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PANEL NUMBER TWO

Harold C. Hart-Nibbrig

Thank you Linda; I had planned to say a few thank yous to Linda who beat me to the point. I want to thank her for involving me in this. It is something that I consider personally very important and it has already taken on the appearance of being a landmark or a beginning to, I hope, a great amount of study.

This panel is entitled, "Factors Contributing to Bar Examination Failure." In a sense we are going to set aside cultural bias which takes place or has an impact on a minority student's life well before he gets to law school; and we are going to look at two institutions that are immediately impacting his ability to get by the bar examination. This isn't a how-to-do-it panel, but it is a discussion of those two institutions and their role in the examination process. I would just like to set the scene by painting a personal picture or my view of what those two institutions represent to the minority student or the anglo student. I think the law schools and the bar review courses represent to the anglo student a continuum, a link to a goal. That is, successful passing of the examination and then into practice. I think for most minority students the two institutions are somewhat dichotamous in that the law school gets you to the point in time when you can take a bar review course which gets you over the exam if at all. They are not linked as a chain in a continual process.

I want to introduce all the panel members. William D. Warren, Dean, U.C.L.A. Law School; Peter J. Liacouras, Dean, Temple University Law School; Michael Josephson, Josephson's Bar Review Centers; Steven Daitch, Bay Area Bar Review Course, Inc.

Dean William Warren:

Thanks Harold. Linda has asked me to address myself to two questions. First, let me give a brief description of the U.C.L.A. special admissions program which we call the LAOP program. It has been with us now close to ten years. We are very proud of this program. It has, I think; become a successful program. We are secure enough that we, I believe, feel comfortable speaking frankly and critically about it. I have sometimes thought that the one group of people on this earth that have supported this program from the beginning, continue to support it and will support it in the future is the faculty. I think that faculty has paid its dues and has earned the right to speak very frankly about the program. We started out in the very early stages. I would describe it as the romantic period of the LAOP program in 1967. We felt we could take people with very low qualifications and work very hard with these people with tutoring and bring these people up to the level of passage of the bar. By and large that did not work.

We did work hard and we had some highly qualified people who did pass the bar and some high risk people who did not pass the bar.

In 1973 we re-thought the whole program. We decided to place more reliance on objective criteria, such as undergraduate grade point average and LSAT scores. At that point we instituted what we called the predictive index floor. We said that we will not consider people as being in the pool for selection for our program unless they had a predictive index floor of at least 1500 points. To gove you some indication of what that means, a person with a 500 LSAT and a 3.00 G.P.A. would have a 1650 predictive score.

Our first class chosen under the predictive index floor will not take the bar until this summer. If we apply our 1500 predictive index floor criteria retroactively, we find that, for instance, in the class of 1974 those who had a predictive index of 1500 passed the bar at a rate of 70 percent. And taking our program as a whole, even in the early days and even when we were taking very high risk students, we have had over-all a 60 percent passage rate for everyone and we have had some very good passing figures in recent years. We have found that if a student has a 1500 predictive index score he has twice the chance of passing the bar than he would have with a score under the 1500 mark.

We have had another review of the program that some of the people in this room participated in. This issue, debated in our recent go-around, has been the participation of students in selecting people for our program. We have always had an interviewing process in which U.C.L.A. students have interviewed prospective students for that program. This has come under criticism by the faculty; this has come under criticism from other quarters. It was thoroughly looked into and the faculty decided that the interviewing process was a positive process, was carried on at a high level, and was on the whole a beneficial one and decided to keep that process. The faculty also decided to keep the process in which the students have an input into that program in terms of final selection of participants in the program. Although, of course, the final selection is made by law by the faculty.

We have then a program which has 200 persons, twenty percent of our enrollment. It is basically an admissions program and after the person is in law school they must meet the same standards as any one else in law school. There are some tutoring aspects and some remedial aspects if the people in the program want those aspects. That in a nutshell is our program. As I say again, I am happy about the program. It has caused some problems but it has also given us a great deal of satisfaction. I see as the greatest threat to the program now, the likelihood of an adverse decision by the California Supreme Court about the way we select students. But that is going to be the subject of another program, not this one.

Linda has also asked me to address myself to the topic, whether law schools should take responsibility for preparing minority students to take the bar exam.

It is my position that our law school program does, in fact, teach them to pass the bar exam by teaching them legal analysis and by familiarizing

them with legal principles, and does so every day of the week. This is a long three year process. It is unspectacular and sometimes boring, but it works.

Somehow I got the idea when I was in law school that there are two distinct bodies of law. One that you learn in law school and another that you learned to pass the bar. That is a fantasy; I never found that other body of law. There is only one corpus juris, and to pass the bar one needs the ability to analyze a legal problem and you need some knowledge of legal doctrine and you have to know how to apply it to reach a solution.

Our regular admitees on the last bar exam, July 1975, passed the California bar exam at the rate of 95 percent. This rate of passage on the toughest bar exam in the country shows that our program does in fact aid our students mightily to pass the bar exam. I have an open mind on the matter and I am willing to be persuaded to the contrary that there is anything more that law schools can do to help minority students than they are now doing to help all students to pass: that is to give them a good education.

Our statistics at U.C.L.A. form a very clear pattern: the better the LSAT and undergraduate grades, the better the law school grades. The better the law school grades, the higher the bar passage rate. It is a very persuasive correlation. I am persuaded that minority students with a predictive score of 1700 or 1800 will do as well as anglo students with those figures. As a matter of fact, indicators are that our minority students are over-achievers.

For instance, we have 20 percent minority students having lower admission figures than the other students therefore the predictors say that they should be in the lower part of the class, but they are not. We have minority students in every quatrile of the class and the same is true of the bar. We find that minority students that come to us with LSAT scores of 520 and over and undergraduate grade point averages of 3.20 and over are doing as well on the bar as regular students with LSAT scores 150 points higher. In short, before we change what we are doing in law school instruction to get more minority students through the bar, let's be sure there is something wrong with the instruction now. If minority students will do as well as anglo students with the same qualifications I submit the problem is not instruction, but admissions. If we simply raised our floor of admissions to a 500 LSAT and a 3.00 g.p.a. we should probably have very few prople who would not get by the bar on at least the second time. We haven't been willing to do that because we have been willing to take high risks because we want more minority lawyers, but the fact that we will take greater risks does not mean that we are failing in our task of teaching students.

The sad, cruel lesson we learned at U.C.L.A. is that if people with low admission standards are admitted, however strong their motivation, however good the remedial teaching, they are going to have a great deal of trouble on the bar. Their chances on the bar are going to be from 1 in 5 to 1 in 10. I question if this is a rational allocation of our scarce resources.

Should law schools do something other than teach well to help minority students? Should we tutor? Yes, I think we should make tutoring available. When I was here before at U.C.L.A. some of the most pleasant enjoyable teaching I did was my tutoring sessions. I got to know the students.

They got to know me. I felt good about it, and they felt good about it. It assuages faculty guilt. Whether it significantly contributes to passing the bar is another matter. The last group I tutored intensively for a year are very good friends of mine and I try to keep in touch, but their bar passage rate was not good. I think we should keep on tutoring because it does something to reduce the cultural shock. I think it builds a bond of friendship and understanding, but I think we ought to recognize the limitations that tutoring has.

Should we have a third year bar refresher course done by the law faculty? We have tried that a couple of times and we don't do anything near as well as Mike Josephson or Steve Daitch. We tried it a couple of years ago. The faculty geared up to deliver themselves of bar review type lectures giving all the answers for once and no one showed up. Students are very busy during April and May in their last year of law school. Our law school calendar is a bad one anyway, we extend so far into June. I don't think law schools do that well.

What about financial help after graduation? Well law schools are not very well able to do that because we don't have enough financial resources to give help before graduation. There is something you can do about it. There is now a bill pending before the assembly; if you have a pencil with you it is AB 3985, introduced by Ken Mead. It is worthy of your support because it will provide some funds to help minority people during that period when they are preparing to take the bar examination. If you want to write a letter, write it to assemblyman John J. Miller, Chairman, Committee on the Judiciary, Sacramento, California. I think it is a very good bill and I hope it passes.

So I have taken the position that there is a lot law schools can do to increase bar passage. We can select students with a decent chance of succeeding in law school and we can teach them well the art of rigorous legal analysis. Now this may seem trite and unimaginative, but this is the conclusion most of us on the U.C.L.A. faculty have arrived at and we have come at it from all idealogical directions, I might add. After nearly ten years of experience, I come here today asking whether any of you had any convincing experiences that have led you to conclusions other than mine.

Peter J. Liacouras, Dean, Temple University Law School

FACTORS CONTRIBUTING TO BAR EXAMINATION FAILURE

The real problem seems to be with the Bar Examiners and their failure to reply to this simple question: what, according to them, constitutes the minimum competence to practice law, and how does a score of 100, 120, 130, or 140 (70% of 200%) on the MSE portion of the Bar exam rationally relate to such "minimum competence?"

Are the "pass rates" related only to displaying "minimum competence," or is there more?

Consider Pennsylvania, for example, where the "pass rate" for Blacks in the period between 1955-1970 was 27.7% while the overall "pass rate" was 67.6%. Then came the widely-publicized "Report of the Philadelphia

Bar Association's Special Committee on Pennsylvania's Bar Admission Procedures: Racial Discrimination in Administration of the Pennsylvania Bar Examination" (the so-called "Liacouras Committee Report").* On the Bar exam immediately following publication of that Report, the "pass rate" for Blacks went up to 100%, and averaged 75% during the next three years.

In defending such high overall "pass rates" (85%-98%) on the Pennsylvania Bar Examination in the 1971-75 period, the then Chairman of the State Board of Law Examiners, Judge Roy Wilkinson, stressed that the exam was a "minimum competence" test designed to week out only the incompetent candidates. Judge Wilkinson, an early advocate and defender of the MSE, reasoned that for each of the 200 questions in the MSE, there are 2 clearly incorrect answers and 2 other answers which may be correct. According to Judge Wilkinson, a Bar candidate who has the competence to eliminate the 2 clearly incorrect answers to each of the 200 questions demonstrates "minimum competence"; consequently, the required score for minimum competency would be 100. The "minimally competent" candidate would have eliminated the 2 clearly incorrect choices, and would have been right 50% of the time in the choosing one of the 2 "correct" answers. And this was the position of the Pennsylvania Board of Law Examiners for awhile.

Coincident with this rise in the overall "pass rate," however, complaints began surfacing about an "oversupply" of young and competitive lawyers. Judge Wilkinson then retired from the State Board, and the required score in Pennsylvania for passing the MSE was then raised to 135—that magic 70%, and the "pass rate" on the January 1976 exam dropped to 67% with the Black "pass rate" even lower (about 45%). We are now asking the State Board why the minimum passing score was raised from 85 to 135, and why 135 is a better reflection of "minimum competence" than 100, 120 or 125? Should those who passed the Bar exam in 1973 with an MSE score of 125 now be flunked retroactively because they lack the "minimum competence" of 135 under the January 1976 standard?

Irrelevant considerations aside, "minimum competence" is the only legitimate standard to establish and implement for passing the Bar exam. "Minimum competence" is also the required standard for earning a degree from law school. For a degree to be awarded, we do not ask whether you hold a 2.93, or a B Plus, or are cum laude; we require only that you reach the minimum requirement of 2.00 with the minimum residency points. In policy terms, accordingly, the question for Bar examiners and law schools is the same: does 70% or 50%, or 135 or 100, or any other symbol, percentage, raw or adjusted score constitute the required "minimum competence?" Yet it is this crucial question to which State Bar Examiners are not responding.*

If law school faculties are unable to equip their students with "minimum competence" during three or four years in 1300 hours of classes 130

* Printed in 44 *Temple Law Quarterly* 141 (Winter 1971); reprints are available by writing directly, to Dean Peter J. Liacouras, Temple University School of Law, 1719 North Broad St., Philadelphia, Pa. 19122.

* Once we decide what "minimum competence" is, everyone falling within that class must be passed.

hours of rigorous examinations, how can cram schools accomplish this goal in 6 weeks? As much as I may respect my wealthy friends who run the Bar cram schools——and who benefit directly from these higher flunk rates—they are hardly more gifted teachers than my law school colleagues. It should not make much difference, therefore, if a law graduate attends, and conscientiously studies at, a cram school. But it does appear to make a difference. Graduates of our Pennsylvania law schools, by large, did not take (or conscientiously study at) cram courses in the 1972-75 period because just about everyone of them was passing the Pennsylvania Bar examination. When everyone was passing, the self-perceived urgency to take a cram course diminished, but with the overall pass rate dropping to 67%, and the Black pass rate falling to about 45%, anxiety and cram school enrollments increased.

Our experience in Pennsylvania is therefore not unlike yours: there is a national problem. It is a political problem. But it is not necessarily a "minority vs. non-minority" problem. Look at some other national trends. Lower Bar exam "pass rates" are only part of what appears to be a multi-level trend requiring more from the new lawyer than is required of those who are already lawyers. Accordingly, in some states (Indiana, for example), certain courses must be taken in law school before one may sit for the Bar exam even with the J.D. degree earned from an A.B.A.-approved school. Next, if you want to practice before certain courts, you may have to take specific courses in evidence, trial advocacy, etc. (see the Clare Committee Report, in the Second Circuit, and its aftermath). There is also a movement to require formal continuing legal education courses to qualify for specialization practice. And there is the lower "pass rate" on Bar exams. To someone not bogged down with fancy footwork, this multi-level trend looks like an attempt by the persons who control the Bar and specialized areas of practice—those who are senior—to preserve their turf against the younger persons who are knocking for admissions at the Bar's door.

The correct solution is quite simple. It is not to lower "pass rates" to "keep lawyers honest." One Judge, who shall remain nameless, told me quite recently (when I observed that Bar exam "pass rates" in his state had dropped significantly) that this change was necessary because we would otherwise "have severe disciplinary problems because there is not enough business for all of them." That reasoning is simple but is also pernicious; it demonstrates no faith in our professional colleagues and in the market place. If widespread, such reasoning may help explain support for the tightening trends earlier noted. It may also help explain why the Bar exam "pass rates" have gone down; if so, this problem may be rectified quite simply by substituting a legitimate motive and standard: the Bar exam requirement should be moved to a level genuinely insuring "minimum competence" without regard to such irrelevant considerations as the state of the economy, lawyer overpopulation, etc. The market place, individual initiative and minimum competence should decide how many lawyers we have. It is not right to "pull up the rope" once you reach the top of the mountain. Nor is it right to unleash incompetent lawyers on the public.

As to the related issue of law school admissions: We should not be slaves to the ETS psychologists who have created the demigod called the LSAT, or to ostensibly "neutral standards" that seek to measure your achievement and aptitude out of context.

Those of us who stem from Southern European or Jewish stock or can identify with such ancestors; those who remember the 1920's and 1930's and the direct discrimination perpetrated against those minorities and other persons in the name of "quality-insuring" standards; those of us who recall that the AALS got started as a direct attempt to stop the development of evening law schools which threatened to "overpopulate" the Bar with too many of "those types of persons" who would bring "impurity" and "lack of congeniality" to the Bar—everyone who understands those earlier social, historical periods—knows the real and continuing problems in law school admissions and Bar admissions. In the overwhelming majority of cases, the real problems are not with the applicant but with the gate-keepers.

Law school admissions policy is quite simple. Law school admissions is the first step in getting a major piece of the political, economic, and social action in this society. The first question that must be asked in law school admissions is, therefore: Who, from what groups of society, from what backgrounds and merits, to achieve what kind of legal profession and larger society will be given the opportunity to enter the legal profession and become our future community leaders by first of all getting into law school? Raising these policy questions makes sense because, pragmatically, those are the effects of law school admissions. Are the standards actually used in law school admissions explicitly related to such policy? If not, why not? What does the LSAT have to do with such policy? Who is being helped and hurt by this or that standard?

Certainly we must look at the exclusionary effects of the LSAT. We fool only ourselves if we maintain an aloofness on the socially exclusionary effects of admissions standards and procedures—an aloofness that began after the Second World War in reaction to the direct discrimination practiced during the inter-war period. Such aloofness produced "objective" factors which were established and then standardized to diminish the opportunity for individual bias. From those noble purposes, however, benign neglect led to new forms of group exclusion: racial minorities, among others, were being denied admission due to these new "objective standards." ("A rose by any name smells just as sweet.") But law schools in the late 1960's made exceptions for Blacks and selective other minority groups because it became clear (through direct action, etc.) that the LSAT was indeed discriminating and that "aloofness" was aiding such exclusionary results.

The past ten years should have taught us, further, that the way to approach all admissions—not just special admissions or racial minority admissions—is to approach them directly and explicitly.

Issues in law school admissions have much in common with Bar examination issues. The "Liacouras Committee Report" of 1970, for example, indicated that the Bar examination was invalid because the Bar Examiners

did not know whether their Bar exam was an "achievement test" or an "aptitude test."

An "achievement test" is supposed to measure what you already have learned about a subject, field or process. What kind of an achievement test is the Bar exam if a cram school can successfully give you in six weeks what you could not achieve in three or four years at law school? (The same goes for LSAT cram schools.) The successes of these cram schools tend to diminish the "achievement test" feature of the Bar exam, or tend to render the three or four years spent in law school unimportant (and perhaps irrelevant) if one can pick up enough achievement to meet "minimum competence" in a six-week cram school.

Is the Bar exam an "aptitude test?" An "aptitude test" tries to predict how well you are going to do as a lawyer. We do know that neither the six week cram school nor law school, and certainly not the LSAT, deliberately measure all of the major factors that constitute a competent lawyer. For instance, are these factors deliberately measured: common sense, practicality, motivation, judgment, idealism, tenacity, character, maturity, integrity, patience, preparation, perserverance, how to handle clients, how well you handle clients, creativity, personality, oral skills, organizational ability, leadership—in sum, much of what it takes to be a good lawyer and community leader.

All the LSAT tries to measure is certain syntactic skills (implication, co-implication, etc.) as well as some semantic skills, but nothing pragmatic. Law School exams, especially first year exams, may be well predicted by LSAT's, but that tends to reveal more about who prepared the exam than it tells you about the exam-takers and whether the exams are valid. The same goes for the Bar exams.

Nobody should be admitted to law school or the Bar who lacks minimum competence or needs supportive help. There should not be two classes of citizens in law school or at the Bar. Law school examinations—just as law school admissions standards and Bar examination "minimum competency" standards—should be practical, fair and not simply a perpetuation of the self-image of the testers or a reaction to over-population or selective objectivity.

What do law school admissions standards based solely on GPA and LSAT have to do with selecting each of those applicants who, taken as an individual whole, will probably become good lawyers? Without proof of that premise, how can we be convinced that by lowering the GPA and LSAT requirements, we necessarily are lowering achievement standards and aptitude for lawyering? As I said earlier, the problem seems more with the tester than the applicant. To say that minority group applicants require extra, supportive help smacks of the "white man's burden" syndrome. If we had admissions standards which were neutral, fair, merit-rewarding, quality-insuring, and job-related (if that is what regular admissions standards the GPA and LSAT actually did, and what Bar exams were accomplishing), and if the results were the same as today, then I would be forced to decide whether we need a truly "preferential admissions policy," for historical or other reasons, to include members of groups otherwise excluded. But we

are from that point. We do not have such neutral admissions standards. They tend to be artificial, exclusionary standards. They are standards not positively corelated to lawyering even if they may be predictors of how well one will perform on first year tests in law school and on multiple choice Bar exams. I, therefore, part company with some of the other panelists' analysis, although our objectives may be similar.

STEVEN DAITCH, BAY AREA REVIEW COURSE

Thank you Harold. I would like to thank the members of the Black Law Journal for inviting me down to sit on the panel. I feel very much like the junior member of this panel as I am the junior member of my firm. I think you will all find very shortly, when you are the junior member, that the senior members sit around and discuss the problem in generalities and then look to the junior member to actually solve the problem, do the work, spend the time in the library, etc. In the same manner, the bar reviews listen to the problems, but we are charged with solving them, if you will. It is our business to get people through the bar exam.

Let me first address two very short remarks to the law school experience. I am probably the member here who is closest to that experience since I graduated two years ago. My first suggestion would be to change the curriculum. Teach law and give the answers from the beginning rather than have a review at the end. Let me leave that for professors to discuss; I think many students here realize we are experts in one thing, and that is teachers. You know instantly whether someone can communicate. You have sat in front of teachers all your life. That is the secret to learning. Many of us possess the knowledge; the problem lies with communicating it. Secondly, B.A.R. has been asked by our school representatives this year, and we have representatives from all the minority groups from all the law schools in California, each of the 61, to look into the problem of helping minority students to pass the bar exam. What we have done is to actively seek out participation from minority students. We have said, you tell us what we can do. What can we do from a commercial point of view to get you through the bar exam? We have met with the Third World Caucus at Boalt Hall. This week I met with the minority students at Hastings Law School. One other observation with the law school experience that came out of those meetings would be to assimilate the minority students into the law school experience. The San Diego Law Students tended to form their own study groups, and participate together in many activities which never broadened them at all. The Hastings students especially pointed out that they had made an attempt to form integrated study groups, and found very quickly that the minority students, if I may generalize, always jumped to concludions when trying to solve a problem while the anglo students spent much more time trying to analyze the problems and that is the key to law school exams as well as the bar exam.

As far as the bar exam process and what the B.A.R. Review does to help minority students, first of all let me pose the problem. Perhaps I can do it through the words of Richard Nixon. I was impressed, for once, when

Mr. Nixon pointed out in his resignation speech that you are going to have failures. And here is a man whose only concern, in my opinion, was his place in history, pointing out that when you flunk the bar exam it is traumatic, but you try again. That is how important the bar exam was to a man who was our only resigning president. The bar exam is important to every student whether you are minority or not. When we made a suggestion as to some special writing programs the Law Review called us the next day and said we want in. That is a big problem for commercial bar reviews. How do you design special programs at the same cost, and then exclude students who are just as concerned as everyone else?

And that leads to the initial problem—that many students do not have the money to take a bar review course, that has already been discussed. There is the bill pending in Sacramento. In addition you may also note that the Davis Financial Aid office now provides funds to students who are on Federal grants in Law School. They get $400 to get them through the summer. Now that money is primarily used for bar review courses and the bar exam fee. Secondly the Hastings group will have a sum of money available. We have found that about half the students cannot afford a bar review course. If you can't afford it, it is not going to help you. Secondly we did some studies at Boalt Hall of the twelve minority students who took the B.A.R. course, which six passed. We found the other six who did not pass simply did not do the work. By that I mean four wrote two out of the twelve exams that we suggest they do. Those same people attended 30 percent of the lectures. Again, just as in law school, if you don't do the work, you're not going to get through. Second suggestion, obviously, if you get into the course, read the outlines. They are designed to review the law that you should have had in law school. The law that we have found in our experience is always tested in California. Third, attend the lectures because the lecturers who are teaching you there are the very best from each and every law school. They are true communicators. Many of them have six, seven or eight years of experience in teaching and in bar review teaching. Getting contracts out in twelve hours is not an easy task, but if you are experienced you can get it through. And finally, do the exams. The exams are previous California Bar Exams, they are simulated exams in terms of pressure of writing in a crowded room.

The last point I would like to make, and one that I don't have any solution to at all is the panic factor. I panicked when I took the bar and I luckily passed. My panic was caused by walking into a room and seeing 3000 people sitting there. It was like walking through a pressure barrier. I saw people fainting, literally standing up and falling over a table. In the typewriter room there were people with stereo head phones with four typewriters around their desks—pure panic. The thing that came out at Hastings is that minority students panic even more because of all the discussion and statistics we have heard today. And that is legitimate. That is a factor. Somehow we have to break down that panic. So really my purpose here today is to find out what the solution is. What do you want the B.A.R., the bar review to do? What will put you at ease? What will help the panic? How do we solve the problem?

MICHAEL JOSEPHSON, JOSEPHSON'S BAR REVIEW CENTER

I also am a teacher of law, a professor. At least I am not intimidated by the academic qualifications of my colleagues although I have enormous respect for it. And I would like to address myself to some of the questions here as to what does the bar review do and what does the law school do in relation to it. First of all, I agree in part with Dean Warren that the law school is doing all it can do in terms of bar reviewing. Not all it should do but all it can do.

I am a critic of law school education as I am of bar review education and of the exams, etc. I think that most of us who have been through the law education system believe it is inefficient and believe that a lot more learning could take place. I mean just good solid teaching could go on; but the nature of institutions, and the way that faculties are selected and the way that tenure is granted are not the most efficient means of being sure that the absolute product of the system is the student. It often tends to be a number of collateral goals. I think that when law schools have tried to go further in preparing people for law exams, and there is no logical reason why they shouldn't, they run into these potential inadequacies.

Very few law schools, and I taught at quite a few of them and know a great many more, can staff a quality bar review course in each and every area. By its nature they only have one or two people teaching in a particular area. There are exceptional communicators. There are often people on the faculty who are exceptional in other areas and may not be best at communicating a large amount of information in a short period of time. On the other hand I disagree entirely with Mr. Daitch about trying to make the law school teach any differently in terms of teaching answers. I think the law school should be more efficient at what it is doing, but I think you should be concerned about learning how to think, how to understand the process of law. That is what makes bar reviewing so easy, and frankly it is easy. Whether it be my course or a B.A.R. course it is a very easy thing. It is pretentious if were were to suggest that we are doing any basic learning in a bar review context. We do a little polishing, a little shining, perhaps, but we are most valuable in the area of diagnosis and maybe in exammanship, which I want to address myself to at some length. We spend some time in that area where law schools tend to ignore that.

Law schools say that if you're good you will prove it, and go out and do it. Whereas, in reality, there are many people who, from the LSAT on, are stumbling on the system of being evaluated not necessarily on whether they have achieved the skills and abilities that they ought to have achieved. I think that the law schools should and could develop more thorough going programs in exam savvy, the exammanship process. I took many of my finals sitting right over there in that corner because I graduated from U.C.L.A. and I learned that the more I went to law school the less I did. That is very frankly the reality. I didn't buy any books my last two years of law school, except in one course. And my grades stayed up, in fact went up, because I had exam savvy. I am not very proud of that in retrospect. As a matter of fact now I teach courses against people like me. I have designed the course, I tell my students, to prevent people like me from ever

getting through. But what I am trying to say is that for reasons that have little to do with intelligence or anything else, I had the knack, like some people can sing: I could write examinations. There have been occasions, both in the teaching of law to law students, to special admittees and of course in bar reviewing, where I have had the opportunity to concentrate on these skills that I had or those abilities and to try to convey that knack to other people. It is not easy, anymore than finding a good painting teacher or anybody who can necessarily teach you things that they can do. But I think it is a terrible mistake to set aside the problem of exammanship from the problem of substantive quality.

Now Dean Liacouras' answer was simple and I was and I am pleased to know I am both rich and your friend. I don't know which pleased me the most. It was certainly a pleasure. I might add, incidently, that there is the tendency of those who are only in full time education, and haven't dabbled as I have outside, to marvel that someone can make money offering courses at such a cheaper rate than the law school themselves do. But I'm sure you don't begrudge yourself profits where we can make them, given that we can go through your schools and help make them more efficient.

But what I am concerned with, although I enjoy such sparring, is the problem of trying to determine what is the role of the bar review course, vis-a-vis passing the bar. Now Dean Liacouras's answer is easy. Lower the standards and I don't mean lower than if the standard was valid in the first place. But I mean if you change the definition of minimal competence the problem is solved because everybody passes. It happened in Pennsylvania after the report, and is illustrated by some of the statistics, quoted by Mr. Bowles, and I know in all good faith, about how things improved in 1972 when the Multistate came in. It concurred with a whole new policy in Pennsylvania where for awhile everybody passed. That is no longer the policy in Pennsylvania. That is no longer the policy as more people are failing. My problem with that answer is that it changes with whoever is in the bar at various times. If it is an easy group of bar examiners or it is an easy state you no longer have a minority problem. If it is a difficult state you have the problem.

So I would like to focus, without addressing myself to the problem of where minimal competency should be, on the fact that if we are going to judge minimal competency, why should the minority group be on the bottom when they draw the line. If they are going to start drawing the line at 85 at 90, 95 or 100, why is it that more and more minority students get swept in as the line goes up? I think that is the uniform problem, whether or not we decide to change minimal competency. And I also think, by the way, that it has to be recognized that we run bar review courses all over the country including Pennsylvania, as I think you know. There is no question that the standards are very different from state to state. In my view, California is one of the absolute hardest states. Many, many people take my course and fail the exam when I am absolutely confident and, in fact, I have often sent the same student to another state and they pass that exam. So what you define as minimal competence certainly varies from state to state. The states have a right to do that certainly. But if there is some suggestion of a national norm, it just simply is not true. There are people who can

pass certain state exams and not others because of the way the exams are evaluated.

But what is a bar review course supposed to do? The bar review course has to take you as you are at that stage. That is the important thing I want to say now. Whatever criticisms I have of law school, it's too late for that. I have to take you exactly as you are, with all your deficiencies, all your fears, all whatever inadequacies you have, and first of all try to diagnose them. Try to find out where it is you are going to go wrong and try to solve them. Very often you can't do that. If in fact you really can't put two coherent sentences together, no bar review course is going to make it possible for you. But there are a number of things that make people fail that are purely solvable. I want to tell you the three things that make people fail bar exams. I think it is fairly evident, but by isolating them you can talk about how to cure them.

The first and most obvious one is information, simple lack of information. This is more important now that the multi-state is in. This should not be confused with the problem of access to information. There are so many sources, with and without the bar review courses. With all the bootleg copies, the outlines and everything else the problem is not access to information, it is retention of information. That at a finite point in time you have to retain an enormous amount of data. Most people have gotten through law school on the cram method, especially by the second or third year. That is one of the deficiencies of law schools, in spite of all the talk and in spite of the fact that they say avoid the secondary sources. How come most students can get through the exams relying on the secondary source? Because perhaps all of the promise of the educational committment hasn't been met. But the reality is, and I think you all know it, you tended to get through law school on the cram method. Because of that you are unprepared for an exam that is going to test anywhere from seven, as in Pennsylvania, seven or eight, up to twenty-two substantive areas of law. California had sixteen one time. If you were only allowed two days per area to cram, you would be alloting, in California, 32 successive days. How many all-nighters can you pull? Nobody has that kind of retention. And the fact is that you may not have been learning right because you haven't had to learn right. You haven't had to learn right. What happens is you fill the bathtub brain full of information, and two or three days later you pull the plug and it is gone. If some of you took a look at the exams you wrote a year ago, you would be amazed that you ever knew that. So one of the first problems is to recognize that the learning approach to a bar exam is very different because it goes over such a long period of time. The course description mentions only a six week period of time, but in six weeks we telescope three years and so, as a result, if you miss three days you miss torts. So as a result you've got the problem of having been exposed to, and having it whipped by in the first week, all of torts and then seven or eight weeks later, which feels like three years later, having still retained so much of the detail that even your law professors didn't expect it of you. Because the multi-state requires detail fo memory that the traditional essays do not entirely expect of you.

As a result you have a severe retention problem. I am not going to talk about our bar review course; we do a certain thing to try to solve the retention problem. The B.A.R. does a certain thing to try to solve that. All I am trying to do is say that retention is a part of the problem. There is nothing law school could do in three years to solve that particular problem except maybe give you a somewhat stronger foundation so that it is a little easier for you to refresh yourself, a little easier for you to get in and polish yourself up. Because there is no way, no way anyone who is prudent would go into a bar exam that has a reasonably substantial failure rate like twenty percent without going through some kind of conscientious review. The retention of information is vital and you've got to realize that involves a lot of work.

I have to echo one of the things that Mr. Daitch said. We have found in the analysis of our minority students that there is a particularly high percentage of students that do not do the work. I am not going to simplify it be saying that blacks jump to conclusions, or blacks are lazy and they don't work. I want to say that although I think this kind of conference is valuable for long run changes, I also think it is one of the causes of failure. Let me tell you why. It inherently causes the kind of anxiety, the kind of problem, the kind of paranoia that makes it difficult for you, as a individual, to cope with the exam. If you come to it and say, "It's against me, it's against me. Look what happened in Alabama, look at what happened in Washington, D.C. , and it's going to happen to me," you are fighting the entire battle of the entire cultural movement, as well as trying to climb your own mountain. It is very, very difficult. I only want to urge each and every one of you, as you approach the exam yourself, that you have got to, at that point in time, concentrate on getting through yourself. If it is a bad ballgame, it is still their ball game. If the rules are no good, they are still the rules until you get over them. So my analysis is that it is too late for reform for yourself. If you are taking the exam in July, the reform will help someone else. I would like to help you concentrate on the fact that right now you don't have the gun. It behooves you to be conscious of who does.

Therefore the exam is passable. It is a very passable exam. I don't see any significant difference between minority and non-minority students when they have an approximately even start. But, if I have someone from the bottom ten or twenty percent of the class, it means that they haven't succeeded on exams in the past, they haven't been playing the game right all along. So it is no surprise to me that they are going to be highly failure prone when they are asked to play the game with all the marbles on the table. So as a result it seems to me that it is you and exam and you have to do what it takes. You have to work and you have to diagnose yourself. And you can no longer be intimidated. So often you hear that the law and justice should be color blind; so should you at some point in your life. You have got to say it is just me. And do the best you can. You cannot afford to carry these extra burdens on you in an exam that is inherently difficult.

So that deals with the anxiety problem which I think is serious. Anxiety is often produced by knowing that you didn't work and they feed on each

other and you say they are going to get me. They are not going to get you, you're going to get them. And you really can, but but you've got to be aware of it.

Finally is the problem of exammanship. Here is where you just have to practice. Now practice is not enough because if you are practicing bad things over and over again, you're still a bad pianist. You need practice under some tutoring; the law schools could provide this. I would like to see the law schools provide more of this kind of thing in exammanship. Bar review course, of course, can provide it because they can critique and comment on it. But whatever it is I don't want to leave on a pessimistic note because I see that the statistics are improving. A lot of those are old and come from a time when the admissions standards were handled differently than they are now. There are a lot of changes occurring in terms of the percentage of minority students passing, but I think that as minority students begin to think that they are just law students, with the same strengths and weaknesses as others, maybe some more in some areas, than their chances of passing are going to be substantially improved.

QUESTION: I was so impressed by what Mr. Josephson said. I am really excited about the concept of being a winner. I am a first year student here at UCLA. I am preaching the gospel of success. I want to get some feedback from the panel on this, but I am completely against the perpetuation of the philosophy that I am different or that I am inferior. I am a success. I am looking like a million dollars, I just scored heavily on my exams and I am feeling good. I would like to get your feedback as to the psychological approach to this thing of being a success.

DAITCH: One of the jobs I hold at B.A.R. is counseling people who did not make it; they stream into my office. You have to start at the beginning. The first thing that you have to recognize is that there are about 32,000 graduating from law school this year in the total population of this country. People who make it into law school are a total complete success right there. I am sure U.C.L.A.'s admission policy emphasizes this a bit more. If you get into this law school that will be the most difficult thing that will ever happen to you. That is kind of an eastern philosophy. I don't know whether Temple University Law School has that, but when I applied to some eastern schools that is what I was told. Secondly, your college scores, your LSAT scores, you have to continually go through a process of building yourself up. Then, when you hit that exam, especially at U.C.L.A., you just have to look around the room and say, "Hey, I am better than half the people in this room." That's it. No matter what happens. More than half pass obviously. You owe yourself the job of psyching yourself up and making use of everything available to you, but you can't let yourself down. For instance, when I used to walk out of an exam tradition was that everyone would stand around and talk about it. I would just walk away as fast as I could. I would say, "I am not insulting you. I just don't want to hear about it. I have to keep my head together." Every student in this room can do the same thing. It is a constant war that has to go on.

Hart-Nibbrig: I will make a brief comment from a minority point of view. Having been through the process on the law school and bar exam level, I can't view a greater problem. There are problems as great, but the anxiety and the intimidation of the precedent set before you that the bar exam is the big obstacle is something to be reckoned with, and I do believe you ought to reckon with it way before that exam. Keep a successful attitude-look upon it as something you will achieve and keep thinking that way.

Liacouras: Let me say a word about that. When I was in law school 20 or 25 years ago, the bar examination had a 50 percent pass rate in Pennsylvania and surrounding states, and we didn't emphasize tha bar exam at all in law school. We never gave it much thought. I came out here and it is all anyone is focusing on. I repeat what I said before, you should focus on what is minimal competence. Why is 140 or 150 minimal competence and not 70 or 80? The burden is on those who would draw the line somewhere to show minimal competence. What we have done at Temple is try not to single out students, any students. We recognize that predominately white law schools have had historically an environment which has been comfortable for minority persons only who were super and majority persons who were mediocre as well as super. What we have done deliberately has been to bring minorities on as a part of our faculty. We now have 6 minorities and five women on our full-time faculty totalling forty. Now that creates an environment of your not being so different and it creates the kind of backup to what was said earlier. Everybody at our school is treated with the same lack of due process. There is not an equal protection problem. There is a lack of due process problem. We treat everybody in a very bad way, but it isn't because you're minority or majority, and I think that is the essense of the rhetorical question stated by our future president and I would like to back him up.

Question: The instructors tell us to go in with this great psychological lift, but sometimes you instructors intimidate us as students. Usually, during the first week you say to look to our right because two of those people won't be there next year. So maybe you instructors could look at it from that perspective. My question probably should have gone to the Committee of Bar Examiners. What are your thoughts as to some type of critique on the exam papers after a person has flunked the bar explaining the issues missed instead of just a cold 65 or 50?

Warren: I think there will be a response to that this afternoon. One of the conclusions of the California commission was the possibility of giving out model answers.