

**Report on Proposed ABA Interpretation 301-6 (as of December 3, 2007)**

submitted by

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This Report addresses the December 3, 2007 version of proposed ABA Interpretation. For comments on earlier versions see my letter, dated May 15, 2007, and my Preliminary Report on Bar-Based Outcome Measures, dated October 31, 2007. The comments in this report are solely my own, and should not be attributed to South Texas College of Law.

**301-6(A)(1): ABA Progressive Bar Passage Rate of 75%**

Proposed 301-6(A)(1) is a major step forward in at least two respects. First, to a certain extent, it takes into account cumulative Bar passage rates, including subsequent Bar passage by those who failed on the first attempt. Second, for purposes of calculating a school's cumulative Bar passage rate, its graduates from the relevant years are considered as a group. This reduces the standard error of measurement.

The first problem with 301-6(A)(1) is that it does not result in a true eventual (cumulative or ultimate) Bar passage rate. Under 301-6(A)(1)(a), the calculation includes all students graduating from one through five years ago. More recent cohorts of graduates will have had progressively fewer opportunities to retake, and to pass, the Bar. As a result, the current Bar passage rate of each cohort becomes increasingly less reliable as a measure of its eventual Bar passage rate. The effect of the progressive nature of the 301-6(A)(1) is reduced somewhat by 301-6(A)(1)(b), which allows schools to test only three out of the last five cohorts of graduates. Looking only at the cohorts from 5, 4 and 3 years ago should provide a better estimate of a school's eventual (cumulative or ultimate) pass rate.

The second problem goes back to the differing State grading practices, especially cut scores. As I discuss in "Unpacking the Bar: Of Cut Scores and Competence" (available on SSRN at <http://ssrn.com/abstract=988429>), state grading practices have a strong effect on law-school first-taker Bar passage rates. So far as I know, there is no comprehensive study of eventual law-school Bar passage rates, and the factors that affect them.

**301-6(A)(2): Minus 15% Difference Score**

**1. General Comments**

First, thirteen jurisdictions have only a single law school with that state as its plurality Bar, and another 9 have only two. In these jurisdictions, a standard using a "difference score" from the State ABA average for first-takers is largely meaningless. For schools in these states, only 3016(A)(1)'s progressive Bar passage rate will apply. If a standard based on first-taker Bar passage rates is to be used, it should not effectively exempt law schools in certain states.

Second, as discussed in my paper "Benchmarking the Bar: No Unity in Difference Scores" (available on SSRN at <http://ssrn.com/abstract=1017996>) and in my Preliminary Report on Bar-Based Outcome Measures, the use of difference scores does not eliminate the effect of differing state cut scores. Lowering the minimum difference score from minus 10 to minus 15 percentage points is too blunt an instrument to cope with the wide range of state cut scores.

**2. Empirical Analysis**

An empirical analysis of projected difference scores shows that the minus 15% difference score standard will disproportionately affect both historically black law schools, as well as law schools with part-time programs.

This analysis is based on the first-taker Bar passage data for each ABA law school's plurality state in Summer 2005 and Winter 2006 Bar passage.<sup>1</sup> The law school Bar data was then combined by plurality state, to calculate an ABA plurality (overall) passage rate in each state. A difference score for each law school was calculated by subtracting from each school's passage rate the overall passage rate in its plurality state.

As shown in Table 1, 17 schools had difference scores lower than minus 15%, meaning that they should be considered to be at "high" risk under the standard of 301-6(A)(2).

**Table 1**  
**Law Schools at Risk**  
**High Risk (Difference Score < -15% )**  
**and Moderate Risk (Difference Score = -15% & < -10%)**

<b>High Risk</b>	<b>Moderate Risk</b>
Appalachian School of Law	Barry University
City University of New York	Chapman University School of Law
District of Columbia	Cleveland State University
Florida A&M School of Law	Hofstra University
Golden Gate University	New England School of Law
Howard University	New York Law School
John Marshall Law School (Atlanta)	Pace University
University of La Verne	Pontifical Catholic University of P.R.
Saint Thomas University (Florida)	Regent University
Southern University	Saint Mary's University
Texas Southern University	Syracuse University
Thomas Jefferson School of Law	
Touro College	
Western New England College	
Western State School of Law	
Whittier College	
Widener University-Harrisburg	

An additional 11 schools had difference scores higher than minus 15%, but lower than minus 10%, meaning that they should be considered to be a "moderate" risk under that standard. This additional layer of schools at risk offsets somewhat the standard error of measurement for the various law-school passage rates, which averaged over 6%.

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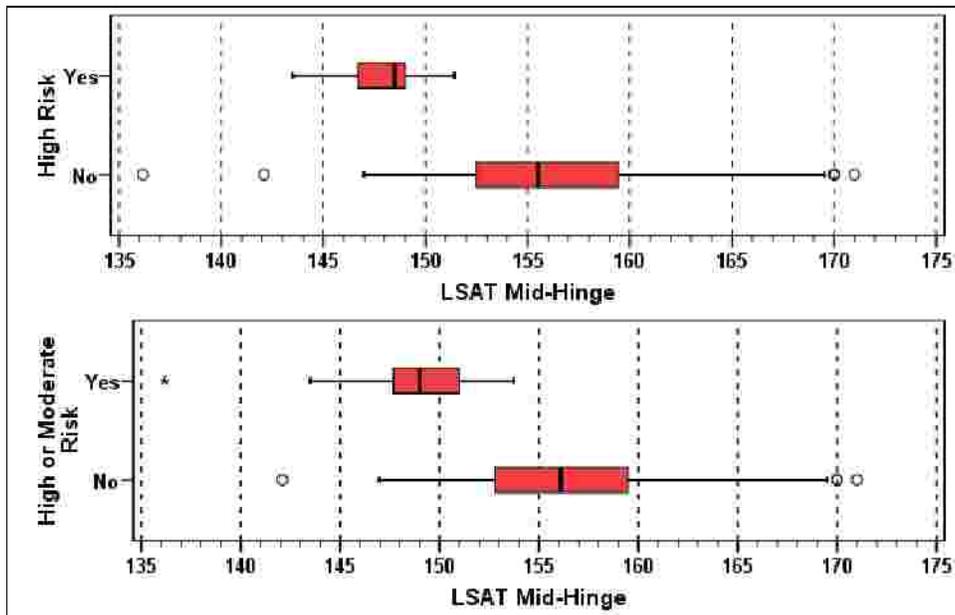
<sup>1</sup> This data was taken from the 2008 Official Guide to ABA Law Schools.

In comparing schools at risk to schools not at risk, three points stand out:

- a. **LSAT Profiles.** The LSAT mid-hinges of entering classes<sup>2</sup> of the law schools at high risk were substantially lower than those of law schools that were not a high risk. As shown in Chart 1, the highest LSAT mid-hinge of schools at high risk was below the 25<sup>th</sup> percentile for schools not at high risk. Moreover, 25% of high-risk law schools had LSAT mid-hinges lower than all but two of schools not at high risk. Despite this, the LSAT mid-hinges of at-risk law schools did substantially overlap those of schools not at risk. I suggest that this means that the schools that were not at risk were located in (plurality) states with relatively lower cut scores.

In comparing the LSAT mid-hinges of schools at high or moderate risk and those of schools not at high or moderate risk, the differences are not quite as stark, but still sobering.

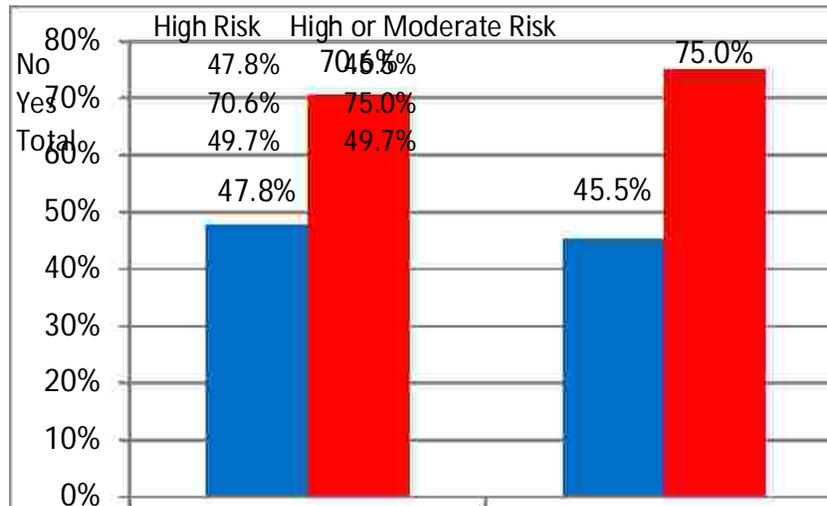
**Chart 1**  
**Box-Plot of Distribution of School LSATs**  
**Not-at-Risk (No) versus At-Risk (Yes)**  
**High versus High or Moderate Risk**



<sup>2</sup> The entering classes were the 2002 full-time and 2001 part-time classes.

- b. **Part-Time Programs.** Law schools with part-time programs represented almost half of the 195 law schools in the 2008 Official Guide. Yet, schools with part-time programs made up 70.6% of schools at high risk, and 75.0% of schools at high or moderate risk (see Chart 2).<sup>3</sup>

**Chart 2**  
**Percent of Schools with Part-Time Programs**  
**Not-at-Risk (No) versus At-Risk (Yes)**  
**High versus High or Moderate Risk**



- c. **Historically Black Law Schools.** Data from the 2008 Official Guide shows that there are now 5 law schools with a large proportion of African-American law students, 4 of which are historically Black law schools: (i) Howard University (70.8%); (ii) Southern University (56.1%); (iii) University of St. Thomas (Minnesota) (52.8%);<sup>4</sup> (iv) Texas Southern University (44.5%); and (v) North Carolina Central University (44.0%). Three out of four of the historically Black law schools, Howard University, Southern University and Texas Southern University, are all at high risk.

<sup>3</sup> The significance of the differences between at-risk schools and not-at-risk schools were 0.073 (high risk) and 0.004 (high or moderate risk).

<sup>4</sup> Accredited by the ABA in 2003, the law school at the University of St. Thomas is not an “historically black” law school.