



THE STATE BAR
OF CALIFORNIA

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June 5, 1992

Chief Justice Malcolm M. Lucas
Supreme Court of California
303 Second Street
South Tower - 8th Floor
San Francisco, CA 94107

Re: Law School Admission Council Bar Passage Study

Dear Chief Justice Lucas:

I am writing to request the Court's assistance and instruction on how to comply with the request of the Law School Admission Council (LSAC) for confidential bar applicant information for the examinations administered during the period July 1988 through February 1991. As you may recall, on November 19, 1990 you notified The State Bar of California that the Conference of Chief Justices had requested all Boards and Committees of Bar Examiners to cooperate fully with the LSAC Passage Study. A copy of your letter is enclosed for your reference as Attachment A. The Committee of Bar Examiners of The State Bar of California has endeavored since that date to reach an agreement with the Law School Admission Council that will meet their needs and comply with applicable California law.

The LSAC has asked all participating jurisdictions to provide the following bar examination specific data for each law school graduate who took the bar examination during the period July 1988 through February 1989: pass/fail status, bar examination total score, Multistate Bar Examination (MBE) total scaled score, MBE part scores [Torts, Real Property, Evidence, Criminal Law, Constitutional Law, and Contracts], and essay scores. In addition, participating jurisdictions have been asked to supply the applicant's name, social security number, date of birth, name of law school awarding the applicant's degree, and date of degree. The LSAC is not asking jurisdictions to provide ethnic and gender data; this information will come from pre-admission data already in LSAC files. (Attachment B contains the LSAC study design and request for information.)

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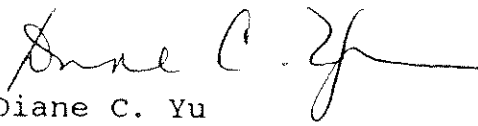
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The request is problematic because of Porten v. University of San Francisco (1976) 64 Cal.App 3d 825, a copy of which is enclosed for your convenience as Attachment C. Porten provides an action for invasion of privacy based on dissemination of confidential information, which we believe is applicable to this situation. We have tried, without success, to negotiate with LSAC to allow the State Bar to provide information on bar passage without tying it to specific applicant identification. An additional way to avoid violating applicants' privacy rights would be to obtain releases from all of them. However, we believe that it is impractical, if not impossible, to contact all of the applicants for the years 1988 through 1989 and secure their consent for this information. In any event, perhaps the burden and cost of such approach would be more appropriately borne by the LSAC rather than the State Bar.

In conclusion, the Committee of Bar Examiners is willing to cooperate with the LSAC study to the extent permitted by state law. It has determined that it will release the information sought by the LSAC upon the direction of the Board of Governors. The Board, upon being advised of the privacy issue, has asked me to advise the Court of this dilemma and request your guidance on how best to accommodate the conflicting concerns involved.

Thank you for your courtesy and anticipated assistance.

Respectfully submitted,


Diane C. Yu
General Counsel

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Enclosures

cc: John Seitman, President
Harvey Saferstein, Chair,
Board Committee on Admissions and Discipline
Isidoro Berkman, Chair,
Committee of Bar Examiners
Jerome Braun, Senior Executive for Admissions
Starr Babcock, Office of General Counsel