

THE TESTING COLUMN

PERSISTENCE ON THE BAR EXAM

by Susan M. Case, Ph.D.

How many times do examinees sit for the bar exam? A Google search reveals articles about examinees who have taken the exam 6, 8, and even 48 times. We know of famous people from top-tier law schools who failed the bar exam. But how do these isolated stories fit into the overall narrative?



were first-time takers in July 2007. The resulting sample included 30,759 candidates representing 35 jurisdictions. We followed the MBE performance of these examinees beginning with July 2007 and ending 11 administrations later in July 2012.

PERSISTENCE OF THE TOTAL GROUP

In the past decade, the data collection and data sharing practices of both NCBE and individual jurisdictions have progressed significantly to the point where substantial groups of bar examination candidates can be traced through the bar examination process. Although neither candidates nor jurisdictions provide NCBE with information about the individuals' bar admission status, which would help confirm which individuals have passed or not passed the bar exam, sufficient data are available to begin making some preliminary explorations about ultimate pass rates. We have used this improved data collection to compile a database of examinees who sat for the MBE. (By "we," I really mean Doug Ripkey, NCBE's Associate Director of Testing.)

A total of 26,247 examinees took the MBE only once. This represents 85.3% of the total group. It is possible that some of these examinees took the MBE and failed but for whatever reason decided not to try again; however, we can assume that the vast majority of this 85.3% passed the bar exam on the first attempt. A total of 2,795 examinees took the MBE a second time; this is 9.1% of the total group. Totaling these, we have 29,042 examinees, representing over 94% of our sample, taking the MBE only one or two times.

We used this data set to investigate the persistence of examinees in taking the MBE. In order to track examinees across test administration dates, our sample included only those examinees with appropriately coded Social Security numbers who

The numbers drop considerably after the second try: 886 (2.9%) took the MBE three times, 392 (1.3%) took it four times, and less than 2% took it more than four times.

Table 1 shows the number and percentage of examinees taking the MBE one or more times. (For those of you who believe a picture is worth a thousand words, Figure 1 shows the same data by percentage in graphic form.)

Table 1: Number and Percentage of Examinees Taking the MBE One or More Times

	Number of times taking the MBE											Total taking
	1	2	3	4	5	6	7	8	9	10	11	
Number taking	26,247	2,795	886	392	208	106	56	35	17	8	9	30,759
Percentage taking	85.3	9.1	2.9	1.3	0.7	0.3	0.2	0.1	0.1	0.0	0.0	100

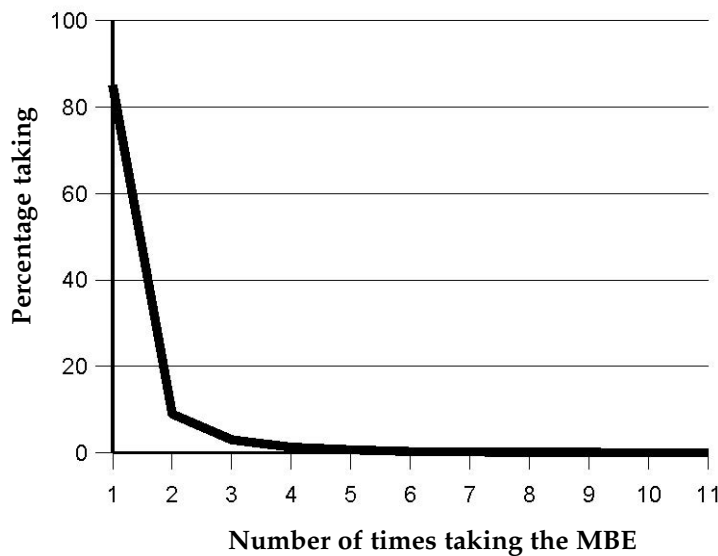


Figure 1: Percentage of examinees taking the MBE one or more times

Persistence by Ethnic Group

Table 2 shows the number of examinees, and Table 3 shows the percentages, taking the MBE one or more times broken down by ethnic group. (Once again, for those of you who are visually oriented, Figure 2 shows the percentage data in graphic form.) Of the 30,759 examinees in the sample, 17,414 (56.6%) were white, 2,147 (7.0%) were Asian, 1,395 (4.5%) were Hispanic, and 1,301 (4.2%) were black. The remaining 8,502 identified themselves as some other ethnic

group or did not indicate their ethnicity. While the passing percentage varied by ethnic group, the vast majority of each group took the MBE only once, and less than 3% of any group took it more than four times.

The percentage of examinees who took the MBE only once varies considerably by ethnic group: 91.1% of whites, 81% of Asians, 79.4% of Hispanics, and 70.3% of blacks took the MBE only once. The gap narrows significantly over additional takes. The

Table 2: Number of Examinees Taking the MBE One or More Times, by Ethnic Group

	Number of times taking the MBE											Total taking
	1	2	3	4	5	6	7	8	9	10	11	
White	15,860	1,066	286	103	54	24	10	4	2	3	2	17,414
Asian	1,739	265	74	35	15	5	5	3	5	0	1	2,147
Hispanic	1,107	167	58	34	15	5	5	2	1	1	0	1,395
Black	914	238	80	33	19	9	5	1	0	2	0	1,301
Total	26,247	2,795	886	392	208	106	56	35	17	8	9	30,759*

* Of the 30,759 total examinees, 8,502 examinees identified themselves as some ethnic group other than those listed in this table or did not indicate their ethnicity. Data are not included for those 8,502 examinees.

Table 3: Percentage of Examinees Taking the MBE One or More Times, by Ethnic Group

	Number of times taking the MBE										
	1	2	3	4	5	6	7	8	9	10	11
White (%)	91.1	6.1	1.6	0.6	0.3	0.1	0.1	0.0	0.0	0.0	0.0
Asian (%)	81.0	12.3	3.4	1.6	0.7	0.2	0.2	0.1	0.2	0.0	0.0
Hispanic (%)	79.4	12.0	4.2	2.4	1.1	0.4	0.4	0.1	0.1	0.1	0.0
Black (%)	70.3	18.3	6.1	2.5	1.5	0.7	0.4	0.1	0.0	0.2	0.0
Total (%)	85.3	9.1	2.9	1.3	0.7	0.3	0.2	0.1	0.1	0.0	0.0

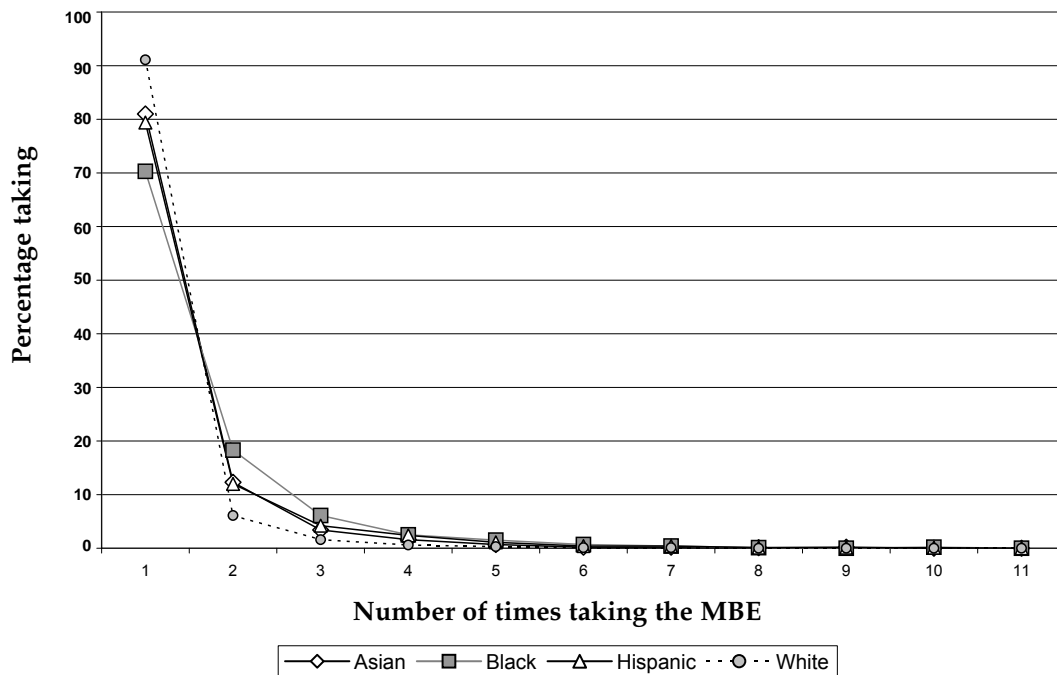



Figure 2: Percentage of examinees taking the MBE one or more times, by ethnic group

percentage of examinees taking the MBE no more than three times includes 98.8% of whites, 96.8% of Asians, 95.5% of Hispanics, and 94.7% of blacks.

CONCLUSIONS

MBE repeater rates show that the vast majority of examinees take the MBE only once. Assuming that most of them pass, we may conclude that most examinees pass the bar exam on their first attempt. There is a large gap between the pass rates of white and minority examinees on first attempt, but this gap narrows from about 20 percentage points after the first attempt (91.1% for whites and 70.3% for blacks) to about 4 percentage points after the third attempt (98.8% for whites and 94.7% for blacks).

We do not have a complete data set that indicates who passed the bar exam. However, we do have MBE

records for a large sample of examinees. The correlation between MBE scores and written scores is high, and based on other research findings, we believe the trends noted above would not change with more complete data. (See, for example, a previous Testing Column entitled “Urban Legends about the Bar Exam,” which reports on minority performance on the written and multiple-choice components of the bar exam.¹) 

NOTE

1. Susan M. Case, Ph.D., *Urban Legends about the Bar Exam*, 77(2) THE BAR EXAMINER 44–46 (May 2008), available at http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2008/770208_testing.pdf.

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