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## Reflections on the LSAC National Longitudinal Bar Passage Study: Two Findings That Have Immediate Impact

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# REFLECTIONS ON THE LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY

**I**n 1988, the Minority Affairs Committee of the Law School Admission Council (LSAC) recommended that a national bar passage study be funded to gather data about the performance of minority students at law school and on bar examinations. The committee's recommendation was approved by the LSAC Board of Trustees one year later and was launched in 1991 by Dr. Linda Wightman, the LSAC's then Vice President for Test Development and Research under the title of the *National Longitudinal Bar Passage Study*.

Over a five year period, data was gathered from law students, law schools, and state boards of bar examiners. More than 23,000 students who entered law school in the fall of 1991 were followed. The analysis of the data revealed an eventual bar passage rate for minority candidates which ranged from seventy-eight percent to ninety-two percent.

The completed study was released in June 1998 into an environment which has become hostile to affirmative action programs. The bar passage study now provides empirical evidence that minority candidates have a high success rate at law school and on the bar examination. The study replaces pessimistic, anecdotal information about minority bar passage rates. It has also raised questions which can only be answered by further study and analysis.

It is essential that the bar admissions community be completely involved in and supportive of continuing study and in participation in the inevitable debate that will follow. It was with this goal in mind that we invited the authors of the essays which follow to contribute brief, personal reflections on the bar passage study.

Copies of the *National Longitudinal Bar Passage Study* are available from the Law School Admission Council, P. O. Box 40, Newtown, PA 18940 or on the Internet at [www.lzac.org/bar-passage.htm](http://www.lzac.org/bar-passage.htm). A limited number of copies of this issue of *The Bar Examiner* are available by writing to the National Conference of Bar Examiners, 333 N. Michigan Avenue, Suite 1025, Chicago, IL 60601 or by sending an e-mail to [annfisher@compuserve.com](mailto:annfisher@compuserve.com).

Ann Fisher  
Executive Editor

## TWO FINDINGS THAT HAVE IMMEDIATE IMPACT

by *Leo M. Romero*

Legal education and the profession can rejoice at the good news the LSAC *National Longitudinal Bar Passage Study* brings — minority law graduates achieve very high levels of success on the bar exam, and they do so quickly after graduation. By now, you probably are familiar with the broad findings about overall pass rates by ethnic groups and gender. In this brief article I wish to discuss two specific findings that may be easy to overlook in the volume of national bar passage data Linda Wightman has produced for LSAC.

The first finding reports differences in persistence rates among those who fail the exam the first time. One obvious benefit of a longitudinal study of this kind is the ability to see what happens to individuals over time. We were interested not only in overall bar passage rates, but also in the question of how long it took successful bar applicants to be successful. Just as the overall pass rates for minority students are quite strong (particularly when viewed in the context Henry Ramsey provides in his *Historical Introduction*), the news is equally good about the number of attempts required for that success — 81 percent of minority law school graduates pass the bar within nine months of graduation.

In addition, the longitudinal data say even more, pointing to one way we might be able to improve the success rates of black and Hispanic bar applicants. These data show that a higher proportion of black and Hispanic, compared to white and Asian American, bar applicants who meet with initial failure do not try again. The differences are striking: among the four ethnic groups for which persistence is analyzed, two percent of the total white and Asian American study populations both failed their first attempt and did not persist, compared to five percent of all Hispanic and 11 percent of all black study participants.

GROUP	TOTAL NUMBER OF PARTICIPANTS	NUMBER OF NONREPEATERS	NONREPEATER PERCENTAGE
Asian American	961	22	2
Black	1,368	148	11
Hispanic	520	27	5
White	19,285	368	2

Of course, the study data do not tell us why any individual did not persist, nor do they explain this "persistence gap." We can conclude, however, that it represents a significant loss to the profession. Had the 148 black nonrepeaters persisted and passed at the same rate as black applicants who did repeat, there would have been 89 additional black lawyers from this study group, and the eventual pass rate for blacks would have increased to 84 percent.

I hope that we will be able to engage in follow-up research that will help us better understand this persistence gap. It may have many causes. As just one example, the study data tell us that black law students had a proportionately higher level of financial responsibility for themselves and their families than students from other groups. Perhaps family and career responsibilities and the high opportunity costs associated with taking the bar exam more than once combined to make repeating the test less feasible for black bar applicants. This hypothesis and other potential explanations of course merit further inquiry.

In the meantime, I hope that bar examiners will consider ways to encourage persistence. If the folklore among minority bar applicants is "you either pass the first time or it takes years," bar examiners should publish and publicize the new data showing that 80 percent of bar applicants who failed their first bar exam and tried again passed on their second attempt. Bar examiners could publish this national data along with data from their own states, perhaps much in the way that LSAC publishes LSAT repeater data in its registration book. This strikes me as a simple and effective way of helping to increase the number of minority lawyers.

The second finding I would like to discuss relates to our current national debate on affirmative action. Many opponents of affirmative action argue that its demise would not reduce the overall number of minority law students. They assert that the end of affirmative action will simply reallocate minority students who would have benefited from affirmative action to less selective institutions. In an article published in the *New York University Law Review*,<sup>1</sup> Linda Wightman used Bar Passage Study data to show that abandoning race as a factor in law school admission decisions will result in significantly fewer minority law students across all of legal education. Her analysis was published before the well-publicized race-blind admission cycles at the University of California and the University of Texas, but it predicted the results obtained at those schools and showed that all law schools, not only the highly selective ones, would have fewer minority students if admission decisions were based solely on LSAT scores and undergraduate grades. The stakes for the legal profession in the current affirmative action debate are quite high, and the bar passage study data show that a retreat from affirmative action would significantly reduce opportunities for minority college graduates who stand a very good chance of becoming attorneys.

The legal profession cannot retreat from affirmative action — the use of race as a factor in admissions — if minorities are to be included. The bar passage study is very important because it shows that minority law students are highly successful on the two most important performance measures — completing law school and passing the bar examination — even when they are admitted to law school with lower LSAT scores and undergraduate grades than those of some of their peers.

In this article, I have tried to highlight one finding that suggests some immediate action we can take and another that addresses a current argument in the affirmative action debate. The bar passage study data reveal many other insights. They also point to a wide range of unanswered questions, and should provide grist for many research projects to come.

## ENDNOTES

1. Linda F. Wightman, "The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions," 72:1 N.Y.U. Law Rev. 1 (1997).



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