

**SUMMARY OF THE OCTOBER 2006 REPORT PREPARED BY THE NATIONAL  
CONFERENCE OF BAR EXAMINERS FOR THE NEW YORK BOARD OF LAW  
EXAMINERS ENTITLED:**

***Impact of the Increase in the Passing Score  
on the New York Bar Examination***

Members of the public assume that the lawyers they hire are competent to practice law. In New York State, the courts set the criteria for determining who is qualified to become a lawyer. The Rules of the Court of Appeals, New York's highest court, include specific legal education requirements for persons applying to practice law. In addition, by statute, applicants must pass a bar exam. The Board of Law Examiners, appointed by the Court of Appeals, prepares and administers that examination.

Many professions, such as medicine, accounting and engineering, mandate passage of an examination as a pre-requisite to obtaining a professional license. The purpose of licensure examinations, such as the bar exam, is to protect the public by providing reasonable assurance that those licensed to practice the profession have met minimal competency requirements. An extensive study of the New York State bar exam (the Millman Report issued May 1993), determined that it is a valid test of the knowledge and skills important to the practice of law.

Like any test for licensure, the bar exam must have a passing score. The passing score is intended to separate those applicants who are minimally competent to practice law from those who have not yet demonstrated that they have met that standard. Setting the passing score is one of the responsibilities of the Board of Law Examiners.

In 1979, when the Multistate Bar Examination was adopted as part of the New York bar exam, the Board of Law Examiners established 660 (on a scale of 1,000) as the passing score. At that time, however, no standard-setting study was available to evaluate the validity of the passing score. The 1993 Millman Report suggested that the Board consider conducting such a study.

Based on that suggestion, and on the advice of measurement experts that passing standards for licensure tests should be periodically reviewed, the Board of Law Examiners in 2000 conducted a study to determine whether 660 was an appropriate passing score. At that time, only thirteen states had passing scores lower than the standard in New York. The study, under the direction of Stephen P. Klein, Ph.D., included a diverse group of judges, law professors, graders of the bar exam, and lawyers from around the state. The results of the study indicated that the passing score was too low and that an increase of as much as 33 points on the 1,000-point scale should be considered.

The Board asked a recognized expert, William A. Mehrens, Ph.D., Professor Emeritus in the Department of Education of Michigan State University, to review the study. In 2001, he

determined the study to have been appropriately designed and properly conducted and made some suggestions for further analysis of the study data. That further analysis was done by Dr. Klein and reviewed by Dr. Mehrens during 2002.

After reviewing the study and considering relevant policy issues, the Board proposed to increase the passing score by 15 points on the 1,000-point scale. The Board invited public comment and, in 2003, conducted public hearings. After considering all comments on the proposal, obtaining further advice on the methodology and counsel regarding licensure testing from experts at the National Conference of Bar Examiners (NCBE), and in consultation with the Court of Appeals, the Board recommended an increase of five points on a scale of 1,000 for the July 2005 bar exam, with two successive five point increases, in order to reach a passing score of 675. Twenty-four other states have passing standards that equal or exceed 675 on the New York scale. The Court of Appeals approved a five-point increase and requested that an evaluation be undertaken of the impact of that increase in the passing score.

The Board engaged the NCBE to review the effects of the five point increase in the passing score that was implemented with the July 2005 administration of the bar exam and to evaluate what impact might be expected if future increases become effective. That study has now resulted in an extensive and detailed report, which contains a comprehensive set of analyses. The analyses provide important information for bar admissions authorities and legal educators alike. The Board is grateful to the NCBE for undertaking this research project and for the extraordinary work product it produced.

This summary abstracts data and analysis from the extensive (155 page) report prepared by the NCBE research team, and is an attempt specifically to outline some of the findings most important to the core questions of the impact of the recent increase and any possible future increases in the passing score.

It also contains some recomputation of data, some additional data from the Board's internal files, and some wholesale repetition of data and analysis from the NCBE report. For a more thorough explanation of the data and the results of the study, reference should be made to the complete report, which is available on the Board's website, **[www.nybarexam.org](http://www.nybarexam.org)**.

The study analyzes the data for the various subgroups of those who took the New York bar exam in July 2005, including US domestic-educated<sup>1</sup> first-time takers, domestic-educated repeat takers (collectively and in accordance with the number of attempts), foreign-educated first-time takers, and foreign-educated repeat takers. Where available, the data is analyzed by gender, race/ethnicity, age at graduation and age at bar attempt. Bar exam performance is analyzed in detail, and for a subsample of the domestic-educated first-time takers, the study examines the impact of other predictors on bar exam performance.

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<sup>1</sup>Throughout this summary and the report, the term "domestic-educated" is used to refer to candidates who received a JD degree from law schools in the United States.

There were 6585 candidates in the study who attended law school in the United States, receiving a JD degree, and who were taking the New York bar exam for the first time. Of that group, 93 candidates did not pass the July 2005 exam with the required passing score of 665 who would have passed if the passing score remained at 660. This represented a 1.4% decline in the pass rate of the domestic-educated first-time takers in the study.

## **DATA COLLECTION**

Data for the study was collected in several ways. First, candidates taking the July 2005 bar exam were asked to complete a demographic survey. Next, candidates were asked to authorize the Law School Admission Council (LSAC) to release data in the LSAC files which included demographic information and performance data, particularly undergraduate grade point average (GPA) and average Law School Admission Test (LSAT) score from all attempts.

Another source of data for the study was the performance of candidates taking the July 2005 bar exam while they were in law school. We requested that candidates provide us with authorizations to obtain law school performance data (e.g., GPAs) from their law schools.

The Board provided NCBE with the dates of birth and law school graduation dates of candidates and also provided detailed performance information on the July 2005 administration of the New York bar exam, consisting of overall scores and scores on each of the components of the test, which are the New York essay examination, the Multistate Performance Test, the Multistate Bar Examination, and the New York multiple choice test.

The resultant database contained a total of 10,175 records, one for each of the 10,175 candidates who took the New York bar exam in July 2005. Participation in the study was excellent, with over 90% of the candidates supplying the information requested of them. Some data was not available for some candidates (e.g., LSAC records and law school GPAs for foreign-educated candidates), but of the 10,175 records created, 7,093 contained LSAC data and 7,055 contained law school data, including data from 125 US law schools.

The various results reported below reflect the subsets of the population for whom the particular variable at issue was available.

## DEMOGRAPHIC CHARACTERISTICS OF THE CANDIDATES

Of the candidates indicating gender, 48.9% are female and 51.1% are male. Among those candidates indicating the source of their legal education, 78.7% of the candidates obtained their legal education in the United States and 21.3% were foreign-educated, coming from well over 100 countries. Race/ethnicity was reported by all but 855 of the 10,175 applicants. Of those whose source of legal education was known, the percentages in the reporting categories for race/ethnicity were as follows:

<b>RACE/ETHNICITY</b>	<b>% OF DOMESTIC-EDUCATED RESPONDENTS</b>	<b>% OF FOREIGN-EDUCATED RESPONDENTS<sup>2</sup></b>
<b>Caucasian/White</b>	70.6%	34.4%
<b>Asian/Pacific Islander</b>	11.7%	42.5%
<b>Black/African American</b>	8.1%	9.2%
<b>Hispanic/Latino</b>	3.5%	5.6%
<b>Puerto Rican</b>	1.2%	0.0%
<b>Chicano/Mexican American</b>	0.4%	0.0%
<b>American Indian/Alaskan Native</b>	0.2%	0.0%
<b>Other</b>	4.1%	7.8%
<b>Omitted</b>	0.2%	0.6%

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<sup>2</sup>Note: Percentages add up to 100.1% due to rounding.

## **ANALYSIS OF CANDIDATE PERFORMANCE ON THE JULY 2005 NEW YORK BAR EXAM**

The New York bar exam consists of the Multistate Bar Examination (MBE) which includes 200 multiple choice questions, the New York essay examination with five essay questions, one Multistate Performance Test item (MPT), and the New York multiple choice test (NYMC) with 50 questions. In determining the scores on the New York bar exam, the five New York essays and the MPT are combined to produce a total essay score (Essay). The scores on each component of the New York bar exam (the MBE, the Essay, and the NYMC) are transformed to a 0 to 1,000 point scale. First, the MBE score, which is reported on a 0 to 200 scale, is multiplied by 5, putting it on a 0 to 1,000 scale. The Essay scores and the NYMC scores are then scaled to this MBEx5 scale. Scaling the Essay and NYMC scores to the MBEx5 scale ensures that, for the total group of candidates taking the New York bar exam on a given test date, the mean, or average, and the standard deviation (SD)<sup>3</sup>, of the Essay scores and of the NYMC scores will be the same as the mean and the SD of the MBE scores on the MBEx5 scale.

In computing the total score for each candidate on the New York bar exam, the MBE is weighted 40% and the NYMC is weighted 10%. The five New York essay questions together get a weight of 40%, and the MPT is weighted 10%. Therefore, the Essay score derived from the scores on the five essays and the MPT is assigned a combined weight of 50%.

An important aspect of test scores is their reliability.<sup>4</sup> The reliabilities for the components of the New York bar exam are all fairly high. MBE scores have a reliability of about .90. Multiple choice tests typically have high reliabilities, and long multiple-choice tests (the MBE has 200 items) tend to have especially good reliability. The New York multiple choice test (NYMC) is much shorter than the MBE, and mainly as a result of that has a somewhat lower reliability, about .78. The Essay component (including the MPT) has a reliability of about .80. The total score on the New York bar exam that results when the three components are combined with appropriate weights has a reliability of about .92.

### **Performance of domestic-educated first-time takers.**

Domestic-educated first-time takers of the July 2005 New York bar exam had a mean total bar exam score of 727.44, well above the current (665) passing score.

Among domestic-educated first-time takers, the male candidates did better on average than the females on the MBE and slightly better on the NYMC. The female candidates did better on average than males on the Essay, which includes both the essay questions and the MPT. The

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<sup>3</sup>Standard deviation is a measure of the spread of scores. About 68% of the scores in a distribution will be within one standard deviation of the mean.

<sup>4</sup>Reliability refers to the consistency or repeatability of scores and reflects the extent to which measurements are free from random variation or random error. Reliability coefficients range from 0.0 to 1.0, where higher values reflect more precision and lower values indicate less precision.

average score for males on the total NY bar exam is about six points higher than the average score for females, equal to about one-tenth of an SD for the total group.

Two other general characteristics are worthy of note. First, in general, the results are fairly consistent across test components within each racial/ethnic group. That is, the difference between the highest average component score and the lowest average component score within each group is generally less than ten points or about one-seventh of an SD, the exception being the Chicano/Mexican American group, which consists of a small sample and, therefore had a relatively large sampling error.

The other characteristic worthy of note is that the differences between racial/ethnic groups are quite large. The difference between the Caucasian/White group, which has the highest overall average score, and the Black/African American group, which has the lowest, is about 60 points, which is close to one SD for the total sample.

Differences among the racial/ethnic groups are not associated with particularly high or low scores on one component of the bar exam. Rather, the differences are fairly consistent across all of the components. The fact that each group performs at about the same level on each component of the bar exam suggests that no one component is easier or more difficult for any racial/ethnic group. No one component is causing the differences observed across racial/ethnic groups.

The mean scores of domestic-educated first-time takers in each racial/ethnic group and by gender on each component of the test is indicated on the following table. The letter “N” indicates the number of respondents within each group.

**July 2005 Domestic-Educated First-Time Takers**

<b>Race/Ethnicity</b>	<b>MBE Scaled Score x 5</b>	<b>Essay Scaled Score</b>	<b>NYMC Scaled Score</b>	<b>Total NY Bar Score</b>
<b>Caucasian/White</b>				
<b>Female (N = 2265)</b>	722.57	743.52	728.50	733.65
<b>Male (N = 2552)</b>	747.22	731.34	731.72	737.73
<b>Total (N=4818)<sup>5</sup></b>	<b>735.63</b>	<b>737.03</b>	<b>730.21</b>	<b>735.79</b>
<b>Asian/Pacific Islander</b>				
<b>Female (N = 424)</b>	706.47	726.98	715.30	717.63
<b>Male (N = 316)</b>	721.05	708.51	707.33	713.41
<b>Total (N=740)</b>	<b>712.70</b>	<b>719.09</b>	<b>711.90</b>	<b>715.82</b>
<b>Black/African American</b>				
<b>Female (N = 279)</b>	666.93	687.87	673.75	678.08
<b>Male (N = 151)</b>	684.81	662.52	667.02	671.88
<b>Total (N= 430)</b>	<b>673.21</b>	<b>678.97</b>	<b>671.39</b>	<b>675.90</b>
<b>Hispanic/Latino</b>				
<b>Female (N = 108)</b>	686.44	708.84	702.68	699.25
<b>Male (N = 106)</b>	712.98	704.15	701.52	707.44
<b>Total (N=214)</b>	<b>699.59</b>	<b>706.52</b>	<b>702.10</b>	<b>703.31</b>
<b>Puerto Rican</b>				
<b>Female (N = 42)</b>	712.01	730.79	715.62	721.74
<b>Male (N = 31)</b>	708.35	676.79	707.67	692.61
<b>Total (N=73)</b>	<b>710.46</b>	<b>707.86</b>	<b>712.24</b>	<b>709.37</b>
<b>Other</b>				
<b>Female (N = 142)</b>	698.35	717.93	700.97	708.43
<b>Male (N = 126)</b>	740.58	720.89	716.89	728.37
<b>Total (N=268)</b>	<b>718.20</b>	<b>719.32</b>	<b>708.45</b>	<b>717.81</b>
<b>Total<sup>6</sup></b>				
<b>Female (N = 3284)</b>	713.28	734.08	719.75	724.34
<b>Male (N = 3299)</b>	740.04	724.12	724.62	730.54
<b>Total (N= 6585)</b>	<b>726.69</b>	<b>729.07</b>	<b>722.20</b>	<b>727.44</b>

<sup>5</sup>Total includes one Caucasian/White candidate who omitted his/her gender.

<sup>6</sup>Includes racial/ethnic groups not separately listed because they had relatively small sample sizes.

Note that the mean total NY bar score among domestic-educated first-time takers for every racial/ethnic group falls at or above 675, the total NY bar score that will be required to pass the exam if the full extent of the Board-recommended increases are implemented. Analyzing the data by both gender and race, however, Black/African American males had a mean under 675.

The finding that females tend to do relatively well on the Essay and the males do relatively well on the MBE holds up across racial/ethnic groups. However, differences between females and males on their average total scores are inconsistent in magnitude and direction. For the Caucasian/White group, the average total score for the females is about four points lower than that of males, and for the Hispanic/Latino group, the average for females is about eight points lower than that of males. However, in the Asian/Pacific Islander, Black African American and Puerto Rican groups, females have higher average total scores than males.

Examining age differences, the average score for the total NY bar exam among domestic-educated first-time takers decreases systematically from the youngest group (under age 27) to a group between ages 46 to 50. The youngest candidates had a mean total score of 734.86. The group with the lowest total score, those aged 46 to 50, had a mean of 682.91.

### **Performance of domestic-educated repeat takers.**

Among domestic-educated repeaters, the mean for females, males and total group and for every racial/ethnic group was found to be below 660, which is the passing score that existed prior to July 2005. To the extent that a particular score is less than 660, any increase in the passing score has no impact.

The total NY bar score mean for domestic-educated repeaters was 623.77. The differences between racial/ethnic groups for domestic-educated repeaters are much smaller than they are for domestic-educated first-time takers. The score means for domestic-educated repeaters by racial/ethnic group are reported as follows:



### July 2005 Domestic-Educated Repeat Takers

<b>Race/Ethnicity</b>	<b>MBE Scaled Score x 5</b>	<b>Essay Scaled Score</b>	<b>NYMC Scaled Score</b>	<b>Total NY Bar Score</b>
<b>Caucasian/White (N = 302)</b>	626.85	633.83	628.92	630.53
<b>Asian/Pacific Islander (N = 111)</b>	626.23	616.38	629.85	621.67
<b>Black/African American (N = 154)</b>	613.98	613.15	604.98	612.67
<b>Hispanic/Latino (N = 42)</b>	618.89	614.09	631.68	617.74
<b>Other (N = 31)</b>	615.21	635.10	615.33	625.06
<b>Total<sup>7</sup> (N = 667)</b>	622.52	624.88	623.33	623.77

In the report, domestic-educated repeaters are also examined by gender, age at graduation, and number of bar attempts. Those results are not discussed in this summary.

#### **Performance of foreign-educated first-time takers.**

As with domestic-educated first-time takers, males do better on average than females on the MBE and on the NYMC, and females do better than males on the Essay. The average total score for males and females is nearly identical, with males scoring about two points higher on average than females.

The results are not as consistent across test components within each racial/ethnic group among foreign-educated candidates as they are for domestic-educated first-time takers. The Asian/Pacific Islander group has a substantially lower average on the Essay than on the MBE or the NYMC. The other groups are relatively consistent in their mean scores across the three components.

The differences across racial/ethnic groups are quite large with the largest difference between the Caucasian/White and Black groups. The foreign-educated first-time Caucasian/White takers achieved a total NY bar score mean of 675.43, and the Black foreign-educated first-time takers achieved a total NY bar score of 587.85 on average.

Among foreign-educated first-time takers, males generally out-perform females with the exception that the Asian/Pacific Islander females have an average score slightly higher than that of the

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<sup>7</sup>Includes racial/ethnic groups with fewer than 20 candidates.

Asian/Pacific Islander males, and the Black females average about 47 points higher than the Black males.

### **Performance of foreign-educated repeat takers.**

Foreign-educated repeaters have a mean of 598.85. Female foreign-educated repeaters perform slightly better than males, and the differences between racial/ethnic groups within the foreign-educated repeaters are smaller than they are for corresponding first-time takers.

### **CORRELATIONS AMONG SCORES**

MBE scaled scores, Essay scaled scores, and NYMC scaled scores are all positively correlated, indicating that the rank order of candidates is similar across components. The correlations among the three components of the bar exam are consistently large for the various gender and racial/ethnic groups, suggesting that performance is fairly consistent across these components for the sample as a whole and for various groups within the sample. These results suggest that there is considerable overlap in the competencies measured by the different components, or that the competencies measured by the different components are strongly related.

### **PROJECTED PASSING RATES**

The report analyzes in detail the impact on passing rates of the change in the passing score that has already been implemented, and the expected impact of possible future increases on the passing rate, as measured within the population of July 2005 candidates. Examining performance within a static population (those who took the bar exam in July 2005) means necessarily that the passing percentages go down as the passing score goes up. These projections assume that there is no increased preparation, knowledge, proficiency or performance in the cohort of candidates taking the exam under the constraint of a higher passing score.

An analysis was done of projected passing rates for scores of 660 (the passing score prior to July 2005), 665 (the passing score for the July 2005 exam), 670 and 675 (the potential score levels).

#### **Projected pass rates of domestic-educated first-time takers.**

Among domestic-educated first-time takers in the sample, 84.4% would have passed had the passing score remained unchanged at 660, as compared to the 83.0% who passed at the passing score of 665. Had the passing score increased to 670, 81.7% would have passed, and at 675, 80.5% would pass. Thus, the total decline in the passing rate from the previous passing score of 660 to a score of 675 would be 3.9% for domestic-educated first-time takers. Among the 6585 domestic-educated first-time takers in the sample, 93 failed in July 2005 who would have passed had the passing score been 660.

Stated another way, 98.3% of the domestic-educated first-time takers who would have passed had the passing score remained at 660 passed in July 2005, despite the increase in the passing score to 665. 95.4% of these candidates who would have passed had the passing score remained at 660 would also have passed had the passing score of 675 been implemented for the July 2005 bar exam.

The pass rate for female domestic-educated first-time takers decreases from 83.5% to 79.0% as the passing score increases from 660 to 675, a decline of 4.5 percentage points. The pass rate for males decreases from 85.3% to 82.1%, a decline of 3.2 percentage points. Males have a slightly higher pass rate for all four passing scores, and the difference in pass rates between males and females increases from 1.8 percentage points to 3.1 percentage points as the passing score increases from 660 to 675, a difference of 1.3 percent.

There are large differences in pass rates across the racial/ethnic groups among domestic-educated first-time takers, and the order of the five groups in terms of pass rates remains the same as the passing score increases. The Caucasian/White group has the highest pass rates, the Asian/Pacific Islander group is second, the Puerto Rican group is third, the Hispanic/Latino group is fourth, and the Black/African American group is fifth. The percentage of the July 2005 domestic-educated first-time takers in the sample who would pass at each of these score points, reported both by gender and race/ethnicity is as follows:

### July 2005 Domestic-Educated First-Time Takers

<b>RACE/ ETHNICITY</b>	<b>NUMBER: FEMALE MALE TOTAL</b>	<b>PASS 660 % (N)</b>	<b>PASS 665 % (N)</b>	<b>PASS 670 % (N)</b>	<b>PASS 675 % (N)</b>
<b>WHITE</b>	2265 2552 <b>4818</b>	87.4% (1979) 88.4% (2256) <b>87.9% (4235)</b>	86.1% (1950) 87.5% (2234) <b>86.8% (4184)</b>	84.9% (1924) 86.7% (2212) <b>85.8% (4136)</b>	83.8% (1898) 85.8% (2189) <b>84.8% (4087)</b>
<b>ASIAN</b>	424 316 <b>740</b>	84.4% (358) 80.1% (253) <b>82.6% (611)</b>	82.1% (348) 77.5% (245) <b>80.1% (593)</b>	79.7% (338) 76.3% (241) <b>78.2 (579)</b>	78.3% (332) 74.4% (235) <b>76.6% (567)</b>
<b>BLACK</b>	279 151 <b>430</b>	59.5% (166) 55.0% (83) <b>57.9% (249)</b>	56.3% (157) 49.7% (75) <b>54.0 % (232)</b>	53.4% (149) 48.3% (73) <b>51.6% (222)</b>	50.9% (142) 47.7% (72) <b>49.8% (214)</b>
<b>HISPANIC</b>	108 106 <b>214</b>	70.4% (76) 69.8% (74) <b>70.1% (150)</b>	70.4% (76) 68.9% (73) <b>69.6% (149)</b>	67.6% (73) 67.0% (71) <b>67.3% (144)</b>	63.9% (69) 67.0% (71) <b>65.4% (140)</b>
<b>PUERTO RICAN</b>	42 31 <b>73</b>	81.0% (34) 80.7% (25) <b>80.8% (59)</b>	78.6% (33) 74.2% (23) <b>76.7% (56)</b>	76.2% (32) 67.7% (21) <b>72.6% (53)</b>	76.2% (32) 64.5% (20) <b>71.2% (52)</b>
<b>OTHER</b>	142 126 <b>268</b>	77.5% (110) 85.7% (108) <b>81.3% (218)</b>	76.8% (109) 84.9% (107) <b>80.6% (216)</b>	73.9% (105) 84.1% (106) <b>78.7% (211)</b>	71.8% (102) 83.3% (105) <b>77.2% (207)</b>
<b>TOTAL</b>	3284 3299 <b>6585<sup>8</sup></b>	83.5% (2742) 85.3% (2814) <b>84.4% (5557)</b>	81.9% (2691) 84.0% (2772) <b>83.0% (5464)</b>	80.4% (2639) 83.0% (2739) <b>81.7% (5379)</b>	79.0% (2593) 82.1% (2707) <b>80.5% (5301)</b>

The passing rate on the July 2005 bar exam for the 4818 Caucasian/White students in this sample (86.8%) would have been 2% less if the passing score had been 675 in July 2005 rather than 665.

If the passing score had remained at 660, the passing rate for Caucasian/White candidates in this sample would have been 87.9%, 3.1% higher than if the passing score had been 675. There were 97 Caucasian/White domestic-educated first-time takers who passed the bar exam in July 2005 who would have failed the bar exam had the passing score been 675. There were 51 Caucasian/White candidates who failed the bar exam in July 2005 who would have passed the bar exam had the passing score been unchanged.

Put another way, 98.8% of the domestic-educated first-time takers in the sample who were Caucasian/White who would have passed the bar exam if the score had remained at 660 passed

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<sup>8</sup>Includes racial/ethnic groups not separately listed with relatively small sample sizes.

with the score at 665, and 96.5% of those who would have passed at 660 would still have passed had the score been 675.

Among the 740 Asian/Pacific Islander domestic-educated first-time takers in the sample, the pass rate of 80.1% was 2.5% lower in July 2005 than it would have been had the pass rate remained unchanged at 660. Had the pass rate been increased to 675 in July of 2005 an additional 3.5% of the candidates would have failed for a pass rate of 76.6% among this sample. There were 18 Asian/Pacific Islander candidates who failed the July 2005 bar exam who would have passed had the passing score remained unchanged. There were 26 Asian/Pacific Islander candidates in this sample who passed the bar exam in July 2005 who would have failed had the passing score been 675.

97.1% of the Asian/Pacific Islander candidates who would have passed had the score remained unchanged passed despite the increase in July 2005. 92.8% of the candidates who would have passed had the passing score remained at 660 would have passed even if the score had been 675.

Among the 430 Black/African American candidates in the sample, the pass rate declined 3.9% (to 54.0%) with the increase in the score from 660 to 665. Had the passing score been 675, an additional 4.2% of the Black/African American first-time domestic-educated takers would have failed the exam, for a pass rate of 49.8%. There were 17 Black/African American candidates in this sample who failed the bar exam in July 2005 who would have passed had the passing score remained at 660. Ten Black/African American candidates in this sample who passed the exam would have failed had the passing score been 670, and 18 Black/African American candidates who passed at 665 would have failed had the score been 675.

93.2% of the Black/African American candidates who would have passed the July 2005 bar exam had the score not changed passed despite the increase in the score. If the passing score on the July 2005 exam had been 675, 85.9% of the candidates who would have passed had the passing score remained unchanged would continue to pass.

At a passing score of 675, the passing rate among Black/African American domestic-educated first-time takers would have been 49.8%. The passing score of 675 approximates the mean of this group, and increasing the passing score tends to have the most impact on groups with average scores near the passing score and pass rates near 50%. If the passing score is near the mean for a group, even a modest change in the passing score can change the pass/fail status for a relatively large number of candidates in the group.

Among Hispanic candidates, 69.6% of the domestic-educated first-time takers passed. 99.3% of those who would have passed had the passing score remained at 660, passed in July 2005 with the passing score at 665. Had the passing score been 675, 93.3% of those who would have passed had the score remained unchanged would have passed in any event. The passing rate declined only .5% among this group with the passing score at 665 from what it would have been had the passing score remained at 660. An additional 4.2% of this sample of candidates would have failed had the passing score been 675. In numbers, one Hispanic candidate failed the bar exam in July 2005 who would have passed had the score remained unchanged. An additional nine candidates would have failed had the score been 675.

The Board has examined its data following the population of first-time takers in July 2005, tracking their performance on the February 2006 exam. Of those candidates who first took the bar exam in July 2005, overall 83% had passed by their second attempt. Of the domestic-educated group, 89.5% had passed by second attempt. Had the passing score been 675 in July 2005 and February 2006, after two attempts 86.3% of the domestic-educated group would have passed.

### **Projected pass rates of domestic-educated repeat takers.**

The NCBE looked at domestic-educated repeaters as a whole, breaking the group up by gender and by race/ethnicity, and then looked at this group by number of attempts, particularly second-time bar takers and third-time bar takers.

As noted above, the mean overall bar performance of the repeater groups was consistently below the score of 660, such that the passing rates of this group are quite low. Overall, 21.1% of the domestic-educated repeaters passed the July 2005 bar exam, whereas 23.4% would have passed had the passing score remained at 660. There were 15 students in this group who failed the bar exam but would have passed if the passing score had been 660. If the passing score had been 675, 15.9% of the domestic-educated repeaters would have passed, with 50 candidates failing to pass who would have passed had the passing score been 660.

Looking at domestic-educated second-time bar takers by ethnicity, the passing rates are very low even had the passing score remained at 660, with 37.7% of the Caucasian/Whites, 33.3% of the Asian/Pacific Islanders and 20.5% of the Black/African Americans achieving that score. The numbers of candidates who would have passed at 660 but who failed at 665 or who would have failed had the passing score been 675 are also very low, as there are comparatively few candidates in these categories. For example, only two Caucasian/White candidates who were second-time takers failed the July 2005 bar exam but would have passed had the passing score remained unchanged. Seven additional candidates would have failed had the passing score been 675. Among the Asian/Pacific Islanders, one candidate failed who would have passed had the passing score been 660 and one additional candidate would have failed had the passing score been either 670 or 675. Among the Black/African American domestic-educated second-time takers, one candidate failed the July 2005 bar exam who would have passed had the score been 660, and two additional candidates would have failed had the passing score been 675.

Second-time takers do better than third-time takers, who do better than those taking the exam for the fourth or more time.

### **Projected pass rates of foreign-educated candidates.**

Among foreign-educated first-time takers, the overall pass rate decreases from 46.3% to 40.3% as the passing score increases from 660 to 675. On the July 2005 administration of the exam, 43.9% of the foreign-educated first-time takers in the sample passed, whereas 46.3% would have passed if the passing score had been 660, and 40.3% would have passed had the passing score been 675.

The overall pass rate for foreign-educated repeaters is very low. Even had the passing score remained unchanged, only 15.1% of the foreign-educated repeat takers would have passed on the July 2005 administration of the bar exam, as compared to the 13.5% that did pass. At a passing score of 675, 10.9% of the foreign-educated repeat takers would pass. The numbers involved are quite low, with only 87 of the foreign-educated repeat takers passing at 660, 78 at 665 and 63 at 675.

The report analyzes the pass rates for foreign-educated candidates by gender and race/ethnicity, as well as by first-time taker/repeater status, and that data is not repeated here.

Overall, among the 9214 candidates in the study (including all domestic and foreign educated first-time takers and repeaters), 150 candidates did not pass the July 2005 exam with the required passing score of 665 who would have passed if the passing score remained at 660. This represented a 1.6% decline in the total number of passing test takers in the study.

### **IMPACT OF UNDERGRADUATE GPA, LSAT SCORE AND LAW SCHOOL GPA ON BAR EXAM PERFORMANCE**

The NCBE made an examination of pre-law school performance, law school performance and performance on the New York bar exam by examining undergraduate GPA (U-GPA) and LSAT scores, law school GPAs (L-GPA) and total scores on the bar exam for a large sub-sample of first-time taker/domestic-educated candidates for whom all this information was available (the school-based sample). NCBE looked at both a 4-point L-GPA and an Index-Based L-GPA, the latter being weighted for the selectivity of the school, by taking account of the U-GPAs and LSAT scores of their graduates who were in the school-based sample.

Overall, females have slightly higher average U-GPAs and males have slightly higher average LSAT scores, L-GPAs, and bar exam scores. For each of the racial/ethnic groups represented in the analysis, females also had higher average U-GPAs and males had higher average LSAT scores. For each of the racial/ethnic groups, except the Black/African American group, males had higher average bar exam scores than females. Note that there are almost twice as many females as males in the Black/African American group.

NCBE rescaled all of the variables to a Z-score scale<sup>9</sup> in order to make the different measures comparable. The average Z-scores for the Caucasian/White group was above the established mean of zero on all five variables (U-GPA, LSAT score, 4-point L-GPA, Index-Based L-GPA and Total NY Bar score). Average Z-scores for the Black/African American group and the Hispanic/Latino group are below zero and therefore below the overall average for the school-based sample as a whole on all five variables. Groups with relatively low average scores on U-GPA and LSAT (i.e., measures of previous academic success) also have relatively low average scores on L-GPA and relatively low average scores on the New York bar exam.

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<sup>9</sup>Z-scores are scores that have been scaled to have a mean of zero and a standard deviation of one.

The Black/African American candidates had U-GPAs about half a standard deviation (SD) below the mean, and average LSAT scores over three-quarters of an SD below the mean. To the extent that these two measures reflect readiness for law school, this group starts out at an academic disadvantage.

On average, this group had relatively low GPAs in their law schools. The average Index-Based L-GPA for the Black/African American group was half an SD below the mean, which while relatively low, was not as low as the average for the 4-point L-GPA. This difference reflects the fact that Black/African American candidates tend to graduate from law schools that are more selective than the typical law school in the school-based sample.

Females had higher average U-GPAs than males consistently across all five of the racial/ethnic groups examined, and lower average LSAT scores than males, which is also consistent across racial/ethnic groups. Females tend to have slightly lower average 4-point L-GPAs, but that is not consistent across racial/ethnic groups. Within the Caucasian/White group, males and females have the same 4-point L-GPAs. For the Asian/Pacific Islander group, the average 4 point L-GPA is higher for males than for females, but for Black/African American and Hispanic/Latino groups, the average 4-point L-GPA is higher for females than for males.

Females had lower average Index-Based L-GPAs consistently across all five of the racial/ethnic groups and have lower average bar exam scores than males, which is also consistent with the exception of the Black/African American group in which females have higher average bar exam scores than males.

NCBE examined the correlation coefficients among U-GPA, LSAT score, 4-point L-GPA, Index-Based L-GPA and Total NY Bar score. The correlations are all positive.

The 4-point L-GPA is a measure of each candidate's relative standing within his or her school, and is independent of the law school's selectivity. An interesting finding was that the 4-point L-GPA has a relatively low correlation (.19) with LSAT scores and a somewhat higher correlation with U-GPA (.23). The Index-Based L-GPAs, which build information about a law school's average LSAT score and average U-GPA into the computation, show much higher correlations (.75, for example, with LSAT scores).

Performance on the bar exam is strongly related to the performance in law school. A strong positive correlation (.63) between the 4-point L-GPA and bar exam scores indicates that relative performance in law school (independent of the selectivity of the law school) is an important determiner of performance on the bar exam, accounting for almost 40% of the variance in bar exam scores. The Index-Based L-GPA has a somewhat higher correlation with bar exam scores (.68) indicating that the strength of the relationship between grades in law school and performance on the bar exam can be enhanced by taking the selectivity of the law school into account. The Index-Based L-GPA accounts for about 47% of the variance in bar exam scores. These high correlations indicate that there is substantial overlap in what is being evaluated on the bar exam and what is being evaluated in law school.



The correlation of bar exam scores with LSAT scores is fairly high (.49), and the correlation with U-GPA is also reasonably high (.36). U-GPA has a higher correlation with bar exam scores than it has with LSAT scores (.34).

The NCBE also used a linear regression analysis to see how well L-GPA predicts bar exam scores, and a logistic regression analysis was performed to determine the capacity of L-GPA to predict bar exam outcome (pass/fail). Path analysis models were created to examine the direct and indirect effects of the variables.

In general, L-GPA is strongly related to performance on the bar exam, as would be expected. The best predictor of performance on the bar exam was achieved using the 4-point L-GPA which reflects a candidate's relative standing in terms of GPA within their law school, with the LSAT scores and U-GPA as ancillary predictors.

## **CONCLUSION**

The NCBE report contains a wealth of data on the performance of candidates in various subgroups on the New York bar exam, and warrants careful and deliberate review. The Board is currently engaged in that process.

The Board wishes to express its thanks to the NCBE and most especially to Director of Research, Michael Kane, for undertaking this project and for the extraordinary effort evidenced by the comprehensive report which has been produced. This work is an enormous contribution to both the bar admissions community and to legal education, and is likely to be much studied and often cited in the days and years to come.