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The Kids Are Definitely Not All Right: An Empirical Study Establishing a Statistically Significant Negative Relationship Between Receiving Accommodations in Law School and Passing the Bar Exam

Three weeks ago, we celebrated our nation's Independence Day. Today we're here to rejoice in and celebrate another "independence day," one that is long overdue. With today's signing of the landmark Americans for Disabilities Act, every man, woman, and child with a disability can now pass through once-closed doors into a bright new era of equality, independence, and freedom.

President George H. W. Bush[1]

INTRODUCTION

Throughout my career as a law professor and a law school dean, I have had a deep interest in the science of learning, academic support programs, and law school bar passage programming. Because of this, I have noticed that certain categories of students underperformed their peers on the bar examination. For example, students of color who (based on my interactions with them and their law school grades) should have passed the bar exam on their first attempt did not, while comparable White students did.[2] To investigate this phenomenon, my colleagues, Dr. Erin Lain and Dr. Kelsey Hample, and I engaged in two empirical analyses that unequivocally show that the bar examination produces racially biased outcomes (students of color fail at a much higher rate than their White peers).[3] Our most recent study also puts to bed the notion that these differences are due to differing credentials between examinees of color and White examinees.[4] That notion is not true because the difference in outcomes

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1 George H.W. Bush, U.S. President, Remarks of President George H. W. Bush at the Signing of the Americans with Disabilities Act (July 26, 1990), https://archive.ada.gov/ghw_bush_ada_remarks.html [https://perma.cc/D95B-VDL3].

2 This Article capitalizes all terms that refer to socially constructed race and ethnic categories.

3 Scott DeVito, Kelsey Hample, & Erin Lain, *Examining the Bar Exam: An Empirical Analysis of Racial Bias in the Uniform Bar Examination*, 55 U. MICH. J. L. REFORM 597, 639 tbl.12 (2022) [hereinafter *Examining the Bar Exam*]; Scott DeVito, Kelsey Hample, & Erin Lain, *Onerous Disabilities and Burdens: An Empirical Study of the Bar Examination's Disparate Impact on Applicants from Communities of Color*, 44 PACE L. REV. 21–23 figs.1 & 3, 27 tbl.3, 35–36 tbl.5 (forthcoming 2023) [hereinafter *Onerous Disabilities*].

4 *Onerous Disabilities*, *supra* note 3, at 35–36 tbl.5, 37–38 tbl.6, 39–40 tbl.7.

is due to something in the exam or the exam process, not differences among the students.[5]

Similarly, I have noticed that students who received accommodations at law school underperformed their unaccommodated peers on the bar examination. For example, I had a very bright, dedicated student with a physical disability who did not pass the bar exam despite multiple attempts. When I spoke to the student after each attempt, I realized that the state bar was unwilling to give them appropriate accommodations. It was only when the student went to another state, which gave them appropriate accommodations, that the student passed the bar examination on their first attempt.

Unfortunately, there has been no publicly available data on the relationship between accommodations and bar passage rates. As a result, there have also been no published empirical studies of their relationship. Fortunately, the American Bar Association (ABA) has begun requiring law schools to report the number of students who receive accommodations of any type during the reporting year.[6] As a result, anyone can request that data from public law schools through public records requests.

Using data gathered from sixty public law schools relating to the years 2019, 2020, and 2021, this Article demonstrates that there is a statistically significant[7] negative correlation between the percentage of students in a school who receive accommodations and the school's first-time[8] bar passage rate. In other words, this study shows that as the

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5 *Id.* (providing the results of our model of bar pass rates that, controlling for entering credentials, region, and tier, showed a different predicted pass rate based on race or ethnicity).

6 *See, e.g.*, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA, COMPLETE 2022 AQ INSTRUCTIONS, at 17, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/Questionnaires/2022/complete-2022-aq-instructions.docx.

7 All measures of statistical significance discussed in this Article relate to the *p* value of a statistical hypothesis. Traditionally, *p* values of 0.01, 0.05, and 0.10 indicate that a hypothesis is statistically significant. *See* DAMODAR N. GUJARATI & DAWN C. PORTER, ESSENTIALS OF ECONOMETRICS 185 (4th ed. 2010). A *p* value of 0.01 means that one percent of the time the reported result would be due to chance, a *p* value of 0.05 means that five percent of the time the result would be due to chance, and a *p* value of 0.10 means that ten percent of the time the result would be due to chance. DAVID A. HENSHER, JOHN M. ROSE, & WILLIAM H. GREENE, APPLIED CHOICE ANALYSIS: A PRIMER 45–46 (1st ed. 2005).

8 The analysis showed a similar negative correlation between ultimate bar passage rates, but because those results were not statistically significant at a *p* value of at least 0.05, they

percentage of accommodated students in a law school increased, its bar passage rate decreased.

This Article establishes a prima facie case that something is wrong with the accommodation granting process and argues that state board of bar examiners should provide more data and transparency on examinee accommodations. This Article begins with a short grounding in disability law as it relates to standardized testing. Next, this Article examines the exclusionary history of the bar admission process. A process that has long been used to exclude "the other," whether they are people of color, women, people with disabilities, or the neurodivergent. With this background in hand, this Article provides the results of its empirical analysis of accommodation data demonstrating a statistically significant, negative correlation between first-time bar passage rates and the percentage of students receiving accommodations at law school. Finally, the Article ends with a discussion of how we should proceed given this result.

I
THE AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) requires that providers of standardized examinations give disabled examinees appropriate accommodations for their disability. Congress passed the ADA with the primary intent of eliminating employment discrimination against individuals with disabilities.[9] Nearly twenty years later, Congress enacted the ADA Amendments Act of 2008 (ADAAA) to overturn three types of errors the courts had made in interpreting the ADA: the Supreme Court too narrowly interpreted the definition of "disability," the courts held too high a standard for the degree of functional

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are not included herein. There are multiple potential explanations for this lack of statistical significance for ultimate bar passage rates, including students receiving appropriate accommodations in subsequent takings of the exam, students requesting accommodations in a subsequent exam when they could have received them (but did not) the first time, or students learning to succeed despite inadequate or different accommodations from those given at law school. Alternatively, the lack of statistical significance could simply be due to the limited data and the level of the data (at the school-level, not the student-level) available for analysis. Only future studies will enable us to better understand the relationship between accommodations and ultimate bar passage rates.

[9] Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified at 42 U.S.C. § 12101); Sam L. Bussey, *Setting the Bar: Applying a Uniform Standard of Documentation in Accommodating Bar Examinees with AD/HD in Compliance with Title III of the ADA*, 49 VAL. U. L. REV. 997, 1013 (2015); Stacy A. Hickox, *The Underwhelming Impact of the Americans with Disabilities Act Amendments Act*, 40 U. BALT. L. REV. 419, 423–24 (2011).

limitation needed to count as a disability, and the courts placed too much emphasis on whether the employer believed that the employee had a disability.[10]

The ADA defines "disability" as "a physical or mental impairment that substantially limits one or more major life activities of such individual."[11] Physical and mental impairments include "[a]ny physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems," and "[a]ny mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability."[12] The ADA inclusively defines "[m]ajor life activities" as "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working."[13] As noted, learning is specifically identified as a major life activity.[14]

Consistent with its inclusion of learning-related disabilities, the ADA requires private entities offering licensing examinations to offer the examination "in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals."[15] This requirement applies to the bar examination.[16] In addition, the National Conference of Bar Examiners (NCBE), state bars, and the state Board of Bar Examiners are each subject to the ADA's examination requirements and may be found liable for violations of the ADA.[17]

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10 U.S. EQUAL EMP. OPPORTUNITY COMM'N, EEOC-NVTA-2011-3, FACT SHEET ON THE EEOC'S FINAL REGULATIONS IMPLEMENTING THE ADAAA (May 3, 2011), https://www.eeoc.gov/laws/guidance/fact-sheet-eeocs-final-regulations-implementing-adaaa [https://perma.cc/V3YR-YU9C].

11 42 U.S.C. § 12102(1)(A).

12 28 C.F.R. § 36.105(b)(1)(i)–(ii).

13 42 U.S.C. § 12102(2)(A).

14 *Id.*; 28 C.F.R. § 36.105(c)(1)(i); Wong v. Regents of Univ. of Cal., 410 F.3d 1052, 1063 (9th Cir. 2005).

15 28 C.F.R. § 36.309(a) (2023).

16 *See, e.g.*, Bartlett v. N.Y. State Bd. of L. Exam'rs, 970 F. Supp. 1094, 1128–9 (S.D.N.Y. 1997), *vacated in part on other grounds*, 226 F.3d 69 (2d Cir. 2000).

17 *See, e.g.*, Enyart v. Nat'l Conf. of Bar Exam'rs, Inc., 823 F. Supp. 2d 995, 999 (N.D. Cal. 2011) (noting that the Court had "previously entered two preliminary injunctions . . . ordering NCBE to provide [the examinee's] required accommodations on the" MBE and MPRE); *see also* NAT'L CONF. OF BAR EXAM'RS, *MPRE Test Accommodations*, https://www.ncbex.org/exams/mpre/ada-accommodations/ (last visited Sept. 19, 2023)

Test providers have the burden of providing examinations "so as to best ensure that, when the examination is administered to an individual with a disability . . . , the examination results accurately reflect the individual's aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual's [disability]."[18] Because the mental health questions on character-and-fitness questionnaires "screen out or tend to screen out" applicants with certain mental health conditions, mental health questions conflict with ADA requirements unless state bar associations can prove they are "necessary for the provision of the service, program, or activity being offered."[19]

II
THE BAR'S LONG HISTORY OF EXCLUSION

The bar admissions process has long been used to exclude people who were deemed by the profession to be unfit for the practice of law. Unfortunately, this effort to prevent unfit practitioners from joining the bar has, all too often, been used to exclude people who were "different" from then-current bar membership. As discussed below, this has led the bar admissions process to exclude communities of color, women, people with disabilities, and the nonneurotypical. This history of exclusion demonstrates how easily the other can be, and has been, excluded from the practice of law. Thus, it opens our eyes to the possibility that similar issues are, unconsciously or consciously, arising in the context of accommodated students.

[https://perma.cc/9BQB-SWEQ] (noting that "NCBE is committed to providing reasonable accommodations to candidates with documented disabilities in accordance with the Americans with Disabilities Act"); Cox v. Ala. State Bar, 330 F. Supp. 2d 1265, 1266 (M.D. Ala. 2004) (recognizing that the state bar may be liable for violations of the ADA); FLA. BD. OF BAR EXAM'RS, *General Instructions for Requesting Test Accommodations*, https://www.floridabarexam.org/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/4483d394bda239a685257c0c00779f16#:~:text=Requests%20for%20test%20accommodations%20and,will%20be%20acknowledged%20by%20mail (last visited Sept. 19, 2023) [https://perma.cc/H9N4-83SP] (stating that "[i]t is the policy of the Florida Board of Bar Examiners to administer the bar examination . . . in accordance with the Americans with Disabilities Act"); ARIZ. COMM. ON EXAMINATIONS, *Test Accommodation Guidelines for Arizona Bar Examination* (Nov. 7, 2018), https://www.azcourts.gov/Portals/26/admis/GL_WEB/ADA_Guidelines_Revised.pdf?ver=2018-11-07-101415-733 (discussing accommodations in light of the ADA).

[18] 28 C.F.R. § 36.309(b)(1)(i) (2023); *see also* Dep't. of Fair Emp. & Housing v. L. Sch. Admission Council Inc., 896 F. Supp. 2d 849, 867 (N.D. Cal. 2012).

[19] Nancy Paine Sabol, *Stigmatized by the Bar: An Analysis of Recent Changes to the Mental Health Questions on the Character and Fitness Questionnaire*, 4 MENTAL HEALTH L. & POL'Y J. 1, 11 (2015).

This practice of excluding the other arose early in the profession's history. One of the earliest instances of such exclusion, which was made on the basis of social "class," can be seen in the English bar's distinction between barristers and solicitors.[20] Solicitors were deemed the "inferior" branch of the profession and were limited to ministerial functions and helping their clients navigate the confusing waters of the justice system.[21] Barristers, the "superior" branch, represented clients in court.[22] Because only those of sufficient wealth and social standing were permitted to become barristers, this division into barristers and solicitors reinforced English notions of class and relegated those deemed lesser by the "upper" classes to "inferior" roles in the profession.[23] This exclusionary approach prevented tradespeople, journalists, Catholics, and solicitors from joining the ranks of the barrister.[24]

The use of class to exclude certain groups of people from becoming barristers was reinforced by differences in the promulgation of rules for admission. In 1729, as a result of solicitors' "abysmal level of practice," Parliament passed regulations relating to admission to the bar as a solicitor.[25] These regulations required that attorneys take an oath to "truly and honestly demean [themselves] in the Practice of an Attorney according to the best of [their] Knowledge and Ability"[26] and gave judges the authority to assess a potential solicitor's "Fitness and

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20 *See* Judith L. Maute, *Alice's Adventures in Wonderland: Preliminary Reflections on the History of the Split English Legal Profession and the Fusion Debate (1000-1900 A.D.)*, 71 FORDHAM L. REV. 1357, 1359–60 (2003). Over the long history of the English bar, there have been many types of players involved in the practice of law. *See, e.g.*, Carol Rice Andrews, *Standards of Conduct for Lawyers: An 800-Year Evolution*, 57 SMU L. REV. 1385, 1392 (2004). Nonetheless, the creation of "two distinct branches" of legal practitioners (barristers and solicitors) has a long history—emerging in late 1200's during King Edward I's reign—and provides a sufficient, although simplified, model for our discussion. *See* Maute, *supra*, at 1360.

21 Andrews, *supra* note 20, at 1391–92; *see also* JOHN H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 186–87 (3d ed. 1990).

22 *See* Andrews, *supra* note 20, at 1390.

23 Deborah L. Rhode, *Moral Character as a Professional Credential*, 94 YALE L.J. 491, 494 (1985).

24 *Id.*; 12 SIR WILLIAM HOLDSWORTH, A HISTORY OF ENGLISH LAW 19, 372 (1938); MICHAEL BIRKS, GENTLEMEN OF THE LAW 133 (1960).

25 *See* HOLDSWORTH, *supra* note 24, at 54 n.6; Rhode, *supra* note 23, at 495.

26 An Act for the Better Regulation of Attornies and Solicitors 1729, 2 Geo. 2 c. 23 § XIII.

Capacity to act as a Solicitor."[27] Nearly one hundred years later, barristers became subject to informal qualifications of the Inns of Court. In 1828, the English Inns of Court adopted a requirement that applicants to the Inn provide a signed testimonial from either "one bencher or two barristers certifying that the applicant was a fit person to be a member of the Inn, and to be called to the bar."[28] This requirement likely functioned as a way to "solidify the class bias of the admissions structure" and not as a control on moral behavior.[29] While the Inns of Court did have the ability to regulate their members, such regulation was likely limited to issues of etiquette and social status.[30]

The American public has long been wary of attorneys and, as a consequence, has sought to impose character qualifications on those seeking to join the profession. For example, around the time of the American Revolution, attorneys "were denounced as banditti, as blood-suckers, as pick-pockets, as wind-bags, [and] as smooth-tongued rogues."[31] Concerns over their practices led to calls for both the abolition of the profession and the adoption of character requirements. For example, in 1748, Virginia required attorneys applying for admission to the bar to present themselves before an "examining committee consisting of members of the highest court" who would confirm the applicant's "fitness" and "good moral character."[32] In 1785, Massachusetts enacted legislation "[t]hat no person shall be admitted an Attorney of any Court in this Commonwealth, unless he is a good person of good moral character."[33] In 1805, New Jersey's Supreme Court of Judicature adopted a rule requiring that admission to the bar be predicated on the applicant having "good moral character."[34] In May 1837, Rhode Island required persons to have "good moral character" for admission to the practice of law.[35]

Despite these efforts at ensuring that attorneys possessed good character, throughout the Jacksonian Era (1820–1845), attorneys

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27 *Id.* § IV.

28 HOLDSWORTH, *supra* note 24, at 26.

29 Rhode, *supra* note 23, at 495.

30 *Id.*

31 1 JOHN BACH MCMASTER, A HISTORY OF THE PEOPLE OF THE UNITED STATES, FROM THE REVOLUTION TO THE CIVIL WAR 302 (New York, D. Appleton & Co. 1885).

32 Anton-Hermann Chroust, *The Legal Profession in Colonial America*, 34 NOTRE DAME L. REV. 44, 50–51, 50 n.40 (1958).

33 1785 Mass. Acts, 475; *see also* W. Raymond Blackard, *Requirements for Admission to the Bar in Revolutionary America*, 15 TENN. L. REV. 116, 118 (1938).

34 Blackard, *supra* note 33, at 123.

35 *Id.* at 121–22.

continued to fall into disrepute[36] (thereby supporting ongoing calls for character requirements).[37] For example, P. W. Grayson described lawyers as "[a] class of men . . . whom we find swarming in every hole and corner of society" and who give aid to men who are "apt enough to exert all their craft in turning the laws to their own advantage."[38] Grayson further describes attorneys as "seeds of depravity" who shoot out malignant beams "over the whole surface of society, shedding upon it the pestilence of discord, strife, and injustice!"[39]

The net effect of this disdain for lawyers combined with the Jacksonian view that everyone had a "natural right . . . to pursue any lawful calling of his choice" led state legislatures to eliminate educational qualifications for those practicing law and, instead, require those seeking admission to the state bar both to be residents of the state and to have good moral character.[40] Massachusetts, New Hampshire, Maine, Wisconsin, and Indiana allowed state citizens to apply for admission to the practice (without regard to educational qualifications) if they could prove "good moral character."[41]

Character and fitness requirements were quickly turned to exclude people simply because they were members of a particular group. For example, while there is little evidence that requirements of good moral character were used to keep men, as a group, out of the profession, they were used to keep women out.[42] In 1872, the Supreme Court prevented Myra Bradwell from joining the Illinois bar because married women could not enter contracts without their husband's consent and because "[t]he paramount destiny and mission of wom[e]n are to fulfil the . . . offices of wife and mother."[43] Justice Bradley further noted, "[I]t is within the province of the legislature to ordain what offices, positions, and callings shall be filled and discharged by men, and shall receive the

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36 Anton-Hermann Chroust, *The American Legal Profession: Its Agony and Ecstasy (1776-1840)*, 46 NOTRE DAME L. REV. 487, 512–21 (1971).

37 *Id.* at 521–22.

38 P.W. GRAYSON, VICE UNMASKED, AN ESSAY: BEING A CONSIDERATION OF THE INFLUENCE OF LAW UPON THE MORAL ESSENCE OF MAN, WITH OTHER REFLECTIONS 91 (New York, George H. Evans 1830), *reprinted in part in* THE LEGAL MIND IN AMERICA: FROM INDEPENDENCE TO THE CIVIL WAR 193 (Perry Miller ed., 1962).

39 *Id.*

40 Chroust, *supra* note 36, at 521.

41 *Id.* at 522.

42 Rhode, *supra* note 23, at 497.

43 Bradwell v. Illinois, 83 U.S. 130, 141 (1872) (Bradley, J., concurring).

benefit of those energies and responsibilities, and that decision and firmness which are presumed to predominate in the sterner sex."[44] The Supreme Court of Wisconsin agreed, noting that the profession of the law is "inconsistent with [the] sacred duties of their [female] sex."[45]

In addition, bar admission requirements were used to keep Black Americans from entering the profession.[46] It was only in 1844 that the first Black American, Malcom B. Allen, was admitted to practice law in the United States (in Maine).[47] After the Civil War, bias against Black Americans was evident in the need to create "mission" colleges for Black law students due to the refusal of many established law schools (especially, but not limited to, those in the segregated South) to allow them admission.[48] These mission schools were the consequence of the "'separate but equal' principle."[49] As a result, they were poorly funded and maintained only to the degree necessary to meet the bare requirements of the principle.[50] In addition, the early twentieth century push for higher entering standards for law school had a direct and deleterious impact on Black law students, decreasing the number of Black students enrolled in law school from forty-one in 1914 to just four in 1936.[51]

In the decades leading up to the early 1900s, moral qualifications rose in importance as a means to exclude the other.[52] At that time, a number of states adopted different measures to ensure that candidates had good moral character, including

> (1) Formal certificates of character from citizens, attorneys or judges; (2) recommendation by the local Bar Association; (3) certification of character by the local court of the applicant's residence; (4) public registration of the applicant upon beginning his study of the law;

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44 *Id.* at 142.

45 *In re* Goodell, 39 Wis. 232, 245 (1875).

46 See *Onerous Disabilities*, *supra* note 3, at 14–18, for a detailed discussion of this history.

47 Horace Mann Bond, *The Negro Scholar and Professional in America*, *in* THE AMERICAN NEGRO REFERENCE BOOK 581 (John P. Davis ed., 1966) (noting that Mr. Allen was admitted to practice in Maine); Edward J. Littlejohn & Donald L. Hobson, *Black Lawyers, Law Practice, and Bar Associations—1844 to 1970: A Michigan History*, 33 WAYNE L. REV. 1625, 1629 (1987) (explaining that Mr. Allen read the law).

48 *See* Bond, *supra* note 47, at 582 (in this context a mission school is a school whose mission is to educate Black students).

49 Littlejohn & Hobson, *supra* note 47, at 1630.

50 *Id.*

51 *See Onerous Disabilities*, *supra* note 3, at 10–11 tbl.2.

52 *See* Clarence A. Lightner, *A More Complete Inquiry into the Moral Character of Applicants for Admission to the Bar*, 21 L. STUDENT'S HELPER 5, 5 (1913).

> (5) publication of the intended application for admission; (6) an affidavit by the applicant that he has read the Bar's code of ethics; (7) admission upon probation for a year, more or less, applied especially to foreign attorneys; (8) investigation of character by the court of last resort or by its clerk, and (9) a special character committee.[53]

Legal scholars have shown that these changes were intended to restrict immigrants and people of color from joining the profession.[54] During this period, the ABA was an all-White organization, which actively excluded persons of color from joining.[55] When the ABA mistakenly admitted three Black lawyers in 1912, it justified revoking their admission by explaining that it wanted to keep "pure the Anglo-Saxon race."[56] Professor Friedman explains that the ABA's efforts to develop formal bar admission requirements were heavily influenced by the pervasive exclusionary beliefs of ABA members and leadership.[57] Only after 1944 did the ABA stop requiring applicants to list race on their application.[58] The ABA was not alone in its efforts to maintain an all-White profession.[59]

Professor Subotnik demonstrated that this renewed emphasis on an applicant's "qualifications" was a proxy for anti-immigrant/anti-

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53 *Id.* at 7.

54 *See, e.g.*, RICHARD L. ABEL, AMERICAN LAWYERS 85 (1989); Dan Subotnik, *Does Testing = Race Discrimination?: Ricci, the Bar Exam, the LSAT, and the Challenge to Learning*, 8 U. MASS. L. REV. 332, 365 (2013); Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 10 LA RAZA L.J. 363, 392–93 (1998).

55 *See* Subotnik, *supra* note 54, at 365–66 (discussing the history of law school admission standards).

56 *Id.*

57 LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 648–54 (2d ed. 1985).

58 GERALDINE R. SEGAL, BLACKS IN THE LAW: PHILADELPHIA AND THE NATION 1 (1983).

59 In 1925, Texas passed a law limiting law school admission to White students. *See* Sweatt v. Painter, 339 U.S. 629, 631 n.1 (1950) ("It appears that the University has been restricted to white students, in accordance with the State law." (citing TEX. CONST. art. VII, §§ 7, 14; TEX. REV. CIV. STAT. ANN. art. 2643b (West 1925) (repealed 1971); TEX. REV. CIV. STAT. ANN. art. 2719 (repealed 1969); TEX. REV. CIV. STAT. ANN. art. 2900 (West 1925) (repealed 1969))). "As late as 1938, the University of Missouri Law School continued to formally exclude Black applicants on the grounds that 'it was "contrary to the constitution, laws and public policy of the State to admit a negro as a student in the University of Missouri.'" Roithmayr, *supra* note 54, at 399 (quoting Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337, 343 (1938)). It was only in 1964 that the Association of American Law Schools (AALS) could report that its member schools no longer used race to deny admission. Littlejohn & Hobson, *supra* note 47, at 1631.

community-of-color bias.[60] Critical race theorist Professor Roithmayr adds that leaders in the legal profession were troubled by the possibility of immigrants and non-Whites entering the field.[61] Elihu Root's address to the Conference of Bar Associations on February 23, 1922, where he argued against immigrants in the bar, is a good example of this anti-immigrant bias.[62] In addition, Yale Law School's quota limiting admission of Jewish persons, in force from 1922 to 1960, is a clear example of anti-Semitic bias.[63]

The character-and-fitness process has also been used to keep people with controversial political backgrounds out of the bar. In the 1950s and 1960s, an applicant's affiliation with communist associations or their refusal to answer questions regarding such affiliations resulted in state bars refusing to admit them due to a lack of good moral character.[64]

In addition, a person's neurodiversity has been used to delay or deny admission to the bar. For example, Kathy Flaherty, a graduate of Harvard Law School and member of both the New York and Massachusetts bars, was initially denied admission to the Connecticut bar due to Flaherty having bipolar disorder.[65] After a year of hearings, Flaherty was admitted conditionally (renewed annually for nine years) despite a lack of character-and-fitness issues other than her (well-managed) bipolar disorder.[66]

In 2018, *Above the Law* published an article about an attorney it called "Atticus Finch" to protect his identity.[67] Mr. Finch submitted his character-and-fitness application and properly disclosed legal issues he

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60 Subotnik, *supra* note 54, at 365.

61 Roithmayr, *supra* note 54, at 392–93 (discussing the history of law school admission standards).

62 *See* Elihu Root, Chairman, Address of Elihu Root, Conference of Bar Association Delegates Held Under Auspices of the American Bar Association 21 (February 23 & 24, 1922).

63 ABEL, *supra* note 54, at 85.

64 *See* Schware v. Bd. of Bar Exam'rs of N.M., 353 U.S. 232, 238 (1957); Konigsberg v. State Bar of Cal., 353 U.S. 252, 266 (1957); *In re* Anastaplo, 163 N.E.2d 429, 430 (Ill. 1959); Baird v. State Bar of Ariz., 401 U.S. 1, 4–5 (1971); *In re* Stolar, 401 U.S. 23, 26–27 (1971). *See generally* Theresa Keeley, Comment, *Good Moral Character: Already an Unconstitutionally Vague Concept and Now Putting Bar Applicants in a Post-9/11 World on an Elevated Threat Level*, 6 U. PA. J. CONST. L. 844, 847–52 (2004).

65 Lindsey Ruta Lusk, *The Poison of Propensity: How Character and Fitness Sacrifices the "Others" in the Name of "Protection,"* 2018 U. ILL. L. REV. 345, 347 (2018).

66 *Id.*

67 Brian Cuban, *When Bar Examiners Become Mental Health Experts*, ABOVE THE LAW (Jan. 10, 2018, 10:03 AM), https://abovethelaw.com/2018/01/when-bar-examiners-become-mental-health-experts/ [https://perma.cc/DE3J-5EGE].

had experienced.[68] Having been called to an interview, Mr. Finch was asked whether his parents were divorced, whether he was seeing a psychologist, and for a list of medications he was currently taking.[69] Mr. Finch advised the committee that his parents were divorced and that he was seeking the advice of a psychiatrist to identify and prescribe appropriate medication for Finch's attention deficit hyperactivity disorder (ADHD).[70] Finch was then asked to "meet with the Character and Fitness psychiatrist for a mental evaluation to see if he was 'prepared to practice.'"[71] He was also required to undergo six months of weekly therapy appointments with monthly progress reports sent to the committee.[72]

The courts and the Department of Justice (DOJ) have increasingly scrutinized state bar inquiries into an applicant's mental health. For example, the Eastern District of Virginia struck down a question that asked, "Have you within the past five (5) years been treated or counselled for any mental, emotional or nervous disorders?" on the grounds that it violated the ADA.[73] In addition, in 2011, the DOJ investigated the Louisiana Bar's use of the NCBE Character and Fitness Report Request Form.[74] The DOJ found that questions 25, 26A,

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68 *Id.*

69 *Id.*

70 *Id.*

71 *Id.*

72 *Id.*

73 Clark v. Va. Bd. of Bar Exam'rs, 880 F. Supp. 430, 431 (E.D. Va. 1995).

74 Emily C. Maurice, *South Dakota's Bar Admission Requirements: A Critical Analysis of the Deficiencies in South Dakota's Bar Application Relating to Mental Health Diagnoses*, 61 S.D. L. REV. 139, 145 (2016).

26B, and 27[75] violated the ADA because they were each "based on stereotypes and assumptions about disabilities."[76]

Given this long history of exclusion and suspicion of mental health issues, it is not surprising that state bar boards have also been reluctant to grant bar applicants accommodations on the bar examination even after passage of the ADA. For example, in 1994, the Delaware Board of Bar Examiners granted Kara B. Rubenstein extended time for the essay portion of the bar examination due to her learning disability but refused to provide extended time for the Multistate Bar Exam (the multiple-choice section of the exam); however, the expert's accommodation recommendation contained no distinction between the essay and multiple-choice sections.[77] The Delaware Supreme Court overruled the Board on the grounds that their decision was manifestly unfair.[78] Similarly, Marilyn J. Bartlett was denied accommodations on the bar examination despite expert testimony that she had a learning disability.[79] In 2011, the NCBE refused to provide Timothy Elder, a blind examinee, the computer and software necessary for Elder to access the MBE portion of the February 2011 California bar examination.[80] Elder requested that the court grant a temporary restraining order enjoining the NCBE from refusing to allow him to

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75 Question 25 asked, "Within the past five years, have you been diagnosed with or have you been treated for bipolar disorder, schizophrenia, paranoia, or any other psychotic disorder?" Question 26A asked, "Do you currently have any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) which in any way currently affects, or if untreated could affect, your ability to practice law in a competent and professional manner?" while Question 26B asked, "If your answer to Question 26(A) is yes, are the limitations caused by your mental health condition . . . reduced or ameliorated because you receive ongoing treatment (with or without medication) or because you participate in a monitoring program?" Question 27 asked, "Within the past five years, have you ever raised the issue of consumption of drugs or alcohol or the issue of a mental, emotional, nervous, or behavioral disorder or condition as a defense, mitigation, or explanation for your actions in the course of any administrative or judicial proceeding or investigation; any inquiry or other proceeding; or any proposed termination by an educational institution, employer, government agency, professional organization, or licensing authority?" *Id.* at 145–46.

76 *Id.* at 146.

77 *In re* Rubenstein, 637 A.2d 1131, 1134, 1138 (Del. 1994).

78 *Id.* at 1140.

79 Bartlett v. N.Y. State Bd. of L. Exam'rs, 970 F. Supp. 1094, 1103, 1106 (S.D.N.Y. 1997), *vacated in part on other grounds*, 226 F.3d 69 (2d Cir. 2000).

80 *See* Plaintiff's Notice of Motion and Motion for Temporary Restraining Order and Order to Show Cause; Notice of Motion and Motion for Preliminary Injunction and Memorandum of Points and Authorities in Support, Elder v. Nat'l Conf. of Bar Exam'rs, No. 11-00199, 2011 WL 4079623 (N.D. Cal. Sept. 12, 2011), 2011 WL 204135.

use this software and a computer.[81] Granting Elder's request, the court ordered the NCBE to provide Mr. Elder with the relevant accommodation.[82]

Boards of Bar Examiners have also been inconsistent in granting accommodations to applicants with disabilities. For example, TW received "50 percent extra time, off-the-clock breaks, and a separate testing room" as a student at Harvard Law School due to "her depression, anxiety, and panic attacks, as well as deficits in short-term memory and 'solving of complex abstract problems.'"[83] Over the course of multiple attempts to pass the bar examination, her state bar examiners (1) denied her any accommodations, (2) gave her off-the-clock breaks and seating in a smaller nonprivate room, (3) gave her 50% extra time and seating in the small room but not the off-the-clock breaks she had received previously, and (4) gave her just double time.[84]

Given the legal profession's long history of excluding people from the practice of law based on bias and the difficulty applicants have had in securing ADA-mandated accommodations for the bar examination, we should be concerned that the bar is not providing applicants with appropriate accommodations. In addition, this concern requires us to empirically assess the relationship between bar passage and accommodations to ensure bar examinations are given in a manner consistent with the ADA.

III
THE LINK BETWEEN ACCOMMODATIONS AND BAR PASSAGE RATES

There are currently no empirical studies of the correlation between a bar examinee's probability of passing the bar exam and that examinee's accommodations status. This is not due to a lack of interest, but rather to a lack of data. The ABA, law schools, and state bar examiners do not publicly release any information as to the distribution of accommodations granted, the frequency of denying accommodations, and the bar passage rate for students receiving a given class of accommodations. As a result, no data currently exists

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81 *Id.*

82 Elder v. Nat'l Conf. of Bar Exam'rs, No. 11-00199, 2011 WL 4079623, at *1 (N.D. Cal. Sept. 12, 2011).

83 T.W. v. N.Y. State Bd. of L. Exam'rs, No. 16-3029, 2017 WL 4296731, at *1 (E.D.N.Y. 2017).

84 *Id.* at *1–2.

that could help establish whether bar pass and accommodation status are related. Fortunately, the ABA now requires law schools to report the number of students enrolled each year who received accommodations at some point during that year.[85] Law schools are not required to make such data publicly available[86] but, as discussed below, it can be accessed through public records requests to public law schools. The analysis of this data shows that there is a statistically significant negative correlation between a law school's percentage of students receiving accommodations in a year and the school's first-time bar passage rates in that year.

A. The Data

To gather data relating to the number of accommodated students, I filed public records requests with sixty public law schools asking for the number of accommodated students in 2019, 2020, and 2021. Of the sixty schools, four refused or failed to provide any data as to the number of students accommodated. To aid further research, the data gathered, along with each school's total reported enrollment that year, is provided in Table 1. A negative one (−1) in the columns for number of accommodated students indicates that, despite the public records request, the school did not provide the number of accommodated students for that year.

For each school and year, the data set included the school's 50th percentile LSAT, 50th percentile undergraduate grade point average (UGPA), and the percentage of enrolled students from communities of color. These indicators were chosen because prior work has shown that these are all relevant to a school's bar passage rate[87] and because that data is publicly available on the ABA's *Required Disclosures* page.[88]

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85 SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *supra* note 6, at 22.

86 *See* SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2022-2023, at 38 (2022), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2022-2023/2022-2023-standards-and-rules-of-procedure.pdf.

87 *See Examining the Bar Exam*, *supra* note 3, at 639 tbl.12; *Onerous Disabilities*, *supra* note 3, at 35–36 tbl.5.

88 *ABA Required Disclosures*, ABA: SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, https://www.abarequireddisclosures.org/Disclosure509.aspx (last visited Sept. 19, 2023) [https://perma.cc/MQR9-J3RK].

Table 1. *Total Students and Number of Accommodated Students 2019–2021*

	2019		2020		2021	
School Name	**Total**	**Acc.**	**Total**	**Acc.**	**Total**	**Acc.**
Arizona State U	812	64	798	81	850	93
City U of New York	622	98	672	71	696	65
Cleveland State U	403	42	431	53	420	62
Florida A&M U	563	61	472	50	416	56
Florida International U	465	36	509	50	542	74
Florida State U	605	21	612	37	572	53
Georgia State U	656	39	679	35	713	41
Indiana U-Bloomington	511	23	534	24	558	27
Louisiana State U	571	60	594	70	618	70
Michigan State U	698	47	632	38	665	46
North Carolina Central U	364	66	405	69	460	84
Northern Illinois U	279	21	307	27	322	25
Ohio State U	577	−1	551	−1	559	−1
Rutgers U	1206	70	1262	106	1346	129
Southern Illinois U-Carbondale	254	31	237	42	246	56
Texas A&M U	480	43	515	62	522	99
Texas Southern U	577	30	536	25	544	35
U of Akron	416	−1	428	−1	416	−1
U of Arizona	375	45	392	51	395	64
U of Baltimore	668	72	702	68	698	72
U of Buffalo-SUNY	431	30	444	35	465	37
U of California LA	975	133	1002	143	1038	177
U of California-Davis	592	43	622	55	668	72
U of California-Hastings	945	187	989	224	1087	232
U of California-Irvine	519	93	500	119	443	113
U of Cincinnati	363	25	394	22	392	29
U of Colorado	526	30	522	35	512	45
U of Connecticut	468	−1	488	−1	490	−1
U of Florida	780	73	722	92	703	135
U of Georgia	586	40	578	54	571	61

Cont'd on next page

	2019		2020		2021	
School Name	**Total**	**Acc.**	**Total**	**Acc.**	**Total**	**Acc.**
U of Hawaii	330	29	339	46	331	43
U of Houston	679	55	685	60	729	71
U of Idaho	333	40	462	45	437	66
U of Illinois	399	12	408	15	492	19
U of Iowa	431	21	473	22	500	30
U of Kansas	311	18	305	15	315	21
U of Kentucky	348	33	365	29	369	38
U of Maine	253	22	254	20	258	25
U of Massachusetts Dartmouth	280	29	358	28	365	45
U of Minnesota	667	58	674	50	677	67
U of Mississippi	412	31	464	30	491	54
U of Missouri	273	17	299	14	346	17
U of Missouri-Kansas City	372	28	398	26	401	37
U of Montana	234	−1	257	−1	248	−1
U of Nebraska	391	26	398	35	438	37
U of Nevada Las Vegas	444	31	445	37	449	46
U of New Hampshire	305	19	407	28	512	38
U of New Mexico	310	28	291	25	294	16
U of North Carolina	600	56	589	57	589	67
U of North Dakota	206	25	218	23	235	23
U of Oklahoma	500	22	512	23	546	30
U of Oregon	412	28	435	50	474	63
U of South Carolina	633	66	635	69	633	68
U of Texas at Austin	985	48	965	77	1001	106
U of Toledo	278	29	302	26	371	39
U of Utah	292	13	290	26	288	33
U of Washington	493	45	500	49	492	56
U of Wyoming	226	6	230	4	229	4
UNT Dallas College of Law	375	48	389	47	380	38
West Virginia U	329	18	326	30	333	46

The data as to LSAT, UGPA, and percentage from communities of color was offset by three years from the bar exam in order to gather those factors relative to the year the typical bar examinee would have enrolled in law school. For example, the 2020 first-time pass rate is

connected with that class's (2017) entering credentials and racial demographics.

B. A Quick Overview of the Data

Before discussing the statistical analysis, it is worthwhile to engage in a simple overview of the data.[89] The first thing to note in Table 2 is that the average and maximum percentage of students who were given accommodations increased from 2019 to 2021.

Table 2. *Percent Accommodated Students By Year*

Year	Minimum % Accommodated	Average % Accommodated	Maximum % Accommodated
2019	2.65%	8.60%	19.79%
2020	1.74%	9.28%	23.80%
2021	1.75%	10.94%	25.51%

These changes corresponded to an increase in the total number of accommodated students as shown in Table 3.

Table 3. *Number of Accommodated Students By Year*

Year	Total Accommodated Students	Average # of Accommodated Students
2019	2,424	43.29
2020	2,674	48.62
2021	3,295	58.84

In Figure 1,[90] we can also see the appearance of a negative correlation between first-time bar passage rate and percentage of the student body receiving accommodations.

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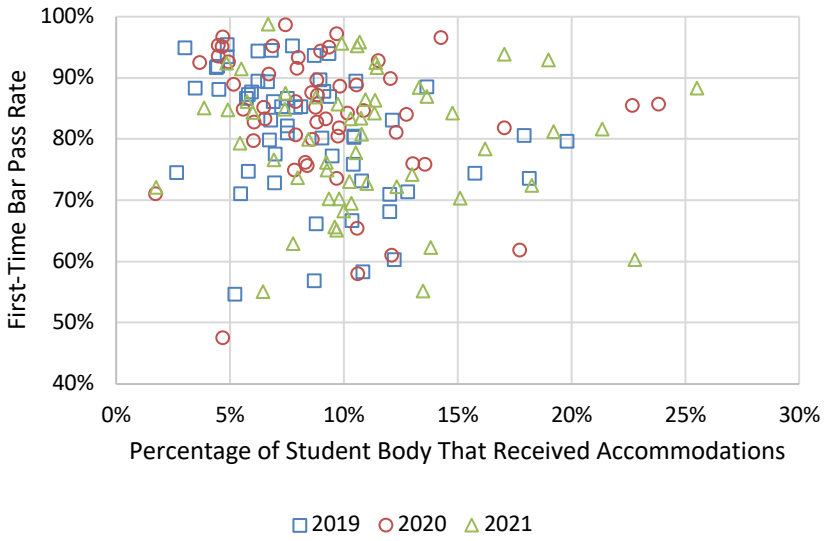
89 *See, e.g.*, FREDERICK HARTWIG & BRIAN E. DEARING, EXPLORATORY DATA ANALYSIS 9 (1979) (recognizing the importance of an exploratory approach to data analysis); LES KIRKUP, DATA ANALYSIS WITH EXCEL: AN INTRODUCTION FOR PHYSICAL SCIENTISTS 14 (2002) (discussing the value of picturing experimental data).

90 In a scatterplot, each pair of data points, in our case first-time bar passage and percentage accommodated, is represented as a single "dot" on an X- and Y-axis. *See* HARTWIG & DEARING, *supra* note 89, at 33. In our case, the axes represent first-time bar passage and percentage accommodated. Further, each datapoint for 2019 is represented by an empty square, each datapoint for 2020 is represented by an empty circle, and each datapoint for 2021 is represented by an empty triangle.

Figure 1. *Scatterplot of First-Time Bar Pass Rate and Percentage of Students Receiving Accommodations*

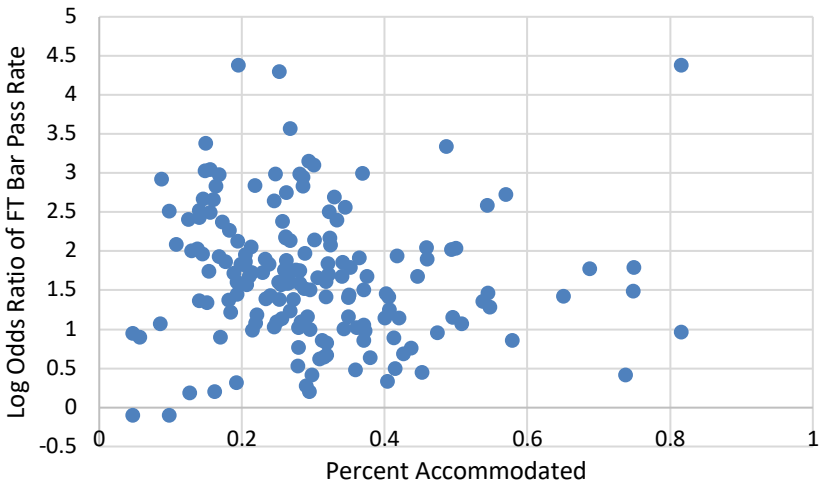


C. The Model

When the data is restricted to the unit interval (between 0 and 1), as with school bar passage rates (which are between 0% and 100%), we can use a regression analysis of the log odds ratio of the bar passage rate to estimate the relationship between the school's bar passage rate and its percentage of accommodated students; see Figure 2.[91] The scatterplot of the log odds ratio is similar to that of Figure 1.

[91] Fractional logistic models provide a good fit to data, like the bar passage rates, where the dependent variable must fall within the unit interval (between 0 and 1). *See* JEFFREY M. WOOLDRIDGE, ECONOMETRIC ANALYSIS OF CROSS SECTION AND PANEL DATA 661–62 (2002) (discussing fractional logit regression and log odds ratios).

Figure 2. *Log Odds Ratio First-Time Bar Passage Rate and Percent Accommodated*



Because a law school class's entering credentials (50th percentile LSAT score, 50th percentile UGPA) are correlated with bar passage rates,[92] those credentials are incorporated into our model and analysis. In addition, in prior work, we have established that increasing the percentage of students from communities of color decreases a school's bar passage rates.[93] As a result, the model also includes a variable for the percentage of enrolled students in a school (and year) that self-identify as members of communities of color. This produces an empirical model represented by the following equation:

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92 *See, e.g.*, *Examining the Bar Exam*, *supra* note 3, at 639 tbl.12; *Onerous Disabilities*, *supra* note 3, at 35–36 tbl.5.

93 *See, e.g.*, *Examining the Bar Exam*, *supra* note 3, at 639 tbl.12; *Onerous Disabilities*, *supra* note 3, at 35–36 tbl.5. It is my contention that such disparities are due to problems with the exam, not with the examinees.

$$\boldsymbol{PassingRate_{s,y}} = \beta_0 + \beta_1 PerAccom_{s,y} + \beta_2 MedianLSAT_{s,y,} + \beta_3 MedianUGPA_{s,y,} + \beta_4 PerBIPOC_{s,y,} + \mu$$

where

$\boldsymbol{PassingRate_{s,y}}$ is the log odds ratio of the first-time bar passage rate for school *s* in year *y*;

$\boldsymbol{\beta_0}$ is the *y*-intercept;

$\boldsymbol{\beta_1 - \beta_4}$ are the correlation coefficients for the variables that immediately follow them;

$\boldsymbol{PerAccom_{s,y}}$ is the percentage of students in school *s* who received accommodations in year *y*;

$\boldsymbol{MedianLSAT_{s,y,}}$ is the median LSAT for school *s* in year *y*-3;

$\boldsymbol{MedianUGPA_{s,y,}}$ is the median entering UGPA for school *s* in year *y*-3;

$\boldsymbol{PerBIPOC_{s,y,}}$ is the percentage of students who self-identify as American Indian/Alaska Native, Asian/Pacific Islander, Black, or Hispanic at school *s* in year *y*-3; and

$\boldsymbol{\mu}$ is the error term.

Using this equation, we engaged in a series of linear regression analyses starting with a naïve model in which only the percentage accommodated was included as an independent variable. This was followed by a credential model in which percentage accommodated, 50th percentile UGPA, and 50th percentile LSAT were the independent variables. Finally, we analyzed the complete model in which percentage accommodated, 50th percentile UGPA, 50th percentile LSAT, and percentage from communities of color were the independent variables.

Linear regression provides us with a curve of best fit describing the average relationship of the independent and dependent variables.[94] This curve of best fit does not (in general) perfectly overlap the data points.[95] As a result, the curve of best fit is only an approximation of the true value.[96] Whenever the curve of best fit does not overlap with a data point, we measure the distance (error) between the log odds ratio

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94 *See, e.g.*, Jeffrey S. Kinsler & Jeffrey Omar Usman, *Law Schools, Bar Passage, and Under and Over-Performing Expectations*, 36 QUINNIPIAC L. REV. 183, 198 (2018).

95 *See, e.g.*, Daniel J. McGarvey & Brett Marshall, *Making Sense of Scientists and "Sound Science": Truth and Consequences for Endangered Species in the Klamath Basin and Beyond*, 32 ECOLOGY L.Q. 73, 90 n.81 (2005) (discussing how data points will lie above and below the regression line).

96 *See* Kinsler & Usman, *supra* note 94, at 198.

first-time bar pass rate predicted by our curve of best fit and the actual log odds ratio first-time bar pass rate for that school and year.[97] Measuring those errors provides us with an "R-squared" value that indicates how well the curve of best fit describes the relationship.[98] As can be seen in Table 4 below, as we move from the naïve model to the complete model, the R-squared value rises from 0.03 to 0.51, indicating that the complete model most fully captures bar passage rates.

Table 4. *Models for Log Odds Ratio First-Time Bar Pass Rate*[99]

Independent Variable	Naïve Model	Credentials Model	Complete Model
% Accommodated	−1.12**	−0.97***	−0.82**
Median LSAT		0.06***	0.06***
Median UGPA		1.24**	1.16**
% from Community of Color			0.74**
Constant	2.02	−11.80	0.82
# of Observations	166	166	166
Adjusted R^2	0.03	0.50	0.51

As we can see, our analysis found—in all models—that there is a statistically significant negative correlation between the percentage of enrolled students who receive accommodations and a school's first-time pass rate. In other words, as the percentage of accommodated students rose, the school's first-time bar pass rate fell.

IV
PROBLEMS AND SOLUTIONS

To enable us to better understand precisely why the granting of accommodations in law school is negatively correlated with bar passage, the ABA, law schools, and the state board of bar examiners

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97 *See* DAMODAR GUJARATI, ECONOMETRICS BY EXAMPLE 13–14 (2011) (discussing R^2 as a measure of goodness of fit).

98 *Id.* at 43–44.

99 A single asterisk (*) means that the model is 90% confident that the relationship between that independent variable and pass rate exists and is therefore different from 0; two asterisks (**) indicate that the model is 95% confident that the relationship exists; three asterisks (***) indicate that the model is 99% confident. We draw conclusions only from coefficients marked with asterisks because of these very high levels of confidence.

for each jurisdiction must provide more data for independent researchers to analyze.

At the most basic level, the results of this Article's empirical study demonstrate that as accommodation rates increase, first-time bar passage rates decline. Under the ADA, test providers have the burden of administering exams so that the "results accurately reflect the individual's aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual's" disability.[100] The results of this empirical study provide evidence that the bar examination's results may be reflecting an individual's disability, not their aptitude. This result should raise alarm bells among law students, law schools, the state bar associations, the NCBE, the ABA, and the DOJ. It should also demonstrate to the legal community that we need more transparency and data relating to accommodations in law school and on the bar examination.

Importantly, because of the high level of the data, this result does not establish the cause of the negative impact of receiving accommodations in law school on one's probability of passing the bar exam. This effect could arise at the level of the bar examination, the law school, or the student. Even if we assume the problem arises as a result of the bar examination accommodations process, there are multiple possible explanations. For example, state bars may be giving examinees insufficient accommodations, giving examinees the wrong accommodations for their disability, being inconsistent in their grant of accommodations, or wrongly refusing to give examinees with certain types of disabilities any accommodations.

Similarly, if we assume the problem is with the way law schools grant accommodations, there are multiple explanations that could fit the data. Law schools may be providing students with accommodations beyond what is appropriate for their disability, giving accommodations to students who should not be receiving them, applying a different standard for granting accommodations (and for what accommodations to grant) than the bar examiners, and giving bar applicants bad advice about how to apply for accommodations.

Furthermore, the results could be explained by accommodated students having lower credentials or law school GPAs than unaccommodated students. There could also be explanations associated with an examinee's gender, race, or socioeconomic status.

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[100] 28 C.F.R. § 36.309(b)(1)(i) (2023); Dept. of Fair Emp. & Hous. v. L. Sch. Admission Council Inc., 896 F. Supp. 2d 849, 867 (N.D. Cal. 2012).

In light of this uncertainty and the ADA's mandate, it is incumbent upon the profession to identify precisely why this correlation between law school accommodations and first-time bar passage rates exists. To do so will require data at the level of individual student. And to gain that data, I will be seeking funding for a grant that would allow for a comprehensive, student-level, multidisciplinary study of accommodations in law school and the bar examination. Only with such a study will we truly know why accommodations in law school are negatively correlated with bar passage rates.