

HOW THE BIFURCATION RULE AFFECTED THE PERCENT PASSING
CALIFORNIA'S GENERAL BAR EXAMINATION

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ABSTRACT

Prior to July 1983, California's General Bar Exam (GBX) had an essay and a multiple choice (MBE) section. Applicants could pass the GBX in two ways. The compensatory rule passed those who on a given administration had an MBE plus Essay score that was at least 70 percent of the theoretical maximum possible total score. The bifurcation rule passed those who passed the MBE on one administration of the GBX and the Essay on a prior or subsequent administration. Thus, applicants could pass overall by combining the passing statuses (but not the scores) earned on different administrations of the exam. There was no penalty for retaking and failing a part passed previously, and applicants who became bifurcation rule were strongly encouraged to retake both parts.

This report describes what happened to the 731 applicants who failed the July 1981 exam but because of their scores on that exam, became eligible to pass a subsequent exam by means of the bifurcation rule.

There were 491 applicants with a July 1981 MBE pass who retook at least one part of the February 1982 exam. Within this group, the passing rate was 16 percent for the 110 who retook just the Essay and 57 percent for the 381 who retook both parts. There were 127 applicants with a July 1981 Essay pass who retook at least one part of the February 1982 exam. Within this group, the February 1982 passing rates were 43 percent for the 14 applicants who retook both parts and 59 percent for the 113 who retook just the MBE. Almost all of those who passed after retaking both parts did so as a result of the compensatory rule.

In general, the higher an applicant's July 1981 total score, the greater the likelihood that applicant was to pass a subsequent exam. Applicants who retook both parts tended to have lower July 1981 total scores than those who retook just the part they failed previously. However, contrary to these trends, applicants who retook both parts had a 20 percent higher passing rate than those who retook only one part. Taken together, these findings suggest that the relative advantage of retaking both parts was actually much greater than the 20 percent difference in passing rates that was observed.

The foregoing results along with analyses of the July 1982 data indicated that the bifurcation rule had a very slight, but negative overall impact on the passing rate. Specifically, if the bifurcation rule had been eliminated so that all repeaters were required to retake both parts and pass by the compensatory rule alone, then about 20 more of the over 7,000 applicants taking a July GBX would have passed after as many as two subsequent attempts. These findings and the tremendous costs associated with implementing and operating a bifurcation policy argue strongly against its adoption.

SUMMARY

California's compensatory rule passed applicants if their total scores (MBE + Essay) were at or above the pass/fail line. This rule applied to both first timers and repeaters. California's bifurcation rule passed repeaters if they passed the MBE on one administration and the Essay on a previous or subsequent administration. A repeater could retake a part passed previously without jeopardizing the passing status on that part.

This report describes analyses with the 731 applicants who failed the July 1981 exam but became eligible to pass a subsequent exam by means of the bifurcation rule. Within this sample, 594 applicants passed the MBE and 137 passed the Essay portion of the July 1981 exam. The test taking strategies and success rates of these two subgroups were monitored on the next two exams (February 1982 and July 1982).

The major findings of this study were as follows:

- o The higher an applicant's July 1981 total score, the greater the likelihood the applicant would pass a subsequent exam (and with fewer attempts). This pattern held regardless of test taking strategy. For example, within the group of 395 applicants who took both parts of the February 1982 exam, the July 1981 total scores of the applicants that passed and failed were 1024 and 1015, respectively.
- o Applicants who retook only one part of a subsequent exam had a higher average July 1981 total score than applicants who retook both parts. This pattern held regardless of whether the applicant had a July 1981 MBE or Essay pass.
- o Contrary to what was expected by the first two findings and other considerations, applicants who retook only one part had a lower average score on that part than the applicants who retook both parts. For instance, on the February 1982 exam, the applicants who retook just the MBE had an average MBE score of 427 whereas the applicants who retook both parts had an average MBE score of 435 (i.e., despite the latter group being generally less able as indicated by their 6-point lower July 1981 total score).
- o Even though retaking both parts did not jeopardize a passing status on the part passed previously, over one-third of the bifurcation eligible applicants who retook any part, only retook the part failed previously. About the same number of applicants choose to retake only the MBE as choose to retake only the Essay.
- o Retaking just the Essay section greatly reduced an applicant's chances of passing the entire exam. For instance, 58 percent passed among those who retook both parts of the February 1982 exam, but only 16 percent passed among those who retook just the Essay section.

If the bifurcation rule had been eliminated prior to the July 1981 exam, then about 20 more of the over 7,000 examinees who took this exam would have eventually passed. In other words, the net effect of the rule was to fail about 3 percent of the applicants who became eligible to use it (20 out of 731). The negative net effect of bifurcation was due mainly to the large number of applicants with a prior MBE pass who retook just the Essay portion of the exam and the especially low success rate within this group compared to the success rate among those with comparable (or less) ability who also had a prior MBE pass, but retook both parts.

On a typical July exam, about 10 percent of the applicants became eligible to use the bifurcation rule on a subsequent exam. However, the presence of this rule affected the success rate of less than three tenths of one percent of the over 7,000 applicants taking it. Thus, the rule had an extremely small, but negative, impact on the total percent passing the California bar exam.

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BACKGROUND

California's July 1981 General Bar Examination (GBX) and the following two GBX's contained 9 essay questions, each of which had a maximum score of 100 points, and the Multistate Bar Examination (MBE), which had a maximum score of 600 points. Applicants who failed the July 1981 exam could pass a subsequent exam by means of the Compensatory and/or Bifurcation rules.

The compensatory rule passed repeaters as well as first timers if they had total scores (MBE + Essay) of 1050 or higher. This rule also passed applicants in Phase 1 of a multiphased grading process if they completed both parts of the exam and the sum of their scores on the MBE and the first three of their Essay answers that were graded was 666 or higher.

The bifurcation rule only applied to repeaters. This rule passed applicants if they passed the MBE on one administration of the exam and passed the Essay on a previous or subsequent administration. The MBE and Essay passing scores were 420 and 630, respectively. Applicants could retain a passing status on a part for 23 months; i.e., three more administrations of the exam. They also could retake a part passed previously without jeopardizing a passing status on that part. Applicants could not combine the score earned on the MBE on one administration with the score earned on the Essay on another exam. They could only combine passing statuses across administrations.

California's rules differed from those on certain other licensing exams in that bifurcation eligible repeaters could pass by either or both rules rather than having to pass by just the bifurcation or compensatory rule alone. They could retake just the part failed previously or retake both parts. Those who retook both parts could pass in three ways: (1) having a Phase 1 score that was 666 or higher, (2) having a total score (MBE + Essay) that was 1050 or higher, or (3) passing just the part failed previously. Those who retook just the part failed previously could only pass by the latter method.

The Committee of Bar Examiners' announcements encouraged repeaters to retake both parts because this strategy offered more ways of passing the exam. Moreover, the fee for retaking the exam was not affected by the number of parts taken. Nevertheless, about one third of the bifurcation eligible repeaters who retook any part of the exam only retook the part failed previously.

PURPOSE

The analyses described below investigated what would have happened if California had not had the bifurcation rule. In other words, how many more or fewer repeaters would have eventually passed the GBX if all repeaters were required to retake both parts and pass by means of their total scores. The study also examined whether the source of an applicant's bifurcation eligibility (i.e., a prior MBE or Essay pass) was related to that applicant's decision to retake one or both parts as well as to eventual pass/fail status.

JULY 1981 RESULTS

The population for this study consisted of the 7082 applicants (first timers and repeaters) who had scores on both parts of the July 1981 exam. These applicants were classified into the groups listed in Table 1. The bifurcated pass group in this table does not include 12 applicants who took both parts of the July 1981 exam but were passed without reading their Essay answers. These applicants passed the MBE portion of the exam and therefore passed overall because they passed the Essay on a previous administration.

Table 1

NUMBER AND PERCENT OF APPLICANTS IN EACH PASS/FAIL CATEGORY
ON THE JULY 1981 EXAMINATION

Pass/Fail Categories	Number	Percent
Phase 1 Pass	2162	30.5
Pass MBE and Essay	625	8.8
Pass MBE, Fail Essay, Pass Overall	481	6.8
Fail MBE, Pass Essay, Pass Overall	205	2.9
Bifurcated Pass	<u>60</u>	<u>0.8</u>
Total That Took Both and Passed	3533	49.9
Failed Both	2818	39.8
Pass MBE, Fail Essay, Fail Overall	594	8.4
Fail MBE, Pass Essay, Fail Overall	<u>137</u>	<u>1.9</u>
Total Became Bifurcation Eligible	731	10.3
Total	7082	100.0

STUDY SAMPLE

The sample for the analyses described below consisted of the 731 applicants who became bifurcation eligible as a result of their July 1981 scores. Within this group, 58 percent took the GBX for the first time in July 1981.

FEBRUARY 1982 RESULTS

Table 2 shows the number and percent of the 731 applicants who took each part of the February 1982 exam, the percent passing in each group, and the group's average total scores on the July 1981 exam.

Taken together, Tables 1 and 2 indicate that an applicant's decision to retake one or both parts of the February exam was highly related to the source of that applicant's bifurcation eligibility. Of the 137 applicants who became bifurcation eligible as a result of a prior Essay pass, 113 (82 percent) retook just the MBE. Of the 594 applicants who became bifurcation eligible as a result of a prior MBE pass, only 110 (19 percent) retook just the Essay. Almost all (91 percent) of the 113 bifurcation eligible applicants who did not take any part of the February exam had a prior MBE pass.

The passing rate in the group of 395 applicants who retook both parts was 58 percent. Only 38 percent of the 223 applicants who retook just one part passed.

Table 2

NUMBER AND PERCENT OF APPLICANTS IN THE SAMPLE WHO TOOK EACH PART OF THE FEBRUARY 1982 EXAM (N = 731)

Part(s) Taken	Number of Applicants	Percent of the Total Sample	Percent Passing 2/82 Exam	Average Total GBX Score on 7/81 Exam
MBE	113	15.5	59.3	1025
Essay	110	15.0	16.4	1017
MBE and Essay	395	54.0	57.7	1020
None	113	15.5	0.0	1012
Total	731	100.0	42.8	1019

Of the 91 applicants who passed because of the bifurcation rule, 73 (80 percent) combined a July 1981 Essay pass with a February 1982 MBE pass.

Table 3 shows that within each group using a given test taking strategy, the applicants who passed the February 1982 exam had a higher average July 1981 total score than the applicants who failed the February 1982 exam. The difference was 9 points in the group that retook both parts, 10 points in the group that retook just the MBE, and 15 points in the group that retook just the Essay. Thus, initial total score was related to eventual success. This finding is consistent with the results of past studies and it has important implications for assessing the unique effects of bifurcation.

Table 3

DETAILED CATEGORIZATION OF SAMPLE ON FEBRUARY 1982 EXAMINATION

Test Taking Behavior And The Resulting Pass/Fail Status	Number of Applicants	Percent of the Total Sample	Mean Total Score on 7/81 Exam
Did Not Take The 2/82 Exam			
Had a Previous MBE Pass	103	14.1	1010
Had a Previous Essay Pass	10	1.4	1031
Took Both Parts			
Passed By Bifurcation Rule	6	0.8	1031
Passed By Compensatory Rule	106	14.5	1021
Passed By Both Rules	116	15.9	1026
Failed	167	22.8	1015
Retook Only the MBE			
Passed	67	9.2	1029
Failed	46	6.3	1019
Retook Only the Essay			
Passed	18	2.5	1030
Failed	92	12.6	1015

JULY 1982 RESULTS

Tables 4 and 5 show what happened to the sample of 731 applicants on the July 1982 exam relative to their test taking decisions and July 1981 total scores. These data indicate that the July 1982 applicants who retook only the Essay had a higher passing rate than those who retook both parts or just the MBE.

Table 4

NUMBER AND PERCENT OF APPLICANTS IN THE SAMPLE WHO TOOK EACH PART OF THE JULY 1982 EXAM (N = 731)

Part(s) Taken	Number of Applicants	Percent of the Total Sample	Percent Passing 7/82 Exam	Average Total GBX Score on 7/81 Exam
MBE	45	6.2	35.6	1019
Essay	44	6.0	52.3	1019
MBE and Essay	177	24.2	43.5	1015
None	465	63.6	0.0	1019
Total	731	100.0	42.8	1019

EFFECTIVENESS OF DIFFERENT STRATEGIES

The relative effectiveness of different test taking strategies was investigated by determining an applicant's pass/fail status after that applicant had had the opportunity to take both the February and July 1982 exams. This analysis indicated that the eventual passing rates among those who adopted the strategy of retaking just the MBE, just the Essay, or both parts were 73, 37, and 77 percent, respectively.

The foregoing findings, by themselves, suggest that the strategy of retaking just the MBE was almost as effective as retaking both parts. However, the applicants who retook just the MBE had a higher average July 1981 total score than those who retook both. Thus, the applicants who retook just the MBE should have had a higher rather than a slightly lower eventual passing rate than the applicants who retook both parts.

The applicants who retook just the Essay obviously put themselves at a marked disadvantage (especially since their average July 1981 total score also was higher than that of those who took both).

Table 5

DETAILED CATEGORIZATION OF SAMPLE ON JULY 1982 EXAMINATION

Test Taking Behavior And The Resulting Pass/Fail Status	Number of Applicants	Percent of the Total Sample	Mean Total Score on 7/81 Exam
Did Not Take The 7/82 Exam			
Previous MBE Pass	137	18.7	1012
Previous Essay Pass	15	2.1	1024
Passed in 2/82	313	42.8	1025
Took Both Parts Of 7/82 Exam			
Passed By Bifurcation Rule	5	0.7	1028
Passed By Compensatory Rule	27	3.7	1016
Passed By Both Rules	45	6.2	1023
Failed	100	13.7	1010
Retook Only the MBE			
Passed	16	2.2	1023
Failed	29	4.0	1017
Retook Only the Essay			
Passed	23	3.1	1023
Failed	21	2.9	1015

UNIQUE EFFECTS OF BIFURCATION

Six of the February 1982 applicants and 5 of the July 1982 applicants took both parts and passed solely because of the bifurcation rule. They would not have passed if the bifurcation option was eliminated. By themselves, these data suggest that the the bifurcation option slightly increased the percentage of July 1981 applicants who eventually passed ($11/7082 = .0016$).

Counting the number of applicants who passed solely because of bifurcation does not provide an appropriate measure of the unique effects of bifurcation. It does not address the policy question of what the passing rate would have been if this option was eliminated and passing was based on just the compensatory rule. The analyses of the February and July 1982 data that are described in the remainder of this section therefore investigated how many of the bifurcation eligible applicants who retook only one part would have passed if they had studied for and retaken both parts? Would their passing rate be higher or lower if bifurcation was eliminated?

February 1982 Analyses

Analyses of the February 1982 data showed that 38 percent of the 223 applicants who took just one part passed by means of the bifurcation rule whereas 57 percent of the 395 applicants who retook both parts passed by the compensatory rule. However, the group that retook only one part had a 2 point higher average total GBX score on the July 1981 exam than the group that retook both parts. Taken together, these findings suggest that if the group of 223 had retaken both parts, they would have had a slightly higher passing rate with the compensatory rule than the group of 395 applicants who actually did retake both parts.

A more precise estimate of the unique effects of the bifurcation rule was obtained by contrasting the success rates of those who retook both versus only one part after their respective success rates were adjusted for whether they had a prior MBE or Essay pass. The procedures for making these calculations are summarized below:

- o Of the 395 applicants who retook both parts, 381 had a prior MBE pass. Within this group, 216 (56.7 percent) passed the February 1982 exam by means of the compensatory rule.
- o There were 110 applicants with a prior MBE pass who retook only the Essay. About 62 of these applicants would have passed the February 1982 exam by means of the compensatory rule if they had retaken both parts ($.567 \times 110 = 62.4$).
- o Of the 395 applicants who retook both parts, 14 had a prior Essay pass. Within this group, 6 (42.9 percent) passed the February 1982 exam by means of the compensatory rule.
- o There were 114 applicants with a prior Essay pass who retook only the MBE. About 49 of these applicants would have passed the February 1982 exam by means of the compensatory rule if they had retaken both parts ($.429 \times 114 = 48.9$).

The combination of the actual number that passed by the compensatory rule ($216 + 6 = 222$) with the number that would be expected to pass with this rule if they retook both parts ($62.4 + 48.9 = 111$) yielded a total of 333 applicants. This is 20 more than the 313 applicants that actually passed. Thus, by the completion of the February 1982 exam, the estimated net effect of the bifurcation rule was to fail 20 applicants who would have passed had they been required to pass by the compensatory rule alone.

The net effect of bifurcation was composed of about 8 applicants who only would have passed by the bifurcation rule and 28 who would have gone from a fail to a pass with its elimination. These values were estimated as follows:

- o There were only 6 applicants who retook both parts and passed by bifurcation alone. All of these applicants had passed the MBE portion of the July 1981 exam. Within the group of 395 applicants who retook both parts, there were 381 applicants who had a prior MBE pass. Thus, the passing rate due solely to the bifurcation rule in this group was 1.6 percent ($6/381 = .0157$).
- o Within the group of 223 applicants who retook just one part, there were 113 applicants who had a July 1981 MBE pass. If all 113 applicants had retaken both parts, then about 2 of them probably would have passed the February 1982 exam by means of the bifurcation rule alone ($.0157 \times 113 = 1.78$).
- o If all repeaters had been required to retake both parts, then about 8 of them ($6 + 1.78$) would have gone from a pass to a fail status. However, because the net effect of bifurcation was to fail 20 applicants, its elimination would have resulted in about 28 passing and 8 failing.

The foregoing calculations probably underestimate the increase in passing rate that would be derived by eliminating the bifurcation rule. Applicants could retake the part passed previously without jeopardizing the passing status on that part. Some applicants who retook both parts may therefore have only tried their best on the part failed previously. This strategy would most likely lower their total scores and thereby reduce the number of applicants who passed as a result of the compensatory rule.

July 1982 Analyses

It is not possible to obtain a precise estimate of the net effect of the bifurcation rule for the July 1982 exam. All of those from the original group of 731 applicants who retook both parts of this exam had a prior MBE pass. Thus, there is no empirical basis for estimating what the passing rate would have been if those with a prior Essay pass had taken both parts.

There are, however, two factors that suggest that the passing rate for bifurcation eligible repeaters would not have been affected if they were required to pass by the compensatory rule alone.

- o Of the 177 applicants who retook both parts of the July 1982 exam, 41 percent passed by means of the compensatory rule. This passing rate is not significantly different than the 44 percent passing rate obtained with the 89 applicants who retook only one part.
- o The 89 applicants who retook just one part had a 4 point higher average July 1981 total score than the 177 applicants who retook both parts. And, the higher the initial score, the greater the likelihood of eventually passing. Thus, the

group of 89 applicants would be expected to have a slightly higher passing rate than the group of 177 applicants.

DISCUSSION OF RESULTS

The Committee of Bar Examiners encouraged applicants who became bifurcation eligible as a result of their July 1981 scores to retake both parts of the exam. This strategy provided more ways of passing the exam, it did not jeopardize a previous passing status on a part, and there was no reduction in fees for taking only one part. Nevertheless, a significant percentage of bifurcation eligible applicants did not heed the Committee's advice and retook just the part failed previously. In fact, 36 percent of the bifurcation eligible applicants who retook any part of the February 1982 exam only retook the part failed previously.

The strategy of retaking just the part failed previously rather than both parts decreased an applicant's chances for passing. This was especially true for the applicants who retook just the Essay part of the exam. For instance, on the February 1982 exam, there were 106 applicants who passed only as a result of taking both parts. They would not have passed if they had retaken just the part failed previously because their February 1982 scores on that part were below the pass/fail line. On the July 1982 exam, there were 27 applicants who passed by the compensatory rule alone.

Those who favor bifurcation may argue that the 133 applicants who passed only because of the compensatory rule would have passed by bifurcation if they had concentrated their exam preparation efforts on just the part failed previously. The empirical data do not support this hypothesis.

Table 6 shows that applicants who retook both parts of the exam had consistently higher average scores on both the retaken MBE and Essay parts than the applicants who retook only the part failed previously. Moreover, this trend occurred despite the fact that the applicants who retook only one part tended to be more able than those who took both parts (as indicated by their generally higher average July 1981 total scores).

Table 6

MEAN 1982 MBE AND ESSAY SCORES AND JULY 1981 TOTAL SCORES
FOR APPLICANTS WHO RETOOK ONE OR BOTH PARTS OF THE EXAM

Exam Date	Parts Retaken	Number of Applicants	1982 Means		7/81 Total
			MBE	Essay	
Febr 1982	Both	395	435.4	612.2	1019
	MBE	113	426.8	---	1025
	Essay	110	---	594.0	1017
July 1982	Both	177	430.6	606.2	1015
	MBE	44	416.7	---	1019
	Essay	45	---	602.2	1019

SUMMARY AND CONCLUSIONS

The net effect of the bifurcation rule was to decrease the percent passing the exam. If bifurcation had not been offered to the 7082 applicants who took the July 1981 exam, then at about 20 more of them (0.3 percent) would have eventually passed. The major reason the bifurcation option reduced the percent passing was that a large percentage of applicants only retook the part failed previously. And, taking only one part reduced the opportunities for passing and led to lower rather than higher scores on the part retaken.

It is not clear why so many applicants relied on the bifurcation option to pass and thereby reduced their chances of achieving this goal. The Committee of Bar Examiners' announcements and policies certainly encouraged bifurcation eligible applicants to retake both parts. However, for many applicants, the psychological appeal of having to retake only one part seems to outweigh the desire to maximize one's chances of passing.

An assessment of the implications of bifurcation would not be complete without consideration of its costs and logistical consequences. Even with the aid of computers, it is very difficult and expensive to operate a bifurcation system. It also is likely to delay score reporting. Thus, since bifurcation does not have a positive effect on the percent passing but does have a substantial negative impact on costs, there does not appear to be a compelling reason to use it.

