

# Eye of the Beholder: How Perception Management Can Counter Stereotype Threat Among Struggling Law Students

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## ABSTRACT

When individuals belong to a group about which there is a negative stereotype, their fear of confirming that stereotype will often suppress their performance ability. This phenomenon is known as “stereotype threat,” and it has been documented with regard to gender, race, age, social class, athletic ability, and any number of other classifications, so long as a negative stereotype exists about that group.

Law students with low grade point averages (GPAs) are at greater risk than their higher-GPA peers of failing the bar exam, and they know it. Left unchecked, the pressure of this correlation—the stereotype threat—may *itself* depress their bar exam performance.

Together with school-wide efforts, however, academic support programs and messages can be developed so as to diffuse the negative stereotype of low GPA resulting automatically in bar failure. This Article discusses how the bar exam can be reframed, its consistency emphasized, and other techniques to help move students away from the fear that struggling in law school means bar exam failure. The Article also discusses how law schools can create a positive stereotype for students participating in bar preparation programming, by manufacturing a sense of belonging to a group that is stereotyped to do well on the bar exam. Such positive affiliation may result in a “stereotype boost,” or overperformance compared with peers.

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## INTRODUCTION

Incoming law students are perceived as lacking in critical thinking, problem-solving, and other lawyering skills.<sup>1</sup> It is natural that these students will struggle to adapt to the rigors of law school, and many of them will continue to struggle throughout their legal education. In addition to the academic pressures students face in preparing for class, completing assignments, outlining, working in study groups, and studying for exams, students in law school also face a new level of pressure: grading curves and the resulting class ranks.

In law school, for the first time, students who all excelled in college are forced into a paradigm where a C or C+ is the median grade. Half of all law students find themselves in the bottom half of the class—it's a mathematical certainty, but it comes as a shock, and it has repercussions.

Low grades in law school bring with them academic, professional, and emotional tolls. Students fear that a poor GPA will prevent them from landing a job after graduation. An extremely low GPA may result in academic probation, restrictions from participation in extracurricular activities, or academic dismissal. Students with low GPAs may spend their remaining law school semesters attempting to dig out from their bad starts, ideally by changing their approach to studying or by seeking academic support. Students may also attempt to boost their GPAs through course selection, taking courses they perceive as being easy, or choosing courses with different grade determinants (papers and class participation, for example, instead of a cumulative final).

Students are also becoming increasingly aware of the correlation between low grades and bar exam failure. GPA at graduation is not

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1. Susan Stuart & Ruth Vance, *Bringing a Knife to the Gunfight: The Academically Underprepared Law Student & Legal Education Reform*, 48 VAL. U. L. REV. 1 (2013).

a perfect indicator of bar exam success, but statistically, at some schools, it does show a stronger correlation with bar passage than other factors.<sup>2</sup> The “danger zone” of low GPAs may vary from school to school—for some law schools, students in the bottom quartile of the class may be at risk of bar failure, whereas for other schools, the risk may be spread across the bottom half—but students are aware of a correlation, and students with low GPAs are very afraid of their bar passage prospects.<sup>3</sup>

Psychologist Claude M. Steele, along with his colleagues and collaborators, has identified and studied a dangerous concept for at-risk individuals: stereotype threat.<sup>4</sup> Stereotype threat will be discussed in greater detail in Part I below, but put briefly, when an individual is placed in a pressured situation where she would stereotypically be believed to perform poorly, she will. In fact, the more the negative stereotype is pointed out to her ahead of time, and the more she cares about doing well, the worse she will perform.<sup>5</sup> Stereotype threat has been proven to affect individuals of various races, genders, ages, social classes, and a variety of other characteristics<sup>6</sup>—so long as the individuals are stereotyped to perform in a certain (typically negative) way.

Stereotype threat also poses a danger to law students at the bottom of their graduating classes: the fact that they know they’re expected to perform badly on the bar exam may mean, in fact, that many will regardless of their individual abilities. This concept is explored in more detail in Part II. The pressure to perform, and to

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2. Nicholas Georgakopoulos, *Bar Passage: GPA and LSAT, Not Bar Reviews* (Robert H. McKinney Sch. of Law Legal Studies Research, Working Paper No. 2013–30, 2013). *But see* Christian C. Day, *Law Schools Can Solve the “Bar Pass Problem”—“Do the Work!”*, 40 CAL. W. L. REV. 321, 328–29 (2004) (finding near-perfect correlation between bar passage and LSAT score, a finding not replicated elsewhere in the literature).

3. *See infra* Part II.

4. *See generally* CLAUDE M. STEELE, WHISTLING VIVALDI: HOW STEREOTYPES AFFECT US AND WHAT WE CAN DO (2010).

5. *Id.* at 59, 98.

6. *Id.* at 97–98. (“In the nearly fifteen years since its first demonstration was published, research on stereotype threat effects has blossomed throughout the world. The effect has been observed in women, African Americans, white males, Latino Americans, third-grade American schoolgirls, Asian American students, European males aspiring to be clinical psychologists (under the threat of negative stereotypes about men’s ability to understand feelings), French college students, German grade school girls, U.S. soldiers on army bases in Italy, women business school students, white and black athletes, older Americans, and so on. It has been shown to affect many performances: math, verbal, analytic, and IQ test performance, golf putting, reaction time performance, language usage, aggressiveness in negotiations, memory performance, the height of athletic jumping, and so on.”).

counter the stereotype, may actually inhibit students from performing up to their natural capabilities, like an athlete who “chokes” in a crucial moment.<sup>7</sup>

The good news is that stereotype threat can be countered. Steele and others have explored and identified concrete ways to reduce or dissolve stereotype threat, and these techniques can be used to help law students with low GPAs prepare for, and pass, the bar exam. These techniques are discussed in Part III below, in the context of how academic support programs can be designed and marketed in such a way as to reduce negative stereotypes and even create positive stereotypes, which may in turn generate a performance boost.

### I. STEREOTYPE THREAT GENERALLY

Stereotype threat is a concept first researched and identified by psychologist Claude Steele in the 1990s.<sup>8</sup> Steele and his colleagues began their research by exploring how women performed in advanced college math classes.<sup>9</sup> Women, as a group, are often stereotyped to have poor math skills, and Steele wondered whether the existence of that stereotype had any effect on women’s actual performance.<sup>10</sup> The initial experiment was simple: undergraduate men and women—with comparable math SAT scores, good grades in calculus, and for whom math was an important personal and professional goal<sup>11</sup>—came into Steele’s lab one at a time and took either a difficult math or English test.<sup>12</sup> The women performed worse than the men on the math exam, but the groups performed equally on the English exam.<sup>13</sup> Although there were other possible explanations for this disparity, Steele and his collaborators theorized that “it was the pressure not to confirm a stigmatizing view of oneself that made women underperform in this experiment.”<sup>14</sup>

As Steele’s research progressed, he and his colleagues began to focus on racial stereotypes,<sup>15</sup> using a similar experimental setup to test the implications of the stereotype that black individuals have

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7. *Id.* at 124.

8. *See generally id.*

9. *Id.* at 32–33.

10. *Id.*

11. *Id.*

12. *Id.* at 33. The tests were taken from the advanced GRE subject exams.

13. *Id.* at 34.

14. *Id.*

15. Steele himself filed an expert report in *Grutter v. Bollinger*, 137 F. Supp.2d 821 (E.D. Mich. 2001), a lawsuit over whether the University of Michigan Law School could use applicants’ race as a factor in its admissions decisions. The case was ultimately appealed to and decided by the Supreme Court. *Grutter v. Bollinger*, 539 U.S. 306 (2003).

lesser intellectual ability. A difficult verbal test was administered to both white and black Stanford undergraduates.<sup>16</sup>

[Steele] assumed that the frustration [the test] caused would be enough to make black students feel this threat [of confirming the negative stereotype]. White students wouldn't like frustration either. But they wouldn't worry that it was confirming anything about their group, since there is no broadly held negative stereotype in this society about whites[] having lower intelligence.<sup>17</sup>

The white students did in fact outperform the black students on the test.<sup>18</sup> The black students' underperformance did not automatically confirm the hypothesis of stereotype threat, of course; that was just one possible explanation.<sup>19</sup>

So the next experiment regarding racial stereotypes introduced a new variable: participants were given the same test, but were given a new explanation as to the test's purpose. The psychologists explained to the new participants "that the test was a 'task' for studying problem solving in general, and [the test administrators] emphasized that it did not measure a person's intellectual ability."<sup>20</sup> There is no stereotype that blacks are not good at problem solving, and in fact, once freed from the possibility of confirming a negative stereotype about intelligence, the black students performed at the same level as white participants.<sup>21</sup>

Steele concluded that the black and female students who believed they were being tested on something they are stereotyped as being bad at risked a "double consequence": that the test would reveal they were individually unsuccessful, but also that their group as a whole would be unsuccessful at such a task.<sup>22</sup> Steele also concluded more broadly that when individuals perceive themselves to be at risk of confirming a negative stereotype about themselves, their increased anxiety disrupts their performance: "a mind trying to defeat a stereotype leaves little mental capacity free for anything else we're doing."<sup>23</sup>

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16. STEELE, *supra* note 4, at 50. Again the test was taken from the advanced GRE subject exam.

17. *Id.*

18. *Id.*

19. *Id.* at 51.

20. *Id.*

21. *Id.*

22. Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1520 (2005).

23. STEELE, *supra* note 4, at 123.

Further research into stereotype threat demonstrates that members of *majority* groups also experience similar effects when they perceive themselves to be reinforcing a negative stereotype. Researchers at Princeton discovered that white men on a miniature golf course perform badly when told the course was a test of natural athletic ability—after all, whites stereotypically lack athletic ability, and the pressure of confirming or disproving that stereotype interrupted their actual performance.<sup>24</sup> But when white participants were told the miniature golf course was a test of “sports strategic intelligence,” they did just fine.<sup>25</sup> Black participants, by contrast, performed well when under the belief they were being tested on natural athletic ability, but performed poorly when under the belief they were being tested on strategic intelligence, again in relation to stereotypes about blacks’ natural athletic ability but lesser intelligence.<sup>26</sup>

The effects of stereotype threat have been identified in many populations by many other researchers, so long as a negative stereotype exists for that group. Stereotype threat “can . . . impair women during negotiations, cause white males to act more prejudiced, and cause elderly people to be more forgetful.”<sup>27</sup> It even depresses the verbal agility of lower-class French citizens, based on a specific stereotype among the French.<sup>28</sup> “The breadth of findings shows that stereotype threat is a general psychological process that can impact anyone who belongs to a group for which there exists negative stereotypes.”<sup>29</sup>

Another heartbreaking finding is that the more an individual cares about succeeding on a given task, the more stereotype threat is likely to hamper their performance. Black high school students who self-identify as caring about school performed worse on a simulated verbal SAT when told it was a test of verbal ability than when told it was a test of problem-solving ability.<sup>30</sup> On the other hand, black students who self-identify as not caring about school

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24. *Id.* at 8–11.

25. *Id.* at 10.

26. *Id.* at 9–11.

27. Jeff Stone, *A Hidden Toxicity in the Term “Student-Athlete”: Stereotype Threat for Athletes in the College Classroom*, 2 WAKE FOREST J.L. & POLY 179, 182 (2012) (internal footnotes omitted).

28. William C. Kidder, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?: A Study of Equally Achieving “Elite” College Students*, 89 CALIF. L. REV. 1055, 1087 (2001) (citing Jean-Claude Croizet & Theresa Claire, *Extending the Concept of Stereotype Threat to Social Class: The Intellectual Under-Performance of Students from Low Socioeconomic Backgrounds*, 24 PERSONALITY & SOC. PSYCHOL. BULL. 588 (1998)).

29. Stone, *supra* note 27, at 182.

30. STEELE, *supra* note 4, at 56.

performed equally no matter what they believed the test's purpose was.<sup>31</sup>

How does this happen? The best understanding so far is that the pressure to disprove a damaging stereotype actually disrupts individuals' cognitive abilities, "probably as a result of alternating their attention between trying to answer the items and trying to assess the self-significance of their frustration."<sup>32</sup> "For example, women who are faced with the stereotype that men are better at math devote more of their thoughts to worrying about and monitoring their performance on math problems compared to nonthreatened women."<sup>33</sup> The mere act of "monitoring a situation for evidence of threat[,] and controlling one's behavior to offset threat[,] each require cognitive effort."<sup>34</sup>

Not all research on stereotype threat is distressing, however. As research in this field has evolved, interesting nuances have been discovered. Most significantly, a positive stereotype has been shown to incite a performance *boost*.<sup>35</sup> For example, one researcher demonstrated that when a group of Asian-American women were given a math test, those who were subtly reminded beforehand that they were female (thereby triggering the stereotype that women are bad at math) underperformed as compared to a control group.<sup>36</sup> But those who were reminded of their Asian heritage (and thus the corresponding stereotype that Asians are good at math) actually *overperformed* when compared to the control group.<sup>37</sup>

31. *Id.* at 57. It's important to note that those who didn't care about school didn't do well on either test—they just performed equally poorly on both. *Id.*

32. Jason S. Marks, *Legally Blind? Reevaluating Law School Admissions at the Dawn of a New Century*, 29 J.C. & U.L. 111, 127 (2002) (citing Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERSONALITY & SOC. PSYCHOL. 797, 809 (1997)).

33. Cynthia J. Najdowski, *Stereotype Threat in Criminal Interrogations: Why Innocent Black Suspects Are at Risk for Confessing Falsely*, 17 PSYCHOL. PUB. POL'Y & L. 562, 569 (2011) (citing Sian L. Beilock et al., *Stereotype Threat and Working Memory: Mechanisms, Alleviation, and Spillover*, 136 No. 2 J. EXPERIMENTAL PSYCHOL.: GEN. 256, 257 (2007)).

34. *Id.* at 570.

35. Some literature in fact refers to this kind of positive-stereotype threat as "stereotype boost." See Kang, *supra* note 22, at 1521 n.151 (citations omitted).

36. See Margaret Shih et al., *Stereotype Susceptibility: Identity Salience and Shifts in Quantitative Performance*, 10 PSYCHOL. SCI. 80, 81 (1999). Participants took a questionnaire before the test, which was designed to trigger their association with a particular part of their identity. *Id.* at 80. Some participants answered questions about their living situations, including whether they lived on a single-sex or coed floor, and whether they would prefer living on one or the other—this triggered their association with being female. *Id.* at 81. Other participants answered questions about the languages their parents and grandparents spoke, and about how many generations their family had been in America—this triggered their association with being Asian. *Id.* The control group answered race-neutral and gender-neutral questions, such as whether they used the university telephone service, or whether they subscribed to cable. *Id.*

37. See *id.* at 80–81.

Research into stereotype threat may continue to reveal new insights and nuances, but even the existing research has important implications for struggling law students.

## II. STEREOTYPE THREAT AND STRUGGLING LAW STUDENTS

Stereotype threat is a phenomenon that exists anywhere there is a negative stereotype about a particular group's performance.<sup>38</sup> The more an individual cares about success, the greater power that negative stereotype has to depress the individual's performance.<sup>39</sup>

Our best assessment is that stereotype threat cause[s] an inefficiency of processing . . . . Stereotype-threatened participants spent more time doing fewer items more inaccurately—probably as a result of alternating their attention between trying to answer the items and trying to assess the self-significance of their frustration. This form of debilitation—reduced speed and accuracy—has been shown as a reaction to evaluative apprehension; test anxiety; the presence of an audience; and competition.<sup>40</sup>

*Evaluative apprehension, test anxiety, the presence of an audience, and competition*—is there a better description of law school?

Among struggling law students, the most damning stereotype is that students who graduate near the bottom of their class are more likely to fail the bar exam. Statistics bear out the correlation,<sup>41</sup> though some schools may find that the bottom third of the class is disproportionately at risk, while other schools may find that risk to be restricted primarily to the bottom quintile, perhaps, or spread across the bottom half.<sup>42</sup> In any case, the fact that stereotype threat is “thought to be the most serious on standardized exams”<sup>43</sup> puts struggling law students at real risk of bar exam failure over and above any existing academic deficiencies.

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38. Kidder, *supra* note 28, at 1086.

39. See STEELE, *supra* note 4, at 98.

40. Marks, *supra* note 32, at 127.

41. *E.g.*, Georgakopoulos, *supra* note 2, at 7. *But see* Day, *supra* note 2, at 329.

42. At Texas Tech, for instance, the bulk of the graduates who fail the bar exam on their first attempt graduated in the bottom quarter of their classes. In years with lower bar pass rates, the graduates who failed the bar were spread evenly throughout the fourth quartile. In years with higher bar pass rates, however, the graduates who failed the bar were concentrated in the lowest octile of their graduating class—that is, the bottom half of the bottom quarter. This leads to the conclusion that the bar prep program at Texas Tech can be most effective with students in the seventh octile of the graduating class—those in the top half of the bottom quarter.

43. Richard H. Sander, *Listening to the Debate on Reforming Law School Admissions Preferences*, 88 DENV. U. L. REV. 889, 938 (2011).



As any lawyer or law professor knows, failing the bar exam has enormous financial and emotional consequences for an individual. Career plans are set back by at least six months, law school debts continue to loom un-repaid, and the individual must cope with the public and personal humiliation of failing an exam that seventy, eighty, or ninety percent of classmates passed. These setbacks exist even for those who go on to pass a bar exam on a second or later attempt.<sup>44</sup> Those strugglers who *never* pass a bar exam lag behind their lawyer peers “on every measure—earnings, employment stability, even marriage and divorce rates.”<sup>45</sup> For the first five to ten years out of law school, these non-lawyer J.D.s even underperform as compared to average college graduates.<sup>46</sup>

Many law schools have implemented robust academic support programs, which are diverse in structure and demonstrably successful.<sup>47</sup> Engaging with struggling students, giving them new and different tools to study material and perform on exams, is proven to be effective in improving struggling students’ grades and bar passage rates.<sup>48</sup>

Given the damaging power of stereotype threat, however, academic support is potentially a double-edged sword. As soon as students get their class ranks, the majority find themselves in a place in the class none of them have ever been before—remember, most law students excelled in college, many without breaking a sweat. Now, however, half of them find themselves in the bottom half of the class. Word gets around quickly: being at the bottom of your class means you’re going to fail the bar. An academic support program that appears to be remedial can reinforce this stereotype, actually putting students *more* at risk of bar failure because of the stereotype threat implications.

Instead, academic support interventions can be designed thoughtfully, so as to avoid increasing the stigma placed on students with low GPAs. It may even be possible to design an academic support program that creates a positive stereotype, creating a stereotype boost for the participants. These concepts are discussed in more detail in Part III.

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44. Bar passage on the first attempt is ideal, whether from the perspective of the students, the law school, the alumni base, or the public.

45. Jane Yakowitz, *Marooned: An Empirical Investigation of Law School Graduates Who Fail the Bar Exam*, 60 J. LEGAL EDUC. 3, 4 (2010).

46. *Id.*

47. See Denise Riebe, *A Bar Review for Law Schools: Getting Students on Board to Pass Their Bar Exams*, 45 BRANDEIS L.J. 269, 289–300 (2007) (summarizing existing literature and empirical research on the demonstrated success of academic support programs).

48. See *id.*

## III. MANAGING PERCEPTIONS

A weak GPA is widely known to correlate with failure on the bar exam, and research into stereotype threat suggests that struggling law students, once identified, may follow a self-fulfilling prophecy of failure on the bar exam. Academic support programs have been demonstrably successful in improving bar passage rates for struggling law students.<sup>49</sup> It is important, however, that academic support programs not emphasize the stereotype that students who perform poorly in law school go on to fail the bar exam—emphasizing the stereotype will only make the problem worse; moreover, these are the students specifically in need of academic support, and *none* of the students at the law school should begin to associate academic support with bar failure.

This Part explores methods to reduce or dissolve negative stereotypes about students at the bottom of the class, as well as ways to create a positive stereotype about the students who participate in academic support.

A. *Reducing Negative Stereotypes*

Negative stereotypes can be reduced by reframing students' understanding of the bar exam, emphasizing its consistency, celebrating students' struggles, and allowing students to interact with role models who also struggled on the bar exam.

*Reframing.* As mentioned above,<sup>50</sup> changing the perceived purpose of a test can remove the pressure of confirming negative stereotypes. Recall that white men struggled to complete a miniature golf course when they believed they were being tested on natural athletic ability, but they performed just fine when told the test was of their "sports strategic intelligence"; for black men, the results were the opposite.<sup>51</sup> Nothing was different about the putt-putt course—the only thing that changed was how the men thought about it.

Students who struggle in law school may believe that they are less intelligent than their peers, so academic support should definitely send the message that the bar exam is not a test of intelligence (and it isn't!). Instead, the bar exam can be framed as a test of preparation—how efficiently students study and how many practice questions they answer as they prepare.

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49. *See id.*

50. *See supra* text accompanying notes 24–26.

51. *See supra* text accompanying notes 24–26.

When counseling students about the bar exam, academic support staff should speak almost exclusively about the eight-week preparation period. It is not necessary to discuss the exam days themselves in any detail. The bar exam can be described as an obstacle course that the bar examiners have set up and that the examiners will watch students run at the end of February or July.<sup>52</sup> The examiners provide the layout of the obstacle course ahead of time (MBE, MPT, and essay questions), and students need to understand that they're going to spend the summer training to run that obstacle course.

This rebranding also moves exam preparation away from something students have no control over—their IQ—and places it in an area they have complete control over—their study efforts. Research shows that “individuals tolerate frustration better, persevere in completing tasks, and are generally more successful[]” when they perceive they have control over a process.<sup>53</sup> A student preparing for the bar exam is far more likely to come back to the frustrating process of studying if she senses that bar skills can be learned rather than being an ability she was born with (or without).<sup>54</sup>

*Consistency.* Research suggests that emphasizing the fairness of a test may help eliminate stereotype threat.<sup>55</sup> “Underperformance appears to be rooted less in self-doubt than in social mistrust.”<sup>56</sup>

While credible arguments can be made that the bar exam is an imperfect measure of an individual's competency to practice law,<sup>57</sup> it is at least very consistent from year to year. Emphasizing the bar exam's consistency may help students appreciate that something *predictable* is something for which they can *prepare*. In Texas, for instance, an oil and gas essay question that appeared on the July 2009 exam reappeared almost verbatim on the February 2014

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52. Sports metaphors are often useful to drive home the idea of practicing for the bar exam. The bar as a wrestling match: “You have a wrestling match at the end of the summer, with an opponent who's pretty tough. Are you going to spend the summer reading about wrestling, or are you going to *practice* wrestling?” (This metaphor works equally well with boxing, golf, or nearly any other sport). The bar as a marathon: “You're training for a marathon. Can you run a marathon today? No, you cannot. Can you run one if you train for eight weeks? Yes, you can.” For those tightlywound overachievers: “If the bar exam is a sport, you don't need to be in the big leagues. You just need to make the farm team. The farm team is good enough.”

53. Kristen Booth Glen, *When and Where We Enter: Rethinking Admission to the Legal Profession*, 102 COLUM. L. REV. 1696, 1733 (2002).

54. *Id.*

55. Marks, *supra* note 32, at 127.

56. *Id.* at 127 (citing Claude M. Steele, *Thin Ice: “Stereotype Threat” and Black College Students*, ATLANTIC MONTHLY, August 1999, at 52).

57. See, e.g., Glen, *supra* note 53, at 1709.

exam.<sup>58</sup> A different oil and gas question that appeared on the July 2010 exam reappeared almost verbatim on the July 2013 exam.<sup>59</sup> Even where essays are not reproduced exactly, the topics tested repeat frequently, and the twists and turns in the fact patterns reflect the nuances and exceptions to these regularly-tested rules.

Consistency appears not only on the essay portion of the bar exam. The MBE is famously consistent across examination periods,<sup>60</sup> and the MPT, though it varies in subject matter, almost always contains a fact pattern, a statute (or other rule, such as ordinances or dictionary definitions) and a handful of interpreting cases.<sup>61</sup>

The consistency of the bar exam is a boon to examinees. It is difficult, but it is also predictable. As they do practice questions, students can see for themselves that they are learning specific information and specific skills that they will be able to deploy on the exam itself.

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58. Compare Texas Board of Law Examiners, *Texas Bar Examination: Thursday Afternoon, July 30, 2009, Essay Questions 7–12*, TEXAS BOARD OF LAW EXAMINERS, [http://www.ble.state.tx.us/pdfs/Past%20Exams/2008\\_2009/pm\\_essays\\_0709.pdf](http://www.ble.state.tx.us/pdfs/Past%20Exams/2008_2009/pm_essays_0709.pdf) (scroll down to Question 10), with Texas Board of Law Examiners, *Texas Bar Examination: Thursday Afternoon, August 1, 2013, Essay Questions 7–12*, TEXAS BOARD OF LAW EXAMINERS, [http://www.ble.state.tx.us/pdfs/Past%20Exams/2014/Feb2014\\_PM.pdf](http://www.ble.state.tx.us/pdfs/Past%20Exams/2014/Feb2014_PM.pdf) (scroll down to Question 10).

59. Compare Texas Board of Law Examiners, *Texas Bar Examination: Thursday Afternoon, July 29, 2010, Essay Questions 7–12*, TEXAS BOARD OF LAW EXAMINERS, [http://www.ble.state.tx.us/pdfs/Past%20Exams/2010\\_2011/pm\\_essays\\_0710.pdf](http://www.ble.state.tx.us/pdfs/Past%20Exams/2010_2011/pm_essays_0710.pdf) (scroll down to Question 12), with Texas Board of Law Examiners, *Texas Bar Examination: Thursday Afternoon, August 1, 2013, Essay Questions 7–12*, TEXAS BOARD OF LAW EXAMINERS, [http://www.ble.state.tx.us/pdfs/Past%20Exams/2014/Feb2014\\_PM.pdf](http://www.ble.state.tx.us/pdfs/Past%20Exams/2014/Feb2014_PM.pdf) (scroll down to Question 6).

60. *MBE FAQ*, NATIONAL CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/about-ncbe-exams/mbe/mbe-faq/> (Myth 6) (last visited Mar. 2, 2015). MBE scores were markedly decreased in July 2014, however, leading some to question the consistency and reliability of the MBE across exam administrations. See, e.g., Jacob Gershman, *Law School Deans Question Sharp Drop in Bar Exam Scores*, WALL ST. J. L. BLOG, (Nov. 26, 2014), <http://blogs.wsj.com/law/2014/11/26/dozens-of-law-school-deans-question-drop-in-bar-exam-scores/>.

61. Compare National Conference of Bar Examiners, *Multistate Performance Test: July 2008 MPTs and Point Sheets, Bohmer v. Bohmer and Williams v. A-1 Automotive Center*, NATIONAL CONFERENCE OF BAR EXAMINERS, [http://www.ncbex.org/assets/media\\_files/MPT/MPT-Point-Sheets/July.08MPTPS102208.pdf](http://www.ncbex.org/assets/media_files/MPT/MPT-Point-Sheets/July.08MPTPS102208.pdf) (scroll down to page 1), with National Conference of Bar Examiners, *Multistate Performance Test: February 2006 MPTs and Point Sheets, Harris v. CBL and State of Franklin v. Butler*, NATIONAL CONFERENCE OF BAR EXAMINERS, [http://www.ncbex.org/assets/media\\_files/MPT/MPT-Point-Sheets/Feb06MPT062106.pdf](http://www.ncbex.org/assets/media_files/MPT/MPT-Point-Sheets/Feb06MPT062106.pdf) (Scroll down to MPT–2).

*Celebrate struggle.* Individual faculty members can applaud a student's intellectual struggle as a sign of emotional strength, rather than denigrate it as a sign of intellectual weakness.<sup>62</sup> *Celebrating* struggle allows students to feel like they're going through a difficult rite of passage, rather than simply being the dumb kid who doesn't get it.

*Representation.* It is incredibly powerful for students to see someone who looks like them doing the thing they want to do. It has been suggested, for example, that one way to combat the underperformance of blacks on the LSAT is to have "a course available only to African-American students and taught by African-American instructors, with the assurances that the course has the same high standards of those offered elsewhere . . . ."<sup>63</sup> Borrowing from this, if possible, bar preparation programs can be run by lawyers who graduated from law school with low GPAs but went on to pass the bar exam. These individuals can model for students how to successfully prepare for the bar exam, sharing their own experiences, struggles, and successes.

*B. Creating Positive Stereotypes: "We few, we happy few, we band of brothers . . . ."*<sup>64</sup>

In the absolute reverse of stereotype threat, individuals who associate themselves with a group's positive stereotypes may experience a stereotype *boost*. Recall that Asian-American women outperformed a control group on a math test when cued to identify themselves as Asian rather than female.<sup>65</sup> The simple sense of belonging can reaffirm positive performance.<sup>66</sup> Along with rebranding the bar exam so as to remove its threatening aspect, it may be possible to manufacture a positive stereotype about an academic support program that could transmit a stereotype boost to participants.

*Borrowing from athletics.* This rebranding approach has some precedent. The Scholar-Baller curriculum, developed by athletics

62. See *Struggle for Smarts? How Eastern and Western Cultures Tackle Learning*, NAT'L PUB. RADIO, (Nov. 12, 2012), <http://www.npr.org/blogs/health/2012/11/12/164793058/struggle-for-smarts-how-eastern-and-western-cultures-tackle-learning>.

63. Marks, *supra* note 32, at 127–28.

64. WILLIAM SHAKESPEARE, *HENRY V* act 4, sc. 3.

65. See *supra* text accompanying notes 38–40.

66. Shakespeare understood. The quotation accompanying this subpart B comes from the scene in *Henry V* when, on St. Crispin's Day, hopelessly outnumbered by the French, Henry rallies his men: "We few, we happy few, we band of brothers;/For he to-day that sheds his blood with me/ Shall be my brother; be he ne'er so vile,/This day shall gentle his condition:/And gentlemen in England, now a-bed,/ Shall think themselves accursed they were not here,/And hold their manhoods cheap whiles any speaks/That fought with us upon St. Crispin's Day." *HENRY V* act 4, sc. 3.

and academic directors and endorsed by the NCAA, is designed to eliminate the association of “student–athlete” with “dumb jock.”<sup>67</sup> The Scholar–Baller organization initiates high school, college, and university athletes into the program if they maintain a certain GPA or demonstrate academic improvement.<sup>68</sup> Inductees receive jersey patches, helmet stickers, plaques and other items that advertise their membership.<sup>69</sup> The program is aspirational, its goals are not easy to achieve, and it works to remove the stereotype that anyone who is an athlete cannot also be smart.<sup>70</sup>

Empirical evidence of the effect of the Scholar–Baller program on student–athlete GPAs is difficult to come by, but the Scholar–Baller organization itself highlights successes among individual programs.<sup>71</sup> According to Scholar–Baller, Arizona State University’s football program implemented the Scholar–Baller curriculum in 2001 and saw increased GPAs among the players, near–disappearance of academic ineligibility, and triple or quadruple the number of players with GPAs over 3.0.<sup>72</sup> The Scholar–Baller program has not proven to be a panacea, however. Academic weakness continues to plague college athletics,<sup>73</sup> and at least one study found that student–athletes participating in Scholar–Baller programs demonstrate *less* academic motivation than those participating in non–Scholar–Baller programs.<sup>74</sup>

Celebrating academic achievement, however, appears to have helped at least some student–athletes improve their academic performance. This may be attributable to stereotype boost: athletes in

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67. Stone, *supra* note 27, at 196.

68. *Frequently Asked Questions*, SCHOLAR–BALLER.ORG, <http://scholarballer.org/faqs> (last visited Sept. 5, 2014).

69. *Id.*

70. Stone, *supra* note 27, at 196.

71. *E.g.*, *Scholar–Baller Research Division—Measures & Success Stories*, SCHOLAR–BALLER, <http://scholarballer.org/wp-content/uploads/2011/04/SCHOLAR-BALLER%C2%AE-RESEARCH-DIVISION-%E2%80%93MEASURES-SUCCESS-STORIES.pdf> (last visited January 1, 2015) (reporting, for example, that the average GPA for students in one Division 1 basketball team increased from 2.3 to 3.3 during a four–semester period of utilizing the Scholar–Baller model).

72. *The Scholar Baller Curriculum—Theoretical Framework*, SCHOLAR–BALLER, 3 (2011), available at <http://scholarballer.org/wp-content/uploads/2011/04/Scholar-Baller-Theoretical-Framework-for-Curriculum.pdf>.

73. See, e.g., Ray Slover, *Details Emerge on 2004–2005 NCAA Champs, UNC Academic Scandal*, SPORTING NEWS (Nov. 9, 2014), <http://www.sportingnews.com/ncaa-basketball/story/2014-11-09/academic-fraud-scandal-bogus-grades-paper-classes-north-carolina-basketball-football-roy-williams-rashad-mccants>.

74. Janet M. Rasmussen, *An Investigation of Scholar–Baller and Non Scholar–Baller Division I Football Student–Athletes’ Academic, Athletic, Intrinsic Motivation and Athletic Identity* (Fall 2009) (unpublished Ed.D. dissertation, University of Central Florida) available at [http://etd.fcla.edu/CF/CFE0002901/Rasmussen\\_Janet\\_M\\_200912\\_EdD.pdf](http://etd.fcla.edu/CF/CFE0002901/Rasmussen_Janet_M_200912_EdD.pdf). Of note, the study assessed and analyzed academic *motivation*, not academic performance.

the Scholar–Baller program may begin to associate themselves with strong academic performance, and may see improved academic performance because of this association.<sup>75</sup> Similar celebration of aspirational performance may help struggling law students’ success in their bar exam preparation and performance.

*Creating an “in” club.* Aspirational, difficult–to–get–into, stereotype–removing programming can also be developed and implemented in academic support programs to incentivize and encourage law students with low GPAs to succeed on the bar exam. Texas Tech University School of Law, for example, offers a for–credit bar prep course called Texas Practice. The course does not have “bar prep” in the name, but it is advertised as such. The course focuses almost exclusively on essay writing, because of an institutional belief that essay writing is a skill that must be practiced and developed over a period of time, rather than crammed in June and July. One section of the course is offered each semester, with an advertised cap of twenty students. (The course usually ends up with twenty–three or twenty–four enrolled students.)

Students apply to get in the course. The application process is not complicated—applicants provide a copy of their transcripts and a cover letter explaining why they believe they will benefit from the course. Students are selected based on their perceived level of need for academic support. Enthusiasm counts, too; almost any student in the bottom third of the class who makes an in–person pitch will be accepted into the course.

The application process serves several purposes. First, it ensures that the students in the class really want to be there. Second, it allows school resources to be devoted to the students who need (and want) the most help. Third, it allows the students in the class to feel that *they’re in*. They got a coveted prize that was denied to other students. From here, the club–membership feeling is emphasized by underscoring how far ahead of the game these students are—saying things like, “So many of your classmates won’t write a single practice essay until after the Fourth of July! You have such a leg up on them!” This is followed, naturally, by pointing out that they will have to keep practicing until the bar.

Like the Scholar–Baller program, though, the Texas Practice course has not proven to be a magic wand, solving all the school’s bar passage difficulties. As the course is quite new, only twenty–four students have completed the course and sat for a bar exam at the time of this writing. These students did not outperform their

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75. See *supra* text accompanying notes 35–37.

similarly-situated peers on the bar exam; they passed the bar exam at the same rate as non-takers with similar GPAs. It is hoped, however, that as the course evolves and improves, and as the sample size of students taking it and taking a bar exam increases, a more positive effect of the course on bar passage will be seen.

*Messaging and advertising.* Academic support programs and participants should be tracked and assessed for success, which can then be advertised.<sup>76</sup> This advertising is a direct form of perception management, shaping the way the law school community views academic support and academic struggle. Bar success cannot, of course, be relegated solely to academic support offices; the entire curriculum and the entire faculty are responsible for students' success on the bar exam.

Of note, if academic support programs are targeting students with lower GPAs, bar passage rate may still be below the school-wide average. For instance, if the bottom quarter of a law school class is passing the bar at a fifty percent rate, improving that passage rate to sixty-seven percent is still a marked improvement, even if the school-wide bar pass rate is eighty-five percent. Rather than advertising a sixty-seven percent pass rate which is less than the school-wide rate, the messaging can emphasize the increase in bar passage relative to similarly-situated students: "*Students who took ABC course performed XY% better on the bar exam than their peers!*"

Through these and other methods, law schools can manufacture a positive association for struggling students to hang their hats on. Research into stereotype threat suggests that once a negative stereotype has been dissolved, either by changing the individuals' sense of affiliation or rebranding the test as something unrelated to the stereotype, at-risk individuals will perform on par with their peers. Going a step further, if these at-risk individuals can affiliate themselves with a *positive* stereotype, they may even outperform their peers.

## CONCLUSION

When individuals belong to a group about which there is a negative stereotype, their fear of confirming that stereotype will often suppress their performance ability. Women taking a math test under pressure of confirming that women are bad at math will perform

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76. Various constituencies are concerned with a school's bar passage rate: students, faculty, alumni, the local bar association, etc. Messages regarding academic support programming can and should be tweaked when addressing different audiences.



worse than men, and they will also perform worse than women who do not feel the pressure of the stereotype. The phenomenon has been documented with regard to gender, race, age, social class, athletic ability, and any number of other classifications, so long as a negative stereotype exists about that group.

Law students with low GPAs are at greater risk than their higher-GPA peers of failing the bar exam, and they know it. Left unchecked, the pressure of this correlation may *itself* depress their bar exam performance.

Together with school-wide efforts, however, academic support programs and messages can be developed so as to diffuse the negative stereotype of a low GPA resulting automatically in bar failure. The bar exam can be reframed for students: it's not a test of intelligence; it's a test of how early you start doing practice questions. The predictable nature of the bar exam should be stressed—it's difficult, sure, but it's so very similar from year to year! This helps move students away from the fear that the bar exam is unfair. Moreover, law schools can create a positive stereotype for students participating in bar preparation programming. Affiliating oneself with a positive stereotype can result in a "stereotype boost," or over-performance compared with peers.

Making these changes to the perception of underperforming law students can allow law schools to help these students overcome the effects of stereotype threat and realize success on the bar exam. This will not only allow law schools to see their bar passage rate rise but will also enable students, who once seemed at risk of failure, to become successful attorneys.

