Bar Admission Requirements
“Character and Fitness”

Is there an efficient way to get students certified?
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Director of Bar Services
Duquesne University Law School
Pittsburgh, PA
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Introduction

- Duquesne University
  - Founded 1878
  - Enrollment 10,373
  - 14:1 Student-faculty ratio
  - The Princeton Review 2011 edition of its annual college guide The Best 373 Colleges recommends Duquesne as one of the country’s best institutions for undergraduate education, as well as Best in the Northeast.
Introduction

- Duquesne University School of Law
  - Founded 1911
  - Enrollment 700
  - Day and Evening Division
  - Teaching
    - Our focus is on the classroom; that is our learning laboratory
  - Skills-based
    - Criminal Law, Economic Development Law, Civil Rights Litigation, and Family Law
Bar Admission Rates Effect

- Rankings
- Alumni
- Tuition
- Moral Obligation
- Legal Obligation
Problem

- How do we get our students licensed to practice law?
- How do we maximize our bar admission rates?
- Becoming more difficult
Tension

Bar Admission Boards  v.  Law Schools
Tension

Bar Admission Boards \textit{v.} Law Schools
Protect the Public \textit{v.} Educate Students
Barriers to entry \textit{v.} Law school’s interests
A Brief History of Bar Admission

The use of the term *bar* to mean "the whole body of lawyers, the legal profession" comes ultimately from English custom. In the early 16th century, a railing divided the hall in the Inns of Court, with students occupying the body of the hall and readers or benchers on the other side. Students who officially became *lawyers* crossed the *symbolic physical barrier* and were "admitted to the bar".
Historical Models

- Apprenticeship system
- British Parliament, colonial assemblies and state legislatures Regulate Entry to the Profession
- First Bar Exam (Delaware 1763)
- Formal legal training at Law Schools (Harvard 1817)
- Law Licensing Boards
In the early days of our history, admission legal practice operated on an apprenticeship system, such as evidenced by the careers of Abraham Lincoln and others.

Lawyers who had been admitted to the bar would vouch for the character and knowledge of new applicants to the bar in that state.

Issues of character and fitness were still resolved through a vouching system in some states even after the National Council of Bar Examiners (“NCBE”) established national guidelines for the bar examination.
Early Pennsylvania Model (1902)

RULE IV.
No person shall be registered as a student at law for the purpose of becoming entitled to admission to the Bar of the Supreme Court until he shall have satisfied the State Board of Law Examiners that he is of good moral character, and shall have passed a preliminary examination (emphasis added) . . .
Early Pennsylvania Model (1902)

. . . upon the following subjects:
(1) English language and literature;
(2) Outlines of universal history;
(3) History of England and of the United States;
(4) Arithmetic, algebra through quadratics, and plane geometry;
(5) Modern geography;
(6) The first four books of Caesar's Commentaries, the first six books of the AEneid, and the first four orations of Cicero against Cataline.
RULE V. Candidates for admission, who have spent at least three years after registration in the study of the law, either by attendance upon the regular course of a law school . . . or partly in a law school and partly in the office of a practicing attorney, or by the bona fide service of a regular clerkship in the office of a practicing attorney. . ..
RULE V . . .

3. He must file a certificate, signed by at least three members of the Bar in good standing in the judicial district in which he has resided or intends to practice, that he is personally known to them, and that they believe him to be of good moral character.

4. A certificate from the dean of the law school or preceptor that he has been regular in attendance and pursued the study of the law with diligence from the time of his registration.
RULE VI. Every applicant for admission must sustain a satisfactory examination in Blackstone's Commentaries, constitutional law, including the Constitutions of the United States and Pennsylvania, equity, the law of real and personal property, evidence, decedents' estates, landlord and tenant, contracts, partnership, corporations, crimes, torts, domestic relations, common law pleading and practice, Pennsylvania practice, the Federal statutes relating to the judiciary and to bankruptcy, Pennsylvania statutes and decisions and the rules of Court.
Modern Model

- State-by-state Licensing Agencies
- National Conference of Bar Examiners
Modern Model

- State-by-state Licensing Agencies
  - Judicial Branch

- National Conference of Bar Examiners
  - Multi-state Exams
  - Character & Fitness Services
Modern Model

- Standardized Test
- State Specific Questions
- Multiple Choice Format
- Essay
- Performance Test
- Character & Fitness Review
Trend to Uniformity

- Each jurisdiction - with the exception of Louisiana, Washington, and Puerto Rico - administers the Multistate Bar Exam (MBE), a multiple choice exam
- 27 jurisdictions administer the Multistate Essay Exam (MEE)
- 35 jurisdictions administer the Multistate Performance Test (MPT)
- 2 jurisdictions – Missouri and North Dakota – administer the Uniform Bar Exam (UBE)
MBE

- Multiple choice questions on six areas of common law: real property, torts, contracts, criminal law, evidence, and constitutional law
- Standardized test constructed by the NCBE in the early 1970s
- Administered on the same date in each jurisdiction
- Utilized by every U.S. jurisdiction except Louisiana, Washington, and Puerto Rico
MEE

- Essay questions
- Drafted by the NCBE in the late 1980s
- Goal of the MEE is to evaluate the test-taker’s legal knowledge and ability to construct a logical legal argument
- Some jurisdictions elect to use essay questions specific to the law of that jurisdiction rather than utilizing the MEE
MPT

- First created by the NCBE in the late 1990s
- Requires the test-taker to solve a legal problem using only the law and facts provided in the performance test
- Answering the question requires the employment of practical skills to solve realistic client problems, such as drafting a demand letter or an affidavit
UBE

- Very recently created by the NCBE
- Uniform exam consisting only of the MBE, MEE, and MPT
- Currently adopted by two states
- Product of the current trend toward uniformity
- Makes possible the transfer of scores across state lines
## Persons Taking and Passing the 2009 Bar Examination

<table>
<thead>
<tr>
<th></th>
<th>FEB</th>
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<th></th>
<th>BOTH</th>
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<tr>
<td>Taking</td>
<td>21,820</td>
<td>Passing</td>
<td>11,462</td>
<td>53%</td>
<td>57,305</td>
<td>42,565</td>
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<tr>
<td>Taking</td>
<td>57,305</td>
<td>Passing</td>
<td>42,565</td>
<td>74%</td>
<td>79,125</td>
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## 2009 Bar Examination
### Top 6 Jurisdictions

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Total Examinees</th>
<th>Total Passes</th>
<th>Pass Rate</th>
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</thead>
<tbody>
<tr>
<td>New York</td>
<td>15,092</td>
<td>9,787</td>
<td>65%</td>
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<tr>
<td>California</td>
<td>12,751</td>
<td>6,258</td>
<td>49%</td>
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<tr>
<td>Florida</td>
<td>4,082</td>
<td>2,782</td>
<td>68%</td>
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<tr>
<td>New Jersey</td>
<td>3,942</td>
<td>3,037</td>
<td>77%</td>
</tr>
<tr>
<td>Texas</td>
<td>3,909</td>
<td>3,052</td>
<td>78%</td>
</tr>
<tr>
<td>Illinois</td>
<td>3,673</td>
<td>3,073</td>
<td>84%</td>
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## 2009 Bar Examination High/Low Pass Rates

<table>
<thead>
<tr>
<th>Highest Pass Rates</th>
<th>Lowest Pass Rates</th>
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<tbody>
<tr>
<td>N. Mariana Is. (100%)</td>
<td>Palau (17%)</td>
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<tr>
<td>Wisconsin (89%)</td>
<td>Puerto Rico (41%)</td>
</tr>
<tr>
<td>Iowa (88%)</td>
<td>California (49%)</td>
</tr>
<tr>
<td>Missouri (87%)</td>
<td>Guam (52%)</td>
</tr>
<tr>
<td>Montana (87%)</td>
<td>Nevada (60%)</td>
</tr>
</tbody>
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Duquesne Law School
Bar Admission Rates

- 10-Year Trend: 75% average
- Above PA-state average each year
- Last 5 Years: 90% average
- Low: 68% (2005)
- High: 97% (2008)
- LSAT: +/- 152
Duquesne Law School
Bar Preparation

- Focus Resources in newly created Bar Services Department (2006)
- Study Bar Examination
- Design and Implement Curriculum
- Work Individually with Students
Duquesne Law School Study

- 85% - 90% of Graduates Take PA
- 5% - 10% Take Multiple Exams (PA & NJ, NY & NJ, PA & MA)
- 5% Take Exam in Other State
- Trend Toward Multiple Exams
Duquesne Law School
Correlation Study

- LSAT and Bar Score
- UGPA and Bar Score
- 1L GPA and Bar Score
- MPRE Score and Bar Score
- Bar Examinable Subjects Taken in Law School
- Day v. Evening Division and Bar Pass
LSAT/Bar Exam Score
UGPA/Bar Exam Score

<table>
<thead>
<tr>
<th>UGPA</th>
<th>Bar Exam Score</th>
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<tr>
<td>2.00</td>
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<tr>
<td>2.50</td>
<td>2.50</td>
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<tr>
<td>2.75</td>
<td>2.75</td>
</tr>
<tr>
<td>3.00</td>
<td>3.00</td>
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</tbody>
</table>

Note: The image includes a scatter plot showing the relationship between UGPA and Bar Exam scores. The plot includes a trend line and data points indicating a correlation between the two variables.
Duquesne Law School
Correlation Study

- LSAT: Moderately Strong Correlation to Bar Score (esp. MBE)
- UGPA: Moderate Correlation to Bar Score (esp. essay portion)
- 1L GPA: Strong Correlation
- MPRE Score: Strong Correlation
- Bar Examinable Subjects Taken in Law School: Weak Correlation (except some correlation for middle 1/3 of class)
- Evening Division Students Require Additional Attention
Duquesne Law School Curriculum

- Elective 2-credit course
- Spring Semester (Saturdays)
- Emphasize Substantive Law Review of “Big 6” Subjects
- Include Essay Writing Skills
- Include MPT Skills
- Include Weekly Application via MBE Questions
- Conclude with Mock MBE
Duquesne Law School
Individual Attention

- Graduating Class Size = +/- 205
- Blackboard Web Site
- Email
- Practice Essays
- Individual Conferences
Duquesne Law School
Individual Attention

- Tutoring
- Financial Aid
- Application Questions
- Bar Exam Lunch
- Counseling
- C&F Issues
Individual Attention
Character & Fitness

- Bar applicants in each U.S. jurisdiction must undergo a character and fitness evaluation.
- If an applicant fails to meet the standard set forth in the evaluation, the applicant may not sit for the bar examination or, if the applicant has already taken the exam, will be permitted to gain admission to the bar.
The National Conference of Bar Examiners conducts character and fitness investigations on applicants seeking either admission to the bar or a limited license to practice law.

Not all jurisdictions participate in our Character and Fitness Investigations service; some jurisdictions do the investigations themselves.

The NCBE Application is 32 pages long.
Character & Fitness

• A body or organization appointed by the judicial branch of each jurisdiction, which can be separate from the bar examining authority
• In 12 of 56 U.S. jurisdictions, a body separate from the state bar examiners conducts character and fitness evaluations
Character & Fitness

- The NCBE provides that “the primary purpose of character and fitness screening before admission to the bar is the protection of the public and the system of justice.” Comprehensive Guide to Bar Admission Requirements 2011, p. vii.

- The public must be “secured in their expectation that those who are admitted to the bar are worthy of the trust and confidence clients may reasonably place in their lawyers.”
Character & Fitness

- What is the standard an applicant must meet?
  - A record clear of any significant deficiency in honesty, trustworthiness, or reliability
Character & Fitness

- Protection for the Applicant:
  - The NCBE recommends that each examining body institute a rule providing confidentiality of records to keep them from being used for purposes other than evaluating fitness to sit for the bar exam.
  - The examining body should afford applicants due process, giving them notice and an opportunity to appear, with right to counsel, before a final decision is made.
  - The examining body should also have a rule permitting reapplication for those being denied admission based on character and fitness.
Character & Fitness

- Duties the examining body has to the applicant:
  - Each examining authority should publish character and fitness standards, but 18 U.S. jurisdictions do not.
  - Applicants should be informed of the possible consequences of failing to produce information requested or of making misrepresentations or omissions.
  - Questions should be framed in such a way that they are clear and unambiguous
Character & Fitness

- Revelation of any of the following can lead to more in-depth inquiry:
  - Unlawful conduct
  - Academic misconduct
  - False statements or omissions
  - Employment misconduct
  - Acts of honest, fraud, deceit, or misrepresentation
  - Abuse of the legal process
  - Neglect of responsibilities
  - Neglect of professional obligations
Character & Fitness

- Revelation of any of the following can lead to more in-depth inquiry:
  - Violation of a court order
  - Emotional instability*
  - Drug use
  - Denial of admission to the bar in another jurisdiction on character and fitness grounds
  - Disciplinary action by a lawyer disciplinary agency of any jurisdiction

* Connecticut's State Bar Examining committee is now asking attorney applicants to the state bar if they have been treated for depression along with other major psychiatric disorders like schizophrenia, and bi-polar illness according to an article on Lawyer.com. This is already done in Colorado, Florida, Delaware, and Kentucky.
Character & Fitness

- The listing of factors to consider when evaluating the conduct of each applicant shows that the NCBE does not, in theory, consider certain conduct to be a per se bar to admission.

- The NCBE notes that conduct that is “merely socially unacceptable” is NOT relevant to character and fitness.
Character & Fitness

- 20 U.S. jurisdictions allow conditional admission to the bar for issues such as substance abuse, mental disability, debt, and criminal history.
- A felony conviction is an absolute bar to admission in only 4 of 56 U.S. jurisdictions.
- Many states require an applicant convicted of a felony to overcome a presumption against fitness.
Felony and Credit History NOT a Bar to Admission

- In re Bryant, 922 So.2d 471 (La. 2006)
  - Applicant had a felony conviction for possession of cocaine with intent to distribute, as well as numerous delinquent credit accounts
  - Supreme Court permitted applicant to sit for the bar, conditional upon his presentation of character and fitness evidence afterward
  - The court found that the applicant’s conviction had resulted from a mistake he made in high school, and that his delinquent credit was largely due to his inability to pay his way through college
  - The court approved the applicant’s application to the Louisiana bar and recommended a two-year period of probation in light of the felony conviction
Financial Irresponsibility and Failure to Disclose Bar Admission

- In re Application of Stewart, 860 N.E.2d 729 (Oh. 2006)
  - Applicant had outstanding debts exceeding $160,000, all but $30,000 of which had been incurred by student loans. The $30,000 was attributed to credit card debt.
  - Applicant was also delinquent in paying state, federal, and local taxes from 1970 through 1990.
  - Applicant was also seen as “highly litigious,” due to the 62 court cases in which he had been involved.
  - Applicant was also seen as arrogant and lacking an inability to control his demeanor.
  - The court noted that financial irresponsibility alone is enough to bar admission.
  - The court found that the applicant’s tendency toward financial irresponsibility rendered him unfit to entrust with the duties owed to clients and others in the legal system and provided that the applicant could reapply once he can show that he has reformed his practices.
Criminal History Bars Admission

- **Application of David H., 392 A.2d 83 (C.A. Md. 1978)**
  - Applicant had a history of repeated theft convictions, some of which had been expunged
  - Applicant fully disclosed the incidents
  - In evaluating present character in light of past misconduct, the court looked to the extent to which the applicant rehabilitated himself.
  - The court found that a rehabilitative period of 5 years was insufficient to prove that the applicant could become a member of the legal profession free of suspicion.
  - The court denied the applicant admission and provided that he could reapply at a later time.
Combined Issues
Bar Admission

- In re Application of Silva, 665 N.W.2d 592 (Neb. 2003)
  - Applicant failed to fully disclose criminal history on law school application
  - Applicant fully disclosed on bar application criminal history over the course of 15 years involving disorderly conduct, assault and battery, DUI, flight to avoid arrest, domestic violence, no proof of insurance, failing to stop and provide information
  - The court found that the combination of the applicant’s failure to disclose past acts on his law school application and his lengthy criminal history rendered him unfit to sit for the bar examination at the time that he had originally applied
  - The court provided that the applicant could reapply in two years
Law School Application Misrepresentations

- As illustrated by the *Silva* case, character and fitness problems can arise where a bar applicant is found to have withheld information on an application for law school admission.

- A character and fitness investigation can be conducted whether the omission was intentional or the product of mere confusion.

- Thus, a misguided answer on a law school application can have grave implications for a student applying to sit for the bar exam after completing his or her legal education in full.
Should Law School Application Be Relevant?

- The knowledge base of an undergraduate student completing law school applications and a graduating law school student completing bar applications are very different.
- Similar wording in law school application questions and bar exam application questions can render inconsistent results based on lack of knowledge regarding the language used in the questions.
Law School Application
What do We Need to Know?

- Residence History - how far back?
- History of Academic Discipline - how defined?
- Criminal History/ Unlawful conduct - what about summary offenses, acquittals, ARD, pleas, juvenile offenses, expunged records?
- False statements or omissions Acts of fraud, deceit, or misrepresentation
What do We Do With the Answers?

- Admissions Decisions
- Disclosure After Admission
- Misconduct During Law School
- Disclosure by 3Ls
- Reason for Failing to Disclose
  - Misunderstood the Nature of the Question
  - Didn’t Think Offenses had to be Disclosed if:
    - Convicted when a Minor
    - Summary Offenses
    - Only an Arrest with no Charges Filed
    - Only a Citation not a Formal Charge
    - Charge resolved by ARD
    - Record Expunged
  - Advice of Parent/Counsel/Judge
Do Our Questions Do More Harm than Good?

- Have we unwittingly created a “honesty” or character issue?
- Do we want our questions to mirror those on the bar application?
  - Which application?
- How should we advise our students?
How Should Law Schools Respond?

- To guard against the possibility of omissions based on mistaken understanding, law school admissions offices should compose questions that are:
  - Precise
  - Expressed in plain English
  - Descriptive
  - Thorough
How Should Law Schools Respond?

- One key to avoiding unnecessary similarities and/or inconsistencies between law school application questions and character and fitness questions is to keep the desired goal of the admissions council in mind.
- The goals of the admissions council are to maintain a safe environment for the student body and to ensure that admitted students meet the professionalism standards held by the university.
- The goals of the character and fitness evaluators are to ensure the safety of clients, client funds, and the integrity of the judicial system.
How Should Law Schools Respond?

- Precision and clarity in law school admission applications is one of the biggest protections a law school admissions staff could offer its students preparing to take the bar exam.