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**COMPARISONS OF EVENTUAL PASSING RATES  
IN THE 1985 AND 1986 COHORTS**

**Stephen P. Klein, Ph.D.**

**Roger Bolus, Ph.D.**

**GANSK & Associates**

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## COMPARISONS OF EVENTUAL PASSING RATES IN THE 1985 AND 1986 COHORTS

### OVERVIEW

This report presents the initial and eventual passing rates of the applicants who took the bar exam for the first time in July 1985 or 1986. The number of applicants in these two cohorts were 4,894 and 4,777, respectively. The report also examines what the eventual passing rates were within various racial/ethnic groups and school types as well as what they probably would have been if a lower pass/fail standard had been used.

### PROCEDURES

Test results were tracked through the February 1988 exam. Thus, a July 1985 first timer could take the exam as many as five times after the first attempt whereas a July 1986 first timer had only three more chances (February 1987, July 1987, and February 1988) to take the exam.

In both cohorts, applicants were divided into four groups: initial pass (i.e., they passed on their first attempt), initial fail but eventually passing after one or more repeated attempts, subsequent fail despite one or more repeated attempts, and no attempt to repeat the exam after an initial fail.

There were many variations in test taking pattern in the middle two categories. For instance, in the July 1985 cohort, 559 applicants failed on their first attempt, but passed in February 1986. Another 61 of the July 1985 first timers also passed on their second try; i.e., they sat out one or more administrations before their second attempt. In fact, in this cohort, there were 60 different test taking patterns among those who failed initially but later retook the exam.

**GENERAL RESULTS**

Table 1 shows the actual initial and eventual passing rates in the two cohorts. These data indicate that in both cohorts, just under 85 percent of the applicants eventually passed. The 1985 cohort's passing rate is virtually identical to the 1986 cohort's rate despite the latter group having two less opportunities to pass. Moreover, 187 of the 4,894 applicants in the July 1985 cohort (4 percent) passed the exam as a result of taking it more than two years after their initial attempt. Thus, the July 1986 cohort's eventual passing rate probably would increase somewhat if this cohort was tracked over as many exam administrations as was the 1985 cohort.

Table 1

PERCENT OF APPLICANTS IN EACH PASS/FAIL CATEGORY

Pass/Fail Status	1985	1986
Initial Pass	58	59
Subsequent Pass	25	25
Total Pass	83	84
Subsequent Fail	12	10
Nonrepeating Fail	5	6
Total Fail	17	16

**ANALYSES BY RACIAL/ETHNIC GROUP**

Table 2 shows that about two-thirds of the Latinos and slightly more than half of the Blacks eventually passed. These rates are much higher than their initial rates. Because of rounding, some values in this and the next table may not add up to the subtotals presented.

As has been noted in previous reports on eventual passing rates, there was a relatively large percentage of Blacks who took the exam once, failed, and did not take it again. Some of this behavior may, of

course, be attributed to the tendency among applicants in all racial groups not to repeat the exam if they had especially low scores on their first attempt; and, Blacks tend to have lower bar exam scores than their classmates. Nevertheless, there are probably many applicants in all racial groups who failed on their first attempt, but would have passed eventually if they had taken the exam a few more times. It is not clear why there were so many "nonrepeating fails" among the Asians who took the 1986 exam.

Across the two cohorts, minority group applicants (i.e., all non-Whites) constituted about 15 percent of those tested and 12 percent of those who eventually passed. Thus, their representation in the passing group is only slightly below their representation in the applicant pool. This finding is consistent with estimates made from cross-sectional analyses of previous exams.

Table 2

PERCENT OF APPLICANTS IN EACH PASS/FAIL CATEGORY  
BY RACIAL/ETHNIC GROUP

Pass/Fail Status	White		Asian		Latino		Black	
	85	86	85	86	85	86	85	86
Initial Pass	62	64	43	41	34	29	19	25
Subsequent Pass	24	23	33	32	34	39	36	29
<b>Total Pass</b>	<b>86</b>	<b>87</b>	<b>76</b>	<b>72</b>	<b>67</b>	<b>68</b>	<b>55</b>	<b>54</b>
Subsequent Fail	9	8	19	16	30	27	34	31
Nonrepeating Fail	5	5	5	12	3	5	11	14
<b>Total Fail</b>	<b>14</b>	<b>13</b>	<b>24</b>	<b>28</b>	<b>33</b>	<b>32</b>	<b>45</b>	<b>46</b>
Percent of cohort	86	85	5	5	5	5	3	4

One percent of the applicants in both cohorts did not belong to any of the four racial/groups listed in this table.

ANALYSES BY SCHOOL TYPE

Table 3 shows that just over 75 percent of the applicants in both cohorts graduated from an American Bar Association (ABA) approved law school. About another 12 percent came from schools accredited by California. Only 2 percent were from unaccredited schools. Almost all of the remaining 10 percent were not allocated to a school type because they did not take the exam within one year of their graduation from law school.

The relatively large proportion of "nonrepeating fails" in the later group is probably composed of applicants who were not dedicated to practicing in California.

Table 3 also shows that the eventual passing rate among applicants from California accredited schools is significantly higher than the eventual passing rate among nonaccredited school graduates despite the fact that (averaged across cohorts) they had the same initial rate (37 percent).

Table 3

PERCENT OF APPLICANTS IN EACH PASS/FAIL CATEGORY BY SCHOOL TYPE

Pass/Fail Status	ABA		CalAc		NonAcr		Other	
	85	86	85	86	85	86	85	86
Initial Pass	62	64	35	39	38	36	54	51
Subsequent Pass	26	25	31	29	15	18	15	16
Total Pass	88	89	66	68	53	54	69	67
Subsequent Fail	8	7	28	24	41	41	13	13
Nonrepeating Fail	3	4	6	8	6	5	19	20
Total Fail	12	11	34	32	47	46	31	33
Percent of cohort	76	77	12	11	2	2	10	10

#### ESTIMATED EFFECT OF LOWER PASS/FAIL STANDARDS

Figure 1 shows what the eventual passing rates probably would have been if the current pass/fail standard (of 1440) was lowered to 1420, 1400, 1380, or 1360. For instance, if an applicant took the exam twice and if on the first attempt the score earned was 1390 and on the second attempt it was 1415, then this applicant would be classified as having "failed" the exam on the second try if the passing score was 1420, but having "passed" on this try if it was lowered to 1400. These estimates should be interpreted with caution because there is no way to adjust them for all of the many things that might influence test preparation and taking behavior if standards were lowered.

To conduct the analysis, we transformed the scores on each exam to the same system that is now used. In other words, scores on the written (Essay plus PT) portion of the exam were scaled to the same mean and standard deviation as the MBE scores; and, the two scores were combined into a total score using the formula:  $(.35)(\text{MBE}) + (.65)(\text{Written})$ .

Because the results with the 1985 cohort were so similar to those with the 1986 cohort, we averaged them to produce the plots in Figure 1. These data indicate that with a 1360 pass/fail score (i.e., a standard that is just slightly higher than the one used by Massachusetts and Connecticut), the eventual passing rates for Whites, Asians, Latinos, and Blacks would be about 94, 84, 85, and 72, respectively.

It is evident from this figure that lowering the score required for passing would increase the minority passing rate more than it would increase the White passing rate. For instance, if the score required for passing was lowered to 1360, the White rate would climb 7 percentage points (from 87 to 94) whereas the Black rate would go up 16 points (from 54 to 72). However, because there are so many more whites than Blacks in the applicant pool, the net effect of a lower standard would be to further increase the imbalance between groups in the total number of lawyers licensed. For example, 633 more whites, but only 43 more Blacks would pass if the pass/fail score was lowered to 1360.

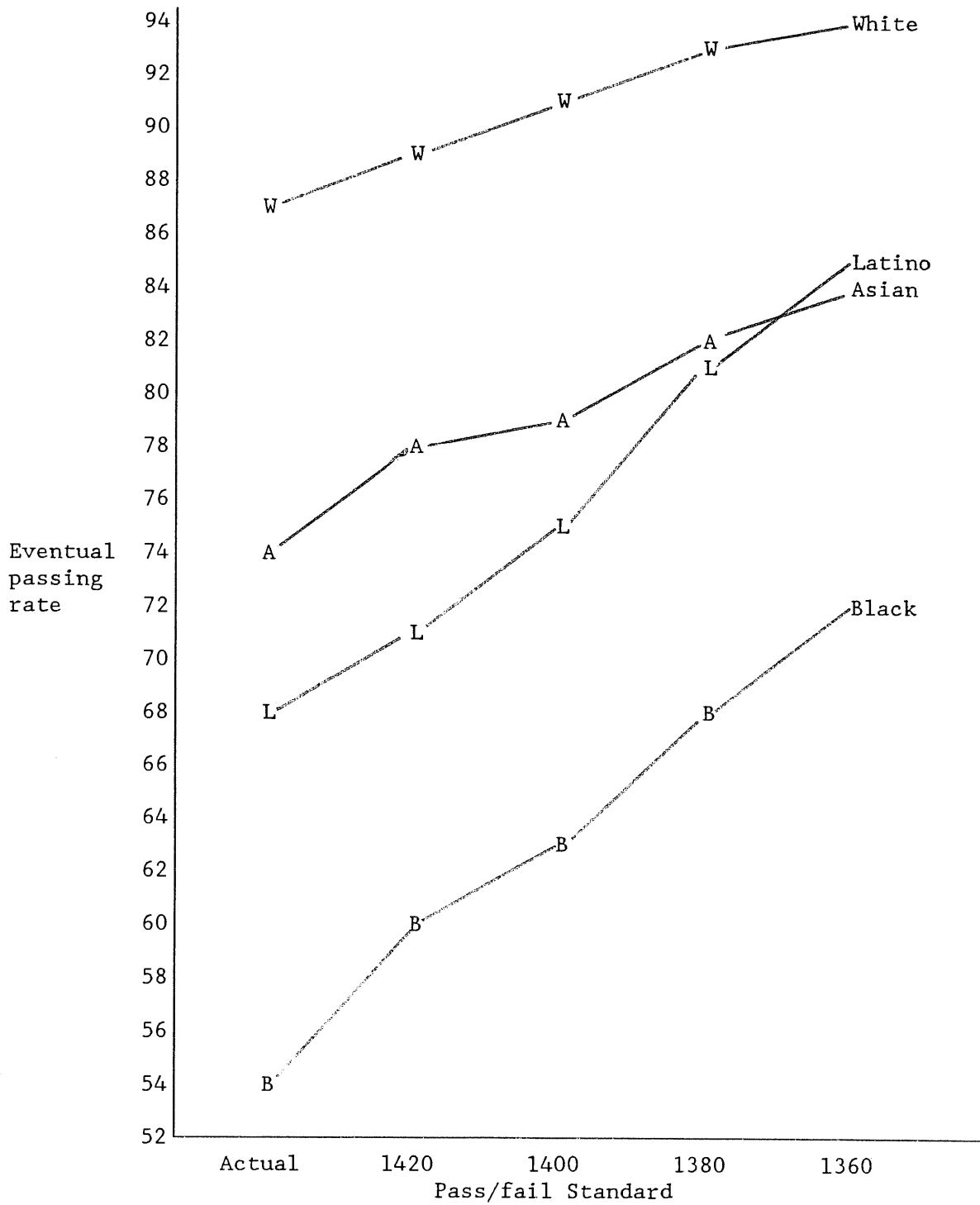


Fig. 1: Eventual passing rates within racial/ethnic group under actual and lower pass/fail standards.

The only surprise in the data relative to actual passing rates is that Asians and Latinos would have about the same eventual passing rate with a 1360 standard. Analyses within cohort indicated that this finding did not stem from the procedure used to estimate passing rates being overly sensitive to the relatively large percentage of nonrepeating fails among Asians in the 1986 cohort; e.g., in the 1985 cohort, eventual passing rates for Asians and Latinos were 84 and 86 percent, respectively.

#### SUMMARY OF FINDINGS

The research presented in this report examined the initial and eventual passing rates of applicants who took the bar exam for the first time in July 1985 or 1986. The major findings from this study were:

- o The eventual passing rates in both groups were almost identical (i.e., about 85 percent) despite the fact that the 1985 cohort was tracked over a total of as many as six administrations and the 1986 cohort only over as many as four administrations.
- o Just under four percent of the 1985 cohort passed as a result of taking the fifth or sixth administration. Thus, the eventual passing rate in the 1986 cohort is likely to be somewhat higher if this cohort is tracked for another year (two administrations).
- o About two thirds of the Latinos and just over 50 percent of the Blacks eventually passed the exam. These rates were much higher their respective average initial rates (32 and 22 percent).
- o Minority group representation among those who eventually passed (12 percent) was only slightly below their representation in the total applicant pool (15 percent).
- o Applicants from ABA schools had higher initial and eventual passing rates (63 and 89 percent, respectively) than did other applicants. And, applicants from California accredited schools had a higher eventual passing rate (67 percent) than did the



applicants from unaccredited schools (54 percent) even though the applicants from both school types had identical initial passing rates (37 percent).

- o A relatively large percentage of the applicants who were not allocated to a school type did not retake the exam after an initial failure on it.
- o Only 98 of the applicants from unaccredited schools eventually passed. Thus, these schools contributed only 1 percent of the 8,077 applicants from the two cohorts who eventually passed.

We also explored what would happen to eventual passing rates if the score required for passing was lowered. The results of this analysis suggested that:

- o Lowering the score required for passing would increase the passing rate in all groups, but this increase would be greater for minority groups than for Whites. However, because so many more Whites than non-Whites take the exam, the net effect of a lower standard would be to increase the imbalance between racial groups in the total number of lawyers licensed.
- o If the pass/fail standard was lowered to 1360, then Asians and Latinos would have comparable eventual passing rates even though they had quite different eventual rates under the current rules.

These predictions should be treated with caution because there is no way to forecast accurately all the effects of a lowered passing score. For instance, a lower standard might induce more (but less qualified) applicants to take the California exam as well as encourage more attempts to repeat it after an initial fail. It also might lead to less effort among applicants to prepare for the exam. Nevertheless, the estimation procedure does provide a rough guide as to what might happen if the passing score was changed.