

FIELD NOTES



Empirical Study of Legal Education and the Legal Profession Winter 2020 Newsletter

IN THIS ISSUE

Message from the Chair	1
The Power of Partnerships:	
Profile of Tiffane Cochran, AccessLex	3
Profile of Felix Chang, Cincinnati Law	7
Upcoming Conferences and Events	9
Member Publications	10
Section Program at AALS Annual Meeting	11

MESSAGE FROM THE CHAIR

I wanted to begin by extending my thanks to Joel Chanvisanuruk for organizing the theme of our Section's Winter 2020 Newsletter: **The Power of Partnerships**. In this message, I aspire to share three vantage points on the importance of partnerships, and in doing so, to spotlight recent empirical research in neighboring fields that our members may find valuable on this theme. I anticipate that rekindling these partnerships will be a prominent concern as we emerge from the year and begin to reimagine our institutions and roles in a post-pandemic world.

First, there is an increasing recognition that multi-disciplinary, "team science" and collaborative cultures are needed to address the most vexing and pressing challenges our society faces (Disis & Slattery, 2010; Wuchty, Jones & Uzzi, 2007). Indeed, over the past year we have witnessed firsthand that COVID-19 is not *merely* a public health crisis. Rather the pandemic is interconnected with vulnerabilities, needs, and fragilities across many areas of life and our society's institutions. Addressing these interconnected challenges has required integrated interactions among researchers across different disciplines with diverse expertise, including

epidemiology, medicine, public health, social and behavioral science, psychology, economics, computer science, and law (Van Bavel, 2020). Without doubt, addressing pressing problems of racial justice, and the global challenge of climate change, will require multi-disciplinary teams, collaborative cultures, and diverse partnerships as well. In short, partnerships and collaborative cultures accelerate innovation and generate knowledge with the potential to address complex societal problems (Lariviere, Gingras, Sugimoto & Tsou, 2014).

But the power of partnerships, team science, and collaborative cultures extends beyond generating knowledge and innovation. Recent research reveals that accentuating individual achievement may foster an independent, competitive culture, which disincentivizes cooperation (Murphy et. al., 2020). These non-communal values and norms deter people who value communal and prosocial goals (Diekmann, 2013), which, in turn, impacts who ultimately joins and advances within our own institutions and the legal academy more broadly. For example, research has revealed that the perceived lack of prosocial and collaborative culture in science, technology, engineering, and math (STEM) deters women (Diekmann, 2010), first-generation students (Harackiewicz et. al., 2016), and racial minorities (Thoman et. al., 2015; Cech et. al., 2017). As such, partnerships, collaborative cultures, and a team-based approach to empirical scholarship have the benefit of enriching innovation, while at the same time enhancing diversity and inclusion in the legal academy (Murphy et. al., 2020).

Finally, partnerships and relationships matter a great deal to our students as well. For example, research on *communal goal congruity* theory (Diekmann 2013) has revealed that women and underrepresented students often seek out opportunities to express their communal and prosocial goals. Accordingly, whether our institutions and the legal profession embrace these values and goals likely shapes who attends and persists in law school and may ultimately shape

diversity and inclusion within the legal profession more broadly. Moreover, our student's relationships with faculty members and partnerships with peers shape whether they come to feel that they belong in law school and their long term success (Green et. al., 2020). We should, therefore, make communal learning opportunities available within our courses, while providing students in our institutions the opportunity to form high quality and lasting relationships.

In closing, I wanted to express my thanks to Chair-Elect Jennifer Gundlach for organizing a terrific AALS program, *Disrupted Gatekeeping: An Empirical Look at Influences on Access to Legal Education and the Profession*, to be held on Thursday, January 7, 2020 from 2:45 - 4:00 pm PST. The program will feature newly emerging research on key decision-making stages that shape students' entry into law school, their success in law school, and entry into the legal profession. I also wanted to express my thanks to Dean Angela Onwuachi-Willig who will be graciously offering her remarks. And finally, I wanted to express my heartfelt thanks to the Executive Committee for our own partnership and collaboration over a challenging year, and especially your efforts, your commitment, and those of our members who have helped to navigate legal education through the challenges of the year by promoting the use of multi-disciplinary knowledge, collaborative cultures, and empirical methods.

Victor D. Quintanilla

Bicentennial Professor of Law

Co-Director, Center for Law, Society & Culture

Maurer School of Law

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Empirical Study of Legal Education and the Legal Profession Officers

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Jay J. Van Bavel, et. al., Using Social and Behavioural Science to Support COVID-19 Pandemic Response, 4 Nature Human Behaviour 460-471 (2020).

Stefan Wuchty, Benjamin F. Jones & Brian Uzzi, *The Increasing Dominance of Teams in Production of Knowledge*, 316 Science 5827 (2007).

The Power of Partnerships

This issue of *Field Notes* explores the Power of Partnerships. We profile two practitioners whose recent projects in the empirical study of legal practice and education have been defined and elevated through partnerships.



Tiffane Cochran is the Managing Director of Research at AccessLex Institute, where she leads and facilitates all of the research and data initiatives. Our profile of Ms. Cochran explores AccessLex's recent partnership with the Law School Survey of Student Engagement (LSSSE).

Field Notes:

Could you describe and introduce the bar exam success initiative that you're conducting with LSSSE?

Tiffane Cochran:

We are partnering with LSSSE to understand the extent to which student engagement directly influences bar passage outcomes. A lot of the literature and research tends to focus on pre-admission and academic influences of bar passage, so we wanted to take that a step further. Our initiative seeks to understand and unpack how different student experiences, whether faculty interaction, frequency and amount of time preparing for class, and outside commitments, impact likelihood of bar passage. This initiative is the result of a partnership with LSSSE and, by extension, with the participating law schools to assemble the data. The data we are analyzing are 3L student responses to the LSSSE instrument from partner law schools and those students' performance on their first bar exam after graduation.

Field Notes:

How did you come to this partnership? Did the idea behind the initiative precede the partnership, or vice versa?

Tiffane Cochran:

Aaron Taylor, Executive Director of the AccessLex Center for Legal Education Excellence, envisioned this partnership. When Aaron came to AccessLex, in 2017, he

does and what we were trying to achieve here at AccessLex, which is to help our member law schools improve their bar passage rates.

Field Notes:

What sorts of assumptions are you exploring in the work with this partnership with LSSSE?

Tiffane Cochran:

The first assumption is that law school matters. What happens to you in law school should have an impact on how you perform on the bar exam. Otherwise, if we're just going to assess bar performance on how you performed on the LSAT or how you performed as an undergraduate, then we could skip law school and go straight to the bar exam, right?

The second assumption is, and I think it's an assumption that most of us in legal education can agree on, is that there is no silver bullet. We're not going to find some magic answer as to what helps someone pass the bar exam. It's about what works for the students at a particular institution and taking into account those particular contexts.

So, if we know that law school matters, and if we know that those experiences have some impact, the work becomes a matter of figuring out what are the most high-impact experiences and activities related to bar performance and then to what extent these experiences relate to a measurable prediction in how students perform on the bar exam.

A lot of institutions have been adopting academic success programs and have been trying different experiments on their campuses. We wanted to help supplement those efforts by providing some hard data that wouldn't necessarily result in a one-size-fits-all approach but rather reveal some of the factors that we know have a demonstrable impact at a given institution.

was still the acting and outgoing chair of LSSSE. At the time, we were adopting a new strategic plan that included an objective focused specifically on bar passage. He saw this as a perfect marriage of what LSSSE

Additionally, a lot of the bar passage research has the limitation of being done at only one institution, and so it only applies to that one context. We wanted to try to coalesce around all the different schools that we partnered with and do an aggregate study in addition to providing them with their own customized reports. We are still finalizing the aggregate report and will share it publicly. Our hope is that it will provide more generalizable results that can help law schools maximize what they're already doing to further improve bar success.

Field Notes:

Can you walk us through any conclusions or findings that have been revealed to date through the partnership?

Tiffane Cochran:

Absolutely. I think probably the most exciting one that we found, and I think it holds true for all 20 institutions that we partnered with, is that academic growth, measured by GPA, from the first semester to the final semester of law school has a profound impact on how you perform on the bar exam. So the larger the jump from first semester to final GPA, the higher the likelihood of passing the bar exam. And that's a really exciting outcome for us because, as I mentioned at the outset, a lot of the literature right now tends to focus on those static indicators of your academic performance in law school: your first semester performance, first-year GPA, or your final GPA. If you could somehow increase your GPA in that timeframe and essentially improve how you're performing in law school, then that will pay dividends for your likelihood of passing the bar the first time. This also means that all the work that so many institutions are doing that's focusing on that critical first semester and that critical first year can be tremendously impactful. If you can help students overcome a mindset that, "I didn't do well. I'm not going to do well," then that could really help them, not only in terms of performing better in law school and feeling more confident in their

ability to do well in their classes, but also feeling more confident in their ability to pass the bar.

We found some student engagement factors to be negatively associated with first-time bar passage. One of those was other non-legal responsibilities, in other words, time that you spent working in a non-legal job, time that you spent commuting to class – how many hours per week are you commuting – as well as things like having dependent care responsibilities. So if you have young children, or if you have older adults or others who need your time and attention from a care perspective, then that can have a negative influence on your likelihood of bar passage. And that makes sense because those are competing priorities for your time, and you don't have as much time to focus on studying for the bar.

The other thing we found, and this was a counterintuitive finding, is that the more time you spent preparing for class, the less likely you are to pass the bar exam. This is where it's important to understand how the LSSSE questionnaire items are structured. In this case, the question is structured in increments of 10 hours, so zero-to-ten, eleven-to-twenty, etc. We found that students who reported spending more than 30 hours a week preparing for class were less likely to pass the bar exam compared to those in the zero-to-ten category. It could be the students who are spending that much time preparing for class, and again, we're talking about LSSSE results in the third year, those might be students who were struggling. Those might be students who feel like they have to put in that much time in order to perform well. But it could also be that maybe they're not spending that time efficiently. Maybe they're spending their time on the wrong things.

So now let me pivot to the positives. I think two of the strongest factors that we found to be associated with bar passage from a student engagement perspective were, first, having real-world legal experience. So these are either pro bono or paid, hands-on legal experiences outside of clinical coursework. And that, again, would make sense because the bar exam is testing your competency as a lawyer. So if you have those real-world experiences, even if it's just 10 hours a week or even less, it makes a huge difference. So that was a really interesting and significant finding.

And the other strong factor was the behavior of asking questions in class. I find this really interesting because it gets to the heart of what we traditionally think of when we think about student engagement. How actively is a student participating in class and actively listening and engaging with the content during class. It could also say something about that student's level of confidence. I know it's not easy to raise your hand in law school classes. I didn't go to law school, but people tell me it's a big deal to do that. And so it could also just mean that there's something unique and special about those students who are willing to go out on a limb and raise their hand and ask questions.

Then it becomes a question of "How do you encourage those behaviors?" associated with bar passage. Many law schools are already encouraging a lot of practical experience through clinical coursework, but maybe there are other things that students can do, again, including pro bono or paid legal work. And then there's the idea that we're not necessarily going to simply tell students to ask questions. But really what does that suggest when you're the kind of student who does ask questions in class? How does that potentially lead you to do well on the bar exam?

Field Notes:

If you ask a question in class, I would presume that you've prepared for the class, that you feel that your question is insightful or furthers discussion of the topic. The other way to look at that what level of comfort and safety does that student feel with the faculty member? How is that established?

Tiffane Cochran:

Definitely. So those are some of the high-level findings looking specifically at the relationship between student engagement of third year students and how they perform on the bar exam.

Field Notes:

What are the next steps in this initiative?

Tiffane Cochran:

This initiative focuses solely on 3L student engagement. For Phase II, we hope to conduct a longitudinal analysis of student engagement—tracking LSSSE responses for the same group of students for all three years of law school—and examine how changes in student engagement levels relate to changes in law school GPA from the first to the final semester, and ultimately, bar exam outcome.

And as I shared earlier, we are hoping to soon release a report of aggregate findings from Phase I of the initiative. Our Senior Research Methodologist, Jason Scott, and his team have taken all 20 institutions' data, combined them, and done an analysis to try to understand if that gives us more sample power to allow us to better understand how some of these engagement factors play out on a larger scale.

Field Notes:

From your partner's angle, from LSSSE's perspective, what would you say made AccessLex a compelling partner?

Tiffane Cochran:

First of all, I would say that I think if anyone's thinking about partnering with LSSSE, absolutely do it. There's so much rich data. They're such a great collaborative partner. I know they've been engaging other legal education organizations like AccessLex to pursue research and I know that LSSSE also wants to partner with schools. I think one of the barriers, and this is where it gets to why AccessLex is a helpful partner, one of the barriers for some institutions is cost. You have to pay an administrative fee to administer the LSSSE questionnaire at your school, and because AccessLex had a special interest in supporting law schools that are struggling with bar passage, we subsidized the cost for any school that had a bar passage rate below 75% and who opted to partner with us in this initiative. We were able to reimburse the partner schools' LSSSE administration fee if they were able to secure a data sharing agreement with us that would allow us to conduct the analysis for their institution. The second

thing is that we have such an amazingly talented research team here at AccessLex. We have a really great staff and resources on hand to actually conduct these analyses of 20 partner schools.

Field Notes:

The last question, since the focus of this article is about the impact of partnerships: are there any partners missing in the equation? Are there any institutions, groups, or people that you would ideally add to this partnership and that would impact its outcomes?

Tiffane Cochran:

I wish that we could get as many schools involved as possible, particularly those that are struggling with bar passage. There are many institutions that, for various reasons, were not able to partner with us. I think one of the hurdles was some institutions couldn't get IRB approval to participate in the research. In some cases, the law school was on board but wasn't able to get approval from the main campus to participate in the project. We need the approval from the institution and the buy-in to get the necessary data to provide this analysis.

It would also be interesting to merge jurisdiction-level data with LSSSE findings to examine the extent to which certain law school experiences influence performance on specific parts of the bar exam. Jurisdiction data could also open the door for us to analyze the relationship between student engagement and bar exam score (as opposed to just a pass or fail outcome).

At AccessLex we are always willing to partner with interested organizations. We're not a school with access to student-level data. We're not LSAC with information about admission and LSAT performance, for example. In some ways this limits what we can do empirically, but again, when we have partners, like the LSSSE and partner institutions, it allows us to really further our work to support students. At AccessLex, the tagline is "Empowering the next generation of lawyers," and we need data to be able to do that. Thank you for highlighting the importance of data partnerships, and I'm hoping that this is the first of many to come.



Felix Chang is Associate Dean of Faculty, Professor of Law and Co-Director, Corporate Law Center at the University of Cincinnati College of Law. His scholarship focuses on financial reform, particularly the intersections of financial regulation and antitrust.

Our profile of Prof. Chang explores his recent partnership with the University of Cincinnati's Digital Scholarship Center conducting topic modeling research.

You can follow Felix on Twitter @changlawprof

Field Notes:

Can you broadly describe the research that you are conducting with the University of Cincinnati Digital Scholarship Center?

Felix Chang:

Yes, this project is a collaboration I've undertaken with the Digital Scholarship Center (DSC), part of the library system at the University of Cincinnati. The library system has secured a \$1 million grant from the Andrew W. Mellon Foundation to do big data analysis. In particular, DSC has built a machine learning platform that utilizes topic modeling (a form of natural language processing) to sift through very large datasets. DSC has tweaked topic modeling algorithms to generate a variety of visualizations that highlight the latent patterns among key terms within the dataset.

We have started by analyzing a really large data set of antitrust cases. I wanted to see what topic modeling illuminates, for instance, on the market power doctrine or the balance between antitrust and regulation.

The dataset we used is all federal cases bearing either the word "antitrust" (in total, about 35,000 cases) or "regulation" (in total, about 306,000 cases), extracted from Harvard Law Library's Case Law Access Project. From this pool, selected all federal antitrust cases with the word "market power" (the market power corpus) and all cases with the words antitrust and regulation (the antitrust–regulation corpus).

Field Notes:

How did you come to this partnership with the University of Cincinnati Digital Scholarship Center? Did the research question precede the partnership, or vice versa?

Felix Chang:

I was not very familiar with big data analysis and I wasn't familiar with topic modeling at all. It was through the introduction of our College of Law Librarian, Jim Hart, that I started to partner with the Digital Scholarship Center here at the University of Cincinnati.

I came to Jim with this problem: how do federal courts understand open-ended topics in antitrust such as market power, and do these courts balance antitrust and regulation? Jim introduced me to others in the University's library system working on topic modeling.

Field Notes:

What sorts of concepts or questions are you exploring in this work?

Felix Chang:

Because I was new to topic modeling, I began slowly and just wanted to see what trends the algorithms turned up. I had no preconceptions whatsoever, other than assuming that federal courts probably weren't very good at honing and pinning down what "market power" means. Nor did I think they were very precise about the balance between antitrust and regulation.

So we let topic modeling loose. These algorithms work best over large and unstructured datasets. With copious amounts of natural language (that is, case law), we could what patterns emerged.

At its core, topic modeling is a form of distant reading—as opposed to law, which tends to engage in close reading of texts. In recent decades, the field of digital humanities has pioneered computational and quantitative analysis of large corpora of texts, extending the capacity of distant reading to uncover patterns that the human eye cannot detect. This was part of the reason I came to the project with no preconceptions on what to expect.

Field Notes:

What is the value of topic modeling as an empirical research method in legal scholarship?

Felix Chang:

Law scholars can be siloed in our approach. And when we cite other works, we tend to cite highly cited papers. And highly cited papers usually hail from within our disciplines. But when we look across disciplines, we find many people are looking at the same problems, but from a variety of perspectives.

Topic modeling can cut down some of the silos within legal subfields. After all, some of its earliest uses was to recommend scientific papers across disciplines. Specifically, topic modeling creates visual descriptions of the relationships—the statistical relationships—among words; it maps out the likelihood that certain words will tend to cluster together into topics. If you start with a focused corpus of cases, for instance, “antitrust” and

“regulation,” topic modelling can tell you how the words in these cases tend to cluster together, without regard to whether the regulations in question pertain to banking, insurance, labor, health care, and intellectual property.

Field Notes:

Can you walk through any conclusions or findings your research has helped surface?

Felix Chang:

What we see is a pattern of diversification over time. In “market power” cases, for instance, there is a decline of cases that relate to tying (an offense under antitrust law), as well as a decline of cases with the keywords “bank” or “financial.” In their place, we see diversification within the corpora—for instance, the emergence of patent topics, hospital topics, and also procedural topics that pertain to litigation, in particular, class actions.

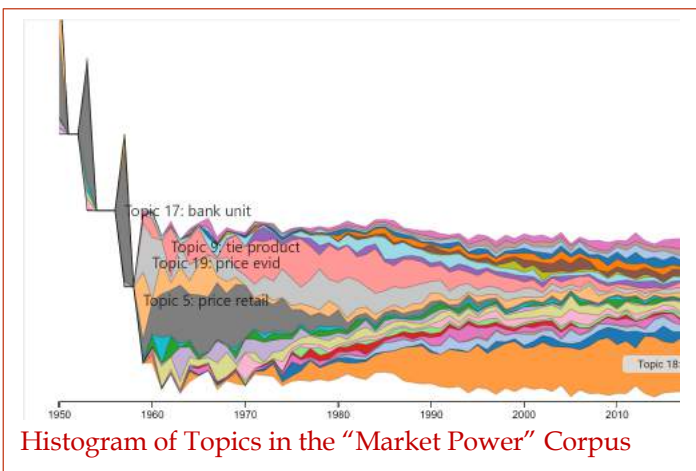
The picture of diversification complicates previous research. Prior empirical research often focused on whether antitrust cases have declined over time. I think our results suggest greater nuance, in that the absolute numbers may have ebbed and flowed, but the so have the types of antitrust cases.

In the antitrust–regulation corpus, we’ve witnessed the same diversification as in the market power corpus. It seems, for instance, that tying cases have abated, supplanted by litigation-centric topics, dealing with civil procedure.

I think we can also extrapolate some general inferences about patterns of industrial change in the US. Topics bearing terms associated with manufacturing have declined over the decades, but patent and health care terms have become more prevalent. Still, at this stage, it’s a little premature to too many inferences.

Field Notes:

From your partner’s angle, from the University of Cincinnati Digital Scholarship Center perspective, what would you say made you a compelling partner?



Felix Chang:

I help provide the subject matter context. One of the critiques from digital humanities is that this sort of distant reading can obscure context. Because you are splicing words, you are taking them out of context to illuminate very broad and big picture patterns. There are some technical fixes though. For instance, DSC's platform has a document retrieval function where you can actually pull up cases and read through them to make sure that they cohere with the topic.

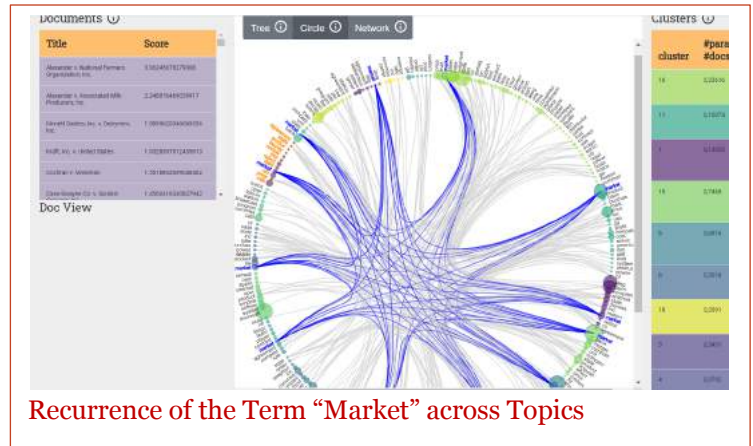
The last question, since the focus of this article is about the impact of partnerships, are there any partners missing in the equation? Are there any institutions, groups, or people that you would ideally add to this partnership or will take the outcomes of your work further?

Felix Chang:

I hope that ultimately that our work will push the proprietary legal research services to be more forthcoming. Scholars have pointed out that Lexis, Westlaw, and other commercial databases are not transparent about how their algorithms work. We are very transparent about our methodology and our results.

We are at a juncture in which the market for legal information is diversifying. You are seeing insurgents challenge the incumbents. So you have legaltech upstarts that are promising disruption through algorithms that can grab cases more accurately, but they're just as opaque about their algorithms. My hope is that through this partnership with the DSC, we can provide a path for scholars to do some of the basic visualization work ourselves. This would force for-profit legaltech to

provide services that are truly valuable. This would truly be disruptive.



Recurrence of the Term "Market" across Topics

UPCOMING CONFERENCES AND EVENTS

January 5 – 9: [AALS Annual Meeting](#), Virtual

Fall 2021: [15th Annual Conference on Empirical Legal Studies](#) (CELS), University of Toronto Law School

MEMBER PUBLICATIONS AND PRESENTATIONS

Bahadur, Rory D., *Blinded by Science? A Reexamination of the Bar Ninja and Silver Bullet Bar Program Cryptids* (August 28, 2020). *Journal of Law & Education*, 2020, Available at SSRN: <https://ssrn.com/abstract=3682375>

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Gharakhanian, Anahid and Larmore, Carolyn Young and Parlett-Pelleriti, Chelsea, *Achieving Externship Success: An Empirical Study of the All-Important Law School Externship Experience* (September 8, 2020). *Southern Illinois University Law Journal*, 2020, Available at SSRN: <https://ssrn.com/abstract=3689133>

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Winick, Mitchel and Quintanilla, Victor David and Erman, Sam and Chong-Nakatsuchi, Christina and Frisby, Michael, *Examining the California Cut Score: An Empirical Analysis of Minimum Competency, Public Protection, Disparate Impact, and National Standards* (October 15, 2020). AccessLex Institute Research Paper, Available at SSRN: <https://ssrn.com/abstract=3707812>

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SECTION PROGRAM AT THE 2021 ANNUAL MEETING

Disrupted Gatekeeping: An Empirical Look at Influences on Access to Legal Education & the Profession

Thursday, January 7th, 2:45 - 4:00pm EST.

This program will feature newly emerging empirical research related to gatekeeping, key decision making stages that affect students' admission to law school, success during law school, and entry into the legal profession. The presenters will focus on preparing diverse students for law school, grading and inequity in law school, new pathways for licensure, and the disparate impact of bar exam cut-off scores. In light of the COVID-19 pandemic, our panel will include current empirical research on these critical gatekeeping moments and discuss how they may be, are being, or have been impacted and disrupted by the pandemic.

TOPICS AND PRESENTERS

JD-EAP: Exposing, Assessing, Preparing Diverse Students for Law School

Jessica Deborah Findley, Research Scholar, University of Arizona, James E. Rogers College of Law

Grades and Inequity in Legal Education: Findings from the COVID Disruption

John Bliss, Assistant Professor University of Denver, Sturm College of Law

New Pathways for Licensure Based on an Empirically Based Definition of Minimum Competence

Deborah Jones Merritt, Professor, The Ohio State University, Moritz College of Law

Gatekeeping and the Legal Profession: An Empirical Study of Bar Exam Cut Scores and Their Disparate Impact on Diversity in the Legal Profession

Victor Quintanilla, Indiana University, Maurer School of Law

In addition, we are deeply grateful that Dean Angela Onwuachi-Willig, Dean, Boston University School of Law will conclude the program by offering a response to the presented research from the perspective of a law school dean.

Please plan to attend this important Section event.