

Perspective

The Future of the Bar Exam: Should Remote Testing Continue To Be an Option?

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Books, notes, cases, outlines—everything had to be hard copy. This is how many of us were taught in law school, to tangibly engage with our materials by highlighting and underlining holdings, key facts and rules. We lugged around heavy case books and used up our printing credits on thick class outlines. Finals were often a mix of bubble in scantrons and freshly printed essay questions. This was all in preparation for one of the most important tests of our lives—the bar exam. I viewed the in-person administration of the bar exam as the great equalizer—everyone in the same room at the same time, taking the same exam. On its face, this is a level playing field where everyone has one common goal—to pass.

So, when I learned that the majority of bar exams in the summer/fall of 2020 would be held remotely due to the COVID-19 pandemic, in some ways I felt that this would not be fair. What would people do if they did not have a quiet place to take this two-day exam and could not afford a hotel? What if some people had reliable Internet and others did not? How could test takers undo the system of learning

law school had ingrained in so many of them and prepare for a remote bar exam? The more I thought about it, the more I realized that maybe this perceived level playing field was not so level after all.

A remote bar exam was one of many forced changes that the year 2020 brought about. This was the first time that the bar exam was held remotely since its first written administration in 1855. Jessica Williams, *Abolish the Bar Exam*, Calif. L. Rev. Online (October 2020). It was uncharted territory—no one knew what to expect from a remote bar exam. Yet the bar must go on, and for many graduating law students bar prep began as the pandemic continued to rapidly unfold. The problem was that bar prep courses were not originally designed to teach us how to take the exam remotely. My bar course, for example, focused specifically on how to effectively read, annotate and highlight hard-copy multiple choice and essay questions.

In a (very) unforeseen turn of events, I ended up taking two full-length bar exams during the pandemic—one in person, and one remotely.

The process of navigating where to take the Uniform Bar Exam (UBE) was complicated during a time where it was unclear if I would even be able to sit for my preferred



bar exam due to the state of the pandemic. Forty jurisdictions have adopted the UBE, and they offer score transferability with other UBE jurisdictions because of their

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common grading scheme. *Jurisdictions That Have Adopted the UBE*, The National Conference of Bar Examiners (last visited June 14, 2021). The caveat is that, in order to transfer your score, in the majority of states you must become barred in the state where you actually sat for the bar exam. This process can be both lengthy and costly. The less common exception is

courtesy-seating states, which allow you to sit in one state to take the bar exam without ever becoming admitted there. There is also the cost factor of the exam application itself, which significantly varies despite the fact that all UBE jurisdictions offer the same exam. Countless hours of research later, I took a gamble and applied to sit for an in-person UBE bar exam, with the ultimate goal of transferring my score.

Up first was the July 2020 UBE bar in the Midwest. Two planes and two Ubers later and I was finally at my hotel. This experience was stressful, arriving to an unfamiliar place alone and having to travel quite far to get there. In a pre-COVID-19 world, this is the norm; bar test takers often have to travel to their destination, which can be both anxiety-inducing and costly.

The day of the exam posed its own challenges. Despite arriving to the city early to try to avoid jetlag and to locate the exam facility, I got stuck waiting for a freight train to pass and I barely made it to my testing center on time. I then stood in line to get temperature checked at the door and have my mask inspected to ensure it was free of any writing. It was also still difficult being in a different time zone. Everyone in the testing center was nervous and the tension in the room was palpable. There were so many exam proctors that paced up and down the room the entire time, not to mention it was so unexpectedly hot and humid inside (I was prepared for icy AC). As my heart rate climbed, I tried to take deep breaths, but my mask kept getting sucked into my mouth. During the exam, the person in front of me was nervously squeaking in their chair, the person beside me kept sneezing, people constantly got up and loudly exited the room to go to the bathroom, and I was ever so cognizant of the test takers leaving exam sessions a full hour early. While there were only around 80 people taking my exam, other states such as New York often host thousands

of test takers in large convention centers where I can only imagine that the tension as well as exam distractions are even more abundant. The stress caused by other people in my testing room was a factor I had successfully navigated during many law school exams, but the bar felt different because the stakes were so much higher. Nonetheless, the bar is in my opinion largely mind over matter, and this situation was definitely manageable.

Flashforward six months and I am sitting in a quiet hotel room with my ear plugs in, AC on, and my laptop ready to begin the California bar exam. This was quite a change. No commuting, no freight trains, no heat and humidity. It was just me and my computer. Of course, hotels are not always cheap and there can be noise and distractions. I posted a large “do not disturb, exam in progress” sign on my door and requested to be placed in a quieter room. I was concerned because I thought maybe I needed other people in the room to feed off of their adrenaline—but I didn’t. What I found is that I was able to zone in and focus even more on the exam because I was alone, and the small outside noises did not bother me. There was no one coughing next to me, no one getting up, no squeaky chairs, no major distractions. I also really appreciated having more breaks built into the exam as compared to the in-person one, which allowed me to get up and stretch. These breaks were built in to allow test takers to upload their online answer files, and for me it made the exam feel a bit more manageable. I didn’t have to leave to get lunch, I just grabbed my sandwich from my mini fridge. And then it happened, my laptop crashed in the middle of the exam.

Yet despite this, I have become a supporter of the remote bar exam. While there are definitely problems that come with a remote bar exam, such as financial barriers to securing a quiet testing location, facial recognition not working, Internet connection failing, computers crashing, as well as potential cheating, these issues

can be greatly minimized and the benefits of a remote exam may arguably outweigh the risks for some test takers.

A remote bar exam magnifies income inequality because of course not everyone has a quiet place with Internet to take the bar exam, and not everyone can afford a hotel. As a result, my law school opened its doors for test takers to sit for the remote bar exam this year and offered financial support for those who wished to take the exam in a hotel. Other people I know asked friends and family to allow them to take the bar in their homes as opposed to the student’s apartment. Some test takers were able to ask their employers to contribute support toward renting a hotel room. While these solutions may not work for everyone and undoubtedly favor some test takers over others, there are options out there. I was in a bit of an unusual situation when I took my remote bar exam because I was working full-time and could afford hotel accommodations. Remote exams clearly offer potential benefits because there is not necessarily any travel involved, no change of time zones, and some test takers may even be able to take the bar in their own home.

In contrast, it is common for students to have to travel to take an in-person bar exam and usually incur hotel expenses, as well as meal and transportation costs. I personally do not know of any other exam where test takers have to physically travel to the state they wish to practice in to take an exam. Maybe it used to be the norm that people who wanted to practice law in a certain state went to law school in that state, but times have changed. Law students are studying all over the country and moving to a mix of states to practice law. I likely would not have been able to take the California bar had it been in person because I was working full-time at a new job, and this would have required me to take more time off work to travel to and from my testing location.

The California bar also implemented changes after recognizing some issues

in the first administration of the online exam. This time around, if the facial recognition software did not recognize you, you were still allowed to log into the exam. Concerns about Internet connection reliability were also put somewhat at ease because you only needed to be connected to the Internet when you logged into an exam session, not while you were actually taking the exam. Additionally, while the first online administration of the California bar flagged nearly a third of applicants with violations for potential cheating (see Sam Skolnik, *Third of California Online Bar Exams Cited for Possible Cheating*, Bloomberg Law (Dec. 22, 2020)), the exam software was likely improved because for my exam administration there was no online buzz about violations being issued. Feedback through surveys and analysis of software issues allows for the improvement of remote examinations with each administration; I was asked to fill out a survey afterwards. For both in-person and remote bar exams, having reliable technology is another important factor. The exception is if you are part of the small minority of people who choose to handwrite their entire in-person bar exam; there was one person who handwrote the exam in my testing center. The downside of a remote exam is that if your laptop does crash during the exam, you do not have the option to instead handwrite your answers. An in-person exam does allow you to switch over to a handwritten format if your technology fails, but the clock does not stop for you while you switch over to this format. In contrast, if your laptop crashes during a remote bar exam, the clock does temporarily freeze to allow you time to try to fix the problem, as was the case for me. Yet no matter what we do, technology is unpredictable, regardless of whether you are sitting in an exam location by yourself or in an exam room full of hundreds of people.

As an unexpected benefit, studying for the remote bar transformed my ability to work from home. While putting down

my pencil and taking practice tests on a screen took some adapting to, as a result I no longer feel the need to print everything. I can quickly read cases in electronic form instead of using the method I was taught as a 1L, which had me spending around double the amount of time printing, highlighting and underlining hard copy versions. While I consider myself technology proficient, studying for the remote bar made me more comfortable with and faster at reading large volumes of documents on a screen.

This begs the question, should test takers have the option of sitting for either an in-person or a remote administration of the bar exam? For some, a traditional in-person exam may be preferred, while for others a remote bar exam may be more cost effective and possibly less stressful. This past year has proven that an online bar exam is completely feasible. While I was initially overwhelmed by the idea of a relatively untested remote bar exam and felt that it could likely end up being disastrous, actually taking the exam made me realize that my assumptions were incorrect. Problems and glitches with the exam software were largely fixed between the first and second administration of the remote California bar exam, and additional process improvements can continue to be made as feedback is collected from test takers. Our technology has progressed so far over the past several decades and continues to rapidly improve. I was fortunate to have passed both bar exams, but if I had to go back and do it again, I would choose to do a remote bar exam as opposed to an in-person one.

While the bar requirement is rooted in over a century-old tradition and does not seem to be going anywhere anytime soon, maybe the way we administer it should change. This change is perhaps one that needed to be made a long time ago, and it took a pandemic for us to open our eyes and realize this opportunity for growth. The pandemic affected how we work, how we live, how we learn, how we socialize,

and how we travel. A remote bar exam is no longer simply a temporary solution forced upon test takers when the pandemic hit, rather it is a testing platform that works and comes with many benefits.

The bar exam is always going to be challenging, whether it is taken remotely or in person. While the bar is clearly doable in both environments, perhaps offering a remote bar exam as a testing option would actually level the playing field for test takers. Not everyone performs well in high tension in-person testing situations, and not everyone can afford the costs associated with potential travel to a testing center. Some test takers may actually prefer to take the bar alone in a remote environment and avoid travel. What is best for one test taker is not necessarily what is best for another. It may not be time to completely transition to a remote testing world, yet it is important to keep this option available in case we find ourselves in another situation where an in-person administration is not feasible. At one point, the bar was only offered in a handwritten format, yet as technology progressed, we embraced laptops and offered the option of either completely handwriting the exam or using a laptop for part of it. Over time, using laptops to take the bar has become the new norm. In today's world, embracing flexibility, technology, and finding solutions to help prevent testing inequalities for students has become increasingly important as we navigate a changing world. Just like we embraced laptops, we should embrace the forced change that resulted in remote bar exams and offer test takers the option of swapping out their pencils and scantrons for a mouse and keyboard. This might just be the start of helping to eliminate some bar exam testing barriers and taking a step toward changing with the times.