

THE TESTING COLUMN

FAILING THE BAR EXAM—WHO'S AT FAULT?

by Susan M. Case, Ph.D.

Thanks to improved data collection and data sharing practices of both NCBE and individual jurisdictions, we now know that about 80% of those seeking bar admission pass the bar exam on their first attempt.¹ But what about those who do not pass on their first attempt? What do we know about those who have to face the many challenges of being in the bottom group of bar exam takers? And who should be held accountable for these failures?



LSAT Score—The LSAT is also an early warning sign. Past studies show that those with an LSAT score of 160 had an average MBE score of 153, while those with an LSAT score of 140 had an average MBE score of 132.

Law School Grades—Third, as noted below, law school grades are also a good indicator.²

MPRE Scores—Finally, MPRE scores are a fourth early warning sign. Those with high MPRE scores tend to do well on the bar exam; those with low MPRE scores tend not to.

HEEDING WARNING SIGNS THAT CAN INDICATE RISK OF BAR EXAM FAILURE

First, failing the bar exam should not come as a surprise to the examinee or others with access to the examinee's records—there are many advance warning signs.

UGPA—One of the earliest warning signs is undergraduate grade point average (UGPA). Examinees with higher UGPAs tend to perform better on the bar exam. We know from past studies that the average MBE score for those with a UGPA of 3.5 is 151, while those with a UGPA of 3.0 had an average MBE score of 138. To further evaluate these data, examinees should judge the rigor of their UGPAs: was the UGPA from a program with rigorous standards? If not, the concern associated with a low UGPA should be even stronger.

While many of these early indicators involve multiple-choice tests, the data should not be dismissed as irrelevant; it is not reasonable for a student to argue that he or she just can't do well on multiple-choice tests. Each bar exam has multiple-choice questions; there is no escaping the format. Besides, we know that those who perform well on the MBE also tend to perform well on the written portion, and vice versa. These predictors are not absolutely diagnostic of success or failure, but they provide a solid indication of level of risk.

SOME OF THE FAULT OF FAILURE LIES WITH THE EXAMINEES

Examinees have an obligation to prepare for the bar exam. They need to read the relevant exam

information booklets available on the NCBE website (www.ncbex.org). They should study carefully the specific purpose of each exam and review the sample questions available in the booklets. In addition, they should make use of NCBE's MBE Online Practice Exams, which provide an accurate representation of MBE questions as well as a commentary on each question explaining why the correct answer is correct and the distractors are incorrect. For the MEE and the MPT, examinees should take advantage of the study aids available on the NCBE website to help them prepare. These study aids consist of representative sample questions and guidance on optimal answers, and many of them are available free of charge. Examinees should not rely exclusively on bar preparation courses.

To address some of the complaints expressed by recent bar exam takers:

- *The bar exam is irrelevant.* Complaining about the relevance of the bar exam distracts from the examinee's job, which is to pass the exam. (Besides, current examinees who suggest eliminating the bar exam entirely would not succeed in doing so within a window of time that is relevant to them anyway.)
- *Bar exam questions don't look anything like the questions I was exposed to by my bar review course.* To obtain the best picture of bar exam questions, examinees should use the study materials prepared by NCBE, many of which are available free of charge or at a fraction of the cost of commercial bar review materials.
- *Bar exam questions are much harder than any sample material I have seen.* Questions that are reviewed outside of an actual bar exam administration tend to seem easier than those taken in a real test setting. The MEE and MPT questions available on the NCBE

website are actual previously used questions. The MBE and MPRE Online Practice Exams are derived from actual exam questions, and the scores obtained by the examinee on the practice exams should provide a good indication of expected MBE and MPRE scores on the actual exams.

- *This bar exam had many more questions about a particular topic than the previous bar exam (version #1) OR This bar exam had a disproportionate number of questions on a particular topic (version #2).* The MBE is built according to content specifications that do not vary from one exam to the next. Any change in the specifications is announced well in advance of the change. It is common for examinees who are less familiar with a certain topic to think that there is an overload of questions on that topic.

Bottom line: examinees should use data of past performance to evaluate their risk of failing the bar exam. Preparation for the bar exam should begin early in law school, especially for those at risk of failure. Preparation time should be used to learn the material, not to look for tricks to pass (e.g., contrary to a widely reported trick advocated by one bar preparation company, a large number of examinees selecting answer "B" for a difficult question will not result in the question being discarded).

SOME OF THE FAULT OF FAILURE LIES WITH THE LAW SCHOOLS

At the time of admission to law school, schools are (or should be) well aware of students who are at risk of failing the bar exam. As noted above, UGPA and LSAT scores provide a good indication of which students are at risk. As the students progress in school, their first-semester and then first-year grades


provide another solid indication of who is at risk. There is really no excuse for schools failing to fully educate the students they admit. If they admit at-risk students, they have an obligation to provide the support necessary to help these students reach their educational goals. And, because one of the goals of law schools should be to educate future lawyers, the curriculum should be designed (at a minimum) to ensure that graduates can be admitted to the bar. Schools should be eager to be evaluated on the extent to which they meet this goal.

WHAT SHOULD THE BAR EXAMINING COMMUNITY DO?

The bar examining community also has a responsibility to its examinees. Some things it can do to help examinees succeed on the bar exam are as follows:

- Provide full information about the bar exam to facilitate preparation and study. Include a clear statement of the purpose of each exam component, and provide sample test material from previous exams. Jurisdictions that use NCBE test materials should direct examinees to the NCBE website for information on NCBE-developed exams.
- Provide all scores with sufficient measurement accuracy to ensure accurate indications of performance; do not provide scores with poor measurement accuracy. Each jurisdiction should provide a total scaled MBE score and a total scaled written score. Under no circumstances should raw scores be provided.³
- If a jurisdiction develops its own exam questions, it should ensure that all exam questions and grading guidelines for written components are properly constructed and properly vetted.

- Ensure that all scoring processes are properly conducted. If the jurisdiction uses NCBE products, local graders should participate in the NCBE grading workshops conducted immediately after each test administration. If the jurisdiction develops its own written materials, similar sessions should be conducted locally. Calibration efforts should be organized according to suggested protocols.⁴

While we will probably never see a 100% pass rate on the bar exam, jurisdictions should make every effort to make their processes transparent and fair; the schools should work to ensure bar passage of the students they admit; and the examinees should avail themselves of the information and assistance available. 

NOTES

1. Percentage is based on MBE performance of examinees from July 2007 to July 2012. For details on passing percentages, see Susan M. Case, Ph.D., *The Testing Column: Persistence on the Bar Exam*, 81(4) *THE BAR EXAMINER* 20–23 (December 2012), available at http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2012/810412beTestingColumn.pdf.
2. For details regarding the strength of the relationship between law school grades and bar exam performance, see Michael T. Kane, Ph.D., Andrew A. Mroch, Ph.D., Douglas R. Ripkey & Susan M. Case, Ph.D., *Pass Rates and Persistence on the New York Bar Examination*, 76(4) *THE BAR EXAMINER* 6–17 (November 2007), available at http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2007/760407_KaneMrochRipkeyCase.pdf.
3. See Douglas R. Ripkey, *Interpreting Performance on Bar Examinations—Which Score Types Make the Grade?*, 73(4) *THE BAR EXAMINER* 25–28 (November 2004), available at http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2004/730404_ripkey.pdf.
4. See Kellie R. Early, *Practices and Procedures to Improve Grading Reliability on Essay Examinations: A Guide to the Care and Feeding of Graders*, 73(4) *THE BAR EXAMINER* 6–10 (November 2004), available at http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2004/730404_early.pdf; Susan M. Case, Ph.D., *The Testing Column: Quality Control for Developing and Grading Written Bar Exam Components*, 82(2) *THE BAR EXAMINER* 34–37 (June 2013), available at http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2013/820213Testing-Column.pdf.

SUSAN M. CASE, PH.D., is the Director of Testing for the National Conference of Bar Examiners.