

A COMPARISON OF INITIAL AND EVENTUAL PASSING RATES
ON THE CALIFORNIA BAR EXAMINATION

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SUMMARY

An analysis of the initial and eventual passing rates of July 1977, 1981, 1982, and 1984 first timers indicated that:

- o In the last three cohorts studied, about 80 percent eventually passed; another 7 percent took the exam once, failed, and did not try again; and the remaining 13 percent did not pass after retaking the exam one or more times.
- o The 1977 cohort's eventual passing rate was higher than that in each of the last three cohorts studied, however, a portion of this difference stemmed from tracking the 1977 group over as many as seven exams whereas the 1981 and 1984 cohorts were each followed for five exams and the 1982 cohort for only three exams.
- o Nine out of ten applicants who came close to passing but failed on their first attempt did eventually pass the exam.
- o The higher the initial total bar exam score, the more likely the applicant was to eventually pass. However, there was no initial score that clearly differentiated between those who did and did not eventually pass. And, initial total score was not a good predictor of how many attempts an applicant would have to make in order to achieve a passing status.
- o Given their scores on their first attempt, about one-third to one-half of the applicants who initially failed and chose not to try again probably would have passed had they taken the exam one or two more times. Thus, the overall eventual passing rate probably would have risen a few percentage points if these applicants had repeated the exam one or two times.

- o Most of the applicants who failed initially but eventually passed achieved their passing status on their second or third attempt.
- o Eventual passing rates were very consistent for the last three cohorts studied (July 1981, 1982, and 1984 first timers) even though they had substantially different initial passing rates.
- o The initial and eventual passing rates of ABA graduates was much higher than the corresponding rates of California Accredited graduates which in turn was higher than graduates of unaccredited schools.
- o The initial and eventual passing rates of white applicants was much higher than the corresponding rates of minority applicants. This pattern was observed with applicants from both ABA and non-ABA schools. However, on all the exams studied, close to two-thirds of the minority applicants (and nearly 75 percent of those from ABA schools) eventually passed.
- o Men and women now have about the same eventual passing rates.

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This report describes the initial and eventual passing rates of applicants who took the California bar exam for the first time in July 1981, 1982, or 1984. The passing rates in these three cohorts are contrasted with those obtained in a study of July 1977 first timers.

PASS/FAIL CATEGORIES

The applicants in each cohort were classified into the following groups:

Initial Pass - applicants who passed on their first attempt

Subsequent Pass - applicants who failed on their first attempt, but passed after taking the exam two or more times

Subsequent Fail - applicants who failed on their first attempt and repeated the exam at least once, but did not pass on any attempt

Nonrepeating Fail - applicants who failed on their first attempt and did not take the exam again

The combination of the Initial and Subsequent Pass groups is defined as the "Eventual" passers.

EXAM STRUCTURE AND PASS/FAIL RULES

The July 1977 exam had had two sections, the Multistate Bar Examination (MBE) and a 12-question essay test. Applicants could earn up to 514 points on the MBE and 1200 on the essay. The passing score was 1200.

The July 1981 and 1982 exams had two sections, the MBE and a 9-question essay test. Applicants could earn up to 600 points on the MBE and 900

on the essay. The passing score was 1050. However, some applicants were passed if their scores on the MBE and three essay questions were high enough to indicate that they almost certainly would achieve a 1050 if their other six essay answers were graded. The total "essay" score of an applicant who passed under this phased grading policy was estimated by multiplying by 3.0 the sum of that applicant's scores on the three questions that were graded.

July 1981 and 1982 first timers also could eventually pass using the "bifurcation" rule. Under this rule, applicants were deemed to have passed the exam if they passed the MBE on one administration and the essay on another administration (where passing a section was defined as earning 70 percent of the possible points on that section). A "passing" status on a section could be retained for 21 months. Although the bifurcation rule was discontinued in July 1983, applicants could still use it if they had passed a section prior to the July 1983 exam.

The July 1984 exam had three sections: the MBE, a 6-question essay test, and a 2-problem Performance Test (PT). Applicants could earn up to 600 points per section. The passing score was 1260. The bifurcation rule was discontinued before the July 1984 first timers took the exam.

TRACKING STUDY PROCEDURES

Computer records for applicants in the July 1981 and 1984 cohorts were searched to determine these applicants' test taking activities on up to four additional administrations of the exam after their initial attempt.

Because of a change in the methods used to record identification numbers, there was no efficient means of checking the test taking activities of the July 1982 cohort after 1983. Thus, we could only track them for a total of three attempts. This shortened period probably reduced their eventual passing rates slightly. For instance, results with the July 1981 and 1984 cohorts suggest that eventual passing rates in the July 1982 cohort would be about 2 to 4 percent

higher than those presented in this report if it had been possible to follow this cohort for a total of five administrations of the exam.

The July 1977 cohort was followed for a total of seven administrations of the exam.

Column and subcolumn totals in the report's tables may not correspond exactly to the sum of the values in the column due to rounding. And, counts of the number of applicants in a group may differ slightly between tables because a few applicants were missing data on certain variables (such as race, sex, and school type).

RESULTS WITH ALL FIRST TIMERS

Table 1 shows that three cohorts had very similar eventual passing rates even though they had markedly different initial rates. A comparison of the 1977 first timer results with those on the July 1981, 1982, and 1983 cohorts indicates the 1977 group had a higher initial and eventual passing rate. However, it should be remembered throughout this report, that the 1977 group was tracked over as many as seven total attempts and the 1982 group over no more than three total attempts.

The data in Table 1 are consistent with findings from previous research that indicated the bifurcation rule did not increase eventual passing rates. Specifically, the eventual passing rates in the 1977 and 1984 cohorts (who could not benefit by this rule) were as high or higher than those in the 1981 and 1982 cohorts (who could benefit from this rule).

Table 2 shows for each pass/fail category, the percentile rank of the average applicant's total bar score on the first attempt relative to all first timers. For example, on the average, a July 1982 first timer in the initial pass category had a total bar score that was at the 72nd percentile point in the distribution of all first timer total bar scores whereas the typical applicant in the subsequent fail group was at the 9th percentile.

Table 2's data indicate that applicants with relatively high (albeit not passing) scores on their first attempt were more likely to pass on a subsequent attempt than were repeaters who did not eventually pass. In other words, the higher the initial score, the greater the chances of eventually passing. However, there were many applicants with relatively low initial scores who did eventually pass and some with relatively high initial scores who despite repeated attempts did not pass. Thus, there was no one initial total score that would clearly separate those who did and did not eventually pass. These results are further illustrated in Table 3 where it can be seen that there is a close but far from perfect relationship between initial total score and eventual pass/fail status.

The less than perfect relationship between initial total score and eventual pass/fail status suggests that many of the applicants in the Nonrepeating Fail category would have passed had they taken the exam at least one or two more times. This is particularly so given that many of them had higher initial scores than those in the Subsequent Pass group. In fact, projections based on their initial scores suggest that the eventual passing rate in each cohort would have risen about 3 percentage points if all the Nonrepeating Fails had taken the exam at least twice.

The rank ordering of pass/fail groups on total bar exam score paralleled their rank ordering on the various sections of the exam and on the Law School Admission Test (LSAT); i.e., the Initial Pass group had the highest average scores and the Subsequent Fail group the lowest average scores. Table 4 illustrates this pattern on the LSAT.

Table 5 shows that most applicants who eventually pass achieve their passing status by their second or third attempt. In general, if a repeater eventually passes, the chances are about 4 out of 5 that the pass will come by the second or third time the applicant takes the exam. Nevertheless, some applicants pass after more than three attempts.

The number of times it took an applicant to pass was correlated weakly with that applicant's initial total score. In other words, applicant's with relatively high (but below passing) total scores on their first

attempt were only slightly more likely to require fewer attempts to achieve their passing status than were those in the Subsequent Pass group who had relatively low initial total scores. For instance, the difference in average total raw score between those who passed on their second attempt and those who passed after three or more attempts was 3 points in the July 1982 cohort and 8 points in the July 1984 cohort.

Thus, while initial total score is a fairly good (but far from perfect) predictor of eventual pass/fail status, it is not a good predictor of how many attempts a repeater will require to achieve a passing status. The same pattern holds when the Law School Admission Test is used as the predictor of eventual passing status.

RESULTS WITH SUBGROUPS

There has been a consistent trend over the past ten years in the direction of women making up an increasingly large percentage of all first timers. This trend is paralleled by a decline in the advantage women enjoyed over men in overall passing rate so that by the 1980s, male first timers began having as high or higher passing rates than women. Table 6 shows that the convergence of the sexes in initial passing rates also carried over into eventual passing rates.

Table 7 shows that ABA applicants had higher initial and eventual passing rates than applicants from California Accredited schools who in turn had higher rates than applicants from Unaccredited schools. About 85 percent of the ABA applicants eventually passed. The Unaccredited Schools' sharp decline in both passing rates and percentage contribution to the total pool of applicants may stem from some schools changing their accreditation status between 1977 and 1984.

The ALL OTHERS category in Table 7 is composed mainly of applicants from who did not take the exam within one year of graduation from law school, but who did take all the sections of the exam (i.e., they did not take the Attorney's Exam). The ALL OTHERS category also includes a few

applicants who obtained their legal education through correspondence courses or law office study.

Table 8 shows that differences among racial/ethnic groups in their eventual passing rates generally corresponded to differences in their initial passing rates. However, despite these differences, about two out of every three nonwhite applicants eventually passed. The nonwhite eventual passing rates for the 1977, 1981, 1982, and 1984 exams were: 76, 64, 63, and 60 percent, respectively.

Table 9 shows that the eventual passing rates in all racial/ethnic groups increased when the analysis sample was restricted to ABA graduates and that about 75 percent of the ABA minority applicants passed the exam. Moreover, the passing rate in most groups probably would have increased by about another three percent had some of the Nonrepeating Fails taken the exam a few times.

Table 1

PERCENTAGE OF APPLICANTS IN EACH PASS/FAIL CATEGORY

| Pass/Fail Status | 1977 | 1981 | 1982 | 1984 |
|-------------------|------|------|------|------|
| Initial Pass | 68 | 65 | 64 | 55 |
| Subsequent Pass | 20 | 15 | 14 | 25 |
| Total Pass | 88 | 80 | 77 | 80 |
| Subsequent Fail | 8 | 14 | 15 | 14 |
| Nonrepeating Fail | 4 | 7 | 8 | 6 |
| Total Fail | 12 | 21 | 23 | 20 |
| Total N | 5419 | 4834 | 4620 | 4783 |

The total number of exams over which an applicant in a cohort could be tracked were: 1977 (7), 1981 (5), 1982 (3), and 1984 (5).

Table 2

PERCENTILE EQUIVALENT OF MEAN TOTAL BAR SCORES OF APPLICANTS IN EACH PASS/FAIL CATEGORY

| Pass/Fail Status | 1977 | 1981 | 1982 | 1984 |
|-------------------|------|------|------|------|
| Initial Pass | 71 | 72 | 72 | 76 |
| Subsequent Pass | 19 | 21 | 25 | 28 |
| Subsequent Fail | 6 | 8 | 9 | 9 |
| Nonrepeating Fail | 8 | 16 | 14 | 15 |

Table 3

NUMBER OF JULY 1984 INITIAL FAILS AND THEIR EVENTUAL STATUS
RELATIVE TO THEIR INITIAL TOTAL BAR SCORE

| July 1984 Total Score | Subsequent Pass | Subsequent Fail | Repeater Passing Rate | Did Not Repeat |
|--------------------------|--------------------|--------------------|--------------------------|-------------------|
| < 1200 | 429 | 543 | 44% | 204 |
| 1200 - 1219 | 251 | 69 | 78% | 37 |
| 1220 - 1239 | 303 | 28 | 92% | 34 |
| 1240 - 1259 | 190 | 21 | 90% | 23 |
| Total | 1173 | 661 | 64% | 298 |

The July 1984 passing score was 1260.

Table 4

MEAN LSAT SCORES IN EACH PASS/FAIL CATEGORY

| Pass/Fail Status | 1981 | 1982 | 1984 |
|-------------------|------|------|------|
| Initial Pass | 628 | 625 | 642 |
| Subsequent Pass | 560 | 569 | 573 |
| Subsequent Fail | 512 | 510 | 516 |
| Nonrepeating Fail | 545 | 542 | 557 |

Table 5

PERCENTAGE OF APPLICANTS WITHIN THE SUBSEQUENT PASS AND FAIL
CATEGORIES WHO TOOK THE EXAM 2, 3, 4, OR MORE THAN 4 TIMES

| Number of times took the exam | Subsequent Pass | | | | Subsequent Fail | | | |
|-------------------------------------|-----------------|------|------|------|-----------------|------|------|------|
| | 1977 | 1981 | 1982 | 1984 | 1977 | 1981 | 1982 | 1984 |
| 2 | 61 | 64 | 74 | 64 | 24 | 31 | 49 | 30 |
| 3 | 17 | 24 | 26 | 26 | 19 | 26 | 51 | 25 |
| 4 | 14 | 8 | -- | 7 | 18 | 24 | -- | 25 |
| >4 | 7 | 4 | -- | 4 | 39 | 19 | -- | 21 |
| Total | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

The number of exams over which an applicant in a cohort could be tracked were: 1977 (7), 1981 (5), 1982 (3), and 1984 (5).

Table 6

PERCENTAGE OF MALES AND FEMALES IN EACH PASS/FAIL CATEGORY
IN THE 1977, 1981, 1982, AND 1984 COHORTS

| Pass/Fail Status | MALES | | | | FEMALES | | | |
|-------------------|-------|----|----|----|---------|----|----|----|
| | 77 | 81 | 82 | 84 | 77 | 81 | 82 | 84 |
| Initial Pass | 67 | 66 | 72 | 56 | 70 | 63 | 66 | 54 |
| Subsequent Pass | 20 | 14 | 13 | 23 | 21 | 15 | 15 | 26 |
| Total Pass | 87 | 80 | 85 | 80 | 91 | 78 | 81 | 80 |
| Subsequent Fail | 9 | 13 | 9 | 13 | 6 | 14 | 13 | 15 |
| Nonrepeating Fail | 4 | 7 | 5 | 7 | 2 | 8 | 6 | 5 |
| Total Fail | 13 | 20 | 15 | 20 | 9 | 22 | 19 | 20 |
| Percent of Cohort | 74 | 65 | 64 | 60 | 26 | 35 | 36 | 40 |

Table 7

PERCENTAGE OF APPLICANTS FROM EACH SCHOOL TYPE IN EACH PASS/FAIL CATEGORY
IN THE 1977, 1981, 1982, AND 1984 COHORTS

| Pass/Fail Status | ABA | | | | CAL ACCR | | | | UNACCR | | | | ALL OTHERS | | | |
|-------------------|-----|----|----|----|----------|----|----|----|--------|----|----|----|------------|----|----|----|
| | 77 | 81 | 82 | 84 | 77 | 81 | 82 | 84 | 77 | 81 | 82 | 84 | 77 | 81 | 82 | 84 |
| Initial Pass | 76 | 72 | 70 | 60 | 53 | 40 | 39 | 28 | 44 | 35 | 42 | 21 | 48 | 56 | 43 | 52 |
| Subsequent Pass | 17 | 14 | 14 | 26 | 31 | 19 | 15 | 27 | 31 | 17 | 6 | 15 | 19 | 14 | 13 | 13 |
| Total Pass | 93 | 85 | 84 | 86 | 84 | 59 | 54 | 55 | 75 | 52 | 48 | 36 | 67 | 70 | 56 | 65 |
| Subsequent Fail | 5 | 9 | 11 | 9 | 14 | 33 | 38 | 37 | 22 | 39 | 38 | 50 | 16 | 16 | 19 | 17 |
| Nonrepeating Fail | 2 | 6 | 6 | 4 | 2 | 9 | 8 | 8 | 4 | 9 | 14 | 14 | 17 | 14 | 25 | 18 |
| Total Fail | 7 | 15 | 16 | 14 | 16 | 41 | 46 | 45 | 25 | 48 | 52 | 64 | 33 | 30 | 44 | 35 |
| Percent of Cohort | 69 | 76 | 78 | 78 | 17 | 14 | 12 | 11 | 9 | 3 | 3 | 2 | 5 | 6 | 8 | 9 |

Table 8

PERCENTAGE OF APPLICANTS IN EACH RACIAL/ETHNIC GROUP IN EACH PASS/FAIL CATEGORY IN THE 1977, 1981, 1982, AND 1984 COHORTS

| Pass/Fail Status | WHITE | | | | ASIAN | | | | HISPANIC | | | | BLACK | | | |
|-------------------|-------|----|----|----|-------|----|----|----|----------|----|----|----|-------|----|----|----|
| | 77 | 81 | 82 | 84 | 77 | 81 | 82 | 84 | 77 | 81 | 82 | 84 | 77 | 81 | 82 | 84 |
| Initial Pass | 71 | 68 | 68 | 60 | 48 | 58 | 51 | 40 | 43 | 38 | 36 | 29 | 30 | 31 | 22 | 16 |
| Subsequent Pass | 19 | 14 | 13 | 24 | 30 | 20 | 15 | 31 | 37 | 26 | 19 | 32 | 34 | 17 | 16 | 24 |
| Total Pass | 90 | 82 | 81 | 84 | 77 | 78 | 66 | 71 | 80 | 65 | 54 | 61 | 64 | 48 | 38 | 40 |
| Subsequent Fail | 7 | 12 | 12 | 11 | 16 | 17 | 23 | 16 | 15 | 24 | 36 | 30 | 27 | 38 | 48 | 43 |
| Nonrepeating Fail | 3 | 6 | 7 | 5 | 7 | 5 | 11 | 13 | 5 | 11 | 10 | 9 | 8 | 14 | 14 | 16 |
| Total Fail | 10 | 18 | 19 | 16 | 23 | 22 | 34 | 29 | 20 | 35 | 46 | 41 | 35 | 52 | 62 | 60 |
| Percent of Cohort | 89 | 87 | 86 | 84 | 3 | 4 | 4 | 5 | 4 | 4 | 5 | 5 | 3 | 4 | 4 | 4 |

About one percent of the applicants did not belong to one of the groups above. The eventual passing rate of applicants in the "Other" category was: 85% in 1977, 61% in 1981, 55% in 1982, and 70% in 1984.

Table 9

PERCENTAGE OF ABA APPLICANTS IN EACH RACIAL/ETHNIC GROUP IN EACH PASS/FAIL CATEGORY IN THE 1981, 1982, AND 1984 COHORTS

| Pass/Fail Status | WHITE | | | ASIAN | | | HISPANIC | | | BLACK | | |
|-------------------|-------|----|----|-------|----|----|----------|----|----|-------|----|----|
| | 81 | 82 | 84 | 81 | 82 | 84 | 81 | 82 | 84 | 81 | 82 | 84 |
| Initial Pass | 75 | 74 | 65 | 62 | 60 | 46 | 45 | 40 | 32 | 35 | 30 | 20 |
| Subsequent Pass | 13 | 13 | 25 | 19 | 16 | 32 | 31 | 22 | 35 | 22 | 17 | 34 |
| Total Pass | 87 | 87 | 89 | 81 | 76 | 78 | 77 | 62 | 67 | 57 | 47 | 54 |
| Subsequent Fail | 7 | 8 | 7 | 15 | 15 | 13 | 13 | 29 | 25 | 28 | 45 | 35 |
| Nonrepeating Fail | 5 | 5 | 4 | 4 | 9 | 9 | 10 | 9 | 8 | 15 | 8 | 11 |
| Total Fail | 13 | 13 | 11 | 19 | 24 | 22 | 23 | 38 | 33 | 43 | 53 | 46 |
| Percent of Cohort | 87 | 87 | 84 | 4 | 4 | 5 | 4 | 5 | 5 | 4 | 3 | 3 |