Determinants of Attorney Misconduct:
A Study of California Lawyers

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February 2025

Abstract

Lawyers are required to follow the rules of professional conduct within their jurisdiction. These rules govern their obligations to clients, judges, other lawyers, and the public. A small fraction of lawyers attract the attention of regulators, who investigate and impose discipline. Given their role in our increasingly interconnected society, an important question that emerges is what factors, if any, explain which lawyers are investigated and disciplined? Using data from the State Bar of California, we examine the universe of lawyers admitted to practice in the state during the period 1990 to 2023. This data provides a rich array of anonymized individual-level information: law school education, bar performance, demographic characteristics, and any investigation and/or discipline. We find that lawyers with the highest rates of investigation and discipline are drawn disproportionately from graduates from less selective law schools and those receiving low passing scores on the state bar exam. Gender and ethnicity are also strong predictors. The data also suggest, however, that these factors alone provide an incomplete, and likely misleading, narrative of attorney misconduct. We argue that the existing regulatory framework is largely reactive and could benefit from a more evidence-based approach. More promising, we posit, is for regulators to proactively identify lawyers at high risk of discipline and provide them with training and resources to avoid the most common forms of attorney misconduct.

I. Introduction

Lawyers are required to act in accordance with the professional rules within their jurisdiction. The rules of professional conduct outlines their obligations to clients, judges and other lawyers, and the public. While the vast majority of lawyers go their entire careers without any allegations of professional misconduct, a relatively small number attract the attention of professional regulators, who investigate and – in some instances – levy disciplinary sanctions. Given the increasingly important role lawyers in perform in our increasingly interconnected society, an important question that emerges is what factors, if any, predict which lawyers are investigated and disciplined.

Lawyers perform an increasingly essential role seemingly in seemingly every sphere, affecting governments, institutions, and individuals involving private and public transactions. It is no exaggeration to say that society depends on a well-functioning legal system in which lawyers adhere to their professional obligations. Attorney misconduct imposes real costs to their clients. Clients are time-barred from filing suit when their lawyers miss the statute of limitations. Attorney breaches of confidentiality subject clients to financial or reputational harm. Conflicts of interest often subordinate one client's interest to another, often resulting in adverse legal outcomes.

Lawyers meeting their professional obligations requires effective regulation, an area that remains underexplored. Legal scholars have richly explored the myriad ways in which lawyers violate their professional obligations.[1]. This paper focuses on a precedent question: what factors, if any, predict which lawyers engage in attorney misconduct?

Constructing a complete account for attorney misconduct is a difficult, if not impossible undertaking. A multitude of factors potentially account for why lawyers act in these harmful ways. Some reasons may be internal to the lawyer, such as personal finance troubles or their general willingness to bend the rules.[2] Other explanations may be specific to lawyers' practice, such as a high volume of clients, pressure imposed by senior lawyers, or their firm's lack of institutional oversight. Many of these factors are observable only to the lawyers themselves – and sometimes they themselves may be unaware. Nevertheless, the importance of this question warrants closer examination, drawing upon existing information.

Using unique data provided by the California Bar, we analyze the universe of lawyers who received their license during the period 1990-2023, in which we observe key individual-level demographic, educational, testing, and administrative data. This

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[1] *See, e.g.,* Jason Kreag, *Disclosing Prosecutorial Misconduct,* 72 VAND. L. REV. 297 (2019) (describing how prosecutorial misconduct arises in the form of *Brady* violations). HERBERT KRITZER AND NEIL VIDMAR, WHEN LAWYERS SCREW UP: IMPROVING ACCESS TO JUSTICE FOR LEGAL MALPRACTICE VICTIMS (2018) (providing a quantitative and qualitative exploration into professional misconduct involving lawyers); RICHARD ABEL, LAWYERS ON TRIAL: UNDERSTANDING ETHICAL MISCONDUCT (2010) (providing case studies of lawyers who committed attorney misconduct); JEROME E. CARLIN, LAWYERS' ETHICS: A SURVEY OF THE NEW YORK CITY BAR (1966) (examining the circumstances that give rise to ethical misconduct amongst New York City lawyers).

[2] *See* Albert H. Yoon, *In the Eye of the Beholder: How Lawyers Perceive Legal Ethical Problems*, forthcoming, J. EMP. LEG. STUD. (2025) (explaining how lawyers' commitment to ethical rules may be shaped by their perception of others).

anonymized data contained non-public information, including information unbeknownst to the lawyers themselves, such as their passing score on the state bar exam.

We find that many of these factors strongly correlate with lawyer investigation and discipline. These lawyers are drawn disproportionately from lawyers who receive low passing scores on the state bar exam or attend less selective law schools, notably those that lack accreditation from the American Bar Association. We also find that male lawyers are more likely to be investigated and disciplined than female lawyers, and Black and Hispanic lawyers more likely to be investigated and disciplined than White or Asian lawyers. These differences are even stronger when we take into account that among investigated lawyer, half of them are investigated on multiple occasions.

Our examination of the data also suggests that the schooling and bar performance, while strong predictors, provide an incomplete narrative. These factors likely have a direct effect on intermediate factors – such as practice setting and practice area – which in turn influence subsequent rates of investigation and discipline. Some of these factors – notably bar exam score – already serves a gatekeeping role. These same factors, however, can serve as a risk-assessment tool, proactively identifying lawyers most at risk for investigation and discipline.

The rationale for a risk-assessment approach to attorney regulation draws from regulatory approaches in other professions – such as medicine or aviation – that prioritizes performance quality over assigning blame. The same rationale exists for lawyers, given the chronic shortage in legal services. Moreover, the data suggests a regressive dimension to current approach to regulation of the legal profession, where lawyers with likely the least resources and on-the-job mentorship have the highest rates of investigation and discipline. The returns to intervention are promising. A large fraction of investigations involve allegations of misconduct (e.g., client neglect) that at-risk lawyers could reduce with modest but well-timed training and resources.

This article proceeds as follows: In Part II, we briefly describe the relevant literature on the regulation of lawyers. We explain in Part III our methodology and the data we use to run our survey experiment. We provide the results of our experiment in Part IV, looking at potential factors in both a bivariate and multivariate lens. In Part V we discuss the implications of our findings, including potentially more effective ways at reducing attorney misconduct. Part VI concludes.

II. Relevant Literature [to be developed]

The legal profession is a self-regulating profession. This power, as the saying goes,[3] comes with great responsibility. The profession establish the entry requirements to practice: which law schools to bestow accreditation; the required licensure exams and the minimum required passing score. It also establishes the code of conduct for its members, in the form of the rules of professional conduct.[4] Third, they oversee its members, determining who among them to investigate and ultimately discipline.

Thus, the profession has three stages at which it regulates its membership. Figure 1 provides a simple representation of the stages.

Figure 1
Stages of Regulating Lawyers

Law School	Bar Exam	Practice
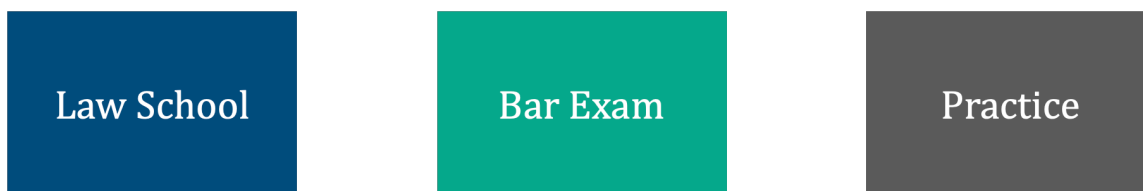
The first stage is law school admissions. With limited exceptions,[5] aspiring lawyers must first attend law school in order to practice. Law schools vary in their selectivity, based in large part on undergraduate grade point average (UGPA) and performance on the Law School Admissions Test (LSAT).[6] Historically, law schools have been highly selective, rejecting more students than they accept.[7] The law school admissions process serves as a *de facto* gatekeeper for the legal profession; those denied admission to any law school are highly unlikely to become lawyers.[8]

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[3] This quote is frequently attributed to Voltaire and, more recently, Uncle Ben of the Spiderman comic series. *See* Daniel Woislaw, *Absolute Immunity: Applying New Standards for Prosecutorial Accountability,* 26 GEO. MASON CIV. RT. L.J. 349 (describing the attributed authors, including, most likely, William Lamb, 19th century Prime Minister of England).

[4] The American Bar Association promulgated its Rules of Professional Conduct in 1983, which most states (including California) have adopted in their own version of the rules. *See* ABA Model Rules of Professional Conduct (available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/).

[5] California, for example, still allows one to become a lawyer without attending law school, under supervised study of a judge or licensed attorney (see State Bar of California Education Requirements, available at https://www.calbar.ca.gov/Admissions/Requirements/Education).

[6] The American Bar Association voted – effective 2025 – that law schools need not require the LSAT. In recent years, individual schools have allowed students to submit their scores on the Graduate Record Exam (GRE) in lieu of the LSAT. *See* Karen Sloan, "ABA votes to end law schools' LSAT requirement, but not until 2025," Reuters, Nov. 18, 2022 (available at https://www.reuters.com/legal/legalindustry/aba-votes-end-law-schools-lsat-requirement-not-until-2025-2022-11-18/).

[7] *See* Jesse Rothstein and Albert H. Yoon, *Affirmative Action in Law School Admissions: What do Racial Preferences Do?*, 75 U. Chi. L. Rev. 649, 662 (noting that in 2007, only 3 out of 185 ABA accredited law schools accepted more than half of its applicants).

[8] Some states allow individuals to become lawyers without first receiving a law degree. See

Law school itself provides another point of regulation, where students must successfully complete coursework to receive their degree. [start here] Legal scholars have long debated what form their legal education should take: e.g., replacing the longstanding Langdellian approach in favor of more modern, interdisciplinary pedagogy[9]; focusing more on adjudicative processes, both judicial and administrative[10]; emphasizing practical rather than theoretical knowledge[11]; recognizing how the legal system – and law school – perpetuate social hierarchy[12]; and prioritizing legal ethics in the curriculum, as the lens through which students study all other areas of law.[13]

Law schools also provide a second gatekeeper mechanism: a law degree. Most states require, as part of the licensing process, that lawyers graduate from law school. Upon entering law school, the vast majority of law students receive their degrees. At ABA-accredited law schools, the graduation rate in 2023 exceeded 96 percent.[14] Amongst California law schools, the attrition rate in 2022 was 8 percent at ABA accredited law schools but notably higher for California-only accredited (42 percent) and unaccredited law schools (51 percent).[15]

The second stage is the bar exam. For many years, Wisconsin was the only state that allowed law graduates to bypass the state bar exam - providing they attended law school within the state. In 2024, Oregon and Washington approved alternative pathways to obtaining a law license without taking the state bar.[16] The widely held rationale for the bar exam was to protect the public from law graduates who could not show the requisite level of professional competence. Recent studies provide support for this claim. Lawyers with low (but passing) bar exam scores are more likely to be disciplined by the state bar.[17] The implementation of a state bar resulted in lower rates of discipline amongst experienced lawyers.[18]

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[9] *See* Robert W. Gordon, *The Schlegelians v. the Langdellians on Legal Education,* 69 Buff. L. Rev. 87 (2021); Jeremiah A. Ho, *Function, Form, and Strawberries: Subverting Langdell*, 64 J. Leg. Educ. 656 (2015).

[10] *See* Lon L. Fuller, *What the Law Schools Can Contribute to the Making of Lawyers*, 1 J. Legal Educ. 189 (1948).

[11] *See* Robert R. Kuehn and David R. moss, *A Study of the Relationship Between Law School Coursework and Bar Exa Outcomes*, 68 J. Leg. Educ. 623 (2019) (finding that law students who take more bar-subject courses perform better on the state bar exam); *Wayne S. Hyatt, A Lawyer's Lament: Law Schools and the Profession of Law*, 60 Vand. L. Rev. 385 (2007).

[12] *See* Etienne C. Toussaint, *The Purpose of Legal Education,* 111 Cal. L. Rev. 1 (2023); Duncan Kenney, *Legal Education and the Reproduction of Hierarchy*, 32 J. Leg. Educ. 591 (1982).

[13] *See* Russell G. Pearce, *Legal Ethics Must Be the Heart of the Law School Curriculum,* 26 J. Legal Prof. 159 (2002); Russell G. Pearce, *Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 Loy. U. Chi L. Rev. 719 (1998).

[14] The ABA's Standard 5009 Information Reports provides annualized attrition rates for all ABA-accredited law schools (available at https://www.abarequireddisclosures.org/requiredDisclosure).

[15] *See* Profile of California Law Schools (2022), Chapter on Attrition (available at https://publications.calbar.ca.gov/law-school-profile/).

[16] See Karen Sloan, "Washington Adopts New Lawyer Licensing Paths as Other States Mull Bar Exam Bypasses," Reuters, March 18, 2024 (available at https://www.reuters.com/legal/government/washington-adopts-new-lawyer-licensing-paths-other-states-mull-bar-exam-bypasses-2024-03-18/).

[17] *See* Robert Anderson IV and Derek T. Meuller, *The High Cost of Lowering the Bar*, 32 Georgetown J. Leg. Eth. 307 (2019) (relying on aggregated data of California lawyers).

[18] *See* Kyle Rozema, *Does the Bar Exam Protect the Public?* 18 J. of Emp. Leg. Stud. 410 (2021) (finding lawyers who passed the bar had similar disciplinary rates early in their careers compared with those admitted under diploma privilege, but had relatively lower rates after twenty years of practice).

The state bar examination requirement has also drawn criticism. Detractors argue that bar exams are poorly designed to evaluate a lawyer's ability to practice,[19] providing little additional protection of the public[20]. Others have advocated moving away from a uniform bar exam and towards a more flexible licensing methods that consider the myriad forms of practice.[21]

In the United States, the legal profession is self-regulating. In most jurisdictions, the state bar is tasked with investigating allegations of attorney misconduct, and imposing discipline where warranted. The current system of self-regulation faces two obstacles. The first is funding. The limited – and arguably inadequate – funding that state judicial systems counter also befall many state bars.[22] The second is public perception. State bars have drawn criticism for its opacity, with legal scholars contending that it undermines public trust in in lawyers,[23] and advocating for greater public involvement in both investigation and discipline stages.[24]

III. Data

Our data comes from the State Bar of California.[25] This state regulatory body performs several roles relating to practicing lawyers in California. It administers the state component of the licensing exam, including setting the minimum score required to be eligible to practice. For admitted lawyers, it ensures that they act in accordance with the California Rules of Professional Conduct, which "are intended to regulate professional conduct of

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[19] *See* Leon Green, *Why Bar Examinations?*, 33 Northwestern L. Rev. 908, 911 (1939) (concluding "I dare suggest there is not a single similarity between the bar examination process and what a lawyer is called upon to
do in his practice, unless it be to give a curbstone opinion").

[20] *See* Milan Markovic*, Protecting the Guild or Protecting the Public? Bar Exams and the Diploma Privilege,* 35 GEO. J. LEGAL ETHICS 163, 168 (2022) (expressing skepticism of the bar exam's efficacy in protecting the public).

[21] *See* Cassandra Burke Robertson*, How Should We License Lawyers?,* 89 FORDHAM L. REV. 1295, 1297 (2021) (stating that "a licensing regime focused on protecting clients requires reevaluating licensing from the ground up and abandoning the idea of one-size-fits-all licensing practices").

[22] *See* e.g., Jim Ash, "Florida Court Clerks: Grateful' for Anticipated $28.8M Funding Boost, Warning of Ongoing Underfunding Challenges," FL. BAR (noting that the increased funds still leaves the state with inadequate resources to fulfill its statutory obligations) (available at https://www.floridabar.org/the-florida-bar-news/florida-court-clerks-grateful-for-anticipated-28-8m-funding-boost-warn-of-ongoing-underfunding-challenges/).

[23] *See* Leslie C. Levin*, The Case for less Secrecy in Lawyer Discipline,* 20 GEO. J. LEG. ETH. 1, 50 (2007) (writing that the public's distrust of the disciplinary system erodes their trust in the entire legal profession).

[24] *See* Jennifer M. Kraus*, Attorney Discipline Systems: Improving Public Perception and Increasing Efficacy,* 84 Marq. L. Rev. 273, 297 (2000) (recommending that "public members should not only participate, but have the tools to participate actively.").

[25] The State Bar of California generously provided this data for the sole purpose of this academic study, and upon final completion of the study, all original files shall be deleted.

attorneys licensed by the State Bar through discipline."[26] California has the largest state bar in the United States, home to two of the largest legal markets (Los Angeles; San Francisco) within the United States, as forty public and private law schools.[27]

Our data contains individual-level information for all attorneys who were admitted to practice in California between 1990 and 2023. This cohort includes those whose status to practice were either active or inactive as of 2024. The identities of the attorneys have been anonymized but contains detailed individual-level information. We know for each attorney their gender, ethnicity, and year of birth. The data also provides where they attended law school, their performance on both the multi-state professional responsibility exam (MPRE) and state bar exam, and the year they were admitted to practice. The records also include any investigations or disciplinary actions the State Bar of California may have conducted against the lawyer.

A bit more context on our information on licensing exams: the data includes the exact passing score that lawyers received on both both tests. While admitted lawyers are informed of their score on the MPRE, they do not learn their score on the state bar exam (only that they passed). We also know how many times they took the state bar exam prior to passing it, as well as their performance on the multi-state component (Multistate Bar Exam) of the state bar exam, which California uses as part of its evaluation.

The raw data comprises of 240,536 observations, where the unit of observation is lawyer-investigation: i.e., every licensed lawyer appears at least once, regardless of their investigation or discipline history. Those who have been investigated more than once have additional observations for each investigation. For most of our analyses, we transform our unit of observation to unique lawyer – representing 172,754 observations. We choose the lawyer-centric unit of observation to generate unbiased point estimates of the variables of interest.[28]

Table 1 provides summary statistics of the lawyers contained in the data. Most members of the California Bar during this period are male (50 percent) and white (62 percent). Lawyers of Asian descent represent roughly 15 percent of our observations, while Hispanic lawyers comprise 6 percent and Black lawyers another 5 percent. Lawyers who identify as multiracial represent a growing and now sizeable fraction (7 percent) of the California lawyer population.

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[26] *See* State Bar of California – Rules of Professional Conduct (providing a complete list of the applicable rules of professional conduct (available at https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct).

[27] *See* State Bar of California – Law Schools (listing the 18 ABA-accredited law schools; 19 California-accredited law schools; and 3 unaccredited correspondence schools) available at https://www.calbar.ca.gov/Admissions/Law-School-Regulation/Law-Schools).

[28] As the investigation-centric unit of observation yields important insights into lawyers' observable characteristics, we ran certain analyses with this specification, which we discuss in Part V, *infra*.

Table 1
Summary Statistics
State Bar Members (1990-2023)

Lawyers (unique)		Law School Attended	
N	172,754	ABA-Accredited	87.9%
		Non-ABA-Accredited; CA-Accredited	6.4%
Gender Identication		Non-ABA-Accredited, CA-Nonaccredite	2.0%
Female	48.0%	Non-ABA-Accredited, Out of State	0.1%
Male	50.4%	Foreign Law Schools	1.2%
Other/Nonbinary	1.0%	No Information	2.5%
Unknown	0.6%		
		Admitted to Practice (California)	
Ethnicity		1990-1999	34.0%
Asian	14.6%	2000-2009	18.8%
Black	3.4%	2010-2019	34.6%
Hispanic	6.0%	2020-2023	12.6%
Multiracial	7.0%		
Other	3.1%		
Unknown	3.9%		
White	62.1%		

The vast majority (88 percent) graduated from an American Bar Association (ABA) accredited law school, which bestows formal recognition of the J.D. degree by the U.S. Department of Education.[29] This group includes law schools located across the United States. Roughly 6 percent of observations graduated from a law school – located within California – that is not ABA-accredited but accredited within California. Another 2 percent graduate from law schools that have received neither ABA- nor California accreditation. The remaining graduates attended either a foreign law school (1 percent), or for whom the data is missing (3 percent).[30]

A brief overview of how the State Bar of California investigates and disciplines attorney misconduct. Licensed lawyers are required to comply with California's Rules of Professional Conduct,[31] which outlines the responsibilities and obligations that lawyers have to clients, fellow lawyers, judges (and other tribunals), and the public. Most investigations originate from clients, who contact the state bar to submit a complaint, either anonymously or with attribution. These complaints typically reflect client dissatisfaction with their lawyer. Not all complaints, however, are actionable pursuant to the rules of professional conduct.

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[29] *See* American Bar Association, Section of Legal Education and Admissions to the Bar (describing the significance of ABA approval) (available at https://www.americanbar.org/groups/legal_education/resources/frequently_asked_questions/).
[30] This category pertains lawyers who practiced out-of-state as attended law school outside California for which the State Bar of California does not have records.
[31] *See* FN 26, *infra* (provided a complete list of the rules of professional conduct).

The State Bar initiates investigations for credible allegations of violations of the rules of professional conduct. Our data includes only complaints that lead to investigations. Lawyers under investigation are not made public. Our data identifies which lawyers are investigated, irrespective whether they receive any discipline, and the specific ground(s) for the investigation. By contrast, lawyers who the State Bar of California chooses to discipline is public record. One attribute of our data is that we can link discipline to the underlying allegations and also compare them with lawyers who the State Bar of California investigates but does not discipline.

Table 2 provides summary statistics on investigations and discipline. In our data, roughly 10 percent of lawyers (18,006/172,754) have been investigated at least once by the State Bar of California since being admitted to practice. Among the entire lawyer population, the average number of allegations per investigation was 1.78, reflecting that many investigations involve multiple allegations of rule of professional conduct violations.

The table lists the enumerated allegations, and the statutory rule of professional conduct for California to which it corresponds. Subcolumn 1 shows the allegation rate among the entire population of lawyers, while Subcolumn 2 shows the allegation rate amongst those who are investigated in the first place. The higher percentages for Column 2 highlight that misconduct allegations against lawyers typically involve numerous allegations.

Table 2
Summary Statistics
Investigation and Discipline (1990-2023)

Investigated		Allegations		All 1	Investigated 2
All Lawyers	10.4%	**Client-Lawyer Relationship (Chapter 1: Rules 1.1 - 1.18)**			
Mean Number of Allegations	1.78	1	Client fees (Rule 1.5)	2.3%	22.3%
		2	Client loyalty/conflicts of interest (Rules 1.7-1.9)	1.9%	18.0%
Disciplined		3	Client neglect/abandonment (Rules 1.3, 1.4)	6.5%	62.6%
All Lawyers	1.9%	4	Client/entrusted funds (Rule 1.15)	2.3%	22.4%
Among Investigated Lawyers	18.4%	5	Disregard of client's decisions/consent/authorization/interests (Rules 1.2, 1.4)	0.0%	0.0%
		6	Improper business transactions/relationships w/ 3rd parties (Rule 1.8)	0.6%	5.5%
		7	Loan modification misconduct (Rules 1.5; 1.15)	0.4%	3.8%
		8	Prohibited agreements/transactions between attorney and client (Rule 1.8)	0.0%	0.1%
		9	Sexual relations with client (Rule 1.8-10)	0.1%	0.8%
		10	Superior court assumption of practice (Rule 1.16)	0.1%	0.7%
		Advocate (Chapter 3: Rules 3.1 - 3.10)			
		1	Criminal prosecutorial misconduct (Rule 3.8)	0.1%	0.6%
		2	Interference with judicial administration/integrity (Rule 3.5)	2.4%	23.1%
		Transactions with Persons Other than Clients (Chapter 4: Rules 4.1 - 4.4)			
		1	Improper conduct toward opposing party/counsel/3rd parties (Rule 4.1-4.4)	1.0%	9.4%
		Law Firms and Associations (Chapter 5: Rules 5.1 - 5.7)			
		1	Duties of managing/supervising/subordinate attorneys (Rules 5.1-5.3)	0.3%	2.6%
		2	Employment of disbarred/resigned/suspended attorneys (Rule 5.5)	0.1%	0.9%
		3	Unauthorized practice of law (Rule 5.5)	1.5%	14.5%
		Information About Legal Services (Chapter 7: Rules 7.1 - 7.6)			
		1	Advertising/solicitation for employment (Rules 7.1-7.3)	0.8%	7.8%
		Maintaining the Integrity of the Profession (Chapter 8: Rules 8.1 - 8.5)			
		1	Discrimination – harassment - retaliation (Rule 8.4)	0.0%	0.0%
		2	Duties to state bar (Rule 8.1)	1.3%	12.6%
		3	Misconduct as judicial officer/3rd party neutral/judicial candidate (Rule 8.2)	0.0%	0.2%
		4	Non-compliance with conditions of discipline (Rule 8.4))	0.5%	4.4%
		5	Professional integrity/honesty (Rule 8.4)	5.5%	52.9%
		6	Prohibited financial transactions (not with clients) (Rule 8.4)	0.0%	0.1%
		7	3rd party reportable actions (Rule 8.3)	0.5%	4.7%
		8	Violation of other laws (Rule 8.4)	2.5%	23.8%

Most allegations relate to Client-Lawyer Relationships (Chapter 1 of the California Rules of Professional Conduct) or failure to Integrity of the Profession (Chapter 8). Within these chapters, two specific allegations occur most frequently. Over three-fifths (63 percent) of all investigations involve client neglect or abandonment, examples of which include a lawyer's failure to keep the client informed or failure to subit court filings within the statutory deadline. Over half (53 percent) of investigations allege a lawyer's lack of professional integrity or honesty, which can arise when a lawyer fails to disclose conflicts of interest or over-charges a client for legal services.

Numerous other allegation types arose at least 10 percent of the time among investigated lawyers. Amongst misconduct involved clients, nearly a quarter (23 percent) related to inappropriate fees or handling of funds (22 percent), respectively, both reflecting payments that clients feel were improperly used to wrongfully withheld. Nearly a fifth (18 percent) involved conflicts of interest. With respect to judicial proceedings, roughly another quarter (23 percent) of investigated lawyers allegedly interfered with judicial

proceedings (e.g., abuse of process claims). Another common allegation related to the unauthorized practice of law (15 percent), e.g., which can occur when a lawyer allows a non-lawyer to perform legal tasks.

In our main analysis (Part IV), we look at the allegations collectively, focusing on lawyer characteristics that give rise to investigations . We do this in part for methodological reasons: allegations for investigation are perfectly correlated with whether a lawyer is investigated, and we are first interested in why lawyers are investigated before turning our attention to the specific allegations. We look at specific allegations during our discussion (Part V), as we try to understand lawyers' propensity to run afoul of certain rules.

IV. Findings

In this section, we are interested in understanding what attorney characteristics, if any, correlate with whether the State Bar investigates or disciplines a lawyer. We begin with a visual exploration of these factors, with a bivariate focus. We then run a series of regressions to see the joint effect of these characteristics.

Licensing Exams: We first examine how attorneys' performance on the bar exam correspond to investigation and discipline rates. Specifically, we look at two exams: the Multi-State Professional Responsibility Exam (MPRE) andthe state bar exam. These exams are administered on separate dates and evaluated separately. To be admitted to practice, lawyers must receive a passing score on each exam, set by the State Bar of California.

The MPRE: The MPRE tests one's understanding of professional responsibility, based on the model American Bar Association (ABA) rules on the subject. These rules are germane to practicing lawyers as well, as all states base their own rules of professional conduct – at varying levels – on the ABA model rules. California's own rules of professional conduct hew closely to the ABA models rules, both in organization and substance.

The MPRE, developed by the National Committee of Bar Examiners (NCBE), is a two-hour test, containing 60 multiple choice questions. While every state (save Wisconsin) uses the MPRE as part of its licensure, states set their own minimum passing score. California requires a minimum raw score of 86 on the MPRE, the highest among all states. Lawyers typically take the MPRE during their third year of law school, although some choose to take it earlier or later.

In our analyses, we normalize MPRE score on a scale from 0 to 100 (the latter representing the highest recorded score). We also normalize each test by cohort year, so that the scores for any lawyer are directly comparable to the cohort who passed the test during the same year. As shown in Figure 2, the solid line indicates the fraction of lawyers who were investigated (Figure 2a) disciplined (Figure 2b) since being admitted to the bar, based on their normalized score. The scale for this fraction is on the left-side y-axis. The dotted line in each of the graphs captures the number the lawyers receiving the normalized-by-year score. The scale for the number of lawyers is on the right-side y-axis.
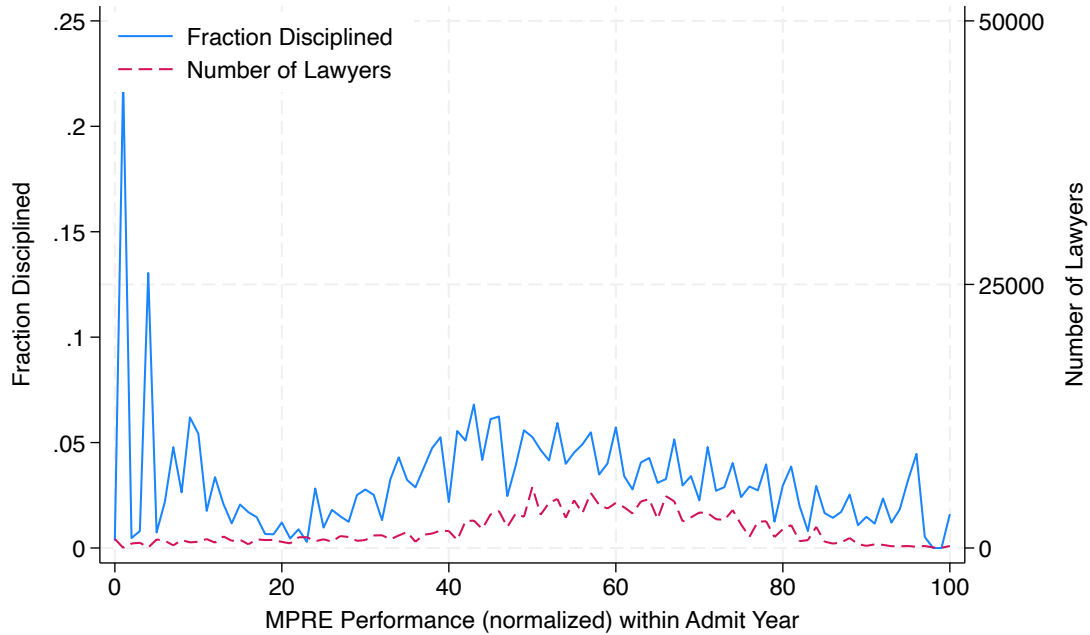
For both investigation and discipline graphs in Figure 2 – and those that follow – the range for each y-axis is designed to minimize overlap with the other, facilitating interpretation.

Figure 2
Investigation and Discipline by MPRE Score
(1990-2023)
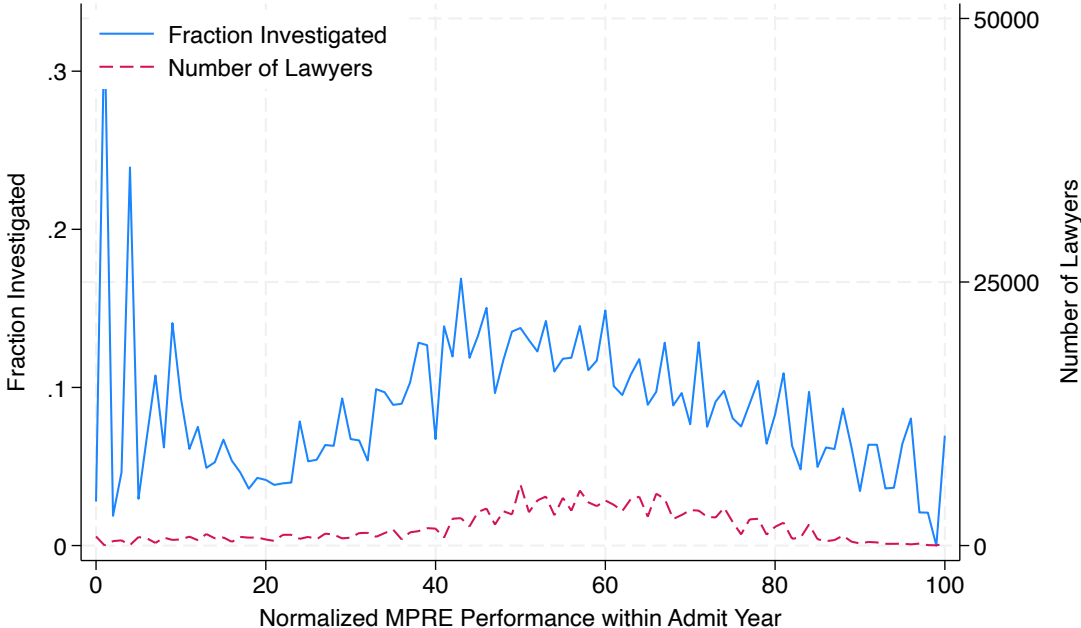
a. Investigation

b. Discipline

Investigations (Figure 2a) reveal different patterns for both the rates of investigation and the number of attorneys by MPRE score. The rates of investigation follow a bi-modal distribution, with peaks among lawyers receiving with the lowest MPRE scores, and then again among those with scores in the middle of the distribution (40). By contrast, the number of students at each score follows a roughly normal distribution (albeit right-skewed), with a modal (normalized) score of 45. A similar pattern emerges for rates of discipline (Figure 2b). The rates of discipline are lower than for investigation, however, indicative that only a subset of lawyers investigated for misconduct subsequently are disciplined.

Interpreting investigation rates and attorney counts in tandem reveals a positive but nuanced correlation between lawyers' MPRE score and probability of investigation. Most lawyers score well above the minimum passing score (0 in the normalized MPRE score, 86 as the raw MPRE score). The median normalized score is 56 (100 raw score). Even test-takers who perform at the lowest quartile of passing scores achieve a normalized score of 45 (raw score of 89). Figure 2a reveals that most investigations involve members *not* with the lowest MPRE scores, but rather in the middle of the distribution: i.e., normalized scores between 40 and 60. Figure 2b reveals a similar pattern. In other words: most California lawyers investigated and disciplined by the State Bar of California perform closer to the middle of the pack than at the bottom of the MPRE distribution.

The State Bar of California Exam: The State Bar of California exam is a closed-book exam. The exam historically involved three days but was shortened in 2017 to two days.[32] The exam consists of three parts:

[32] *See* State Bar of California News Release, "California Supreme Court Approves Two-Day Bar Exam" March 16, 2016 (describing the same criteria tested over two days rather than three, effective July 2017) (available

1) The Multistate Bar Exam (MBE), a six-hour, 200-question multiple-choice examination developed by National Committee of Bar Examiners (NCBE). The exam tests seven subjects - Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts – based on model rules (e.g., Uniform Commercial Code) or common law.
2) Essay questions based on substantive state law (e.g., contracts, torts, corporate);
3) A closed writing memo-writing exercise based on provided materials.

Historically – and already in effect for lawyers admitted in 1990 – California required a minimum raw passing score of 1440. But in 2020 – corresponding with a decades-long decline in the pass rate – the State Bar of California lowered its minimum passing score to 1390 effective Fall 2020, where it has remains today.

Figure 3
Investigation and Discipline by State Bar Exam Score
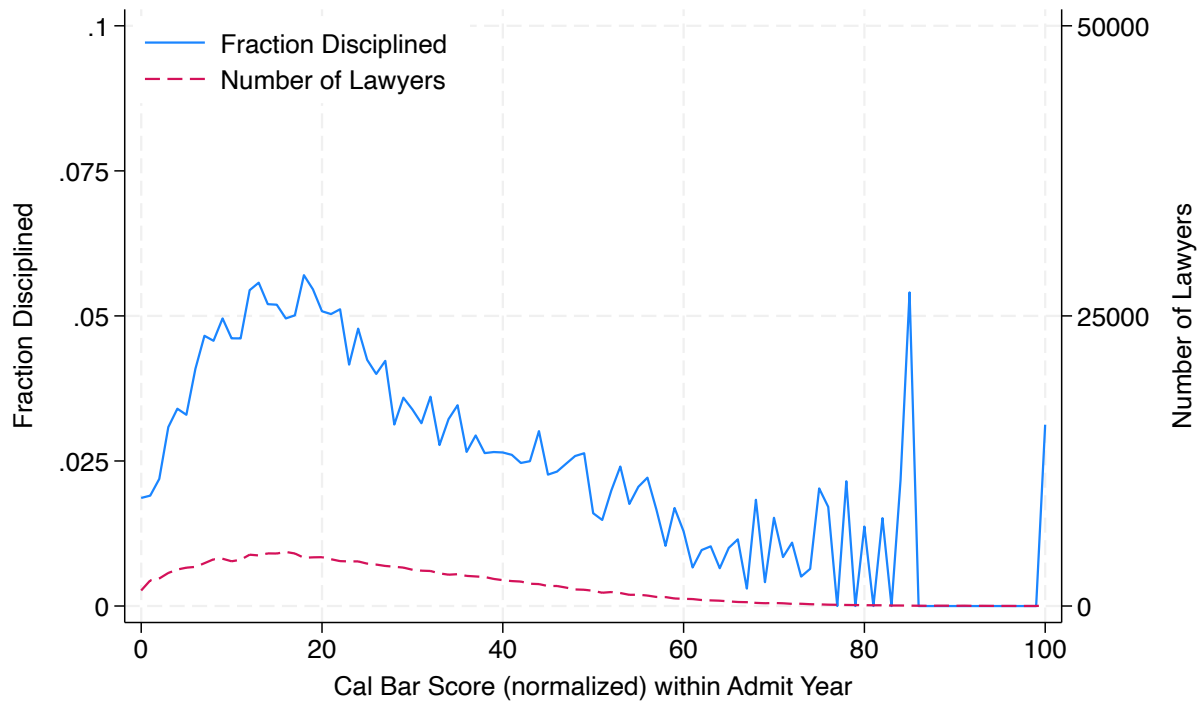**(1990-2023)**

a. Investigation

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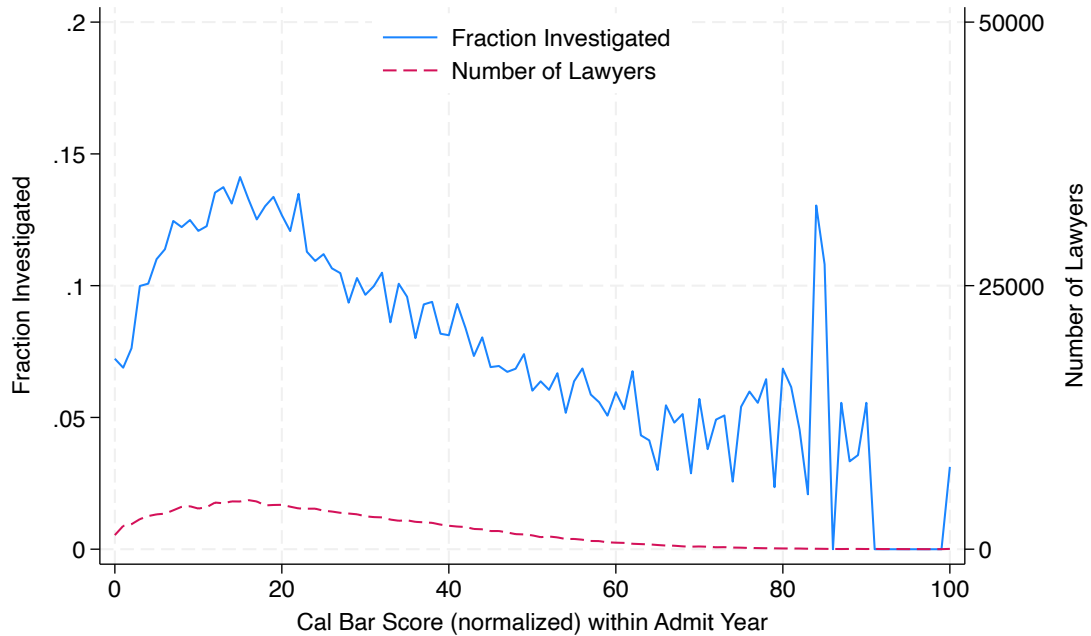
b. Discipline

Figure 3 reports the investigations and discipline based on performance on the state bar exam. In contrast to Figure 2, the distributions take a different form for the state bar exam. Both the investigation and discipline rates as well as the number of lawyers follow a Poisson rather than a normal distribution. Notably, the modal value for each dimension takes on lower values within the distribution. The median normalized score on the State Bar Exam is 21, and only a quarter of the lawyers achieve a score of 25 or higher. Similarly, the highest rates of both investigation and discipline occur amongst those scoring on the lower end of the normalized scores (below 20). Accordingly, the high rates of investigation among those with passing scores below 20 (Figure 3a) on the state bar exam represents a sizable number of lawyers. By contrast, the spikes in investigation rates for those with higher scores (e.g., above 60) represent relatively few lawyers.

The rates of discipline (Figure 3b) follow a similar pattern to investigations across the distribution of scores on the state bar exam. While only a fraction of investigations results in discipline, lawyers with passing scores below 20 represent the majority of those investigated. The rates of discipline take a similar shape to the rates in investigation, albeit with a lower peak. Stated more simply: lawyers with the lowest state bar exam scores are most likely to be investigated and disciplined.

Comparing the two exams – the MPRE and state bar exam – reveal sizeable differences in the distribution of lawyers most likely to face investigation and discipline. While scores for both tests are correlated with investigation and discipline for misconduct, the relationship is stronger for state bar exam scores than for the MPRE. The MPRE scores have a higher mean and variance than the normalized state bar scores. Lawyers score closer to the cutoff for the state bar exam than for the MPRE.

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Law School Attended: We now explore the effect where lawyers attended law schools has on subsequent professional discipline and sanction. Law schools in the United States vary in admissions selectivity, but all rely heavily on two metrics: undergraduate grade point average (UGPA) and performance on the Law School Admission Test (LSAT).[33] On average, academically stronger applicants gravitate to stronger academic – and therefore, selective – schools.

Nearly all licensed lawyers in our data attend law school in the United States. Among this group, most attend a law school accredited by the American Bar Association (ABA) (comprised of 198 schools in our sample). In addition, California has a sizeable number of law schools that have not received ABA accreditation. Some of these schools have received state accreditation by the State Bar of California, while others have not.[34] Graduates of both types of non-ABA accredited schools are eligible to take the California Bar.

To analyze the schools, we ordinally ranked these schools pursuant to the *U.S. News and World Report* law school rankings, which run from 1 to 198.[35] While *U.S. News* has drawn considerable criticism from students, deans, and academics (e.g., Rothstein & Yoon 2024; Posner 2006; Stake 2006), we nonetheless use it based on its continued salience[36] and that the rankings closely correlate with the aforementioned indices of selectivity (i.e., UGPA and LSAT). We assign following rankings to non-ABA accredited law schools, in the same order as listed in Table 1: 1) non-ABA but California accredited (200); 2) non-ABA, non-California accredited (210); 3) non-ABA, out-of-state (215); 4) foreign law schools (220); and 5) lawyers with non-reported school information (225). On the figures space out these different classifications of non-ABA accredited-schools for ease of visual interpretation.

Amongst non-ABA accredited law schools, we acknowledge our admittedly reductionist approach. As we were unable to find any published rankings for law schools without ABA-accreditation, we assigned the same ranking for all California-accredited rankings, and another – lower – ranking for California schools with neither ABA nor state accreditation. As for the foreign law schools, our singular ranking will fail to account for any differences in selectivity amongst these school. We note, however, that foreign law

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[33] *See* Alexia Brunet Marks and Scott A. Moss, *What Predicts Law Student Success? A Longitudinal Study Correlating Law Student Applicant Data and Law School Outcomes,"* 205, 211 (2016) (describing the LSAT and undergraduate GPA as the main admissions criteria).

[34] During the 1990-2023 period of our data, some non-ABA accredited law schools in California shut down or lost their accreditation. Thomas Jefferson Law School lost its ABA accreditation in 2019, and transitioned to a California-only accreditation. *See* Stephanie Francis Ward, "Under Teach-Out Plan, Thomas Jefferson Law School Has Accreditation for 3 More Years," ABA Journal, Jan. 13, 2020 (available at https://www.abajournal.com/news/article/under-teach-out-plan-tjsol-has-aba-accreditation-three-more-years).

[35] Specifically, we used the 2017 *U.S. News Rankings* across all years. We did this for mostly practical reasons (e.g., in the early 1990s, *U.S. News* ranked only a subset of schools), but noted for the available years, the rankings were highly stable, particularly within tiers of schools.

[36] In recent years, however, the U.S. News Law Rankings have faced public criticism from several law schools, suggestive that its impact may be diminishing. See Karen Sloan, "After Setbacks, U.S. News law school rankings show signs of waning influence," Karen Sloan, Reuters, April 15, 2024 (available at https://www.reuters.com/legal/legalindustry/after-setbacks-us-news-law-school-rankings-show-signs-waning-influence-2024-04-12/).

schools make up only one percent of our observations. Moreover, the consolidation of foreign schools – several of which are highly selective (e.g., Oxford; Cambridge; McGill) will likely bias downward the effect of finding a correlation between school selectivity and attorney misconduct

Figure 4
Investigation and Discipline by Law School Attended
(1990-2023)

a. Investigation
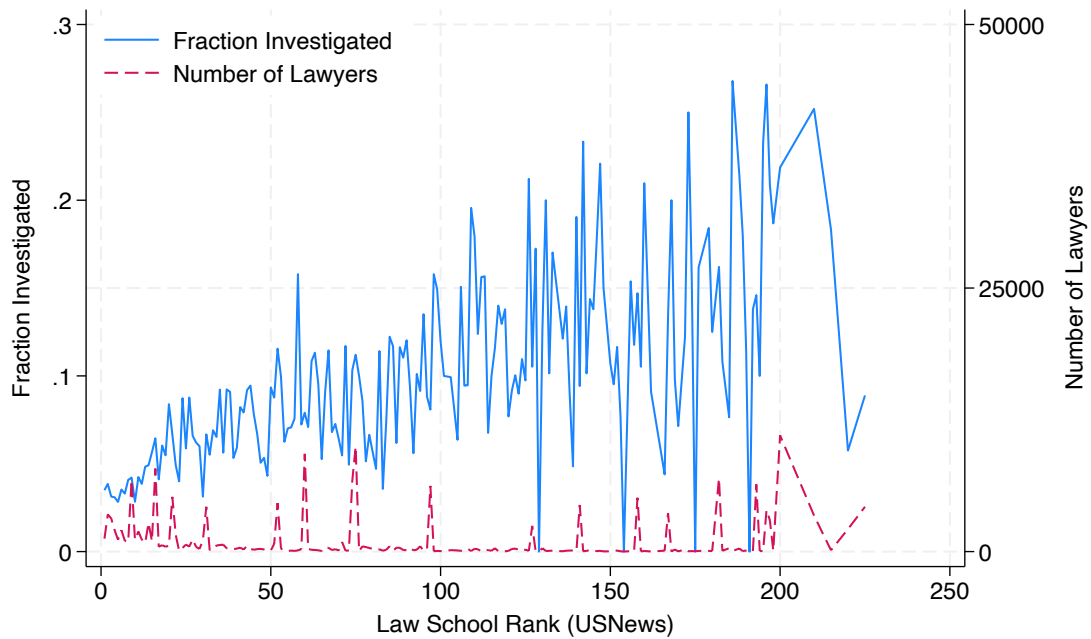
b. Discipline

In contrast to the MPRE and state bar exam, Figure 4 illustrates considerable variation from one school to the next, both with respect to the 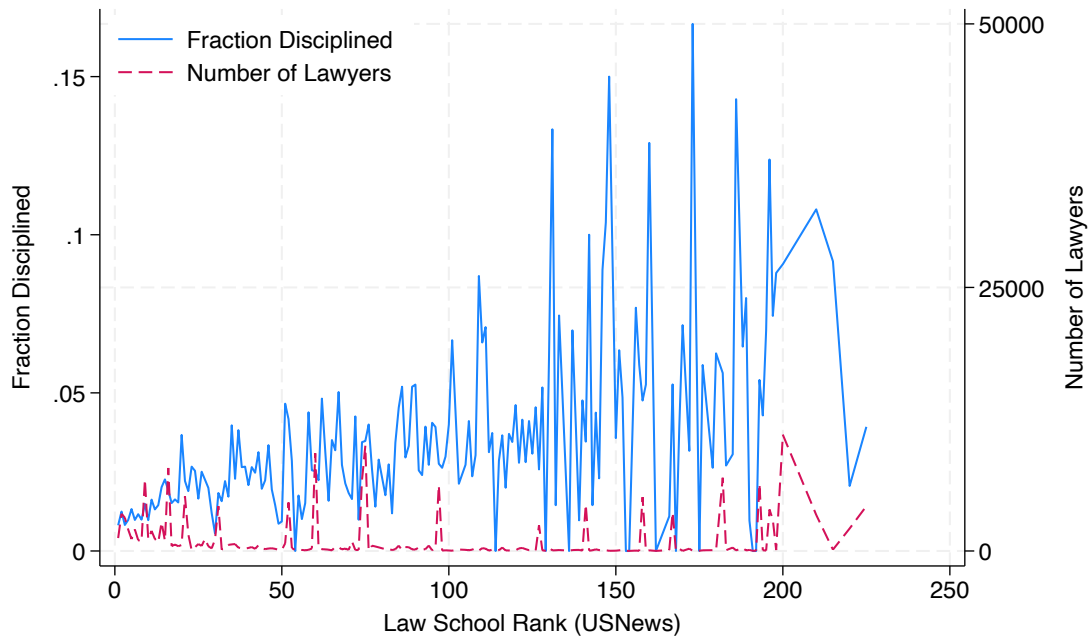number of lawyers as well as the rates of investigation and discipline. It is helpful to note that many schools with high rates of investigation or discipline involve relatively few lawyers, suggesting that small changes in the number of lawyers investigated or disciplined can have a large effect on the rates of investigation or discipline.

A brief explanation for the spikes observed amongst the number of lawyers along the x-axis: many graduates from the University of California system – e.g., Berkeley, UCLA, San Francisco (formerly Hastings) and Davis – choose to remain in California following graduation. Graduates of private law schools schools – e.g., Stanford University, University of Southern California, University of San Francisco – also remain in California in high numbers. In addition, graduates of non-ABA California schools – e.g., University of La Verne, University of West Los Angeles – overwhelming choose to practice in California, influenced in strong part by the ABA accreditation requirement in. most states. The spikes in the number of lawyers across the distribution of law schools largely coincide with graduates of California schools choosing to practice within the state.

Underlying the variation from one school to the other, Figure 4 show a statistically significant correlation between school rank and both investigation (Figure 4a: r = 0.26; p<0.001) and discipline (Figure 4b: r = 0.12; p<0.001). On average, lawyers from higher ranked schools are investigated and disciplined at lower rates than those from lower ranked schools. The high rate of investigations and discipline amongst the least selective (lowest) ranked schools (i..e, non-ABA accredited law schools), coupled with their relatively high number of graduates practicing in California, reveal that these graduates are disproportionately represented within the California Bar.

Gender and Ethnicity: In addition to their performance on the bar and their educational background, we also analyze lawyers' ascribed characteristics of gender and ethnicity. The legal profession has evolved over time from its origins as a predominantly male and white profession. The profession is now more diverse, both with respect to gender and ethnicity. Our data reveals near-parity with respect to gender, which understates recent trends with more women than men enrolling in law school.[37] Lawyers in our dataset is ethnically diverse, comparable to the general population,[38] reflecting a higher percentage of Asian graduates but lower percentage of Black and Hispanic than the national average.

Our data allows us to observe how, if at all, these demographic factors play a role in attorney regulation. While the figures that follow are bar graphs rather than lines (as used to analyze test scores and law schools) but follow a similar interpretation: solid shading indicates the fraction either investigated or disciplined, while the dotted line indicates the number of lawyers.

Gender: Figure 5a indicates differences between men and women in rates of investigation. Given the small number of lawyers who identify other than male or female (less than 2%), we report only the binary gender categories. While the baseline rates of male and female lawyers approach parity, men are investigated at nearly twice the rate of females (14 percent vs 7 percent), a statistically significant difference (p<=0.0001). With respect to discipline, the rates are lower for both men and women (as denoted by the left-side y-axis) but the ratio remains. Males (5 percent) are disciplined at more than twice the rate of women (2 percent), again statistically significant.

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[37] Elizabeth Olsen, "Women Make Up Majority of U.S. Law Students for First Time," N.Y. Times, Dec. 16, 2016 at B4 (noting that women in 2016 made up 51% of law school enrollees) (available at https://www.nytimes.com/2016/12/16/business/dealbook/women-majority-of-us-law-students-first-time.html).

[38] *See* ABA 2024 Standard 509 Information Data Overview (posted 12/16/2024) (showing non-whites comprising nearly 43% of enrolled JD students) (available at https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2024/2024-standard-509-information-report-data-overview.pdf).

Figure 5
Investigation and Discipline by Gender
(1990-2023)

a. Investigation
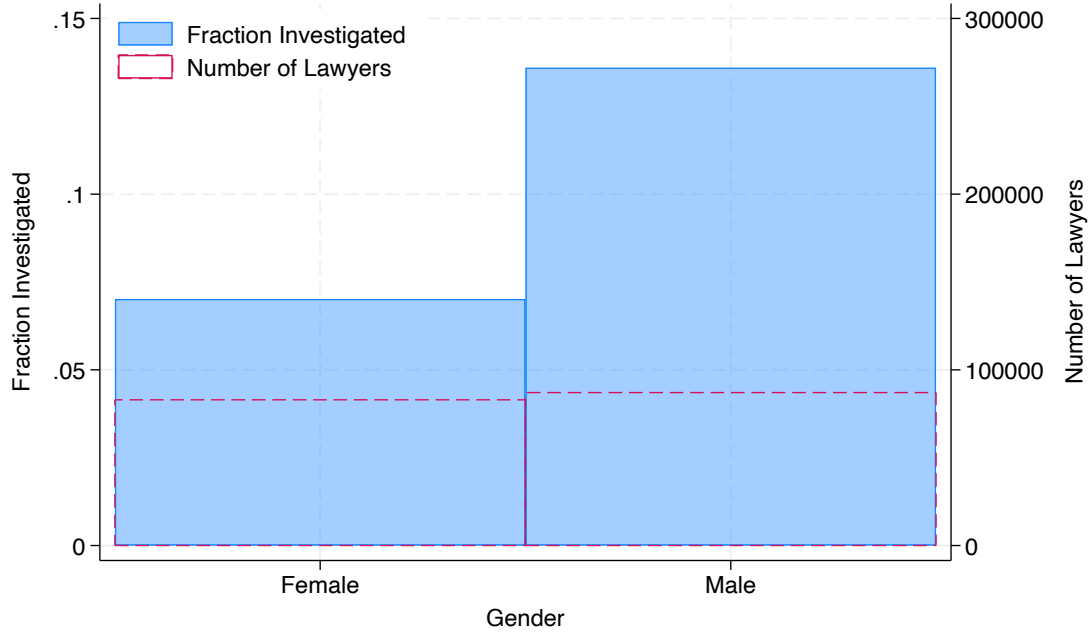
b. Discipline
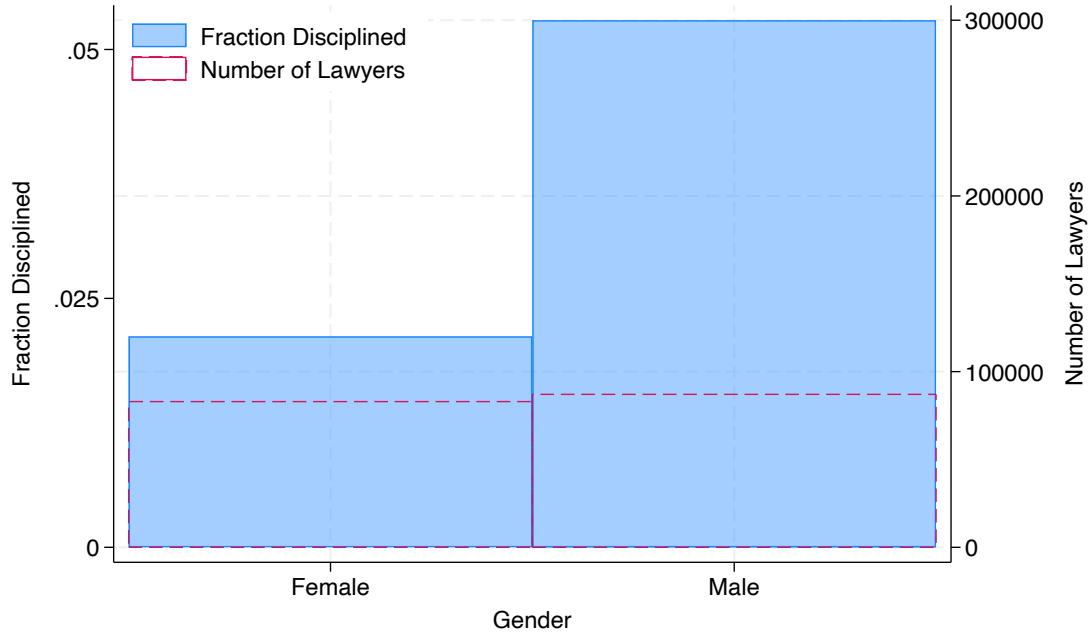
Ethnicity: As with gender, the rate of investigation varies by attorney ethnicity (Figure 6). As noted in the summary table (Table 1), most lawyers identify as White, with sizeable

pluralities of Asian, Black, Hispanic, and multi-racial populations. Amongst investigated lawyers, Black lawyers were highest at 15 percent, with Hispanic lawyers at 14 percent, White lawyers at 11 percent; multi-racial at 10 percent, and Asians at 7 percent. These pairwise differences were statistically significant (p<0.001).

Rates of discipline were lower across all groups when looking at discipline: lawyers identifying as Black were disciplined at a rate of 7 percent, followed by Hispanic (5 percent), White (4 percent), multiracial (3 percent) and Asian (3 percent). These pairwise differences were each statistically significant (p<0.001). Looking only discipline involving those lawyers under investigation (not shown), discipline rates increased but converged with one another: Black (49 percent); Hispanic (36 percent); White (36 percent); multiracial (34 percent); and Asian (36 percent). Excluding Black lawyers, these pairwise differences were statistically significant in a pairwise comparison (all at or below p<0.01).

Figure 6
Investigation and Discipline by Ethnicity
(1990-2023)

a. Investigation
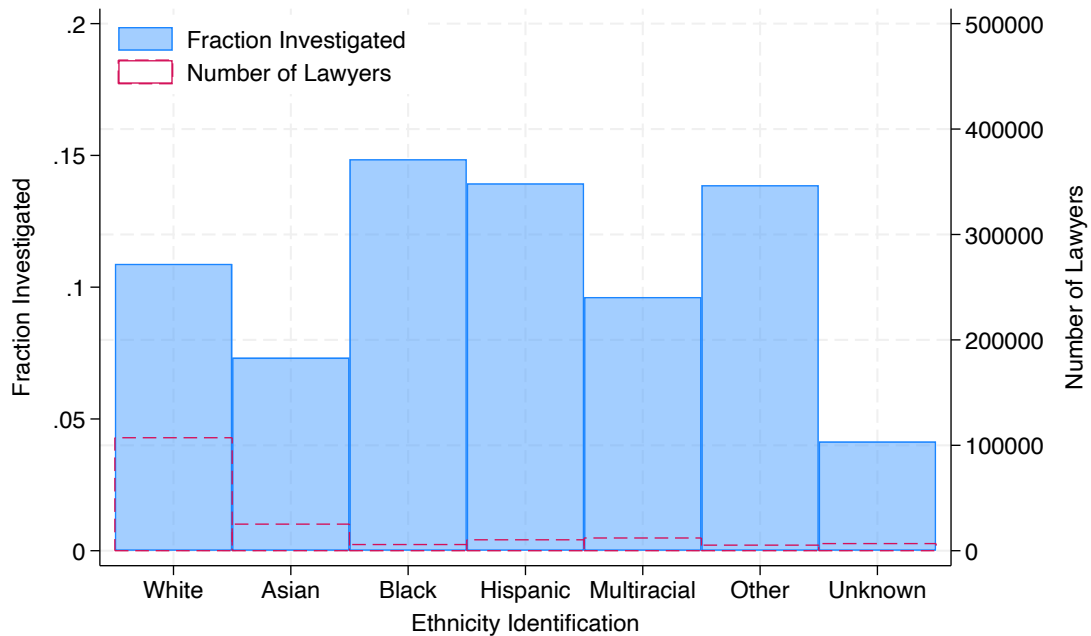
b. Discipline
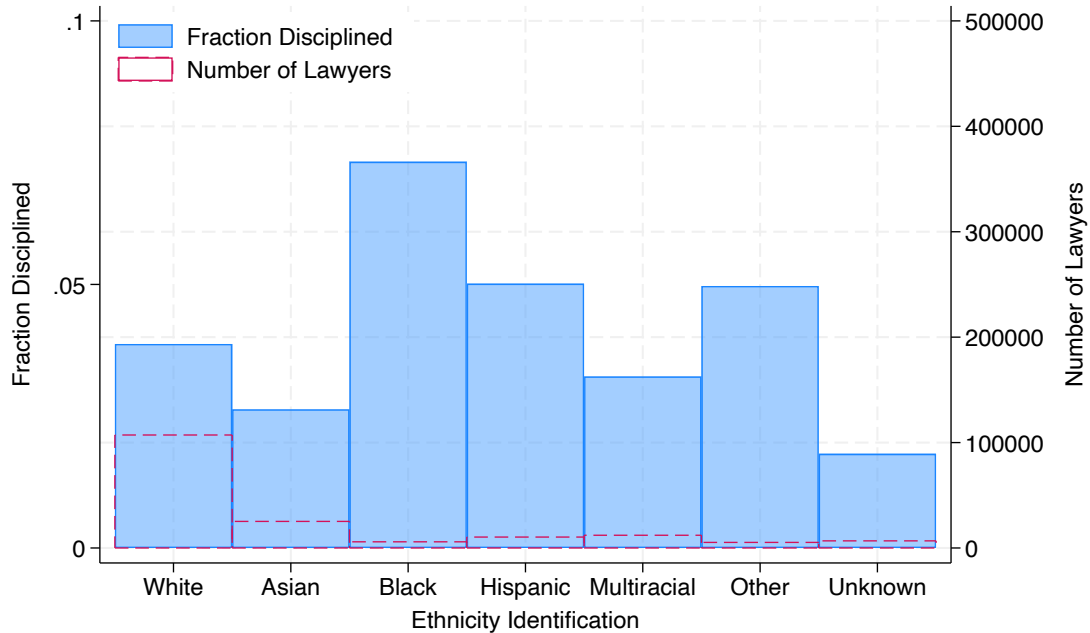
A Regression-Adjusted Evaluation of Lawyer Characteristics: Our visual exploration into licensing exam performance (State Bar of California and the MPRE), law school attended, and demography (gender; ethnicity) each suggest a strong correlation with attorney investigation and discipline. While informative, this bivariate approach is limited, since it cannot account for how these factors potentially interact with one another.

Regressions allow us to understand the interactive effect of these factors. The following tables examine these variables through a series of regressions with different specifications. In each specification we run a logit model with the coefficients reporting marginal effects (rather than log-odds). We do so for ease of interpretation, which reports the percentage change in the dependent variable based on a one-unit change in the explanatory variable. To account for potential time trends, each specification controls for the year the attorney was admitted to the bar. We look at investigation and discipline in sequence.

Investigation: Table 3 examines the aforementioned factors that influence whether a lawyer is investigated. Columns 1 through 7 columns examine each of the demographic factors on their own, while Columns 8 and 9 look at these factors collectively.

Column 1 looks at law school selectivity based on the categories listed in the Table 1 summary. The baseline omitted category is ABA-accredited schools. Graduates of non-ABA accredited law schools were roughly 11 percent more likely to be investigated, whether they attended a law school accredited by the State Bar of California (11 percent) or not (12 percent). These differences were statistically significant (p<0.001). Graduates of unaccredited out-of-state law schools were 7 percent more likely to be investigated. By contrast, graduates from foreign law schools were nominally less likely to be investigated. These latter differences were statistically non-significant.

When we evaluate law schools through their ordinal ranking (Column 2), we see that, on average, a drop in rank corresponds with a 2 percent greater probability of investigation. Given that international law schools also include highly selective admissions – on par with the most selective U.S. law schools – the point estimate for this category is likely biased slightly downward.

We examine the effect of bar exam performance in Columns 3 through 5. For the sake of completeness, we examine the effect of the Multistate Bar Exam (MBE) on its own, separate from their performance on the State Bar of California (of which the MBE is a component). We find a one-unit increase in the normalized MBE score corresponds with a 0.01% *higher* probability of investigation. This result ran counter to our intuition, as we expected the point estimate to be negative. We caution against any strong interpretation, given the small point estimate and relatively weak statistical significance ($p<0.01$). By contrast, a one-unit increase in the normalized MPRE exam corresponded with a 0.1 percent *lower* ($p<0.001$) probability of investigation. The point estimate for a one-unit increase in the State Bar of California Exam was larger at 0.2 percent.

Column 6, consistent with what we observed in Figure 5, show that women were significantly less likely – 5 percent ($p<0.001$) – to be investigated compared with men. With respect to ethnicity (Column 7), lawyers identifying as Black or Hispanic were each roughly 4 percent – 3.7 percent ($p<0;001$) for Black; 4.3 percent ($p<0;001$) for Hispanic – more likely to be investigated than White lawyers. The lower probability for Asians – 0.2 percent – was smaller but also statistically significant.

Including all factors into single model – Columns 8 and 9 –we find the point estimates, while slightly smaller, remain statistically significant. Graduates from non-ABA-accredited law schools are still roughly 8 percent more likely to be investigated, while a drop of 10 spots in the rankings corresponds to a 0.4 percent greater probability of being investigated. Given the differential rates of investigation for non-ABA accredited law schools – within and outside of California – the effect of ranking is likely nonlinear. A one-unit change in the California Bar Exam has more than double the effect on the probability of investigation than a one-unit change on the MPRE. Women remain 5 percent less likely to be investigated, while Black and Hispanics are 3 to 4 percent more likely to be investigated.

Table 3
Investigations by the State Bar of California
(1990-2023)

	1	2	3	4	5	6	7	8	9
Law School Attended									
Not ABA Acredited but CA Accredited	0.1097***							0.0812***	
	(0.004)							(0.003)	
Neither ABA nor CA Accredited	0.1155***							0.0806***	
	(0.006)							(0.005)	
Out of State - Neither ABA nor CA accr	0.0734*							0.0417	
	(0.029)							(0.024)	
Foreign Law School	-0.0026							-0.0027	
	(0.006)							(0.006)	
No Information	0.0541***							0.0408***	
	(0.006)							(0.006)	
Law School Rank (US News)		0.0005***							0.0004***
		(0.000)							(0.000)
Bar Exam Performance									
MPRE Score (ranked)			-0.0011***					-0.0005***	-0.0003***
			(0.000)					(0.000)	(0.000)
MBE Score (ranked)				0.0001**					
				(0.000)					
CA Bar Score (ranked)					-0.0017***			-0.0011***	-0.0007***
					(0.000)			(0.000)	(0.000)
Gender									
Female						-0.0498***		-0.0471***	-0.0473***
						(0.001)		(0.001)	(0.001)
Ethnicity									
Black							0.0367***	0.0293***	0.0372***
							(0.003)	(0.003)	(0.003)
Hispanic							0.0431***	0.0317***	0.0339***
							(0.002)	(0.002)	(0.002)
Asian							-0.0160***	-0.0126***	-0.0079***
							(0.002)	(0.002)	(0.002)
Multi-ethnic							0.0145***	0.0139***	0.0167***
							(0.003)	(0.002)	(0.002)
Other							0.0459***	0.0369***	0.0344***
							(0.003)	(0.003)	(0.003)
Unknown							0.0176***	0.0056	0.0086
							(0.005)	(0.005)	(0.006)
Observations	172754	172754	172754	172754	172754	172754	172754	172754	172754
Control for Ca Bar Admit Year	Y	Y	Y	Y	Y	Y	Y	Y	Y

Statistical significance: * p<0.05; ** p<0.01; *** p<0.001

Discipline: Consistent with our bivariate analyses, we observe smaller effects of the observed factors, across the board (Table 4), on discipline. Higher scores on the MPRE and state bar still reduce the likelihood of discipline. Females are still disciplined at lower rates (2 percent (Column 6)), while blacks and Hispanics are disciplined at higher rates (2 percent and 1 percent, respectively (Column 7)). The effect of schooling – attending a non-ABA accredited schools (Column 1) and rank of school (Column 2) – are smaller but still statistically significant (p<0.001).

These regressions provide strong evidence that test scores, education, and demographics – even after looking at their joint effect – remain important in understating rates of investigation and discipline. Lawyers more likely to be investigated and disciplined for professional misconduct are drawn disproportionately from non-ABA accredited law schools; the lowest scores on the state bar exam; and male and visible minorities.

Discipline amongst Investigated Attorneys: Whereas Table 4 measures discipline across the entire membership of lawyers, we also examine only at lawyers who were investigated. Looking just at this subgroup allows us to observe the marginal effect of these factors just amongst those who, by definition, are subject to discipline.

As Table 5 illustrates, the point estimates remain roughly the same in many factors – but not all. For example, the point estimate of the MPRE actually became more negative (0.0004 percentage points for all lawyers to 0.0009 percentage points for just those investigated), as well as for the state bar exam (0.0006 for all lawyers to 0.0015 percentage points for just those investigated). The magnitude of these differences, however, were small.

The notable change occurred for discipline based among women and visible minorities, with divergent trends. Females are still less likely to be disciplined, conditioned on being investigated, although the difference increases by roughly a factor of four (-0.0183 for the general population to -0.0792 for investigated lawyers). By contrast, non-white lawyers are more likely than white lawyers to be disciplined, conditioned on investigation. The discipline rate was eight times higher for Black (0.0182 for the general population to 0.1474) lawyers and three times higher for Hispanic (0.0139 for the general population to 0.0406 for investigated lawyers) for investigated lawyers). Asian lawyers also experienced a dramatic increase (-0.0016 for the general population to 0.0343 for investigated lawyers).

The notably higher point estimates for gender and ethnicity compared to schooling or test scores in Table 5 compared to Table 4 surprised us. We expected a upward shift in the point estimates for these variables, and that it would be fairly uniform. Two possible explanations. The first is that of unobservable characteristics of merits of the allegations that correlate with gender and ethnicity more than bar performance of schooling. Another explanation is regulator bias: the regulators can readily observe the gender and ethnicity – but not the exam scores or school – and these features may have shaped their disciplinary decision.

Table 4
Discipline by the State Bar of California
(1990-2023)

	1	2	3	4	5	6	7	8	9
Law School Attended									
Not ABA Acredited but CA Accredited	0.0383***							0.0250***	
	(0.002)							(0.002)	
Neither ABA nor CA Accredited	0.0372***							0.0216***	
	(0.003)							(0.002)	
Out of State - Neither ABA nor CA accr	0.0331*							0.0151	
	(0.016)							(0.010)	
Foreign Law School	0.0037							0.0021	
	(0.003)							(0.003)	
No Information	0.0276***							0.0171***	
	(0.004)							(0.003)	
Law School Rank (US News)		0.0002***							0.0001***
		(0.000)							(0.000)
Bar Exam Performance									
MPRE Score (ranked)			-0.0004***					-0.0002***	-0.0001***
			(0.000)					(0.000)	(0.000)
MBE Score (ranked)				0.0000					
				(0.000)					
CA Bar Score (ranked)					-0.0006***			-0.0004***	-0.0003***
					(0.000)			(0.000)	(0.000)
Gender									
Female						-0.0183***		-0.0160***	-0.0153***
						(0.001)		(0.001)	(0.001)
Ethnicity									
Black							0.0182***	0.0136***	0.0154***
							(0.001)	(0.001)	(0.001)
Hispanic							0.0139***	0.0089***	0.0096***
							(0.001)	(0.001)	(0.001)
Asian							-0.0016	-0.0008	0.0003
							(0.001)	(0.001)	(0.001)
Multi-ethnic							0.0058***	0.0050***	0.0055***
							(0.001)	(0.001)	(0.001)
Other							0.0157***	0.0110***	0.0099***
							(0.002)	(0.001)	(0.001)
Unknown							0.0116***	0.0058**	0.0058***
							(0.002)	(0.002)	(0.002)
Observations	172754	172754	172754	172754	172754	172754	172754	172754	172754
Control for Ca Bar Admit Year	Y	Y	Y	Y	Y	Y	Y	Y	Y

Statistical significance: * $p<0.05$; ** $p<0.01$; *** $p<0.001$

Table 5
Discipline Conditioned on Being Investigated
State Bar of California
(1990-2023)

	1	2	3	4	5	6	7	8	9
Law School Attended									
Not ABA Acredited but CA Accredited	0.0801***							0.0695***	
	(0.011)							(0.011)	
Neither ABA nor CA Accredited	0.0746***							0.0540**	
	(0.018)							(0.018)	
Out of State - Neither ABA nor CA accr	0.1206							0.0851	
	(0.105)							(0.106)	
Foreign Law School	0.0464							0.0223	
	(0.046)							(0.045)	
No Information	0.1083***							0.0822**	
	(0.027)							(0.027)	
Law School Rank (US News)		0.0005***							0.0004***
		(0.000)							(0.000)
Bar Exam Performance									
MPRE Score (ranked)			-0.0017***					-0.0009***	-0.0007**
			(0.000)					(0.000)	(0.000)
MBE Score (ranked)				-0.0003					
				(0.000)					
CA Bar Score (ranked)					-0.0034***			-0.0025***	-0.0024***
					(0.000)			(0.000)	(0.000)
Gender									
Female						-0.0792***		-0.0823***	-0.0834***
						(0.008)		(0.008)	(0.008)
Ethnicity									
Black							0.1474***	0.1324***	0.1417***
							(0.017)	(0.017)	(0.017)
Hispanic							0.0406**	0.0280*	0.0320*
							(0.014)	(0.014)	(0.014)
Asian							0.0343**	0.0257*	0.0301*
							(0.012)	(0.013)	(0.012)
Multi-ethnic							0.0312*	0.0309*	0.0341*
							(0.015)	(0.015)	(0.015)
Other							0.0503**	0.0432*	0.0427*
							(0.019)	(0.019)	(0.019)
Unknown							0.0942**	0.0827**	0.0858**
							(0.029)	(0.029)	(0.029)
Observations	18006	18006	18006	18006	18006	18006	18006	18006	18006
Control for Ca Bar Admit Year	Y	Y	Y	Y	Y	Y	Y	Y	Y

Statistical significance: * $p<0.05$; ** $p<0.01$; *** $p<0.001$

V. Discussion

Our findings – bivariate and regression-adjusted – provide evidence that lawyers' performance on the state bar exam, law school education, gender, and ethnicity are strong predictors for whether they will face investigation or discipline within their legal careers. Perhaps surprisingly, lawyers' performance on the MPRE – designed to directly evaluate their understanding of the rules of professional conduct – was a weak predictor of attorney misconduct.

While revealing, our findings are only the starting point to improving the professionalism of the legal profession, and the necessary steps to achieve this goal. The data unpinning our findings, while rich and highly granular, is incomplete, as it almost certainly omits factors that likely influence whether one draws the attention of the state bar regulators. Two clear omissions are lawyers' areas of practice (e.g., criminal law; corporate) and practice environment (e.g., law firm; government).

Before turning to any discussion of improving attorney prefessionalism, we note that our findings in some respects, *understate* the true effect of the aforementioned factors. As noted earlier, the unit of observation throughout our analyses is unique lawyer, in which we look at whether each lawyer has even faced investigation or discipline since being admitted to the bar. Nearly 90 percent of lawyers are never investigated (and therefore, never disciplined) during their legal careers. Among the 10 percent (18,006 lawyers) who have been investigated, over half (52 percent) have this happen only once in our data. The remaining 48 percent however, have been investigated at least twice. Moreover, there is a long tail on this distribution, with 1900 unique lawyers having 10 or more investigations, and 42 lawyers with 100 or more investigations.

Looking at the data from where the unit of observation is investigation tells a different story. Of the 240,536 observations, 36 percent involve investigations, and 10 percent result in discipline. These numbers are dramatically higher than those in Table 2, where only 10 percent of lawyers are investigated and 2 percent disciplined. As it turns out, not all investigated lawyers are equal. Half (52 percent) of investigated lawyers had only a single occurrence. The other cohort of investigated lawyers faced on nearly 9 investigations on average, with a handful over 100 intestigations since being admitted.

The significance of these oft-investigated lawyers is that it affects the absolute and relative impact of bar exams, schooling, gender, and ethnicity. We ran the same regressions as in Table 3 and 4 (not reported here), in which the unit of observation was lawyer-investigation (rather than unique lawyer). This characterization of the data expressly allows track the lawyers based on the frequency of their investigations.[39] We find that the point estimate of state bar exam score (-0.0075, p<-0.001) in this model is four times greater than for the unique lawyer model; and the estimate of non-ABA accredited law school graduates (0.3198 for California-accredited; 0.3017 for non-California accredited) is three times greater for the unique lawyer model. The differential effect for both women (-0.2295); Hispanics (0.1879) and Blacks (0.2092) are roughly four times greater than in the full model. These point estimates were all statistically significant at the p<0.001 level.

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[39] In this specification, we accounted for multiple observations of individual attorneys by clustering for unique attorney identifier.

While the base rates for discipline were lower for the lawyer-investigation model than for investigation, we found similar differences in magnitude between the two models.

The point here is not to argue in favor of one model specification over another, but rather to highlight the non-representative nature of attorney investigation and misconduct. Our primary analysis revealed that a relatively small number of lawyers account for the plurality of investigations and discipline, and they disproportionately drawn from the lowest passing state bar scores and least selective law schools. Our secondary analysis suggests these lawyers impose a multiplier effect on allegations of attorney misconduct, given their frequency of their investigation and discipline.

The number of lawyers with multiple investigations and discipline suggests a glass half-empty, half-full narrative. The half-empty story is the concern that such a small number of lawyers draw the attention – often repeated – of state regulators. The half-full story is that policy recommendations that speaks to this subset of lawyers has the potential to dramatically improve attorney professionalism.

Regulating Ethics v. Competence: Before embarking on the implications of our findings, we take a moment to examine the substantive complaints unpinning investigations and discipline, and how they might inform our thinking of regulatory improvements.

The MPRE and state bar exam comprehensively test lawyers' understanding of the law, at least from a formal, educational perspective. These two exams by design measure different dimensions of legal understanding. The state bar measures lawyers' understanding of substantive law – civil procedure, contracts, constitutional law, criminal law, evidence, torts, property – while the MPRE measures one's understanding of the rules of professional conduct (often referred to as legal ethics). Accordingly, we hypothesize that the predictive power of performance on these exams vary based on the grounds for investigation. In our analyses thus far – bivariate and regression-adjusted – we examined all twenty-five allegations for investigation (shown in Table 2) collectively.

It may be, in the true state of the world, that the impact of bar performance and education may vary depending on the particular grounds for investigation. We test for this possibility by looking at individual allegations. Specifically, we choose grounds that focuses on either 1) lawyers' competence on substantive law or 2) lawyers' ethical conduct towards clients. Most of the grounds for investigation arguably involve both competence and ethics (e.g., conflicts of interest). In such instances, teasing out these different dimensions may be difficult.

To isolate these factors, we looked for allegations that we could credibly claim as falling more squarely within either competence or ethics. We chose Client Neglect/Abandonment as focusing primarily on competence on substantive law (i.e., civil procedure and the obligations lawyers have to competently represent clients during their representation). We chose Honesty/Integrity as focusing primarily on ethical or moral obligations to clients, a responsibility that applies holistically and not just in particular areas of practice. We also chose these categories because of their frequency in which they arise: Client Neglect/Abandonment comprised 63 percent, and Honesty/Integrity comprised 53 percent of all investigations.

Table 6
Individual Investigation Offense Types
State Bar of California Investigations and Discipline
(1990-2023)

	Client Neglect and Abandonment				Professional Integrity and Honesty			
	Investigation		Discipline		Investigation		Discipline	
	1	2	3	4	5	6	7	8
Law School Attended								
Not ABA Acredited but CA Accredited	0.0576***		0.0139		0.0383***		0.0128	
	(0.003)		(0.010)		(0.002)		(0.012)	
Neither ABA nor CA Accredited	0.0531***		0.0459**		0.0357***		0.0475*	
	(0.004)		(0.017)		(0.003)		(0.019)	
Out of State - Neither ABA nor CA accr	0.0289		0.1368		0.0122		0.1356	
	(0.017)		(0.111)		(0.013)		(0.128)	
Foreign Law School	0.0060		-0.0079		0.0013		-0.0647	
	(0.005)		(0.039)		(0.004)		(0.038)	
No Information	0.0318***		0.0387		0.0237***		0.0556	
	(0.004)		(0.025)		(0.004)		(0.030)	
Law School Rank (US News)		0.0003***		0.0001*		0.0002***		0.0001
		(0.000)		(0.000)		(0.000)		(0.000)
Bar Exam Performance								
MPRE Score (ranked)	-0.0004***	-0.0002***	-0.0002	-0.0002	-0.0003***	-0.0001***	-0.0002	-0.0002
	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)
CA Bar Score (ranked)	-0.0008***	-0.0006***	-0.0007*	-0.0007*	-0.0006***	-0.0004***	-0.0015***	-0.0015***
	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)
Gender								
Female	-0.0310***	-0.0298***	-0.0174*	-0.0181*	-0.0259***	-0.0251***	-0.0224*	-0.0232**
	(0.001)	(0.001)	(0.008)	(0.008)	(0.001)	(0.001)	(0.009)	(0.009)
Ethnicity								
Black	0.0219***	0.0261***	0.0482**	0.0516***	0.0171***	0.0206***	0.0522**	0.0551***
	(0.002)	(0.002)	(0.015)	(0.015)	(0.002)	(0.002)	(0.016)	(0.016)
Hispanic	0.0243***	0.0248***	-0.0129	-0.0123	0.0140***	0.0151***	-0.0048	-0.0043
	(0.002)	(0.001)	(0.013)	(0.013)	(0.001)	(0.001)	(0.015)	(0.015)
Asian	-0.0058***	-0.0027*	0.0013	0.0036	-0.0050***	-0.0025*	-0.0059	-0.0039
	(0.001)	(0.001)	(0.012)	(0.012)	(0.001)	(0.001)	(0.014)	(0.014)
Multi-ethnic	0.0100***	0.0111***	-0.0039	-0.0026	0.0069***	0.0080***	-0.0070	-0.0059
	(0.002)	(0.002)	(0.015)	(0.015)	(0.002)	(0.001)	(0.017)	(0.017)
Other	0.0234***	0.0208***	0.0111	0.0106	0.0211***	0.0192***	0.0062	0.0061
	(0.002)	(0.002)	(0.018)	(0.018)	(0.002)	(0.002)	(0.020)	(0.020)
Unknown	0.0007	0.0020	0.0050	0.0044	0.0051	0.0058*	-0.0101	-0.0117
	(0.003)	(0.003)	(0.030)	(0.030)	(0.003)	(0.003)	(0.032)	(0.032)
Observations	172754	172754	11257	11257	172754	172754	9516	9516
Control for Ca Bar Admit Year	Y	Y	Y	Y	Y	Y	Y	Y

Statistical significance: * p<0.05; ** p<0.01; *** p<0.001

Our priors are the state bar exam and MPRE differ in their ability to predict these two types of investigation. We hypothesized that the state bar exam– testing understanding of substantive law – would better predict investigation and discipline involving Client Neglect/Abandonment, while the MPRE – testing understanding of professional rules – would better predict investigation and discipline for Honesty/Integrity. We report our findings in Table 5. As with our earlier regression analysis, we are interested in whether a

lawyer was investigated or disciplined based on these two allegations. In these specifications, we return to our unit of analysis of unique attorney (rather than attorney-investigation).

Client Neglect and Abandonment: As indicated in Columns 1 through 4 in Table 6, both the state bar and MPRE have a small but statistically significant (p<0.001) effect on whether a lawyer is investigated for client neglect/abandonment. For both exams, members who score higher are less likely to be investigated. While the point estimates for both examinations are small, the effect of the state bar exam is twice as large: an increase of 10 points on the normalized state bar score corresponds to roughly a one percent lower probability of being investigated for client neglect/abandonment, compared roughly a half-percent lower probability of investigation for a 10 point increase in the MPRE. For discipline, the point estimates are smaller across both the state bar exam and the MPRE, with only the state bar exam retaining any statistical significance (p<0.05). Other factors matter more, such as law school attended, where graduates from non-ABA accredited law schools are 5 percent more likely to be investigated. Our finding is consistent with our priors that performance on the state bar exam predicts better than the MPRE investigations involving client neglect and abandonment, but the point estimates suggest that neither test is a strong predictor.

Honesty/Integrity: In Columns 5 through 8, we similarly find that the state bar exam better predicts investigations involving professional integrity and honesty than the MPRE. The point estimates are again small for both examinations, but much larger for the state bar exam. A 10 point increase in the state bar exam score corresponds with roughly a 0.4 percent decrease in this type of investigation but only a 0.1 percent increase in the MPRE. For discipline, the point estimates increase slight for the state bar exam – a 10-point increase correspond to a 2 percent decrease in discipline, but remain largely unchanged (and no longer statistically significant) for the MPRE. The relative weakness of MPRE as a predictor results run counter to our priors. Notwithstanding our perceived closer nexus of this type of violation to the rules of professional responsibility, the state bar exam better predicts investigations and discipline relating to honesty/integrity.

Our examination of specific allegations of attorney misconduct are consistent with our earlier model that shows the state bar exam to be a stronger predictor of investigations and discipline than the MPRE. This finding is perhaps unsurprising, given that MPRE scores follows a normal distribution while the state bar follows a Poisson distribution (Figures 2 and 3).

Statistical Discrimination as a Gatekeeper: One approach to reducing attorney misconduct – at least under the State Bar of California's current regulatory approach – is to focus on lawyers most likely to be investigated of disciplined. Our analysis thus far suggests that the bar examinations (MPRE; state bar exam) and law school education are credible places to begin. We look at each in turn, in which we graph cumulative distribution functions (CDF) to observe the effectiveness of using this measure to screen out prospective members of the bar.

MPRE: The gradual slope of the investigation (Figure 7a) and discipline (Figure 7b) CDFs in Figure 7a and 7b provide in one sense, another visualization of the investigation

and discipline rates (Figure 2a and 2b) discussed earlier. They also highlight, however, the limited effectiveness of using MPRE score to regulate admittance to the state bar. Lawyers with the lowest MPRE scores (below 20) comprise just 7 percent of the state bar membership. Among this group, less than 6 percent were ever investigated. By contrast, 17 percent of California lawyers had a normalized score between 40 and 50 on the MPRE, but comprised 13 percent of (unique) lawyers investigated. Based on our data, raising the minimum passing score of the MPRE to, say, a normalized score of 20 would reduce a relatively small number of investigations and discipline actions at the same time denying admittance to many more lawyers who never face investigation nor discipline.

Figure 7
Cumulative Distribution Function – MPRE Score
**(1990-2023)**
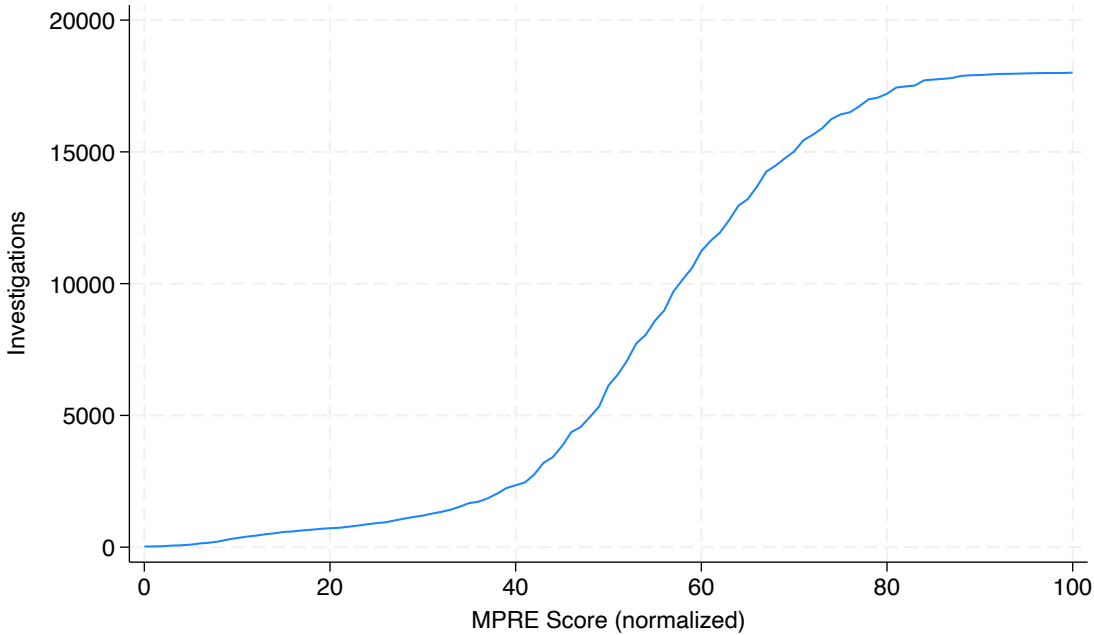
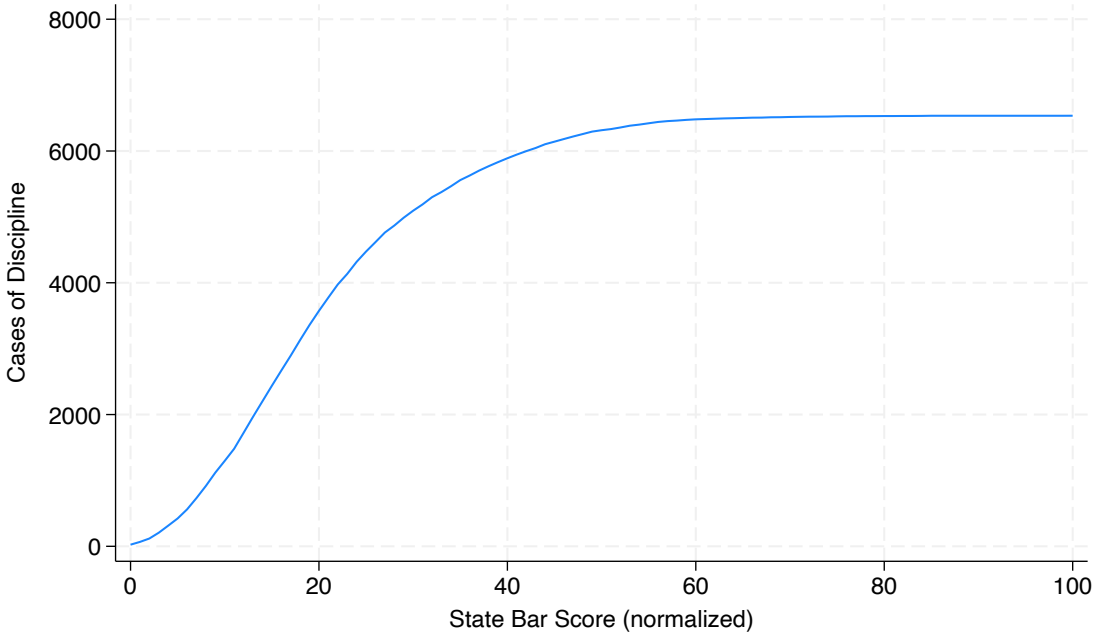**a. Investigation**
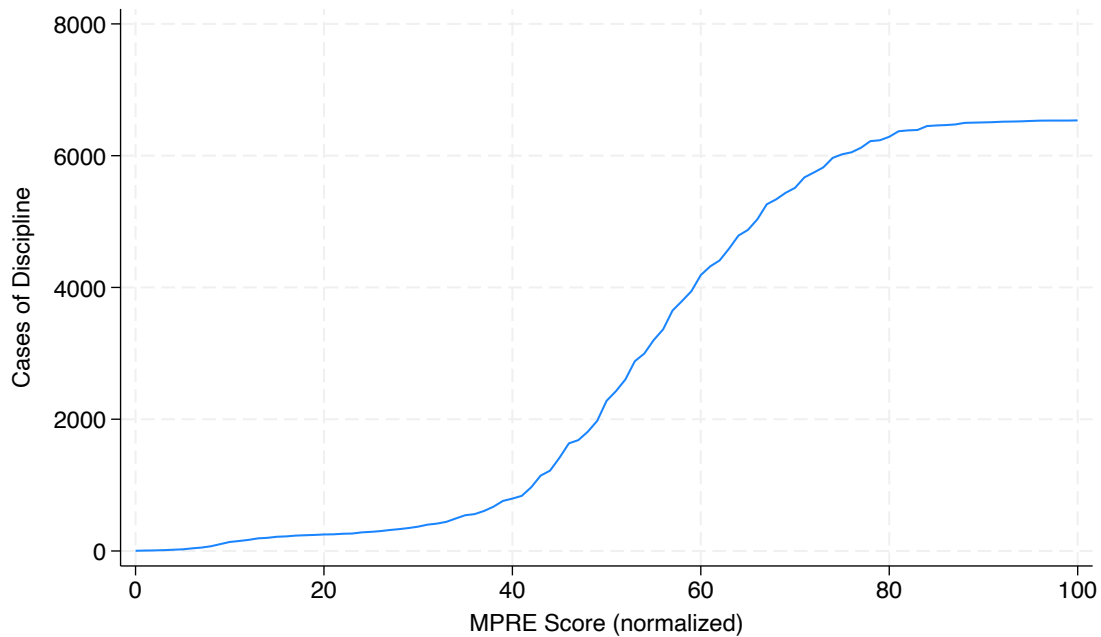
b. Discipline

State Bar of California: By contrast, Figure 8 reveal that the CDFs take on a steeper slope for both investigations (Figure 8a) and discipline (Figure 8b). Nearly half (45 percent) of lawyers in our data receiving a normalized state bar score of 20 or below. This group accounted for 52 percent of investigated lawyers, and 55 percent of disciplined lawyers. Given their numbers, it would be unworkable to deny admission to this group of lawyers. A smaller cutoff could yield a more workable solution. For example, a normalized state bar score of 10 represent 20 percent of lawyers in our data, and (coincidentally) 20 percent of lawyers investigated and 20 percent of lawyers disciplined; a normalized state bar score of 5 represent 9 percent of investigated lawyers and 8 percent of disciplined lawyers. Setting the optimal cutoff score involves a policy-intensive line-drawing exercise, but the data indicate that the state bar exam is a more effective mechanism than the MPRE to regulate membership.

Figure 8
Cumulative Distribution Function – State Bar Exam Score
(1990-2023)
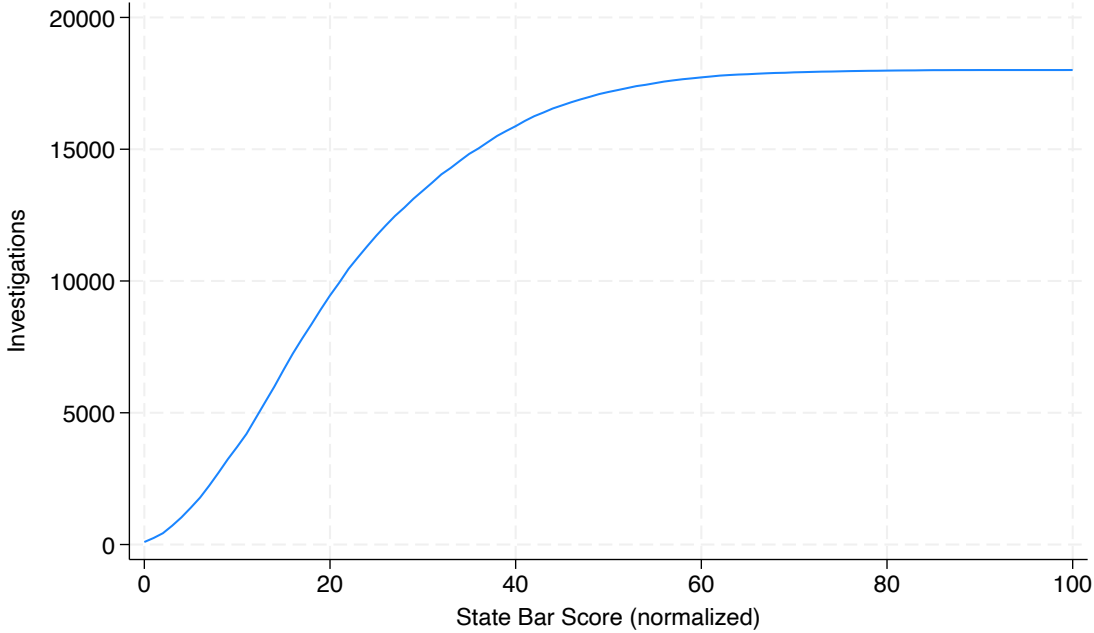
a. Investigation

b. Discipline

Recent changes in the administration of California's state bar exam provide a unique opportunity to observe how changes in the minimum passing score affects investigations and discipline. A brief background: California has a well-established reputation for its demanding bar exam. California historically had a relatively low bar passage rate, which in recent years routinely fell below 60 percent.[40] Moreover, until 2017, the exam took place over three days, compared to the two-day exams in most other jurisdictions. In the Summer of 2020, following several years where the most test-takers failed the bar, California lowered the minimum passing score from 1440 to 1390, effective October 2020.[41] In the aftermath of this change, bar passage rates improved returned closer to its historical norms.[42]

This 2020 change in the required minimum passing score creates an opportunity for us to observe the rates at investigation and discipline of applicants with passing scores below the historical minimum of 1440. To examine this question, we look at two cohorts of test-takers: 1) those who took the test in 2019 and those who took the test in 2021. We exclude test takers in 2020, because graduates who took the test in February 2020 were subject to the 1440 cut-off, while the October 2020 test takers benefitted from the 1390 cutoff – and the data provides only the month but not the year the lawyer passed the test. For each cohort, we examine rates of investigation and discipline for the three years following their admission to the bar. We note the limitation of such a short time period, since most lawyers in our data who are investigated fall outside this three-year window.

Figure 9 graphically shows the investigation and discipline rates for 2019 and 2021 respectively. The main structural difference is minimum passing score was 1440 in 2019 and 1390 in 2021. The dashed vertical line indicates the 1440 cut-off. Given the primacy of the specific cutoff score, we represent the scores as given rather than normalizing them.

Given the relatively small number of lawyers in 2019 (4295) and 2021 (9092) and short window, the rates of investigation and discipline are highly variable. That said, a pattern emerges where lawyers with low state bar scores a) comprise the plurality of admitted lawyers; and b) experience a higher rate of investigation and discipline. We see this pattern in 2019 with the 1440 cutoff, and again in 2021, with the lowered 1390 cutoff.

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[40] These numbers are drawn from State Bar of California's published statistics on its bar passage for the period 2007 to 2024, available at https://www.calbar.ca.gov/Admissions/Examinations/Exam-Statistics.
[41] *See* Merrill Balassone, "California Supreme Court Lowers Bar Exam Passing Score," News Release from the California State Courts, July 16, 2020 (announcing the permanent change in minimum passing score of the state bar exam) (available at https://newsroom.courts.ca.gov/news/california-supreme-court-lowers-bar-exam-passing-score).
[42] *See* FN 40, *infra.*

Figure 9
Investigation and Discipline After Lowering Cutoff Score
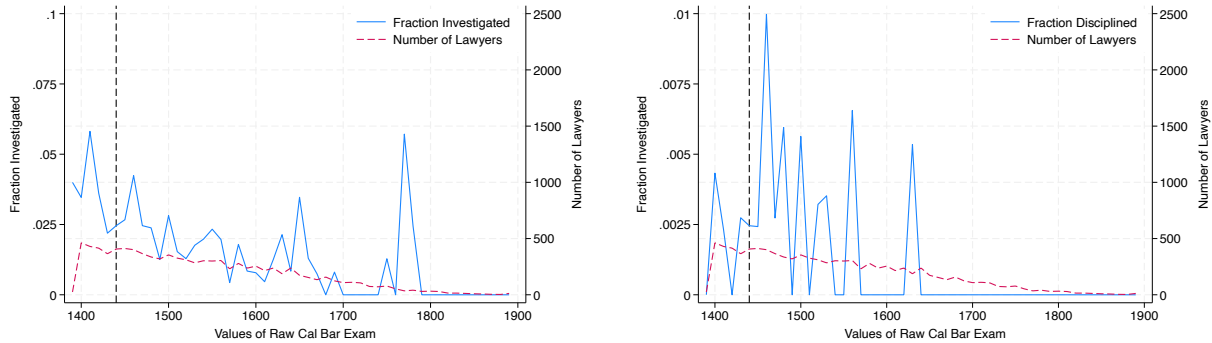**State Bar of California**
2019
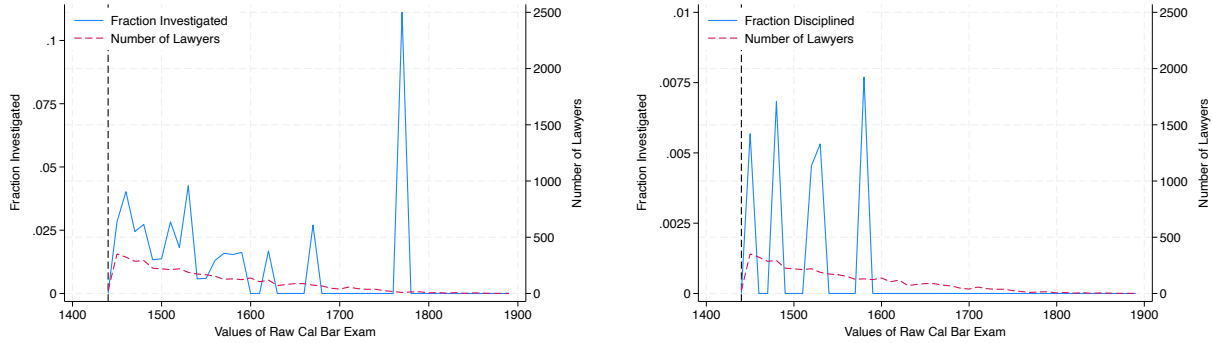
2021

Table 6 reports the regression of these years, controlling for observable factors. It shows lower state bar scores correspond to higher rates of investigation particularly for those who score between 1390 and 1440 (those admitted in 2021). The point estimates for state bar score approach zero, however, when looking at discipline. This latter finding is perhaps unsurprising, given that Figure 9 shows greater variation in discipline rates among higher state bar exam scores than for investigation.

Table 7
**Attorney Misconduct Pre-Post Lowering of Minimum Passing Score**
State Bar of California
2019 and 2021

	Investigated		Disciplined		Disc if Inv	
	1	2	3	4	5	6
Law School Attended						
Not ABA Acredited but CA Accredited	0.0155**	0.0218***	0.0026	0.0047	0.0598	0.0815
	(0.005)	(0.007)	(0.002)	(0.003)	(0.060)	(0.063)
Neither ABA nor CA Accredited	0.0441**	0.0574**	0.0039	0.0077	0.0076	0.0388
	(0.014)	(0.018)	(0.004)	(0.007)	(0.056)	(0.072)
Out of State - Neither ABA nor CA accr	0.0000	0.0000	0.0000	0.0000		
	(.)	(.)	(.)	(.)		
Foreign Law School	-0.0125***	-0.0127**	0.0000	0.0000	0.0000	0.0000
	(0.003)	(0.004)	(.)	(.)	(.)	(.)
No Information	-0.0002	0.0007	0.0002	0.0004	0.0300	0.0603
	(0.003)	(0.003)	(0.001)	(0.001)	(0.056)	(0.065)
Bar Exam Performance						
MPRE Score (ranked)	-0.0001	-0.0001*	-0.0000	-0.0000	-0.0002	-0.0005
	(0.000)	(0.000)	(0.000)	(0.000)	(0.001)	(0.001)
CA Bar Score (ranked)	-0.0005***		-0.0000**		-0.0015	
	(0.000)		(0.000)		(0.001)	
CA Bar Score below 1440		0.0091**		-0.0002		-0.0526
		(0.003)		(0.001)		(0.043)
Gender						
Female	-0.0046*	-0.0049*	-0.0002	-0.0002	-0.0062	-0.0014
	(0.002)	(0.002)	(0.000)	(0.000)	(0.031)	(0.030)
Ethnicity						
Black	0.0061	0.0092*	0.0000	0.0000	0.0000	0.0000
	(0.004)	(0.004)	(.)	(.)	(.)	(.)
Hispanic	0.0023	0.0046	-0.0014	-0.0016	-0.1199	-0.1034
	(0.003)	(0.003)	(0.001)	(0.001)	(0.062)	(0.063)
Asian	-0.0052	-0.0043	-0.0016	-0.0017	-0.1017	-0.0881
	(0.003)	(0.003)	(0.001)	(0.001)	(0.069)	(0.067)
Multi-ethnic	0.0017	0.0027	0.0005	0.0007	0.0315	0.0342
	(0.003)	(0.003)	(0.001)	(0.001)	(0.037)	(0.036)
Other	-0.0000	0.0015	0.0006	0.0009	0.0539	0.0644
	(0.004)	(0.005)	(0.001)	(0.001)	(0.051)	(0.051)
Unknown	-0.0104	-0.0116	0.0013	0.0016	0.1920	0.1989
	(0.009)	(0.010)	(0.001)	(0.001)	(0.108)	(0.120)
Observations	13301	13301	12464	12464	247	247
Control for Ca Bar Admit Year	Y	Y	Y	Y	Y	Y

Statistical significance: * p<0.05; ** p<0.01; *** p<0.001

Law School Attended: The high rate of investigation and discipline among graduates from less selective law schools invite closer examination. One potential advantage of using law schools rather than bar examination score as a gatekeeper is that it allows for more targeted exclusions. An individual law school with a disproportionate number of investigated or disciplined lawyers may offer greater justification for exclusion than lawyers with particular bar exam scores.

Figure 10
Cumulative Distribution Function – State Bar Exam Score
(1990-2023)

a. Investigation
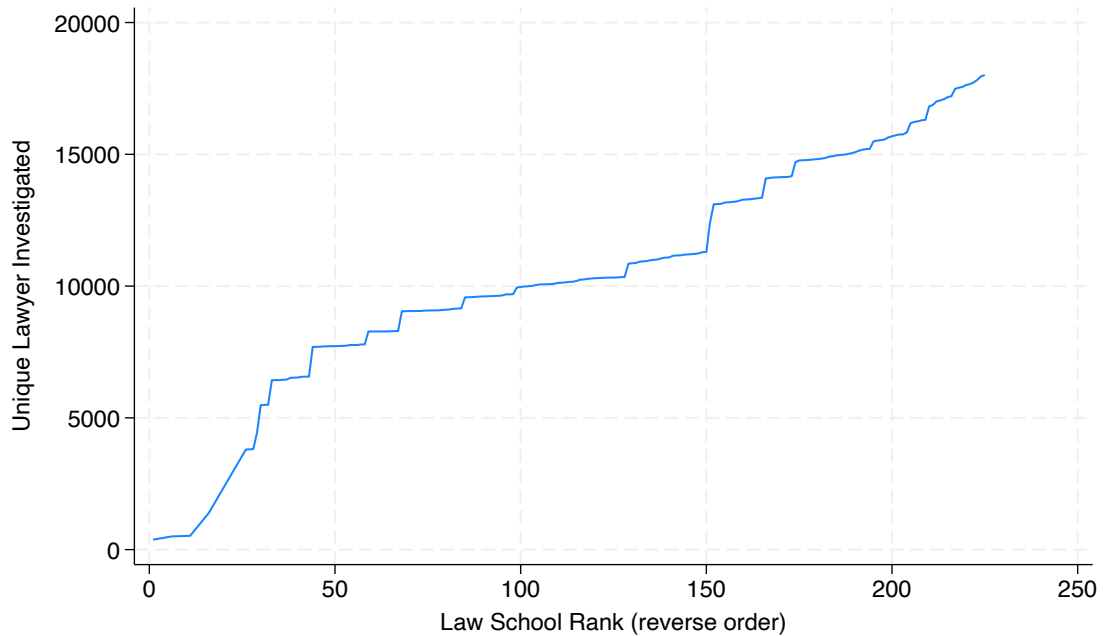
b. Discipline
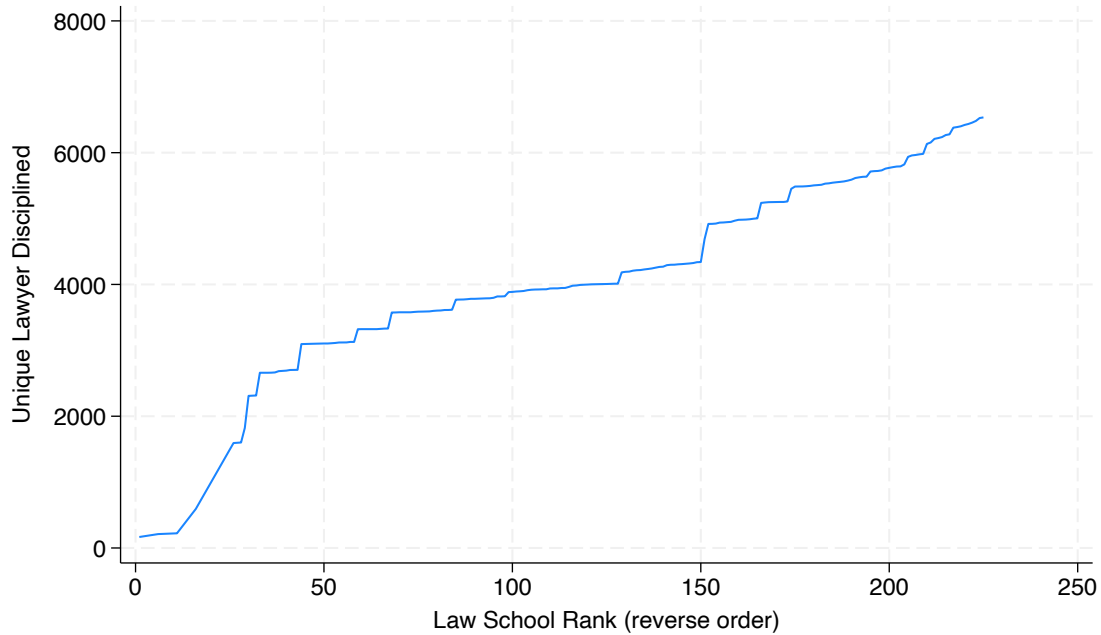
In generating the cumulative distribution function, shown in Figure 10, we reverse the order of school rank from least to most selective. Accordingly, less selective law schools are ranked closer to 0, and more selective schools are ranked closer to 225.[43] The ABA-accredited law schools, ranked from low to high, begin at 26 and ends at 225.

The bottom quartile of law schools based on school selectivity account for 43 percent of lawyers investigated and 47 percent of all lawyers disciplined during this time period. Graduates of non-ABA accredited law schools alone represent 8 percent of admitted lawyers but account for 18 percent of lawyers investigated and 21 percent of lawyers disciplined. Admitting only graduates from ABA-accredited law schools would, in a simple counterfactual, significantly reduce the number of investigations and discipline. It would also allow the State Bar of California to deploy its efforts to investigate other allegations.

Limits of Statistical Discrimination as Gatekeeper: Taken together, the cumulative distribution functions (Figures 7, 8, and 10) identify which lawyers, based on bar performance and law school attended, are at higher risk of investigation and discipline. Scholars have explored disparities based on bar performance within law school.[44] The stark differences in investigation and discipline rates based on bar performance and school

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[43] Lawyers with no information on law schools or designated under "registration cards" are given a rank of 1; foreign law graduates have a ranking of 2; out-of-state, non-ABA and non-California accredited law schools are assigned a ranking of 3; non-ABA but California accredited law schools have a ranking of 4. The remaining individual schools are listed individually in reverse order of their *U.S. News* law ranking (i.e., Yale Law School is ranked 201).

[44] *See,* Richard Sander and Robert Steinbach, *Mismatch and Bar Passage: A School-Specific Analysis*, 71 J. Legal Educ. 716 (2022) (describing how academic mismatch amongst students lead to lower bar passage rates within the same school).

attended highlight the potential returns of a gatekeeping approach that provides a more robust screen for lawyers more likely to be investigated or disiciplined.

Such an approach, however, poses its own methodological and practical concerns. We address each in turn.

Methodological Concerns: Our focus on lawyers who face investigation and discipline ignores the much larger number of lawyers who never draw regulatory scrutiny. As noted in Part III, 90 percent of all lawyers are never investigated during the legal careers. There are risks to denying a legal license based on observable characteristics. For example, 23 percent of lawyers from non-ABA accredited law schools have been investigated at least once, but it is correspondingly true that 77 percent of lawyers from these schools have never been investigated. Similarly, among the nearly 2000 lawyers in 2021 who scored below 1440 on the state bar exam (Figure 9), less than 4 percent were investigated during the three-year window.

A gatekeeping approach to regulation also runs the risk of prioritizing relative risk over absolute risk. Returning to cohort of lawyers admitted to practice in 2021, the 1095 lawyers who scored in the top quintile on the state bar exam (a score of 1600 or higher) had an investigation of 1 percent. This rate compares favorably to the investigation rate for the 2021 cohort scoring below 1440 (4 percent). Admittedly, the difference in relative risk between the two groups is a factor of four. The absolute risk for each cohort, however, is small. Over 96 percent of lawyers from each group were never investigated during the three-year window. A screening policy based on bar exam in a blunt instrument, denying admission to a small number of to-be-investigated lawyers but also to a much larger number who will never be investigated.

Practical Concerns: A gatekeeping approach focused on law schools is a perilous endeavor. Law schools, like most professional graduate schools, involve a large upfront and ongoing financial commitment, in most cases from the university of which it part, as well as from donors. Schools that receive accreditation from either the ABA or California have already met certain regulatory requirements. Were they to close, law schools would be unfilling their commitment to their enrolled students.[45]

Setting a higher screen on the state bar exam introduces trade-offs. While a large plurality of lawyers with low state bar exam scores are investigated and disciplined, most lawyers with low state bar exam scores in our data have an unblemished record, neither disciplined nor investigated. Despite their over-representation for investigations and discipline, only 12 percent of lawyers with normalized bar scores at or below 20 are ever investigated and only 4 percent are disciplined. Lowering the cut-off does not change the rates: amongst lawyers with normalize bar scores at or below 10, only 11 percent were investigated and 4 percent disciplined. At either benchmark, the vast majority of lawyers have unblemished records with the state bar.

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[45] There is, however, recent precedent for law school closures in the United States, centered primarily on for-profit law schools. See Karen Sloan, "For-Profit Schools, Once Flourishing, Are Nearly Extinct," Reuters, October 3, 2023 (noting that half of the for-profit law schools operating in 2013 had closed by 2023) (available at https://www.reuters.com/legal/government/for-profit-law-schools-once-flourishing-are-nearly-extinct-2023-10-23/).

Reducing the number of licensed lawyers carries real consequences, on both an individual and societal level. Raising the minimum passing score on the state bar denies law graduates with low scores the opportunity to earn a living as a lawyer. Law school tuition is expensive, including at unaccredited law schools.[46] Law graduates who work in a non-lawyer capacity will, in most instances, earn considerably less than their counterparts who practice law. These likely lower earnings will make it more difficult for these graduates to repay their educational loans.

Societally, the need for legal services – civil as well as criminal – remains largely unmet. Some of this is due to the sorting of the legal labor market, where lawyers gravitate to higher-paying clients over those with more modest ability to pay. But in many regions, there are a shortage of lawyers altogether, leading to "legal deserts."[47] Reducing the number of lawyers would have a regressive effect on access to legal services. Lawyers most likely affected by a gatekeeping approach are draw heavily from less selective law schools (e.g., lower rankings on U.S. News or non-ABA accredited). These graduates are more likely to practice in small firm and solo practice settings,[48] which tend to represent individuals in one-off matters involving personal injury or family law.[49]

The Selection on Unobservables Concern: Our reservations about a gatekeeping approach based on schooling or bar scores reflect our belief that such measures, while informative, are blunt measures. We recognize that the data provides strong evidence that lawyers with certain features are more likely to face investigation or discipline during their legal careers. Those at risk include graduates of less selective or non-ABA accredited law schools; those who barely pass the state bar exam; certain visible minorities. If we believed that these factors best predicted attorney behavior, we could stop our analysis here.

We may, however, believe that other factors may be at play – those that we do not observe but are correlated with test scores or schooling. Our data, while rich and comprehensive, remains incomplete. Our analysis is limited by what we can observe about each member of the bar. A complete model would include the factors we explored in our bivariate and multivariate analyses, but also a few additional ones.

The interplay of state bar score and law school attended with investigation and discipline rates illustrates this point. Lawyers with low state bar scores are investigated/disciplined at higher rates, as are those from non-ABA accredited law schools. The data also shows that lawyers satisfying both conditions are investigated at higher rates than lawyers satisfying just one. But surprisingly, it also shows that graduates from unaccredited law schools are investigated at higher rates – typically double, sometimes

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[46] For example, Lincoln Law School of Sacramento estimates the tuition and fees for its four-year, JD degree at approximately $60,000 (available at https://www.lincolnlaw.edu/new-students/tuition/).

[47] *See* Profile of the Legal Profession, American Bar Association, available at https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf.

[48] For example, among the 54 2023 law graduates from Western State Law School, 21 were working in firms of 10 lawyers or fewer. *See* 2023 ABA Employment Summary of Western State (available at file:///Users/alberthyoon1/Downloads/EmploymentSummary_2023.pdf).

[49] For an illuminating discussion of this demographic of the legal profession, see CARROLL SERON, THE BUSINESS OF PRACTICING LAW: THE WORK LIVES OF SOLO AND SMALL-FIRM ATTORNEYS (1996) (examining lawyers in the New York City metropolitan region).

triple – compared to graduates of ABA-accredited law schools. The explanation cannot be easily attributable to understanding to their understanding of the law, thereby undercutting the efficacy of law school attended as a screen.

What could account for these patterns? To start, the rates at which lawyers violate professional rules likely vary by practice setting. Large law firms have processes in place that significantly reduce the likelihood of certain violations. As example, these firms proactively identify conflicts of interest,[50] whether arising from their lawyers, clients, or both. These firms similarly have dedicated personnel to deal process client billing. If issues arise, the firm responds to them in a timely mannerly, typically before clients consider filing a complaint to the state bar. As a result, lawyers at these firms are largely liberated from these professional responsibilities.

In addition, lawyers at large law firms enjoy a certain safety in numbers. They typically work in teams, which foster a system where senior lawyers evaluate the work of their junior colleagues, reducing harm to – or discontent of – the client. By contrast, lawyers operating a solo practice or as part of a small firm lack the institutional scaffolding and are therefore forced to take greater – or exclusive – ownership of these responsibilities. Our data unfortunately does not include information on lawyers' practice setting; the State Bar of California has only recently begun to collect this information year over year.

In addition, investigations and discipline likely vary by practice area, another dimension missing from our data.[51] The public records of attorney discipline of California lawyers in recent years[52] appears to skew towards lawyers in certain practice areas. Corporate, tax, intellectual property, mergers and acquisitions practices typically reside in large law firms and involve clients who sophisticated, well-resourced, and long-standing and rarely if ever appear in investigations. By contrast, family law, immigration, and personal injury are routinely found amongst solo practitioners or small firms and typically involve clients who rarely engage with lawyers.

That our data indicates a stronger effect of law school attended than bar exam score is consistent with the phenomena that where lawyers attend law school has a strong and enduring effect on their legal careers.[53] Suppose the career path of lawyers from less selective law schools 1) categorically differ from those from more selective schools; 2) these pathways themselves are highly correlated with rates of investigation/discipline; and 3) these differences endure irrespective of legal abilities (as measured by the state bar

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[50] *See* Janine Griffiths-Baker and Nancy J. Moore*, Regulating Conflicts of Interest in Global Law Firms: Peace in Our Time*, 80 Fordham L. Rev. 2241, 2546, FN 109 (2012) (explaining the emergence of compliance officers for legal practice, finance, and administration, "to enable compliance with the Code of Conduct.").

[51] The State Bar of California has recently started to collect this information on an annualized basis.

[52] The Daily Journal, which covers the legal profession in California, publishes each month lawyers who receive discipline from the State Bar of California (available at https://www.dailyjournal.com/articles/cal_lawyer?category=Discipline+Report).

[53] *See e.g.,* Trace E. George, Albert H. Yoon, & Mitu Gulati, *Some Are More Equal than Others: U.S. Supreme Court Clerkships,* 123 Col. L. Rev. Forum 146, 173 (2023) (finding that among Harvard Law School *cum laude* graduates, those who attended Harvard, Yale, and Princeton universities were three times more likely to receive a Supreme Court clerkship than similarly performing peers who attended other undergraduate institutions).

exam). It may then be then be the case that practice setting and practice area better explain investigation/discipline than lawyers' educational pedigree.

The Lamp Post Problem: The lamp post problem arises when an organization pursues a policy objective by allocating resources and attention in easily measurable or straightforward ways. The theory originates with the joke about the inebriated person looking for their lost keys under a lamppost, not because it is where they lost the keys, but because that is where the light is.[54] Problems emerge where the solution lies elsewhere, in more difficult-to-find places.

Throughout our analyses we take as given the State Bar of California's regulatory approach to investigations and discipline. Its process relies on an intake approach, through its toll-free, multilingual hotline as well as online submission form[55] to submit complaints and claims. In one important sense, our findings suggest a fairness and integrity to the state bar's approach. While bar performance and schooling are strong predictors for whether a lawyer is investigated, these factors – conditioned on a lawyer being investigated – have a much smaller effect on disciplinary actions. We also observe, however, higher discipline rates – conditioned on being investigated – based on lawerys' gender and ethnicity.[56]

Our data does not allow us to evaluate the state bar's effectiveness in regulating attorney misconduct across its entire membership. But even stipulating that state bar regulators investigates and disciplines only lawyers warranting this scrutiny still leaves unanswered the question, what lawyers are engaging in attorney misconduct but escape regulatory scrutiny? The state bar's intake system could be akin to the lamp post problem, investigating and disciplining known and easy-to-find allegations of attorney misconduct while other misconduct avoids regulatory scrutiny altogether.

Recent scholarship highlights how such regulatory efforts can fall short. A recent study of the Internal Revenue System (IRS) reveals facially neutral policies that yield disparate auditing rates on certain demographic groups.[57] Another study concluded that lawyers who are disciplined disproportionately work in solo and small firm settings.[58] The emphasis here is less about those who fall within the regulatory ambit, and more about others who are equally deserving but are not investigated. Exploring this possibility goes beyond the scope of this paper, but – we contend – warrants closer examination.

As noted earlier, the data does not identify the areas of practice or practice environment of its member lawyers. It is easy to imagine, however, that these factors

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[54] For a discussion of the lamppost theory and its limitations, see Alan S. Blinder, *The Lamppost Theory of Economic Policy,"* 163 PROCEEDINGS OF THE AMER. PHIL. SOC. 239 (2019).

[55] *See* the State Bar of California's webpage, Complaints and Claims (available at https://www.calbar.ca.gov/public/complaints-claims).

[56] *See* Table 5, *supra* page 27, *infra.*

[57] *See* Hadi Elzayn et al, *Measuring and Mitigating Racial Disparities in Tax Audits*, forthcoming Q. J. ECON. (2024) (describing how the IRS implemented differing audit rates by race among taxpayers claiming the Earned Income Tax Credit (EITC), resulting in Black taxpayers being audited at 2.9 to 4.7 times the rate of non-Black taxpayers).

[58] *See* Kyle Rozema, *Professional Discipline and the Labor Market: Evidence from Lawyers*, 67 J. L. & ECON. 371 (2024) (finding that "disciplined lawyers are more likely to practice in areas of the law that predominately deal with unsophisticated clients, and are more likely to work at small law firms or in solo practice", p. 373).

influence whether the client files a complaint. Clients of large law firms are typically institutions or high-wealth individuals with on-going relationships with their firms. If they are dissatisfied with their representation, they are more likely to speak directly with the managing partner than contact the State Bar of California. By contrast, clients who infrequently engage in legal services and do not have an ongoing relationship with their lawyer[59] may understandably find the State Bar of California a more promising alternative.

Statistical Discrimination to Reduce Attorney Risk of Investigation and Discipline: Two narratives emerge from our analysis of the data. The first is that the highest rates of investigated and disciplined lawyers are drawn disproportionately from lawyers who attended the least selective schools and receive a low score on the state bar exam. The second is that, irrespective of law school attended or state bar exam score, the vast majority of lawyers have unblemished disciplinary records with the State Bar of California. Taken together, these narratives advocate for a more nuanced approach to reducing rates of attorney misconduct.

A promising staring point is a systematic examination of how practice setting and practice area relate to investigation and discipline. Our understanding of the problem suggests these factors plays an important role. The next, and more challenging step is to look beyond these correlations to better understand how these factors influence client levels of disatisfaction. For example, do clients at larger law firms report higher level of satisfaction than clients of solo practice and small firms? If the answer is yes, what explains it? Higher levels of actual legal representation? Or perhaps something simpler, such as more effective communication regarding timelines and billing. If the answer is no, is there a way to help clients for solo practice and small-firm lawyers more effectively address their concerns prior to calling the state regulator?

A better understanding of client dissatisfication can lead to proactive ways to help lawyers with the greatest statistical risk of investigation/discipline. The data already would allow the state bar to identify lawyers who, based on their score on the state bar, are at risk for violating the rules of professional responsibility. The state bar could engage in preventative efforts such as mentorship or additional training to lower the likelihood that lawyers would run afoul of the professional rules. The solution could be a simple as providing training that helps lawyers manage their cases, clients, documents, and billing. Many lawyers – particularly those at larger firms – already accomplish this through existing software.[60] The State Bar could use this opportunity to take a leading role in democratizing legal technology for its membership.

Admittedly, such an approach may present challenges. It may be difficult, ex ante, who among the lawyers with low bar scores are most at risk for investigation and discipline. If so, one may have to conduct preventative outreach to everyone below a certain (passing)

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[59] For a discussion highlight differences in client sophistication, see Marc Galanter, *Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change*, 9 Law & Soc. Rev. 95 (distinguishing between *repeat players* and *one-shotters*).

[60] *See, e.g.,* Clio (www.clio.com) or Filevine (www.filevine.com) (providers of client and billing software).

score, which is administratively costly. Studies in other professional settings, however, have shown the long-term benefits to mentoring justify the short-term costs.[61]

VI. Conclusion

Drawing upon unique data provided by the State Bar of California to explore attorney misconduct, we identify significant predictors of lawyer discipline and investigation. Lawyers with lower bar exam scores and graduates from less selective, often unaccredited, law schools are at a higher risk of investigation and discipline. While these factors are *ex ante* identifiable before lawyers being their careers, they are likely correlated with other significant unobservable factors. Practice setting and practice area significantly influence whether a client alleges attorney misconduct. We argue that efforts to strengthen lawyers' fidelity to law focus on proactively helping *at-risk* (of investigation and discipline) lawyers to fulfil their professional obligations.

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[61] See, e.g., Anthony Villar and Michael Strong, *Is Mentoring Worth the Money? A Benefit-Cost Analysis and Five-Year Rate of Return of Comprehensive Mentoring Program for Beginning Teachers,* 25 ERS Spectrum 1 (2007) (showing that the initial costs of comprehensive mentoring of public school teachers were offset by lower teacher attrition) (available at https://www.researchgate.net/profile/Michael-Strong-3/publication/228653979_Is_mentoring_worth_the_money_A_benefit-cost_analysis_and_five-year_rate_of_return_of_a_comprehensive_mentoring_program_for_beginning_teachers/links/54a2daa50cf267bdb9042a9d/Is-mentoring-worth-the-money-A-benefit-cost-analysis-and-five-year-rate-of-return-of-a-comprehensive-mentoring-program-for-beginning-teachers.pdf).