a recent proliferation of CROWN Acts to protect individual's ability to wear their hair in natural and healthful ways in the workplace because of the prevalent discrimination against race-based hairstyles. This type of discrimination occurs in law education and law practice too. Additionally, many students end up sacrificing outside relationships and healthful behaviors like exercise and sleep to fulfill course load obligations and seek belonging in this new community. Some students also learn that they can cut corners if they block off enough time to cram at the end of the semester for the singular summative assessment where they merely have to outperform x number of classmates to "succeed." Others learn to rely on performance enhancing substances to help get through a critical moment and then different substances to help them get to sleep that night.

Legal education changes how its students think and how they behave. As a consequence, it influences the affective and emotional health of students too and provides no safeguards to work through and address the affective impact students experience. Cognitive-behavioral therapy (CBT) is used to help people change how they think and how they behave. Unlike legal education, when CBT is administered by a professional trained to do it, there are required safeguards before a professional begins helping a person to make significant changes in their interactions with the world through the way they think about the world and the way they behave. These safeguards include things like securing informed consent so that a client is apprised of the risks and benefits that come with successful completion of CBT and with termination midway through. A professional also gathers information to make sure the client is a good candidate for CBT and doesn't fit into one of the personality or circumstantial molds that suggests CBT will produce a poor outcome for them. Additionally, these professionals are obligated to participate in and pursue treatment for their own personal concerns so that they don't subconsciously model disordered or harmful thoughts and behaviors for their clients. Moreover, CBT is a course of negotiated therapy where the informed consent isn't just at the beginning of the treatment program, but it is re-established with every new exercise and every new homework assignment because the client is a partner in treatment, not an object being processed through the assembly line of curriculum and testing hurdles.

Several schools are taking first steps in addressing some of the unintended harms that come from receiving a course of CBT without the acknowledgement and protections for the emotional domain of human functioning. These first steps include close partnerships with the school's counseling education department and counseling center to ensure that students can see providers with the ability to support their emotional development over the course of the degree program. Some schools also have student-driven initiatives with student organizations or projects that promote and educate on wellness. Other schools have close partnerships with their jurisdiction's lawyer assistance programs so that students are aware of and know how and when to reach out in the future for help. A number of schools have mindfulness groups, meditation rooms, and other physical and community-based resources. Generally, these are all sound ideas and helpful, but there is still more that can be done.

The article concludes with brainstorming as to what those next steps might look like. It might be a modified informed consent process; not of the degree or legal impact that a healthcare provider's informed consent contains, but an intentional pause for acknowledgement and reflection on the mechanisms in play and an affirmative opt-in to continue. It might look like slowing law school down and having more four-year part time degree programs so that students have more opportunity to remain involved in family and community life outside of law school. It might be requiring law school personnel to, at a minimum, complete a mental health first aid course. Each of these ideas, and the others not listed here, has strengths and weaknesses in its ability to address the lack of support for emotional health in an environment of intense cognitive and behavioral change. Each school, and each cohort of students, is a little bit different from any other, so the solutions will likewise look a little bit different in implementation.



ORGANIZATION UPDATE

The NALP Foundation for Law Career Research and Education

Fiona Trevelyan Hornblower is President and CEO, Jennifer Mandery is Vice President for Research, and Skip Horne is Vice President for Engagement for The NALP Foundation.

The NALP Foundation for Law Career Research and Education is an independent, nonprofit research organization whose mission is to advance the legal profession through independent, credible, and impactful research, programs, and education. For over 25 years, the Foundation's work has been used by law firms and other legal employers, as well as by law schools and researchers in the legal profession, and is regularly featured in the legal and general media.

Incorporated in 1996, The NALP Foundation initially nested within the National Association for Law Placement (NALP) and became a fully independent entity in 2002.

Within a few years of its inception, The NALP Foundation launched its first major collaborative research project, *After the JD: A National Survey of Legal Careers*. This landmark longitudinal study, a cooperative effort among a coalition of nonprofit entities (principally The NALP Foundation and the American Bar Foundation, and including Access Group (now AccessLex Institute), the Law School Admission Council, NALP, the National Conference of Bar Examiners, the National Science Foundation, and the Open Society Institute of the Soros Foundation), was one of the largest and most ambitious studies ever undertaken of the legal profession.

The study, taking more than 15 years to complete, comprehensively examined the career trajectories of approximately 4,000 lawyers, surveying participants at three separate points — 2003, 2007, and 2012 — over the course of 12 years following their bar passage in 2000. This large-scale project established The NALP Foundation as a key source for reliable, data-driven, and affordable research for the profession.

In addition to landmark longitudinal studies, The NALP Foundation is also recognized for its signature annual surveys of law firm attrition and hiring and law school alumni career trajectories, as well as its episodic research studies on timely topical issues.

The *Update on Associate Attrition*, first launched in 1988, covers overall law firm associate attrition and hiring with detailed analyses of departure destinations, factors driving associates' departures, and whether the departures were desired or not from firms' perspectives, as well as comparisons of data by entry-level and lateral status, race/ethnicity, gender identity, geographic region, firm size, and other key metrics.



The NALP Foundation and NALP's *Law School Alumni Employment and Satisfaction Study* first launched a decade ago with a report on the class of 2010 and has continued annually since then. The study measures employment status and career satisfaction three years after graduation, exploring an array of satisfaction dimensions in order to help gain a better understanding and insight into how well legal education prepares law students for the profession. The survey includes information about diverse and first-generation graduates as well as data on educational debt, mobility, and the impacts of experiential education and professional identity formation on career satisfaction, with insightful narrative responses from study participants.

Last year, the Foundation was honored to receive a three-year grant from AccessLex Institute to expand *Alumni Study* coverage to support the participation of the six law schools at Historically Black Colleges and Universities as well as additional law schools with significant levels of students and alumni from groups underrepresented in the legal profession, providing important additional insights for the profession as well as actionable data and benchmarking for the new participating schools.

The Foundation's forthcoming study, *Should I Stay or Should I Go: Key Factors Driving Law Firm Associate Retention*, asked law firm associates to rate and rank 15 factors, including mentorship, Diversity, Equity, and Inclusion (DEI), compensation, benefits, and hybrid/remote workplace, and to answer a number of open-ended narrative questions. Data collection concluded in mid-October with an anticipated winter report release. Given the robust associate response level (over 3,000), the Foundation will be able to segment the data by a number of demographics, including gender, race/ethnicity, hire type, seniority, years at firm, and office size and location to discern if there are any relevant differences among the demographic cohorts.

For more information about The NALP Foundation and its educational programs and resources, please visit our [website](#).

BUILDING BAR SKILLS INITIATIVE

AccessLex Institute Launches Building Bar Skills Initiative to Prepare Member Law Schools for the NextGen Bar Exam

AccessLex Institute launched its Building Bar Skills Initiative with the sole purpose of preparing its member law schools for the NextGen Bar Exam. Led by the AccessLex Center for Legal Education Excellence®, this initiative represents a significant research and development investment into future methods of bar preparation. Over the next year, AccessLex Institute will announce additional components of the Building Bar Skills Initiative. The initial focus of this initiative was to assemble and commission the work of five teams comprised of Doctrinal and Skills faculty and staff to draft Bar Skills Modules. The five Module Building Teams commenced their work during a two-day workshop in July.



Bar Skills Modules

Teams are charged with developing a series of easily adapted modules for use by faculty in doctrinal courses. Each Bar Skills Module will provide the adopting faculty member with referable modules that 1) introduce students to the skills assessed on the NextGen Bar Exam and 2) provide students with an opportunity to apply these skills. Equipped with professors' notes, student learning outcomes, and rubrics built around formative assessments — adopting faculty will refer their students to AccessLex Institute's online education network, Ask EDNA®, to access and complete the Bar Skills Modules.

A unique aspect of AccessLex Institute's Building Bar Skills modules is that each team is utilizing their modules in a classroom this fall. Based on this initial use, all modules will be revised and informed by student feedback and performance. This approach demonstrates AccessLex Institute's commitment to the development of evidence-based interventions to improve first-time bar passage across the nation's law schools.



Meet the Module Building Teams

Drawn from five different law schools and comprised of doctrinal and skills faculty, these teams are developing and testing innovative curriculum units for use in doctrinal courses that are designed to cultivate the skills tested on the NextGen Bar Exam.

University of Hawai'i – *Torts*

Garrett Halydier, Visiting Assistant Professor and Interim Director of Academic Success

Liam Skilling, Director of the Evening Part-Time Program and Academic Success Associate Faculty Specialist

Nova Southeastern University – *Criminal Law*

Megan Chaney, Co-Director of the Criminal Justice Field Placement Clinic and Professor of Law

Carlota Toledo, Professor of Practice in the Academic Success and Professionalism (ASP) Program

Ohio Northern University – *Torts*

Jennifer Gregg, Assistant Director of Academic Success

Melissa Kidder, Director of Legal Clinics and Externships and Associate Professor of Law

Saint Louis University – *Civil Procedure*

Antonia Miceli, Director of Academic and Bar Success and Professor of Law

Ann Scarlett, Professor of Law

Syracuse University – *Legal Ethics*

Tara Andryshak, Associate Director of Academic and Bar Success

Kelly Curtis, Associate Dean of Academic and Bar Success

April 2024 Building Bar Skills Conference

As part of its Building Bar Skills Initiative, AccessLex Institute will host a Building Bar Skills Conference for member law schools on April 15-17, 2024 that will include the work of the Module Building Teams. Please continue to monitor your inbox for information about the Conference.

NextGen
Bar Exam of the Future

ACCESSLEX | AASE ASP FACULTY SCHOLARS

AccessLex and the Association of Academic Support Educators (AASE) Announce 2023 ASP Faculty Scholars

AccessLex and AASE are dedicated to the academic and bar success of law students across the nation. An important point of this collaboration is to contribute to scholarship in the field while supporting the professional development of academic support educators, especially those who are newer to the discipline and face various challenges in getting such support. Launched in 2021 and now in its third year, the AccessLex | AASE Faculty Scholarship Grant supports scholarship by ASP faculty.

Scholars are members of the AASE organization and are selected through a blind review of applications comprised of research proposals and statements of professional development. Selected Scholars are supported with a one-year fellowship program including a research grant totaling \$5,000 and the appointment of two mentors to assist in completing a draft article. The culmination of the fellowship is a Works-In-Progress presentation at the subsequent AASE Annual Conference, with a final publication-worthy draft by the end of the calendar year. 2023 AccessLex | AASE ASP Faculty Scholars will present on their works at the May 2024 AASE Annual Conference to be held at the University of Idaho.



The 2023 AccessLex | AASE ASP Faculty Scholars and their research topics are:

Afton Cavanaugh, Assistant Dean of Law Success, Service Professor of Law St. Mary's School of Law

Adapting a Clinical Judgement Framework from Nursing Education to Teach Legal Education

Anne G. Johnson, Adjunct Professor of Law, Associate Director of Academic Success, Director of the Group and Peer Mentor Program Mercer University School of Law

Preparing Students for the Legal Research Components of the NextGen Bar Exam

Erica Lux, Director of Academic Success Programs Texas Tech School of Law

Supporting Neurodivergent Law Students

Kari Milligan, Associate Teaching Professor of Law, Academic Excellence Specialist Mitchell Hamline School of Law

The Efficacy of Class-Based Versus One-on-One Tutoring Academic Support

Dawn Young, Assistant Clinical Professor, Academic Success University of Idaho College of Law

Can Law Schools Learn from Pedagogical Approaches in Primary and Secondary Education?

AccessLex Institute is proud of the research and work of all past ASP Faculty Scholars and celebrates the published works of past Scholars:

Ashley M. London (Thomas R. Kline School of Law of Duquesne University) *Who Watches the Watchmen? Using the Law Governing Lawyers to Identify the Applicant Duty Gap and Hold Bar Examiner Gatekeepers Accountable*, Michigan State Law Review

Leila Lawlor (Washington and Lee University School of Law) *Building Belonging: Proven Methods to Decrease Attrition and Best Serve Law Students*, Tennessee Law Review

Chelsea Baldwin (Washburn University School of Law) *Emotional Harms from the Cognitive Effects of Legal Education*, St. Mary's Law Journal

All AccessLex Institute grantee scholarship is available through the [AccessLex Resource Collections](#), a curated digital repository of leading research on the topics of law school diversity and academic and bar success.

The 2024 AccessLex | AASE Diversity Scholar application cycle will open in spring of 2024. Updates on the process will be posted to the [Academic and Bar Success section of AccessLex Institute's website](#).



CONFERENCE CORNER

- [Association of American Law Schools \(AALS\) Annual Meeting](#) (January 3-6)
- [American Educational Research Association Annual Meeting](#) (April 11-14)
- [AccessLex Building Bar Skills Conference](#) (April 15-17)
- [AALS Conference on Clinical Legal Education](#) (May 1-5)
- [AALS Workshop for New Law School Teachers](#) (June 6-8)
- [American Association of Law Librarians Annual Meeting](#) (July 20-23)

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

PUBLICATIONS AND POSTS

- Rebecca Flanagan, [*Open Books, Better Skills: An Argument for Limited Open Book Exams*](#) (Sept. 1, 2023).
- Judith A. Gundersen, [*Leaving Langdell Behind: Reimagining Legal Education for a New Era*](#), 107 Minnesota Law Review 2407 (2023).
- John Lande, [*Taking Advantage of the NextGen Bar to Stimulate Changes in Legal Education*](#) (Oct. 26, 2023).
- Michael D. Murray, [*Artificial Intelligence for Academic Support in Law Schools and Universities*](#) (Sept. 26, 2023).
- National Conference of Bar Examiners, [*NCBE Announces Update to NextGen Exam Content, Extends Availability of Current Bar Exam*](#) (Oct. 25, 2023).
- National Conference of Bar Examiners, [*First Jurisdictions Announce Plans to Adopt NextGen Bar Exam*](#) (Nov. 1, 2023).
- Dennis C. Prieto, Susan Landrum, Timothy J. McFarlin, and Wanda M. Temm, [*From My Perspective: Essays on the NextGen Bar Exam and Legal Education*](#), The Bar Examiner, Summer 2023.
- Lucy Ricca and Thomas Clarke, [*The Bar Re-Imagined: Options for State Courts to Re-Structure the Regulation of the Practice of Law*](#) (Sept. 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®](#)

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

- [JDEdge by AccessLexSM](#)
- [The Bar Examiner](#)
- [CALI Lessons](#)

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

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Fletcher Hiigel, Managing Editor

Rob Hunter, Staff Editor



EMPOWERING THE NEXT GENERATION OF LAWYERS®

AccessLex Institute®, in partnership with its nearly 200 nonprofit and state-affiliated ABA-approved member law schools, has been committed to improving access to legal education and to maximizing the affordability and value of a law degree since 1983. The AccessLex Center for Legal Education Excellence® advocates for policies that make legal education work better for students and society alike, and conducts research on the most critical issues facing legal education today. The AccessLex Center for Education and Financial Capability® offers on-campus and online financial education programming and resources to help students confidently manage their finances on their way to achieving personal and professional success. AccessLex Institute is headquartered in West Chester, PA.
