March 15, 2018

Secretary Daniel Alvarez
Secretary of the California State Senate
State Capitol, Room 3044
Sacramento, CA 95814

Mr. E. Dotson Wilson
Chief Clerk of the Assembly
State Capitol, Room 3196
Sacramento, CA 95814

Ms. Diane F. Boyer-Vine
Legislative Counsel
State of California
State Capitol, Room 3021
Sacramento, CA 95814

Dear Secretary Alvarez, Mr. Wilson, and Ms. Boyer-Vine:

I am pleased to submit the attached report in accordance with the requirements of Business and Professions Code section 6046.8 which provides in relevant part:

> [T] he board of trustees shall oversee an evaluation of the bar examination to determine if it properly tests for minimally needed competence for entry-level attorneys and shall make a determination, supported by findings, whether to adjust the examination or the passing score based on the evaluation.

The statute directs the Board of Trustees to submit the results of the evaluation by March 15, 2018, and every seven years thereafter.

This statutory requirement coincided with direction that the State Bar received from the California Supreme Court last year which required the Bar to undertake a "thorough and expedited study" by December 1, 2017, to include among other things:

(1) identification and exploration of all issues affecting California's bar pass rates; and
(2) a meaningful analysis of the current pass rate and information sufficient to determine whether protection of potential clients and the public is served by maintaining the current cut score.

Pursuant to this direction, the State Bar completed three separate studies on the California Bar Exam (CBX) in 2017 and has a fourth study currently underway. In addition to studies initiated in 2017, the State Bar has decided to embark on the first ever California job analysis of the legal profession in 2018, an effort which will aid the Bar in ensuring that CBX content relates to the knowledge and skills required of entry-level attorneys.

These studies have reflected a watershed moment in the history of the development and analysis of California's attorney licensing exam. The body of work has greatly increased our understanding of what we have done well and where we need to improve.

The first study, *Recent Performance Changes on the California Bar Examination: Insights from CBE Electronic Databases* (Performance Changes Study) evaluated the historical pattern of the CBX pass rate and changes in applicant characteristics based on information that was readily available in the State Bar's database.

The findings from the Performance Changes Study suggested that other intervening variables may be impacting CBX performance. As a result, the State Bar initiated a *Law School Bar Exam Performance Study* soon after the completion of the Performance Changes Study. This study will merge law school performance data with individual student credential information. The State Bar anticipates that when completed the Law School Performance Study will help to provide greater context for understanding the significant decline in bar passage rates over the past decade, with a particular focus on any changes in student characteristics that might explain the downward trend. The anticipated release date for this study is June, 2018.

The second study completed in 2017, *Standard Setting Study for the California Bar Exam* (Standard Setting Study) focused on an analysis of the appropriate pass line, or cut score, for the CBX. The study concluded that setting the passing score at a combined scaled score between 1388 to 1504 would meet the standard for the expected level of knowledge, abilities, and skills required for entry-level attorneys.

The third completed study, *Content Validation Study for the California Bar Exam,* sought to examine the overlap between what is measured on the exam and what is critical knowledge required for entry-level attorneys. The process of content validation involves determining whether exam content aligns with job-related knowledge, skills, abilities, and tasks. The study results suggest that the content on the examination matches job-related expectations for the practice of law. That is, the CBX aligns with the job knowledge expected of entry-level attorneys.

The analysis of the expected skills of an entry-level attorney was based on a 2012 job analysis conducted by the National Conference of Bar Examiners. Due to both the passage of time and lack of a state-specific focus, one of the recommendations generated by the 2017 studies was that the State Bar undertake its own job analysis. This effort is currently captured in the State Bar's 2017-2022 Strategic Plan and will officially launch this year. The goals of the California job analysis will include: ensuring that CBX content (breadth, depth, and complexity) is related to the knowledge and skills required of entry-level attorneys; providing a documented link between CBX content and current legal practices; assessing the adequacy of the exam format in testing requisite knowledge and skills; providing a blueprint for question development and selection; and lastly, to inform the development of a minimum competence definition to be used for standard setting purposes in the future.

The State Bar submitted a comprehensive report on completed 2017 CBX studies to the Supreme Court on December 1, 2017. That report is attached and serves as the State Bar's vehicle for compliance with section 6046.8. As noted above, the fourth study initiated last year, *the Law School Bar Exam Performance Study*, will be completed in June; we will provide our stakeholders with a report on the results of that study shortly thereafter.

In closing, I note that the State Bar is committed to exercising its licensing function in accordance with best practices and in alignment with its mission to both protect the public and promote access to justice. This year, we look forward to the results of the *Law School Bar Exam Performance Study* and to undertaking California's first ever attorney job analysis, efforts that support the type of continuous review and improvement contemplated by section 6046.8.

Sincerely,

Leah T. Wilson

Enclosure

THE STATE BAR
OF CALIFORNIA

Title of Report: The State Bar of California Bar Exam Evaluation Results
Statutory Citation: Business and Professions Code Section 6046.8
Date of Report: March 15, 2018

The State Bar of California has submitted a report to the Legislature in accordance with Business and Professions Code section 6046.8, which directs the Board of Trustees to report bar exam evaluation results including any determination regarding adjustment in the passing score to the Supreme Court and the Legislature. The following summary of the report and attachments are submitted in accordance with the requirements of Government Code section 9795.

In 2017, the State Bar conducted a series of studies intended to evaluate the California Bar Exam (CBX) from several perspectives. The completion of these studies, the first of their kind in California, was a critical moment in the history of the development and analysis of California's attorney licensing exam, and set the Bar on an important trajectory of continual review and improvement of its licensing function. These studies included the following:

1) *Recent Performance Changes on the California Bar Examination: Insights from CBE Electronic Databases*: This study evaluated the historical pattern of the California Bar Exam (CBX) pass rate and changes in applicant characteristics based on information that already exists on the Bar's Admissions database.
2) *Standard Setting Study for the California Bar Exam*: This study evaluated the current CBX pass line to determine whether it meets the minimum competence requirement for new attorneys going into law practice.
3) *Content Validation Study for the California Bar Exam*: This study evaluated content representation and content complexity of the CBX in comparison with the results of a job analysis conducted by the National Conference of Bar Examiners (NCBE) in 2012 to determine if the content on the exam tested the knowledge, skills, and abilities expected of entry-level attorneys.
4) *Law School Bar Exam Performance Study*: This study will merge law school performance data with individual student credential information. The State Bar anticipates that when completed the Law School Performance Study will help to provide greater context for understanding the significant decline in bar passage rates over the past decade, with a particular focus on any changes in student characteristics that might explain the downward trend. The anticipated release date for this study is June, 2018.

The State Bar will also soon embark on a California-specific job analysis, which will set the stage for a future re-evaluation of CBX content and passline.

The full report is available for download on the State Bar's website at:
http://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Reports.

A printed copy may be obtained by calling 415-538-2300.

Report to the Supreme Court of the State of California
Final Report on the 2017 California Bar Exam Studies

December 1, 2017

Contents

I. Executive Summary

In response to steady declines of bar exam pass rates in recent years, the California Supreme Court (Court) directed the California State Bar (Bar) in February of 2017 to conduct a "thorough and expedited" study of the California bar examination (CBX). Specifically, the purpose of the study was to (1) evaluate issues affecting the bar pass rates and (2) determine whether the current CBX cut score should be maintained in the interest of protecting the public and potential clients served by licensed attorneys. The Court further directed that the studies be conducted in such a manner as to ensure the "participation of experts and stakeholders in the process, including psychometricians, law student representatives and law school faculty or deans." The Bar was directed to complete the study and report to the Court no later than December 1, 2017. To accomplish these objectives, the Bar organized the work into four interconnected studies listed below, with a description of the main focus of each study:

1. "Recent Performance Changes on the California Bar Examination: Insights From CBE Electronic Databases" (Performance Changes Study) – evaluates the historical pattern of CBX pass rate and changes in applicant characteristics based on information that already exists in the CBX database;
2. "Law School Bar Exam Performance Study" (Performance Study) – supplements the Performance Changes Study. This study will merge the CBX performance data of individual applicants with their student credential information to be provided by law schools;
3. "Conducting a Standard Setting Study for the California Bar Exam" (Standard Setting Study) – evaluates the current CBX pass line to determine whether it meets the minimum competence requirement for new attorneys going into law practice; and
4. "Conducting a Content Validation Study for the California Bar Exam" (Content Study) – evaluates content representation and content complexity of the CBX in comparison with the results of a job analysis conducted by the National Conference of Bar Examiners (NCBE) in 2012.

The Bar commissioned these studies with two independent psychometricians. Dr. Roger Bolus was contracted to conduct the first two studies, with Dr. Chad Buckendahl contracted to conduct the studies on standard setting and content validation. With extensive experience working with many jurisdictions throughout the country on bar exams, Dr. Bolus has been responsible for assessing the validity of each administration of the CBX for the last four years. Dr. Buckendahl, a nationally recognized expert in standard setting and content validity, has conducted studies on high-stake licensing exams in various practices. Additionally, the Bar contracted with two psychometricians to provide independent review of the Standard Setting and Content studies. These two outside experts are Dr. Mary Pitoniak, a nationally recognized

expert in standard setting, and Dr. Tracy Montez, a California-based psychometric expert who is serving as the Chief of Programs and Policy Review at the California Department of Consumer Affairs.

Three of the four studies above have been completed in time as directed by the Court. Table 1 (below) chronicles the milestone events of the various studies.

The Standard Setting Study concluded that the current pass line of 1440 was consistent with the minimum competence level expected of entry-level attorneys. The study also provided a range from 1388 to 1504—with 95-percent statistical confidence that the "true" cut score is within this range. Specifically, a pass line within this range could be selected, while remaining statistically accurate, that reflects the minimum competence required to practice law in California. This information is critical and relevant when considering policy issues such as access, diversity and the justice gap. The technical report for the Standard Setting Study completed by Dr. Buckendahl and the report prepared by Bar staff to discuss the study findings and policy implications were reviewed and discussed at Committee of Bar Examiners (CBE) and Board of Trustees' meetings. In addition, a large volume of feedback was received in response to the study findings during the month of August through public comment, attorney and applicant surveys, and public hearings held in Los Angeles and San Francisco. In September, the Bar submitted to the Court the "Final Report on the 2017 California Bar Exam Standard Setting Study," which summarized the study results, policy considerations associated with the study findings, and feedback received from stakeholders; the Performance Changes Study completed by Dr. Bolus in February was also attached to this report. (See Appendix A.) The report presented three options for the Court to consider: (1) maintain the current pass line at 1440; (2) lower it to 1414; and (3) lower it to 1390. After reviewing the report and numerous amicus letters submitted by interested parties from across the nation, the Court issued an order in October to keep the current pass line at 1440. The Court indicated that the Bar should continue "analyzing whether the exam or any of its component might warrant modification" during the next review cycle, or sooner if the Court so directed.[1]

The Content Study report was completed in October. This study presented evidence to conclude that the current version of the CBX is measuring important knowledge, skills, and abilities consistent with expectations of entry level attorneys. It suggests that there is no need

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[1] Amended in June 2017, effective on January 1, 2018, the Supreme Court adopted California Rules of Court 9.6(b) requiring that "At least once every seven years, or whenever directed by the Supreme Court, the State Bar must conduct an analysis of the validity of the bar examination." Also codified in Business & Professional Code, Section 6046.8 states that "at least once every seven years, or more frequently if directed by the Supreme Court, the board of trustees shall oversee an evaluation of the bar examination to determine if it properly tests for minimally needed competence for entry-level attorneys and shall make a determination, supported by findings, whether to adjust the examination or the passing score based on the evaluation."

to modify or eliminate the 13 different subjects test on the CBX at this time. The study also pointed to limitations of the current effort, however, calling for an updated job analysis of attorney practices in California as the basis for reevaluating CBX content. The Board of Trustees approved the Content Study report, supporting Bar staff's and CBE's recommendations that a California-based job analysis be conducted followed by a comprehensive evaluation of the scope, structure, and format of the CBX.

The Performance Study has experienced significant delays due to law schools' concerns over data security and privacy issues. Senate Bill (SB) 690, introduced in the Legislature in February of this year, was intended to provide the necessary confidentiality protections. This bill was however not approved by the Governor until early October. During the period that SB 690 was pending the Bar also worked with law schools to address additional issues that had been raised relating to the sharing of student information pursuant to the Federal Educational Rights and Privacy Act (FERPA). Subsequent to the passage of SB 690, the FERPA issues were satisfactorily addressed. Then, in early November, some law schools proposed to change the original Performance Study comparison cohorts of 2008 and 2016 July CBX exam takers to those of the 2013 and 2017 CBX. After further discussion with law school deans it was determined that the study would proceed with three comparison cohorts, including exam takers from the 2013, 2016, and 2017 July CBX. With more law schools considering participation in the study under the new design, the study sample would be more representative of the exam taking population, which in turn would enhance the generalizability of the study findings. Currently, it is projected that the study will be completed in the Spring of 2018.

The following sections of this report provide summaries of the studies completed to date, including processes followed and methods used to conduct the studies; study findings and relevant policy issues raised from those studies; a description of communications with stakeholders to receive their feedback and comments throughout the process; limitations and lessons learned from the current effort; and thoughts for future work to continue the Bar's ongoing effort to improve the fairness, validity, and reliability of the CBX, and to ensure that the CBX satisfies its public protection purpose. Given that the Standard Setting and Performance Changes Studies were detailed in the previous submission to the Court which is provided as Appendix A, this report provides only a brief overview of these two studies, with the focus on key lessons learned from the Standard Setting Study and implications for ongoing evaluation of the CBX. More in-depth discussion will be devoted to findings of the Content Study and related follow-up activities. A detailed update on current status of the Performance Study is provided as well.

Table 1. Bar Exam Studies Milestone Events

#	Time	Project Milestone Events and Activities
1	February	Performance Changes Study was completed; this study examined changes over time in applicant characteristics and CBX performance based on existing, basic information regarding applicant demographics.
2	April	Proposed study plan was discussed with law schools deans at Law School Council meeting, including breakout sessions to review proposed Minimum Competence Definition needed for the Standard Setting Study.
3	April	The Bar began recruitment of workshop panelists for the Standard Setting and Content Validation studies.
4	May	A 3-day workshop for the Standard Setting Study was conducted; this effort evaluated the performance of 2,400 exam answers from the 2016 July CBX.
5	June	An Advisory Group, consisting of five law school deans, met to discuss the study design and data confidentiality issues related to the Performance study.
6	June	A 3-day workshop for the Content Study was conducted; this study assessed the alignment of CBX questions in relationship to the knowledge and skills expected of entry- level attorneys.
7	July	Standard Setting Study report was completed, concluding that the current pass line of 1440 was consistent with the assessment conclusion derived from the workshop; in addition to 1440 as the median value, a range from 1388 to 1504, statistically determined to fall within 95-percent confidence interval, was presented for consideration of possible adjustment of the pass line in connection with other relevant policy concerns.
8	July	Standard Setting Study report was discussed at a joint meeting of the A&E Committee of Board of Trustees and the CBE. The report was approved and released for public comment.
9	August	To solicit stakeholder comments on the Standard Setting Study results, two public hearings were held. In addition, surveys were distributed to all licensed attorneys in California and to recent bar applicants.
10	August	Standard Setting Study report (along with public comments received) was discussed at the Board of Trustees meeting; the Board voted to present three options (maintaining current cut score at 1440 or lowering to either 1414 or 1390) for the Court to consider.
11	September	"Final Report on the 2017 California Bar Exam Standard Setting Study" was submitted to the Court.
12	October	The Court issued its decision to maintain the current cut score at 1440, urging the Bar to continue evaluating the CBX and its various components for consideration of possible modifications in the future.
13	October	The Content Study report was completed and discussed at the Committee of Bar Examiners meeting; the study concluded that the current CBX topics and the complexity of the questions were largely in alignment with the knowledge and skills expected of entry-level attorneys. There was no evidence upon which to base

14	November	No public comment was received for the Content Study report and the report was discussed at the Board of Trustees meeting. The Board voted to support the effort to conduct an updated, California-specific job analysis study as the basis for re-evaluating the bar exam, including its scope, structure, format, and content.
14	November	No public comment was received for the Content Study report and the report was discussed at the Board of Trustees meeting. The Board voted to support the effort to conduct an updated, California-specific job analysis study as the basis for re-evaluating the bar exam, including its scope, structure, format, and content.
15	November	Law school deans recommended modifying the Performance study design to compare the performance of the 2013 and 2017 cohorts, instead of the original cohorts of 2008 and 2016 exam takers. After further discussion, a proposed 3-cohort design (including 2013, 2016, and 2017) gained support from law schools. Accounting for the amount of time required for data collection, current estimate projects that the study will be completed in April or May in 2018.

recommendations to modify CBX content. The study was released for public comment.

II.   Standard Setting Study

As delineated in the "Final Report on the 2017 California Bar Exam Standard Setting Study" submitted to the Court on September 12, 2017, one of the key features of the study was the methodology adopted (the Analytic Judgment method), which relied on a set of performance criteria regarding the minimum competence level of entry-level attorneys. This criterion-referenced approach was an exception rather than the norm in how the bar exam pass lines have been established throughout the country in different jurisdictions. Due to either the legacy of historical practices or limited resources, especially in many smaller jurisdictions, the more common approach is the "norm-referenced approach", which sets the cut score based on what is considered a reasonable pass rate. This approach considers "reasonableness" within the context of historical norms or in relation to other jurisdictions. The current pass line of 1440 for the CBX that was established in late 1980's was decided based on a similar approach; an analysis of the historical norm of pass rates for CBX administered over the previous ten years was conducted. Two jurisdictions, Nevada and Oregon, lowered their bar exam cut scores this year; the adjustments were made through a similar norm-referenced approach.

In contrast, the criterion-referenced standard setting method has been adopted increasingly in the past few decades by the psychometric community as the standard, valid approach for setting standards in testing, in both educational assessment and licensing exams. This method establishes a conceptually more logical connection between the competence level that an exam taker is expected to perform and the pass line established that is intended to measure the relevant performance level. This conceptually coherent approach is inherently more complicated, involving both qualitative judgments and, to some extent, policy considerations at various stages of study.

To ensure the procedural validity underpinning the process of standard setting study method, the Bar strived to adhere to a transparent and inclusive process in implementing its design. To achieve these goals, the Bar worked closely with Dr. Chad Buckendahl, the psychometrician who conducted the Standard Setting Study, law school deans, two outside independent psychometricians, and a Bar Exam Studies Working Group (Working Group) comprised of representatives from the CBE, Board of Trustees, and the Supreme Court. The intensity of public comments and criticism of the Standard Setting Study (once released for comment) highlighted certain key components of the study design and implementation that might warrant re-evaluation and possible modification when a standard setting study is conducted again in the future. Areas for future refinement and exploration include:

- Adopt a more extended and inclusive process for defining the performance level descriptor of entry-level attorneys;
- Achieve greater consensus in determining the appropriate background and experience of workshop panelists; and
- Refine the tools and information provided to panelists for performing their assessment activities, including the appropriate use of grading rubric and guidelines to operationalize the performance level descriptor, and the use of scores for calibration and adjustment of the assessment results.

While modifying these elements might have improved the overall validity of the Standard Setting Study, it is important to note that other factors—economic, technological, and demographic in nature—have put growing pressure for change on the legal market and law schools. The recent decline in bar pass rates and heightened attention on the bar exam pass line represent only the more urgent and immediate issues facing the legal community. Closely related to the validity of the pass line is the validity of the bar exam content itself; while the former reflects the minimum competence level of new attorneys the latter ensures that the exam questions represent the knowledge, skills, and abilities needed for those attorneys. The State Bar's recent approach to this type of assessment of CBX content is outlined in the following section.

III.   Content Validation Study

Prior to the current study of the content validity of the CBX, the CBX has gone through several modifications in its history. In addition to modification of subjects tested on the CBX, there were parallel efforts in recent years to look at the role of legal education and new attorney training in an effort to equip new attorneys with practice-oriented, experienced-based skills. The following section provides a brief history of CBX content changes and other efforts related to the question of what knowledge and skills are needed for entry-level attorneys.

Background of CBX Content Changes and Previous Efforts to Study Knowledge and Skills Expected of New Attorneys

The earliest record available regarding CBX content dates back to 1933, when, according to the "Report of California Survey Committee"[2] there were 42 questions on the examination covering 22 subjects. There is a gap in available information about the exam's scope until June 1983, which is when the Performance Test (PT) was first administered. The written part of the examination (six one-hour essays and two three-hour PTs) included questions on Constitutional Law, Civil Procedure, Contracts, Criminal Law, Community Property, Corporations, Evidence, Real Property, Remedies, Torts, Trusts and Wills.

A statute enacted in September of 1986[3] required the CBE to "conduct a study and prepare a report on the necessity and practicability of requiring applicants for admission to practice law to be certified as possessing minimum courtroom or trial capabilities." In response, an eight-member special committee composed of lawyers, judges and legal educators was appointed by the CBE to conduct the study and make recommendations. Among the conclusions reached by the special committee was that the "Bar Examination should test California civil and criminal procedure and California statewide rules of court in addition to the Federal rules and procedures now being tested."[4] The CBE approved the special committee's report and it was forwarded to the legislature by the established deadline. The report, along with several other recommendations relative to a mandatory trial skills training course, was transmitted to the State Bar's Board of Governors[5] by the Board Committee on Admissions in May 1988. The Board Committee reported that the CBE had appointed the Rules of Procedure Task Force (Task Force) "to develop and identify the parameters for the Bar Exam tests of California procedure and rules of Court."[6]

The six-member Rules of Procedure Task Force, composed of judges, law school professors and CBE members, met and prepared a report and recommendations for the CBE. Among its recommendations were:

1. That Federal and California civil and criminal rules and procedures be accorded "equal dignity" in testing on the California Bar Examination;
2. That the scope of testing in the areas of civil procedure and criminal procedure be broadly defined; and

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[2] This study was prepared in 1933 and published by the State Bar of California.
[3] Business and Professions Code section 6046.6(a).
[4] June 161; Board of Governors Meeting Agenda Item; May 31, 1988.
[5] Now, Board of Trustees.
[6] June 161; Board of Governors Meeting Agenda Item; May 31, 1988.

3. That the enhancement of testing in these areas requires that the scope of testing in the area of evidence be redefined.

In addition, the Task Force communicated its finding that testing on the Statewide Rules of Court could not be recommended. The CBE agreed with the Task Force's recommendations, as did the Board of Governors, and those changes were incorporated into the scope of subjects tested on the CBX.

The next evaluation and modification of CBX content occurred in early 2000. The CBE's Examination Development and Grading (EDG) Team was formerly known as the Board of Reappraisers. Like the current EDG Team, the Board of Reappraisers was composed of independent contractors appointed by the CBE to perform examination development and grading tasks on behalf of the CBE. They were and are responsible for editing essay questions solicited from law school professors and leading the grading teams during the grading of examinations. In 2000, the Board of Reappraisers recommended that the scope of subjects tested on the examination be modified. It believed that the changes were appropriate because these were areas of the law on which most applicants who were about to begin the practice of law should be able to demonstrate minimal competency. The CBE adopted in principle the changes to the scope of the CBX during its meeting in July 2002, and after multiple meetings with law schools and the Board of Governors, significant input from the law schools, and a two-year notice, the scope of the examination was changed as follows:

1. "Corporations" was renamed to "Business Associations"; the scope of the topics tested in Business Associations included those previously tested in Corporations; in addition, the topics of partnerships of all forms, limited liability entities, related agency principles and uniform acts, were added to the scope;
2. The scope of the subject titled "Civil Procedure" was expanded to include the California Code of Civil Procedure; and,
3. The scope of the subject titled "Evidence" was expanded to include the California Evidence Code.

The CBE also considered replacing Community Property with Family Law, but that proposal ultimately was not adopted after consideration of all the comments received, which were primarily from law schools. Law school deans were united in their belief that expanding the scope of the examination would have the effect of increasing the demand for courses covering the examination subjects, which would lead to a reduction in the number of elective courses their students could take. Although the addition of Family Law was posed as a replacement for Community Property, rather than as a true addition, then, as now, many law students don't take Community Property during law school, and choose to study it on their own or through bar review courses. The addition of Family Law, a much broader subject to test, would most likely

have required the law schools to offer it as a course to many more students, which would have negatively affected the overall curriculum, in the law schools' view. It should be noted, however, that Family Law is a subject tested on the Uniform Bar Examination (UBE).

Today, applicants taking the CBX may be required to answer questions involving issues from all of the subjects listed below:

1. Business Associations
2. Civil Procedure
3. Community Property
4. Constitutional Law
5. Contracts
6. Criminal Law and Procedure
7. Evidence
8. Professional Responsibility
9. Real Property
10. Remedies
11. Torts
12. Trusts
13. Wills and Succession

The addition of Professional Responsibility was at the request of the Board of Trustees; Professional Responsibility is the only subject that is always included as either a standalone or cross-over subject in the question(s) for each administration of the examination. Because there are only five essay questions and one Performance Test question, no examination will test in all 13 areas of law. Sometimes, subject matters stand alone in questions or there may be "crossovers" where two or more subjects are discussed in the question. The order in which the areas of law are tested vary from one administration to the next. Not specifying the exact topics for each administration of the CBX is by design intended to ensure that applicants are studying all areas of law within the scope of the exam. The EDG Team nominates the questions for each administration of the examination, which are then reviewed by the CBE and approved for inclusion.

Over time, there have been multiple efforts from outside entities to further expand the scope of the examination, which included requests to add such topics as International Law and Tax Law. There have also been several efforts to reduce the number of subjects tested. In 1995 and 1997, at the behest of interested law schools, the CBE agreed to explore the possibility of reducing the number of subjects tested by eliminating Corporations, Trusts, Wills and Succession, and Remedies. No changes ultimately resulted from those explorations as there was not a consensus that changing the scope was in the best interest of public protection. The

last time the scope was discussed with the law schools in any depth was during a Law School Assembly meeting in June 2015. UCLA Vice Chancellor Carole Goldberg and Justice Dennis Perluss addressed the Assembly seeking its support to add Federal Indian Law to the scope. Conversely, following that proposal, the former Dean President and Dean of Thomas Jefferson School of Law Thomas F. Guernsey argued that subjects should be eliminated, especially in light of the pending Task Force on Admissions Regulation Reform (TFARR) proposal to require 15 units of experiential training as an admission requirement. No action was taken with regard to either presentation.

MBE, UBE and Other States

The Multistate Bar Examination (MBE), which is developed and graded by the National Conference of Bar Examiners (NCBE) and is administered the second day of the CBX, contains 200 multiple-choice questions in seven subject areas:

1. Civil Procedure
2. Constitutional Law
3. Contracts
4. Criminal Law and Procedure
5. Evidence
6. Real Property
7. Torts

The UBE is composed of the Multistate Essay Examination (MEE), the Multistate Performance Test (MPT), both of which are developed by the NCBE, and the MBE. The MEE portion contains six 30-minute essays drawn from 12 different subject areas; the Multistate Performance Test (MPT) is a 90-minute test, much like California's PTs. At the present time, 28 states/jurisdictions have adopted the UBE.

In addition to the seven subjects tested on the MBE, the MEE has questions in the areas of:

1. Business Associations
2. Conflict of Laws
3. Family Law
4. Secured Transactions
5. Trusts and Estates

In the written component of the bar exam in jurisdictions that have not adopted the UBE, the scope of the subject matter varies considerably. As shown in Table 2 below for selected non-UBE jurisdictions as compared to California, the written exam varies with respect to both general subject matters and state-specific elements of different subjects.

Table 2. Bar Exam Subjects in Selected Jurisdictions - California, Florida, Illinois and Texas

	CA	FL	IL	TX
Administrative Law			E	
Agency			E	
Business Associations/Org./Ent. (Corporations - Illinois)	E	E	E	E
Civil Procedure (State & Fed.)	B	B	B	B
Commercial Paper			E	
Community Property	E			
Conflict of Laws			E	
Constitutional Law (State & Fed.)	B	B	B	B
Consumer Rights				E
Contracts	B	B	B	B
Criminal Law and Procedure	B	B	B	B
Equity			E	
Evidence	B	B	B	B
Family Law (Dom. Relations – MA)		E	E	E
Federal Jurisdiction & Procedure			E	
Federal Taxation			E	
Florida Bar R&R, Chpts. 4 & 5		E		
Florida Constitutional Law		E		
Florida Rules of Judicial Admin.		E		
Illinois Rules of Civ. Procedure			E	
Partnerships			E	
Personal Property			E	
Professionalism		E		
Professional Responsibility	E			
Real Property	B	B	B	B
Remedies	E			
Sales			E	
Secured Transactions			E	
Suretyship			E	
Texas Rules of Civ. Procedure				E
Texas Rules of Crim. Pro. & Evid.				E
Torts	B	B	B	B
Trusts	E	E	E	E
Uniform Commercial Code (Art. 9 Secured Transactions)		E (Art. 3 & 9)		E
Wills and Succession	E	E	E	E

Subjects tested both by the MBE and other methods (i.e. essay) = B
Extra subjects tested in addition to MBE subjects = E

Task Force on Admissions Regulation Reform (TFARR) Recommendations and 10-Hour New Admittee Training

The Board of Trustees established two TFARRs several years ago, which ultimately resulted in a recommendation that applicants seeking admission to practice law in California be required to

complete 15 units of experiential competency training as a condition of admission, in addition to two other proposals relative to required Pro Bono service and continuing legal education for new admittees. After discussions during several meetings of the Board of Trustees, the TFARR proposal was referred to the CBE by the Board during its November 2016 meeting. An excerpt from the Board minutes follows:

> FURTHER RESOLVED, that the Task Force on Admissions Regulation Reform proposal regarding mandated competency training admission requirements be referred to the Committee of Bar Examiners for further consideration, and the committee report back to the Board of Trustees on this matter during the Board's July 2017 meeting.

The CBE deferred consideration of the mandated competency training proposal or making any recommendations pending the completion of all of the CBX studies. What constitutes minimum competence at the time of admission and how that should be determined, whether through testing or other means, is relative to the discussion of the content of the CBX. For example, the question of the impact of the current 6 unit experiential learning requirement, which was just implemented last fall for ABA approved law schools and recently approved by the CBE and the Board of Trustees for California-accredited and unaccredited law schools, is not yet known. The relatively new requirement for the law schools—and how it may address the issue of knowledge and skills expected of new attorneys and its relationship to the number of subjects tested on the CBX—is an area requiring further study and consideration.

Another TFARR proposal suggested that new admittees be required to complete legal education in certain subject areas that would make them more practice ready. The Board of Trustees agreed with that recommendation and the "New Attorney Training Program" was adopted and becomes effective on February 1, 2018. Under the new requirement: "A new member is required to complete a State Bar New Attorney Training Program during the first year of admission which can also be applied to the regular MCLE requirement."

A separate working group was subsequently established to guide the development of the New Attorney Training content. It ultimately led to the design and adoption of a 10-hour curriculum comprised of 4 hours of legal ethics; 3 hours of basic skills, including civility, pro bono and law practice management and technology; 1.5 hours of identification and elimination of bias; and 1.5 hours of competency. In studying the possible topics, the working group coordinated its curriculum development activity with the Content Study. For example, the working group considered a potential scenario where a new admittee MCLE program might be developed on the subject of Community Property, if that subject ultimately was removed from the CBX. While this concept was initially explored by the working group, it was not pursued for the reasons discussed below in connection with follow-up focus group meetings of Content Study panelists.

2017 Content Validation Study

The 2017 Content Study was designed to evaluate whether the breadth and depth of content on the CBX was in alignment with the knowledge, skills, and abilities (KSAs) expected of an entry-level attorney. Dr. Buckendahl's report (Appendix B) and the two evaluations of the report prepared by independent consultants Mary J. Pitoniak, Ph.D. and Tracy A. Montez, Ph.D. (Appendix C), are attached. Dr. Buckendahl's report sets the stage for the more lengthy and complex discussion of what subjects should be tested on the California Bar Examination.

Methodology

Panel Selection
Similar to the Standard Setting Study, the Content Study relied on practicing attorneys to evaluate CBX questions in a two-and-one-half day workshop. When Bar staff started planning for the two studies, both of which required practicing attorneys to serve on workshop panels, the same selection criteria were used to present potential panelists to the Supreme Court for consideration. These criteria included years of experience, employment type, practice area, geography, and demographics related to gender and race/ethnicity. When the nomination process was completed at the end of April, nearly forty candidates were available for selection for either workshop. When the Supreme Court made its final selection of ten panelists for the Content Study, four of the ten had been previously selected for the Standard Setting Study; this overlap was considered beneficial for maintaining some continuity between the two workshops, as well as balancing panel composition in terms of demographics and other factors.

Relative to the twenty panel members recruited for the Standard Setting Study, the panel size for the Content Study was smaller due to the different process adopted for the Content Study workshop. In the Standard Setting Study, each member made independent judgments in rating the performance of examination answers which resulted in a large number of data points as the basis for analyzing the examination scores. In contrast, the Content Study panel members were engaged in more interactive activities facilitated by Dr. Buckendahl. As discussed in more detail below, the evaluation activities required panel members to participate in group discussions to delineate the topic or subtopic areas and skills included in exam questions, assess the appropriate level of cognitive complexity associated with the subjects and skills, and map them to a list of knowledge and skill statements derived from results of a job analysis conducted by the NCBE. These facilitated group activities aimed to achieve consensus decisions on the core issues of content fit and cognitive complexity, with the assessment activities often involving more qualitative analysis and value judgments.

In addition to panel members participating in the workshop, observers representing law schools and the CBE, along with one of the independent psychometricians, sat through either part or the entirety of the two-and-one-half days of the workshop.

Workshop Activities
As noted above, the purpose of the Content Study was to evaluate whether the current version of the CBX is measuring important knowledge, skills, and abilities consistent with expectations of entry level attorneys. Consistent with the Standard Setting Study, questions from the July 2016 CBX were used for the workshop. Two external sources of data were used as the basis for comparison to evaluate alignment:

- National job analysis survey results conducted by NCBE in 2012 (see Appendix D); and
- US Department of Labor's database O*NET (Occupational Information Network) for occupational characteristics and KSAs for attorneys updated in 2017 (Appendix E).

These two external data sources are equivalent to curriculum standards and learning objectives in educational systems, in which they are often used as reference materials for evaluating the alignment between what was taught to students and what was tested on their exams.

For the Content Study, the main source data for measuring content alignment was the NCBE's job analysis survey. Survey respondents provided an assessment of the relative importance of each knowledge domain as well as the frequency with which their legal practices required those areas of knowledge and skills. Table 3 presents a list of sample items of knowledge domains, skills and abilities from the NCBE survey with corresponding Average Significance and frequency of use (% Performing). They are top ten items in both sections according to the average significance scores, with item numbers in the table referring to the original item numbers in NCBE's report. This table shows that, based on a 1-4 scale (with 1 representing "not significant" and 4 "extremely significant"), Rules of Civil Procedure was rated by the survey respondents as the most significant or important domain of knowledge needed for their legal practice. The Table also shows that the ten knowledge domains and skills given the highest Average Significance ratings were also used frequently (% Performing) by the responding attorneys in performing their daily tasks, all of them above 80 percent.

Within the confines of the current CBX format, some items are not applicable for this study, such as skills relating to listening and oral communication that are not tested as part of the current CBX. In reviewing the entire list of more than 100 items, the panelists also had to reorganize certain items, as some could be consolidated or subsumed by others.

Table 3. Sample Items from NCBE Job Analysis in Knowledge Domains, and Skills and Abilities

Line #	Knowledge Domains	Avg Significance	% Performing
1	Rules of Civil Procedure	3.08	86%
2	Other Statutory and Court Rules of Procedure	3.06	88%
3	Rules of Evidence	3.01	81%
4	Professionalism	2.95	87%
5	Research Methodology	2.91	89%
6	Statutes of Limitations	2.91	84%
7	Rules of Professional Responsibility and Ethical Obligations	2.83	93%
8	Statutory Interpretation	2.83	86%
9	Document Review/Documentary Privileges	2.73	81%
10	Contract Law	2.67	84%
	Skills and Abilities		
87	Written communication	3.77	100%
88	Paying attention to details	3.67	99%
89	Listening	3.60	99%
90	Oral communication	3.58	99%
91	Professionalism	3.58	99%
92	Using office technologies (e.g. word processing and email)	3.56	99%
93	Critical reading and comprehension	3.55	98%
94	Synthesizing facts and law	3.55	97%
95	Legal reasoning	3.54	99%
96	Knowing when to go back and ask questions	3.46	99%

After the panel members reorganized and clarified the KSA descriptions, the panel began to assess content alignment; this process involved essentially creating a "crosswalk" between topics covered on the CBX and the list of KSA descriptions from the job analysis survey. A topic that appeared on the CBX without a match on the job analysis list would be an indication of the topic being misaligned. On the other hand, an item listed on the job analysis results but not covered on the CBX, especially one that had been given a high importance and frequency rating, would be considered a gap in the CBX content. In this crosswalk exercise, O*NET's list of knowledge and skills served as additional source data and evidence for content fit.

In addition to content fit evaluated through the exercise of mapping KSAs between the different source data, which in the literature of content validation research is called "categorical concurrence," there is another important dimension in the overall measurement of content alignment—a determination of the appropriate level of cognitive complexity required in exam questions that is consistent with the expected KSAs for entry-level attorneys. This is a separate exercise that the panelists engaged in at the early part of the workshop. It required that the panel, through group discussion and consensus decision making, determine the level of

cognitive complexity deemed appropriate for each domain of knowledge and skills expected of entry-level attorneys.

To assess the cognitive complexity of various topics on the CBX, the panelists used the Depth of Knowledge (DOK) taxonomy developed by Norman Webb. The four levels of DOK are described below:

- Level 1 – recall and recollection: recalling information such as a fact, definition, term, or a simple procedure, as well as performing a simple algorithm or applying a formula.
- Level 2 – skills and concepts: making decisions as to how to approach a problem or solving a problem involving application and/or reasoning.
- Level 3 – strategic thinking: reasoning, planning, using evidence, generally more complex and abstract; a higher level of thinking than the previous two levels.
- Level 4 – extended thinking: involving more complex reasoning, planning, developing, and thinking, combining and synthesizing ideas into new concepts, generally observed over an extended period of time.

After providing training for the panelists on the distinguishing features of each DOK level, Dr. Buckendahl facilitated group discussions to assess the DOK of major topics on the CBX, including both knowledge of substantive areas of law as well as various skills and abilities. Consensus emerged from this exercise regarding two aspects of the CBX content in relation to DOK. First, cognitive complexity at levels 2 and 3 are considered appropriate for CBX content, distinguished from level 1 involving simple recall or rote memorization or level 4 requiring deeper knowledge or skills accumulated over time. Second, the panel agreed that DOK level 2 would be appropriate for substantive areas of law expected for entry-level attorneys, whereas DOK level 3 would be appropriate for various skills such as legal reasoning, synthesizing facts and law, or written communication. Given the difference between the multiple-choice and written components of the CBX in terms of knowledge and skills required in responding to the questions, the MBE component was judged to lean more toward level 2, whereas the written component, especially performance test questions, was considered to lean more towards level 3 DOK.

Following the establishment of appropriate DOK levels for different domains of knowledge and skills, the panel went through exercises of mapping the examination subjects on each of the essay questions and the performance test in comparison to NCBE's job analysis results and O*NET list of KSAs.

Evaluation results from the two steps described above provided data to validate the extent to which the CBX content matches with the KSAs, and the extent to which the DOK levels are consistent with the expected level for entry-level attorneys. Beyond these two areas of

alignment, the panel also discussed the relative weights assigned to various topics on the CBX. This has to do with the question of whether there is a balanced and stable distribution of different subjects on the CBX as relating to both a specific exam and multiple exams administered over a period of time. For this exercise the panel relied partly on detailed grading guidelines to evaluate the subtopics and their score points.

Study Findings and Limitations

Following the procedures described above in evaluating the July 2016 CBX questions, the results indicate that all content on the CBX matched with job-related KSAs expected for entry-level attorneys. The distribution of topics and skills requiring different levels of cognitive complexity is also consistent with the relative weights assigned to MBE multiple-choice and written questions. Table 4 below presents the alignment evidence resulting from the crosswalk exercise. The list of knowledge domains and skills in the table were based on the job analysis survey items that received high ratings from responding attorneys on both the "significance" and frequency in practice scales. After being mapped to subject matters and skills tested on CBX questions, the "crosswalk" matching result shows that all topics covered in the CBX are represented on the job analysis survey results as knowledge domains and skills expected of entry-level attorneys. In other words, there were no subjects and skills tested on the CBX that were considered unimportant for legal practice or used infrequently, according to survey results from the job analysis study conducted by NCBE.

Using score points assigned to different topics in the CBX questions, the panel also estimated approximate percentage distribution of the different topics and skills represented on the CBX. The distribution is represented in Table 4 as percentages associated with each knowledge domain and skills tested on either the MBE section or written exam questions. This estimated percentage distribution presents another dimension of content alignment measurement, this one measuring the balance of subject representation. The result shows that slightly more than one-third (36 percent) of the current CBX content is represented by various skills, the rest by domain knowledge relating to different substantive areas of law. This estimate should be treated as approximate and tentative, however, as the MBE component of the CBX was evaluated based on a broad content outline only rather than individual question items.

Table 4. Bar Exam Content Alignment with Job Analysis Results, with Approximate Percentage of Representation of Topics and Skills

Knowledge, Skills, Abilities and Tasks from the NCBE Job Analysis Survey	Essays and PT	MBE	Total
Knowledge Domains			
Rules of Civil Procedure	4%	4%	7%
Other Statutory and Court Rules of Procedure	-	4%	4%
Rules of Evidence	-	7%	7%
Contract Law	3%	7%	10%
Tort Law	-	4%	4%
Criminal Law	-	7%	7%
Rule of Criminal Procedure	-	-	0%
Other Privileges	-	-	0%
Personal Injury Law	-	4%	4%
Principles of Electronic Discovery	1%	-	1%
Real Property Law	3%	7%	10%
Constitutional Law	3%	7%	10%
Family Law	3%	-	3%
Skills, Abilities, and General Tasks			
Written communication	4%	-	4%
Critical reading and comprehension	3%	-	3%
Synthesizing facts and law	8%	-	8%
Legal reasoning	15%	-	15%
Issue spotting	1%	-	1%
Fact gathering and evaluation	2%	-	2%
Identify issues in case	2%		2%
Total	50%	50%	100%

Looking at the subject areas covered on the CBX over a ten-year period, and taking into account the different weights associated with different knowledge domains and skills, the Content Study also found evidence to show that changes over time in topics selected for written questions contribute to only a small variation of examination content year after year. This is due to the fact that MBE subjects remain constant over time, which account for 50 percent of the CBX from July 2017 forward. For the remaining 50 percent in essay and performance test questions, professional responsibility and ethics appeared in almost all exams administered in the past ten years, as shown in Table 5 below. A significant additional proportion of the written component is represented by subject-neutral skills discussed above, such as writing and synthesizing facts and law. As a result, what remains that allows for rotation of different subjects over time accounts for a relatively small proportion of the overall subjects covered, estimated at approximately 15 percent of the total content.

Table 5. Representation of Subject Areas from 2008-2017 (n=20 administrations)

Subject Area	Frequency of Representation	Rating of Significance	Percent Performing
Professional Responsibility	19	2.83	93%
Remedies*	12	-	-
Business Associations	11	2.33	67%
Civil Procedure	10	3.08	86%
Community Property**	10	2.23	53%
Constitutional Law	10	2.29	76%
Contracts	10	2.67	84%
Evidence	10	3.01	81%
Torts	10	2.50	61%
Criminal Law and Procedure	9	2.50	54%
Real Property	9	2.30	56%
Trusts	7	1.95	44%
Wills	7	2.21	46%

* Remedies does not align with a single Knowledge Domain because it crosses over multiple substantive areas of practice in law.
** Treated as part of family law in mapping to the NCBE job analysis survey knowledge domains.

In addition to frequency representation on CBX over time, the thirteen subjects in Table 5 were also mapped to the NCBE job analysis survey to show the relative importance ("rating of significance") and frequency in practice ("percent performing") as rated by survey respondents of the national sample. With regard to the relative importance rating, it should be noted that out of more than 80 knowledge domains included in the survey, only 3 subjects (Civil Procedures, Court Rules and Procedures, and Rules of Evidence) were given an average rating above 3 points. Approximately 45 percent of the rest were rated between 2 to 3 points.

The data shows that topics that had been selected more frequently over time tended to be items in the job analysis survey that were given higher ratings on either the importance or percent performing scale. It should be noted that it is only a moderate correlation, further constrained by the small sample size of 13 data points and the limited variability of the data, in particular the significance rating scores falling within a narrow range from 1.95 to 3.08. This analysis suggests that, with more up-to-date job analysis information that reflects the practice of law in California, there are opportunities for further alignment of content sampling of CBX over time.

Overall, the validity evidence on content alignment discussed above indicates that no subjects currently measured on the CBX were judged as outside the scope of KSAs expected of entry-level attorneys. In a gap analysis the Content Study also discusses topic areas and skills that are

considered important according to NCBE's job analysis but currently not covered as primary subjects on the CBX. Examples include knowledge domains such as research methodology and statutory interpretation, and skills such as negotiation, interviewing, and resource management.

It is noted above that NCBE's job analysis results, supplemented by linking to O*NET information related to attorney KSAs, served as the primary source data for validity evidence regarding the current scope of the CBX content. Gap analysis results or any other suggestions for modifications of the CBX content would require job analysis data more closely reflective of attorney practices in California. In fact, this is one of the main issues raised by the two independent psychometricians in their evaluation reports. Dr. Pitoniak cited comments from panelists indicating that some of the job analysis survey categories and statements did not quite match the content domains and skills. Dr. Montez's comments highlighted the importance of conducting an updated, comprehensive occupational analysis, with its focus on the practice of law in California as the baseline for evaluating the content validity of the CBX.

Dr. Buckendahl described in his report some adjustments and reorganization of job analysis descriptions that needed to be made during the workshop to facilitate the discussions. He also pointed out another potential limitation of the study related to the analysis of the MBE portion of the CBX. To assess the content of the written component of the CBX, the panel was given access not only to exam questions, but also grading rubrics for each question. With complete information made available they were able to analyze the topics and subtopics, as well as to assess the cognitive complexity levels required for exam takers to respond to the questions. In contrast, the assessment of the MBE component was based on a broad content outline rather than question items from a complete MBE exam. For security reasons, NCBE would make available only practice or "retired" questions, instead of a specific exam form in its entirety, which is not suitable for a comprehensive evaluation. This lack of detailed information on individual question items poses a constraint on the validity evidence with regard to the MBE portion of the CBX.

Follow-Up Focus Group

Following two days of workshop activities devoted to mapping of topic areas and skills to assess content alignment, the panel was asked on the last day of the workshop to reflect on the consensus they had reached and to discuss the implications on potential adjustments of CBX content by eliminating topics or adding new topics. They also discussed topics that would be appropriate for inclusion in the new 10-hour New Admittee Training.

To extend this conversation, with the goal of relying on their experience to inform the development of the 10-hour New Admittee Training course content, the panel was invited to participate in a focus group in which they would have the opportunity to elaborate further on

their brief discussions during the workshop. Four of the original members and two observers from law schools attended a half-day meeting in August. To facilitate the discussions, materials prepared for the focus group meeting included the following:

- Background information on the 10-hour New Admittee Training;
- Preliminary analysis results from the Study workshop;
- Compilation of topics covered in bar exams from a selection of five other jurisdictions; and
- Attorney survey data compiled by the Bar early this year that shows the distribution of attorney practice areas and employment types.

These materials are provided as Appendix F.

The focus group members were asked to consider three questions relating to the CBX and 10-hour New Admittee Training:

- Which topics could be considered for elimination from the CBX?
- Which topics could be considered for elimination from the CBX but included in the 10-Hour New Admittee Training in some modified format?
- Which topics that are currently not on the CBX would be beneficial to be included as part of the 10-Hour New Admittee Training requirements?

With regard to the first question, Remedies as a primary topic area was the only subject matter that focus group members thought could be eliminated from the CBX as it crosses over with other subjects such as torts and contracts. Wills, Trusts, and Community Property were also mentioned by some members as potential topics to be taken off the examination scope, as they believed that the need for new attorneys to have this knowledge in these practice areas was rather limited.

As they began to discuss potential content for the 10-hour New Admittee Training, there was a general consensus that no substantive areas of law would be appropriate for that format. There were several reasons for the group's reluctance, including: (1) the structure of a one or two hour MCLE course is inadequate as a substitute for the thorough educational experience provided in law school; (2) even assuming that learning goal for the substantive area is restricted to the limited objective of alerting the new attorney to issues that they might overlook and which would require further research and acquisition of competence, the focus group was concerned that a little information might be dangerous to public protection because it could lead to a new attorney's false sense of competence in that area of law; and (3) no substantive area of law would be universal or core for all new attorneys and for those not interested in the area of law, the MCLE hour or hours would be a wasted use of the limited 10-

hour MCLE program and a missed opportunity to focus on universal core concerns such as ethics, basic skills, elimination of bias and competency.

Consistent with views emerging from the workshop, which placed greater emphasis on skills, focus group participants recommended that the 10-hour structure of the training be devoted to practical lawyering skills. In reviewing the items from the gap analysis, focus group participants discussed certain practical skills that would be of most value, including billing, resource management, interpersonal relationships and civility. They also pointed out important connections between these skills and professional ethics in more practical settings, all of which would fit well with the 10-Hour New Admittee Training framework.

Study Recommendations for Next Steps

In the Content Study conclusion Dr. Buckendahl states that "the results of the content validation study suggested that most of the content on the examination was important for entry level practice without substantive gaps in what is currently measured on the examination compared with what is expected for practice." The report provided additional suggestions for several next steps that could be taken on a wide range of topics related to future improvement of the CBX as follows:.

> "*As recommended next steps for the California Bar Examination in its evaluation of its design and content, the results of the gap analysis and feedback from panelists provide a useful starting point for further discussion. Specifically, from the results of the national survey, skills and tasks were generally interpreted as more generalizable than many of the knowledge domains. Given the diversity of subject areas in the law, this is not surprising. At the same time, it may also suggest that a greater emphasis on skills could be supported in the future. To answer this question, further study is warranted. This additional study would begin with a program design that leads to a job analysis for the practice of law in California. As an examination intended to inform a licensure decision, the focus of the measurement of the examination needs to be on practice and not on the education or training programs. Through this combination of program design and job analysis, results would inform and provide evidence for decisions about the breadth and depth of measurement on the examination along with the relative emphasis (e.g., weighting) of different components.*
>
> *While the results of this study provided evidence to support the current iteration of the examination, there are also formative opportunities for the program to consider in a program redesign. Specifically, the current design and format for the California Bar Examination has been in place for many years. Feedback from the content validation panelists suggested that there are likely subject areas that*

> *could be eliminated or consolidated to better represent important areas needed by all entry-level practitioners."*

The Content Study provided examples of redesign considerations, which included a suggestion that it might be desirable to construct the CBX content as a combination of a candidate's competency in federal or cross-jurisdictional law, California-specific law, and job-related lawyer skills. In terms of CBX format, grading and other exam program components, additional areas that would benefit from further assessment for redesign considerations include exam item types (e.g., multiple-choice, short answer, extended response), scoring policies and practices and alternative administration methods for different components such as computer adaptive testing that has been adopted in other licensure exams.

There was no evidence from the Content Study to support proposing to the Supreme Court that the scope of subjects tested on the CBX should be changed. There are, however, several opportunities to gather additional information that could result in such recommendations being generated in the future.

California is hardly the only state evaluating the appropriate scope and content of its bar examination. There are national conversations underway about the content of bar exams, and the need to focus more on skills than subject matter competency. In late January 2017, the ABA approved, effective August 2017, the creation of the Commission on the Future of Legal Education. The Commission will explore possible changes to methods of training and testing the future generations of law students. Part of any next steps in California must include working to understand national trends and the impact of any significant discussions and research occurring at the national level on ongoing discussions regarding CBX content development.

Discussion of Content Study report at CBE and Board of Trustees' Meetings
Dr. Buckendahl's Content Study and a report prepared by Bar staff summarizing the study were reviewed by the CBE during its October 13 and 14, 2017 meeting. The day prior to that meeting, the Law School Council, an advisory group to the CBE, also considered the study. At the meeting the Council took action to request that the CBE support a recommendation to the Board of Trustees and the California Supreme Court for creation of a Blue Ribbon Panel or Task Force to take a comprehensive look at the structure, format, content, and grading of the CBX, as well as the issue of reciprocity.

The CBE discussed the Council's recommendation, but declined to accept its recommendation, as it believes that it is within the Committee's responsibilities to consider the matters related to the CBX in accordance with Court Rule 9.6, which states: "The Committee of Bar Examiners is responsible for determining the bar examination's format, scope, topics, content, questions and grading process, subject to review and approval by the Supreme Court…."

The CBE authorized release of the report for public comment and supported a staff recommendation that the current scope of the subjects tested on the CBX not be modified at this time. The CBE also supported staff's recommendation that further research be conducted on the content of the CBX, which should include conducting a California-based job analysis of attorney practices, and then a revised content validation study designed to inform the exploration of future changes to CBX development, format, content and grading procedures.

Subsequent to the release of the report for public comment in October, during which no public comments were received, the Content Study was reviewed and discussed at the Board of Trustee's meeting in early November. The Board approved going forward with conducting an updated, California-based job analysis of attorney practices and to reevaluate the CBX content alignment after the job analysis study was completed. The 2018 preliminary budget approved by the Board contains funds to conduct such studies.

Follow-Up Activities to Content Study

The sequence of conducting an updated job analysis study and a re-evaluation of exam content is a process that typically takes more than a year to complete; the State Bar intends to undertake this process through the following activities:

Conducting a California Specific Job Analysis. This will be a critical first step in determining the alignment of the KSAs and the subjects tested on the CBX. Beyond the issue of content validity of the CBX, an updated job analysis of attorney practices in California will also contribute to discussions of whether the development, format or the grading of the CBX should be adjusted to reflect today's changing landscape in the areas of technology and the practice of law. Evaluation of exam structure and format will also inevitably touch on the question of whether California should adopt the UBE. The adoption of the UBE in California has important policy implications regarding reciprocity; that is, allowing attorneys from other states entry to practice law in California based on UBE scores they received taking the bar exam in other jurisdictions.

A New Content Validation Study. Following completion of the job analysis study, a revised content validation study should be conducted. With the California specific job analysis, a new content validation study will more effectively assess whether existing content should be deleted, or additional subjects added. Given the job analysis result in Table 3 indicating that, of the top ten most "significant" knowledge domains and skills, all skill items were given higher ratings than knowledge in substantive areas of law, this study should examine the appropriate distribution between skills and content testing to determine if greater weight needs to be placed on skills over content. Additionally, with the new Admittee Training slated to roll out in February 2018, this study will be better able to study the impact of that training on competence.

A New Standard Setting Study. Depending on the outcome of the content validation study, a new standard setting study may be warranted in the relatively near term.

IV.   Law School Bar Exam Performance Study Status Update

The Performance Study was designed to supplement the earlier exploratory Performance Changes Study completed in February 2017, which looked at the recent decline of bar pass rates and changes in exam taker characteristics based on existing data readily available in the Admissions database. This earlier study examined changes in the characteristics of the exam taking population over time in terms of basic demographics; it also evaluated the changing distribution patterns of exam scores over time, highlighting a significant decline in bar exam performance for those in the bottom quartile of the distribution in recent cohorts. The analysis in the Performance Changes Study was constrained by the lack of student credential information, however, that prevented it from providing an explanation as to the causes of the declining pass rates in recent years.

The initial design of the subsequent Performance Study, as proposed by Dr. Roger Bolus, the principal investigator of the study, would require participating law schools to provide student credential information (LSAT and several measures of GPA's during law schools) for exam takers of 2008 and 2016 July CBX. In consultation with the Advisory Group, consisting of law school deans and created to provide guidance for the study, it was determined that additional student information related to bar-related courses taken during law school years would be beneficial to understand the impact of curriculum or pedagogical changes between different cohorts on their bar performance.

With the basic study design confirmed in May, nearly thirty law schools expressed interest in participating in the study. Pending passage of Senate Bill 690, which was introduced in the Legislature in February and which included provisions that would have provided confidentiality protection for the data collected for the study, the project plan was to complete data collection, analysis and report writing in September or October. This timeline would have provided the information within the timeframe that the Court identified for completion of the work, in conjunction with the Standard Setting and Content Study findings, to consider the decision on whether to adjust the cut score.

SB 690 ultimately passed the Legislature in September and was approved by the Governor in early October. Independent of SB 690's passage law schools were also considering confidentiality issues for sharing student information under the regulation of the Federal Educational Rights and Privacy Act (FERPA). According to FERPA rules, educational institutions that receive federal funding are permitted to share student information with a third party for research

purposes, within clear definitions of the research use and application, and while conforming with specific reporting criteria.

In early November, a few law school deans proposed a slightly modified research design that they believed would be more advantageous for several reasons, including more concrete, forward-looking instructional value which would render data sharing more in compliance with FERPA regulations. Instead of a comparison between the 2008 and 2016 July CBX takers, the proposed new study design would focus on 2013 and 2017 cohorts. With the 2013 rather than the 2008 cohort proposed as the baseline for comparison with a subsequent cohort, the advantage lies in the relative ease of gathering student information for more recent graduates, which is more readily available in electronic form in many law schools. A comparison with July 2017, rather than 2016, exam takers will provide more useful information about the impact of the CBX change of format from three to two days first implemented in the July 2017 exam. After consultation with Dr. Bolus and further discussion with law school deans it was ultimately determined that three cohorts would be included in the study, including 2013, 2016, and 2017 July CBX takers. A 3-cohort study design, with two based on the traditional 3-day format and one based on the new, 2-day exam format, will provide the opportunity to examine the stability in the relationship between student credentials and CBX performance.

As of the writing of this report, twelve law schools have indicated their interest in participating in the study based on the new study design. The Bar is currently gathering the exam taker lists for participating law schools to begin the process of data collection. It is projected that law schools will complete the data collection in February 2018, with data analysis and reporting writing completed in April.

V.   Follow-Up Activities to Bar Exam Studies

Since the Bar embarked on the series of CBX studies discussed in this report, several salient issues have emerged that warrant further research or follow-up actions. Some of the issues were identified as part of the completion of the Performance Changes, Standard Setting, and Content Studies. Other issues emerged from the Bar's ongoing engagement with law school deans and other stakeholders during the study period. This engagement resulted in an unprecedented level of interest and feedback throughout the study period. These larger issues touch on profound changes that legal education and legal services markets have experienced in the past decade; they fit the description of "socially complex" problems, as characterized in a study conducted by the British legal regulatory agencies in 2013.[7]

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[7] Webb, J., Ching, J. , Maharg, P. and Sherr, A., 2013. Setting standards: the future of legal services education and training regulation in England and Wales: the final report of the Legal Education and Training Review independent research team, June 2013. Legal Education and Training Review. (Can be downloaded from http://www.letr.org.uk/the-report/.)

In addition to the immediate need to conduct a California job analysis and subsequent content validation study (with implications for exam structure, format, and grading) this process has identified several "socially complex" issues that also warrant further study including:

- The issue of the "justice gap" in California, in terms of geographical inequity of distribution of legal services; specific type of legal services for underserved populations; the likelihood of these needs being met by law school graduates from certain law schools more than others; and the segmented market for legal services that presents a market disequilibrium with limited employment opportunities for new attorneys on the one hand, and the ongoing unmet need for legal services on the other hand; and
- The connection between the bar exam and public protection; current efforts have focused on correlating exam performance with attorney discipline. This correlation is challenged by both a lack of data and potentially a lack of relevance, given that most attorney discipline occurs well into an attorney's career (and thus discipline is not a meaningful proxy for an entrance exam).

The State Bar looks forward to initiating the California job analysis and developing a framework for exploration of these challenging yet critically important issues in the coming months.

VI.   Table of Appendices

**THE STATE BAR
OF CALIFORNIA**

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September 14, 2017

SUPREME COURT
FILED

SEP 14 2017

Jorge Navarrete Clerk

Deputy

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: Amended Cover Letter to the *Final Report on the 2017 California Bar Exam*[1]

Dear Chief Justice Cantil-Sakauye:

Both case law and new rule 9.3 of the California Rules of Court (effective January 1, 2018), make clear that the California Supreme Court (Court) has the inherent power to admit persons to practice law in California, including the sole authority to set the passing score of the bar examination; the State Bar, acting as the administrative agent of the Court, may make recommendations regarding the passing score.

In light of this authority, and in response to concerns regarding declining California Bar Exam (CBX) pass rates over the last 8 years, including concerns that were raised in a February 14, 2017, hearing before the Assembly Committee on the Judiciary, in February 2017, the Court called for the State Bar to undertake a "thorough and expedited study" to include:

(1) identification and exploration of all issues affecting California bar pass rates; (2) a meaningful analysis of the current pass rate and information sufficient to determine whether protection of potential clients and the public is served by maintaining the current cut score; and (3) participation of experts and stakeholders in the process, including psychometricians, law student representatives and law school faculty or deans.

Pursuant to that direction, the State Bar submits to the Court the attached *Final Report on the 2017 California Bar Exam Standard Setting Study* (report). The report, which identifies options for a statistically reliable CBX cut score, includes findings from the Standard Setting Study, the second of four studies that the State Bar has undertaken to comprehensively explore the issues outlined by the Court[2].

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[1] This cover letter has been amended to correct an error in the statistically valid range contained in the second paragraph of page 2. The correct range is 1388 to 1504.
[2] The first study, Recent Performance Changes on the California Bar Exam (CBE): Insights from CBE Electronic Databases, is included as Appendix G of the report. The scope and status of the two remaining planned studies, the Content Validity and Law School Bar Exam Performance Studies, are discussed in the report.

Hon. Tani Cantil-Sakauye
September 14, 2017
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According to the psychometric literature, the purpose of any licensure examination like the CBX is to distinguish minimally competent candidates from those that could do harm to the public; the purpose is not to evaluate mastery of content, ensure employability, or evaluate training programs. Licensure exams are also not intended to be predictive of career success or possible future misconduct. With this doctrinal understanding of the purpose of a licensing exam, the attached report provides the Court with an analysis of the continued validity of the current CBX cut score of 1440, as well as the potential impact of the implementation of two alternate lower cut scores, 1414 and 1390.

These cut score options derive from the Standard Setting Study, which was designed and implemented by an independent psychometrician, Chad Buckendahl, PhD, using the Analytic Judgment Method, a methodology well-accepted in the field of licensure. The study results determined that a median cut score of 1439 – effectively the same as the current pass line of 1440 – is most likely the "true" value of the recommended cut score. Following a routine statistical procedure, standard errors of mean and median were calculated to estimate a range of cut scores within which the true cut score most likely falls. That range is from 1388 to 1504. Given the specific impetus for the series of 2017 CBX studies, the State Bar has focused its analysis on the current cut score as well as options falling below 1440 that are within the range of standard error determined by the Standard Setting Study.

Within these parameters of a psychometrically determined range of possible cut scores, and recognizing that a Standard Setting Study is only one data element relevant to the ultimate policy decision to establish a pass line, the attached report outlines the key issues relevant to a decision by the Court. These inter-related issues include public protection, access to justice, and diversity.

It is important to reflect on the significance of the undertaking that the Court has compelled. In California, it has been 30 years since the pass line has been studied. And even then, the cut score was set not as a result of a psychometric study, but rather to ensure a consistent pass rate with previous administrations of the exam, set at a 70 percent passing score to reflect academic standards at the time. California is not alone in this failure to employ modern psychometric practices to validate its passing score. A survey of other states conducted by State Bar staff during the pendency of the Standard Setting Study revealed that few, if any, have conducted the type of analysis that California has just undertaken to set or modify their pass lines.

The magnitude and importance of California's recent effort, and the accelerated timeframe in which it has been completed, are noteworthy. While the study provides the Court with a quantitative framework within which to make an informed policy decision, it also revealed a number of areas warranting additional research and analysis. First, and most importantly, the principal concern in setting any cut score must be public protection. However, no clear measure or definition for public protection in the context of a licensing exam has been established. Through the course of this study we have learned that the only currently available proxy for public protection is discipline data, problematic on many fronts, most especially because an exam governing entry into the practice is not intended to be predictive of future misconduct.

Hon. Tani Cantil-Sakauye
September 14, 2017
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In addition to public protection, the study process highlighted the relevance of the recurring themes of access to justice and diversity. While the empirical data do exist to model the impact of various cut scores on the diversity of California's attorney population, very little information is available to establish the connection between access and diversity. In addition, further articulation of California's justice gap is needed. A variety of issues in this regard require further study or assessment including: specific geographic and practice type legal services needs; an assessment of whether those needs exist due to a lack of available attorneys or a lack of available jobs, or both; and an exploration of whether or not licensing more attorneys overall; or ethnic and racial minority and female attorneys specifically, will actually result in increased access to legal services for those most in need. Lastly, and significantly, an exploration of the dependent relationship between access, diversity, and public protection, would be timely and important.

Within the context of these important limitations and clear need for further research, the State Bar presents three cut score options to the Court for consideration. The impact of these options on public protection, access, and diversity – the triumvirate of cut score policy concerns – is addressed to the greatest extent possible, making the best possible use of various sources of "hard" data where it is available, and making assumptions based on informed inferences where it is not.

The State Bar is committed to continuing the exploration of these complex and interrelated issues as, in compliance with rule 9.6(b) of the California Rules of Court, it begins to implement a practice of cyclical review of the CBX every seven years.

Sincerely,

Leah J. Wilson

Leah T. Wilson

Enclosures

cc: *Sent via email*
    Members, Senate Committee on the Judiciary
    Members, Assembly Committee on the Judiciary
    California Law School Deans

THE STATE BAR
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September 12, 2017

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: California Bar Exam

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Sincerely,

Leah T. Wilson

Enclosures

cc: *Sent via email*
  Members, Senate Committee on the Judiciary
  Members, Assembly Committee on the Judiciary
  California Law School Deans

Report to the Supreme Court of the State of California
Final Report on the 2017 California Bar Exam Standard Setting Study

September 12, 2017

I.   Executive Summary

By letter of February 28, 2017, the Supreme Court of California (Court) called for the State Bar of California (Bar) to undertake a "thorough and expedited study" of the pass rate on the California State Bar Exam (CBX). The Court directed the Bar to ensure that the study includes:

> "(1) identification and exploration of all issues affecting California bar pass rates; (2) a meaningful analysis of the current pass rate and information sufficient to determine whether protection of potential clients and the public is served by maintaining the current cut score; and (3) participation of experts and stakeholders in the process, including psychometricians, law student representatives and law school faculty or deans."[1]

To accomplish this, the Bar organized the work into four interconnected studies – a Standard Setting Study, Content Validation Study, and two studies focused on student performance on the bar exam – and contracted with nationally recognized experts in the fields of professional certification, testing, and psychometric evaluation. For the Standard Setting Study, Chad Buckendahl, Ph.D., conducted the research with additional consultants contracted to observe and review his work. Those reviewers included Mary Pitoniak, Ph.D., a nationally recognized expert in standard setting, and Tracy Montez, Ph.D., Chief of Programs and Policy Review at the California Department of Consumer Affairs, which includes the Office of Professional Examination Services.

In addition to the external consultation provided by these subject-matter experts, the Standard Setting Study was conducted with extensive stakeholder engagement including: bi-weekly conference calls with deans of California's law schools (ABA and California accredited and non-accredited); and bi-weekly conference calls with a working group comprised of representatives of the Admissions and Education (A&E) Committee of the Bar's Board of Trustees, the Committee of Bar Examiners (CBE) and Supreme Court staff.

Dr. Buckendahl's report, *Conducting a Standard Setting Study for the California Bar Exam* (Standard Setting Study) was submitted to the A&E Committee and the CBE on July 31, 2017.[2] That report was accompanied by a staff report recommending the release of the Standard

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[1] Attached as Appendix A.
[2] Attached as Appendix B.

Setting Study for public comment along with two cut score options: maintaining the current bar exam cut score of 1440,[3] or reducing the cut score to 1414 on an interim basis to be used exclusively for the July 2017 administration of the CBX. The A&E Committee and the CBE accepted the staff report and released the Standard Setting Study and cut score options for public comment immediately following the meeting.

During August the Bar solicited additional input from stakeholders, holding two full-day sessions – one day each in northern and southern California – to receive public comments, and distributing an online survey to California licensed attorneys, both active and inactive, and applicants for admission. In response to these calls for public input, the Bar received:

- Over 5,000 public comments on the Standard Setting Study;
- Over 34,000 survey responses from licensed attorneys in California, approximately 15 percent of the population of active and inactive attorneys to whom the survey was distributed; and
- Over 4,000 survey responses from applicants who took the July 2017 bar exam, approximately 45 percent of the applicants to whom the survey was distributed.

A report on these comments was presented at a meeting of the Law School Council, an advisory body to the CBE, on August 30, and again, at a joint meeting of the A&E Committee and CBE on August 31. In addition to the option of lowering the cut score to 1414, a third option of 1390 was presented in the staff report for consideration at the August 30 and 31 meetings. After reviewing and discussing the report, the Law School Council voted to recommend that the Supreme Court consider adoption of an interim CBX cut score within the range of 1350 to 1390; the CBE voted to recommend maintaining the pass line at 1440 until the completion of two additional planned studies (the Content Validation Study and the Law School Bar Exam Performance Study).

On September 6, the State Bar Board of Trustees (Board) took up the recommendations from the Law School Council, CBE, and Bar staff. Members of the Board heard additional public comment during the meeting – including additional comment from members of the CBE and the Law School Council – and discussed the issues surrounding the CBX cut score in detail. By a margin of six to five[4], the Board voted to forward three options to the Court: maintain the status quo of a 1440 cut score; reduce the cut score to 1414 on an interim basis; or, reduce the cut score to 1390 on an interim basis.

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[3] Unless otherwise noted, this report will refer to total scaled scores when discussing the cut score. Throughout the report the terms "cut score" and "pass line" are used interchangeably.
[4] The resolutions and roll call vote details for both the August 31 CBE meeting and September 6 Board meetings are attached as Appendix C.

These extraordinary process and inclusion measures have been undertaken to ensure that the evaluation of the bar exam cut score is analytically rigorous, inclusive, and transparent. This report provides: background on the history and evolution of the CBX; a summary of the experiences of other states in evaluating and changing their bar exam cut scores; an overview of the Standard Setting Study; detailed analysis of public comments and survey results regarding options for changing the cut score; simulations of the impact of different cut scores on pass rates as applied to 2008 and 2016 CBX results; a discussion of the cut score's impact on access to justice, diversity of the legal profession, and public protection; and a final section outlining the next steps that the Bar plans to take to address key issues related the cut score as well as areas of needed further study.

This report concludes by providing the Court with three viable cut score options for consideration:

1. No change to the current CBX cut score of 1440 (approximately 72 percent)[5]; or
2. Adopt an interim cut score of 1414 (approximately 70.7 percent); or
3. Adopt an interim cut score of 1390 (approximately 69.5 percent).

II.   A Brief History of the Bar Exam in California

The legal profession in the United States is regulated by state governments leading to a broad diversity of rules and practice governing admission to individual state bars. In a majority of states only students who have studied at schools approved by the American Bar Association (ABA) may take the exam. Other states allow students who have earned degrees from state accredited, unaccredited, and correspondence courses to take the bar exam. In a small number of states it is still permissible to take the bar exam after "reading the law" – serving a form of apprenticeship under a judge or practicing attorney – a practice that developed in common law countries prior to the advent of law schools.

In addition to setting the requirements for legal education of those who may take the bar exam, all states require that candidates meet minimum standards of character and fitness – known as a "moral character" determination in California – and almost all states require that applicants to the bar pass the Multistate Professional Responsibility Examination (MPRE), created and managed by the National Conference of Bar Examiners, a non-profit based in Wisconsin. What constitutes the MPRE varies from state to state; there is no uniform passing score. Thus, while

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[5] Percentages represent the percentage of points out of a possible total of 2000 of the total scaled score. Because of scaling the exam, however, percentages from year to year may not be directly comparable which is why these are listed as "approximate."

passing the bar exam is an essential prerequisite to becoming an attorney in the United States, it is not the only prerequisite.

California is one of the least restrictive states in setting the legal education requirements for who may take the bar exam. In California students who attend ABA accredited, state accredited, or unaccredited law schools may sit for the CBX. Students who studied through correspondence courses may also take the exam. Foreign-educated law students who complete one year of law study at an ABA or California accredited law school may be found eligible to take the exam, and California is also one of only seven states that allows applicants to take the bar exam after reading the law. [6]

Historical Evolution of the California Bar Exam

During the last century the CBX has undergone numerous changes. The number, type, and content of questions, have all changed. The grading process, amount of time allotted to applicants to answer questions, the weighting of different portions of the exam, and rules related to grading and reviewing exams that narrowly miss the pass line, have all also been modified. The one thing that has been relatively constant throughout this period, however, is the pass line which has remained at, or very close to, 70 percent.

The first bar examinations in California were administered in 1920 by a Board of Bar Examiners composed of members appointed by the Supreme Court. The Board had been established in 1919, eight years before the State Bar was created. When the State Bar came into existence in 1927, the Committee of Bar Examiners was established to develop and implement the admission requirements.[7]

From 1932 until 1972 the CBX consisted of about 20 essay questions and applicants needed an average score of 70 percent of the highest possible grade to pass.[8] In 1972, the Multi-State Bar Exam (MBE) – a 200 item, multiple-choice test developed by the National Conference of Bar Examiners – was added to the CBX and given a weight of 30 percent of the total value of the exam with the essay portion of the exam at 70 percent. The pass line for the combined essay and MBE remained at 70 percent.

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[6] In addition to California, Maine, New York, Vermont, Virginia, Washington, and West Virginia all allow people who have not attended law school to take the bar exam after serving this type of apprenticeship. New York requires at least one year of law school before taking the bar exam and the state of Maine requires applicants to complete two thirds of law school. See *Comprehensive Guide to Bar Admission Requirements, 2017*, published by the National Conference of Bar Examiners and American Bar Association Section of Legal Education and Admissions to the Bar.

[7] Report of California Survey Committee," published by The State Bar of California, 1933.

[8] The historical development and evolution of the bar exam in California are not well documented. This section relies heavily on "History of General Bar Examination Structure and Pass/Fail Rules," Stephen Klein, Ph.D., July 9, 2011

Though it is not well documented, at some point prior to the adoption of the MBE, the number of essay questions was reduced from 20 to 12. The twelve essay questions were drawn from three sections of five questions each and applicants were required to answer four of the five questions in each section and allotted just over 52 minutes per question to complete their answers.

In 1978 a number of additional changes were introduced to the CBX. The number of essay questions was reduced again, this time from 12 to nine, but applicants were required to answer all of the questions. The amount of time allotted to answering the questions was increased to allow a full hour per question. The weighting of the MBE and essay questions was also shifted so that the MBE counted for 40 percent of the total score and the essays counted for 60 percent. In addition, during this period a number of modifications were made to the grading process, in part to save time on the grading,[9] but also to provide a "second read" for exams that fell within the range of 67.3 percent to 70 percent.

In 1981 a "bifurcation" rule was implemented which allowed applicants to repeat only one part of the exam if they failed overall but passed one portion. Applicants were able to bifurcate their results as late as the July, 1985 exam, but this practice was discontinued because it was found actually to *decrease* rather than increase passing rates.[10] In 1984 the practice of sampling three essay exams was also discontinued because it was determined that the labor savings of reading only a sample of a small proportion of the total exams had a negligible impact on the cost of administering the exam.

In 1983 a Performance Test section was added to the CBX. While this initially included a set of multiple-choice questions and scoring separate from both the MBE and essay portions of the exam, by 1985 the multiple-choice portion of the Performance Test was eliminated and by 1987 the essay and Performance Test questions were combined into a single, written score.

In February 1985, the CBE recommended that the essay and performance test portions of the CBX be scaled to the MBE. Scaling the written portions of the examination to the MBE was a procedure that was used by many other states and recommended by the National Conference of Bar Examiners. The goal of scaling, in part, is to ensure that the level of difficulty of the exam remains relatively constant from one administration to another[11].

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[9] Exams were graded initially by randomly selecting the responses from one essay test session – three questions – grading these and then evaluating the applicants score in conjunction with the applicant's score on the MBE. If that score "was high enough to virtually assure they would pass if all their essay answers were read," then the applicant was admitted to the bar without grading the remaining essays (Klein, 2011, p. 2). If, however, the randomly selected essays did not appear to guarantee a passing score, then all of the remaining questions were graded to determine if the applicant passed.

[10] Report on the impact of bifurcation of exam results attached as Appendix D.

[11] In scaling the written exam scores to the MBE, with the MBE as the anchor, the range of written scores are matched to those for the MBE on the basis of the spread of the score points (standard deviation). As a result of this scaling, written and MBE scores are placed on the same comparable scale.

The CBE's psychometric consultant at the time, Stephen P. Klein, Ph.D., also prepared several reports and made multiple presentations on the subject of scaling the essay and performance test scores to the MBE, which included both pros and cons for adopting the new scaling method.

The CBE adopted in principle scaling the essay and performance test portions to the MBE during its July 1985 meeting. However, because the scoring was changing, a new pass line had to be determined. The CBE took the scaling recommendation to the State Bar's Board of Trustees and at its April 1986 meeting, the Board approved the request to begin scaling the examination, effective with the February 1987 administration of the CBX, and determined that "the passing score will be equivalent to the mean difficulty index before reappraisal from the last ten spring and fall bar examinations." That score was established as a scaled total score of 1440 (72 percent of the total possible points available, which would fluctuate from one administration of the exam to the next due to scaling).

To be clear, the pass line of 1440 was not established through a standard setting study of the type described in this report. Rather, the pass line was set to maintain a relatively constant pass rate, consistent with historically observed pass rates. The minimum passing score has remained unchanged since that time.[12]

III.   Experiences of Other States in Evaluating the Bar Exam Pass Line

To provide some context for the Court in evaluating options related to the CBX pass line, bar staff conducted a survey of other states. The survey was sent to representatives of the entity in other states responsible for administering the bar exam and each representative was asked when the last study was conducted of the bar exam in the state, whether the study resulted in recommendations to raise or lower the cut score, and whether the recommendations were ultimately implemented. Of the 31 states that responded to the survey, only 14 indicated that they had undertaken a study to evaluate their bar exam cut score since 1990.

Of those states, five indicated that a recommendation was made to raise the cut score, two indicated that a recommendation was made to lower the cut score, and in two states a recommendation was made to maintain the current cut score. Five states indicated that an "other recommendation" was made: in a number of these cases the other recommendation related to adopting the MBE or using the Uniform Bar Exam (UBE).

A number of states adopted new cut scores when they began to use the UBE, which is developed by the National Conference of Bar Examiners. Most of these states appear to have set the pass line at a point consistent with their pass line prior to adoption of the UBE. While a

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[12] In an effort to streamline the narrative, this description of the process omits various details related to committees that participated in the process, procedural issues and minor modifications to recommendations.

few states have conducted studies to evaluate their cut scores over the years, only two indicated that they conducted studies based on the type of methodology employed for the Standard Setting Study recently completed in California.

Table 1. Summary of Other States' Experiences Evaluating Bar Exam Cut Scores

Current Cut Scores in Other Jurisdictions and Recent Changes

Jurisdiction	Current Cut Score (200-point scale)	Participating Uniform Bar Examination (UBE)?	Recent Changes Based on Survey and Other Sources
Alabama	130	Yes	
Alaska	140	Yes	
Arizona	136.5	Yes	
Arkansas	135	No	
California	144	No	
Colorado	138	Yes	
Connecticut	133	Yes	
Delaware	145	No	
District of Columbia	133	Yes	
Florida	136	No	Raised from 131 in 1999
Georgia	135	No	
Hawaii	134	No	
Idaho	136	Yes	Lowered from 140 in 2015
Illinois	133	No	Raised from 132 in 2015, with further increases recommended for subsequent years not implemented
Indiana	132	No	
Iowa	133	Yes	
Kansas	133	Yes	
Kentucky	132	No	
Louisiana*		No	
Maine	138	Yes	Lowered from 140 in 2000
Maryland	135.3	No	
Massachusetts	135	Yes (2018)	
Michigan	135	No	
Minnesota	130	Yes	Recommendation for raising the cut score in late 1990's not implemented
Mississippi	132	No	
Missouri	130	Yes	
Montana	133	Yes	
Nebraska	135	Yes	
Nevada	138	No	Lowered from 140 in 2017
New Hampshire	135	Yes	
New Jersey	133	Yes	
New Mexico	130	Yes	
New York	133	Yes	Raised from 132 in 2005, with further increases recommended for subsequent years not implemented
North Carolina	140	Yes (2019)	
North Dakota	130	Yes	
Ohio	135	No	
Oklahoma	132	No	
Oregon	137	Yes	Lowered from 142 in 2017
Pennsylvania	136	No	
Rhode Island	138	No	
South Carolina	133	Yes	
South Dakota	135	No	Raised from 130 in 2014
Tennessee	135	No	
Texas	135	No	
Utah	135	Yes	Raised from 130 in 2004
Vermont	135	Yes	
Virginia	140	No	
Washington	135	Yes	
West Virginia	135	Yes	
Wisconsin	129	No	
Wyoming	135	Yes	

* The only state that does not use the Multistate Bar Exam (MBE) for multiple choice administered by the National Conference of Bar Examiners.

Table 1 lists all states plus the District of Columbia with corresponding pass lines; whether the jurisdiction uses the UBE and; additional information gleaned from the survey, if any. Table 1

shows that Florida conducted a study in the late 1990s using a methodology similar to the Standard Setting Study. As a result of this study, Florida raised its cut score from 131 to 136. New York reviewed its cut score in early 2000 using a similar methodology. The result of that study was a recommendation to raise the cut score by more than 6 points from 132 (or 33 points on New York's 1000-point scale). It was raised by one point to 133 in 2005. Two successive 1-point increases that were planned to bring the pass line to 135 never occurred due to fierce opposition from law schools and others.

Several states recently lowered their pass lines, including Oregon from 142 to 137 and Nevada from 140 to 138 (both according to the common 200 point scale).[13] These decisions appear to have been made by the respective Courts without using an established standard setting study methodology.

IV. Recent Changes in the Pass Rate on the CBX and the California Response

California's pass line of 1440 is the second highest of all United States bar admission jurisdictions. While this pass line has remained unchanged since 1987, the pass *rate* on the CBX has risen and fallen over time: falling for a brief period in the early 2000s, then rising until it reached its peak in 2008, and declining steadily since then. Figure 1, below, shows the trend from 2000 to 2016 with the July 2016 CBX pass rate at 43 percent compared to the previous high of 62 percent in 2008.

Figure 1. July Bar Examination Passage Rates, 2000 - 2016

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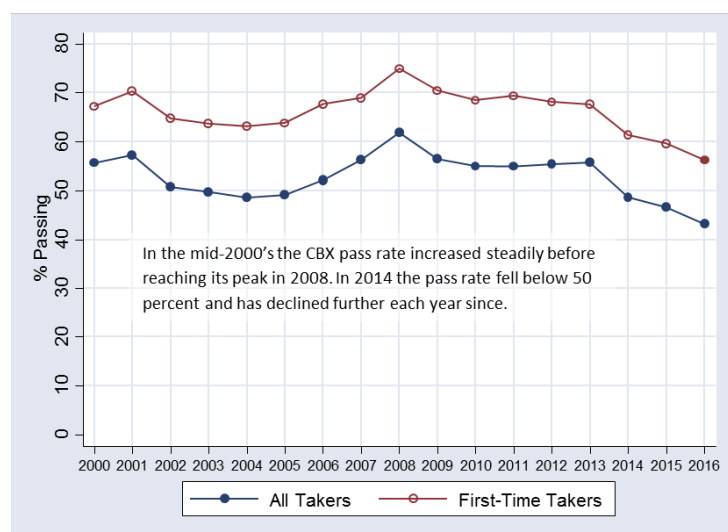
[13] See Michael Tobin, "Oregon Supreme Court Lowers Bar Passage Standard," Daily Emerald, August 22, 2017: https://www.dailyemerald.com/2017/08/22/oregon-supreme-court-lowers-bar-passage-standard/

Critics of the CBX point out that California's pass line is higher than that of every other state in the country except for Delaware. This high relative pass line may raise questions as to the validity of the current cut score and whether it is necessary for the purpose of protecting the public. Figure 2 shows the cut scores used by other states.

Figure 2. Passing Bar Examination Score on 200-Point Scale, by State[14]
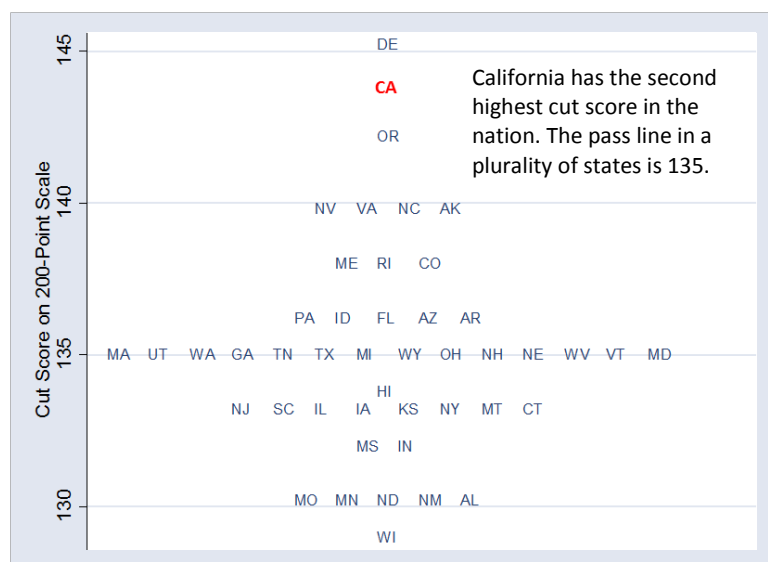
Because the pass rate on the CBX has risen and fallen over time without any change in the pass line, the relatively high score required for passing the exam in California cannot explain the declining pass rate over the last eight years. Moreover, many other states have experienced a similar declining trend in pass rates in recent years.

National efforts to explain these changes have focused on the precipitous drop in law school enrollment. Ms. Erica Moeser, past President of the National Conference of Bar Examiners, asserts that the decline in the job prospects of newly licensed attorneys led to a decline in the number of law school applicants which, in turn, led schools to admit students with weaker academic credentials.[15] As Figure 3 illustrates, changes in law school enrollment and corresponding admissions rates provides some support for this hypothesis.

[14] The cut scores in states that allow applicants to sit for the Bar exam after "reading the law" range from a low of 133 in New York to a high of 144 in California.
[15] "Ask the Professor: Who's to blame for the falling Bar Exam pass rate?" *Above the Law*, October 15, 2015.

Figure 3. National Changes in ABA Law School Enrollments and Bar Admission Rates
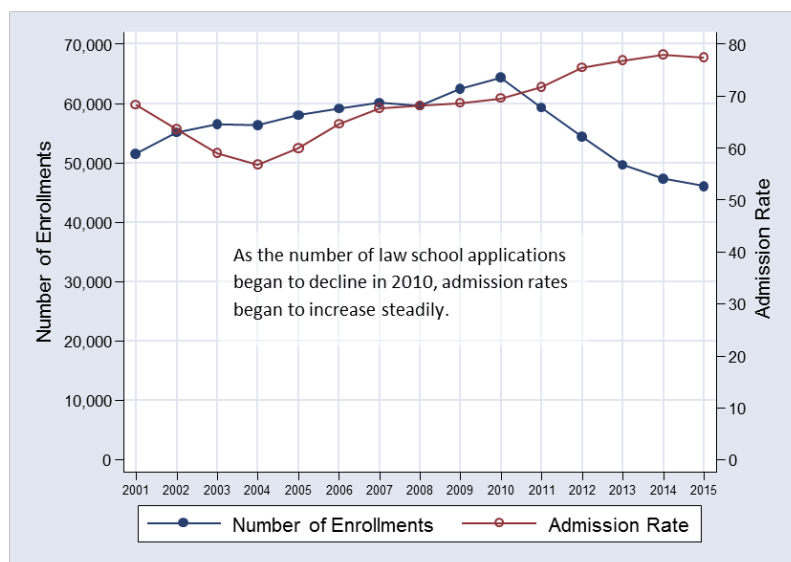
A 2016 proposed ABA policy exacerbated concerns regarding the decline in bar exam pass rates. In March 2016 the ABA's Council of the Section of Legal Education and Admissions to the Bar proposed amending Standard 316 to require 75 percent of each graduation cohort of a law school's students to pass a bar examination within two years of graduation for the law school to maintain its accreditation. While the proposed standard has not yet been approved by the ABA House of Delegates, the likelihood of its adoption is an important contextual factor for consideration by the Court as it evaluates options for modification of the CBX pass line.

Responding to the Declining Pass Rate

In California, the combination of declining law school enrollment, the looming ABA accreditation requirement, and a steady downward trend in exam pass rates came to a head after the release of the July 2016 CBX results. In the winter of 2016, the CBE determined that a thorough analysis of the issue was needed. At its December 2016 meeting the CBE took a preliminary step toward this goal by authorizing a study of the causes of the declining pass rate. The CBE contracted with Roger Bolus, Ph.D., an independent psychometrician who has been responsible for assessing the validity of each administration of the CBX for the last four years, to evaluate factors that affect the pass rate using existing State Bar data.

Adding to the momentum for evaluating these issues, in early February 2017, California law school deans wrote to the California Supreme Court urging the Court to lower the cut score on the CBX.[16] Later in February, the California Assembly Committee on the Judiciary held a hearing on declining exam pass rates and shortly thereafter sent a letter to the California Supreme Court urging the Court to adopt a lower pass line.[17]

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[16] Attached as Appendix E.
[17] Attached as Appendix F.

In its letter to the Bar, dated February 28 and quoted in the Executive Summary of this report, the Chief Justice of the California Supreme Court directed the State Bar to report back to the Court "once the investigation and all studies are concluded."[18] The report "must include a detailed summary of the investigation and findings, as well as recommendation for changes, if any, to the bar exam and/or grading, and a timeline for implementation. The State Bar's report and recommendations should be submitted to the court as soon as practicable and in no event later than December 1, 2017."

In March 2017, Dr. Bolus presented the findings of his study at a meeting of the CBE.[19] The study looked at the relationship between pass rates and the attributes of students at different law schools. Using aggregate data, the study found that, all other things being held equal, roughly 20% of the change in July CBX scores and 17% of the change in bar passage rates could be attributed to the change in the mix of test takers between 2008 and 2016. The "mix" of test takers refers to various known applicant characteristics – race, gender, type of school, and first-time vs. repeat exam taker status – that are predictive of an applicant's likelihood of passing. The lack of individual, student-level data, however, limited the ability of the study to provide a full explanation of the various factors that might have contributed to the decline in the pass rate during that period.

Subsequently, the Committee authorized and the Board approved during its March 2017 meeting the completion of three additional, interrelated, studies regarding the CBX:

- *A Standard Setting Study*. Standard setting studies involve a formal process in which a panel of subject matter experts (SMEs), facilitated by a psychometrician in a workshop setting, evaluate the performance of exam takers and determine a pass line that is aligned with the expected level of knowledge, abilities, and skills of those exam takers.

- *A Content Validation Study*. Also relying on a panel of SMEs, content validity studies assess the alignment of examination content, in terms of breadth and depth, in relation to the expected level of knowledge, abilities, and skills of exam takers.

- *A Law School Bar Exam Performance Study (Performance Study)*. As a supplement to Dr. Bolus' study, this study aims to collect detailed, student-level data to more thoroughly evaluate any possible correlations that might exist between changes in student credentials and changes in CBX pass rates.

To manage these three studies and ensure appropriate oversight and communication with key stakeholders, the Bar formed a Working Group on Bar Exam Studies (Working Group) comprised of one representative from the California Supreme Court, two representatives from

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[18] Attached as Appendix A.
[19] Attached as Appendix G.

the Board of Trustees and two from the CBE. The Working Group is tasked with providing guidance and making administrative decisions related to the studies.

A different working group, composed of five deans, State Bar staff, and Dr. Bolus, was also formed to provide guidance on the Performance Study. In addition, regular updates regarding the progress of all studies underway that have been prepared for the Supreme Court are circulated to interested parties, including law school deans, the CBE, the Board of Trustees, and others. State Bar staff has also held bi-weekly conference calls since March, open to all California law school deans, to discuss progress on all three studies.

Although the three studies were launched concurrently, the Standard Setting Study was accelerated, such that should any options for modification of the cut score submitted to the Board of Trustees could be reviewed and approved by the Supreme Court in time to apply to the scoring of the July 2017 CBX.[20]

At a joint meeting of the A&E Committee and the CBE on July 31, 2017, Bar staff delivered the Standard Setting Study. Staff recommended, and the A&E Committee approved, circulating the study for public comment along with staff recommendations that two cut score options be considered: 1440 (status quo) and 1414.

Following the period of public comment, staff added an additional option – a cut score of 1390 – and presented that option along with a summary of public comments and survey results to the Law School Council and a joint meeting of the A&E Committee and the CBE. On August 30, 2017, the Law School Council voted to recommend that the Supreme Court consider adoption of an interim CBX cut score within the range of 1350 to 1390, and that if a lower interim cut score is approved by the Supreme Court, the score remain in place for no less than three years.

The following day, August 31, 2017, after consideration of the staff report, comments received, and the recommendation from the Law School Council, the CBE voted to recommend maintaining the pass line at 1440 until two pending reports on the CBX – the Content Validation and Performance Studies – are completed and can also be considered in connection with making a recommendation relative to what the cut score should be.

Standard Setting Study and Recommendation of New Cut Score

The primary research activity for the Standard Setting Study was a two and one-half day workshop[21]. The workshop involved a panel of 20 practicing attorneys selected to provide

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[20] The Content Validation Study is expected to be completed in time to deliver to the Court by December 1, 2017. The expected completion date of the Law School Bar Exam Performance Study is less certain because this study depends entirely on law schools providing the Bar with data on student: an issue that is currently under legal review and also the subject of state legislation. The earliest that the Law School Bar Exam Performance Study could be completed would be in the spring of 2018

[21] Detailed information regarding the Standard Setting Study methodology and implementation can be found at: http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000019900.pdf.

subject matter expertise from a diverse body in terms of both demographics and practice types. During the workshop the panelists collectively evaluated 2,400 written essays and performance tests from the July 2016 CBX.

In preparation for the Standard Setting Study State Bar staff discussed options for a definition of minimum competence with law school deans at the April 6, 2017, meeting of the Law School Assembly. The initial resulting draft was further refined pursuant to additional feedback received from the Working Group and law school deans. During orientation and training on the first day of the workshop, the panelists discussed the concept of minimum competence that would serve as the basis for evaluating the performance levels of the essays. Standard setting panelists further modified the definition and established a baseline definition of minimum competence – also known as a Performance Level Descriptor (PLD).[22]

It is important to note that this initial work was necessary because the State Bar did not already have a PLD that could be used for the standard setting exercise: a PLD was not used when 1440 was established as the pass line in 1987. Unlike detailed grading rubrics which are used, as the name implies, for grading specific exam papers, a PLD is used specifically in the context of a standard setting study. According to the Analytic Judgment Method used for the study, panelists are expected to render judgment on the performance of the exam papers holistically across scoring elements or subject matters. Thus, in the way that the PLD is used in the study and in the results that it is expected to generate – deriving a threshold cut score – the PLD is quite different from grading guidelines and rubrics used for grading exams.

In an effort to collect information from other jurisdictions that might inform this work, it was determined that California is not unique in lacking a PLD. In a survey sent to other jurisdictions, 2 out of 23 states that responded indicated that they had defined "minimum competence" for bar admission. Washington, one of the states with positive response, referred to their "Essential Eligibility Requirements" for the practice of law, including good judgment, honesty, integrity, etc. The other state, Florida, referred to the Rules of the Supreme Court Relating to Admissions to the Bar: Technical Competence which states that "[a]ll applicants seeking admission to The Florida Bar must produce satisfactory evidence of technical competence by passing all parts of the Florida Bar Examination." Based on survey responses and the material provided regarding minimum competence, no other states appeared to have a PLD that would have been appropriate for use in California's Standard Setting Study.

Through the collective effort described above, the PLD was established as follows[23]:

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[22] For further discussion of the process of developing the PLD, see the discussion beginning on page 28.

[23] At least one member of the Working Group believed that the introduction of qualifiers into the PLD such as "will likely provide incomplete responses that contain some errors of both fact and judgment" compromised the validity of the PLD by lowering the standard for "minimum competence."

"A minimally competent applicant will be able to demonstrate the following at a level that shows meaningful knowledge, skill and legal reasoning ability, but will likely provide incomplete responses that contain some errors of both fact and judgment:

1. Rudimentary knowledge of a range of legal rules and principles in a number of fields in which many practitioners come into contact. May need assistance to identify all elements or dimensions of these rules.

2. Ability to distinguish relevant from irrelevant information when assessing a particular situation in light of a given legal rule, and identify what additional information would be helpful in making the assessment.

3. Ability to explain the application of a legal rule or rules to a particular set of facts. An applicant may be minimally competent even if s/he may over or under-explain these applications, or miss some dimensions of the relationship between fact and law.

4. Formulate and communicate basic legal conclusions and recommendations in light of the law and available facts."

For each question, in the first round of activity the 20 panelists used the guidelines derived from the discussion of the PLD to classify 600 papers that they read – 30 per panelist – into three performance levels: below competence, meeting competence, and exceeding competence.[24] Following the initial classification, in a second round of activity, the panelists further refined the performance evaluation by selecting 80 papers – four per panelist – from the first two groups (below and above minimum competence). The subset of 80 papers for each question represented the combined total of each panelist's selection of the two best of the non-competent papers and the two worst of the competent papers. These "borderline" cases provided the basis for calculating the pass line that meets the minimum competence definition.

The analysis of borderline papers to establish a new recommended cut score involved three basic steps:

1. *Mean and median cut score calculations*. Mean (average) and median (middle) scores of the papers were calculated. After assessing the difference between mean and median values, it was determined that the median value would more accurately represent the "central tendency" or average typical performance of the papers.

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[24] With each panelist reading 30 responses for each of four questions, a total of 2,400 papers were evaluated (20 X 30 X 4). The essays that panelists read were purposefully selected to present each panelist with papers that covered the full range of scores from the July, 2016 CBX. The scores, however, were not revealed to the panelists, and the papers were presented to the panelists in random order.

2. *Convergence or confidence level of cut score calculations*. Standard errors of the mean and median values were calculated to assess the degree of convergence of individual panelist's classification results and cut scores. This also allows for the representation of the statistical confidence level of the estimated mean and median values derived from the study sample.

3. *Deriving a cut score for a total scaled score*. From the initial cut scores calculated from written exam questions that were evaluated at the workshop, cut scores on the total, combined scale were derived through a process called "equipercentile linking." Equipercentile linking involves comparing two sets of scores on a common scale of cumulative percentile (from 0 to 100) that reflects the distribution of written and total scaled scores. A specific score point for written questions, after being located on the common cumulative percentile curve, is translated to a total scaled score located on the same percentile distribution curve.

Based on the above procedure the standard setting workshop arrived at a median cut score of 1439 – effectively the same as the current pass line of 1440. Following a standard statistical procedure in evaluating the degree of convergence of the cut scores, "standard errors" of mean and median were calculated to estimate a range of cut scores to provide a measure of statistical confidence. The "error" refers to the difference between the mean or median value calculated from the sample of papers evaluated in the workshop as compared to the mean or median value of the population of all exam papers. Given that a census of all 2016 Bar exam papers was neither conducted nor feasible, the standard error represents the degree of confidence to which the observed scores could be compared or generalized to the entire population of 2016 papers. As a function of sample size and the convergence of the panelists cut score values, a larger sample size and greater convergence would lead to a smaller standard error.

Because standard errors are calculated on both sides of the mean or median – in other words, the "true" value may be above or below the estimated value – the application of the standard error could result in a higher or a lower pass line. On the increase side, a cut score of 1477 and 1504 could be used, representing one and two standard errors, respectively, above the median of 1439. Conversely, on the decrease side, a cut score of 1414 and 1388, one and two standard errors, respectively, below the median could also be used to provide a full range of the possible cut scores.

This range within two standard errors above and below the average value provides a 95 percent confidence interval. This means that while 1439 is the best estimate of the "true" cut score as derived from the panelists' evaluation of the papers, one could select a value anywhere within the range from 1388 to 1504 and still have 95-percent confidence that the "true" cut score is within this range. Table 2 below shows the full range of the cut score calculations provided by Dr. Buckendahl in his technical report.

Table 2. Summary Results of Standard Setting Study

	Mean		Median	
	Written Score	**Combined Score** (pass rate)	**Written Score**	**Combined Score** (pass rate)
-2 SE$_{Mean/Median}$	419	1414 (53%)	414	1388 (60%)
-1 SE$_{Mean/Median}$	424	1436 (47%)	419	1414 (53%)
Median score (SE$_{Mean/Median}$)	428 (4.47)	1451 (43%)	425 (5.60)	1439 (45%)
+1 SE$_{Mean/Median}$	432	1480 (36%)	431	1477 (37%)
+2 SE$_{Mean/Median}$	437	1504 (31%)	436	1504 (31%)

Determining where within the range the cut score should fall implicates several key policy considerations. One of these relates to the concept of two types of classification errors in statistical inference: false positive and false negative errors. Selecting a cut score above the median (or setting a higher threshold in general) is likely to lead to more false negative errors, where an applicant fails when in fact the applicant's "true" competence meets the minimum competence requirement. On the other hand, a false positive error (passing an applicant when in fact the applicant's competence does not meet the requirement) is more likely to occur when a cut score is selected below the median (or setting a lower threshold in general).

Another related policy consideration is the cost/benefit analysis of either type of error in relation to the potential tension between public protection and access to legal services. When the threshold for entry into the practice is established at a level that is too stringent, access to justice may be negatively impacted. Conversely, a lax standard may increase the risk of harm to the public caused by the action, or inaction, of unqualified attorneys.

Current bar examination grading practices demonstrate how the cost/benefit calculation has played out in California. The "second read" component of the CBX grading procedure, where examination papers from the first read that fall within a band below the cut score are re-read, represents an implicit policy position of having greater tolerance for false positive errors. The "second read" process is designed to correct false negatives by re-evaluating borderline papers that may have been, incorrectly, assessed below the cut line. Those papers that fall within a band slightly above the cut score are not passed on for second read reflecting a policy preference that is more amenable to false positive errors.[25]

In addition to error type and cost/benefit analysis, the fact that California has the second highest cut score in the nation is an important factor for the Court to consider. There is no

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[25] It is interesting to note that the lower bound for second read is 1390. The statistical tests applied to the Standard Setting Study data found that this lower band – 1390 – is right around two standard errors below the median, 1388.

empirical evidence available that indicates California lawyers are more competent than those in other states. And while there is some evidence that California attorneys who attended schools with lower average LSAT scores are more likely to be sanctioned by the Bar for misconduct, there is also no correlation between the cut score in different states and the rates at which attorneys are disciplined. (This topic is addressed in greater detail on pages 39 and 40.)

To provide the Court with additional information on which to base its decision making process this report now summarizes the public comments received regarding the Standard Setting Study and cut score options circulated for comment. Following that, the report will provide an impact analysis and discuss additional policy implications related to the cut score.

III.   Survey Responses and Public Comments

In an effort to cast a wide net in soliciting public comment on the Standard Setting Study, Bar staff sought public input through multiple different channels including surveys of attorneys and bar applicants, public hearings, and the receipt of public comments through a web-based comment process, by e-mail, and even through US mail.[26]

Surveys of Attorneys and Applicants on the Cut Score

An online survey was distributed to all licensed California attorneys, including both active and inactive members, to solicit their views about the proposed options for the cut score. The survey was open for nine days from August 10 through 18 during which time nearly thirty-five thousand (34,295) attorneys responded (a response rate of about 15 percent). A slightly modified version of the survey was also distributed to bar applicants who took the July 2017 CBX. The applicant survey was open for eight days from August 11 through 18. Out of a total of more than nine thousand applicants (9,175), more than four thousand (4,188) responded (a significantly higher response rate than that of attorneys, at 46 percent).

Key questions for both surveys included options on the bar exam cut score resulting from the July 31 meeting of CBE and the A&E Committee:

- Keep the current cut score of 1440;
- Lower the cut score to 1414;
- Lower the cut score further below the recommended option of 1414; or
- Other.

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[26] Public comments and transcripts of the two days of public testimony have been compiled and posted online. Appendix H provides the links to these documents.

Respondents were also asked to rate the importance, on a 10-point scale, of various factors that might be relevant in consideration of setting an appropriate cut score. These factors included:

- Increasing diversity of attorneys from different backgrounds;
- Increasing access to legal services for underserved populations;
- The fact that the cut score in California is the second highest in the nation;
- Maintaining the integrity of the profession;
- Protecting the public from potentially unqualified attorneys;
- Declining bar exam pass rates in California; and
- The burden of student loan debt for law school graduates unable to find gainful employment after failing the bar exam.

While not an exhaustive listing of policy issues relevant to the bar exam cut score, closed-ended responses allow for statistical reliability in assessing the importance that respondents assign to different factors. The collection of additional information related to respondents' backgrounds also provides context to better understand their views and the source of their concerns.

As shown in Table 3, the views of licensed attorneys and applicants on the cut score are sharply divergent. About 80 percent of attorney respondents are opposed to lowering the cut score, whereas only 2 percent of bar applicants hold the same view. For those attorneys who favor lowering the cut score, approximately 12 percent support the option of lowering it to 1414, and four percent lowering it further, with the remaining five percent in favor of a variety of other options, including raising the cut score, implementing the Uniform Bar Exam, eliminating the bar exam entirely, undecided or no opinion.

More than 90 percent of applicant respondents support lowering the cut score and over half (57 percent of all applicant respondents) favor lowering it below 1414.

Table 3. Survey of Attorneys and Bar Applicants on the Bar Exam Cut Score and the Relative Importance of Various Factors Related to the Cut Score

| Option | % of Total Response | Average Importance Rating on 10-Point Scale (1 = Not at all important - 10 = Very important) | | | | | | |
		Increasing Diversity	Increasing Access	High California Cut Score	Integrity of Profession	Protecting Public Interest	Declining Pass Rate	Student Loan
Attorney (N = 34,295)								
Keep the current cut score	79.8	4.9	5.8	3.5	9.6	9.6	2.4	3.8
Lower it to 1414	11.6	7.5	8.0	6.8	8.2	8.1	6.4	7.0
Lower it further	4.2	7.7	8.3	7.7	7.1	6.9	7.7	7.9
Other	4.4	5.3	6.2	3.8	8.9	9.0	3.3	4.6
Total	100.0	5.3	6.2	4.1	9.3	9.3	3.1	4.4
Applicant (N = 4,188)								
Keep the current cut score	2.3	6.4	7.4	4.1	9.6	9.5	4.1	5.0
Lower it to 1414	36.4	7.9	8.6	7.9	8.1	7.8	8.2	8.5
Lower it further	56.7	8.4	8.9	8.1	7.6	7.2	8.8	9.0
Other	4.6	7.5	8.4	7.3	7.8	7.7	8.5	8.6
Total	100.0	8.1	8.8	7.9	7.9	7.5	8.4	8.7

Importance ratings vary significantly between attorney and applicant respondents who favor lowering the cut score. As shown in Table 3, public protection and integrity of the profession were the top factors for *attorneys* regardless of their position on the cut score. For *applicant* respondents, those who favor maintaining the current cut score rate public protection and integrity of the profession the highest also. But those applicants who support lowering the cut score rated these two factors the lowest. Instead, applicants who support lowering the cut score rated student loan debt and access as the most important factors, as well as the recent decline of bar passage rates.

Additional findings from the surveys include the following:

Attorney Employment Type: Attorney respondents employed in government, academia and nonprofit organizations are more likely to support lowering the current cut score. Other things being equal, those in solo practice are least likely to support lowering the cut score.

Gender: Female respondents, both attorneys and applicants, are more likely to express support for lowering the cut score, with a larger gender difference among attorney versus applicant respondents.

Race/Ethnicity: Among applicants, African Americans are more likely to support lowering the cut score (at a marginally statistically significant level) than other applicants. Other than that, there is no clear racial/ethnic distinction in applicant responses. When attorneys of color are compared to white attorneys as a whole, attorneys of color are *more* likely to favor the status quo. Broken into subgroups, the data shows a stark contrast between Asian and African American attorneys, with the former significantly more likely to support status quo whereas the

latter support lowering the cut score; there is no discernable difference between Latino and white attorney respondents.

School Type and Bar Exam Repeaters: Attorneys who graduated from non-ABA schools or took the bar exam more than once before passing were more likely to support lowering the cut score. Responses from applicants show no difference with respect to school types. Applicants who took the exam once or twice revealed no difference either; repeat applicants with three or more attempts, however, are more likely to be in favor of lowering the cut score. Repeat applicants as a whole are also more likely to show preference for lowering the cut score further below 1414.

In summary, the attorney and applicant surveys revealed a sharp divergence between attorneys and applicants in their assessment of the desirability of lowering the cut score. In addition, the profile of respondents shows that those who favor lowering the cut score are more likely to be women; African Americans; attorneys employed in government, academia, or nonprofit organizations; and those who had taken the bar exam more than once. Additional analysis also shows geographic variations, with both attorney and applicant respondents from Bay Area counties showing a significantly higher propensity in favor of lowering the cut score.

Public Comments and Hearings

Public comments came from a variety of sources, including the general public, attorneys, bar applicants, law professors, judges, researchers and institutions, from both California and across the nation. Representatives of California law schools – ABA, California accredited, and non-accredited – also submitted letters expressing their views on the matter. For those who submitted comments via the online comment form, about 35 percent selected one of the options presented *without* providing additional narrative comments to support the option selected.

The comments touched on a variety of issues related to the Standard Setting Study, the bar exam, and the legal profession in general, and varied from brief statements of a few words to lengthy papers involving detailed research and analysis.

It is important to note that the comments are not a representative sample and cannot be generalized to any specific population. The online public comment form had no mechanism to prevent duplicate submissions. The number and source of comments submitted was also affected by the attorney and applicant surveys that were distributed on August 10 and 11.

Before August 10, online comments were submitted at an average rate of 100 per day and the proportion of responses in support of lowering the cut score outweighed those in favor of the status quo by three to one. During the first two days after the attorney and applicant surveys

were distributed, more than 1,800 online comments were submitted, which also shifted the aggregate views with respect to cut score options. Table 4 shows that by the end of the public comment period 53 percent of online comments were in favor of the status quo, compared to 40 percent opposed.

Table 4. Selection of Cut Score Options from Online Comment Box

Option	Freq.	Percent
Keep the same*	2,789	53.1
Lower cut score**	2,073	39.5
Other***	386	7.4
Total	5,248	100.0

* Option 1 - keep current cut score of 1440 or if the option is modified.

** Option 2 - lower cut score to 1414 or if the option is modified.

*** Agreeing or disagreeing with both options.

Public comments are organized based on the method by which they were submitted. Online comments are grouped by the three response types noted above; individual comments within each category are then arranged in chronological order. Email submissions are the second type, followed by all others.[27]

Major Themes from Public Comments

To a considerable degree the seven factors presented in the attorney and applicant surveys appear frequently in various forms as major themes in the comments. For purposes of organization, key issues discussed in the comments can be categorized as follows:

- The cut score and its relationship to public protection and integrity of the profession;
- The bar exam and what it is designed to measure with respect to attorney competence and skills;
- Economic issues related to the supply and demand for attorney services, touching on student loan debt, with implications for access and diversity as well;
- Critique of the Standard Setting Study methodology, submitted primarily by law schools and academics in the form of letters, research papers, or public hearing presentations; and
- Reference to other states' cut scores, considering California as an unjustified outlier and citing benefits associated with lower cut scores.

Public Protection and Integrity of the Profession

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[27] Due to its size – over 1,500 pages – this document is posted apart from this report in three different links on the Bar's web site. See Appendix H.

While each of the broad categories outlined above reflects a wide diversity of views and individual life experiences, arguments in support of a particular position on the cut score often reflect the same concepts. Members of the public who referred to public protection and the integrity of the profession as important functions of the bar exam generally took the position that the cut score should not be lowered (with not a small number expressing support for raising it). These opinions are often expressed with an unmistakable pride that the commentators associate with the legal profession, as exemplified by the quotes below.

> "…that California's cut score is the second highest in the nation is something to be proud of, not something to be concerned about. I have interacted with attorneys from many other states using lower cut scores. I may be biased, but I believe that in general, California attorneys are better educated and more competent than attorneys elsewhere."

> "I started community college late and was placed in remedial English and algebra....I scored a 148 on the LSAT. If I listened to arguments about how testing formats and cut scores would prevent me from achieving my dreams, I would have quit before I even tried because my credentials were not those of the "people who become lawyers." I'm glad I didn't listen and believed in myself. I worked hard to be where I am, and that is a source of pride."

Those who take this view are prone to attribute the declining bar pass rate to the declining quality of law school students or to law schools passing unqualified students. In contrast, those who support lowering the cut score emphasize the need to consider other factors and question the relationship between the current cut score and the mission of protecting the public.

> "The State Bar needs more cut score studies in order to determine with reliable empirical evidence what the proper cut score is to balance consumer safety, access to justice, and diversity in the bar."

> "This high bar score does not at all reflect well on the integrity of the profession, rather it goes against the progressive stance and nature of what it means to be CALIFORNIAN. We are a state that prides itself in its forward thinking views, diversity, culture, and fairness."

Bar Exam and Measurement of Attorney Competence

> "In my 15 years of practicing law, I have observed too many attorneys who lack minimal competence. It is unclear to me how lowering the cut score to allow people to practice law, who otherwise have not been able to pass, will HELP society."

> *"…the bar exam does a poor job determining who is actually fit to practice law. If the exam were more relevant and better tailored to determine minimal competence, then the set cut score would be much more important and should not be lowered below what California thinks is a competent threshold. However, the bar exam as it is now does not test true competence to practice law."*

The two comments above represent opposing views regarding the CBX as a tool for measuring minimum competence. Those who are opposed to lowering the cut score tend to share observations of what they consider to be less than minimally competent attorneys in practice, in particular the purported decline of the writing skills of younger attorneys. Recent changes to the bar exam format - shortened from three to two days, Performance Test reduced in number from two to one, and the weight of the overall written section lowered from 65 to 50 percent – are also mentioned as evidence of the bar exam standard already being lowered.

In contrast, those in support of lowering the cut score raise questions as to the validity of the bar exam in its various aspects. At the most basic level, many point to the mere fact of the declining pass rates in recent years as an indication that something must be wrong with the exam. Going further, some of the comments criticize the CBX's heavy emphasis on rote memorization of a broad range of subject matters, a modality that is considered to be more a reflection of applicant test-taking abilities than the requisite skills of competent attorneys. The grading process of essay questions is also considered by many as flawed with testimonials from individuals who failed the bar exam attributing that failure to the "arbitrary" and "subjective" grading process that left them just a few points short of achieving the cut score level.

Independent of the role played by the CBX in testing competence, comments from those opposed to lowering the cut score often expressed the view that those who failed the exam lacked the discipline, grit, or work ethic to succeed in passing the bar and by implication, to be a competent attorney. These comments focused on personal traits or character rather than skills or knowledge acquired through learning and training. These comments – as shown in the examples quoted below – reveal deeply embedded cultural values and often suggest inter-generational attitudinal differences, as one comment started by stating "This is typical Millenial [sic] Stuff!".

> *"I passed because of sheer grit and directed effort. I graduated as a special student from a California accredited law school while being the sole supporter of a family of 5."*

> *"To me, the declining pass rate seems to be more of a millennial problem (I say this as a millennial). Students don't want to work hard for anything, they expect it to be given to them. If they're not willing to put in the work, they should not be admitted as lawyers."*

In addition to illustrating a generational shift in values, at a personal, psychological level the interpretation of competence as a reflection of personal traits also suggests a common cognitive bias at work on both sides of the debate. "Attribution error" refers to the tendency to explain positive outcomes that we experience to our character and ability (I tried hard and passed the bar) and negative outcomes to external, uncontrollable events (I didn't pass because the exam was problematic).

These critiques of the CBX actually go to the heart of the issues that are now being studied. The Standard Setting Study is the first installment in a larger process of evaluating the validity of the bar exam and ensuring that it measures what it purports to measure.

Economics – Supply and Demand of Legal Services, Access and Diversity, Student Loan Debt

Each of the seemingly disparate topics summarized in this section deserves its own treatment; the synthesis presented here only begins to address the complexity of the interconnected issues. There is, nonetheless, a common thread of economic or market-related concerns raised when issues of access, diversity, and student loan debt are discussed in connection with bar pass rates and cut score. This is also evident in attorney and applicant surveys, as discussed above, in which the ratings on access, diversity, and student debt are closely associated with one another.

Many who provided comments in favor of keeping the current cut score asserted that there is no shortage of attorneys in California as a primary argument against lowering the cut score. In fact, references to the job market for attorneys appeared in nearly a quarter of all online comments taking a position in support of keeping the current cut score.

> *"To be clear we DO NOT have a shortage of lawyers in this state but we do continue to have a shortage of high-quality legal jobs."*

> *"Consider: there is, most assuredly, no shortage of attorneys in the state -- judges will tell you that there is a shortage of *effective* attorneys in their courtrooms. Lowering standards will not address this problem, but merely make it worse."*

For those in favor of lowering the cut score, economic issues – whether employment, job market, or student loan debt – are often presented in narratives involving difficult choices and personal sacrifices, lost opportunity for gainful employment and service to the community, crushing financial burden from student loan debt and mental agony in dealing with all of these challenges. The emotional intensity appears to be captured in applicant survey results showing that access and student loan debt are rated at the top as most important factors for applicants in favor of lowering the cut score.

> *"…it has been an extreme financial burden as I have spent over $20,000 dollars in bar fees, accommodations, and resources to prepare for the bar. Moreover, my employment opportunities and earning potential are on standby until I pass the bar."*

> *"During my final semester of law school, I interviewed for legal jobs across the country. When time came to register for a bar exam prep course, I was faced with a quandary: do I bet on the California bar exam, in hopes that a California employer says yes to me? Or do I study for a bar exam with greater reciprocity, such as the New York State bar exam, to allow me to start practicing immediately in whatever state I may land a job? Ultimately, I chose to take the California state bar exam, which cost me several promising prospects."*

While it is not the role of the Bar, much less the CBX, to limit the number of attorneys in the market, the availability of legal services and the distribution of these services across California speak to legitimate issues of access to justice. This report addresses questions of access beginning on page 38.

Reference to Common Cut Score Ranges in Other States

Many public comments point to other states' cut scores as evidence that California's pass line is unjustified and extraordinarily high. These comments often cite the benefits associated with a lower cut score, primarily by increasing diversity of the profession and access to legal services. As to the specific cut score below the current level, two stood out as preferred by the vast majority: 1390 (rounded from 1390, or 139 based on a 200-point scale comparable to other states) and 1350, the most common cut score in other states.

Preference for 1390

Two main arguments are often presented as justifying a cut score of 1390:

1. it is within the confidence level of the cut score range from the Standard Setting Study;
2. it is consistent with the score range from 1390 to 1439 for written exams that are currently eligible for second read (some comments assert that papers within this range are often comparable in their quality, aside from grader subjectivity, calling into question the reliability of differentiating performance within this range).

It is true that from the Standard Setting Study result, 1390 lies at the lower end of the confidence interval two standard errors away from the median. It should be pointed out, however, the further a score point within the confidence interval deviates away from the center (1440), the less confidence one would attach to the score due to the bell-shaped distribution. Following the same reasoning, one would have similar confidence in preferring a

cut score to the right of the center at a higher cut score level. However, while statistical evidence presents a framework to evaluate the degree of certainty in selecting a particular cut score level, the decision must ultimately be informed by considering all of the policy implications.

It is not true, though, that the exams currently eligible for a second read are indistinguishable from those that pass. Historically the proportion of applicants who passed the bar after the second read has remained fairly constant at around 15 percent of the total second-read papers. The closer a first-read score is to the pass line, the greater the likelihood that it would pass after the second read. For example, for applicants whose scores fell between 1430 and 1439 on the 2016 July exam, approximately 35 percent passed after second read. That proportion falls by almost half for each 10-point decline within the second-read zone. For those at the bottom end of the zone, between 1390 and 1400, less than two percent passed after the second read.

Preference for 1330 or 1350

Those who advocate lowering the cut score below 1390 often point to the fact that California has the second highest cut score in the nation. Even lowering it to 1390 would leave California with one of the highest cut scores in the country, particularly after Oregon and Nevada, two states at the higher end, recently decided to lower their cut scores. These comments also tend to point out that in states with lower cut scores, including New York with a cut score of 1330, there is no evidence that the competence of attorneys is compromised or that more disciplinary actions are associated with lower cut scores. This last statement is borne out in the brief analysis contained in this report and shown in Figure 7 on page 36.

As the range between 1330 and 1350 is most common in other states, a significant number of proponents for lowering the cut score in California advocate this range by appealing to notions of the "wisdom of the crowd" or "crowd sourcing" as validity evidence regarding attorneys' minimum competence.

Methodological Critiques of the Standard Setting Study

A third category of public comment stands in contrast to the survey results and the majority of the public comment narratives. This third category, primarily from law school representatives and other academics, is more technical in nature and tends to focus on specific methodological and procedural issues. Because the assertions contained within these comments call into question the very validity of the Standard Setting Study, they are addressed point-by-point below.

A number of these comments criticized the statement of minimum competence, the PLD, that was used for evaluating papers. These concerns pointed to the amount of time devoted to the

development of the PLD and the amount of detail contained in the definition of minimum competence. These critiques also focused on the absence of detailed grading rubrics for each exam question presented at the workshop. Related criticisms pointed to the amount of time spent with the panelists at the workshop to discuss and refine the PLD, and a number of comments pointed to one particular member of the panel who had extensive experience grading bar exam papers and who was perceived to be excessively influential during discussions.

Many of these same issues are mentioned by one of the outside reviewers, Dr. Mary Pitoniak. In her detailed overview and critique of the process, Dr. Pitoniak noted that she would have preferred for more time to be been spent defining the PLD and also noted the apparently outsized influence of one panel member.

In addition to the various procedural issues noted above, these comments also focused on the measure of central tendency employed in the study. Two comments, in particular, suggest that the cut score results were too widely dispersed and that the distribution pattern lacks the characteristics of a typical normal distribution as the basis for calculating an overall mean or median cut score value.

1. Panel Composition and Panel Dynamic

One of the key elements of the Analytical Judgment Method (AJM) used for this study and for standard-setting studies in general, is an emphasis on the transparency and inclusiveness of the process. From the initial stage of recruiting panel members to the participation in the study, the State Bar reached out to various stakeholders to solicit nominations. The final selection of panelists made by the Supreme Court was drawn from almost 40 nominees, and consisted of practitioners from a broad representation of backgrounds in terms of practice area, experience, demographics, and geographic distribution.

Broad stakeholder participation in the panelist nomination process is an essential element of the process for ensuring procedural validity of the AJM. In this instance, such participation was sought from all three California law school types. Although Dr. Tracy Montez pointed out that the Department of Consumer Affairs attempts to avoid using educators on panels for standard setting studies to avoid potential conflicts of interest, two educators were selected to serve on the panel.

The decision to include the educators was made to balance the desire for inclusivity with the need for analytic rigor and procedural fidelity. Given the size of the 20-member panel, which typically ranges from 15 to 30 depending on the particular setting and specific study design, coupled with the large number of exam papers reviewed, we believe that the educators made important contributions to the study without skewing the final results.

As a follow up to the Standard Setting workshop, Bar staff conducted interviews with panelists to solicit their feedback about the workshop process. One of the questions specifically addressed whether they felt that they had the opportunity to fully participate in the discussions, and whether any individual members had more influence than others in steering the direction of the discussions. Of the 15 panelists interviewed, all but two members indicated their awareness that one of the members seemed more vocal due to his in-depth knowledge of bar exam grading.

As to whether their views had been influenced by this panelist or whether this panelist affected the dynamic of the group discussions in an undesirable manner, the common response was to dismiss his influence. The sentiment most frequently expressed in these interviews was that the panelists are all independent-thinking and successful attorneys, and that diverse views are helpful: when people make a forceful argument, they still have to convince others. This reaction is consistent with the literature on discourse analysis which emphasizes the role of social status differentials in a group setting.

2. Minimum Competence Definition and Grading Rubric

Two early versions of the PLD, excerpted and modified from bar exam grading guidelines, were first presented for discussion with law school deans at the Law School Council meeting in April 2017. The topic was on the agenda several times thereafter during the bi-weekly conference calls with law school deans that the Bar has held since April. The final version of the PLD reflected the combined input of law schools, Supreme Court staff, and the study psychometrician, Dr. Chad Buckendahl, whose focus was on ensuring that the language used in the statement complied with best practice in standard-setting procedures.

With the PLD serving as the criterion to evaluate the performance of exam papers, grading guidelines or rubrics are intended to provide more concrete information to panelists as a way of focusing on specific elements or traits of the exam. Used in conjunction with the more general definition of PLD, the purpose is to ensure that the papers are evaluated on the basis of a consensus definition as *criteria-referenced* activity rather than *norm-referenced* activity that relies on the relative performance of a set of papers being evaluated.

The original research design actually included individual rubrics for the evaluation of each question. The decision to use a generalized rubric instead of question-specific rubrics was based on concerns expressed by law school deans that rubrics at the item level would bias the panelists. This modification in the method represents a preference rather than a flaw in the method and balances the input of stakeholders without threatening the validity of the research.

The critiques of the PLD, similarly, represent preferences rather than substantive flaws in the method. The PLD was directly related to the judgments that panelists were asked to make on

the examination, specifically the written portion. As a policy statement, the language is intended to provide a profile of what a minimally competent candidate knows and is able to do. This purpose was accomplished through the initial draft and discussion among the panelists. The appropriate question for the panelists was whether the samples they reviewed were characteristic of the performance of minimal competency as guided by the PLD, and this was accomplished during the workshop.

3. Measurement Issues

The most detailed critiques focused on measurement came primarily from two sources: Professor Deborah Merritt of Ohio State University, Moritz College of Law, and Dr. Benjamin Nyblade, director of the Empirical Research Group at UCLA School of Law. Professor Merritt and Dr. Nyblade point to some of the same procedural issues discussed above but also assert that the statistical patterns presented in their critiques demonstrate a "fatal flaw" in the study results.

To summarize the response to their critique in advance of providing the detail that supports it: the analyses and conclusions of Professor Merritt and Dr. Nyblade are correct in terms of the dispersion of the data that they reviewed – but they were looking at data that does not fully reflect the entire process that generated the final result of the cut score range. Instead of reviewing the entire range of panelist responses – 320 data points used to derive the estimated mean and median – these two critiques looked at only the final 20 data points that were calculated from the larger sample.

To reiterate how the final cut score recommendations were derived:

- In the first step of the Standard Setting Study, the 20 panelists evaluated 30 essays for each of four questions – a total of 120 papers per panelist for a total of 2,400 essays;
- Panelists then selected four essays for each question – two marginally above competent, and two marginally below;
- Thus, the four different questions multiplied by 20 panelists and then multiplied by the four essays selected yielded 320 data points – 160 on each side of the border of minimum competence.

In Dr. Nyblade's comment, the presentation of these data points is compressed into a graph that sets the minimum and maximum values equal to the range of the 20 average values derived from the 320 data points, ranging from 380 to 460. This gives the appearance of cutoff scores that are, in Dr. Nyblade's words, "all over the map." When looking at the entire process, however, including each step of selection, and all of the data points used to calculate the 20

average values, the problem appears to be more akin to looking at the *inset* of a map and noting how broadly dispersed the landmarks are within it, without recognizing that this inset is on a different scale from the larger map under consideration.

It is important to keep in mind the multiple steps that the panelists followed in evaluating the papers, the meaning of the data derived from each step, and to interpret each in the proper context. Before the panelists started to formally evaluate the papers, they were first given ten papers as an exercise. This occurred shortly after the conclusion of the PLD discussions to ensure the application of the consensus concept of minimum competence to exam papers as an independent judgment activity.

With further discussion after this first round of exercise activity, panelists began to review 30 papers for the first question. The 30 papers were first classified into three performance levels: below, meeting, and exceeding minimum competence. Analogous to a calibration session to further refine the PLD, the panelists honed in on "borderline" cases by selecting two cases from the below-competence group and two from the meeting-competence group; the exceeding-competence papers were not included in this step.

Following the steps described above, each panel member classified 120 papers, for a total of 2,400 papers for the entire panel. The second part of the process produced rating results for 320 papers (4 papers from each question, 4 questions from each panelist, yielding 320 (4 × 4 × 20). These 320 data points provide the basis for calculating the cut score recommendations reflected in the study results.

The three graphs below show the distributional patterns of these 320 data points from different angles. Figure 4 arranges the 320 papers into two groups: best of non-competent and worst of competent papers. It shows where along the score ranges (vertical axis) the papers are clustered, range of the middle 50 percent of the papers (rectangle boxes at the center of the leaves), and the median value within each group (white dots at the center). Scores for the first group of the best of non-competent papers are clustered around 50 points (mode of the distribution), with median value located at approximately 60 score points. For the second group to the right, the scores are clustered near the center of the leaf around 60, with median value located at approximately 65. Each group consists of scores from 160 papers.

Figure 4. Score Distribution Patterns of Borderline Papers
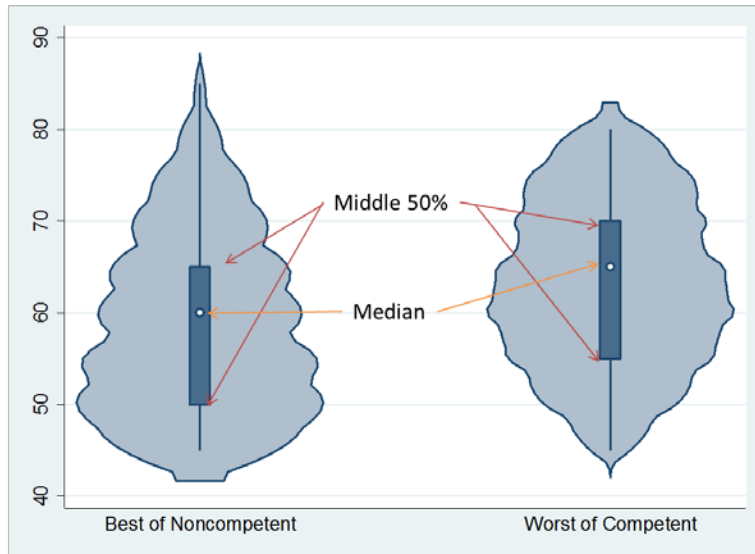
Figure 5 shows the average scores for the two groups of borderline papers for each panel member. Red dots represent the worst of competent papers and hollow squares represent the best of non-competent papers. The average scores for the worst of competent papers are expected to be higher than those for the best of non-competent papers (red dots located to the right of hollow squares). The distance between the two data points for each panelist could serve as an indication of the degree of precision in identifying borderline cases at the margin. The mid-points between the red dots and hollow squares represent the cut score at the level of panelist.

It should be noted that, with the exception of two panelists whose mid-point falls around 50, mid-points fall consistently slightly above (to the right on the horizontal axis) 60. At this level of analysis each dot represents 8 data points – the two papers judged to be the worst of the competent for each of four essay exams – and each square represents eight data points – the two papers judged to be the best of the non-competent for each of four essay exams.

Figure 5. Average Scores of Borderline Cases, by Panel Member
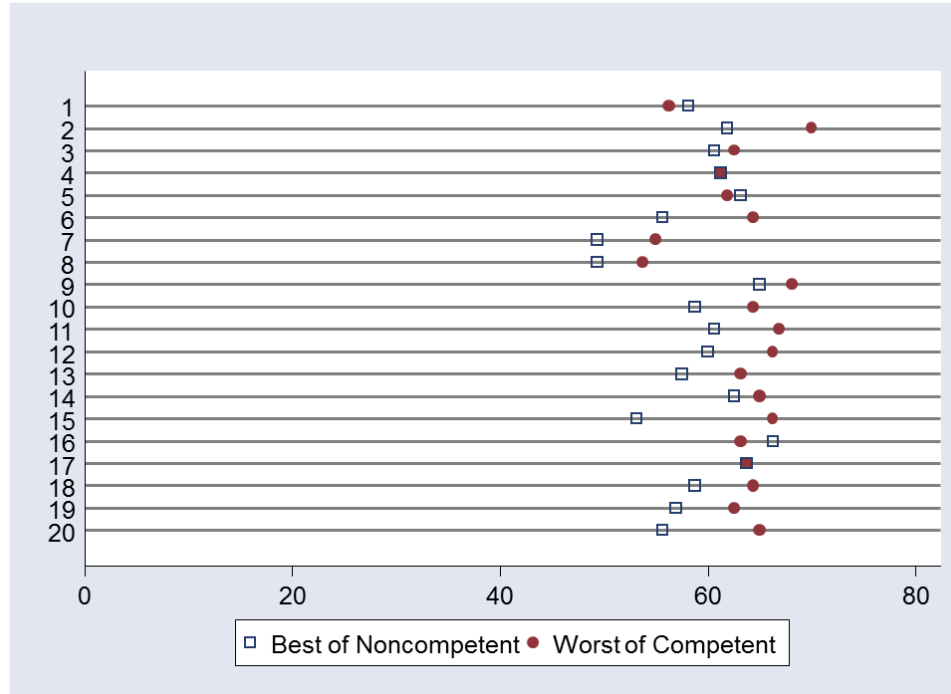
Aggregating the data still further, Figure 6 shows the average value for each of the two groups of borderline cases, as well as the summary of all borderline cases. The red dots represent the average value, with the length of the vertical line through the dot representing the margin of error around the mean value. The average score for all borderline papers is derived as 61 score points, with a lower bound in the confidence band at 59.98 and an upper bound at 62.15. Taking 61 as the overall average for borderline papers and aggregating to a full exam consisting of 5 essays and 1 Performance Test (given twice the weight of the essays), the total score of 427 (61 X 7) approximates the mean cut score of 428 reported in the final report of the study.

Figure 6. Overall Score Point Averages of Borderline Cases
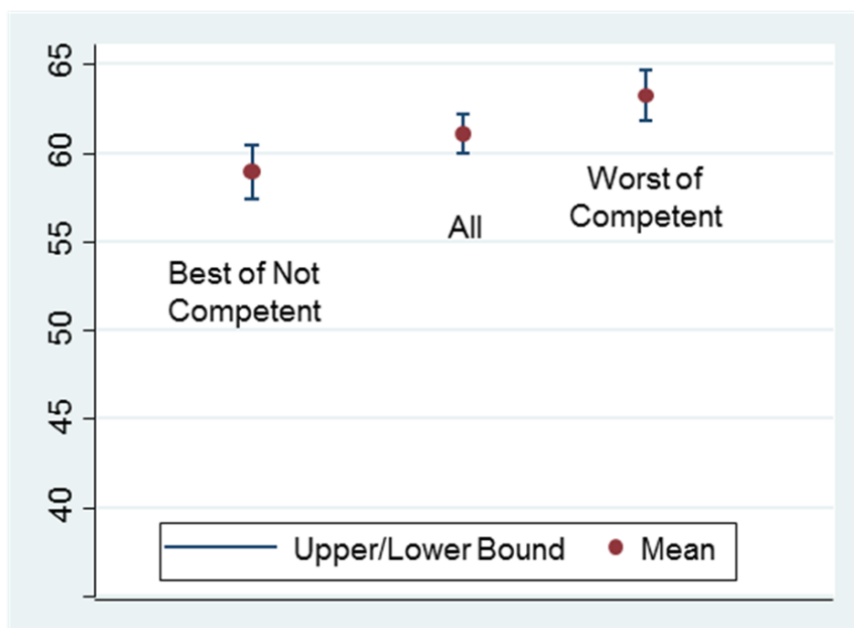
The analysis at each level of aggregation demonstrates the convergence of the scores derived from the independent judgment of the 20 panelists, despite a small number of outlier cases. It also provides indirect confirmation of the consensus among panelists in their discussion of the PLD, and the consistent application of grading guidelines to the performance of the papers.

Instead of looking at the entire sample of 320 data points that reflect the result of a two-step, calibrated evaluation process, critics of the study chose to focus on 20 data points to assert the absence of a valid distribution of the data, thus calling into question the validity of the entire study. Admittedly the multiple steps in the standard-setting process might have caused confusion regarding the proper unit of analysis. Regardless of the reason for the confusion, this explanation should suffice to minimize any misunderstanding regarding these concerns about the methodology.

In her summary of the entire standard setting process, Dr. Pitoniak concludes that:

> "in my opinion there were no fatal flaws. The panel-recommended passing score, and the recommendations for adjusting it made by Dr. Buckendahl, represent credible information for the Supreme Court to consider when they make their policy decision."

Dr. Montez's summary of the standard setting process was less detailed and focused more on compliance with procedural requirements of the methodology. Dr. Montez's frames the observation and review of the workshop as an evaluation "to determine whether the standard setting procedure meets professional guidelines and technical standards outlined in the

Standards for Educational and Psychological Testing." Dr. Montez concluded the summary of her report noting that:

> "The State Bar and ACS [Dr. Chad Buckendahl's consulting firm], appear to adhere to professional guidelines and technical standards, but also recognize that additional strategies can be implemented to further add evidence supporting the pass/fail decision based on CBE [CBX] performance."

IV.   Policy Issues Related to the Pass Line

Though the CBX is an essential component of admission to the practice of law in California, it cannot be expected to meet all of the needs of the legal community and the public that this community serves: no exam can perfectly predict the performance of applicants, safeguard the public with certainty, ensure an adequate supply of attorneys to meet the demand for legal services, or counter the institutional barriers to opportunity that likely result in racial and ethnic disparities in the legal profession. While the entire admissions process addresses some of these factors – through the moral character evaluation and Multistate Professional Responsibility Examination, for example, others can only be meaningfully addressed through long-term public, private, and non-profit collaboration.

The following section of the report assesses the differential impact of selected cut scores on various applicant groups. This analysis looks specifically at the simulated impact of cut scores of 1414 and 1390, reflecting the full range of available pass line options that fall within two standard errors below the Standard Setting Study median.[28]

The Simulated Impact of Changing the Cut Score in California

The implications of selecting a modified pass line of 1414 or 1390 are shown in Table 5 and summarized below. This discussion describes what the impact *would have been* if the pass line had been altered and applied to the 2008 and 2016 administrations of the CBX. Because a decrease in the cut score will necessarily increase the number of applicants who passed the exam on the two samples to which we apply this simulation, the issues examined here relate to the *magnitude* of the changes at different scores and the *differential impact* of the changes on different sub-populations of the total applicant pool.

- Simulating the impact of a cut score of 1414, the total percentage of applicants who passed the exam would have increased from 61.9 percent to 65.5 percent in 2008 and

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[28] Although the discussion here looks only at the simulated impacts of cut scores of 1414 and 1390, Appendix I reflects the simulated impact of cut scores of 1330, 1350, 1390 and 1414.

would have increased from 43.3 percent to 46.8 percent in 2016. These percentages represent an increase in the total number of attorneys who would have passed at 1414 of 313 in 2008 and 266 in 2016;

- If the cut score had been 1390 for those two administrations of the exam, the total percentage of applicants who passed the exam would have been 69.9 percent in 2008 and 52.1 percent in 2016. The total number of additional attorneys who would have passed at a 1390 cut score would have been 688 in 2008 and 678 in 2016;

- Simulating the different pass points for men and women taking the exam:
  - o A 1414 pass line would have resulted in an increase from 60.9 percent to 64.3 for men taking the exam in 2008 and an increase from 44 percent to 47.4 percent of men taking the exam in 2016. Applying these percentages into raw numbers, at a cut score of 1414 an additional 155 men would have passed in 2008 and an additional 125 men would have passed in 2016;
  - o Applied to women, a 1414 pass line would have increased the percentage passing from 63 percent in 2008 to 66.9 percent and would have increased the percentage passing from 42.5 percent to 46.1 percent in 2016. These percentages translate into an additional 158 women who would have passed in 2008 and an additional 140 who would have passed in 2016;
  - o A pass line of 1390 would have increased the percentage of men passing the exam to 68.9 percent in 2008 and to 53.1 percent in 2016. In raw numbers, a 1390 cut score would have resulted in an additional 365 men passing the exam in 2008 and an additional 335 passing the exam in 2016;
  - o For women, a 1390 pass line would have increased the percentage passing the exam to 71 percent in 2008 and to 51.2 percent in 2016. Again, translated into raw numbers, at a cut score of 1390 an additional 322 women would have passed the exam in 2008 and an additional 340 would have passed in 2016.

Before presenting simulation data outlining the impact that different pass points would have by various racial and ethnic categories it is important to make a brief comment on the math. Groups with *lower* pass rates at the current pass line will almost necessarily show greater percentage increases in pass rates as the pass line is lowered than groups with *higher* pass rates at the current pass line. As a result, African Americans and Latinos show the largest percentage increase in pass rates despite larger raw numbers of whites and Asians who would pass at a lower pass line.

- Thus at a pass line of 1414:
  - o 38.1 percent of African Americans taking the exam in 2008 and 23.1 percent taking the exam in 2016 would have passed, increases of 10.4 and 12.5 percent respectively. In raw numbers, a 1414 cut score would have resulted in an

additional 17 African Americans passing the exam in 2008 and an additional 13 passing the exam in 2016;

- o 53.2 percent of Latinos taking the exam in 2008 and 37.5 percent taking the exam in 2016 would have passed, increases of 8.8 and 10.6 percent respectively. Translated into raw numbers, at a cut score of 1414 an additional 35 Latinos would have passed the exam in 2008 and an additional 40 would have passed in 2016;
- o 59.9 percent of Asians taking the exam in 2008 and 40.5 percent taking the exam in 2016 would have passed, increases of 6.4 and 8.7 percent respectively. Thus, at a cut score of 1414 an additional 67 Asian applicants would have passed the exam in 2008 and an additional 59 in 2016;
- o 71. 6 percent of whites taking the exam in 2008 and 54.9 percent taking the exam in 2016 would have passed, increases of 5.2 and 7.2 percent respectively. In raw numbers, at a cut score of 1414 an additional 178 whites would have passed the exam in 2008 and an additional 146 would have passed in 2016.[29]

- In addition to looking at the simulated changes within groups at different pass lines, we can also look at the changes in the relationships among groups, or the disparities in pass rates among different groups. Looking at the 2008 administration of the CBX:
  - o At the current pass line of 1440, the pass rate of whites is 97.1 percent higher than that of African Americans, a gap of 33.5 percentage points. At a simulated pass line of 1414, the gap in the pass rates between whites and African Americans declines to 87.9 percent, and at 1390, the gap in the pass rate between whites and African Americans declines to 65.6 percent, a difference of 27.9 percentage points;
  - o Looking at the 2016 administration of the CBX, the gaps are much larger between whites and African Americans but the diminution of the disparity is also significant at the simulated pass lines. At the 1440 pass line, whites passed the bar exam at a rate one-and-a-half times greater than that of African Americans (149 percent). Simulating the impact of lower cut scores, that gap would have diminished to 138 percent at 1414 and to 108 percent at 1390.

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[29] Table 5 shows the detail of raw number and percentage differences across all of the different combinations of racial/ethnic and gender categories for simulations of a cut score of 1390 and 1414 for both the 2008 and 2016 administration of the CBX. Appendix I shows the same simulations for an even larger range of cut scores including 1330 and 1350.

Table 5. Simulated Impact of Pass Rates at Different Cut Scores

Cut Score		2008 CBX			2016 CBX		
		1390	1414	1440	1390	1414	1440
Total	# Passing	6,017	5,642	5,329	4,010	3,598	3,332
	% Passing	69.9%	65.5%	61.9%	52.1%	46.8%	43.3%
	% Increase*	12.9%	5.9%		20.3%	8.0%	
First Time	# Passing	5,078	4,870	4,682	3,317	3,066	2,896
	% Passing	81.4%	78.0%	75.0%	64.5%	59.6%	56.3%
	% Increase*	8.5%	4.0%		14.5%	5.9%	
Repeat	# Passing	939	772	647	693	532	436
	% Passing	39.7%	32.6%	27.3%	27.2%	20.9%	17.1%
	% Increase*	45.1%	19.3%		58.9%	22.0%	
Male	# Passing	3,121	2,911	2,756	1,970	1,760	1,635
	% Passing	68.9%	64.3%	60.9%	53.1%	47.4%	44.0%
	% Increase*	13.2%	5.6%		20.5%	7.6%	
Female	# Passing	2,890	2,726	2,568	2,005	1,805	1,665
	% Passing	71.0%	66.9%	63.0%	51.2%	46.1%	42.5%
	% Increase*	12.5%	6.2%		20.4%	8.4%	
Asian	# Passing	1,205	1,113	1,046	835	735	676
	% Passing	64.8%	59.9%	56.3%	46.1%	40.5%	37.3%
	% Increase*	15.2%	6.4%		23.5%	8.7%	
Black	# Passing	215	181	164	146	117	104
	% Passing	45.3%	38.1%	34.5%	28.9%	23.1%	20.6%
	% Increase*	31.1%	10.4%		40.4%	12.5%	
Hispanic	# Passing	471	432	397	478	419	379
	% Passing	58.0%	53.2%	48.9%	42.8%	37.5%	33.9%
	% Increase*	18.6%	8.8%		26.1%	10.6%	
White	# Passing	3,765	3,570	3,392	2,369	2,165	2,019
	% Passing	75.5%	71.6%	68.0%	60.1%	54.9%	51.2%
	% Increase*	11.0%	5.2%		17.3%	7.2%	
Other	# Passing	71	67	60	66	56	52
	% Passing	57.3%	54.0%	48.4%	44.6%	37.8%	35.1%
	% Increase*	18.3%	11.7%		26.9%	7.7%	
ABA	# Passing	3,767	3,571	3,415	2,629	2,387	2,231
	% Passing	82.3%	78.0%	74.6%	63.8%	57.9%	54.2%
	% Increase*	10.3%	4.6%		17.8%	7.0%	
CA Accredited	# Passing	265	225	196	169	131	100
	% Passing	35.6%	30.2%	26.3%	21.9%	17.0%	13.0%
	% Increase*	35.2%	14.8%		69.0%	31.0%	
Registered	# Passing	107	88	76	44	38	35
	% Passing	33.5%	27.6%	23.8%	16.2%	14.0%	12.9%
	% Increase*	40.8%	15.8%		25.7%	8.6%	
Out of State	# Passing	1,369	1,307	1,242	801	730	685
	% Passing	73.2%	69.9%	66.4%	56.5%	51.5%	48.3%
	% Increase*	10.2%	5.2%		16.9%	6.6%	

Percent increase of the number of applicants that would have passed under each simulated cut score level relative to the number of passing applicants under the current cut score of 1440.

Issues of Diversity and Access

While modifying the cut score will clearly impact the demographic mix of the legal profession, the impact of pass line adjustment on critical access to justice concerns is less clear. Of course, lowering the cut score on the bar exam and, as a result, increasing the number of attorneys in California would not, by itself, increase the availability of attorney services for those who most need them. Access to legal services depends on where attorneys choose to practice, the type of law they choose to practice, the cost of legal services, and other factors beyond simply increasing the pool of attorneys who practice law in California. There is no simple fix to the challenges of improving access to justice or diversifying the legal profession and any positive impact that lowering the cut score might have can only be fairly characterized as modest.

That said, data on the types of law practiced by attorneys of different backgrounds suggests that attorneys of color and women tend to practice public-interest and non-profit law more often than white men. In a January 2017 survey conducted by the State Bar, just under four percent of white respondents indicated that they worked in the non-profit sector. In contrast, over eight percent of Latino attorneys, six percent of African American attorneys, and 6.3 percent of Asian attorneys indicated that they worked in the non-profit sector.[30]

The survey data show similar disparities across different attorney groups as related to the likelihood of working in government. Women are almost twice as likely to work in government as men – 23 percent of female attorneys surveyed indicated that they worked in government compared to 13 percent of male attorneys. Looking at different racial / ethnic groups in the government sector, whites are the least likely among the groups identified to work in government – 16 percent of white attorneys surveyed, compared with 22 percent of Latino and Asian attorneys and 32 percent of African American attorneys. Though government work can encompass various forms, at least some of these positions can be safely assumed to be tied to access – public defenders, district attorneys, child welfare counsel, and self-help attorneys in the courts, for example.[31]

The findings from the 2017 survey of California attorneys align with research conducted by Wendy Espeland, Associate Professor of Sociology at Northwestern University and Michael

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[30] The survey, conducted in January 2017, was sent to all active and inactive attorneys by e-mail and yielded over 14,000 responses. It is currently the most comprehensive and reliable source of information on California attorneys available and contains information on attorneys specialties, their sector of employment, annual earnings, participation in pro bono work and in the provision of unbundled legal services. A summary of the survey is attached as Appendix J.

[31] It is unclear why attorneys of color and women are more concentrated in non-profit and government settings. Although the reason for disproportionate representation in different sectors of legal practice is beyond the scope of this report, it is worth noting that the result may stem from personal preference, differential opportunity, or some combination of both.

Saunder, Associate Professor of Sociology at the University of Iowa. In their research, professors Espeland and Saunder found that law school graduates of color are more likely to start their law careers in government and public interest law than their white counterparts.[32] To the extent that women and attorneys of color are more likely to work in legal and and government, the issue of diversity appears to be linked to the issue of access.

The need for attorneys outside of the private sector has been documented by the Legal Services Corporation (LSC) in a report describing the negative impacts that the justice gap has on varying communities.[33] In their work, LSC defines the justice gap as the "difference between the civil legal needs of low-income Americans and the resources available to meet those needs." Specifically, the lack of legal services in civil matters has the greatest impact on seniors, rural residents, veterans, persons with disabilities, parents of children under 18 and survivors of domestic violence or sexual assault.

Surveys of 2,000 adults living at or below 125 percent of the Federal Poverty Level reveal that while 71 percent of these households had at least one civil legal problem in the past year, only 20 percent sought professional legal help for these legal problems. Low-income Americans are the least likely to understand the complexity of the legal system or trust it as an institution to which they can turn for assistance. When confronted with a civil legal problem, many low-income Americans may not even realize that the problem has a potential legal remedy.

Where low-income Americans do find their way to the justice system, increasingly they are unrepresented. In California an estimated 81 percent of unlawful detainer proceedings include at least one party who is self-represented; in domestic violence proceedings 90 percent of proceedings involve at least one unrepresented party.[34] Similarly, family law proceedings are increasingly managed by litigants without representation.[35]

While California specific justice gap data is relatively sparse, a review of the distribution of attorneys per capita reflects significant variances across urban and rural divides. Law school deans from non-ABA accredited law schools in California have asserted that their graduates were more likely than graduates from ABA-accredited schools to stay in the local community and contribute to providing legal services in underserved areas. These deans further suggest

[32] See "Rankings and Diversity," *Review of Law and Social Justice*, 2009, 18, 587-608. This research draws on a 1990 study of multiple cohorts of attorneys and their career paths using data from surveys of attorneys who graduated from the University of Michigan Law School between 1970 and 1996.
[33] Legal Services Corporation. 2017. The Justice Gap: Measuring Unmet Civil Legal Needs of Low-income Americans. Prepared by NORC at the University of Chicago for Legal Services Corporation. Washington, DC.
[34] See "The Justice Gap: A Crisis on the Courthouse Steps," http://www.calbar.ca.gov/Portals/0/documents/accessJustice/2015_JusticeGapFund_FactsandFigures.pdf
[35] Bonnie Hough, "Self-Represented Litigants in Family Law: The Response of California's Courts," *California Law Review*, February, 2010.

that the high cut score in California limits access because fewer law school graduates passing the bar leads to fewer students enrolling in these schools (due to the low pass rate). If the trend continues, a vicious cycle may ensue jeopardizing the survival of these non-ABA schools and reducing the availability of attorneys from these schools to fill the justice gap in underserved communities.

The central element of this argument lies in the extent to which non-ABA graduates actually stay in their local community. Looking at the geographical distribution of attorneys by the school type from which they graduated appears to lend some support for this argument. Grouping attorneys into three law-school categories – California ABA, out-of-state ABA, and CALS and unaccredited as the third group, California's inland and small counties have the highest concentration of non-ABA attorneys, including Fresno County with 42% of its attorneys graduating from non-ABA schools.[36]

In contrast, graduates from ABA schools are concentrated in the largest metropolitan areas in the state. In the southland, less than ten percent of the attorneys practicing in Los Angeles, San Diego, and Orange counties graduated from non-ABA accredited schools. In the San Francisco bay area counties of Marin, Alameda, San Mateo, Santa Clara , similarly low percentages of practicing attorneys come from non-ABA schools.

Issues of Diversity and Public Perception

Beyond the possible correlation between increased diversity and improved access, diversity in the legal field is also important to the extent that public perception of the law instils – or undermines – confidence in the legal system. New York State Court of Appeals Judge Jenny Rivera asserts that there are four goals of diversity in law: establishing a profession that represents the broad diversity of the population it serves; providing proof that the legal system does not have barriers based on race, ethnicity, gender; increasing public confidence in the administration of justice; and to promulgate the belief that the system is fair.[37]

Diversity advocates argue that increased public trust and confidence in the legal system also contributes to increased compliance with the law. The Strategic Plan of California's Judicial Branch includes Access, Fairness, and Diversity as the first of its seven Strategic Goals[38] and diversity considerations fall squarely within the State Bar's newly adopted mission statement:

> "The State Bar of California's mission is to protect the public and includes the primary functions of licensing, regulation and discipline of attorneys; the advancement of the

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[36] Data pulled from the State Bar Member database.
[37] Rivera, Jenny. (2016) Diversity and the Law. *Hofstra Law Review,* 1271-1286.
[38] Judicial Council of California website (2017). Retrieved from: http://www.courts.ca.gov/3045.htm.

ethical and competent practice of law; and support of efforts for greater access to, and inclusion in, the legal system."

Despite these worthy goals, articulated for a number of years by the Judicial Branch, California's attorney population remains disproportionately white and male.

Comparing the demographic make-up of California with the findings of the 2017 survey of licensed attorneys in California shows that while Latinos make up 35.4 percent of Californians over the age of 18, they represent less than five percent of California's licensed attorneys. African Americans make up 5.9 percent of the state's population over 18 years of age but account for less than two percent of licensed attorneys while Asians comprise 13.8 percent of the population over 18 but just under six percent of licensed attorneys.

While the root causes of disproportionate rates of passage are beyond the scope of this report, it is clear that applicants of color pass the bar exam at rates that are disproportionate to those of their white counterparts. This impact, when combined with disproportionately lower numbers of people of color in the pipeline to higher education and law school, has resulted in a pool of licensed attorneys in California that does not reflect the population of the state.

As Table 5 on page 37 shows, reductions in the CBX cut score would not eliminate disparities in the pass rate among different groups of applicants. Reductions in the cut score would, however, reduce those disparities and, if the patterns of career choice hold for new attorneys, might also improve access by licensing more attorneys with a propensity to work in non-profit and government sectors.

Public Protection and the Pass Line

One of the most significant challenges facing the Bar and, by extension, research regarding the appropriate pass line for the CBX, is the fact that while "public protection" is essential to the mission of the Bar, public protection has never been clearly defined. As a result, efforts to measure public protection often rely on data from the discipline system as a proxy measure. Not only are data from the discipline system an incomplete measure of public protection, the relationship between discipline rates and minimum competence, which the CBX is designed to assess, is at best unclear. [39]

Despite the lack of a clear definition of or measure for public protection, many of the public comments and survey responses from people who expressed a preference for maintaining the current cut score of 1440 indicated that the integrity of the profession and public protection were the most important issues in their consideration of the cut score. While public protection

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[39] Licensure exams such as the CBX are intended to distinguish between minimally competent candidates and those that could do harm to the public. They are not intended to predict the likelihood of future discipline.

in the licensure setting can be conceptualized as ensuring that attorneys are minimally competent, the definition of minimum competence is inherently non-quantitative, a situation which is less than satisfactory given the critical nature of the question of the relationship of the CBX cut score to public protection. Beyond minimum competence and attorney discipline rates, there are few if any measures or definitions for public protection. Further, to the extent that higher cut scores reduce the number of licensed attorneys in a given jurisdiction, a high cut score may in fact undermine access to legal services – an important form of public protection in and of itself.

Given the dearth of available information while recognizing the inherently limited relevance of discipline data to the cut score context, Bar staff has explored the available literature and data regarding any connection between pass lines and discipline rates.

First, in an unpublished paper, Robert Anderson and Derek T. Muller, associate professors of law at Pepperdine University, calculate the statistical relationship between the average LSAT scores of different California law schools and infer that these scores are correlated with the scores that attorneys would have received on the CBX. They then calculate the probability of attorneys being disciplined – disbarment, resignation with charges pending, or "other" public discipline – based on their law school's average LSAT.[40]

Professors Anderson and Muller show that there is a statistically significant relationship between the likelihood that an attorney in California is subject to one of these forms of discipline and that attorney's law school's average LSAT score . They go on to infer that for every ten points *lower* that attorneys scored on the CBX, any given attorney's probability of being disciplined *increases* by approximately one percent.

While the concept of a connection between CBX performance and discipline may warrant further study, there are important limitations to this analysis that need to be taken into consideration. The grouping of attorney discipline in the paper under "other public discipline" constitutes over one half of the cases of attorney discipline in the data set. This category should be unpacked to determine exactly what is contained within the "other public discipline" category. In addition, professors Anderson and Muller use the average LSAT score *for each attorney's law school* as a proxy for their individual score on the CBX. Assigning each school's LSAT scores to attorneys who graduate from those schools, though, overlooks important differences across the range of individual attorney scores on the LSAT and the CBX.[41] As a result, the findings regarding the higher probability of discipline among attorneys who scored

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[40] See Anderson, Robert and Muller, Derek T., The High Cost of Lowering the Bar (May 30, 2017). Available at SSRN: https://ssrn.com/abstract=2977359.

[41] Since actual results of the CBX are not made publicly available, this is a creative solution to a data limitation, one acknowledged by professors Anderson and Muller.

lower on the LSAT is ultimately more of an aggregate finding regarding *the schools* from which attorneys graduated, with attorneys from lower-ranked schools showing a higher rate of discipline.

An alternative to the research conducted by Professors Anderson and Muller looks at the bivariate relationship between the pass line and attorney discipline at a single point in time across the attorney discipline systems in different states. The scatter plot in Figure 7 shows attorney discipline data from the 2015 ABA Survey on Lawyer Discipline Systems and evaluates it in relationship to the cut scores in 44 states for which data were available.

What the scatter plot shows is that attorney discipline – as measured by private and public discipline per thousand attorneys – appears to have no relationship to the cut score. With so many states using 135 for their cut score, the details of the Figure can be somewhat difficult to tease out. The big picture, however, is clear. At a cut score of 135 the rate of attorney discipline ranges from a low of 1.9 per thousand in West Virginia to 7.9 per thousand in Tennessee. Looking across the entire range of cut scores we see strikingly similar rates of attorney discipline in states with cut scores from 130 – Alabama – all the way to 145 – Delaware. California's rate of discipline (2.6 per thousand) is just over one-half (55 percent) the rate of discipline in Delaware (4.7 per thousand).

Given the vast differences in the operation of different states' attorney discipline systems, these discipline numbers should be read with caution. But based on the data available, it raises doubts as to whether changing the cut score would have any impact on the incidence of attorney misconduct. As with the research conducted by professors Anderson and Muller, this measure of "misconduct" is admittedly limited to cases where misconduct is detected, reported, and sanctioned. There is however currently no better measure of the actual incidence of attorney misconduct or, more importantly, of public protection.

Figure 7. Relationship between Cut Score and Attorney Discipline

Source: ABA Survey on Lawyer Discipline Systems 2015
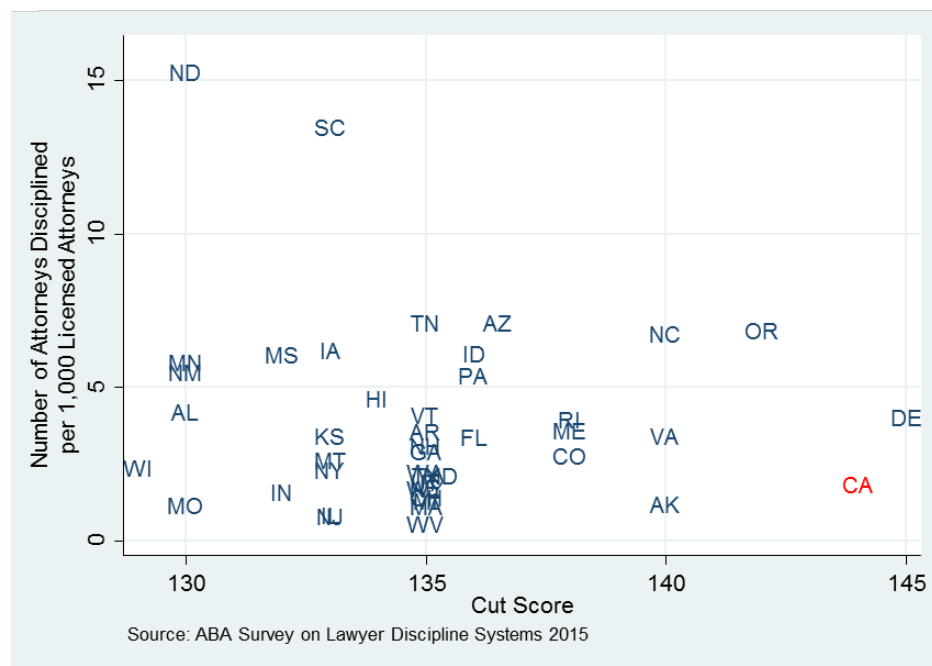
V. Cut Score Options

The question of whether the cut score should remain at 1440 or be lowered to 1390 or 1414 has aroused considerable interest and passion. An overwhelming survey response from attorneys and applicants to the bar, as well as a massive response to the request for public comment, all attest to a high degree of intensity around this topic.

While the ultimate impact of changing the cut score is unknowable, this report has attempted to document a number of possible effects in the areas of access to justice, diversity of the legal profession, and public protection.

The Law School Council and CBE arrived at different conclusions regarding the appropriate cut score. The CBE supported advancing only one option to the Court: maintaining the current cut score of 1440 pending the receipt of additional information, specifically the results of the Content Validation and Performance Studies. The Law School Council supported a range of options, albeit a range that extends to the lower bound of the cut scores that have been examined in this report – between 1350 and 1390.

The Board of Trustees, on a six to five vote[42], submits three options to the Supreme Court for consideration:

1. maintain the current cut score of 1440 (a scaled score of approximately 72 percent); or
2. reduce the cut score to 1414 (a scaled score of approximately 70.7 percent) on an interim basis; or,
3. reduce the cut score to 1390 (a scaled score of approximately 69.5 percent) on an interim basis.

The cut scores included in the options for consideration are all supported by the research conducted in the Standard Setting Study – within two standard errors of the median, yielding a confidence interval of 95 percent.

[42] CBE and Board resolutions and roll-call of votes attached as Appendix C, see footnote 4, p. 2.

VI.   Issues of Implementation and Further Research

Bar staff recognize that whatever decision the Court makes regarding the cut score does not imply that the work on this important topic is concluded. To the contrary, the work conducted to date should be seen as a first installment in much needed policy research into the CBX and the admissions process more generally. The additional work that remains to be done is outlined in the following section. While most of these initiatives will involve significant study, should the Court act to modify the CBX cut score effective with the July 2017 CBX, the Bar will need to implement new grading policies, as discussed immediately below.[43]

Bar Exam Grading: July 2017 CBX Issues

If the Court chooses to adopt a lower cut score applicable to the July 2017 CBX, there is an immediate issue that will need to be resolved regarding the "second-read" band. Under the grading procedures currently in place, all written answers submitted by applicants are read and graded at least once before pass/fail decisions are made. To pass the examination in Phase I of grading, an applicant must have a total scaled score (after one reading) of at least 1440 points out of 2000 possible points. Those with total scaled scores after one reading below 1390 fail the examination.

Those applicants whose scores after Phase I are between 1390 and 1440 enter into a second phase of grading. In Phase II, all answer books are read a second time by a different set of graders, the scores of the first and second readings are averaged, and the total averaged score after two readings is converted to the MBE scale. Provided that there are no discrepancies of more than 10 raw points between the first and second read assigned grades on any question following Phase II, the averaged score is used to make a second set of pass/fail decisions using 1440 as the pass line.

Any answers with discrepancies of more than 10 raw points between the first and second read enter into a third phase of grading: they are read a third time before a pass/fail decision is made. In Phase III:

- Answers for which there was a discrepancy of greater than 10 points between the first and second read are referred to the supervising member of the grading team for resolution of the discrepancy;
- The supervising member will assign a resolution grade to the answer and that grade will replace the average of the first and second read assigned grades for that question;

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[43] The State Bar will need to be notified of any modified July 2017 cut score no later than October 20, 2017, in order to implement that change such that exam results can be released as normal on the Friday before Thanksgiving.

- Scores are calculated again and if the applicant's total scaled score after resolution grading is 1440 points or higher, that applicant passes the examination. If the applicant's total scaled score after resolution grading is less than 1440 points, the applicant fails the examination.

July 2017 exams are already being graded according to the process described above. If the Court decides to lower the cut score for this administration of the CBX, then it is possible for an exam that would have passed on the first read under the new cut score, to fail as a result of a second read that led to an average score *below* the new cut score.

Therefore, if the Court adopts a lower cut score for the July 2017 CBX, to establish clarity regarding the process, Bar staff proposes the following rules for dealing with these cases:

- Applicants whose score is at or above the new pass line *after the first phase of grading* will be passed without consideration of the averaged score after the second read; and
- Applicants whose score is at or above the new pass line after the second or third phase of grading will also be passed.

The Court is asked to specifically address Bar staff's proposed approach to phased grading if a new cut score is adopted for the July 2017 CBX. Distinct from the grading of the July 2017 exam, Bar staff will work with the CBE and the BOT to assess whether, for the February 2018 CBX and beyond, the three phases of grading should continue, and if so what score bands should be used to implement that grading scheme. This assessment will be included in the report made to the Court that will be filed no later than December 1 of this year.

In addition to the immediate issues related to the second-read process, Bar staff will also look into other grading related issues. For example, it has been over 30 years since bifurcation of exam results was permitted, studied, and subsequently rejected. The Bar should reassess the viability and impact of bifurcation given continued interest in the approach and the number of years since it was last studied in California.

Evaluation of the Impact of the Shift to a Two-Day Exam

Entirely apart from the study of the CBX cut score, the CBE made an important change to the format of the exam which went into effect as the change to the cut score was being studied and debated. The July 2017 administration of the CBX will be the first exam which takes place over two, rather than three, days. The total number of essay questions was reduced from six to five and the two performance tests were reduced to one and the time allotted for the performance test was 90 minutes instead of 3 hours. The weighting of the exam also changed from one that reflected roughly the amount of time devoted to each portion of the exam – two-thirds for essay and performance test and one third for MBE – to 50/50 weighting.

In 2011, when the two-day exam format was first being considered, a study was conducted to evaluate the psychometric properties of the exam and the potential impact on the pass rate.[44] Based on exam data from 2001 to 2010, the analysis focused on the *reliability* of the exam and *decision consistency* in terms of pass rate. After adjusting the number of essay and performance test questions through multiple scenarios, along with the weight adjustment for the MBE and written scores, the study concluded that:

> reducing test length does not affect overall passing rates or exacerbate the differences in rates that are typically found among racial/ethnic groups. Assigning equal weights eliminates the difference in passing rates between men and women. In short, California can implement a two day exam in a way that improves test quality, maintains existing pass/fail standards, and does so without making it more difficult for minority applicants to pass.

Aside from the psychometric properties associated with the two-day exam format, however, there are likely to be behavioral changes on the part of the exam takers that might affect their performance on the exam. Bar staff will need to review the results of the July 2017 exam and subsequent ones closely and attempt to distinguish between any changes caused by changing the cut score and those that may occur as a result of modifying the exam format.

Content Validation Study and Updated Job Analysis

As noted previously in this report, a Content Validation Study is currently underway. That Study will assess the alignment of the topics and skills tested on the CBX with a 2012 attorney job analysis conducted by the National Conference of Bar Examiners. The relationship between the Content Validation Study and the Standard Setting Study can be thought of in terms of a continuum. On one end of the spectrum, if the Content Validation Study indicates that the CBX is not aligned in any way, an entirely new exam would need to be drafted, tested, and studied. In this scenario, following a multi-year process to align the CBX, it would be necessary to conduct a new standard setting study. At the other end of the spectrum, if, the Content Validation Study indicates that the CBX is perfectly aligned, then the results of the 2017 Standard Setting Study would suffice for the cut score. The actual results are likely somewhere in between.

The current Content Validation Study relies on a five-year old national attorney job analysis. During the course of the Content Validation Study, it has become clear that an updated, California-specific, analysis needs to be conducted. A comprehensive job analysis would be in and of itself a significant undertaking, likely taking over a year to complete; as such, it was not possible to conduct a new analysis and meet the Court's December 1 deadline. However,

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[44] Attached as Appendix K.

pursuant to California Rule of Court rule 9.6(b), the Bar will be required to conduct validation studies, to include any findings and recommendations regarding CBX content and scoring, every seven years. Prior to the onset of any new content validitation study, the Bar will conduct a California attorney job analysis.

Performance Study

Working with law school deans, the Bar has begun the design, legal, and logistical work necessary to conduct a Performance Study. This study would help the Bar understand the extent to which changes in student characteristics are responsible for changes in the pass rate on the CBX. In addition, it is hoped that the study will shed light on the relationship between these changes in student characteristics and legal education, curriculum design and emphasis in law schools, and trends in legal practice – all with important implications for future modifications of bar exam content and pass line.

It should be noted that many members of the CBE and several members of the Board favored retaining the current cut score pending completion of both the Content Validation and Performance Studies. As discussed briefly in the section above, it is not clear that the results of the Content Validation Study would inform an immediate decision regarding the bar exam cut score, particularly if the results from a Content Validation Study suggest that significant changes to the exam are warranted.

While the Performance Study would likely provide valuable information regarding the reasons for the declining pass rate, it is not entirely clear how this information would inform a decision regarding the CBX pass line. While the Bar remains hopeful that this study will go forward, even under the best-case scenario, it will not be possible to complete the study by the Court's December 1 due date for bar exam related studies. In addition, the completion of this study is dependent on the participation of California's law schools and their interpretation of applicable federal and state law regarding the sharing of student data.

Defining Public Protection

Additional research needs to be conducted to specify more concretely what is meant by "public protection," and identify metrics that are related to public protection in a licensure context. The limited availability of data has resulted in a reliance on discipline filing measures; a broader understanding of the appropriate measure of protection as related to a full range of possible misconduct is needed. Further, the relationship between public protection, access, and diversity, requires robust study and analysis.

Improved Metrics Regarding the Justice Gap

While it is not the function of the pass line, nor is it the role of the State Bar, to influence the market for legal services, the CBX cut score has access to justice implications. Barriers to the justice system exist across multiple dimensions however, well beyond the cut score– not only barriers of race and ethnicity or gender, but also barriers of language, economics, and culture. If the Bar is to take its commitment to improving access to justice seriously, it will need to evaluate these different barriers systematically, identify strategies that address the unique manifestations of each, and understand their potential connection with the bar exam with respect to its impact on legal services in both quantitative and qualitative aspects. It is likely that any movement to reduce the CBX cut score will have only the most modest effect on access. Further California-specific research is needed regarding this issue, as well as an exploration of the role of the judicial branch, the legislative and executive branches, and public and private partners in meaningfully confronting this challenge.

VII.   Conclusion

This report represents an important first step in an over-due and long term initiative to review the California Bar Exam. The work which produced the report has been conducted in an unusually rapid time frame; much remains to be done. The State Bar looks forward to continuing this work under the guidance and at the direction of the Supreme Court.

𝕾𝖚𝖕𝖗𝖊𝖒𝖊 𝕮𝖔𝖚𝖗𝖙 𝖔𝖋 𝕮𝖆𝖑𝖎𝖋𝖔𝖗𝖓𝖎𝖆

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CHIEF JUSTICE OF CALIFORNIA

(415) 865-7060

February 28, 2017

James Fox, President, Board of Trustees
Elizabeth Parker, Executive Director
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: **California Bar Exam**

Dear Mr. Fox and Ms. Parker,

The Supreme Court of California received the attached February 1, 2017, letter from the Deans of 20 ABA-accredited law schools, in which the Deans request the court order the State Bar of California to lower the "cut score" of 144 that the State Bar applies to the Multistate Bar Exam (MBE) portion of the California bar exam. In support of their request, the Deans observe that California's cut score of 144 is the second highest in the nation. They note California bar takers, on average, score higher on the MBE portion of the exam than the national average, yet fare significantly worse at bar admission — and they contend this is so because California uses an atypically high cut score.

Leaving aside the question of what has caused this situation, the Deans raise a significant concern, particularly given the high cost of attending law school and the reality that non-admission to the bar could mean the loss of employment opportunities while student loan debt continues to compound. It appears prudent to consider and address whether 144 is an appropriate score for evaluating the minimum competence necessary for entering attorneys to practice law in California.

Of course, there may be reasons to question how much the cut score is contributing to the pass rate. For one, the cut score has remained consistent for three decades as overall bar pass rates have fluctuated. It is unclear, therefore, whether the July 2016 pass rate, a 30-year low, constitutes evidence that the cut score needs to be lowered.

James Fox
Elizabeth Parker
February 28, 2017
Page 2 of 3

Yet given the significant impact of the pass rate on law school graduates, the issue calls for a thorough and expedited study. The court is informed that the State Bar has begun investigating the potential causes of the declining California bar pass rates and is reviewing the bar exam and its grading system. The court agrees such an investigation is critically important, and directs the State Bar to ensure the investigation includes: (1) identification and exploration of all issues affecting California bar pass rates; (2) a meaningful analysis of the current pass rate and information sufficient to determine whether protection of potential clients and the public is served by maintaining the current cut score; and (3) participation of experts and stakeholders in the process, including psychometricians, law student representatives and law school faculty or deans.

The court directs that, once the investigation and all studies are concluded, the State Bar make a report to the court. The report must include a detailed summary of the investigation and findings, as well as recommendations for changes, if any, to the bar exam and/or its grading, and a timeline for implementation. The State Bar's report and recommendations should be submitted to the court as soon as practicable, and in no event later than December 1, 2017. The State Bar is further directed to submit bi-monthly letter reports to the court regarding the progress of its investigation, beginning March 1.

Sincerely

Tani G. Cantil-Sakauye

Attach.
cc: *Sent via email*
       Erwin Chemerinsky, University of California, Irvine School of Law
       Judith F. Daar, Whittier Law School
       Allen Easley, Western State College of Law
       David L. Faigman, University of California, Hastings College of Law
       Stephen C. Ferruolo, University of San Diego School of Law
       Thomas F. Guernsey, Thomas Jefferson School of Law
       Andrew T. Guzman, University of Southern California Gould School of Law
       Gilbert A. Holmes, University of La Verne College of Law
       Lisa A. Kloppenberg, Santa Clara University School of Law
       M. Elizabeth Magill, Stanford Law School
       Jennifer L. Mnookin, UCLA School of Law
       Francis J. Mootz, III, University of the Pacific, McGeorge School of Law
       Melissa Murray, University of California Berkeley School of Law

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Conducting a Standard Setting Study for the California Bar Exam

Final Report

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Executive Summary

The California State Bar conducted a standard setting workshop[1] May 15-17, 2017 to evaluate the passing score for the California Bar Exam. The results from this workshop serve as an important source of evidence for informing the final policy decision on what, if any, changes to make in the current required passing score. The workshop involved gathering judgments from panelists through the application of a standardized process for recommending passing scores and then calculating a recommendation for a passing score.

The standard setting workshop applied a modification of the Analytic Judgment Method (AJM; Plake & Hambleton, 2001). This method entails asking panelists to classify illustrative responses into defined categories (e.g., not competent, competent, highly competent). The selection of the AJM for the California Bar Examination reflected consideration of the characteristics of the exam as well as requirements of the standard setting method itself. The AJM was designed for examinations that use constructed response questions (i.e. narrative written answers) that are designed to measure multiple traits. The responses produced by applicants on the essay questions and performance task are examples of constructed response questions for which the AJM is applicable.[2]

The methodology involved identifying exemplars of applicant performance that span the observed score scale for the examination. The exemplar performances were good representations of the respective score point such that the underlying score was not in question. The rating task for the panelists was to first broadly classify each exemplar into two or more categories (e.g., not competent, competent, highly competent). Once this broad classification was completed, panelists then refined those judgments by identifying the papers close to the target threshold (i.e., minimally competent). This meant that the panelists identified the best of the not competent exemplars and the worst of the competent exemplars that they had initially classified. The process was repeated for each essay question and performance task with the results summed across questions to form an individual panelist's recommendation.

To calculate the recommended cut score for a given question for a panelist, the underlying scores for the exemplars identified by a respective panelist were averaged (i.e., mean, median) across the group. These calculations were summed across the questions with each essay question being equally weighted and the performance task counting for twice as much as an individual essay question to model the operational scoring that will occur beginning with the July 2017 administration.

Following these judgments, we calculated the recommended score and associated passing rate when considering the written part of the examination. However, we needed to know what score on the total exam corresponded to this same pass rate. To answer this question, another step was needed to transform these

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[1] Standard setting is the phase of examination development and validation that involves the systematic application of policy to the scores and decisions on an examination. Conducting these studies to establish passing scores is expected by the *Standards for Educational and Psychological Testing* (AERA, APA, & NCME, 2014).

[2] Alternative methods that rely on panelists' judgments of candidate work include Paper Selection and Body of Work (see Hambleton & Pitoniak, 2006, for additional details on these and a discussion of the categories of standard setting methods).

judgments to the score scale on the full-length examination. After creating distributions of individual recommendations for the written part of the examination, to estimate the score for the full-length examination we applied an equipercentile linking approach to find the score that yielded the same percent passing as was determined on just the written component of the examination that panelists evaluated. Equipercentile involves finding the equivalent percentile rank within one distribution of scores and transforming to another score distribution to retain the same impact from one examination to another or in this instance, from a part of the examination on which panelists made judgments to the full examination.

The **standard setting meeting results and evaluation feedback generally supported the validity of the panel's recommended passing score for use with the California Bar Examination**. Results from the study were analyzed to create a range of recommended passing scores. However, additional policy factors may be considered when establishing the passing score. One of these factors may include the recommended passing score and impact relative to the historical passing score and impact. The panel's median recommended passing score of 1439 converged with the program's existing passing score while the mean recommended passing score of 1451 was higher.

Additional factors that could be considered in determining the appropriate cut score for California might include the passing rates from other states that have similarly large numbers of bar applicants sitting for the examination. However, the interpretation of these results and the comparability are mitigated by the different eligibility policies among these jurisdictions and **California's more inclusive policies** as to who may sit for the exam [3] along with the downward trend in bar examination performance across the country, particularly over the last few years. In some instances, the gap passing the bar exam between California's applicants and other states has closed and in others, the gap observed in 2007 has remained essentially constant as the trend declined on a similar slope.

An additional factor warrants consideration as part of the policy deliberation. Specifically, the consideration of policy tolerance for different types of classification errors is relevant. Because we know that there is measurement error with any test score, **when applying a passing score to make an important decision about an individual, it is important to consider the risk of each type of error**. A *Type I* error represents an individual who passes an examination, but whose true abilities are below the cut score. These types of classification errors are considered false positives. Conversely, a *Type II* error represents an individual who does not pass an examination, but whose true abilities are above the passing score. These types of classification errors are known as false negatives. Both types of errors are theoretical in nature because we cannot know which test takers in the distribution around the passing score may be false positives or false negatives.

A policy body can articulate its rationale for supporting adoption of the group's recommendation or adjusting the recommendation in such a way that minimizes one type of misclassification. The policy rationale for licensure examination programs is based primarily on deliberation of the risk of each type of error. For

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[3] California has a uniquely inclusive policy as to who may be eligible to take the Bar Exam. Not only those who have graduated from schools nationally accredited by the American Bar Association, but applicants from California accredited and unaccredited law schools are also allowed to take the exam, as well as those who have 'read law.' This sets California apart from virtually all other jurisdictions.

example, many licensure and certification examinations in healthcare fields have a greater policy tolerance for *Type II* errors than *Type I* errors with the rationale that the public is at greater risk for adverse consequences from an unqualified candidate who passes (i.e., *Type I* error) than a qualified one who fails (i.e., *Type I*I error).

In applying the rationale, if the policy decision is that there is a greater tolerance for *Type I* errors, then the decision would be to accept the recommendation of the panel (i.e., 144) or adopt a value that is one to two standard errors below the recommendation (i.e., 139 to 141). Conversely, if the policy decision is that there is a greater tolerance for *Type II* errors, then the decision would be to accept the recommendation of the panel (i.e., 144) or adopt a value that is one to two standard errors above the recommendation (i.e., 148 to 150). Because standard setting is an integration of policy and psychometrics, the final determination will be policy driven, but supported by the data collected in this workshop and this study more broadly.

Introduction and Overview

The purpose of licensure examinations like the California Bar Exam[4] is to distinguish competent candidates from those that could do harm to the public. This examination purpose is distinguished from other types of exams in that licensure exams are not designed to evaluate training programs, evaluate mastery of content, predict success in professional practice, or ensure employability. Although other stakeholders may attempt to use scores from the examination for one or more of these purposes, it is important to clearly state what inferences the test scores are designed to support or not. Therefore, the standard setting process was designed in a way to focus expert judgments about the level of performance that aligns with minimal competence.

Assessment Design

The California Bar Exam is built on multiple components intended to measure the breadth and depth of content needed by entry level attorneys who are minimally competent. These components are the Multistate Bar Exam (MBE), five essay questions, and a performance task[5]. Beginning with the July 2017 examination, the combined score for the examination weights the MBE at 50% and the constructed response components at 50% with the performance task being weighted as twice as much as an essay question.[6] A decision about passing or failing is based on the compensatory performance of applicants on the examination and not any single component. This means that an applicant's total score on the examination is evaluated relative to the passing score to determine pass/fail status. The applicant does not need to separately "pass" the MBE and the constructed response questions.

Study Purpose and Validity Framework

The purpose of this study was to recommend a passing score that distinguished the performance characteristics of someone who was minimally competent from someone who was not competent. To establish a recommended passing score, Dr. Chad Buckendahl of ACS Ventures, LLC (ACS) facilitated a standard setting meeting for The State Bar of California on May 15-17, 2017 in San Francisco, CA. The purpose of the meeting was to enlist subject matter experts (SMEs) to serve as panelists and recommend cut scores that designate the targeted level of minimally competent performance.

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[4] Note that the California Department of Consumer Affairs is responsible for managing the licensure process for many professions and consults with many others. As such, a representative from the Department was asked to serve as an external reviewer for this study.

[5] The performance task is designed to measure skills associated with the entry level practice of law (e.g., legal analysis, reasoning, written communication) separate from the domain specific application of these skills to specific subject areas as are measured in the essay questions.

[6] Prior to the July 2017 exam, MBE accounted for 35% of the exam, with the constructed response components weighted 65% of the total. Previously, constructed responses consisted of six essay and two performance task questions. While the papers used in the workshop were originally administered according to the old format, in anticipation of the new cut score potentially applied to exams from July 2017 based on the new format, the five essay and one performance test questions were used in the workshop to conform with the new exam structure.

To evaluate the cut score recommendations that were generated from this study, Kane's (2001) framework for evaluating standard setting activities was used. Within this framework, Kane suggests three sources of evidence should be considered in the validation process: procedural, internal, and external. When evaluating procedural evidence, practitioners generally look to panelist selection and qualification, the choice of methodology, the application of the methodology, and the panelists' perspectives about the implementation of the methodology as some of the primary sources. The internal evidence for standard setting is often evaluated by examining the consistency of panelists' ratings and the convergence of the recommendations. Sources of external evidence of validity for similar studies include impact data to inform the reasonableness of the recommended cut scores.

This report describes the sources of validity evidence that were collected and reports the study's passing score recommendations. The California Bar is receiving these recommended passing score within ranges of standard error to contribute to discussions about developing a policy recommendation that will then be provided to the California Supreme Court for final decision-making. These results would serve as a starting point for a final passing score to be established for use with the California Bar Exam.

Procedures

The standard setting study used a modified version of the Analytic Judgment Method (AJM; Plake & Hambleton, 2001). The AJM approach is characterized as a test based method (Hambleton & Pitoniak, 2006) that focuses on the relationship between item difficulty and examinee performance on the test. It is appropriate for tests that use constructed response items like the essay questions and performance task that are part of the written part of the California Bar Exam (see Buckendahl & Davis-Becker, 2012). The primary modification for the study was to reduce the number of applicants' performances that panelists reviewed from 50 to 30 given the score scale for each essay question and the performance task.

Panelists and Observers

A total of 20 panelists participated in the workshop[7]. The panelists were licensed attorneys with an average of 14 years of experience in the field. Panelists were recruited to represent a range of stakeholder groups. These groups were defined as Recently Licensed Professionals (panelists with less than five years of experience), Experienced Professionals (panelists with ten or more years of experience), and Faculty/Educator (panelists who are employed at a college or university). Note that some panelists were associated with multiple roles. Some of the experienced attorneys also served as adjunct faculty members at law schools. In listing their employment type in the table below, we have documented the primary role indicated by panelists. A summary of the panelists' qualifications is shown in Table 1.

In addition to the panelists, there were also observers who attended the in-person standard setting workshop. These included an external evaluator with expertise in standard setting, a representative from the California Department of Consumer Affairs, representatives from California Law Schools, a representative from the Committee on Bar Examinations, and staff from the California Bar Examination. Observers were instructed

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[7] Nominations to participate on the standard setting panel were submitted to the Supreme Court who selected participants to represent diverse backgrounds with respect to experience, practice areas, size of firms, geographic location, gender, and race/ethnicity.

during the orientation of the meeting that they were not to intervene or discuss the standard setting activities with the panelists. All panelists and observers signed confidentiality and nondisclosure agreements that permitted them to discuss the standard setting activities and processes outside the workshop, but that they would not be able to discuss the specific definition of the minimally competent candidate or any of the preliminary results that they may have heard or observed during the study. External evaluators and observers were included in the process to promote the transparency of the standard setting and to critically evaluate the fidelity of the process by which a passing score would be recommended.

Table 1. Summary of panelist demographic characteristics.

Race/Ethnicity	Freq.	Percent
Asian	3	15.0
Asian/White	1	5.0
Black	4	20.0
Hispanic	2	10.0
White	10	50.0
Total	20	100.0

Gender	Freq.	Percent
Female	9	45.0
Male	11	55.0
Total	20	100.0

Years of Practice	Freq.	Percent
5 Years or Less	10	50.0
>=10	10	50.0
Total	20	100.0

Nominating Entity	Freq.	Percent
ABA Law Schools	3	15.0
Assembly Judiciary Comm.	1	5.0
Board of Trustees	2	10.0
BOT - CBE*	1	5.0
BOT - COAF*	8	40.0
BOT - CYLA*	2	10.0
CALS Law Schools	1	5.0
Governor	1	5.0
Senior Grader	1	5.0
Total	20	100.0

* Committee of Bar Examiners; Council on Access and Fairness; California Young Lawyers Association.

Primary Employment Type	Freq.	Percent
Academic	2	10.0
Court	1	5.0
District Attorney	1	5.0
Large Firm	4	20.0
Non Profit	3	15.0
Other Govt.	3	15.0
Public Defender	1	5.0
Small Firm	3	15.0
Solo Practice	2	10.0
Total	20	100.0

Practice Areas	Freq.	%
Business	12	17%
Personal Injury	6	9%
Appellate	5	7%
Criminal	5	7%
Labor Relations	4	6%

Juvenile Delinquency	3	4%
Probate	3	4%
Real Estate	3	4%
Antitrust	2	3%
Disability Rights	2	3%
Employment	2	3%
Environmental Law	2	3%
Family	2	3%
Insurance Coverage	2	3%
Intellectual Property	2	3%
Administrative Law	1	1%
Civil Rights	1	1%
Contract Indemnity Litigation	1	1%
Education	1	1%
Elder Abuse	1	1%
General Commercial Litigation	1	1%
Government Transparency	1	1%
Immigration	1	1%
Legal Malpractice	1	1%
Mass Tort	1	1%
Nonprofit Law	1	1%
Policy Advocacy	1	1%
Product Liability	1	1%
Public Interest	1	1%
Total	69	100%

Method

Numerous standard setting methods are used to recommend passing scores on credentialing[8] exams (Hambleton & Pitoniak, 2006). The selection of the Analytical Judgment Method (AJM; Plake & Hambleton, 2001) for the California Bar Exam reflected consideration of the characteristics of the exam as well as requirements of the standard setting method itself. The AJM was designed for examinations that use constructed response questions that are designed to measure multiple traits. The responses produced by the applicants on the essay questions and performance task of the California Bar Exam are examples of constructed response questions where the AJM is applicable.

The methodology first involves identifying exemplars of applicant performance that span the observed score scale for the examination. The exemplar performances should be good representations of the respective score point such that the underlying score should not be in question. Plake and Hambleton (2001) suggested using

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[8] Credentialing is an inclusive term that is used to refer to licensure, certification, registration, and certificate programs.

50 exemplars to ensure that there was sufficient representation of the score scale. Once these exemplars have been identified, they should be randomly ordered and coded to de-identify the score for the standard setting panelists. The goal is to have the panelists focus on the interpretation of the performance level descriptor of minimum competency and not the score of the paper.

The rating task for the panelists is to then broadly classify each exemplar into two or more categories (e.g., not competent, competent, highly competent). Once this broad classification is completed, panelists are asked to then refine those judgments by identifying the papers close to one or more thresholds. For example, if the target threshold is minimum competency, then panelists would identify the best of the not competent exemplars and the worst of the competent exemplars. To calculate the recommended cut score for a given question, the underlying scores for these exemplars are averaged (i.e., mean, median) to determine a value for this question. The process is then repeated for each essay question and performance task with the results summed across questions to form an individual panelist's recommendation.

In the operationalization of this method for this study, two modifications of the methodology were used. First, rather than having 50 exemplars for each question, panelists evaluated 30 exemplars for each question. This modification was applied primarily due to the width of the effective scale. Meaning, although the theoretical score scale for each essay question spans from 0-100, the effective score scale only ranges from approximately 45-90 and is limited to increments of 5 points. This reduces the number of potential scale score points and thereby reduces the number exemplars necessary for each score point to illustrate the range. The second modification of the process involved sharing with the panelists a generic scoring guide/rubric as opposed to specific ones for each question. This was done to avoid potentially biasing the panelists in their judgments and to focus on the common structure of how the constructed response questions were scored.

In the rating task, panelists were asked to review examples of performance and categorize each example as either characteristic of *not competent*, *competent*, or *highly competent* performance. Even though the only target threshold level was *minimally competent*, the use of *highly competent* as a loosely defined category was meant to filter out exemplars that would not be considered in the refined judgments. Following the broad classification, these initial classifications were then refined to identify the papers that best represented the transition point from not competent to competent (i.e., minimally competent). Once these papers were identified by the panelists (i.e., the two best not competent exemplars and the two worst competent exemplars), the actual scores that these exemplars received during the actual, original grading process were used to calculate the average values of the panelists' recommendations for each question and then summed across questions.

Workshop Activities
The California Bar Exam standard setting meeting was conducted May 15-17, 2017 in San Francisco, CA. Prior to the meeting, participants were informed that they would be engaging in tasks that would result in a recommendation for a passing score for the examination. The standard setting procedures consisted of orientation and training, operational standard setting activities for each essay/performance task, and successive evaluations to gather panelists' opinions of the process. Chad Buckendahl, Ph.D., served as the facilitator for the meeting. Workshop orientation materials are provided in Appendix B.

Orientation

The meeting commenced on May 15th with Dr. Buckendahl providing a general orientation for all panelists that included the goals of the meeting, an overview of the Analytical Judgment Method and its application, and specific instructions for panel activities. Additionally, the opening orientation described how cut scores would ultimately be determined through recommendations to the California State Bar. In addition, a generic scoring guide/rubric was shared with the panelists to provide a framework for how essay questions and the performance task would be scored. The different areas of the scoring criteria were a) Issue spotting, b) Identifying elements of applicable law, c) Analysis and application of law to fact pattern, d) Formulating conclusions based on analysis, and e) Justification for conclusions. Each essay question and performance task had a unique scoring guide/rubric for the respective question, but followed this generic structure.

Part of the orientation was a discussion around the expectations for someone who is a minimally competent lawyer and therefore should be capable of passing the exam. The process for defining minimum competency is policy driven and started with a draft definition produced by the California Bar. Feedback was solicited from law school deans, the Supreme Court of California, and the workshop facilitator for substance and style.

Based on the input from multiple stakeholder groups and relying on best practice as suggested by Egan et al. (2012), the California Bar provided the following description of minimally competent candidate (MCC).

> A minimally competent applicant will be able to demonstrate the following at a level that shows meaningful knowledge, skill and legal reasoning ability, but will likely provide incomplete responses that contain some errors of both fact and judgment:
>
> (1) Rudimentary knowledge of a range of legal rules and principles in a number of fields in which many practitioners come into contact. May need assistance to identify all elements or dimensions of these rules.
>
> (2) Ability to distinguish relevant from irrelevant information when assessing a particular situation in light of a given legal rule, and identify what additional information would be helpful in making the assessment.
>
> (3) Ability to explain the application of a legal rule or rules to a particular set of facts. An applicant may be minimally competent even if s/he may over or under-explain these applications, or miss some dimensions of the relationship between fact and law.
>
> (4) Formulate and communicate basic legal conclusions and recommendations in light of the law and available facts.

Additionally, the facilitator guided the panel through a process where panelists further discussed the MCC by answering the following questions:

- What knowledge, skills, and abilities are representative of the work of the MCC?

- What knowledge, skills, and abilities would be easier for the MCC?

- What knowledge, skills, and abilities would be more difficult for the MCC?

The results of this discussion and the illustrative characteristics of MCC performance for each of the subject areas that were included in this study are included as an embedded document in Appendix C.

Training/Practice with the Method

Panelists also engaged in specific training regarding the AJM. This involved a discussion about the initial task of broadly classifying exemplars into one of three categories – not competent, competent, or highly competent – and using the performance level descriptor (PLD) of the MCC to guide those judgments. In addition, prior to the operational ratings, panelists were given an opportunity to practice with the methodology. The practice activity replicated the operational judgments with two exceptions: a) panelists were only given 10 exemplars distributed across the score scale to review and b) panelists only identified one exemplar that represented the best not competent and the worst competent. Panelists then discussed their selections and the reasoning for why their judgments reflected the upper and lower bound of the expected performance of the MCC.

Operational Standard Setting Judgments

After completing the training activities panelists began their ratings by independently classifying the 30 exemplars that were selected for the first question. The 30 exemplars for each question were selected to approximate a uniform distribution (i.e., about the same number of exemplars across the range of observed scores). Figure 1 below shows the distribution of scores for the written section of the examination along with the distribution of exemplars that were selected for this study.

Written Exam Score Distributions - Actual and Sample Selected for Workshop

Score	Actual Freq.	Actual %	Selected Freq.	Selected %
40	29	0.1	0	0.0
45	436	0.8	19	10.0
50	6,669	12.6	25	13.2
55	14,354	27.1	25	13.2
60	14,678	27.7	26	13.7
65	9,383	17.7	26	13.7
70	4,365	8.2	25	13.2
75	2,206	4.2	25	13.2
80	689	1.3	16	8.4
85	178	0.3	3	1.6
90	33	0.1	0	0.0
95	3	0.0	0	0.0
Total	53,023	100.0	190	100.0
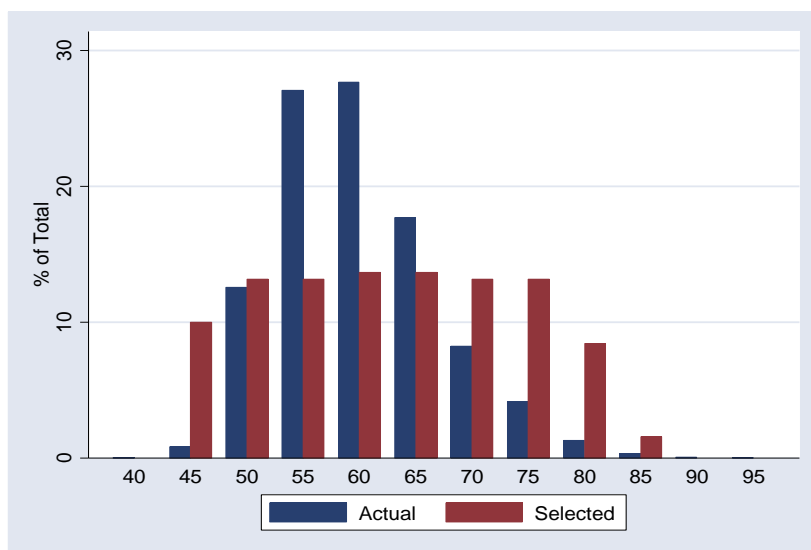
Figure 1. Distribution of observed scores and selected exemplars for the written section of the California Bar Examination from July 2016.

For the study, these exemplars were then randomly ordered and only identified with a code that represented the score that the exemplar received during the grading process in 2016. Panelists were not told the scores on the exemplars to maintain their focus on the content rather than an intuitive perception of a given score. After panelists made their initial, broad classification, they identified the **two best not competent exemplars** and the **two worst competent exemplars** from their initial classifications. The selection of these specific exemplars is used to estimate the types of performance that would be demonstrated by a MCC. Panelists used a predeveloped rating form to indicate the codes on the exemplars that aligned with these instructions.

To convert the panelists' ratings into numerical values to then calculate the recommendations, the first step was to use a look up table to determine the underlying score associated with a given exemplar code. This was done for each question and each panelist. The conversion of the exemplar codes into the scores that each exemplar received permitted the summation of the values, calculation of averages (i.e., mean, median) across panelists.

After completing their ratings on the first question, the facilitator led a discussion of the rationale for why they selected the exemplars that they did. This process of discussion occurred as a full group and was intended to reinforce the methodology and the need to use the definition of minimum competency to inform the judgments about exemplar classification. Following this discussion, the judgment process was replicated for each of the subsequent essay questions and the performance task with an exception that a group discussion did not occur after each question. For logistics purposes, the remaining four essay questions were evaluated by half the group as a split panel. Following their ratings on the essay questions, the full panel then replicated the judgment process for the performance task. After completing key phases in the process (e.g., orientation/training, operational rating) panelists completed a written evaluation form of the process.

Analysis and Results

Following the design of the process, each panelist reviewed 3 essay questions (1 as a full group and then 2 as part of their subgroup) and the performance task. For each, panelists were asked to select four borderline papers that represented the best non-competent responses (2) and the best competent responses (2). After the study, the scores for each of the selected borderline papers were identified and used to determine the level of performance expected for candidates at this level.

To calculate the recommended passing score on the examination from the panelists' judgments, the individual recommendations for each panelist were summed across the questions with each essay question being equally weighted and the performance task counting for twice as much as an individual essay question to model the operational scoring that will occur beginning with the July 2017 administration. Because some essay questions were evaluated by half the group per the design, mean and median replacement were used to estimate the individual recommendations. Mean and median replacement are missing data techniques that are used to approximate the missing values when panelists do not make direct judgments.

The strategy first calculates the mean or median for the available data and then replaces the missing values with the calculated values. This approach retained the recommended values across questions for the panelists while permitting calculations of the standard error of the mean and standard error of the median. The standard error is an estimate of the variability of the panelists' recommendations adjusted for the sample size

of the group. These values provide additional information for interpreting the results of the panelists' recommendations.

Following these judgments, we calculated the recommended score and associated passing rate when considering the written part of the examination. However, we needed to know what score on the total exam corresponded to this same pass rate. To answer this question, another step was needed to transform these judgments to the score scale on the full-length examination. After creating distributions of individual recommendations for the written part of the examination, to estimate the score for the full-length examination we applied an equipercentile linking approach to find the score that yielded the same percent passing as was determined on just the written component of the examination that panelists evaluated.

This methodology is characterized as equipercentile because the goal is to find the equivalent percentile rank within one distribution of scores and transform it over to another score distribution to retain the same impact from one examination to another or in this instance, from a part of the examination on which panelists made judgments to the full examination. This linking occurred applying the weight that 50% of the total score would be contributed by each component – written and MBE.

There are two important assumptions when applying equipercentile linking. First, we assume that the same or a randomly equivalent group of candidates are used to create the two score distributions. Second, we assume that the examinations are sufficiently correlated to support the interpretation. In this application, the same candidate scores were used from the written part to the full-length examination. In addition, the correlation between the written scores and the total score (of which the written scores are a part) was 0.97 suggesting a strong relationship between the distributions to support applying an equipercentile linking approach.

The summary results are presented in Table 2. The panel's recommended mean and median with the associated standard errors are included along with the impact and combined score associated with the recommendation, along with a +/- 2 standard error of mean or median. Individual ratings for each essay question, the performance task, and the summary calculations are included in Appendix C and have been de-identified to preserve anonymity of individual panelists. The summary results of these analyses are shown here in Table 2.

Table 2. Summary results with range of recommendations on written and combined score scales with impact (i.e., pass rate).

	Written Score - Mean	Combined Score – Mean (pass rate)	Written Score – Median	Combined Score – Median (pass rate)
-2 SE$_{Mean/Median}$	419	1414 (53%)	414	1388 (60%)
-1 SE$_{Mean/Median}$	424	1436 (47%)	419	1414 (53%)
Recommended score (SE$_{Mean/Median}$**)**	428 (4.47)	1451 (43%)	425 (5.60)	1439 (45%)
+1 SE$_{Mean/Median}$	432	1480 (36%)	431	1477 (37%)
+2 SE$_{Mean/Median}$	437	1504 (31%)	436	1504 (31%)

Panelists' Recommendations

Interpreting the results of the panelists' recommendations involves a combination of sources of evidence and related factors. The results shown in this section represent one of those sources, specifically, the ratings provided by subject matter experts on exemplars of performance from the California Bar Examination. Additional discussion of empirical and related policy considerations is provided in the *Evaluating the Cut Score Recommendations* section below.

The goal in analyzing the results of the panelists' judgments was to best represent the recommendation from the group. There are different ways this could have been done, each involving a measure of central tendency (e.g., mean, median). The mean calculation is the arithmetic average that most people are familiar with, however, it may not be the best representation of the group's recommendation when the distribution is skewed. For smaller samples or when extreme scores are observed in a distribution, the mean may be higher or lower than the group would have otherwise intended. In these instances, the median is calculated at the point where half the recommendations are above the value and half the recommendations are below the value to balance the effects of an extreme or outlier recommendation. When the mean and median do not converge, it is generally recommended that the median be used as the better representation of the central tendency of the observed score distribution. This approach is analogous to the data that are often shared with respect to housing prices in cities where a median is used to offset the effects of outliers on upper and lower end of the distribution.

Although the values calculated for the panelists were close, the mean and median recommendations did not converge. Therefore, the median likely serves as a better indicator of central tendency of the recommendation of the panelists. The median recommended cut score for the written portion of the exam based on all panelists' judgments was 423.75 and was rounded to the nearest observable score of 425 on a theoretical scale that ranges from 0 to 700 (i.e., 100 points for each essay question, 200 points for the performance task). To then determine how this recommendation would be interpreted with respect to a pass/fail decision, we evaluated the impact on a cumulative percent distribution using only the written component performance by applicants who took the July 2016 California Bar Examination.

To evaluate the impact of this recommendation, we found the location in the cumulative percent distribution of the written scores that corresponded with this value (i.e., 425). This value resulted in an overall impact of 46% pass and 54% fail based on the applicants who took the July 2016 California Bar Examination. To then determine the score on the full examination that corresponded to this impact, we then used an equipercentile linking approach to find the value on the combined score that corresponded to the same impact (i.e., 46% pass and 54% fail), and the corresponding value in the distribution yielded a score of 1439. The same process was followed in evaluating the mean score that was calculated for the group.

When collecting data from a sample, it is important to acknowledge that the results are an estimate. For example, when public opinion polls are conducted to gather perceptions about a given topic (e.g., upcoming elections, customer satisfaction), the results are reported in conjunction with methodology, sample size, and margin of error to illustrate that there is a level of uncertainty in the estimate. In selecting a representative sample of panelists for this study, we similarly collected data that resulted in a distribution of judgments from which we could calculate an estimate of the recommendation of the group.

Because the mean and median were calculated from a distribution of scores, it is also appropriate to estimate the variability in those recommendations to produce a range within which policymakers may consider the panel's recommendation. This range was calculated using the standard error of the mean and median. The standard error is an estimate of the standard deviation (i.e., variability) of the sampling distribution. To calculate the standard error of the median (SE_{median}), the standard error of the mean is first calculated and can then be approximated by multiplying that value by the square root of pi (i.e., 3.14159. . .) divided by two which produces a slightly wider range than the standard error of the mean. Though technical in nature, the Standard Error of the Median can also be interpreted conceptually as the margin of error in the judgments provided by the panel.

Given a median recommendation of 425 on the written section with a SE_{median} of 5.60, the range of recommended passing scores on the written score scale would be 414 to 436 which translates to a range of 1388 to 1504 on the combined score scale. This range would correspond to the interpretative scale of 139 to 150. If the mean recommendation range was used, it would correspond to a 1414 to 1504 which on the interpretive scale would be 141 to 150.

Process Evaluation Results

Panelists completed a series of evaluations during the study that included both multiple-choice questions and open-ended prompts. The responses to the questions are included in Table 3 and the comments provided are included in Appendix D. With the exception of Question 2 that was rated on a 3-point scale (1 = not enough, 2 = about right, 3 = too much), ratings closer to 4.0 can be interpreted as more positive perceptions of the question (e.g., success of training, confidence in ratings, appropriate time) versus values closer to 1.0 which suggest perceptions that are more negative with respect to these questions.

Table 3. Written Process Evaluation Summary Results

	Median	1 - Lower	2	3	4 - Higher
1. Success of Training					
Orientation to the workshop	4	0	0	9	11
Overview of the exam	3	0	0	12	8
Discussion of the PLD	4	0	1	5	14
Training on the methodology	3.5	0	2	8	10
2. Time allocation to Training	2	4	16	0	N/A
3. Confidence moving from Practice to Operational	3	1	1	15	3
4. Time allocated to Practice	3	1	6	10	3
6. Confidence in Day 1 recommendations	3	1	2	11	6
7. Time allocated to Day 1 recommendations	2	5	6	9	0
9. Confidence in Day 2 recommendations	3	0	1	11	6
10. Time allocated to Day 2 recommendations	3	1	3	8	6
12. Confidence in Day 3 recommendations	4	0	0	5	15
13. Time allocated to Day 3 recommendations	3	2	1	8	9
14. Overall success of the workshop	3	0	1	12	7
15. Overall organization of the workshop	4	0	0	7	13

Collectively, the results of the panelists' evaluation suggested generally positive perception of the activities for the workshop, their ratings, and the outcomes. The ratings regarding the time allocation were generally lower which can be attributed to the intensity of the task and the amount of work. Future studies may benefit from an additional day or two to permit more reasonable workload for the panelists.

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Evaluating the Cut Score Recommendations

To evaluate the passing score recommendations that were generated from this study, we applied Kane's (1994; 2001) framework for validating standard setting activities. Within this framework, Kane suggested three sources of evidence that should be considered in the validation process: procedural, internal, and external. Threats to validity that were observed in these areas should inform policymakers' judgments regarding the usefulness of the panelists' recommendations and the validity of the interpretation. Evidence within each of these areas that was observed in this study is discussed here.

Procedural

When evaluating procedural evidence, practitioners generally look to panelist selection and qualifications, the choice of methodology, the application of the methodology, and the panelists' perspectives about the implementation of the methodology as some of the primary sources. For this study, the panel that was recruited and selected by the Supreme Court represented a wide range of stakeholders: newer and more experienced attorneys and representatives from legal education who collectively included diverse professional experiences and backgrounds. The choice of methodology was appropriate given the constructed response aspects of the essay questions and performance task. Panelists' perspectives on the process were collected and the evaluation responses were very positive.

Internal

The internal evidence for standard setting is often evaluated by examining the consistency of panelists' ratings and the convergence of the recommendations. The standard error of the median on which the recommendation was based (5.60) was reasonable given the theoretical range of the scale (0-700) for the written component of the examination. This means that most panelists' individual recommendations were within about six raw score points of the median recommended value. Even considering the effective range of the scale (approximately 280-630), the deviation of scores across panelists did not vary widely. Similar variation was also observed for the mean recommendation. These observations suggest that panelists were generally in agreement regarding the expectations of which applicant responses were characteristic of the Minimally Competent Candidate.

External

Although external evidence is difficult to collect, some sources were available for this study that will be useful for policy makers in their consideration of the recommendations of the group. The use of impact data from applicants in California from the July 2016 examination can be used as one source of evidence to inform the reasonableness of the recommended passing score. In addition, the application of the recommendation to scores from other exams (e.g., February 2016, February 2017, July 2017) would also be useful to evaluate the potential range of impact. **This would be particularly valuable given the different ability distributions of applicants who take the examination in February versus July**. In addition, consideration of first time test takers versus repeat test takers is another potential factor because applicants who are repeating the exam do not represent the full range of abilities.

A limitation of the study was the inability to include items from the MBE as part of the judgmental process. Although it would have been a desired part of the standard setting design, the MBE was not made available to California for inclusion in the study. In using half of the examination for the study, we can make a reasonable approximation of a recommendation for the full examination (see, for example, Buckendahl, Ferdous, &

Gerrow, 2010). The correlation between the written and MBE scores is approximately 0.72 suggesting moderate to strong correlation, but with some unique variance contributed by each component of the examination.

In addition, passing scores on bar examinations from other states can also be used to inform the final policy. However, the use of data from other states should be done with caution for multiple factors. First, it is unclear whether other states have conducted formal standard setting study activities, so to evaluate comparability based solely on the passing standard may not support California's definition of minimum competency. Second, California has different eligibility criteria than other states that will have an impact on the ability distribution of the population of applicants. Specifically, California has a more inclusive eligibility policy than most jurisdictions with respect to the legal education requirements. Third, each jurisdiction may have a different definition of minimum competency as to how it is applied to their examination. These can contribute to different policy decisions.

To illustrate how California passing score compares with other, larger population jurisdictions, Table 4 is shown here for comparison purposes. The overall test taker passing rates are shown from 2007 to 2016 to illustrate the current rate, but also the trend in performance over time.

Table 4. Overall passing rates in selected states and nationally from 2007-2016.[9]

Jurisdiction	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
California	49%	54%	49%	49%	51%	51%	51%	47%	44%	40%
Florida	66%	71%	68%	69%	72%	71%	70%	65%	59%	54%
Illinois	82%	85%	84%	84%	83%	81%	82%	79%	74%	69%
New York	64%	69%	65%	65%	64%	61%	64%	60%	56%	57%
Texas	76%	78%	78%	76%	80%	75%	80%	70%	65%	66%
National Average	67%	71%	68%	68%	69%	67%	68%	64%	59%	58%

Note that across jurisdictions and for the nation, there has been a consistent, downward trend in overall passing rates beginning in 2014. Similar trends were observed for first-time test takers.[6] With passing scores for jurisdictions being held constant through policy and statistical equating, the changing variables of ability within the candidate population in terms of law school admissions, matriculation, as well as any influence on curriculum and instruction have likely contributed to this observed pattern. These data reinforce the caution of not simply relying on current passing scores used in other jurisdictions.

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[9] Data for Table 4 were obtained NCBE 2016 Statistics document (pp. 17-20) and represent the combined pass rate for a given year across the February and July administrations. This report can be accessed: http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F205.

Determining a Final Passing Score

The **standard setting meeting results and evaluation feedback generally support the validity of the panel's recommended passing score for use with the California Bar Examination**. Results from the study were analyzed to create a range of recommended passing scores. However, additional policy factors may be considered when establishing the passing score. One of these factors may include the recommended passing score and impact relative to the historical passing score and impact. The panel's median recommended passing score of 1439 (effectively 144 on the interpretative scale) converged with the program's existing passing score with the mean recommended passing score being slightly higher.

Factors that could be considered include the passing rates from other states that have similarly large numbers of bar applicants sitting for the examination. However, the interpretation of these results and the comparability are mitigated by the different eligibility policies among these jurisdictions and **California's more inclusive policies** along with the downward trend in bar examination performance across the country, particularly over the last few years. In some instances, the gap between California's applicants and other states has closed and in others, the gap observed in 2007 has remained essentially constant as the trend declined on a similar slope.

An additional factor warrants consideration as part of the policy deliberation. Specifically, the consideration of policy tolerance for different types of classification errors. Because we know that there is measurement error with any test score, **when applying a passing score to make an important decision about an individual, it is important to consider the risk of each type of error**. A Type I error represents an individual who passes an examination, but whose true abilities are below the cut score. These types of classification errors are considered false positives. Conversely, a Type II error represents an individual who does not pass an examination, but whose true abilities are above the passing score. These types of classification errors are known as false negatives. Both types of errors are theoretical in nature because we cannot know which test takers in the distribution around the passing score may be false positives or false negatives.

A policy body can articulate its rationale for supporting adoption of the group's recommendation or adjusting the recommendation in such a way that minimizes one type of misclassification. The policy rationale for licensure examination programs is based primarily on deliberation of the risk of each type of error. For example, many licensure and certification examinations in healthcare fields have a greater policy tolerance for Type II errors than Type I errors with the rationale that the public is at greater risk for adverse consequences from an unqualified candidate who passes (i.e., Type I error) than a qualified one who fails (i.e., Type II error).

In applying the rationale, if the policy decision is that there is a greater tolerance for Type I errors, then the decision would be to accept the recommendation of the panel (i.e., 144) or adopt a value that is one to two standard errors below the recommendation (i.e., 139 to 141). Conversely, if the policy decision is that there is a greater tolerance for Type II errors, then the decision would be to accept the recommendation of the panel (i.e., 144) or adopt a value that is one to two standard errors above the recommendation (i.e., 148 to 150). Because standard setting is an integration of policy and psychometrics, the final determination will be policy driven, but supported by the data collected within this workshop and for this study more broadly.

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Appendix A – Panelist Information

Standard setting
panelists.xlsx

Appendix B – Standard Setting Materials

The nomination form for panelists and documentation used in the standard setting are included below.

State Bar Standard
Setting Study Nomin

Agenda

Training

Evaluations

Appendix C – Standard Setting Data

PLD Discussion for
Minimally Competen

California Bar
Standard Setting Da

Appendix D – Evaluation Comments

Each panelist completed an evaluation of the standard setting process that included several open-ended response questions. The responses provided to each are included below.

Day 1 – Training

- Lots of reading
- More time could easily be spent on the practice rating, but I doubt that it would make a difference in the outcome.
- Dr. Buckendahl trained us very effectively. He is engaging, clear, and attentive. I have confidence in him and the process. Good work!
- Perhaps it was the result of the lively discussions we were having, but a little more time for practice would have been ideal as I felt I was a bit rushed.
- More background information before initiating the process would be helpful
- Perhaps additional time spent as a group discussing not the themes/genres of knowledge for each subject, but on what it means to read an essay and decide whether a discussion of the theme is sufficient to communicate minimal competency.
- Not convinced this methodology is valid. Many of us clearly do not know some applicable law and these conclusions may therefore determine that incompetent answers amounting to malpractice are nevertheless passing/competent.
- Great and important discussion about minimal competencies on each exam answer discussed.
- It would have been helpful at the top to have a broader discussion about why the study is being done, what the Bar is hoping to learn, and how the individuals (participants) were selected.
- Would be helpful if watchers could be talking outside [the] room instead of in during review of essays.
- [Related to confidence rating] - only because some of my ratings were different from the majority. Otherwise, very confident.
- [Related to time rating] - Had to rush in order to have time for lunch.
- I think a broader discussion at the outset before the practice/identification of key issues would have been helpful. We all seemed to struggle with our own lack of knowledge and addressing that more up front may have helped us move along more efficiently.

Day 1 – Standard Setting

- I would have liked to know ahead of time that I would be "grading" 40 essays when I came in.
- I did not finish and felt rushed. More time for first question.
- Snacks for end of day grading would help :) I feel like I'm in a groove now and understand the concept of what I'm doing, but 30 tests to read is a lot at the end of a long day. Grateful we can finish in the a.m.!
- More time please
- I'm still not completely certain that I understand how we are qualified to do this without answers. It seems like this could have the overall effect of making it easier to pass?

- Although a lot of folks complained that we didn't "know enough" of subject matter, after reading 30 tests, yes we are - it became easier to spot the competent from the not competent. Perhaps this could be talked about at the outset to avoid this needless discussion altogether.
- I am concerned that an unprepared attorney, without the benefit of experience, studying, or a rubric, is not a good indicator of a minimally competent attorney. We all have an ethical duty to become competent. New lawyers/3 Ls do that by preparing for the exam. A more seasoned lawyer does that by refreshing recall of old material or by resort[ing] to practice guides. Having neither the benefit of studying nor outside sources, at least some of us may be grading with lack of minimum adequate knowledge. By studying for the exam, test-takers are becoming competent and gaining that minimal competency. Practicing professionals who become specialized may lose/atrophy that competence in certain field, which needs to be refreshed by CLG and other sources. So these scores may be of limited utility.
- It's too much. Too many questions to review.
- No changes
- Got 24/30 done [on the first day]

Day 2 – Standard Setting

- It was very difficult to read 60 essays in one day
- The discussion about where certain papers fall on the spectrum is helpful to let us know we are on the right track.
- We need breaks to stretch our bodies and we need to go outside, so our brains can get fresh air.
- It might be helpful to have some kind of "correct" sample answer to avoid having to go back and re-score or re-read for lack of knowing "the correct answer."
- I do NOT like being tricked into grading/reading 130 frigging essays! We should have been told that this is what the project was.
- Snacks were a great addition to the day.
- Thanks for the afternoon snacks!
- We did not follow the agenda which indicated we should build an "outline" for the "question." Instead, on Day 1, we outlined subject areas. There will not be consistency among the group. This was clear this AM when there was no agreement regarding Question 1. Each of the 30 essays was marked as the best no-pass or worst pass by at least one person. We should have outlined as a group.
- After initial "calibration" session on Day 1; and with more time, I feel confident about my ability to apply the PLDs to these essays.
- No changes

Day 3 – Standard Setting and Overall Evaluation

- This no doubt took a lot of work, so thank you to all staff and State Bar folks!
- The early activities and group discussion were helpful in allowing me to orient and direct what I ought to be doing for my recommendations. Perhaps a few more panelists to ease the burden would be helpful for the future!
- No changes

- I really found the time available to review the subject-matter answers to be very challenging. Trying to discriminate among those last four papers and a few on either side of them was difficult. An idea: have readers make their 3 initial stacks and identify not more than x (10?) papers that fall closer to the borderline. Do that for all answers. Then have readers spend last session choosing the "two and two" all at once.
- I'm not entirely sure I understand how what feels like an arbitrary process by 20 graders/panelists results in a less arbitrary cut score. Perhaps some additional information or process would be helpful.
- Although providing a scoring rubric would make categorization more consistent, it would do so in view of the thoughts of the author and not of the 20 panelists. Having no rubric was tough, but appropriate.
- Breaks between assignments
- Work with Dr. Buckendahl again. He was very careful, clear, and engaging. Well done!
- The performance test, unlike subject matter knowledge tests (essays) is much more amenable to this sort of standard setting. While, as with essays, we did not outline/rubric/calibrate, that is less necessary because of closed universe and the skills being tested.
- Overall, I think this process made sense. I was troubled that at least one of the panelists had clear familiarity with the existing exam and process and a clear knowledge of "right" answers as currently graded. I'm not sure everyone had a clear understanding of "minimally competent attorney" so we may have had different standards in mind.
- I'd like to be included in next steps or discussions. Other than just more grading/reading essays.
- I had a hard time with the time limit to review each answer. I am not clear if I was being too thorough, or I missed the lesson on how to move through answers at a quicker pace.

Resolution of the Committee of Bar Examiners, passed on August 31, 2017

"It was moved, seconded and duly carried … that following a period of public comment, the "Report to the Admissions and Education Committee and the Committee of Bar Examiners Regarding Public Comments on the Standard Setting Study" dated August 29, 2017 prepared by State Bar staff be received and filed; and that following review of the report and the public comments received, the Committee's recommendation that the California Bar Examination (CBX) pass line of 1440 be maintained until such time as the two remaining reports on the CBX: content validation and law school performance are completed, so that they may also be considered in connection with making a recommendation relative to the cut score, be forwarded to the Board of Trustees and the California Supreme Court."

In Favor	Opposed	Abstain
Traci Belmore (Attorney)	Jeanne Vanderhoff	Dolores Heisinger
James Bolton (Public Member)	(Attorney)	(Public Member)
James Efting (Attorney)		
Erika Hiramatsu (Attorney)		
Larry Kaplan (Public Member)		
Paul Kramer (Attorney)		
Alexander Lawrence (Public Member)		
Sandhya Ramadas (Attorney)		
Larry Sheingold (Public Member)		
David Torres (Attorney)		
Patricia Villalobos (Public Member)		
Lee Wallach (Public Member)		

CBE Chair, Karen Goodman, was present but did not vote as there was not a tie.

Resolution of the Board of Trustees, passed on September 6, 2017

RESOLVED, that following a period of public comment, which included two public hearings, the Board of Trustee accepts the "Report to the Board of Trustees of the California State Bar Final Report on the Standard Setting Study and Public Comments Regarding Pass Line Options" dated September 5, 2017, prepared by State Bar staff; and it is

FURTHER RESOLVED, that the Board of Trustees approves recommending to the Supreme Court of California that it consider the three options relative to the California Bar Examination cut score: 1) maintain the current cut score of 1440, 2) reduce the cut score to 1414 on an interim basis and 3) reduce the cut score to 1390 on an interim basis, effective with the July 2017 California Bar Examination.

FURTHER RESOLVED, that staff is authorized to make technical amendments to the Report prior to its submission to the Supreme Court

In Favor	Opposed
Mark Broughton (Supreme Court Appointee)	Janet Brewer (Elected member, District 6)
Jason Lee (Supreme Court Appointee)	Terrance Flanigan (Supreme Court Appointee)
Joanna Mendoza (Elected member, District 3)	Renee LaBran (Governor Appointee)
Sean SeLegue (Elected member, District 1)	Richard Ramirez (Assembly Appointee)
Stacie Spector (Governor Appointee)	Brandon Stallings (Elected member, District 5)
Alan Steinbrecher (Supreme Court Appointee)	

Board President Jim Fox was present but did not vote because there was not a tie.

PR-85-5

HOW THE BIFURCATION RULE AFFECTED THE PERCENT PASSING

CALIFORNIA'S GENERAL BAR EXAMINATION

Stephen P. Klein, Ph.D.

September 25, 1985

ABSTRACT

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

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

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

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

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

SUMMARY

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

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

The major findings of this study were as follows:

o The higher an applicant's July 1981 total score, the greater the likelihood the applicant would pass a subsequent exam (and with fewer attempts). This pattern held regardless of test taking strategy. For example, within the group of 395 applicants who took both parts of the February 1982 exam, the July 1981 total scores of the applicants that passed and failed were 1024 and 1015, respectively.

o Applicants who retook only one part of a subsequent exam had a _higher_ average July 1981 total score than applicants who retook both parts. This pattern held regardless of whether the applicant had a July 1981 MBE or Essay pass.

o Contrary to what was expected by the first two findings and other considerations, applicants who retook only one part had a _lower_ average score on that part than the applicants who retook both parts. For instance, on the February 1982 exam, the applicants who retook just the MBE had an average MBE score of 427 whereas the applicants who retook both parts had an average MBE score of 435 (i.e., despite the latter group being generally less able as indicated by their 6-point lower July 1981 total score).

o Even though retaking both parts did not jeopardize a passing status on the part passed previously, over one-third of the bifurcation eligible applicants who retook any part, only retook the part failed previously. About the same number of applicants choose to retake only the MBE as choose to retake only the Essay.

o Retaking just the Essay section greatly reduced an applicant's chances of passing the entire exam. For instance, 58 percent passed among those who retook both parts of the February 1982 exam, but only 16 percent passed among those who retook just the Essay section.

- ii -

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

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

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

Stephen P. Klein, Ph.D.

BACKGROUND

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

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

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

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

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

PURPOSE

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

JULY 1981 RESULTS

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

Table 1

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

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

STUDY SAMPLE

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

FEBRUARY 1982 RESULTS

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

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

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

Table 2

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

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

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

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

Table 3

DETAILED CATEGORIZATION OF SAMPLE ON FEBRUARY 1982 EXAMINATION

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

JULY 1982 RESULTS

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

Table 4

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

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

EFFECTIVENESS OF DIFFERENT STRATEGIES

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

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

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

Table 5

DETAILED CATEGORIZATION OF SAMPLE ON JULY 1982 EXAMINATION

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

UNIQUE EFFECTS OF BIFURCATION

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

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

February 1982 Analyses

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

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

o Of the 395 applicants who retook both parts, 381 had a prior MBE pass. Within this group, 216 (56.7 percent) passed the February 1982 exam by means of the compensatory rule.

o There were 110 applicants with a prior MBE pass who retook only the Essay. About 62 of these applicants would have passed the February 1982 exam by means of the compensatory rule if they had retaken both parts (.567 x 110 = 62.4).

o Of the 395 applicants who retook both parts, 14 had a prior Essay pass. Within this group, 6 (42.9 percent) passed the February 1982 exam by means of the compensatory rule.

o There were 114 applicants with a prior Essay pass who retook only the MBE. About 49 of these applicants would have passed the February 1982 exam by means of the compensatory rule if they had retaken both parts (.429 x 114 = 48.9).

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

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

o There were only 6 applicants who retook both parts and passed by bifurcation alone. All of these applicants had passed the MBE portion of the July 1981 exam. Within the group of 395 applicants who retook both parts, there were 381 applicants who had a prior MBE pass. Thus, the passing rate due solely to the bifurcation rule in this group was 1.6 percent (6/381 = .0157).

o Within the group of 223 applicants who retook just one part, there were 113 applicants who had a July 1981 MBE pass. If all 113 applicants had retaken both parts, then about 2 of them probably would have passed the February 1982 exam by means of the bifurcation rule alone (.0157 x 113 = 1.78).

o If all repeaters had been required to retake both parts, then about 8 of them (6 + 1.78) would have gone from a pass to a fail status. However, because the net effect of bifurcation was to fail 20 applicants, its elimination would have resulted in about 28 passing and 8 failing.

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

July 1982 Analyses

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

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

o Of the 177 applicants who retook both parts of the July 1982 exam, 41 percent passed by means of the compensatory rule. This passing rate is not significantly different than the 44 percent passing rate obtained with the 89 applicants who retook only one part.

o The 89 applicants who retook just one part had a 4 point higher average July 1981 total score than the 177 applicants who retook both parts. And, the higher the initial score, the greater the likelihood of eventually passing. Thus, the

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

DISCUSSION OF RESULTS

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

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

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

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

Table 6

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

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

SUMMARY AND CONCLUSIONS

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

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

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

Gateway to Opportunity in Law

CALS

Association of California
Accredited Law Schools

April 10, 2017

<u>VIA HAND DELIVERY</u>

The Honorable Tani G. Cantil-Sakauye, Chief Justice
And Associate Justices
SUPREME COURT OF CALIFORNIA
350 McAllister Street
Room 1295
San Francisco, CA 94902-4797

RE: The California Bar Exam and the Minimum Passing Score ("cut score")

Dear Chief Justice and Associate Justices:

The undersigned representatives of the California Accredited Law Schools (CALS)
request leave to file this letter before the Court requesting additional clarification
and direction related to the Court's March 10, 2017 letter to the CALS deans and the
February 28, 2017 letter to the State Bar of California. Both letters address the study
and analysis of the minimum passing score ("cut score") of the California Bar exam.

In the Court's February, 28, 2017 letter to the State Bar directing the investigation
and study of the California bar pass rates and bar examination, the Court directed
the Bar as follows:

> *The court agrees such an investigation is critically important, and directs the
> State Bar to **ensure the investigation includes**:
> (3) **participation of** experts and stakeholders in the process, including
> psychometricians, law student representatives and **law school faculty or
> deans**. (emphasis added)[1]*

In the Bar's March 1, 2017 report to the Court, the Bar reported the following:

> *In anticipation of the Board's formal approval of these studies, a working group
> comprised of Board of Trustee Supreme Court appointees Terry Flanigan and*

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[1] *See Attachment A. Supreme Court's Letter to State Bar President James Fox and
Executive Director Elizabeth Parker.*

California Accredited Law School's
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> *Alan Steinbrecher, and CBE Chair Karen Goodman and public member Larry Sheingold, as well as Supreme Court Senior Staff Attorney Gregory Fortescue, has been created to work with State Bar staff in overseeing and informing the progress of the four studies. This working group held its first meeting on February 28, 2017; one of the early decisions made was to **regularly develop and distribute updates to California law school Deans to ensure that they are informed about and included in the process on a continuing basis.** Efforts are also underway to create an ongoing series of briefings with the law schools. (emphasis added)*

The CALS deans are concerned that merely being the passive recipient of reports and updates, after-the-fact, regarding the design, scope, implementation, reporting, analysis, timing, drafting and publication of the critical analysis related to the bar exam's "cut score" does not reflect the type of active "participation" directed by the Court and critical to a successful outcome for this important process.

Upon receiving a copy of the State Bar's March 1, 2017 report to the Court, in a March 6, 2017 letter to President Fox and Executive Director Parker, the CALS requested that a representative of the CALS be added to the five-member oversight working group that will have an influential role in developing, directing, analyzing, and reporting the results of the four proposed studies.[2] As currently composed, the oversight committee has two representatives of the State Bar Board of Trustees, two members of the State Bar Committee of Bar Examiners, and one representative from Court staff. There are no representatives from the stakeholder groups identified by the Court in its letter of February 28, 2017 providing direction to the Bar.

In response to the CALS letter, Executive Director Parker responded by e-mail on March 6th to the CALS, saying, "To this end, the working group has asked me to reach out to the deans of ABA, California accredited and unaccredited law schools to design the best approach for **keeping each group fully and currently informed of progress on these studies,** so that your comments and concerns can be considered in a timely way."[3] (emphasis added)

Despite best efforts of Bar staff, communication regarding the fast moving process of conducting four separate studies related to the analysis of the bar exam and the cut score, communication with law schools has been episodic and lacking clear channels of communication.

At the April 6, 2017 meeting of the Law School Council, a group made up of ten elected representatives of the ABA law schools, California Accredited Law Schools,

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[2] *See Attachment B. CALS letter to State Bar President Fox and Executive Director Parker.*

[3] *See Attachment C. E-mail to CALS from Executive Director Parker.*

California Accredited Law School's
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and Unaccredited Law Schools, and attended by senior bar staff, representatives of the Committee of Bar Examiners, and representatives of the State Bar Board of Trustees, a request was made to add at least one representative of the Law School Council to the five-member oversight working committee. The law school deans believe that to access the best resources for successful completion of the current investigation and to ensure transparency and fairness in the process, it is critical that at least one representative of the California law schools is included in the oversight working group. The law school representative can be selected from the current elected members of the Law School Council and would be tasked with soliciting and providing timely requests for input from law schools, as well as reporting to the law schools in a timely manner on the progress of the investigation and studies. There would be no cost to the Bar, or delay, or disruption of the process by adding this one additional representative to the current five-member oversight working group.

The response from the State Bar staff and State Bar committee representatives appeared to indicate a lack of clarity as to whether the addition of a law school dean's representative was required, or even allowed, pursuant to the Court's previous directive.

The CALS deans seek the Court's advice and clarification on this matter. We request that the Court consider the importance of the California law schools having an active participation in the current investigative process. We also believe that transparency is critical for the current investigation to be considered valid and unbiased.

We believe that the addition of a law school representative to the current five-member oversight working group would be an important additional step to facilitate the Court's directive in its February 28th letter.

Respectfully Submitted,

James Schiavenza
Chair, California Accredited Law Schools

Mitchel L. Winick
CALS Representative, Law School Council

Dean E. Barbieri
CALS Representative, Law School Council

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California Accredited Law School's
Letter to California Supreme Court
April 10, 2017

Please send correspondence for the California Accredited Law Schools to:

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CC: Vanessa L. Holton
        General Counsel, The State Bar of California

        James P. Fox
        President, State Bar of California

        Elizabeth R. Parker
        Executive Director, State Bar of California

        Karen M. Goodman
        Chair, Committee of Bar Examiners

        Gayle Murphy
        Senior Director for Admissions, State Bar of California

February 1, 2017

Supreme Court of California
350 McAllister Street
Room 1295
San Francisco, CA 94102

Re: The California Bar Exam

Dear Justices:

We, the Deans of 20 of California's ABA-accredited law schools, write collectively to request that the Court exercise its legal jurisdiction over the California State Bar to adjust its scoring methods to bring them in line with the nation's at large. California's current practice of setting an atypically high 'cut score' (the minimum passing score set by each state that is keyed to the Multistate Bar Exam (MBE) portion of the exam), has resulted in the nation's lowest bar pass rate as measured over the past couple of decades. This arbitrarily high cut score is not supported by any valid basis and we believe it causes multiple public harms both to our students and beyond.

This year, the pass rate of those who took the July 2016 California bar fell to historically low rates: 43 percent overall, and 62 percent for first-time takers from ABA-accredited law schools, the lowest overall pass rate in 32 years. Thirty-eight percent of the graduates of ABA-accredited law schools did not pass what is understood to be a minimum competency exam.

California consistently ranks near or at the very bottom of pass rates nationally. By contrast, in New York, the pass rate this year for all first-time takers from ABA-accredited schools was 83 percent, and Texas saw a similar 82-percent pass rate for its Texas ABA-accredited first-time takers. Pennsylvania: 75 percent for first time takers; Ohio, 76 percent. We are a distinct outlier.

Critically, California's lower pass rate is not due to those who take the California bar being less qualified, or poorer exam-takers, than those in other states. Rather, it is a result of California's atypically high cut score of 144 for the MBE portion of the exam. This cut score is higher than that of all other states in the country save one (Delaware) and directly generates the low pass rate in California.

In fact, California bar takers, as a whole, performed better than average on the MBE portion of the exam by national standards. The national average score on the MBE was 140.3. California's overall average was 143, and for those takers from California ABA-accredited schools, the average score was 145.7. (Unlike California, most states permit only graduates of ABA-accredited law schools to sit for the bar.) In other words, California bar takers from ABA law schools perform considerably better than the national average on the one part of the exam that is given nationally, and yet fared significantly worse in terms of passing the bar exam, simply because California uses an atypically high cut score on the MBE portion of the exam. While the content of the essay portion of the exam varies across states, it is statistically scaled to

the MBE – meaning, in essence, that the aggregate MBE scores drive the scaled aggregate grades on the essays as well.

We recognize that there have been legitimate concerns, in California and across the country, about law school admissions in recent years, including whether law schools are admitting less qualified students than in the past. We certainly agree that this important issue deserves attention and assessment. But the discrepancy between California's pass rates and those of other states given the performance of California bar takers on the multistate portion of the exam cannot be explained away in these terms. Let us say it again: California graduates of ABA-accredited schools are performing better than average, and yet many of them – graduates of our law schools who would have passed the bar with similar performance in virtually any other state – are failing it in our great State, simply because of where California has decided to draw the line between passing and failing.

California's low pass rate would be regrettable but understandable if there were a valid justification for the State Bar's atypically high cut score. This high cut score was set 30 years ago, in 1986, but we are aware of no valid evidence showing that this unusually high cut score distinguishes accurately between those who should and those who should not be licensed to practice law in California, or produces better lawyers for the citizens of California than those permitted to practice in states like New York and elsewhere.

Given that we can find no justification for the present practice of scoring the bar exam, the costs of the high failure rate should be deeply concerning to us all. The most immediate and direct costs fall upon the students who do not pass the California bar, particularly those who would have passed in other states. Many will retake the exam, and most will ultimately succeed in passing on their second or subsequent attempts. However, as a consequence of their initial failure, many of these students lose jobs or employment opportunities and months of income. Each of these students will incur substantial costs, often including newly incurred debt, to pay for further administrations of the exam, to take additional bar preparation courses, and to pay their costs of living while focusing on test preparation. Those seeking jobs as lawyers find their efforts stymied while they focus on preparing for the exam. For many, failure causes psychological harms as well. Although the bar results are often described in statistical terms, the choice of the cut score profoundly impacts real lives.

Beyond our students, the negative consequences of California's high cut score also impact the people of our State more broadly. Although it is by now an urban legend that there are "too many lawyers," in many parts of the State and in many areas of the law there may well, in fact, be too few. Geographically, for example, the Central Valley is perennially short of practicing attorneys. And by subject area, many areas are short of legal counsel, including family law, and immigration, as well as for large areas of 'low-bono' practice on behalf of people of modest and middle class means. Moreover, the State's elevated cut score has a direct effect on minority populations. In particular, law schools seeking to improve their respective state pass rates are forced to take fewer chances on non-traditional students, and will seek to admit as many strong test takers as possible rather than making more holistic evaluations. This will ultimately have a dire impact on minority representation in law schools and, ultimately, in the legal profession.

Furthermore, California's high cut scores generate pressure for California law schools to design their educational programs with even more focus on the bar exam itself than is required in other states. This may, at the margins, drive schools and students to additional emphasis on memorization, multiple-choice exam skills and overt test preparation rather than the full range of skills necessary for effective lawyering.

We admittedly do not know precisely what cut score would be appropriate for determining who passes and who fails a state licensing exam. However, in the absence of valid support for California's atypically high cut score, we believe that it violates basic fairness, undermines the public interest, and inflicts considerable financial, emotional and psychological costs on prospective members of the Bar, for California to hold to its historical practice of a pass rate 1.5 standard deviations below the national average.

The California Bar has had thirty years to study whether its cut score is justified or truly produces more competent lawyers than those in New York, Texas, Pennsylvania, Massachusetts or virtually anywhere else. Given the lack of meaningful evidence to support the validity of this elevated cut score, and the significant costs to our students and the public of our current outlier approach, we strongly believe that while we wait for such evidence, the threshold should be shifted. Unless or until we have strong justification for the benefits of California's approach, we ought to bring our exam in line with the approach taken by other economically significant states, most of which use a cut score between 133 and 136.

We would welcome careful investigation and thoughtful study of the appropriate cut score, and we are prepared to support and collaborate with the California State Bar in such a study. But we strongly believe that our State cannot wait to act. We therefore propose that the California Supreme Court order the California State Bar, beginning with the July 2017 administration, to employ a cut score in line with other states. In the absence of information regarding what cut score is best, a cut score within the range we suggest (133-136) is likely the best approximation for what is fair. We believe that this standard should be maintained until the State can complete a full study of the bar exam, and we would like to re-emphasize that we are eager to participate in that study in any way that we can.

Should you have any questions we would be pleased to meet at any time to discuss both our proposal and our deep concerns on behalf of our students and schools.

Sincerely,

Erwin Chemerinsky
Dean and Distinguished Professor of Law
Raymond Pryke Professor of First Amendment Law
University of California Irvine School of Law

Judith Daar
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Assembly
California Legislature

ASSEMBLY COMMITTEE ON JUDICIARY
MARK STONE, CHAIR

March 2, 2017

The Honorable Tani Cantil-Sakauye
Chief Justice of California
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: Declining passage rates on the California bar exam

Dear Chief Justice Cantil-Sakauye:

The Assembly Committee on Judiciary recently held an informational hearing on declining passage rates for the California bar exam. The hearing focused in large part on California's cut score, the minimum score required by the Committee of Bar Examiners within the California State Bar to pass the bar exam. The hearing explored the question of whether California's high cut score causes more harm than good to the legal community and public in California.

The state's current overall cut score has remained at 1,440 points since 1986 and has not been reviewed since then. Likewise, the state's minimum competency score of 144 on the multiple choice (Multi-state Bar Exam, or MBE) portion of the bar exam is the second highest in the nation, exceeded only by the State of Delaware. While it is not entirely clear how these thresholds were originally set at their current high levels, testimony at the hearing indicated that maintaining them may not be appropriate. For example, it is difficult to understand why graduates of California's ABA-accredited law schools would score significantly higher on the MBE portion of the bar exam than exam takers in other states, but pass the bar exam at a significantly lower rate than their lower-scoring counterparts elsewhere in the nation, and why this anomaly protects the public or the integrity of the legal profession in California.

Whether the cut score is arbitrary or not, the impact of that score is severe. During our hearing, various stakeholders in the legal community—including consumer advocates, law school deans, representatives of legal aid organizations, and a law student—informed the Committee about the harm caused by California's unusually high cut score. Anxiety over the California bar exam discourages applicants from sitting in California for the exam. Law students take more classes on bar exam subjects rather than on classes that prepare them for careers in the practice of law. Law schools have altered their curriculum to focus more on exam preparation than on teaching skills that are far more crucial to the practice of law. When law school graduates do not pass the

The Honorable Tani Cantil-Sakauye
March 2, 2017
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bar exam, they are forced to incur debt and remain out of the workforce. Legal aid must turn away indigent clients because there aren't enough attorneys, exacerbating the problem of unrepresented litigants in the legal system. The reputation of California's law schools, including top tier ABA-accredited schools, is damaged, making it difficult to attract the most qualified prospective applicants. These consequences are unquestionably serious, negatively impacting prospective attorneys, law schools, consumers, and indeed the entire California economy.

We agree that high standards for attorneys to practice law in California —in terms of education, legal training, and ethics—are appropriate and necessary in order to protect the public and preserve justice. But we also believe that standards must be based on data and research correlating with public protection. From testimony at the hearing, it was unclear that there is a rational basis, let alone a close evidence-based connection, between California's high cut scores and protecting the public. Indeed, State Bar Executive Director Elizabeth Parker told our Committee that "there's no good answer" why California's cut score is so high. The Committee was therefore pleased to hear that the State Bar and the Committee of Bar Examiners intends to study the cut score *over the next several years* to determine whether the exam and its methods promote the interests of justice.

We greatly appreciate your letter to the deans of ABA-accredited law schools, dated February 28th, 2017, indicating that you have directed the State Bar to study this issue and report back to you with their findings by December 1, 2017. Unfortunately, a study completed (without any action necessarily taken as a result of the study for an indefinite period of time afterward) will not adequately address this crisis. Applicants, law schools, and the general public can't afford to wait a year or more for action as a result of such studies. As our Committee has estimated, the potential loss earnings for applicants re-taking the exam could easily exceed $43 million annually.

Given that the cut score lacks a policy basis and its continued effect is causing actual harm to Californians across this State, we agree with the opinion of Barry Currier, Managing Director of Accreditation and Legal Education for the ABA, who testified at our hearing that, "Absent a compelling reason, such as a reason to believe California test takers are less competent or that the standard to be admitted to practice in California must be a lot higher than elsewhere in the country, it seems reasonable to suggest that California should align its passing threshold with other states, particularly other large states."

As the Court itself indicated in its February 28th letter, the question whether California's atypically high cut score is the cause of the lowest passage rate on the July 2016 California bar exam is a "significant concern" the investigation of which is "critically important." We agree with the deans of 20 of California's 21 ABA-accredited law schools, as well as the deans of 13 California-accredited law schools, that immediate action is necessary. Therefore, we respectfully request that the California Supreme Court rely on its inherent authority to regulate admission to the practice of law in the state and temporarily reduce the cut score for passing the California bar exam while research by the California State Bar and the Committee on Bar Examiners is pending.

Should you have any questions, please do not hesitate to contact any of us directly, or to contact the Committee staff at 916-319-2334.

Sincerely,

Assemblymember Mark Stone, Chair

Assemblymember Ed Chau

Assemblymember David Chiu

Assemblymember Cristina Garcia

Assemblymember Chris Holden

Assemblymember Ash Kalra

Assemblymember Eloise Reyes

Assemblymember Philip Ting

2017

Recent Performance Changes on the California Bar Examination (CBE):

Insights From CBE Electronic Databases

Results from the 2008, 2012 and 2016 administrations of the CBE are analyzed to determine the impact of the examination and examinee characteristics on the decrease in scores and passage rates

DR-01-17

Roger Bolus, Ph.D.
Research Solutions Group
2/19/2017

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EXECUTIVE SUMMARY

The recent sharp drop in the percentage of applicants passing the Bar Examination in multiple states, including California, has generated considerable public debate regarding possible causes. The California Committee of Bar Examiners requested that the Research Solutions Group (RSG) conduct analysis of existing California Bar Examination (CBE) databases to: 1) establish a statistical baseline to profile the changes in passing rates that have occurred in California; and 2) determine if any insight could be provided from these databases into the factors that might have contributed to the decline in scores. On the basis of the data available, six research questions were posed to guide the analyses.

Data from the 2008, 2012 and 2016 examinations were analyzed. Over this 9 year period the following changes occurred:

- The number of test takers declined by 6% including an 11% decline in the number of July test takers and a 4% increase in February examinees.

- The mix of examinees shifted, with traditionally higher performing groups making up proportionately less of the total test takers over time.

- For the July exams, overall average Total Scale Scores (TSS) and bar passage rates dropped between 2008 and 2016: The average TSS declined 66 points (1481 to 1415) points and the percentage passing was 18% lower (62% to 44%) in 2016 than in 2008.   Less pronounced decreases also occurred in the February exams between the two years.

The magnitude of the changes was not equal for all subgroups within applicant populations. The passing rate for applicants from CA ABA schools with higher median LSAT scores dropped 11% between 2008 and 2012 as compared to an almost 30% decrease for applicants from lower LSAT schools. The drop in passage rates in the various racial/ethnic groups varied by only 5% however. Additionally, the drop in scores on the Written and MBE sections were roughly equivalent within the various groups, suggesting that neither section disproportionately contributed to the change.

Results from an estimation model indicated that all things being held equal, roughly 20% of the change in July CBE scores and 17% of the change in bar passage rates could be attributed to the change in the mix of test takers between 2008 and 2016. Analyses also revealed a highly disproportionate number of test takers scored at the very lowest levels of the score distribution in 2016 relative to 2008 (21% vs 10%). A comparison of the composition of test takers scoring in this bottom portion of the distribution also revealed a disproportionate change across selected subgroups.

An analysis of "two-year" pass rates indicated that gaps in performance between 2008 and 2016 narrowed considerably, while an analysis of the reliability of the CBE actually showed very slight improvements on both the individual sections and overall scores.

Finally, analyses were conducted to evaluate the impact of alternative passing standards, or "cut points", upon the decline in passage rates. If the modal U.S. standard of 135 were applied instead of California's existing standard of 144, it is estimated that 22%

more applicants would have passed the July 2016 CBE. The size of the decrease between 2008 and 2016 would have shrunk by 3%. Finally, if California were to use a standard of 133 (the passing score applied in New York state), the decrease in passing rates between 2008 and 2016 was estimated to be identical (9%) to New York's for similarly situated applicants.   Since New York adopted the Uniform Bar Examination in 2016 this finding suggests that use of the UBE format in California would probably have had little to no effect on the decrease in bar passage. Further, the change in passing rates for 1st time students from California ABA schools between 2008 and 2016 were similar to other states with large applicant pools.

These results suggest that there are most likely other factors beyond those examined in these analyses which are affecting the CBE passage rate. Institutional factors such as changes in curriculum and/or variation in student characteristics such as motivation, preparation and/or latent legal ability and law school performance may be operating. In the absence of additional data, however, we cannot asses the impacts of such variables. The nature, size and directionality of these decreases require additional data.

Finally, this study did not address whether the content of the CBE remains relevant to assessing the minimum competency to practice law, or whether the current standard remains appropriate in today's practice environment. These are issues that would also require different data and study methods.

I. BACKGROUND

In recent years, there has been a fairly steady decrease in the passing rate on the California Bar Examination (CBE).   From its recent peak in July of 2008 to the most recent 2016 July administration, the percentage of applicants passing the exam has fallen by 18% (from 62% to 44%). The decline has been a steady one. During no 8-year period since the examination was in its current configuration has the passing rate decreased by this amount. This downward trend mirrors a similar pattern observed in the average Multistate Bar Examination (MBE) performance in California over the same period; a drop from 1476 to 1423. It is worthwhile noting that the trends observed in California are consistent with those observed nationally over the same period (see Figure 1).

Figure 1

**Comparison of California and National
Average MBE Performance
2008 through 2016 July Administrations**
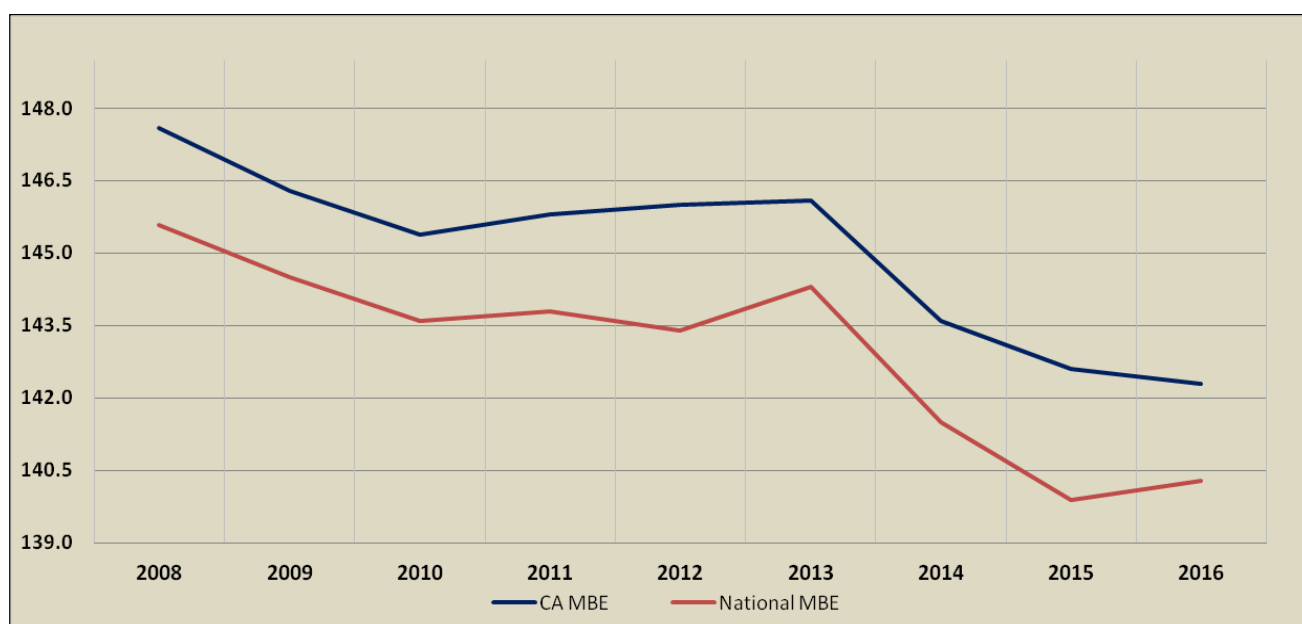
Much has been written recently about possible causes for these drops. Some have theorized that the test takers themselves have changed. The National Conference of Bar Examiners (NCBE), authors of the MBE, has published several pieces suggesting this and attesting to the continuing psychometric strengths of the exam. They point to the changing landscape of legal education reflected in lowered admission numbers, a decline in the quality of the applicant pool, and shifting attrition and transfer policies. This argument has been somewhat corroborated in statistics reported by the American Bar Association. For entering law school classes of 2005 and 2013[1], the number of law school applications fell 38% (from 95,800 to 59,400), the number of admissions dropped by 19% (from 56,100 to 45,700) and eventual matriculations decreased by 17% (from 45,800 to

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[1] These classes would have made up the majority of first time test takers sitting for the July 2008 and 2016 bar examinations.

37,940) with no corresponding decrease in the number of schools during that period. As a result, a much higher percentage of applicants were admitted to ABA schools in 2013 (75%) than in 2005 (59%).

Law school deans have rebutted these arguments. They have posited that the examination itself has gotten more difficult. The deans have questioned whether it remains an appropriate measure of minimal competency to practice law and whether the content is relevant. They also argue that the standard that is being applied in determining minimal competency to practice in California has been set too high, and should be more in line with other states (see Figure 2). They point to the increased curricular emphasis and instructional time that has been placed on bar preparation skills and legal analysis in recent years. Finally, the deans suggest that the average credentials (LSAT scores and Undergraduate GPA) have generally not declined, and where they have, they are in no way decreasing at the rates that their bar passage has.

Figure 2

The Passing Scores
States Using the Multistate Bar Examination
(in MBE Units)

Legend: ☐ = Equal weighting ▨ = Greater written weighting

No. of States	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145
16							VT										
15							AR										
14							GA										
13							MA										
12							MI										
11							MT										
10							NE										
9							NH										
8							OH										
7							SD										
6					IL		TN										
5		AL			DC		TX										
4		MN		CT	IA		UT	PA				AK					
3		MO		IN	KS		WA	MD		CO		ID					
2		NM		MS	NJ		WV	FL		ME		NV					
1	WI	ND	0	OK	NY	HI	WY	AZ	0	RI	NC	VA	0	OR	0	CA	DE

Passing Score
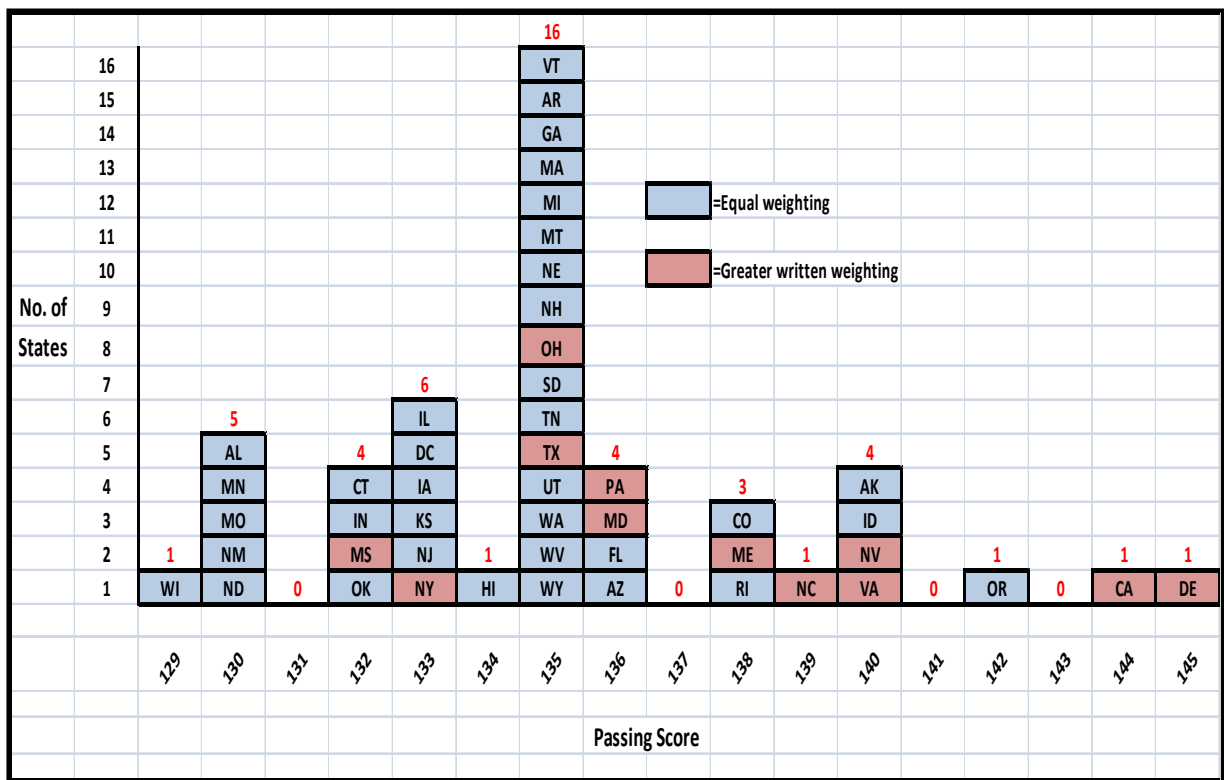
II. PURPOSE OF THIS STUDY

A shift over time in performance on an examination such as the CBE is generally a function of one or more of three possible reasons: (a) the examination itself has changed in some manner, (b) the overall ability or preparedness level of the applicants sitting for the exam has changed, and/or (c) the composition of the test-taking population has been altered. In response to the ongoing public debate and to help untangle the relative impact of these causes, the California Committee of Bar Examiners (The Committee) requested that an initial study be conducted.

This initial study would be limited to analyses of existing, readily available electronic Admissions/Examination Results databases. The purpose of the study would be to (1) establish a statistical baseline to profile the changes that have occurred; and (2) determine whether insights could be provided into factors that might have contributed to the decline. The study would both draw on existing broad statistical summaries and technical reports prepared after each examination, and supplement them with additional, more detailed analyses of the electronic databases that would focus on year-over-year changes.

Thus in summary, the primary objectives of this study were to organize and investigate historical databases for the purpose of establishing a baseline for the changes that have occurred over time, and to investigate any emerging patterns that that could shed light on any or all of the three potential reasons for the decrease in scores and passage rates.

III. METHODS

A. Study Data

The Bar Admissions Office of the State Bar ("Admissions") maintains a base of information for each applicant who sits for the CBE. In additional to basic demographic information (e.g., gender and race/ethnicity), the applicants' scores on each section of the examination and final pass/fail disposition are maintained for all applicants. For the current study, we focused on three specific administration years:

- 2008, a period when bar passage rates were at their highest in recent history
- 2016, the most recent period when scores and bar passage rates have been at their lowest since at least 1990
- 2012, a midpoint between the two years when scores were on the decline

We reasoned that if patterns did exist, they would come to light by focusing on the most recent years with the most extreme differences.

Additional factors contributed to the selection of these periods. The CBEs during these years shared the following similarities[2] in that:

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[2] The configuration and scoring of the CA Bar Examination has changed over the years. We reasoned that it would best to eliminate exams from those periods so as to insure apple-to-apple comparisons.

- They were configured the same (i.e., the MBE, 6 Written Essays, and 2 Performance Tasks (PT))
- They were scored the same (i.e., Each PT was given 2 times the weight of an Essay)
- They were scaled the same (i.e., the Raw Written Score was scaled to the mean and sd of the MBE)
- Total Scale Scores (TSS) were calculated in the same manner (i.e., .35 x MBE + .65 x Written)
- Phase II regrading score bands were the same (i.e., 1390-1439.99)[3]
- The score required for passing remained the same (i.e., 1440[4])

For each applicant testing within those years, we extracted the following demographic and performance data[5]:

1. Racial/ethnic status
2. Gender
3. Applicant's law school designation (which includes other non-traditional designations such as foreign trained)
4. Number of examination attempts at the time of administration
5. Attorney applicant status
6. Examination administration (February vs. July)
7. MBE Scale Score
8. Written Scale Score
9. Total Scale Score (TSS)
10. Pass/Fail disposition

Standard reporting of each CBE's general statistics routinely re-categorizes the 300+ law school designations into more homogenous clusters. Previous analyses have found that average examination performance between these clusters varies significantly. Therefore, to facilitate analysis and reporting, we established similar clusters. They included:

- California ABA-Approved Institutions (CA-ABA)
- Non-California ABA-Approved Institutions (NCA-ABA)
- California Accredited Institutions (ACC)
- California Unaccredited Institutions (NAC)
- Foreign Trained (FOR)

<u>Further Classification of CA-ABA Schools</u>. Past research has identified wide diversity in examination performance between students from the various CA-ABA institutions and found that these differences were highly correlated with the Average Law School Admission Test (LSAT) scores at these institutions (see Figure 3). As a result, we reasoned that it would be valuable to further categorize these schools into more homogeneous groups in a search for deviations in patterns of performance.

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[3] Between 2008 and 2012, the Phase III scoring process changed somewhat, but should have no impact on the analyses proposed here given the relatively small number of applicants experiencing this scoring.
[4] CA multiples the MBE by a factor of 10. Thus, the 1440 is equivalent to 144 on the original MBE scale.
[5] Only applicants completing all sections of the CBE were chosen.

Figure 3

**Relationship between Average Law School LSAT and
Bar Passage Rates*
1998-2007**
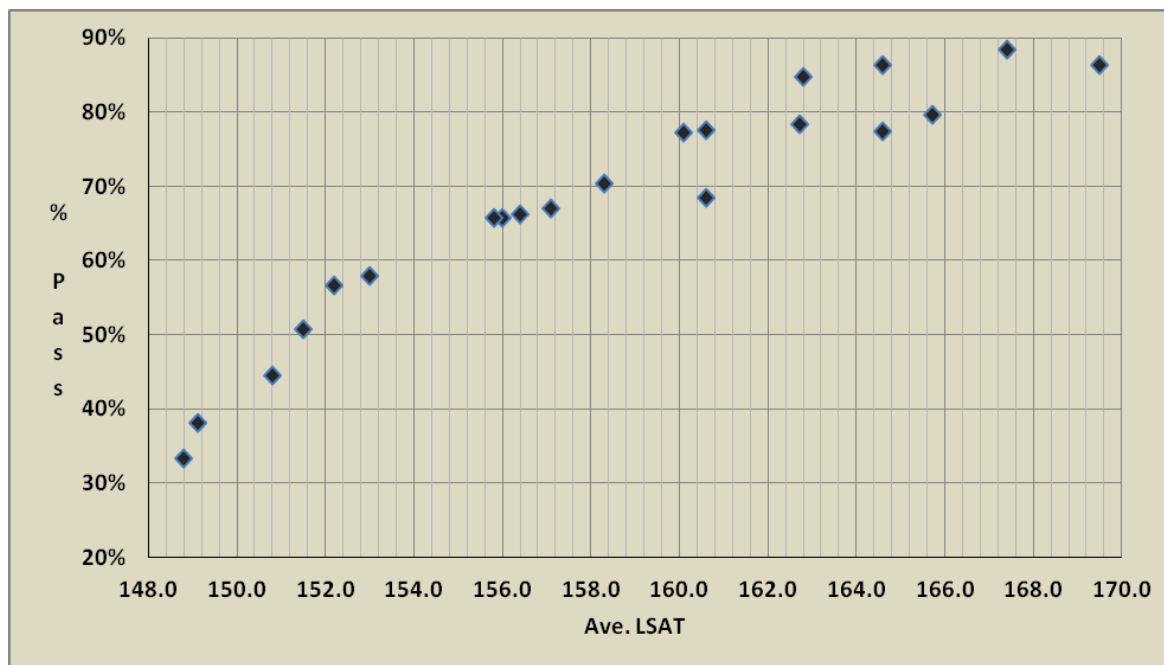
* **Each point on the graph represents the 10 year average LSAT and Passing Rate for students from one school**

Since LSAT scores are no longer collected during the application and admissions process, we looked to an outside source[6] for these data. The website lawschooltransparency.com provided median LSAT scores for each CA-ABA school. Scores were available for 2010 and 2014. We used the 2010 results[7] since those statistics would most closely reflect the class which took the midpoint examination in the study. We attempted to establish roughly equal number of law schools in each group and find a break point in the Median LSAT for the grouping. Our analysis resulted in the following groups:

- Level I   - 7 schools; Median LSAT Range (150-155)
- Level II - 6 schools; Median LSAT Range (158-161)
- Level III - 8 schools; Median LSAT Range (163-170)

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[6] The last year that individual applicant LSAT scores were collected during the admissions process was 2007
[7] The correlation between 2010 and 2014 LSATs was .96 suggesting little change in the relative standings of the schools over time

B. Research Questions

Given the available data, this study sought to address five (5) major research questions.

1. ***How has the composition of the test-taking population changed over time?***
   a) How has the absolute number of test takers differed?
   b) What changes have occurred in the relative "mix" of test-takers, i.e., do certain historically lower performing groups now make up a higher proportion of the test-taking population?

As the number of applications to law schools have decreased, it is possible that characteristics of students (measureable or otherwise) have changed over time. Historically, selected applicants from certain subgroups have performed more poorly on the bar examination and passed at a lower rate than others (e.g., NAC vs CA-ABA schools). If the test taking population as a whole is more "saturated" with these lower performing groups, it might be one cause for decreasing scores.

2. ***To what degree have <u>examination scores</u> & final <u>pass/fail disposition</u> changed over time?***
   a) Has the magnitude of the changes been consistent across sections of the examination?
   b) Have each of the relevant sub-groups experienced similar changes, or have some groups experienced greater changes than others?

The simple change in the overall passage rate is a gross statistic. Knowing if specific groups of applicants experienced larger or smaller decreases in performance is essential to a gaining an understanding of the change. Additionally, pass/fail disposition is based upon actual examination scores; a closer examination of the size of differences is essential.

3. ***To what degree has the <u>shape of the distribution</u> of scores changed, i.e. while the mean scores have changed, have other attributes (e.g., the median, relevant quartiles, etc) shifted as well?***

At this point, it is unclear whether the change in scores leading to the decreasing passage rate is consistent throughout the score distributions, or more heavily concentrated in one or more locations (e.g., close to the passing standard). It is reasonable to determine what size of improvement in performance on recent examinations would have led to increased passage rates.

4. ***Has the likelihood of <u>eventually</u> passing (e.g., after 2 years) changed over time?***
   a) Are individual examinees who must repeat the exam more or less likely to pass upon retaking the exam?
   b) Has perseverance of failing examinees remained consistent?
   c) What do these patterns look like by relevant sub-groups, and how have they changed?

Preliminary evidence suggests that the recent passing rates have not dropped as rapidly for repeating applicants (those taking the exam for a 2nd, 3rd, or more time) as in the past. This may imply that an "eventual" bar passage rate may not have changed as drastically as the first time rate. What we may be seeing is that recent applicants are taking longer to pass. If this were the case, it may point to possible changes in applicants' bar preparation that have occurred since 2008.

Analyses of the success of test repeaters require that a given applicant be tracked over time, i.e., longitudinally. To compile longitudinal data for the purposes of this study, we first obtained data for the cohort of students who took the exam for the first time in July 2008, and followed them forward through February 2010, a total of four examinations. For a second cohort who had taken the exam more recently, we selected students who first sat for the CBE in July 2014 (when the passing rate first dipped below 50%) and followed them forward through February 2016, an additional four examinations.

5. Have other statistical/psychometric properties of the examination changed over time in such a way to impact applicant scores?
   a) Has the reliability of the overall examination or its individual sections changed?
   b) Has the nature of the relationship of the sections changed? For example, if historically applicants performed similarly on specific sections of the exam, either doing well or poorly on both sections, has that pattern persisted?

The amount of measurement error that exists in applicant scores is a function of the reliability of the respective sections (i.e., written and MBE) and the degree of relationship between them. Reliability is a measure of the degree of stability or consistency of scores on a test and is one of key indicators of a test's psychometric properties.[8] The lower the reliability, the higher the amount of error that exists in the measurement. Overall reliability on the CBE itself is a function of the separate reliabilities of the Written section, the MBE and the degree of correlation between the two. As any of these three values change, so does the reliability.

6. How would bar passage rates change if the cut point were set at a standard used by other states?
   a) What would the passage rates have been if a different passing score had been established?
   b) Would the decline in passage rates during the study timeframe been as pronounced under such a circumstance?
   c) Would any relevant sub-group have seen larger increases or decreases than others?

The California standard (i.e., 1440) for passing the CBE did not changed over the 9 year time frame of our analyses. As previously discussed, this standard is the second highest in the country, and questions have been raised as to whether bar passage rates would have declined as steeply if the standard was lower. An additional related question was

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[8] Validity is another major psychometric property of a test. Data available to this study precludes an evaluation of any changes that may have occurred since 2008 in any of the various measures of validity that are used.

how the decreases in passing rates under an alternative standard would compare to that of a similarly situated state (i.e., one of comparable size, applicant composition and passing standard).

IV. RESULTS

This section discusses the data analyses and outcomes relevant to each of the study research questions identified above. For the most part, we present findings for both July and February administrations. For some analyses we present results for July only since applicants sitting for this administration generally are more representative of the typical recent law school graduate. All calculated statistics are presented in the tables but only key findings (e.g., significant differences between CBE years or subgroups) are discussed in the text.

1. How has the composition of the test-taking population changed over time?

Figures 4 and 5 illustrate the trend in applicants sitting for the July and February CBE since 1990.

Figure 4

**Number of Examinees Taking <u>July</u> CBEs
1990 through 2016**
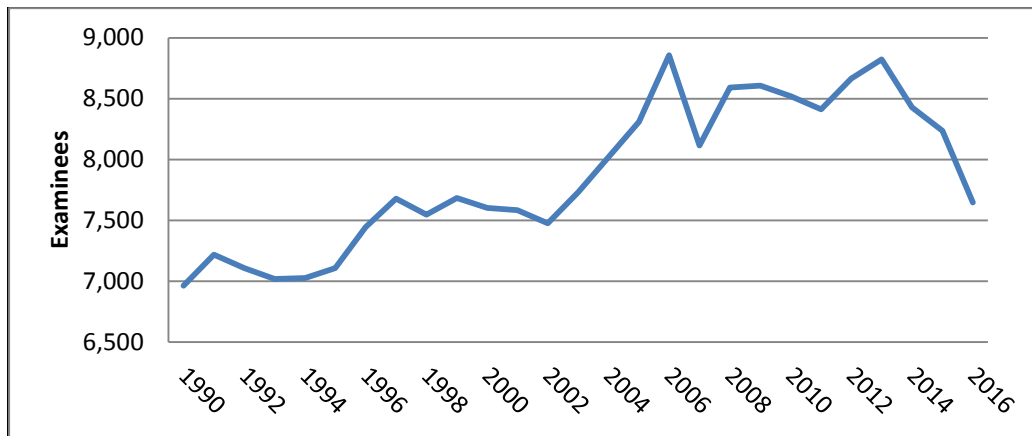
Figure 4 depicts the gradual rise in July examinees peaking in 2006 and again in 2013, and beginning a sharp drop in 2014. The February counts (Figure 5) have tended to track with those of the July examinations, though the downward trend seen in the July counts during the past two has been countered by an upward trend in the number of February test takers. This uptick may be a function of more applicants repeating the examination.

Figure 5

**Number of Examinees Taking <u>February</u> CBEs
1990 through 2016**
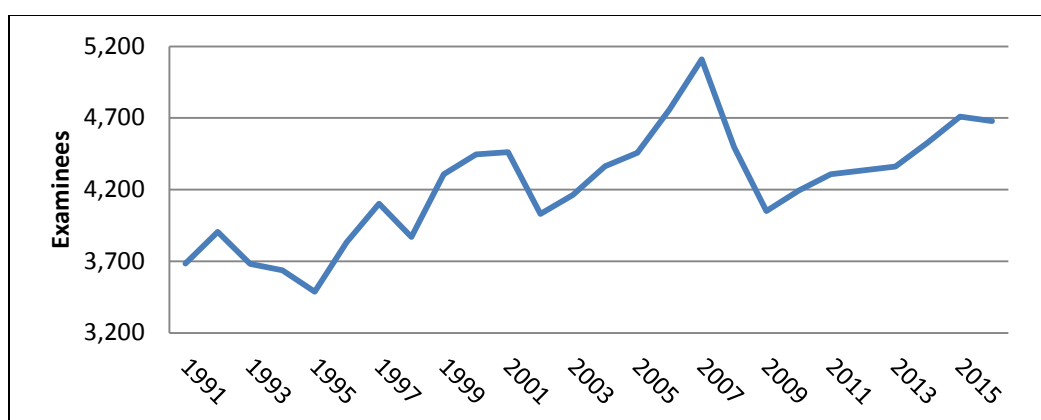
Table 1 provides the characteristics of applicants sitting for examinations in each of the three years included in our study time frame (2008, 2012 and 2016). Since the populations of test-takers for the July and February bar administrations have traditionally varied in terms of size and composition, we examined differences within each administration separately. These point-in-time snapshots show small, but interesting variances in the composition of the applicant populations in each year.

For the July CBE, we note that:

- In comparison to 2008, there were 11% fewer applicants in 2016. This is the largest change during any 8-year testing period since 1990.

- In comparison to 2008, the 2016 population of test-takers included a slightly higher proportion of minority applicants, notably Hispanics (5%) and a corresponding lower proportion of White applicants (6%)[9]. As discussed later, minority applicants have tended to have lower scores and passage rates than Whites.

- There were 5% fewer first time takers in 2016 than in 2008 (72% compared to 67%), and a corresponding 5% increase in the proportion of test repeaters. First time applicants traditionally have performed higher than those repeating the CBE.

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[9] A small number of applicants do not report their race/ethnicity or report as some other group. The percentages are based only on applicants in the four major groups.

Table 1

Composition of the CBE Applicant Pool in 2008, 2012, 2016
July and February Administrations

Metric	July CBE				February CBE			
	Year			Change	Year			Change
	2008	2012	2016	2008-2016	2008	2012	2016	2008-2016
Examinees	8,590	8,664	7,648	-11%	4,497	4,334	4,678	4%
School								
CA ABA	53%	55%	53%	0%	40%	39%	38%	-2%
Level I	29%	28%	31%	2%	50%	47%	48%	-2%
Level II	36%	35%	31%	-5%	30%	34%	30%	0%
Level III	34%	35%	37%	3%	18%	18%	21%	3%
Non CA ABA	22%	20%	18%	-4%	17%	18%	17%	0%
CA Accredited	9%	7%	10%	1%	13%	12%	14%	1%
CA Non-Accredited	3%	2%	2%	-1%	7%	6%	4%	-3%
Foreign	3%	3%	5%	2%	5%	6%	7%	2%
Exams Taken								
1st	72%	74%	67%	-5%	33%	33%	29%	-4%
2nd	7%	7%	9%	2%	33%	33%	38%	5%
3rd	7%	6%	10%	3%	8%	9%	10%	2%
> 3rd	12%	11%	13%	1%	24%	23%	22%	-2%
Racial/Ethnic								
Asian	18%	18%	20%	2%	18%	19%	21%	3%
Hispanic	9%	10%	14%	5%	11%	12%	14%	3%
Black	5%	5%	6%	1%	8%	7%	7%	-1%
White	57%	56%	51%	-6%	52%	51%	49%	-3%
Gender								
Male	52%	53%	48%	-4%	54%	51%	50%	-4%
Attorney	9%	9%	11%	2%	17%	17%	19%	2%

* Multi-group categories may not add to 100% due to missing information or small numbers in an "other" group

- 53% of applicants graduated from CA-ABA schools in 2008 and this did not change in 2016. However, there were 4% fewer students coming from NCA-ABA schools (22% versus 18%). Foreign trained applicants, a traditionally low performing group, increased slightly from 3% to 5%.

- By 2016 males no longer made up the majority of examinees (48% vs 52% females). Given the historical similarities in scores between the gender groups, this change would be estimated to have minimal impact.

With respect to the February administrations, we observed:

- The number of applicants for the February 2016 administration was 4% greater than the number in 2008 (4,678 versus 4.497) but the relative percentage of first time takers was reduced by 4% (from 33% to 29%). This could suggest that the recent decrease in the July passage rates may be "feeding" additional applicants into the February administrations.[10]

- Similar to the July examinations, the proportion of Asian and Hispanic examinees was higher in 2016 than 9 years earlier while the percentage of Whites was 3% lower.

- The proportion of students from Level III (high LSAT) schools was 3% greater in 2016 than in 2008.

- The proportion of attorney applicants in the February exam was higher than in the July exam in both 2008 and 2016, and for both administrations in both years the proportion of attorneys sitting for the bar was 2% greater.

Table 1 shows that the proportion of applicant groups that have historically scored lower on the CBE was somewhat greater in 2016 than in 2008. A full evaluation of any relationship between these changes in the composition of the applicant population and a reduction in scores requires addressing the remaining research questions.

2. **To what degree have <u>examination scores</u> & final <u>pass/fail disposition</u> changed over time?**

Total Population. Table 2 presents information on the average performance on each section of the exam and the total scores (expressed in scale score points), along with the percentage passing the examination in the three years under study. Data is presented for both the July and February CBE.

Inspection of the table reveals that while the absolute change in the MBE and Written sections of the examination have differed, the percentage decreases in scores are equal (4% for July and 1% in February). *This result indicates that across all applicants, no one section of the examination is contributing to the decrease in passing rates more than another.*

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[10] The "tracking/persistency" portion of the analyses presented later will shed more light on this issue

Table 2

Average CBE Performance & Bar Passage Rates By Administration

Year	July					February				
	N	**Ave. MBE**	**Ave. Written**	**Ave. Total**	**% Pass**	**N**	**Ave. MBE**	**Ave. Written**	**Ave. Total**	**% Pass**
2008	8,590	1476	1481	1479	62%	4,497	1405	1400	1402	40%
2012	8,664	1460	1456	1457	56%	4,334	1407	1407	1407	43%
2016	7,648	1423	1415	1418	44%	4,678	1388	1387	1387	36%
2008-2016										
Diff.	-942	-53	-66	-61	-18%	181	-17	-13	-15	-4%
% Change	-11%	-4%	-4%	-4%	-29%	4%	-1%	-1%	-1%	-10.0%

It further suggests that whatever the different skills being measured on the respective parts of the test, all have decreased at a similar pace.   Overall, the average Total Scale Score (TSS) has dropped 61 scale score points in July (from 1479 to 1418) and 13 points in February (from 1400 to 1337). By way of reference, in 2016, the average score actually fell below the passing standard of 1440.[11]   In terms of standard deviation (Sd) units, this represents slightly less than a ½ Sd change in July and a 10% Sd change in February.

The TSS drop was accompanied by a corresponding decrease in passing rates for the July exams; there was a steady decline in these rates from 62% to 56% to 44% in 2008, 2012 and 2016, respectively. The change in passing rates in February, however, rose between 2008 and 2012 (from 40% to 43%), followed by drop to 36% in 2016.

We next examine whether different segments of the applicant pool experienced differing degrees of change from 2008 to 2016. Given the substantial difference between July and February administrations, we present findings for the July examinations. Where findings are significantly different for February administration, we point these out.

Repeater Status. Table 3 presents similar data to Table 2, stratified by whether applicants were sitting for the first time ("first timers"), or repeating the examination ("repeaters"). As known from historical results, first timers perform consistently higher than repeaters and that fact is illustrated in Table 2. The gap in TSS between the two groups in 2008 was 150 scale score points (a full Sd.); however, that gap decreased on average to 137 points by 2016.

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[11] This situation recently began in 2013 when the mean score fell to 1436 and has occurred in three other administrations since 1990.

Table 3

**Average CBE Performance & Bar Passage Rates By Repeater Status
July Administration**

`	1st Time Taker				Repeater			
	Ave. MBE	Ave. Written	Ave. Total	% Pass	Ave. MBE	Ave. Written	Ave. Total	% Pass
2008	1515	1523	1520	75%	1373	1368	1370	28%
2012	1493	1495	1494	69%	1365	1340	1349	18%
2016	1458	1461	1460	57%	1353	1323	1333	17%
2008-2016 Diff.	-57	-62	-60	-18%	-20	-45	-37	-11%
% Change	-4%	-4%	-4%	-24%	-1%	-3%	-3%	-39%

First timers experienced similar rates of decrease in their MBE and Written scores, while repeaters' MBE scores dropped by 1% as compared to a 3% drop in their Written scores. The absolute decrease in passing rates for first timers between 2008 and 2016 (18%) followed the pattern for the entire test taking pool, while the absolute decrease for repeaters was almost half that amount (11%). Additionally, for repeaters the sharpest decrease was seen in 2012 (18%; a drop of 10% from 2008). The change from 2012 to 2016 was only 1% as compared to the 8% decrease for first timers. This pattern tends to suggest that the recent applicants repeating the examination may have been qualitatively different than their predecessors.

Law School. Table 4 presents change in scores and passing rates stratified by the type of school that the applicant attended. Historically, average scores and passing rates have been highest among the CA-ABA and NCA-ABA schools. Scores and passing rates for ACC and NAC have been much lower. For example, in 2008 the passing rate at CA-ABA schools was 74% as compared to 21% at NAC schools (a net difference of over 50%). Yet, in terms of score changes and decreases in passage rates over the study time frame, students from CA-ABA schools had the largest absolute changes in scores and bar passage rates.

Table 4

**Average CBE Performance & Bar Passage Rates by Type of Law School Attended
July Administration**

Year	CA ABA				Non CA ABA				CA Accredited				CA Unaccredited			
	Ave. MBE	Ave. Written	Ave. Total	% Pass	Ave. MBE	Ave. Written	Ave. Total	% Pass	Ave. MBE	Ave. Written	Ave. Total	% Pass	Ave. MBE	Ave. Written	Ave. Total	% Pass
2008	1510	1525	1519	74%	1497	1494	1495	66%	1355	1367	1363	26%	1375	1341	1353	21%
2012	1491	1503	1499	69%	1476	1452	1461	55%	1350	1347	1348	19%	1369	1313	1332	13%
2016	1457	1460	1459	54%	1448	1434	1439	48%	1329	1312	1318	13%	1350	1280	1304	14%
2008-2016																
Diff.	-53	-65	-60	-20%	-49	-60	-56	-18%	-26	-55	-45	-13%	-25	-61	-49	-7%
% Change	-4%	-4%	-4%	-27%	-3%	-4%	-4%	-27%	-2%	-4%	-3%	-50%	-2%	-5%	-4%	-33%

Average scores by section dropped equally (roughly 4%) in both in and out-of-state ABA schools, while students from the ACC and NAC experienced greater drops in their Written sections (4% and 5% respectively) than on the MBE (2%). Correspondingly, the absolute drop in bar passage rates was greater for students from the ABA schools (20% and 18%) than in the non-ABA schools (13% for ACC and 7% for NAC). As shown at the bottom of Table 4, the *absolute drop* in the passing rate is quite different from the *percentage change* in the passing rate. For example, while the passing rates for students in ACC schools dropped by only 13%, that drop represented a 50% decrease from the 26% level in 2008.

When we look more deeply into the changes in performance of students from CA-ABA schools, some interesting trends begin to emerge. Table 5 provides data on the performance of applicants from schools based upon the median LSAT for students at those schools. Both average section scores and passing rates for the Level III schools (i.e., those with the highest median LSAT scores) were the highest of the three school groups in 2008 and remained that way in 2016. Students from Level III schools also showed the smallest decrease in passage rates at 11%, and the smallest and most consistent changes in examination section scores (3%) and overall TSS. For applicants from schools with lower median LSAT scores (Levels II and I), the decrease in performance between 2008 and 2016 is much greater.

Table 5

**Average CBE Performance & Bar Passage Rates by CA ABA Law School Level
July Administration**

Year	Level I LSAT Schools				Level II LSAT School				Level III LSAT Schools			
	Ave. MBE	Ave. Written	Ave. Total	% Pass	Ave. MBE	Ave. Written	Ave. Total	% Pass	Ave. MBE	Ave. Written	Ave. Total	% Pass
2008	1455	1476	1468	61%	1513	1529	1523	77%	1553	1562	1559	83%
2012	1439	1460	1453	55%	1480	1497	1491	69%	1542	1543	1543	81%
2016	1389	1390	1389	32%	1462	1458	1460	56%	1509	1519	1516	72%
2008-2016												
Difference	-66	-86	-79	-29%	-51	-71	-63	-21%	-44	-43	-43	-11%
% Change	-5%	-6%	-5%	-48%	-3%	-5%	-4%	-27%	-3%	-3%	-3%	-13%

While not all students in the various law school groupings share an identical LSAT score, their LSAT does tend to be more similar to those in their own school group than students attending schools from other Levels. Although there have been decreases in CBE performance in all Levels in recent years, the fact that the changes are more pronounced in the Levels I and II schools may suggest that the quality (and possible ability level) of students from those schools have changed at a more rapid pace than students from the Level III schools.

Racial/Ethnic Group. Table 6 presents similar statistics for the July examinations stratified by racial/ethnic group. Historically, White students have made up the majority of students sitting for the CBE and have had the highest scores and bar passage rates. When we look at how CBE performance has changed by racial/ethnic group over the study time frame, we see that Whites have tended to behave similarly to the various minority groups. Mean Written scores have dropped by 4% between 2008 and 2016, which is exactly the pattern seen in Blacks and Hispanics. Scores for Asians, a group whose ranks have proportionately increased since 2008, dropped by 1% more. Across all ethnic groups, TSS have decreased by either 3% or 4%, and the decrease in bar passage rates differ by only have 5% between the groups (18% in Asians, 17% for Whites, 15% for Hispanics and 13% for Blacks). The largest relative decrease in passage rates was experienced by Blacks where their change from 34% in 2008 to 21% in 2016 represents an overall 38% decrease (compared to 32%, 31% and 24% for Asians, Hispanics and Whites, respectively).

Table 6

**Average CBE Performance & Bar Passage Rates by Racial/Ethnic Group
July Administration**

Year	Asian				Hispanic				Black				White			
	Ave. MBE	Ave. Written	Ave. Total	% Pass	Ave. MBE	Ave. Written	Ave. Total	% Pass	Ave. MBE	Ave. Written	Ave. Total	% Pass	Ave. MBE	Ave. Written	Ave. Total	% Pass
2008	1447	1462	1457	56%	1427	1437	1433	49%	1389	1382	1384	34%	1504	1505	1504	69%
2012	1431	1443	1439	51%	1411	1414	1413	42%	1380	1362	1370	28%	1491	1480	1484	64%
2016	1383	1396	1392	38%	1388	1381	1383	34%	1361	1327	1339	21%	1459	1445	1450	52%
2008-2016																
Difference	-64	-66	-65	-18%	-39	-56	-50	-15%	-28	-55	-45	-13%	-45	-60	-54	-17%
% Change	-4%	-5%	-4%	-32%	-3%	-4%	-3%	-31%	-2%	-4%	-3%	-38%	-3%	-4%	-4%	-25%

Gender. Finally, Table 7 presents performance statistics by gender. Both CBE scale scores and bar passage rates have historically been fairly equal. In 2008 the there was only a 9 point difference between males and females and 2% difference in passage rates (females higher in both cases)[12]. In 2012, performance was identical for males and females, while in 2016, the female passing rate was 1% lower for females than male examinees (43% vs 44%). This slight shift is evidenced in the 2008 to 2016 *% Change* data showing a net decrease in pass rates of 20% for females and 17% in males.

[12] A pattern has existed for many years whereby female test takers score more highly on the Written section of the CBE while the reverse is true for the MBE. Interestingly the gap has widened on the MBE while narrowing slightly on the Written section.

Table 7
Average CBE Performance & Bar Passage Rates by Gender
July Administration

Year	Females				Males			
	Ave. MBE	Ave. Written	Ave. Total	% Pass	Ave. MBE	Ave. Written	Ave. Total	% Pass
2008	1462	1496	1484	63%	1489	1467	1475	61%
2012	1439	1467	1457	56%	1479	1446	1458	56%
2016	1403	1421	1415	43%	1443	1409	1421	44%
2008-2016								
Difference	-59	-75	-69	-20%	-46	-58	-54	-17%
% Change	-4%	-5%	-5%	-32%	-3%	-4%	-4%	-28%

"Multi-Characteristic" Estimation Model. The preceding tables have shown some changes in the composition of the CBE applicant population over the study period (Table 1), along with changes in CBE performance by individual characteristics of applicants including repeater status, type of law school, race/ethnicity and gender (Tables 3-7). An applicant however is some combination of these individual attributes. For example, they may be a Hispanic female coming from a Level III ABA school who repeated the exam for the second time, or a White male who graduated from an accredited law school making their first attempt. Additionally, the combination of characteristics represented by applicants in each year's test-taking population varies over time.

To estimate the impact that that the change in applicant mixes from 2008 to 2012 and 2016 may have had on performance in the latter two years, we developed an estimation model. In the model we calculated the bar passage rates and average TSS in 2008 for all combinations of number of exams taken (first time vs. repeater), law school type (including the separate CA-ABA Levels), racial/ethnic group, and gender. We then applied those statistics to the applicants in the same groups in 2012 and 2016, re-weighted them based upon the applicant counts in the respective groups, and recalculated (i.e., estimated) the overall mean TSS and bar passage rates. The results are summarized in Table 8.

Results from Table 8 shows that the changed composition of examinees would have led to reduced performance in both 2012 and 2016, all other things held equal. For the July administration in 2016, the TSS would have been expected to drop by 12 points (1479 – 1467) and the passing rate expected to drop by 3% (62% - 59%). The actual decreases for both measures were much greater, however: a 60 point decrease in the TSS and an 18% decline in the passing rate. *The results suggest that for the July administration only 20% of the change in TSS (12/60) and 17% of the change in passage rates were due to the shift in applicant mix.*

Table 8

Projected vs. Actual CBE Performance

Year	Average Total Score		% Passing	
	Projected	Actual	Projected	Actual
July 2008		1479		62%
2012	1483	1457	64%	56%
2016	1467	1419	59%	44%
2008-2016 Difference	-12	-60	-3%	-18%
February 2008		1402		40%
2012	1402	1407	40%	43%
2016	1399	1387	40%	36%
2008-2016 Difference	-3	-15	0%	-4%

In February, performance would have been estimated to have dropped slightly as well, but not to the same degree as July. For example, the 2016 pass rate would have been estimated to remain exactly the same as in 2008 (as compared to an actual drop of 4%), while Average TSS would have been estimated to have changed by only 3 points (20% of the actual change). *These findings strongly suggest that there are other, unmeasured characteristics in the population of test takers and/or the testing that has led to the observed declines in passage rates between 2008 and 2016.*

3. How has the distribution of scores changed, i.e. while the mean scores have changed, have other attributes (e.g., the median, relevant quartiles, etc) changed as well?

Often the focus on a simple measure of central tendency (e.g., a mean) masks other interesting information in large samples such as that for the thousands of applicants sitting for the CBE. While the previous tables showed that the average scores have trended downwards from 2008 to 2016, they don't indicate where the changes have occurred in the distribution, nor how. For example, average scores by themselves will not indicate whether large amounts of applicants have scored just below the passing standard of 1440, while a second large cluster of test-takers with much lower scores led to an observed decline in the "average" test score.

We explore differences in the score distributions for 2008 and 2016 below. Since the previous data has suggested that more significant changes have occurred in the July administrations, results in this section are reported for those examinations only.

Distribution Similarities and Differences. Table 9 reports the TSS scores associated with various percentiles within the distributions of the 2008 and 2016 examinations. A percentile is defined as the percentage of observations (i.e., applicants) scoring at or below the given score. Table 9 presents data on 5 key percentile points: the three "quartiles" which are the 25th percentile, the 50th percentile (i.e. the median or midpoint), and the 75th percentile; the 10th percentile which is located at the bottom or the distribution and the 90th percentile, which is located at the top of the distribution. In addition to the TSS, we report this data for both the Written and MBE sections.

As can be seen in Table 9 the scores associated with each percentile point for each scale score are lower in 2016 than 2008, though the sizes of the differences are not consistent across the percentile points or by examination section. For example, with respect to the MBE, we see that the bottom 10% of the 2008 applicant pool scored a 1267 or higher as compared to the bottom 10% in 2016 scoring only 1197; a 70 point difference (almost ½ Sd). It can also be seen that as one moves up the distribution, the sizes of the difference begin to get smaller (the 90th percentile in 2008 was 1673 compared to 1631 in 2016, a difference of only 42 points). This finding suggests that, in comparison to 2008, a greater proportion of the lower performing students (on the MBE) in 2016 clustered at the bottom of the distribution for that year. The pattern is slightly changed on the Written section where differences appear to be more consistent in the middle ¾'s of the distribution and slightly smaller at the tails.

Table 9 also reports the size of the standard deviation or the measure of score spread. On average, performance scores have a greater spread in 2016 on both sections and overall. The cause of this additional score spread cannot be determined from the available data, but it does suggest potentially greater variation in the applicant pool.

Table 9

**Total Scale Scores at Various Percentile Points
on the 2008 and 2016 CBEs
July Administrations**

Distribution Points	MBE Score			Written Score			Total Score		
	2008	**2016**	**Diff**	**2008**	**2016**	**Diff**	**2008**	**2016**	**Diff**
10th Pctl	1267	1197	-70	1282	1220	-62	1292	1227	-65
1st Quartile	1375	1315	-60	1364	1290	-74	1374	1313	-61
Median	1487	1437	-50	1473	1394	-79	1478	1402	-76
3rd Quartile	1593	1543	-50	1595	1516	-79	1582	1522	-60
90th Pctl	1673	1631	-42	1689	1638	-51	1667	1627	-40
Std Dev	155	167	12	158	165	7	145	155	10

"Exploring the Tail". The increase in score spread and the size of the difference at the 10th percentile of the MBE (an equated measure and the more reliable of the two sections) between 2008 and 2016, led to further exploration of possible explanations for the observed differences between the two periods.

To make a direct comparison we first established the deciles (percentile points marking 10% segments) of the 2008 TSS score distribution. We then used those same score points to categorize the 2012 and 2016 test takers. We calculated the relative percentages of the test takers falling into each of the categories and compared them to each of the 10% segments to determine where the largest differences were. Figure 5 illustrates the results.

Figure 5

**Percentage of Applicants with Total Scale Scores
Within Selected Ranges
July Administrations**
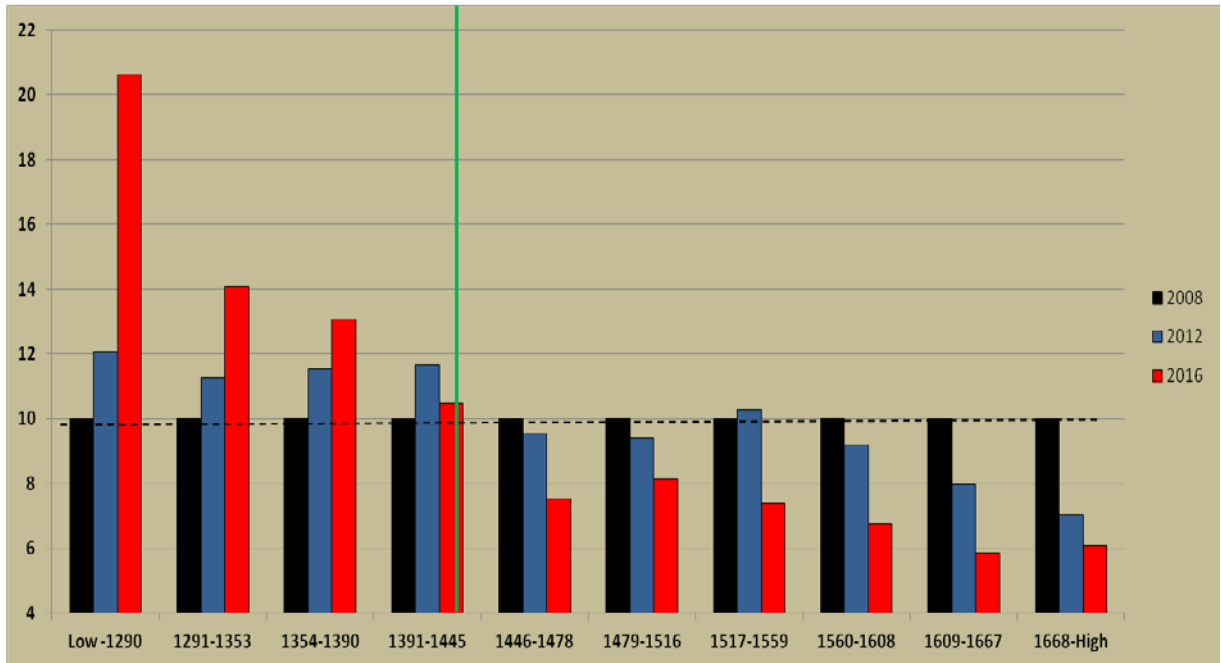
* The green line represents the passing score

As shown, over 21% of the 2016 test population is in the bottom decile of the 2008 TSS distribution (i.e., scores <=1290). The percentage rapidly decreases in the 2nd (1291-1353; 14%), 3rd (1354-1390; 13%) and 4th (1391-1445) deciles. In 2012, as scores were in the middle of their current decline, the percentages of the applicants in all four of these lower deciles were much more similar (ranging between 11% and 12%). Further, none of the other score ranges showed such wide differences between 2008, 2012 and 2016 as this lowest score range.

This finding leads to the question as to whether the composition of test takers at this lowest score level (i.e., <= 1290 and over 150 points from the passing standard) has systematically changed since 2016. To examine this question, we calculated the percentages of the applicants from various subgroups who fell into this group in 2016 and compared them to the percentages from the 2008 examination. Results are summarized in Table 10.

The entries in Table 10 represent the percentage of total test takers in the identified group that scored less than or equal to 1290. For example, in 2008, 6% of all students from CA-ABA schools had scores less than 1290 as compared 14% of all students from CA-ABA schools testing in 2016. The final column in the table presents the absolute differences in those percentages between the two years. In terms of total numbers, the 21% of total 2016 test takers in the lowest score band translates to almost 1,600 test takers.

Table 10

**Percentage of Applicants in Various Subgroups with
Total Scale Scores <= 1290
July Administrations**

Subgroup	Year			2008-2016
	2008	**2012**	**2016**	
Examinees	N=858	N=1,045	N=1,578	
School				
CA ABA	6%	8%	14%	8%
Level I	7%	8%	18%	11%
Level II	3%	4%	9%	6%
Level III	2%	2%	7%	5%
Non CA ABA	8%	12%	18%	10%
CA Accredited	27%	32%	41%	14%
CA Non-Accredited	26%	35%	47%	21%
Foreign	42%	44%	57%	15%
Exams Taken				
1st	6%	8%	14%	8%
2nd	20%	24%	36%	16%
3rd	17%	18%	25%	8%
> 3rd	25%	31%	37%	12%
Racial/Ethnic				
Asian	11%	15%	27%	16%
Hispanic	16%	17%	24%	8%
Black	25%	26%	36%	11%
White	7%	9%	15%	8%
Gender				
Male	10%	12%	19%	9%
Female	10%	12%	21%	11%

These data shed additional light on changes in the composition of the test taking populations during the study period. In terms of the examinees' law schools, the relative percentage of students from CA-ABA in the lowest decile of the score range more than doubled from 6% in 2008 to 14% in 2016. Furthermore, it was the students from the Level I CA-ABA schools (lowest median LSAT) that accounted for the largest absolute change (11%).   Statistics for NCA-ABA applicants mirrored those of the Level I CA-ABA applicants. Nearly 2 out of 5, and 1 out of 2 applicants from ACC and NAC schools scored in this lowest score range in 2016, compared to only 25% in 2008.

In terms of the impact of testing status, the percentage of 1st time takers in the lowest decile increased by 8% (more than doubling the rate) between 2008 and 2016. However, CBE first & third- time repeaters experienced the largest absolute increases , with about 1/3 of the 2016 applicants falling into the lowest score range.

The percentage of each racial/ethnic group falling into the <= 1290 range increased in 2016. By far, the largest change occurred among Asian students; roughly 10% had scored in the lowest decile in 2008, but almost three-times as many (27% or an absolute increase of 16%) did so in 2016. As a group, Blacks continued to have the largest proportion of applicants (36%) in the lowest score range while the relative increase was not as great as for Asians.

While the percentage of both males and females scoring in this group increased (doubling the percentage in 2008), the changes were roughly equivalent.

Results in this section lend evidence to the fact that decreases in CBE scores are not equivalent across the lower portions of the score distribution, and that the overall lower mean scores (and subsequent lower passage rates) may rather be a function of a large group of applicants sitting for the examination who are much less prepared, relative to applicants who took the CBE 9 years prior. The disproportionate increase in the percentage of applicants from selected subgroups (e.g., Level I ABA schools) who scored at these lower levels suggests that the 2016 applicant population may be substantively different (e.g., lower ability?) than those taking the 2008 exam.

4. Has the likelihood of <u>eventually</u> passing after 2 years changed over time?

The revised ABA accreditation process has proposed a standard requiring that 75% of a law school's graduating class pass the CBE within two years. Based on this standard and the fact that decreases in performance on the February exams (taken by disproportionately more repeaters), were not as great as in July examinations, we analyzed the available data to determine if the *changes* in the "two year" pass rates were as significant as the annual rate.

Our analyses tracked two cohorts of first time July CBE takers, one from 2008 and the other from 2014[13]. There were 6,235 and 6,185 first time applicants taking the July 2008 and 2014 CBE, respectively. Table 11 presents data on the outcomes for these two cohorts beginning with their initial attempt and 3 subsequent opportunities.

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[13] The overall passing rate in 2014 was 49%, the first July examination that the rate dipped below 50% since the early 2000's.

Table 11

**Bar Passage Rates after 2 Years
July 2008 vs. July 2014 First Time Test Takers**

	% Pass on 1st Attempt	% Pass on Subsequent Attempt	% Pass Total	% Failing	% No Subsequent Attempts
2008	75%	11%	86%	8%	5%
2014	61%	19%	80%	12%	8%
2008-2014 Diff.	-14%	8%	-6%	4%	3%

Overall Eventual Pass Rates. Table 11 shows that for the 2008 cohort, 86% of the test takers passed the CBE within the 4 exam window; 75% on their initial attempt and an additional 11% on a subsequent attempt. Of the remaining applicants, 8% made one or more subsequent attempts and failed, while 5% did not make another attempt. For the 2014 cohort, 80% passed the CBE; 62% on their initial attempt and an additional 19% on their subsequent attempt. Of the remaining 2014 cohort, 12% failed on a subsequent attempt while 8% did not re-attempt testing.

Thus, while the difference for first time takers on their initial attempt was 14% between 2008 and 2014, the difference between the eventual passage rates after the four examination window was only 6%. Among those failing their first attempt, 5% did not reattempt in 2008 while 8% did not in 2014. Unfortunately the two-year passage rates for the July 2016 test takers will not be known for a few more years.

A. Eventual Pass Rates By Subgroups. Table12 shows the eventual pass rates by applicant subgroups.

Table 12

Subgroup Bar Passage Rates after 2 Years
July 2008 vs. July 2014 First Time Test Takers

Metric	2008	2014	2008-2014
Examinees	N=858	N=1578	
School			
CA ABA	94%	89%	-5%
Low LSAT	91%	81%	-10%
Medium LSAT	94%	90%	-4%
High LSAT	95%	93%	-2%
Non CA ABA	87%	78%	-9%
CA Accredited	55%	54%	-1%
CA Non-Accredited	45%	39%	-6%
Foreign	70%	63%	-7%
Racial/Ethnic			
Asian	85%	76%	-9%
Hispanic	80%	76%	-4%
Black	71%	65%	-6%
White	89%	85%	-4%
Gender			
Male	86%	81%	-5%
Female	86%	80%	-6%

Results from Table 12 suggest that after two years, the overall bar passage rates for the two cohorts converge, as do the rates within each of the subgroups. A difference of less than 10% in the two year success rates was observed for all of the subgroups in the two cohorts, and for several subgroups there was virtually no change. For example, there is only a 2% difference in the passage rates of applicants from Level III CA-ABA schools in the 2008 and 2014 cohorts (95% vs. 93%) and a 1% difference in the passage rate for students from ACC schools (55% vs. 54%). Historically lower performing groups (e.g., Foreign applicants, students from Level I schools, and some minority subgroups) tended to have slightly larger gaps in passage rates between the two time periods.

These findings indicate that there may be a decrease in the initial readiness of applicants or their preparation for taking the CBE since the 2008 examinations were given.

5. **Have other statistical/psychometric properties of the examination changed over time in such a way that it may have impacted applicant scores?**

Reliability measures the degree of stability or consistency of scores on a test and is one of any test's key psychometric property[14]. The lower the reliability, the higher the amount of error that exists in a measurement. Test reliability above .85 (out of 1.00) is considered acceptable for high stakes tests such as the CBE. Overall reliability on the CBE itself is a function of the separate reliabilities of the Written section, the MBE and the degree of correlation between the two. As any of these three values change, so does the reliability.

To determine whether there was any change in any of these metrics, we reviewed historical technical reports for the February and July CBEs in the study time frame. Table 13 summarizes data abstracted from these reports.

Table 13

**Reliability Coefficients by Section and Total Test and
Between Section Correlations
For February and July CBEs**

Year	July				February			
	Reliability			Correlation	Reliability			Correlation
	MBE	Written	Total	MBE & Written	MBE	Written	Total	MBE & Written
2008	.89	.80	.88	.68	.88	.75	.85	.55
2012	.90	.82	.88	.66	.89	.77	.86	.57
2016	.93	.82	.90	.73	.90	.78	.87	.61
2008-2016 Diff.	.04	.02	.02	.05	.02	.03	.02	.05

The overall Total Test reliability has remained quite high since 2008, increasing slightly (but not materially) in 2016. Overall reliability on the July administrations continues to slightly outpace February's, primarily due to the wider spread of scores on that administration. Increases in the overall reliabilities are a function of three factors. First, since 2008, the reliability of the MBE which has about ½ the weight (.35) as that of the Written section (.65) has steadily increased since 2008. Secondly, the reliability of the Written section has also increased slightly. And finally, the degree of relationship between the two sections increased over the same period (.68 to .73 on July CBEs and .55 to .61 on February CBEs), which is due in part to the increased reliability on the respective sections.

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[14] Validity is another major psychometric property of a test. Data available to this study precludes an evaluation of any changes that may have occurred since 2008 in any of the various measures of validity that are used.

We can conclude from these findings that the consistency in scores, as measured by test reliability has not decreased over time, and has actually increased. The increasing correlations between sections on the exam would indicate that applicants are beginning to perform at more equivalent levels on the respective sections than in the past. This finding could dampen the compensatory nature of the current scoring method. However, none of these changes appear large enough to impact the decrease in scores and the subsequent passage rates.

6. **How would the bar passage rates have changed if the cut point were set at standards used by other states?**

Increasing concern voiced over California's high passing standard led us to ask how much the change in passing rates would have been impacted if California had adopted a lower passing score more in line with that used in other states. To conduct these analyses we focused on the July CBEs only. For each of the three years in the study timeframe we calculated the final TSS of all applicants and evaluated the distribution of those scores. We classified applicants as passing or failing using three different standards: 1) the current California standard of 144 (1440); 2) a standard of 135 (1350) which is used by the largest number of states in the country; and 3) a standard of 133 (1330), which is the standard currently used by New York. New York's standard was selected because the state tests the largest number of examinees in the country and is the only state testing more applicants than California. We then calculated the percentage of California applicants that would have passed under each of these standards for the July CBE in each of the three study years[15].

Results presented in Table 14 indicate that if the modal U.S. standard of 135 were used, 66% of all applicants would have passed the July 2016 CBE (i.e., 22% more examinees). This rate would be 15% lower than the estimated passing rate for the 2008 exam if the 135 standard was applied. Using a standard of 133, 7 out of 10 examinees would be estimated to pass and the difference from 2008 would drop to 13%.

The first- time passing rate provides a more direct comparison between the two time periods. At a 135 standard, 19% more first timers would have passed, and the difference between 2008 and 2016 would differ by only 13%. At a 133 standard, that difference is less than 10%.

Refining the comparison even further, we performed the calculations on first- time test takers from CA-ABA schools only (historically the best performing group of all applicants). Results are presented in Table 15.

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[15] We acknowledge two limitations of these calculations. First, if alternative passing standards were used, different regrade bands may have been used. Second, some repeating applicants might have passed on an earlier attempt. We do not believe that the impact of these limitations is significant and that the directionality of results is valid.

Table 14

**Actual and Estimated CBE Passage Rates
At Alternative Passing Points
July Examinations**

Year	1st Time Taker			Repeater			All Examinees		
	144	**135**	**133**	**144**	**135**	**133**	**144**	**135**	**133**
2008	75%	89%	91%	28%	60%	68%	62%	81%	84%
2012	69%	86%	89%	18%	52%	61%	56%	77%	82%
2016	57%	76%	80%	17%	46%	54%	44%	66%	71%
2008-2016 Difference	18%	13%	9%	11%	14%	14%	18%	15%	13%

For test takers from Level I Schools, there remain large differences between 2008 and 2016 examinees (29%, 26% and 19% decreases at the three respective standards). However, the differences in the students from upper level schools paint a slightly different picture. At the modal standard (135) there is only a 9% difference in passage rates from 2008 to 2016 in Level II schools, and only a 7% difference in Level III schools. Over 85% of first time takers from these ABA schools would have passed on the July 2016 examination.

Table 15

**Actual and Estimated CBE Passage Rates
At Alternative Passing Points
1st Time Takers at CA ABA Schools**

Year	Level I Schools			Level II Schools			Level III Schools		
	144	**135**	**133**	**144**	**135**	**133**	**144**	**135**	**133**
2008	77%	93%	94%	83%	94%	96%	87%	96%	97%
2012	67%	88%	91%	76%	94%	95%	85%	95%	97%
2016	38%	67%	75%	64%	85%	89%	76%	89%	91%
2008-2016 Difference	29%	26%	19%	19%	9%	7%	11%	7%	6%

How would California applicants have fared relative to their counterparts in New York, all things held equal?[16] New York reports its general statistics (similar to California) after each administration (https://www.nybarexam.org/ExamStats/Estats.htm). From that site, we determined that closest type of comparison that could be made between California and New York was the bar passage rate of first time test takers from ABA approved institutions. We extracted these statistics for the same three July examinations included in our study time frame. We then calculated an estimated passing rate using the 133 standard that New York applies. The results are summarized in Table 16.

New York, which switched to the UBE in 2016 saw a 9% decrease (from 91% to 82%) in its passage rate between 2008 and 2016. For the CBE, when the 133 standard was applied to students who attended CA-ABA schools, fully 96% of those test takers would have passed the CBE in 2008, 95% in 2012 and 87% in 2016. The decrease between estimated 2008 and 2016 passage rates was 9%; identical to the New York drop. Further, within-year comparisons between the two states show California estimated to have passed 5% more candidates. It is interesting to note that several other states testing larger pools of applicants and having passing standards more closer to the modal mark of 135 (e.g., Texas, Massachusetts, Florida and New Jersey) all experienced decreases in their passing rates between 2008 and 2016 that ranged from about 8% to 12%.

Table 16

Actual New York & Estimated CBE Passage Rates
For 1st Time Test Takers
At ABA Schools

Year	New York Actual % Passing @ 133	California Estimated % Passing @ 133	Difference
2008	91%	96%	+5%
2012	85%	95%	+10%
2016	82%	87%	+5%
2008-2016 Difference	9%	9%	0%

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[16] Note that in July 2016, New York switched to the Uniform Bar Examination (UBE) which included nationally administered written section along with the MBE. New York calculates its scale scores similarly to California's but it now gives its MBE and Written Section equal weighting.

V. SUMMARY AND CONCLUSIONS

A continuing drop in the percentage of applicants passing the California Bar Examination (CBE) has generated a considerable amount of public discussion. The trend has been nationwide and led to much debate about the underlying causes. Declining law school enrollments, changes in legal training curriculum, examination content and standards, and the quality and composition of examinees have all been cited as possible causes. Electronic CBE databases maintained by the Office of Admissions of the California Bar provided an efficient method of profiling where the declines have occurred as well as offering some initial insights into their causes.

Data on various characteristics of applicants and their CBE performance was abstracted from the existing databases for each of three years: 1) 2008, the year with the highest passage rate since 1997; 2) 2016 the most recent year for which data were available and when CBE results dropped to the lowest levels since before 1990; and 3) 2012, a midpoint between these two extremes. During the 9 year period there was an 11% decline in the number of July test takers and a corresponding 4% increase in February examinees, which historically include a higher proportion of applicants repeating the CBE than in the July administration. The relative mix of examinees also shifted between 2008 and 2016 as traditionally higher performing groups made up proportionately less of the total test takers. For the July administrations, first time test takers decreased by 6%, applicants from out of state ABA schools declined by 4%, and non-minority test-takers declined by 6%. Female test takers became the majority gender in 2016 as well.

Other key findings include the following:

- In terms of performance, the overall average Total Scale Scores (TSS) and bar passage rates dropped 66 points (1481 to 1415) points and 18% (62% to 44%) respectively for July applicants in 2016 as compared to 2008. The decrease was less pronounced for the February administration (13 points and 4%, respectively).

- The magnitude of the changes was not equal in all groups. For example, on the July CBE 1st time applicants passage rates dropped 18% versus 11% for repeaters; applicants from CA ABA schools with higher median LSAT scores dropped 11% as compared to an almost 30% decrease for applicants from lower LSAT schools.

- The drop in passage rates in the various racial/ethnic groups, however, varied by only 5%. Relatedly, the drop in scores on the Written and MBE sections were roughly equivalent within the various groups, suggesting that neither section disproportionately contributed to the change.

- Results from an estimation model indicated that all things being held equal, roughly 20% of the change in July CBE scores and 17% of the change in bar passage rates could be attributed to the change in the mix of test takers between 2008 and 2016.

Further exploration of the distribution of scores revealed that a highly disproportionate number of test takers scored at the very lowest levels of the distribution in 2016 relative to 2008 (21% vs 10%). A comparison of the composition of test takers scoring in lowest percentiles of applicants showed that while the percentage of all subgroups among these lowest performers increased between 2008 and 2016, there were relatively higher changes for some groups than others. For example, there was an 11% increase for the low LSAT school students compared to 5% from the higher level schools and 21% increase in Non-Accredited schools. Asians increased by 16% compared to half that in Hispanics and Whites.

To gain insights into applicant preparedness we examined bar passage *after two years,* reasoning that perhaps more recent candidates may not have been as prepared on their first attempt. A study of first time takers in July 2008 and 2014 showed that while the passage rates on the initial attempt for these years differed by a full 14% (75% vs 61%), the difference fell to 6% after a two year follow-up window (86% vs. 80%). The difference between two year pass rates (as compared to the one year rates) again tended to be relatively higher in historically lower performing groups.

Traditional psychometric characteristics of the test that could be measured with the available data showed no degradation in the Written, MBE or Total Test scores. Actually, the reliability coefficient increased slightly from 2008 to 2016, and the correlation in performance between different sections of the exam also rose (from .55 to .61) as a result. The magnitude of these changes would not have a material impact on passing rates.

Finally, the analysis of the impact of the passing standard (i.e., "cut score") on the 2008 to 2016 decrease revealed that the differences between the two years would have been projected to drop by 3% if the national modal standard (135) was used and 2% more if a standard of 133 was used. A direct comparison with New York (which is the only state that tests more applicants than California and also changed to the Uniform Bar Examination in 2016), using only 1st time ABA takers and the 133 standard, revealed identical 9% drops in the passing rates in both states. This finding lends supporting evidence refuting the contention that the decreases in passage rates were caused in part by California's non-adoption of the UBE.

These analyses suggest that while the change in composition of test takers and the passing standard itself may have led to some of the performance decreases between 2008 and 2016, there are most likely other factors in play. Institutional factors such as changes in curriculum and admission policies may have contributed. Also, completely unmeasured in this study are both latent legal ability of applicants and their law school performance. Our study used known correlates for these measures (often to limited groups of students) rather than individual student abilities.

From the available data, we cannot discern the degree to which these student-related factors have changed. However, some of the differences that were observed in this study between performances at the various levels of the CA ABA schools point to possible decreases. It is also possible that other qualitative factors such as poorer student study habits and decreased motivation may have played a role. Assessment of the nature, size and directionality of such factors require additional data.

This study also did not address whether the content of the CBE remains relevant to an assessment of minimum competency to practice law, or whether the current standard remains appropriate in today's practice environment. These are issues that require different data and different methods.

Due to the volume of public comments received, these have been posted online in three separate files:

- Public Comments Received via E-Mail:
  http://apps.calbar.ca.gov/cbe/docs/agendaItem/Public/agendaitem1000002007.pdf

- Public Comments Received via Online Comment Box:
  http://apps.calbar.ca.gov/cbe/docs/agendaItem/Public/agendaitem1000002008.pdf

- Public Comments Received from Other Sources:
  http://apps.calbar.ca.gov/cbe/docs/agendaItem/Public/agendaitem1000002009.pdf

Transcripts of the two days of public testimony are also posted online:

- August 14, 2017 Public Testimony:

  https://www.calbar.ca.gov/Portals/0/documents/communications/State-Bar-Public-Hearing-Transcript081417.pdf

- August 15, 2017, Public Testimony

  https://www.calbar.ca.gov/Portals/0/documents/communications/State-Bar-Public-Hearing-Transcript081517.pdf

		Simulated Cut Scores for July 2008 GBX					Simulated Cut Scores for July 2016 GBX				
		1330	**1350**	**1390**	**1414**	**1440**	**1330**	**1350**	**1390**	**1414**	**1440**
Total	# Passing	7,242	6,920	6,017	5,642	5,329	5,451	5,053	4,010	3,598	3,332
	% Passing	84.1%	80.4%	69.9%	65.5%	61.9%	70.9%	65.7%	52.1%	46.8%	43.3%
	*% Increase**	*35.9%*	*29.9%*	*12.9%*	*5.9%*		*63.6%*	*51.7%*	*20.3%*	*8.0%*	
Gender											
Male	# Passing	3,795	3,617	3,121	2,911	2,756	2,679	2,484	1,970	1,760	1,635
	% Passing	83.8%	79.9%	68.9%	64.3%	60.9%	72.2%	66.9%	53.1%	47.4%	44.0%
	*% Increase**	*37.7%*	*31.2%*	*13.2%*	*5.6%*		*63.9%*	*51.9%*	*20.5%*	*7.6%*	
Female	# Passing	3,441	3,297	2,890	2,726	2,568	2,722	2,525	2,005	1,805	1,665
	% Passing	84.5%	80.9%	71.0%	66.9%	63.0%	69.5%	64.5%	51.2%	46.1%	42.5%
	*% Increase**	*34.0%*	*28.4%*	*12.5%*	*6.2%*		*63.5%*	*51.7%*	*20.4%*	*8.4%*	
Race/Ethnicity											
Asian	# Passing	1,520	1,435	1,205	1,113	1,046	1,161	1,066	835	735	676
	% Passing	81.8%	77.2%	64.8%	59.9%	56.3%	64.0%	58.8%	46.1%	40.5%	37.3%
	*% Increase**	*45.3%*	*37.2%*	*15.2%*	*6.4%*		*71.7%*	*57.7%*	*23.5%*	*8.7%*	
Black	# Passing	314	287	215	181	164	252	222	146	117	104
	% Passing	66.1%	60.4%	45.3%	38.1%	34.5%	49.8%	43.9%	28.9%	23.1%	20.6%
	*% Increase**	*91.5%*	*75.0%*	*31.1%*	*10.4%*		*142.3%*	*113.5%*	*40.4%*	*12.5%*	
Hispanic	# Passing	621	591	471	432	397	734	663	478	419	379
	% Passing	76.5%	72.8%	58.0%	53.2%	48.9%	65.7%	59.3%	42.8%	37.5%	33.9%
	*% Increase**	*56.4%*	*48.9%*	*18.6%*	*8.8%*		*93.7%*	*74.9%*	*26.1%*	*10.6%*	
White	# Passing	4,368	4,200	3,765	3,570	3,392	3,063	2,874	2,369	2,165	2,019
	% Passing	87.6%	84.3%	75.5%	71.6%	68.0%	77.7%	72.9%	60.1%	54.9%	51.2%
	*% Increase**	*28.8%*	*23.8%*	*11.0%*	*5.2%*		*51.7%*	*42.3%*	*17.3%*	*7.2%*	
Other	# Passing	98	91	71	67	60	100	93	66	56	52
	% Passing	79.0%	73.4%	57.3%	54.0%	48.4%	67.6%	62.8%	44.6%	37.8%	35.1%
	*% Increase**	*63.3%*	*51.7%*	*18.3%*	*11.7%*		*92.3%*	*78.8%*	*26.9%*	*7.7%*	

		Simulated Cut Scores for July 2008 GBX					Simulated Cut Scores for July 2016 GBX				
		1330	**1350**	**1390**	**1414**	**1440**	**1330**	**1350**	**1390**	**1414**	**1440**
First Time or Repeat											
First Time	# Passing	5,657	5,521	5,078	4,870	4,682	4,089	3,881	3,317	3,066	2,896
	% Passing	90.6%	88.4%	81.4%	78.0%	75.0%	79.5%	75.4%	64.5%	59.6%	56.3%
	*% Increase**	*20.8%*	*17.9%*	*8.5%*	*4.0%*		*41.2%*	*34.0%*	*14.5%*	*5.9%*	
Repeat	# Passing	1,585	1,399	939	772	647	1,362	1,172	693	532	436
	% Passing	67.0%	59.1%	39.7%	32.6%	27.3%	53.5%	46.0%	27.2%	20.9%	17.1%
	*% Increase**	*145.0%*	*116.2%*	*45.1%*	*19.3%*		*212.4%*	*168.8%*	*58.9%*	*22.0%*	
School Type											
ABA	# Passing	4,240	4,119	3,767	3,571	3,415	3,397	3,196	2,629	2,387	2,231
	% Passing	92.6%	90.0%	82.3%	78.0%	74.6%	82.5%	77.6%	63.8%	57.9%	54.2%
	*% Increase**	*24.2%*	*20.6%*	*10.3%*	*4.6%*		*52.3%*	*43.3%*	*17.8%*	*7.0%*	
CA Accredited	# Passing	458	408	265	225	196	356	294	169	131	100
	% Passing	61.5%	54.8%	35.6%	30.2%	26.3%	46.2%	38.1%	21.9%	17.0%	13.0%
	*% Increase**	*133.7%*	*108.2%*	*35.2%*	*14.8%*		*256.0%*	*194.0%*	*69.0%*	*31.0%*	
Registered	# Passing	194	165	107	88	76	111	95	44	38	35
	% Passing	60.8%	51.7%	33.5%	27.6%	23.8%	41.0%	35.1%	16.2%	14.0%	12.9%
	*% Increase**	*155.3%*	*117.1%*	*40.8%*	*15.8%*		*217.1%*	*171.4%*	*25.7%*	*8.6%*	
Out of State	# Passing	1,629	1,556	1,369	1,307	1,242	1,033	975	801	730	685
	% Passing	87.1%	83.2%	73.2%	69.9%	66.4%	72.9%	68.8%	56.5%	51.5%	48.3%
	*% Increase**	*31.2%*	*25.3%*	*10.2%*	*5.2%*		*50.8%*	*42.3%*	*16.9%*	*6.6%*	

* Percent increase of the number of applicants that would have passed under each simulated cut score level relative to the number of passing applicants under the curent cut score of 1440.

Summary Results of Five-Year Member Survey, 2017

1. Response Rate and Time Taken to Complete the Survey

	# Delivered	# Responded	Response Rate	Average Time Taken (Min)
Full survey	112,899	8,562	7.6%	8.6
Short version 1 with reduced questions	56,489	4,356	7.7%	6.7
Short version 2 with reduced questions	56,499	4,343	7.7%	6.0
Total	225,887	17,261	7.6%	7.5

Attorney Background in Firm/Organization Type and Practice

2. Years Since Admitted to the Bar

	%
1-10	25.2
11-20	18.0
21-30	21.0
31-40	21.8
41+	14.1
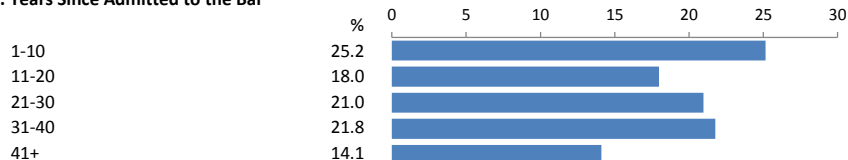
3. Which of the following best describes your current primary employment?

	%
Solo practice	20.8
Small firm	18.4
Medium firm	4.3
Large firm	8.3
Corporate in-house	8.8
Non-profit organization	3.4
District Attorney	2.0
Public Defender	1.7
Court	1.7
Other Government	8.5
Academic	1.4
Not employed as attorney	6.2
Other	3.6
Unemployed	1.4
Retired	9.8
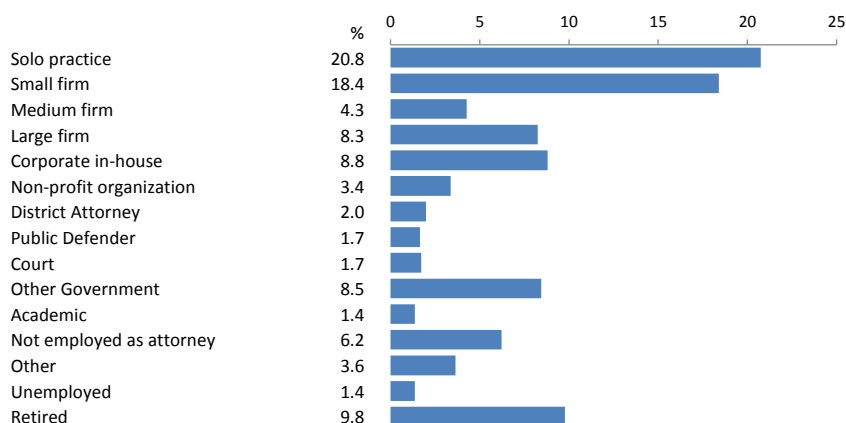
4. Are you an associate or partner?

	%
Partner	42.2
Associate	30.1
Other	27.8
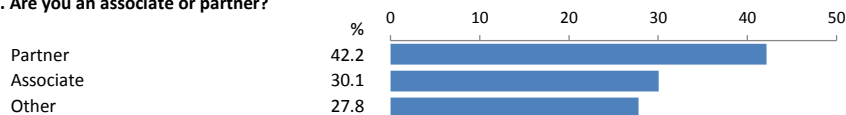
5. What type of legal entity is your private practice? (Sole practice and corporate in-house excluded)

	%
Limited partnership	58.6
Professional corporation	35.1
General partnership	6.2

6. What type of legal entity is your private practice? (Sole practice only)

	%
Sole proprietorship	79.2
Professional corporation	20.8
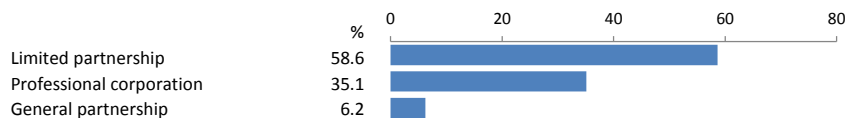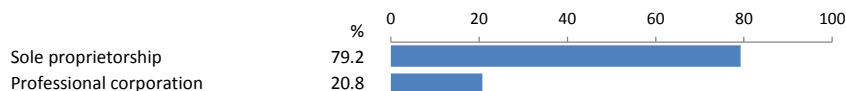
7. What percentage of your clients are:

	%
Individuals	45.7
Small businesses	12.1
Medium businesses	16.1
Large businesses	22.1
Local government	3.0
State government	0.6
Federal government	0.1
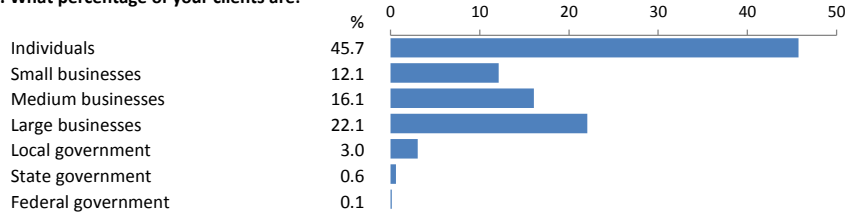
8. Client Type Served - by Firm/Org Type (%)

	Individuals	Small businesses	Medium businesses	Large businesses	Local government	State government	Federal government
Solo practice	71.1	14.5	8.6	3.8	1.1	0.5	0.2
Small firm	53.0	13.7	15.3	12.8	4.2	0.6	0.1
Medium firm	24.0	11.6	24.7	27.4	11.1	0.7	0.2
Large firm	8.4	8.8	26.3	51.3	3.6	1.2	0.1
Corporate in-house	5.0	4.9	23.9	65.3	0.3	0.4	0.2
Total	45.7	12.1	16.1	22.1	3.0	0.6	0.1

9. What is your average hourly billing rate?

	Mean	Median	90th %tile
Solo practice	318	300	450
Small firm	350	350	500
Medium firm	373	330	625
Large firm	592	568	925
Total	377	350	600
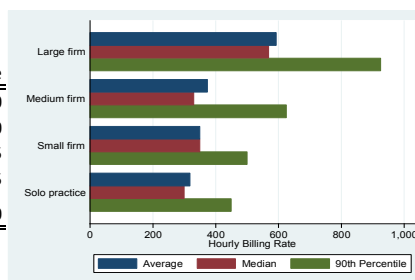
10. Do you provide services on an unbundled basis to clients, i.e., limited scope services--such as only drafting a motion or appearing at a hearing for an otherwise self-represented client?   35.7%

	%
Solo practice	45.1
Small firm	31.3
Medium firm	26.9
Large firm	25.5
Total	35.7
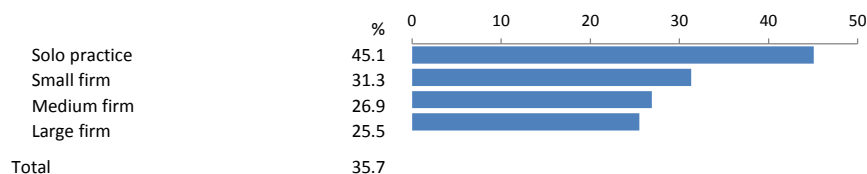
11. Are you covered by malpractice insurance?

66.2%

	%
Large firm	99.6
Medium firm	99.3
Small firm	96.6
Public Defender	79.3
Non-profit organization	78.4
Solo practice	69.5
Corporate in-house	59.5
Other Government	36.7
Academic	27.6
District Attorney	24.8
Court	13.2
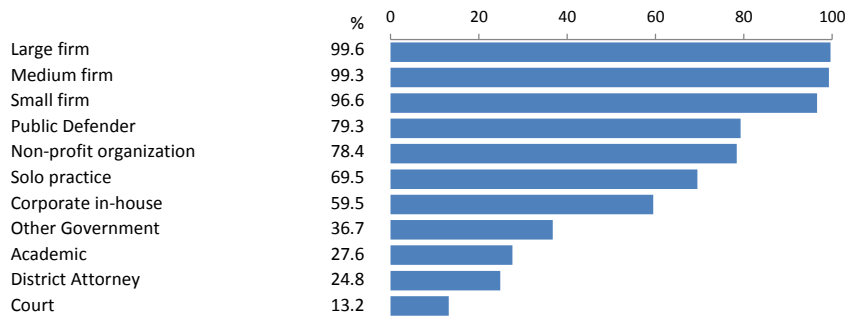
12. What are the reasons you are not covered by malpractice insurance?*

	%
Cost	35.4
Availability	2.9
Not needed	60.5
Don't know	3.2
Other	11.4
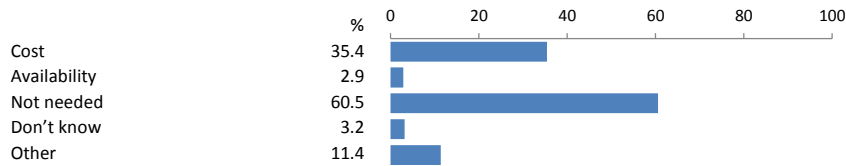
* Related to the response patterns in #11 above, cost was selected as a factor mostly by solo practitioners and those in small firms. More than 70 percent of "Not needed" responses came from corporate in-house attorneys or those in nonprofit or government agencies. The remaining 30 percent were selected by solo practitioners.

13. What are your areas of practice?

	%
Business	43.2
Other	30.4
Real Estate	22.6
Personal Injury	18.0
Intellectual Property	15.5
Probate	13.8
Appellate	12.3
Family	10.7
Criminal	8.5
Labor Relations	7.9
Taxation	5.7
Workers Compensation	4.7
Elder Abuse	3.7
Immigration	3.6
Legal Malpractice	3.0
Insolvency	2.9
Disability Rights	2.4
Dependency	1.1
Delinquency	0.8
Military Law & Vets Benefits	0.5
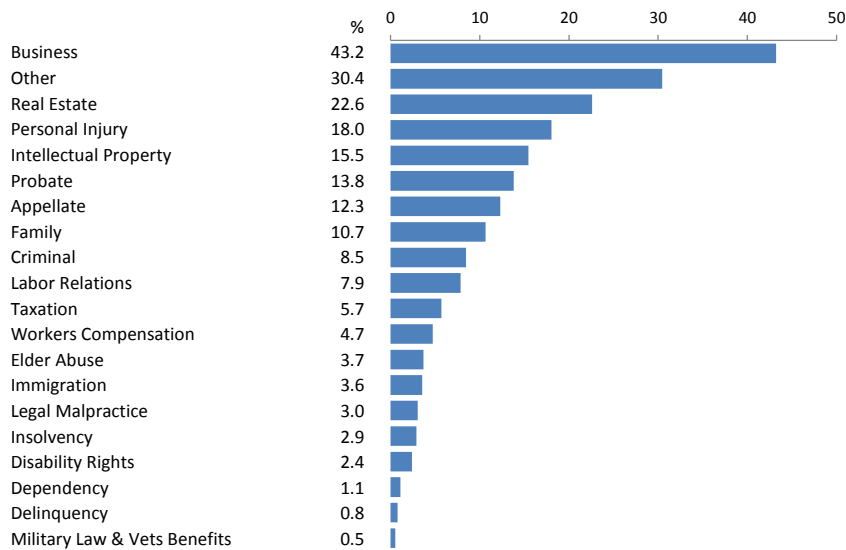
13a. Number of practice areas selected varies by firm type (%)

	Solo Practice	Small Firm	Midium Firm	Large Firm	Corporate In-house	Total
1	37.2	37.4	41.8	56.5	51.8	42.3
2	29.1	26.9	29.5	26.6	27.7	27.9
3	18.8	18.3	16.9	11.5	12.0	16.5
4 +	15.0	17.4	11.7	5.5	8.5	13.3
Total	100.0	100.0	100.0	100.0	100.0	100.0

14. Are you certified by the State Bar in a legal specialty area? Percent Yes.*   4.4%

*More than 90 percent of those with a certified legal specialty came from the private sector, with approximately 40 percent each (of the total) from either solo practitioners or small firms.

15. In which specialty areas are you currently certified?

Specialty Area	%
Family Law	28.1
Estate Planning, Trust & Prob	26.8
Workers Compensation	15.6
Criminal Law	7.6
Taxation	6.9
Appellate Law	5.9
Immigration and Nationality	3.1
Legal Malpractice	2.8
Bankruptcy Law	2.6
Franchise & Distribution	1.9
Admiralty/Maritime	1.3
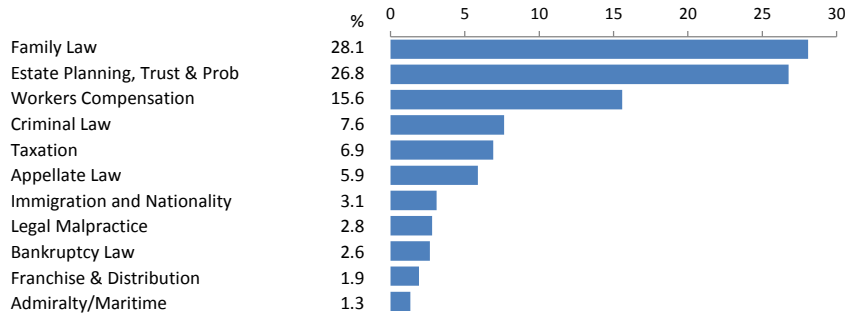
16. Check any additional certified specialty areas that you think should be created.

Specialty Area	%
None	36.9
Don't know	31.9
Healthcare	10.2
Landlord/tenant	9.9
Other	9.5
Personal Injury	8.4
Privacy	4.9
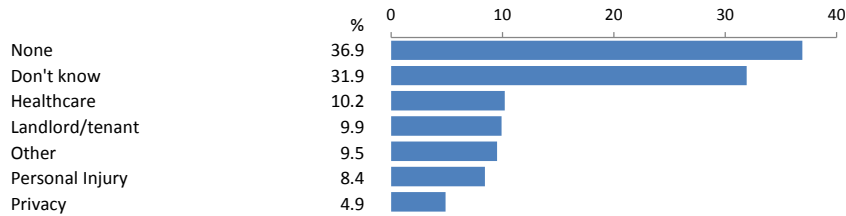
17. Are you licensed to practice law in another jurisdiction? Percent Yes.   24.3%

Which other jurisdiction?	%
Another state	81.6
Federal	32.6
Other	6.2
Another country	4.5
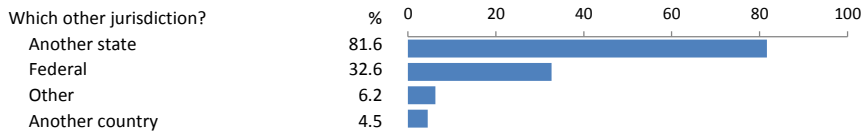
Pro Bono Legal Services

18. Do you provide pro bono legal services?

	%
No	58.4
Yes, to both individuals and nonprofit	15.5
Yes, directly to indigent individuals	18.7
Yes, to nonprofit organizations	7.4
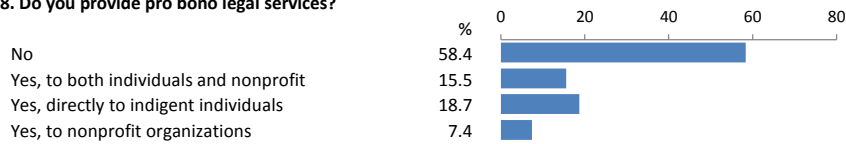
18a. Percent of respondents providing pro bono services varying by firm or organization type.

	%
Large firm	74.6
Solo practice	65.6
Small firm	54.2
Non-profit organization	52.4
Medium firm	46.1
Academic	37.9
Public Defender	35.9
Corporate in-house	26.5
Other Government	10.0
Court	8.9
District Attorney	4.5
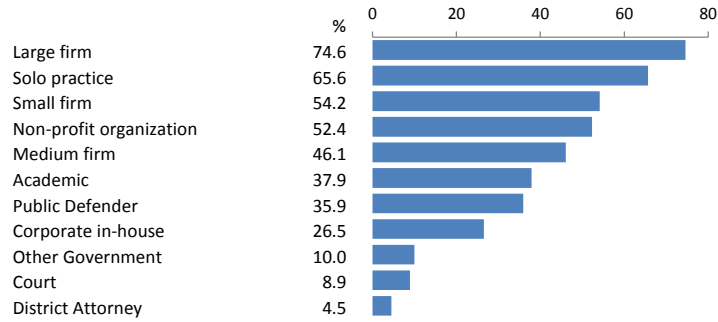
18b. Varying by age as well as measured by years since admitted to the Bar.

	%
1-10	44.0
11-20	44.5
21-30	48.8
31-40	51.3
41+	55.6
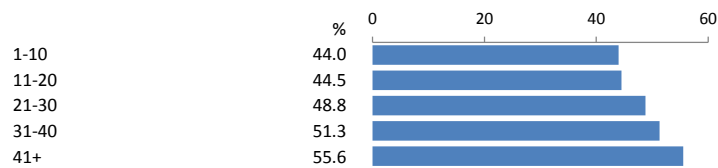
19. Approximately how many hours of pro bono legal work do you perform annually?
Average 70 hours and median 50 hours

	%
1-25	36.3
26-50	27.2
51-99	14.2
100-149	10.3
150-199	3.5
200-249	2.1
250+	6.4
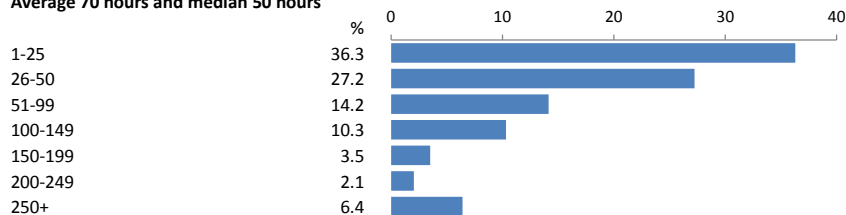
19a. With significant variance by employment background

	Average	Median
Private	69	49
Government	49	40
Nonprofit	105	55
Academic	112	38
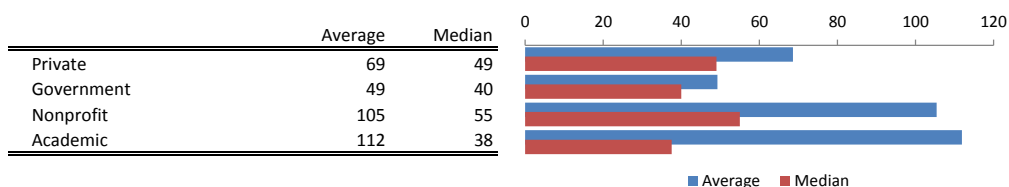
20. What types of pro bono services have you provided?

	%
Legal information & counsel	73.2
Full case representation	41.0
Limited scope representation	40.8
Co-counseling	12.0
Other	8.4
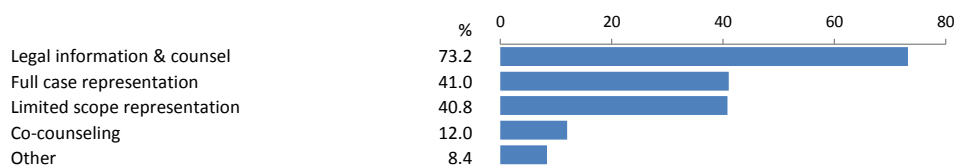
21. Please list the practice areas for your pro bono work.

	%
Business	29.3
Other	25.9
Family	22.4
Real Estate	17.3
Criminal	15.0
Immigration	13.5
Probate	10.8
Personal Injury	10.3
Labor Relations	6.8
Disability Rights	6.6
Intellectual Property	6.6
Elder Abuse	5.7
Taxation	5.2
Insolvency	4.0
Military Law & Vets Benefits	3.4
Appellate	2.6
Delinquency	2.2
Dependency	2.2
Workers Compensation	2.1
Legal Malpractice	1.5
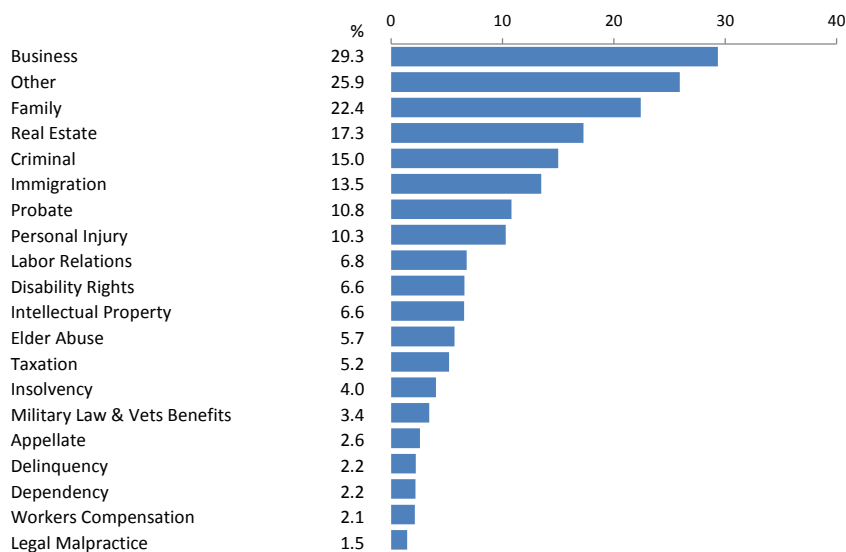
22. What does your employer do to encourage you to perform pro bono work?

	%
No active encouragement	53.8
Firm policy supporting pro bono	19.2
Administrative Support	17.4
Credit for Billable Hours	15.2
Other	14.7
Recognition/awards	11.4
Training/supervision/mentorship	10.7
Firm-managed program or services	10.5
Firm requires	3.2
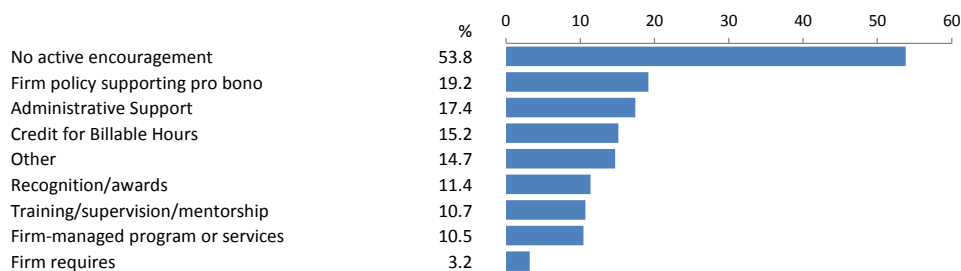
22a. Different incentives for pro bono services varying across employment sectors.

	Private	Gov't	Nonprofit	Academic
No active encouragement	47.5	75.5	43.1	58.5
Firm policy supporting pro bono	29.5	2.9	9.8	3.5
Administrative Support	26.4	2.5	8.9	11.3
Credit for Billable Hours	23.8	1.3	4.3	1.4
Other	6.8	16.7	33.3	20.4
Recognition/awards	16.5	3.1	6.4	12.7
Training/supervision/mentorship	15.5	2.3	10.1	3.5
Firm-managed program or services	16.0	1.3	5.5	0.0
Firm requires	5.1	0.1	1.5	0.0

23. Is there anything the State Bar can do to help you provide pro bono legal services?

	%
MCLE credit	69.9
Reduced membership fee	43.7
Reporting hrs to State Bar	15.4
Other	15.0
Recognition/awards	14.1
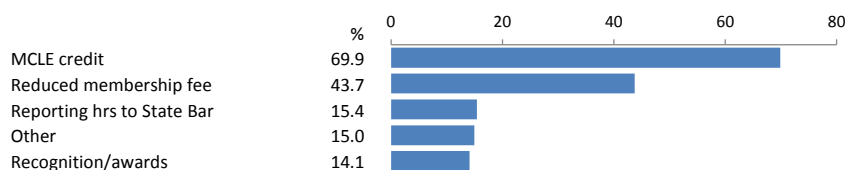
23a. Views regarding what the Bar can do in support of pro bono services varying across employment sector.

	Private	Gov't	Nonprofit	Academic
MCLE credit	76.7	55.5	74.1	54.7
Reduced membership fee	41.7	44.2	53.8	55.7
Reporting hrs to State Bar	16.2	13.6	25.9	19.8
Other	10.3	23.8	12.6	15.1
Recognition/awards	14.6	17.0	24.1	21.7

Career Path Since Law School

24. How soon after graduation from law school were you able to obtain law-related paid employment?

	%
3 months	71.0
6 months	12.0
Within 1 year	10.6
Within 2 years	3.7
Longer than 2 years	2.7
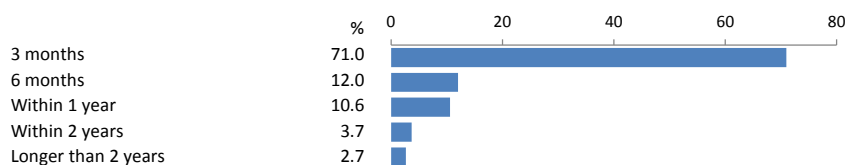
25. What type of paid employment did you first obtain after graduation from law school?

	%
Solo practice	8.8
Small firm	32.1
Medium firm	8.7
Large firm	15.2
Corporate	4.4
Nonprofit	4.0
District Attorney	3.4
Public Defender	2.2
Court	5.4
Other Gov't	7.6
Academic	0.8
No attorney emp	3.0
Other	4.4
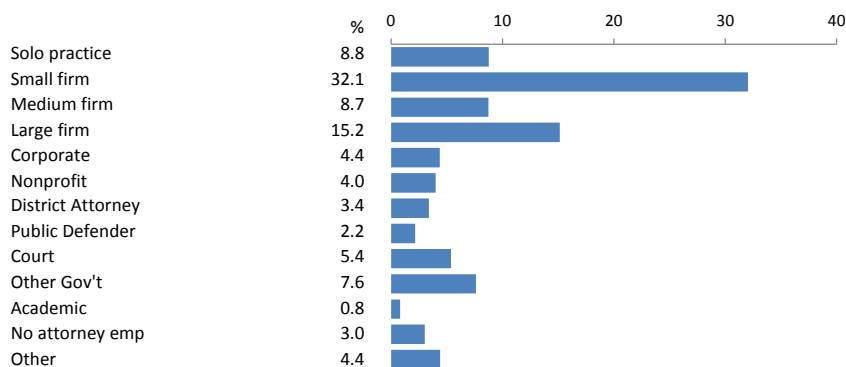
26. Since graduating from law school, approximately how many different law-related paid jobs have you had? Average (and median) 3

27. How long did you typically stay in each job (years)? Average 9.7 years and median 5 years

Awareness and Views Regarding Lawyer Assistance Program (LAP) and Minimum Continuing Legal Education (MCLE)

28. Are you aware of the confidential services offered by the Lawyer Assistance Program (LAP) to lawyers suffering from substance abuse or mental health issues? Percent Yes: **72%**

29. How did you learn about the LAP?*

	%
Required MCLE	58.6
State Bar's Website	22.5
During Admission	13.5
Other	9.7
The Other Bar	8.9
Friend/colleague	6.3
Bar card	5.2
OCTC referral	0.2
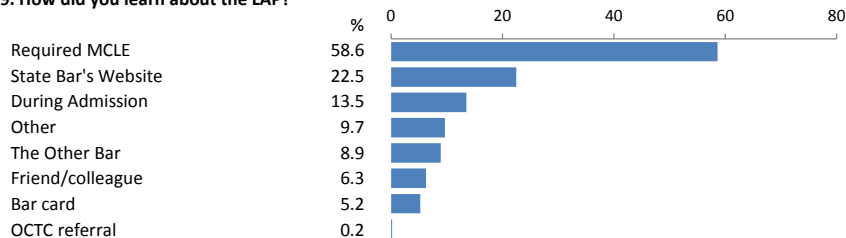
* The most common comments provided for the "Other" answer referred to law school as the source or considered it general knowledge. "Do not recall" is also a common response.

30. Have you ever used the services of the LAP? Percent Yes.   **1.9%**

31. If you had a friend or colleague in the legal profession who you thought was struggling with substance abuse or mental health problems, would you refer them to the LAP? Percent Yes.   **85.1%**

32. Why wouldn't you refer a friend or colleague to the LAP?*

	%
Other	41.5
Program confidentiality	40.4
Program effectiveness	35.0
Cost	2.6
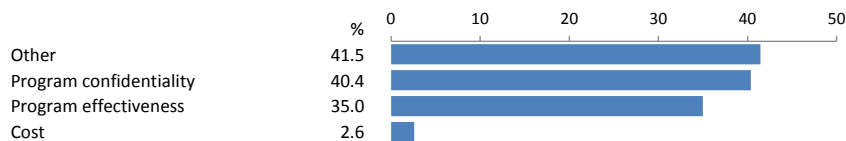
** A large number of those who selected "other" as the reason noted the existence of other programs that they thought might be more suitable; many also thought that it was ultimately the decision of the individual who needs it.

32a. Both gender and age (years since admitted to the Bar) play a role in the different weights given to confidentiality and

	Confidentiality	Effectiveness
Male	37.6	34.7
Female	31.4	44.8

32b. Years since admitted to the Bar

1-10	38.6	46.2
11-20	33.0	42.4
21-30	30.0	43.3
31-40	35.4	39.1
41+	47.5	30.3

33. Have you ever sought assistance for personal concerns about substance abuse or mental health?   13.4%

34. What percentage of your Minimum Continuing Legal Education (MCLE) is provided through:

	%	
Live class training	43.4	
Online	32.6	
Employer (either live or online)	19.6	
Other	4.5	
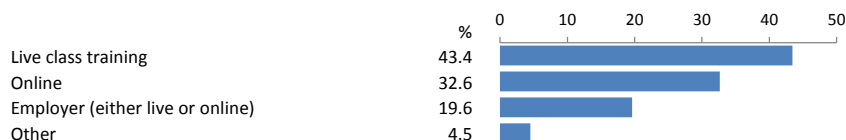
34a. With significant variance across employment types

	Employer	Online	Live Class	Other	Total
Solo practice	2.3	43.8	49.2	4.6	100
Small firm	7.8	34.7	54.3	3.3	100
Medium firm	31.1	23.4	42.2	3.5	100
Large firm	51.2	19.3	27.5	2.3	100
Corporate in-house	18.7	37.2	42.7	2.0	101
Non-profit organization	20.5	31.0	45.8	2.5	100
District Attorney	68.6	6.0	25.1	1.3	101
Public Defender	67.3	6.6	24.9	1.0	100
Court	38.2	18.2	35.5	7.9	100
Other Government	40.7	17.0	30.9	11.8	100
Academic	13.4	31.6	27.5	27.4	100

35. Who pays the costs of your MCLE courses?

	%	
I do	41.9	
My firm/organization	39.3	
Both	13.3	
Only free MCLE courses	5.5	
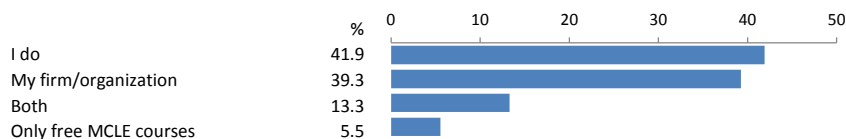
35a. With significant variance across employment types as well

	I do	My Firm	Both	Only free MCLE courses
Solo practice	88.3	6.5	3.8	1.4
Small firm	23.4	59.5	16.6	0.5
Medium firm	7.8	73.5	17.4	1.4
Large firm	4.0	78.3	15.9	1.9
Corporate in-house	12.9	64.8	15.7	6.6
Non-profit organization	18.8	48.6	21.9	10.8
District Attorney	3.1	67.5	18.9	10.5
Public Defender	12.7	44.8	38.7	3.9
Court	23.0	37.9	27.0	12.1
Other Government	17.3	46.3	20.9	15.5
Academic	47.2	15.8	20.5	16.5

36. Do you find it difficult to comply with the requirement to complete 25 hours of MCLE every 3 years? Percent Yes.   19.2%

36a. With noticeable difference across employment types

	%
Corporate in-house	20.4
Solo practice	19.7
Academic	19.0
Small firm	17.4
Non-profit organization	17.0
Court	16.4
Other Government	13.5
Medium firm	12.2
Large firm	11.5
District Attorney	9.5
Public Defender	8.8
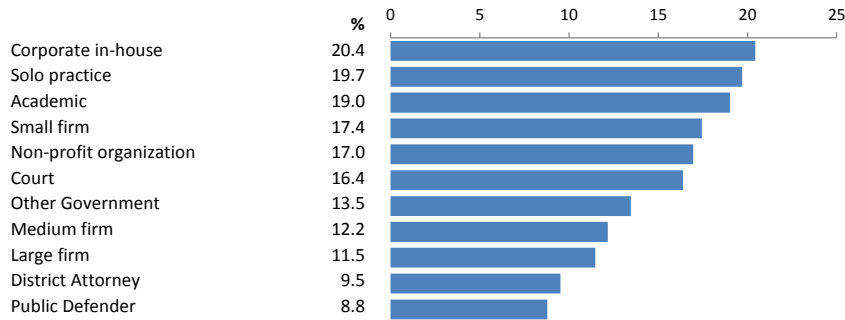
37. Primary reason for the difficulty:

	%
Cost	54.2
Time	54.2
Relevance	43.2
Requirement type	22.8
Location	16.7
Other	8.2
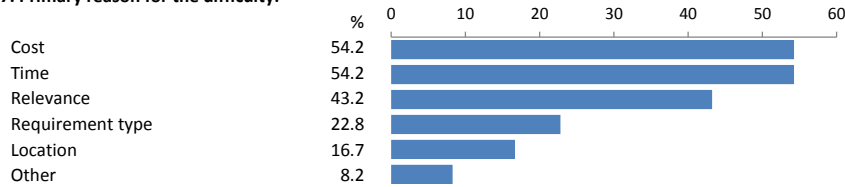
37a. Reasons cited varying across employment types

	Cost	Time	Relevance	Requirement Type	Location	Other
Solo practice	65.2	54.3	46.7	22.7	16.0	8.0
Small firm	43.0	65.9	41.1	20.6	18.0	4.9
Medium firm	41.0	73.8	41.0	29.5	6.6	3.3
Large firm	20.0	66.4	40.9	37.3	11.8	6.4
Corporate in-house	34.4	63.7	47.6	25.9	15.6	7.5
Non-profit organization	65.2	43.9	56.1	37.9	7.6	10.6
District Attorney	31.8	81.8	27.3	36.4	9.1	9.1
Public Defender	68.8	56.3	25.0	31.3	25.0	6.3
Court	60.0	56.7	36.7	26.7	16.7	6.7
Other Government	58.9	51.8	36.6	29.5	17.0	12.5
Academic	63.0	33.3	63.0	22.2	33.3	7.4

Satisfaction with Bar Resources for Improving Professional Competence

38. Please rate your level of satisfaction for any of the following State Bar professional responsibility resources that you have used. (1-5 scale)

Resource	Rating
Sample Written Fee Agreements	3.8
Overall Average	**3.8**
Ethics Opinions	3.8
Ethics Hotline	3.7
www.calbar.ca.gov/ethics	3.7
Compendium on Prof. Responsibility	3.6
Client Trust Accounting Handbook	3.6
Rules of Professional Conduct	3.5
Rules Book - Publication 250	3.5
State Bar Court Reporter	3.2
CYLA Opening a Law Office Book	3.2
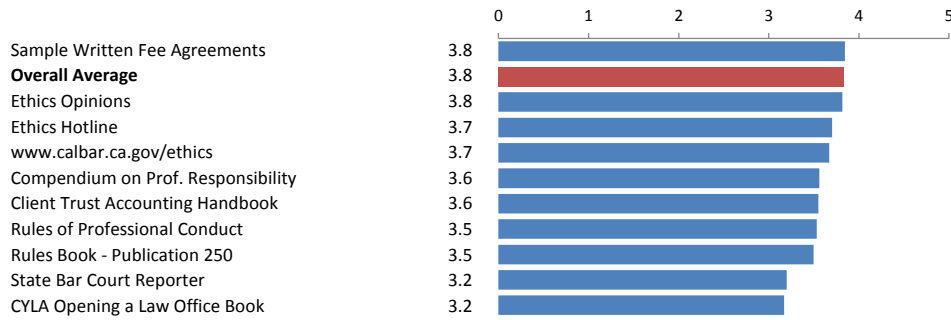
39. Are you aware that the State Bar is conducting a study of the Rules of Professional Conduct with the goal of submitting a recommendation for comprehensive rule amendments to the Supreme Court of California by March 31, 2017? Percent Yes.   19.6%

40. How did you learn about it?

	%
Cal Bar Journal	34.5
State Bar Website	28.2
Other	24.1
Legal media coverage	14.0
Other news coverage	13.2
Rules Revision Comm email list	4.3
Social media	2.6
Radio story on KQED	1.3

Office of Research and
Institutional Accountability
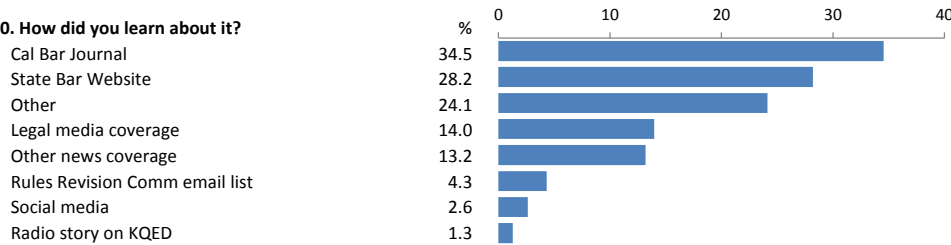
Experience with the Client Security Fund and the Attorney Discipline System

41. Have you ever advised someone who had money misappropriated by an attorney to file an application with the Client Security Fund? Percent Yes.   7.7%

42. Would you support an increase to the annual assessment that active attorneys pay to provide additional funds to the Client Security Fund?

	%
Yes, but no more than $20 increase	13.9
Yes, but no more than $10 increase	20.5
Yes, as much as needed	8.4
No	57.3
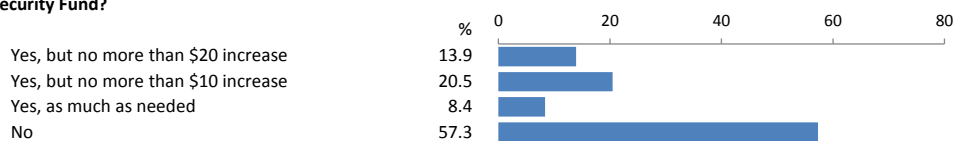
43. Have you ever filed a complaint with the State Bar against another attorney? Percent Yes.   6.9%

43a. With solo practice attorneys having the highest chance of having filed a complaint

	%
Solo practice	12.0
Small firm	8.6
Medium firm	5.0
Large firm	2.1
Corporate in-house	2.5
Non-profit organization	2.6
District Attorney	8.4
Public Defender	5.5
Court	5.6
Other Government	3.5
Academic	4.7
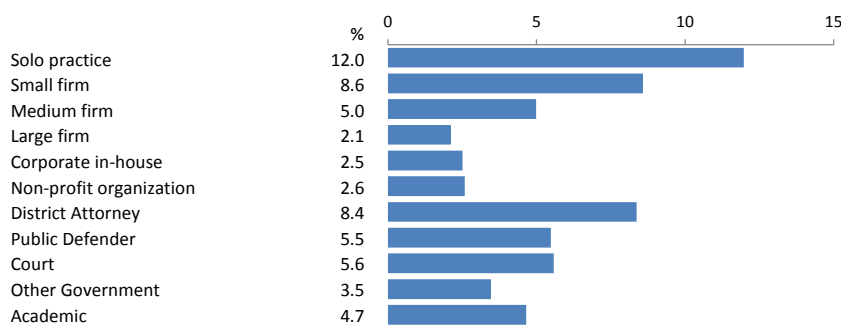
43b. The probability of filing a complaint varying across practice areas

	%
Legal Malpractice	23.8%
Elder Abuse	18.2%
Military Law & Vets Benefits	17.9%
Delinquency	16.7%
Disability Rights	16.6%
Immigration	14.8%
Insolvency	13.6%
Appellate	12.4%
Criminal	11.7%
Probate	11.1%
Real Estate	10.8%
Family	10.7%
Personal Injury	10.3%
Business	8.4%
Workers Compensation	8.1%
Labor Relations	7.7%
Other	6.6%
Dependency	6.0%
Taxation	5.5%
Intellectual Property	4.0%
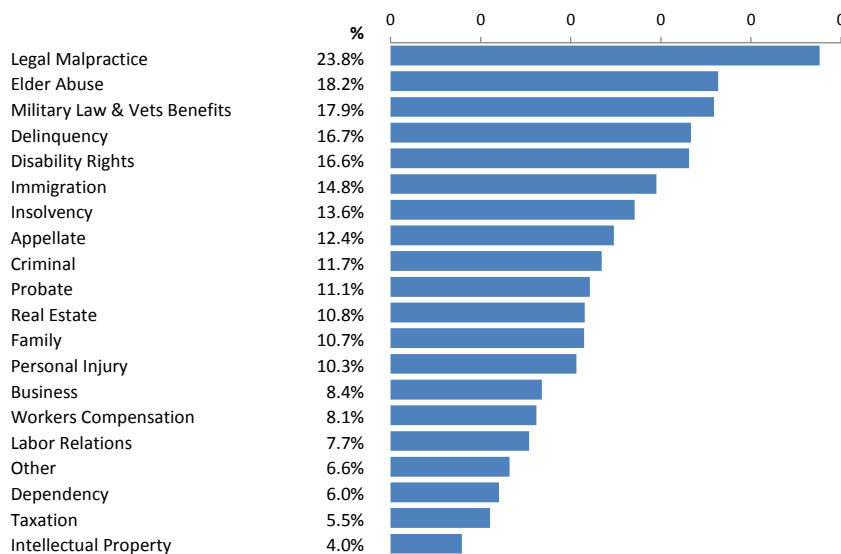
43c. Also showing difference across age groups as measured by the number of years since admitted to the Bar

	%
1-10	2.2
11-20	4.7
21-30	8.0
31-40	10.9
41+	13.1
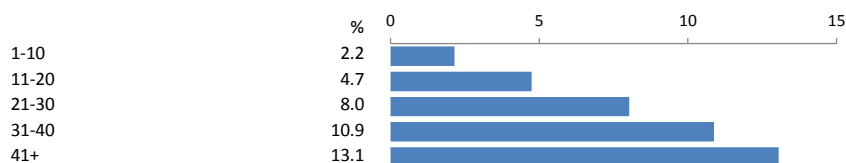
44. Were you informed of the outcome/resolution of your complaint(s)?

	%
Yes	59.9
No	34.0
Other	6.1
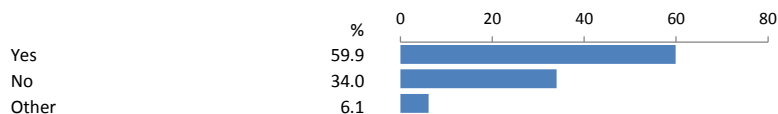
45. Positive Opinion of the Process?*

	%
Yes	37.3
No	50.5
Other	12.2
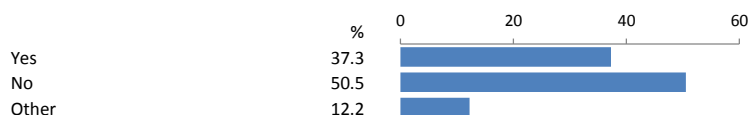
*No difference was found across either employment firm type or age groups as measured by years since admitted to the Bar.

46. What was the final resolution of your complaint?

	%
Don't know	30.5
Closed after investigation w/o discipline	21.3
Closed w/o investigation	18.2
Resolved with discipline	14.9
Resolved with warning	9.2
Has not reached resolution	5.1
Resolved with no discipline after trial	0.9
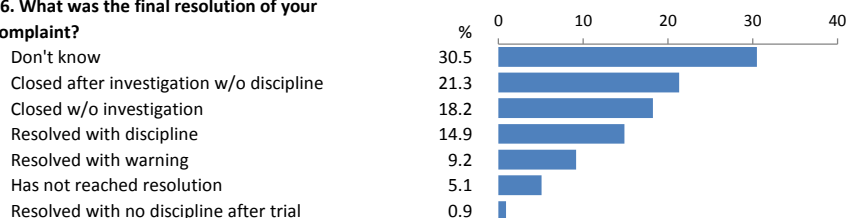
47. Did you attempt to address the misconduct you observed in another way? Percent Yes.   52.9%

Demographics

48. Age of Respondents: average 54, median 55

48a. With significant difference across employment types

	Avg Age
Solo practice	59.6
Academic	53.5
Medium firm	50.6
Small firm	50.3
Large firm	48.9
Corporate in-house	48.3
Other Government	48.1
District Attorney	47.3
Court	47.6
Public Defender	45.8
Non-profit organization	44.8

49. Gender Identify

	%
Female	40.6
Male	56.5
Transgender female	0.1
Transgender male	0.1
Gender variant	0.2
Not listed	0.1
Prefer not to answer	3.0
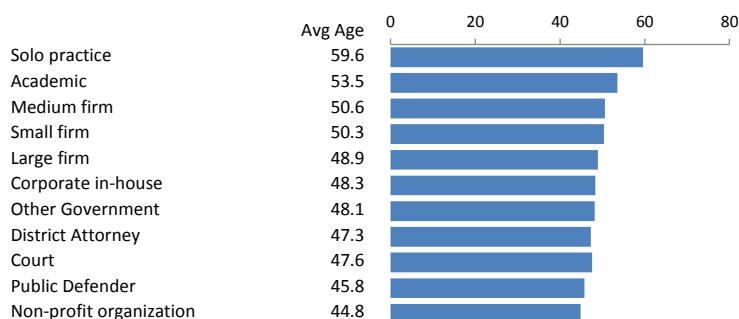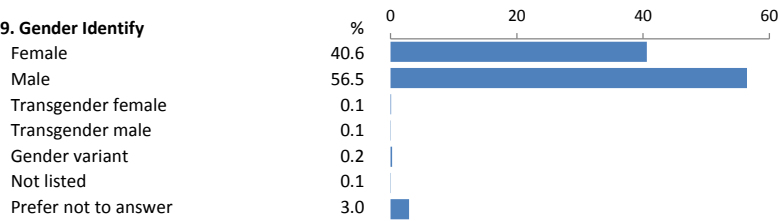
49a. Changing Composition of Gender Identity Groups Over Time (% within age group)

	Number of years Admitted to the Bar					
	1-10	11-20	21-30	31-40	41+	Total
Female	52.7	49.6	44.0	34.3	12.4	40.7
Male	44.7	46.9	52.7	62.4	85.9	56.3
Transgender female	0.1	0.1	0.1	0.0	0.1	0.1
Transgender male	0.1	0.0	0.0	0.1	0.0	0.1
Gender variant	0.6	0.3	0.1	0.1	0.0	0.2
Not listed	0.2	0.0	0.0	0.1	0.0	0.1
Prefer not to answer	2.5	3.1	3.7	3.3	1.9	3.0
Total	100.9	100.2	100.6	100.3	100.2	100.5

50. Sexual Orientation

	%
Heterosexual	86.4
Gay/lesbian	4.4
Bisexual	1.3
Not listed	0.2
Prefer not to answer	7.5
More than one	0.3
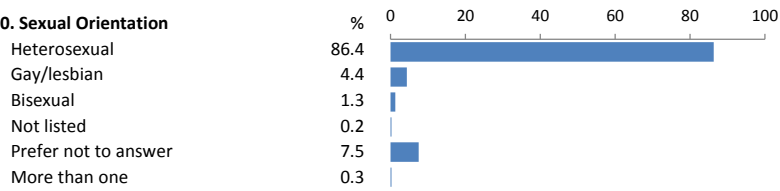
51. Race/Ethnicity Background

	%
White	80.3
Asian	5.9
Hispanic	4.6
More than one	3.4
Other	3.3
Black	1.9
Native Hawaiian	0.3
Am Indian	0.3
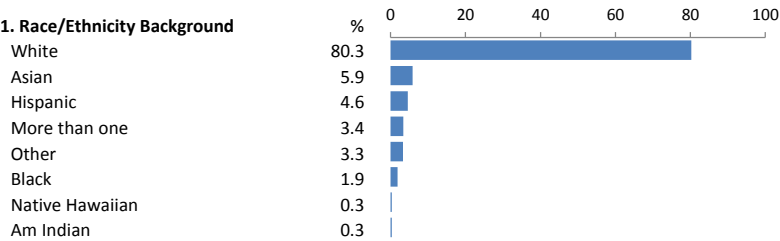
51a. Changing composition of race/ethnicity over time (% within age group)

	Number of years Admitted to the Bar					
	1-10	11-20	21-30	31-40	41+	Total
Am Indian	0.3	0.4	0.2	0.3	0.3	0.3
Asian	10.9	8.4	4.3	2.2	1.1	5.8
Black	2.2	2.3	2.6	1.0	0.7	1.8
Hispanic	6.8	5.7	4.5	2.6	1.4	4.5
Native Hawaiian	0.3	0.7	0.3	0.2	0.1	0.3
White	69.1	75.1	82.8	88.8	94.0	80.8
Other	3.2	3.9	3.4	3.2	1.7	3.2
More than one	7.1	3.5	2.1	1.8	0.7	3.4
Total	100.0	100.0	100.0	100.0	100.0	100.0

51b. Diversity of the legal profession in gender and race/ethnicity has been growing steadily over time.
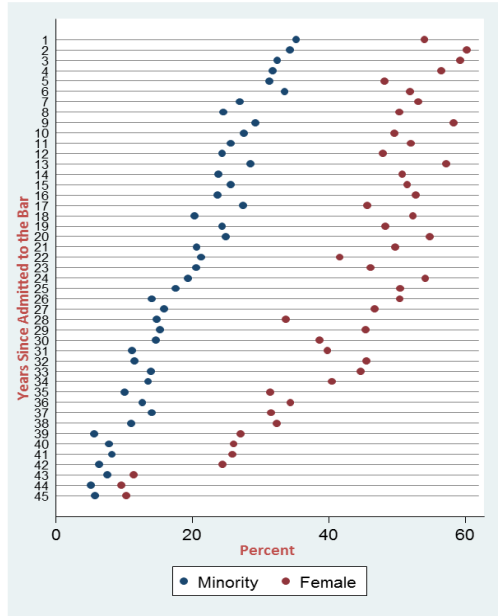
52. What languages other than English do you use in your legal practice?

	%
None	74.3
Spanish	18.3
Other	3.7
French	2.9
Mandarin/Cantonese	2.3
Farsi/Persian	1.0
Russian	1.0
Japanese	0.9
Korean	0.9
Vietnamese	0.7
Armenian	0.6
Tagalog	0.6
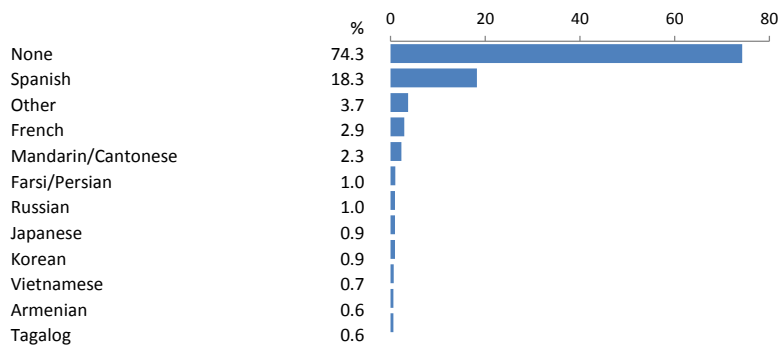
53. Do you belong to any voluntary Bar Association?

	%
Local	46.3
None	45.8
National	19.5
Other	4.0
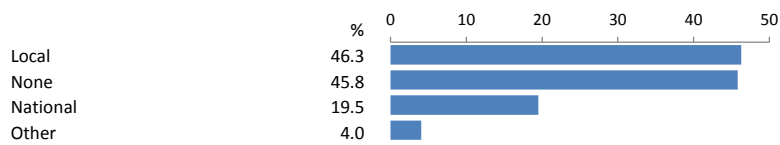
54. I identify as a person with a disability. Percent Yes.   4.5%

55. With a significant disability:

	%
Deaf	59.4
Blind	41.8
W/o use of hands or limbs	6.0
Difficulty walking	4.9
Other	1.9
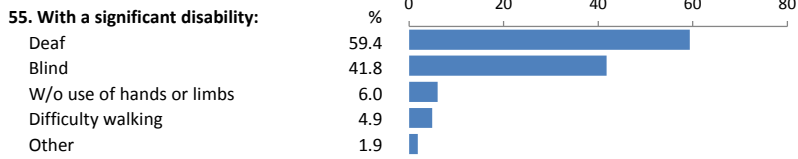
56. How can these disabilities be accommodated in your practice?

	%
Part-time	48.2
Permitting telework	41.8
Modifying physical space	29.5
Modifying workplace policies	24.3
Other	20.7
Job restructuring	16.8
Unpaid leave	13.4
Changing methods of supervisio	10.7
Materials in alternative format	4.3
Reassignment	3.4
Qualified readers or sign langua	1.4
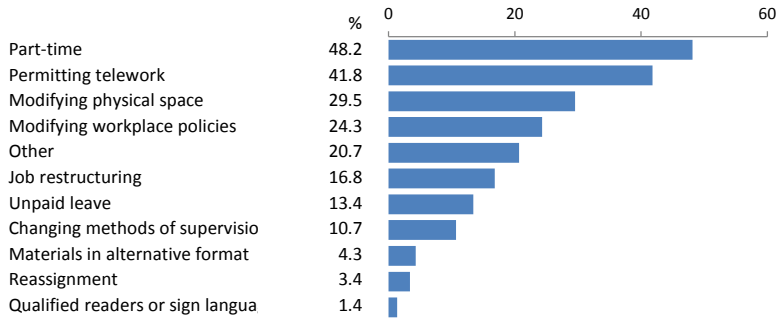
57. Are you a veteran who served in the active military, naval, or air service, and who was honorably discharged?   9.8%

58. Approximate annual income received from legal practice: average $193,000, median $135,000

PR-11-04
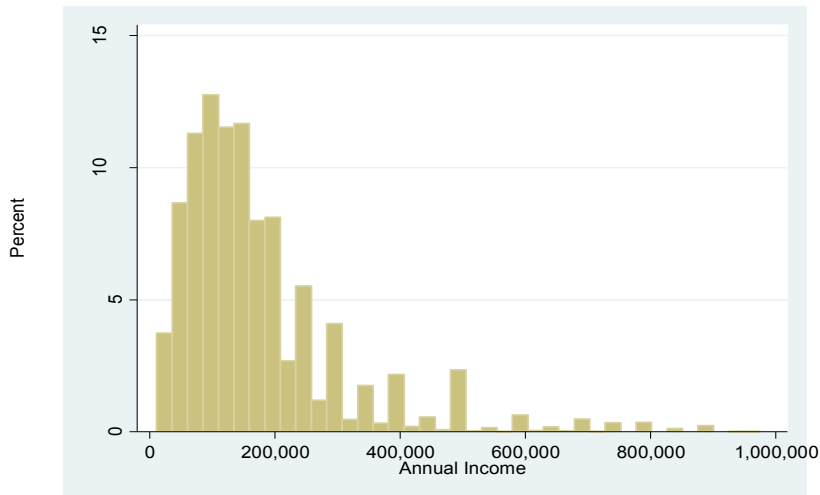
THE ESTIMATED EFFECT ON EXAMINATION QUALITY AND PASSING RATES OF DIFFERENT WAYS OF MODIFYING CALIFORNIA'S BAR EXAMINATION

Stephen P. Klein, Ph.D. & Roger Bolus, Ph.D.
December 12, 2011

Overview

California's General Bar Examination (GBX) is an 18-hour (three-day) test. It consists of the MBE (which is a 6-hour 200-item multiple choice test), a set of six 1-hour essay questions, and two 3-hour Performance Test (PT) questions. This report estimates the likely effects on this exam's quality and passing rate if it was shortened to a two-day test and gave the MBE and written sections equal weight.

Samples

The population for our analyses consisted of all the applicants who took the GBX one or more times between 2001 and 2010. There were 43,832 February and 81,346 applicants in this 20-exam sample for a grand total of over 125,000 applicants. We also analyzed the essay and PT scores of the subset of 20 to 25 applicants who had their answers to each question graded independently by at least ten of the readers assigned to a question; i.e., all the applicants in this sample had their answers to each question graded ten times.[1]

Purposes & Definitions

Our analyses examined how score reliability was affected by: (a) using two or more independent readers per answer, (b) giving the MBE 50% of the weight (instead of the current 35%) in determining an applicant's total exam score, and (c) shortening the written portion of the exam from a two-day 12 hour test to a one day six or seven-hour test. We also examined the percentage of applicants in different racial/ethnic and gender groups whose pass/fail status would be affected by the number and sample of essay and PT questions they answered.

The term "score reliability" in this study refers to the likelihood that applicants would receive the same *score* (as distinct from pass/fail decision) regardless of the particular set of California bar exam essay and PT questions they were asked or the set of readers who graded their answers. For example, an essay test with high score reliability is one where the applicants who earn relatively high scores on one question also tend to earn relatively high scores on the test's other questions. All other things being equal, the higher the score reliability the greater the confidence that can be placed in the results.

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[1] Results with this sample and those who went to reread must be treated very cautiously because they are not random or representative samples of the population of all takers.

"Score reliability" (coefficient alpha) is reported on a 0.00 to 1.00 scale with 1.00 being best. Values less than 1.00 may be due to: (a) some applicants being more proficient in the skills and knowledge needed for some questions while other applicants have a different pattern of expertise, (b) differences among readers in the score they would assign to an answer, and (c) other factors, such as how much scores spread out from the mean. In California, adjusting for the typically small difference in means and standard deviations among readers on a question usually has little or no effect on the written test's score reliability.

"Decision consistency" (which is an especially important characteristic of a licensing test) refers to the stability of pass/fail decisions, such as across different types of tests or versions of a test. Thus, it is a useful index for examining the comparability of different test designs. Decision consistency is highest when: (a) score reliability is high and (b) the passing rate is well above or well below 50%.

Effect of Number of Readings Per Answer on Score Reliability

Score reliability increases as the number of readers per answer increases, but the benefit of additional readers tapers off rapidly. For example, the first row of Table 1 shows that the reliability coefficient for a 6-question essay test in July is 0.06 points higher with two readers than it is with one reader, but adding a third reader results in only a 0.01 improvement over having two readers. In short, the marginal benefit of adding readers disappears quickly (although it seems to be greater for two 3-hour PT questions than for a set of six 1-hour essay questions).

Table 1
Increase in Score Reliability Over a Single Reader as a Function of the Number of Additional Readers per Answer, Type of Question Asked, and Test Month

Number of additional readers	6 Essay Questions			2 PT Tasks	
	February	July		February	July
1	.06	.06		.06	.07
2	.07	.07		.11	.17
3	.07	.08		.13	.17
4	.07	.08		.15	.17
5	.08	.08		.17	.17
6	.08	.08		.18	.17
7	.09	.09		.18	.17
8	.09	.09		.18	.17
9	.10	.09		.18	.17

Applicants have three hours per PT task and an average of one hour per essay question. Results in this table are based on the answers written by the 20 to 25 applicants who had all of their answers graded by all the readers assigned to each question.

The diminishing benefit to improving score reliability by having more than two readers per answer supports California's policy of having a second reading of all the answers written by all the candidates who came close to passing but failed after the initial reading of their answers. In addition, the limited benefit of additional readings suggests that the less than perfect reliability of the written test stems mainly from an interaction between applicants and questions rather than from differences among readers in the scores they would assign to an answer.

The remaining analyses in this report are based on just the first reading of an applicant's answers in the ten-year population of February and July takers. We did this because: (a) not all applicants had their answers read at least twice and (b) which applicants would have their answers read more than once was likely to vary across the different test designs we examined. Thus, the results with these models may underestimate the score reliability that is likely to occur if California continues rereading the answers of those who initially came close to passing.

Reliability of Essay and PT Scores

The mean reliability of a single reading of a set of six 1-hour essay questions in our population of February and July takers was 0.64 and 0.70, respectively. The higher scorer reliability in July than in February may be due at least in part to the greater variance in July scores. In both months, the reliability of the sum of the scores on a single reading of two 3-hour PTs was about 0.52 (based on the Spearman-Brown stepped-up mean correlation of 0.35 between two PT scores).

Procedures for Computing Total Scores

MBE raw scores (i.e., the number of items answered correctly) are converted to scale scores to adjust for possible differences in the difficulty of the questions asked. Essay and PT readers assign scores to answers in 5-point intervals on a 40 to 100-point scale. PT raw scores are then multiplied by 2.00 so that the maximum possible written raw score is 1,000 points. California (like most other states) converts its written raw scores to a score distribution that has the same mean and standard deviation as its MBE scale scores. This step adjusts the reader assigned total raw scores for possible variation in essay and PT question difficulty and grading standards over time. Total scale scores are computed using the formula below. Applicants with total scores of 1440 or higher pass, those in the 1390-1439 zone have all their answers reread, and all others fail.

Total Scale Score = (.35 x MBE Scale) + (.65 x Written Scale)

Except as noted otherwise, the same procedures were used to compute written scale and total scale scores and to determine an applicant's pass/fail status for all the models discussed in the next section of this report.

Modeling Results

Tables 2 and 3 should be used together. Table 2 lists the key features of the models we examined and Table 3 shows their impact on total (MBE + Written) score reliability on February, July, and all exams combined.[2] For example, the only difference between models 1a and 1b is that as per current practice, model 1a weights the written and MBE scores 65% and 35%, respectively. In contrast, model 1b weights them equally. Table 3 shows that this single difference results in a relatively large improvement in score reliability (0.06 in February and 0.05 in July). The benefits of going to 50/50 weighting are consistent with the differences in reliability between models 5a and 5b.

Models 2a and 2b have the same structure, namely: three 1-hour essay questions and one 3-hour PT with the MBE and written sections weighted equally. The only difference between these models is that they use completely different essay and PT questions. The degree of agreement between these models therefore provides an unbiased estimate of their decision consistency and shows the reliability of an exam that is limited to the MBE and a 6-hour written test composed of three 1-hour essay questions and one full 3-hour PT question when the MBE and written portions are weighted equally.

Models 4a and 4b show the results for a two-day exam consisting of five essay questions and one PT. Although these analyses had to rely on data from 3-hour PTs, the results with them are likely to be very close to what would be obtained with 90-minute PTs; i.e., a 6½ hour written test. Models 4a and 4b have higher reliabilities than the current exam (model 1a) as a result of their giving the MBE and written sections equal weight.

Tables 4 and 5 show pass/fail decisions are consistent between various pairs of models. For example, Table 5 shows that in July, 93% of the applicants had the same pass/fail status under Model 2 (a two-day exam with a written component consisting of 3 essay questions and one PT) as they had with the current exam (i.e., a test with twice as many essay and PT questions) provided both exams weighted the written and MBE sections equally.

Table 6 shows that reducing test length does not affect overall passing rates or exacerbate the differences in rates that are typically found among racial/ethnic groups. Assigning equal weights eliminates the difference in passing rates between men and women. In short, _California can implement a two day exam in a way that improves test quality, maintains existing pass/fail standards, and does so without making it more difficult for minority applicants to pass_.

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[2] Total score reliability calculations used MBE score reliabilities of .89 and .91 for the February and July exams, respectively as per the mean values in the MBE's technical reports. Written test reliabilities (coefficient alphas) were based on un-standardized essay raw scores on the first reading.

Table 2
Main Features of the Models Tested

Model	Essay	PT	Written/MBE Weights	Written Time	Model Description
1a	1-6	A & B	65/35	12 hrs	Current model & 65/35 weights
1b	1-6	A & B	50/50	12 hrs	Current but 50/50 weights
2a	1-3	A	50/50	6 hrs	Half of current written exam
2b	4-6	B	50/50	6 hrs	Half of current written exam
3a	1-4	A	50/50	7 hrs	4 1-hr Essays + one 3-hr PT
3b	3-6	B	50/50	7 hrs	4 1-hr Essays + one 3-hr PT
4a	1-5	A	50/50	8 hrs	5 1-hr Essays + one 3-hr PT
4b	2-6	B	50/50	8 hrs	5 1-hr Essays + one 3-hr PT
5a	1-6	None	65/35	6 hrs	6 1-hr Essays 65/35 weights
5b	1-6	None	50/50	6 hrs	6 1-hr Essays 50/50 weights
6	None	A&B	50/50	6 hrs	PT only

Table 3
Total Score Reliability (Coefficient Alpha, decimal points omitted)

Model Number	Test Month(s) February	Test Month(s) July	Test Month(s) All	Model Description
1a	81	85	83	Current model & 65/35 weights
1b	87	90	88	Current but 50/50 weights
2a	80	85	82	Half of current written
2b	80	83	82	Half of current written
3a	82	87	84	4 1-hr Essays + one 3-hr PT
3b	82	86	84	4 1-hr Essays + one 3-hr PT
4a	84	88	86	5 1-hr Essays + one 3-hr PT
4b	84	88	86	5 1-hr Essays + one 3-hr PT
5a	81	85	83	6 1-hr Essays 65/35 weights
5b	86	89	88	6 1-hr Essays 50/50 weights
6	78	80	79	PT only

Table 4
Average Percentage of **FEBRUARY** Applicants with the
Same Pass/Fail Status Under Alternative Models

Model 1a	Model 1b	% Agree
MBE weighted 35% Essays 1-6 in 6 hours PT-A & B in 6 hours Reliability = .81	MBE weighted 50% Essays 1-6 in 6 hours PT-A & B in 6 hours Reliability = .87	95%
Shows unique effect of weighting the MBE 50%		

Model 1b	Mean of Models 2a & 2b	% Agree
MBE weighted 50% Essays 1-6 in 6 hours PT-A & B in 6 hours Reliability = .87	MBE weighted 50% 3 Essays in 3 hours 1 PT in 3 hours Reliability = .80	91%
Models 2a and 2b cut test length in half with MBE weighted 50%		

Model 2a	Model 2b	% Agree
MBE weighted 50% Essays 1-3 in 3 hours PT-A in 3 hours Reliability = .80	MBE weighted 50% Essays 4-6 in 3 hours PT-B in 3 hours Reliability = .80	82%
Same models but completely different written questions in 6 hrs		

Model 3a	Model 3b	% Agree
MBE weighted 50% Essays 1-4 in 4 hours PT-A in 3 hours Reliability = .82	MBE weighted 50% Essays 3-6 in 4 hours PT-B in 3 hours Reliability = .82	86%
Models share 2 of their 4 essay questions in 7 hrs		

Model 4a	Model 4b	% Agree
MBE weighted 50% Essays 1-5 in 5 hours PT-A in 3 hours Reliability = .84	MBE weighted 50% Essays 2-6 in 5 hours PT-B in 3 hours Reliability = .84	88%
Proxy for a 6½ hour written exam (4 essay questions in common)		

Table 5
Average Percentage of **JULY** Applicants with the
Same Pass/Fail Status Under Alternative Models

Model 1a	Model 1b	% Agree
MBE weighted 35% Essays 1-6 in 6 hours PT-A & B in 6 hours Reliability = .85	MBE weighted 50% Essays 1-6 in 6 hours PT-A & B in 6 hours Reliability = .90	96%
Unique effect of weighting the MBE 50%		

Model 1b	Mean of Models 2a & 2b	% Agree
MBE weighted 50% Essays 1-6 in 6 hours PT-A & B in 6 hours Reliability = .90	MBE weighted 50% 3 Essays in 3 hours 1 PT in 3 hours Reliability = .84	93%
Models 2a and 2b cut test length in half with MBE weighted 50%		

Model 2a	Model 2b	% Agree
MBE weighted 50% Essays 1-3 in 3 hours PT-A in 3 hours Reliability = .85	MBE weighted 50% Essays 4-6 in 3 hours PT-B in 3 hours Reliability = .83	85%
Same models but completely different written questions in 6 hrs		

Model 3a	Model 3b	% Agree
MBE weighted 50% Essays 1-4 in 4 hours PT-A in 3 hours Reliability = .87	MBE weighted 50% Essays 3-6 in 4 hours PT-B in 3 hours Reliability = .86	88%
Models share 2 of their 4 essay questions in 7 hrs		

Model 4a	Model 4b	% Agree
MBE weighted 50% Essays 1-5 in 5 hours PT-A in 3 hours Reliability = .88	MBE weighted 50% Essays 2-6 in 5 hours PT-B in 3 hours Reliability = .88	91%
Proxy for a 6½ hour written exam (4 essay questions in common)		

Table 6
Side-By-Side Model Comparison Chart

Total testing time	3 days			2 Days
Written components	6 Essays + 2 PTs			3-4 Essays + 1 PT
Model	Model 1a	Model 1b		Models 2 & 3
Written/MBE weight	65/35	50/50		50/50
Score Reliability				
All Takers	.83	.88		.82 - .84
February	.81	.87		.80 - .82
July	.85	.90		.83 - .87
February Passing Rates				
All February takers	37%	37%		37%
Females	39%	37%		37%
Males	35%	37%		37%
White	41%	42%		42%
Asian	35%	35%		35%
Hispanic	28%	28%		28%
African American	20%	20%		21%
July Passing Rates				
All July takers	53%	54%		54%
Females	55%	54%		54%
Males	52%	54%		54%
White	60%	61%		61%
Asian	49%	49%		49%
Hispanic	40%	40%		41%
African American	24%	25%		25%

Total testing time includes the MBE. Models 2a and 2b use three 1-hour essay questions. Models 3a and 3b use four 1-hour essay questions. Results are based on a single reading of answers on the 10 February and 10 July exams given between 2001 and 2010 (total N = 125,178 candidates). Model 4's February and July passing rates were consistent with Model 1's rates.

Conducting a Content Validation Study for the California Bar Exam

Final Report

October 4, 2017

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Contents

ACS Ventures, LLC – *Bridging Theory & Practice*

Executive Summary

The California Bar Exam recently undertook a content validation study to evaluate the alignment of content and cognitive complexity on their exams to the results of a national job analysis. This study involved gathering judgments from subject matter experts (SMEs) following a standardized process for evaluating examination content, discussing judgments made by the SMEs, summarizing these judgments, and evaluating the representation of content on the examination.

In this process, content validation judgments for the assessments were collected on two dimensions – content match and cognitive complexity. The Written and Multistate Bar Exam (MBE) components of the examination were evaluated for their match to the results of the National Conference of Bar Examiners' (NCBE) 2012 job analysis in terms of content and cognitive complexity as defined by an adaptation of Webb's (1997) Depth of Knowledge (DOK). For the constructed response items (i.e., essay questions, performance task), score points specified in the scoring rubric were evaluated separately to acknowledge the potential for differential alignment evidence (i.e., that different aspects of the scoring criteria may measure different knowledge, skills, or abilities). Because MBE items were not available for the study, the subject areas as described in the publicly available content outline were reviewed and evaluated based on their proportional contribution to the examination.

Summary results suggested that all content on the examination matched with job-related expectations for the practice of law. The cognitive complexity for the written component of the examination as measured by DOK was also consistent with the level of cognitive complexity (e.g., analysis vs. recall) expected of entry-level attorneys. In addition, a review of the content sampling of the examination over time suggests that most content on the examination is consistent with content expected for entry level practice. The sampling plan and the current representation of knowledge and skills when considering the combination of the Written and MBE components of the examination suggest stable representation year to year. This is discussed in more detail in the body of the report. However, there are opportunities for improvement in both the content representation and sampling plan of the existing subject areas.

Results from the judgment tasks and qualitative feedback from panelists also suggested some formative opportunities for improvement in the structure and representation of content on the examination that could be considered. As recommended next steps for the California Bar Examination in its evaluation of its design and content, the results of the gap analysis and feedback from panelists provide a useful starting point for further discussion. Specifically, from the results of the national survey, skills and tasks were generally interpreted as more generalizable than many of the knowledge domains. Given the diversity of subject areas in the law, this is not surprising. At the same time, it may also suggest that a greater emphasis on skills could be supported in the future. To answer this question, further study is warranted. This additional study would begin with a program design that leads to a job analysis for the practice of law in California. As an examination intended to inform a licensure decision, the focus of the measurement of the examination needs to be on practice and not on the education or training programs. Through this combination of program design and job analysis, results would inform and provide evidence for decisions about the breadth and depth of measurement on the examination along with the relative emphasis (e.g., weighting) of different components.

While the results of this study provided evidence to support the current iteration of the examination, there are also formative opportunities for the program to consider in a program redesign. Specifically, the current design and format for the California Bar Examination has been in place for many years. Feedback from the content validation panelists suggested that there are likely subject areas that could be eliminated or consolidated to better represent important areas needed by all entry-level practitioners. From a design perspective, it may be desired to define the components of the examination as a combination of a candidate's competency in federal law, California-specific law, and job-related lawyer skills. Further, if the MBE continues to be included as part of the California Bar Examination, it would be important to be able to review the items on a recently operational form (or forms) of the test to independently evaluate the content and cognitive complexity of the items. If the California is unable to critically review this component of their program, it should prompt questions about whether it is appropriate to continue to include it as part of their examination.

Similarly, such a redesign activity would offer the program an opportunity to evaluate the assessment item types of the examination (e.g., multiple choice, short answer, extended response), scoring policies and practices for human scored elements (e.g., rubric development, calibration, evaluation of graders), alternative administration methods for components (e.g., linear on the fly, staged adaptive, item level adaptive), and alternative scoring methods for constructed response (e.g., automated essay scoring). Advances in testing practices and technologies as well as the evolution of the practice of law since the last program design activity suggest that this interim study may facilitate additional research questions. As an additional resource about the current practices within credentialing programs, interested readers are encouraged to consult Davis-Becker and Buckendahl (2017) or Impara (1995).

For licensure examination programs, in terms of evidence to define content specifications, the primary basis for evidence of content validity come from the results of a job analysis that provides information about the knowledge, skills, and abilities for entry-level practitioners. Although the results of the 2012 NCBE job analysis were used for this study, it would be appropriate for the program to conduct a state-specific study as is done for other occupations in California to then be used to develop and support a blueprint for the examination. The specifications contained in the blueprint are intended to ensure consistent representation of content and cognitive complexity across forms of the examination. This would strengthen the content evidence for the program and provide an opportunity for demonstrating a direct link between the examination and what occurs in practice. These two activities – program design and job analysis – should be considered as priorities with additional redevelopment and validation activities (e.g., content development, content review, pilot testing, psychometric analysis, equating) occurring as subsequent activities.

Recognizing the interrelated aspects of validation evidence for testing programs, it is valuable to interpret the results of this study and its potential impact on the recently conducted standard setting study for the California Bar Examination. Specifically, the results of the content validation study suggested that most of the content on the examination was important for entry level practice without substantive gaps in what is currently measured on the examination compared with what is expected for practice. However, if the examination is revised in the future, it would likely require revisiting the standard setting study.

The purpose of this report is to document who was involved in the process, processes that were used, results of the content validation study, conclusions about content validity of the examination, and recommendations for next steps in the examination development and validation process.

Introduction

The purpose of licensure examinations like the California Bar Exam is to distinguish candidates who are at least minimally competent from those that could do harm to the public (i.e., not competent). This examination purpose is distinguished from other types of exams in that licensure exams are not designed to evaluate training programs, evaluate mastery of content, predict success in professional practice, or ensure employability. As part of the validation process for credentialing examinations, a critical component includes content validation (see Kane, 2006). Content validation involves collecting and evaluating evidence of alignment of content (e.g., knowledge, skills, abilities) and cognitive processing (e.g., application, analysis, evaluation) to established job-related knowledge, skills, abilities, and judgments. Substantive overlap between what is measured by the examination and what is important for entry level practice is needed to support an argument that the content evidence contributes to valid scores and conclusions.

Current Examination Design

The California Bar Exam is built on multiple components intended to measure the breadth and depth of content needed by entry level attorneys. Beginning with the July 2017 examination, these components include the Multistate Bar Exam (MBE) (175 scored and 25 unscored multiple-choice questions), five essay questions, and a performance task. The combined score for the examination weights the MBE at 50% and the written response components at 50% with the performance task being weighted as twice as much as an essay question.[1] A decision about passing or failing is based on the compensatory performance of applicants on the examination and not any single component. This means that a total score is used to make decisions and no one question or task is determinant of the pass/fail determination.

Study Purpose

The purpose of this study was to evaluate the content representation and content complexity of the California Bar Examination in comparison with the results of a job analysis conducted by the National Conference of Bar Examiners (NCBE) in 2012. To collect the information to evaluate these questions, Dr. Chad Buckendahl of ACS Ventures, LLC (ACS) facilitated a content validation workshop on June 6-8, 2017 in San Francisco, CA. The purpose of the meeting was to ask subject matter experts (SMEs) to make judgments about the content and cognitive complexity of the components of the California Bar examination.

This report describes the sources of validity evidence that were collected, summarizes the results of the study, and evaluates the results using the framework for alignment studies suggested by Davis-Becker and Buckendahl (2013). The conclusions and recommendations for the examination program are based on this evaluation and are intended to provide summative (i.e., decision making) and formative (i.e., information for improvement) feedback for the California Bar Examination.

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[1] Before July 2017, the written section of the bar exam was weighted 65 percent of the total score and consisted of six essay questions and two performance test questions administered over two days.

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Procedures

The content validation approach used for the study relies on the content and cognitive complexity judgments suggested by Webb (1997). In this method, panelists make judgments about the cognitive complexity and content fit of exam items or score points relative to content expectations. For this study, those content expectations were based on the 2012 NCBE job analysis supplemented by links to the U.S. Department of Labor's O*NET[2] regarding lawyers that was updated in 2017.

A job analysis is a study often conducted every five to seven years to evaluate the job-related knowledge, skills, and abilities that define a given profession. Conducting a job analysis study for a profession can often take 9-12 months to complete. In using the results from the NCBE study as a reference point, these data were within the typical range for conducting these studies and it was a readily available resource given the timeline under which the California Bar Exam was asked to provide evidence of content validation of its examination.

Panelists

Ten panelists participated in the workshop and were recruited to represent a range of stakeholder groups. These groups were defined as Recently Licensed Professionals (panelists with less than five years of experience), Experienced Professionals (panelists with ten or more years of experience), and Faculty/Educator (panelists employed at a college or university). A summary of the panelists' qualifications is shown in Table 1.

Table 1. Profile of content validation workshop panel

Race/Ethnicity	Freq.	Percent
Asian	1	10.0
Black	2	20.0
Hispanic	1	10.0
White	6	60.0
Total	10	100.0

Gender	Freq.	Percent
Female	5	50.0
Male	5	50.0
Total	10	100.0

Years of Practice	Freq.	Percent
5 Years or Less	2	20.0
>=10	8	80.0
Total	10	100.0

Nominating Entity	Freq.	Percent
ABA Law Schools	2	20.0
Assembly Judiciary Comm.	1	10.0
Board of Trustees	1	10.0
BOT – COAF[3]	3	30.0
CALS Law Schools	1	10.0
Registered Law Schools	1	10.0
Senior Grader	1	10.0

Employment type	Freq.	Percent
Academic	3	30.0
Large Firm	2	20.0
Non Profit	1	10.0
Small Firm	1	10.0
Solo Practice	3	30.0

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[2] The O*NET is an online resource when evaluating job-related characteristics of professions. See https://www.onetonline.org/ for additional information.
[3] Council on Access & Fairness.

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Total	10	100.0	Total	10	100.0

Workshop Activities

The California Bar Exam content validation workshop was conducted June 6-8, 2017 in San Francisco, CA. Prior to the meeting, participants were informed that they would be engaging in tasks to evaluate the content and cognitive complexity of the components of the California Bar Examination. The content validation process included an orientation and training followed by operational alignment judgment activities for each essay/performance task and MBE subject area, as well as written evaluations to gather panelists' opinions of the process. Workshop orientation and related materials are provided in Appendix B.

Orientation

The meeting commenced on June 6th with Dr. Buckendahl providing a general orientation and training for all panelists that included the goals of the meeting, an overview of the examination, cognitive complexity levels, and specific instructions for panel activities. Additionally, the orientation described how the results would be used by policymakers and examination developers to evaluate the current structure and content representation of the examination.

Specifically, the topics that were discussed in the orientation included:

- The interpretation and intended use of scores from the California Bar Exam (i.e., licensure)
- Background information on the development of the California Bar Exam
- Summary results of the NCBE job analysis and O*NET descriptions
- Purpose of alignment information for informing validity evidence

After this initial orientation, the panel was trained on the alignment processes that were used. This training included discussions of the following:

- Cognitive complexity framework – understanding each level, evaluating content framework
- Content match – evaluating fit of score points or subject areas to job-related content
- Decision making process – independent review followed by group consensus

After the training, the panelists began making judgments about the examination. Their first task involved making judgments about the intended cognitive complexity of the knowledge, skills, abilities, and task statements from the 2012 NCBE job analysis. The cognitive complexity framework used for this study was an adaptation of Webb's (1997) Depth of Knowledge (DOK) for a credentialing exam. The DOK levels represent the level of cognitive processing associated with performing a task or activity. Lower DOK levels correspond to cognitive processes such as recall or remembering while higher levels correspond to application of knowledge, analysis, or evaluation. Within Webb's (1997) framework, Level 1 is defined as recall and reproduction, Level 2 is defined as working with skills and concepts, Level 3 is defined as short-term strategic thinking, and Level 4 is defined as extended strategic thinking. For this study, Level 1 was defined as recall or memorization, Level 2 was further clarified as representing the understanding and application level of cognitive process, Level 3 was defined as analysis and evaluation, and Level 4 was defined as creation of new knowledge.

Within psychological measurement, the depth of cognitive processing is considered in combination with the content to ensure that the claims made about candidates' abilities are consistent with the target construct. The DOK framework is one of many potential scales that can be used to evaluate this aspect of content.

Another commonly used model comes from Bloom (1956) and defines cognitive processes being knowledge, comprehension, application, analysis, synthesis, and evaluation. The inclusion of cognitive complexity as a consideration in the evaluation of the content validity of the California Bar Exam is important because it provides information on not only *what* may be needed on the examination, but *at what cognitive level* should candidates be able to function with the content. Procedurally, after rating the DOK of the first few statements as a group, panelists made judgments independently followed by consensus discussions. This consensus judgment was then recorded and used for the subsequent analysis.

Content Validity Judgments

Although characterized as "content," content validation is inclusive of judgments about both cognitive complexity and content match. After a review of the knowledge and task statements from the job analysis, the panelists began reviewing the components of the examination. For these components, panelists made independent judgments regarding the content match with the results of the NCBE job analysis. To calibrate the group to the process and the rating tasks, some of the judgments occurred as a full group facilitated discussions with other judgments occurring independently followed by consensus discussions. At key phases of the process panelists completed a written evaluation of the process including how well they understood the alignment tasks, their confidence in their judgments, and the time allocated to make these judgments.

On the first day, panelists reviewed and determined the cognitive complexity levels of each knowledge and task statement of the job analysis. This activity was done to establish the expected depth of knowledge (DOK) associated with the respective knowledge, skill, and ability (KSA). A summary of the results from these judgments suggested that most KSAs were judged to be at Levels 2 and 3 of the DOK framework. This means that most of the California Bar Examination is expected to measure candidates' abilities at levels beyond recall and memorization, specifically at the understanding, application, analysis, and evaluation levels. As shown below in Table 2, the current examination illustrates measurement expectations consistent with these expectations.

On the second day, the panel began making alignment judgments on the essay questions with the first one occurring as a full group activity. This was then followed by dividing up the task to have two subgroups each evaluate two essay questions and come to consensus on the judgments. After completing judgments on the essay questions, the full group then reviewed the expected content and DOK for the performance task and discussed the representation of content/skills. The third day then involved a full group facilitated discussion where judgments about the representation of domains of the MBE examination to evaluate proportional contribution to the overall content representation.

These judgment activities were followed by a facilitated discussion about content that could be measured on the examination that was not discussed (e.g., subject areas that were measured in other years). A related part of this brief discussion was where content that is eligible for sampling on the California Bar Exam may be more appropriately represented (e.g., Bar Examination, MCLE). These results are included in the evaluation section of this report, but should not be interpreted as a program design or redesign activity. The inclusion of this part of the study responded to a request to gather some high-level information as a starting point for additional exploration of how the California Bar Examination should be defined and structured.

Analysis and Results

The content validation findings are intended to evaluate the following questions:

- What is the content representation of the California Bar Exam essay questions, performance task, and MBE subject areas relative to the knowledge and task statements of the NCBE job analysis?
- What knowledge and task statements from the NCBE job analysis are NOT covered by the California Bar Exam?
- What California Bar Exam content does NOT align with the knowledge and task statements of the NCBE's 2012 job analysis?

There are currently 13 subject areas that can be sampled on the written portion of the California Bar Exam. This means that not all subject areas can be included each year and need to be sampled over time. To answer these content validation questions, the proportional contribution (i.e., percentage) of each exam component was estimated to approximate the distribution of content for the examination. This distribution is influenced by the sampling of content that occurs on the examination each year. As noted, each of the 13 subject areas cannot be included each year, so the content specifications require sampling to occur over multiple years.

For example, if a Real Property essay question is included for an examination, we would expect to see greater representation of the Real Property subdomain relative to years where this subject area is not included as part of the sampling plan. This is also why consideration was given to the content sampling plan for the program and not any single year. To apply a content sampling approach, it is important that the examination meet an assumption of unidimentionality (i.e., there is a dominant construct that is measured by the exam). If this assumption is met, then the variability of content year-to-year does not pose a significant threat to the validity of interpretations of the scores, even if there is an intuitive belief about what content should or should not be on the examination.

To illustrate the effect of the content sampling over time, it is important to understand what parts of the examination are constant versus variable across years. With the weighting of the exam beginning in July 2017 being 50% from the Multistate Bar Exam (MBE) and 50% from the written component (i.e., essay questions and performance task, we can calculate how much each part of the examination contributes to the whole. This breakdown is shown here:

Multistate Bar Exam (50%)

- The MBE is comprised of seven subject area sections, each with 25 scored questions. This means that each of these sections contributes approximately 7% to the total score (i.e., 1 section divided by 7 total sections and then multiplied by 50% to reflect that the MBE is only half of the exam).

- The blueprint for the MBE is fixed, meaning that the same seven content areas are measured each year. Therefore, the representation of content from this exam is consistent year-to-year until any changes are made to the blueprint.

Written Component (50%)

- The written component of the examination is comprised of five essay questions and one performance task that is weighted twice as much as one essay question. This means that for the written component, each of the five essay questions represent approximately 7% of the total score and the performance task represents approximately 14% of the total score (i.e., 1 essay

question divided by 7 total scoring elements [the performance task is calculated as 2 divided by 7 total scoring elements to reflect the double weighting] and then multiplied by 50% to reflect that the written component is only half of the exam.

- The blueprint for the written component is fixed with respect to the number of essay questions and performance task, but there is content sampling that occurs across the 13 subject areas currently eligible for selection. However, one of these subject areas, Professional Responsibility, is represented each year on the examination. Additional discussion about the potential impact of content sampling is discussed below.

The summary matrix in Table 2 represents the combination of information from the cognitive complexity ratings (reflected as Depth of Knowledge levels) in addition to the proportion of aligned content. For efficiency, the results are included for areas of content that were judged to align. Note that there were no components or subcomponents of the California Bar Exam that did not align with knowledge and task statements from the job analysis. There were, however, some areas suggested by the job analysis that could be considered in future development efforts by the Bar Exam that are discussed in the Conclusions and Next Steps section of this report.

Additional explanation is needed for readers to interpret the information presented in Table 2. Within the table, the first two columns refer to the knowledge, skills, abilities, or general tasks that were part of the summary results from the NCBE job analysis. Information in the third column relies on a coding scheme where K-1 refers to the first knowledge statement, S-1 refers to the first skill statement, A-1 refers to the first ability statement, T-1 refers to the first task statement in the O*NET framework. Other links within this framework will associate a letter and numerical code to the appropriate statement (e.g., K-2 refers to the second knowledge statement, T-3 refers to the third task statement). This information is provided to illustrate alignment with a concurrent source of evidence regarding knowledge, skills, abilities, and tasks that may be representative of entry-level practice. For interested readers, the narrative descriptions of these links to the O*NET that were used by panelists are provided in Appendix B.

The Statement DOK column provides information about the expected cognitive complexity for entry-level lawyers on the given knowledge, skill, ability, or task statement with lower numbers being associated with lower levels of cognitive complexity on the 1 (recall or memorization), 2 (understanding and application), 3 (analysis and evaluation) and 4 (creation) scale described above.

In the last three columns of Table 2, information about the estimated percent of the examination that was represented by content on the July 2016 administration with an important caveat. Because the goal of the content validation study was to evaluate the content representation that may occur on the California Bar Examination based on the new examination format that began in July 2017, we selected five essay questions and a performance task as representative of how an examination could be constructed without regard to specific content constraints (i.e., specific subject areas that may be included). This means that the interpretation of the results is dependent on the content sampling selected for the study. This concept is further discussed in the next section.

As described above, to calculate the percentage of coverage for a given content area, we first applied the weights to the respective components of the examination (i.e., 50% for the essays and performance task [written] component, 50% for the multistate bar exam [MBE]). We then calculated the proportion of each subsection within a component based on its contribution to the total score. For example, each essay question

is weighted equally with the performance task weighted twice as much as an essay question. This means that within the written component, there are six questions where one of the questions is worth twice as much. Proportionally, this means that each essay question is worth approximately 14% of the written component score whereas the performance task is worth approximately 28% of the written component score.

However, because the written component only represents half of the total test score, this means that these percentages are multiplied by 50% to determine the weight for the full examination (i.e., approximately 7% for each essay question, 14% for the performance task). The same calculation was applied to the seven equally weighted sections of the MBE. Ratings from panelists on each of the essay questions, performance task, and the content outline from the MBE were communicated as consensus ratings and based on proportional contributions of knowledge, skills, and abilities. These proportions could then be analyzed as weights based on the calculations described above to determine the component and overall content representation.

Table 2. Consolidated content validation results with approximate percentage of representation.

| | Knowledge, Skills, Abilities and Tasks from the NCBE Job Analysis Survey | Link to O*NET | Statement DOK | % of Exam | | |
				Essays and PT	MBE	Total
Section I. Knowledge Domains[4]						
1	Rules of Civil Procedure	K-1	2	4%	4%	7%
2	Other Statutory and Court Rules of Procedure	K-1	1	-	4%	4%
3	Rules of Evidence	K-1	2	-	7%	7%
10	Contract Law[5]	K-1	2	3%	7%	10%
11	Tort Law	K-1	2	-	4%	4%
12	Criminal Law	K-1	2	-	7%	7%
13	Rules of Criminal Procedure[6]	K-1	2	-	-	0%
14	Other Privileges[7]	K-1	2	-	-	0%
15	Personal Injury Law	K-1	1	-	4%	4%
19	Principles of Electronic Discovery[8]	K-1	1	1%	-	1%
20	Real Property Law	K-1	2	3%	7%	10%
21	Constitutional Law[9]	K-1	2	3%	7%	10%

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[4] Note that a current content constraint of the examination is that Professional Responsibility and Ethics is represented on each form of the test. When this content area is included it would reduce the representation of another content area that would be sampled.

[5] MBE content for this area was also judged to partially align with Real Property.

[6] MBE content for this area was also judged to partially align with Criminal Law and Procedure.

[7] MBE content for this area was also judged to partially align with Evidence.

[8] MBE content for this area was also judged to partially align with Civil Procedure.

[9] MBE content for this area was also judged to partially align with Civil Procedure, Criminal Law and Procedure, and Torts.

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24	Family Law	K-1	2	3%	-	3%
Section II. Skills and Abilities						
87	Written communication	S-9, A-5	3	4%	-	4%
93	Critical reading and comprehension	S-3, A-3	3	3%	-	3%
94	Synthesizing facts and law	A-7	3	8%	-	8%
95	Legal reasoning	A-6, A-7	3	15%	-	15%
100	Issue spotting	S-5	3	1%	-	1%
108	Fact gathering and evaluation	S-5	3	2%	-	2%
Section III. General Tasks						
123	Identify issues in case	T-1, T-12	2	2%		2%
	Total			50%	50%	100%[10]

As shown in the footnotes of Table 2, there were areas of the MBE that could represent additional areas of content. However, the extent of that alignment is unknown because we did not have access to the actual test items; only the publicly available content outline. As a result, this report includes the judgments from the panel as a reference point for future study if the actual forms of the MBE are available for external evaluation in the future. To avoid speculation for this report, we did not estimate the potential contribution of these additional areas and only noted them.

Content Sampling Across Years

As noted above, the written component of the examination currently samples from 13 subject areas. Table 3 shows the number of times that each of these subject areas has been represented by essay questions over the last decade. This information is useful to evaluate whether the content emphasis is consistent with the subject areas that have been judged as more or less important in the practice analysis. In noting that one of the subject areas, Professional Responsibility, is sampled every year, we would expect some variability in the other four essay questions as subjects are sampled across years. Note that the performance is not related to the subject area and focuses specifically on lawyer skills, so the proportional measurement of these abilities also appears to be consistent across years.

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[10] Note that totals for each component of the examination and overall will not equal 100% due to rounding.

Table 3. Representation of subject areas from 2008-2017 (n=20 administrations).

Subject area	Frequency of representation[11]	Rating of significance[12]	Percent Performing[13]
Professional Responsibility	19	2.83	93%
Remedies	12	N/A[14]	N/A
Business Associations	11	2.33	67%
Civil Procedure	10	3.08	86%
Community Property[15]	10	2.23	53%
Constitutional Law	10	2.29	76%
Contracts	10	2.67	84%
Evidence	10	3.01	81%
Torts	10	2.50	61%
Criminal Law and Procedures	9	2.50/2.47[16]	54%/54%
Real Property	9	2.30	56%
Trusts	7	1.95	44%
Wills	7	2.21	46%

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[11] Frequency is defined as the number of times a subject area was represented as a main or crossover topic on the California Bar Examination from 2008-2017.

[12] Ratings are based on the average Knowledge Domain ratings for the 2012 NCBE Job Analysis study on a scale of 1 to 4 with values closer to 4 representing more significant content.

[13] Ratings are based on the percentage of respondents indicating that they perform the knowledge for the 2012 NCBE Job Analysis study. Values range from 0% to 100% with higher percentages indicating that more practitioners perform the knowledge.

[14] Remedies does not align with a single Knowledge Domain because it crosses over multiple, substantive areas of practice in law.

[15] Community Property was interpreted to be part of Family Law.

[16] Criminal Law and Procedures were asked as separate Knowledge Domain statements. Each significance rating is included.

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For the essay questions in this study, panelists judged each one as measuring approximately 50% of the subject area knowledge (e.g., real property, contracts) and 50% of lawyer skills (e.g., application of law to facts, analysis, reasoning). This means that for a given essay question, the measurement of the subject area knowledge represents approximately 3.6% of the total examination (i.e., each essay question contributes approximately 7% to the total score (7.14% to be more specific), so if 50% of this is based on the subject area, 7% multiplied by 50% results in approximately 3.6% of the measurement being attributable to the subject area).

Knowing that the current sampling plan includes Professional Responsibility effectively yearly along with the performance task, this means that subject area sampling only applies to the four essay questions that may represent a different subject area year-to-year. In aggregate, this means that the potential variability in the measurement of the examination across years is approximately 14%-15% (i.e., 3.6% multiplied by the 4 essay questions). Another way to communicate these results is to say that 85%-86% of the measurement of the examination remains constant across years. This suggests that what is being measured on the examination remains stable.

In addition, the relationship between the emphasis of the subject areas in Table 3 as represented by the frequency of occurrence, the average significance rating, and the percent performing provides some information that will inform future examination redevelopment. Specifically, the correlation between the frequency of subject areas being represented on the examination and the average significance rating was 0.48 while the correlation between the frequency of subject area representation and percent performing was 0.70. The correlation between the significance of the topic and the percent performing was 0.83. However, these results should not be over-interpreted based on the limited number of observations (n=12). These results suggest that there is moderate relationship between the content sampling and evidence of importance of subject areas to entry level practice. However, there are likely opportunities to further align the content sampling with subject areas that were rated as more or less significant for entry-level practice.

Evaluating the Content Validation Study

To evaluate the content validation study, we applied Davis-Becker and Buckendahl's (2013) framework for alignment studies. Within this framework, the authors suggested four sources of evidence that should be considered in the validation process: procedural, internal, external, and utility. If threats to validity are observed in these areas, it will inform policymakers' judgments regarding the usefulness of the results and the validity of the interpretation. Evidence within each area that was observed in this study is discussed below.

One important limitation of the study that could pose a threat to the validity of the results is the lack of direct evidence from the MBE. Content validation studies generally involve direct judgments about the characteristics of the examination content. Because examination items (i.e., questions) from the MBE were not available for the study, panelists were asked to make judgments about the content evidence from publicly available subject matter outlines provided by the NCBE. There is then assumption that items coded to these sections of the outline align as intended. However, these assumptions should be directly reviewed. Because

California is using scores from the MBE as an increasingly important component of its decision-making process, it is reasonable to expect that NCBE make forms of the test available for validation studies.[17]

Procedural

Procedural evidence was available when considering panelist selection and qualifications, choice of methodology, application of the methodology, and panelists' perspectives about the implementation of the methodology. For this study, the panel that was recruited represented a range of stakeholders: both newer and more experienced attorneys as well as representatives from higher education. Because content validation judgments are more objective in nature (i.e., what does this question measure) as opposed to making standard setting judgments (e.g., how would a minimally competent candidate perform), there are fewer criteria needed with respect to panelist selection other than that they were knowledgeable about the content and familiar with the population of examinees. Again, this was not an activity to determine what *should* be on the examination, but rather, what *is* currently being measured by the examination.

In selecting the methodology for the study, alternative designs were considered. One design could have had panelists making judgments about whether the content and cognitive complexity of the components of the examination were appropriate for entry-level practice. The risk in this approach is the diverse opinions represented by stakeholder groups without a common reference point or link to evidence of what occurs in practice. This type of evidence is typically available following a practice analysis and is then used to build a blueprint from which examination forms are constructed. At that point, such a design could have been implemented because the common reference point would have been the blueprint that was developed with a clear link to practice. However, this information was not available; therefore, this design would have been inappropriate and would have only highlighted individual panelists' opinions or biases (e.g., practitioners' preference for content that aligns with their respective area(s) of practice, high education representatives' preference for content that aligns with their curriculum).

To have a common reference point for panelists to evaluate the alignment of content, we selected the summary results from the 2012 NCBE job analysis study. These results were derived from a national survey that collected information about the knowledge, skills, abilities, and tasks of lawyers. Although the results were not specific to California, it is reasonable to expect that these results would generalize to expectations for attorneys in California. So, the design that included this information along with the evidence from the U.S. Department of Labor's O*NET provided concurrent evidence of the characteristics of attorneys in practice.

For the rating activities, essay questions and the performance task are based on scoring considerations that include multiple traits. Therefore, panelists were asked to breakdown the scoring to proportionally align the parts of these questions that matched with different knowledge, skills, or abilities. To have only evaluated the questions holistically would not have revealed the differential content representation. Given the constructed response aspects of the essay questions and performance task, the methodology and rating tasks were consistent with the types of questions and judgments that could be provided.

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[17] For security reasons and to protect the integrity of the empirical characteristics of operational questions, NCBE only makes available practice questions or "retired" questions, but not the entire exam from a specific administration.

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With respect to the process evaluation, panelists' perspectives on the process were collected and the evaluation responses were consistently positive suggesting that they understood the process and were confident in their judgments about the content validity. In addition, panelists provided comments about aspects of the process that could be improved. This feedback did not threaten the validity of the results, but does inform some of the suggested next steps for the program.

Internal

The internal evidence for content validation studies can be evaluated by examining the consistency of panelists' ratings and the convergence of the recommendations. One approach to content validity studies is to use one or more rating scales where panelists rate individual questions or score points on different criteria (Davis-Becker & Buckendahl, 2013). Decision rules can then be applied to analyze and evaluate the results along with calculating levels of agreement among the panelists. However, this methodology is often more appropriate with more discrete items.

For this study, the rating tasks and decision rules were based on consensus judgments that occurred based on discussions among panelists following individual ratings. This approach is more qualitative in nature and was selected based on the types of assessment items and corresponding scoring criteria/rubrics that were evaluated (i.e., constructed response) along with the lack of an opportunity for direct judgments on items on the MBE. Although the results should not be interpreted as unanimous support by the panelists, consensus was achieved for the content and cognitive complexity rating tasks.

External

The primary source of external evidence for the study was based on the results of 2012 NCBE job analysis as an indicator of suggested content for entry level practice based on a nationally representative sample of practitioners. In addition, links to the U.S. Department of Labor's O*NET that was updated for lawyers in 2017 were also included to provide another source. The summary results of the NCBE job analysis study included ratings of knowledge, skills, abilities, and tasks.

There is an important caveat to note about NCBE's study. Specifically, because the study was designed and implemented as a task inventory (i.e., a list of knowledge, skills, abilities, and tasks) rather than competency statements, there were many statements that were redundant, overlapping, or that could be consolidated or subsumed within other statements. This means that an activity such as preparing a memo for a client was broken down into its component parts (e.g., critical reading and comprehension, identifying the primary question, distinguishing relevant from irrelevant facts, preparing a written response) were listed as separate statements when these part of the same integrated, job related task. More important, the scoring criteria or rubric would not distinguish these elements and would instead allocate points for skills such as identifying and applying the appropriate legal principles to a given fact pattern or scenario; or drawing conclusions that are supported with reasoning and evidence.

However, the value of the job analysis study is that it served as a common, external source against which to evaluate the content and cognitive complexity of the California Bar Examination. A lack of overlap in some areas should not be interpreted as a fatal flaw due to the design of the job analysis. The results can be used to inform next steps in evaluating validity evidence for the program.

Utility

Evidence of utility is based largely on the extent to which the summative and formative feedback can be used to inform policy and operational decisions related to examination development and validation. The summative information from the study suggests that the content and cognitive complexity as represented by content of the examination are consistent with expectations for entry level attorneys when compared with the highly rated knowledge, skills, and abilities of the 2012 NCBE job analysis.

However, whether the proportional contribution of this content (i.e., the percentage of representation of the range of knowledge, skills, abilities) is being implemented as intended is a question that would need to be evaluated as part of the next steps for the program. The intended representation of content for a credentialing examination is generally informed by a job analysis (also sometimes called a practice analysis or occupational analysis, see Clauser and Raymond (2017) for additional information).

These studies often begin with a focus group or task force that defines the knowledge, skills, and abilities for the target candidate (e.g., minimally competent candidate, minimally qualified candidate) to create task or competency statements. These statements are then typically compiled into a questionnaire that is administered as a survey of practitioners to evaluate the relative emphasis of each statement for entry level practice. The results from the survey can then be brought back to the focus group or task force to discuss and make recommendations to the appropriate policy body about the recommended weighting of content on the examination. This weighting is communicated through an examination blueprint that serves as the guide for developing examinations for the program.

The formative information from the panelists' ratings for the individual essay questions and performance task can be evaluated internally to determine whether this is consistent with expectations. For example, if the panelists judged a question to require a candidate to demonstrate knowledge of a subject area as representing 50% of the measurement the question with the other 50% representing skills, the internal evaluation would ask the question of whether this was intended. This intent is evaluated through the design of the question, the stimulus material contained in it, the specific call of the question for the candidate, and the scoring criteria or rubric associated with the question. The information from this study provided evidence to the program of what is currently being measured by the California Bar Examination, but does not conclude whether this is the information that should be measured on the examination. That type of determination would be a combination of information from a job analysis in concert with discussions about the design.

In addition, the panelists' qualitative discussions about potential structural changes to the examination or whether some content is more appropriate as part of continuing education will be useful for policymaker deliberations and examination development purposes. The summary of this discussion is included as part of comments in Appendix C. However, because this was not a primary goal of the study, this information should be interpreted as a starting point for further study and evaluation, not for decision-making at this point. A program design activity that involves a look at the examination and the related components would be valuable to inform decision-making. For example, a potential design for the California Bar Examination might include the MBE as a measure of federal or cross-jurisdictional competencies, the essay questions may be useful for measuring subject areas of law that are important and unique to California, and the performance task serving as a content-neutral measure of the important skills that lawyers need in practice. However, this is a facilitated activity that is more appropriate for policymakers and practitioners to engage in as a precursor to the job analysis.

Process Evaluation Results

Panelists completed a series of evaluations during the study that included both Likert scale (i.e., attitude rating scale) and open-ended questions. The responses to the Likert scale questions are included in Table 4 and the comments provided are included in Appendix C. With respect to training and preparation, the panelists felt the training session provided them with an understanding of the process and their task. Following the training, the panelists indicated they had sufficient time to complete the rating process and felt confident in the results. The rating scales for questions can be interpreted as lower values being associated with less satisfaction or confidence with higher values being associated with greater satisfaction or confidence with the respective statement. Note that for question 2, panelists were only asked to indicate whether the time allocated for training was too little (1), about right (2), or too much (3).

Table 4. Summary of Process Evaluation Results

	Median	1	2	3	4
1. Success of Training					
Orientation to the workshop	4	0	1	3	6
Overview of alignment	4	0	1	3	6
Discussion of DOK levels	3.5	0	1	4	5
Rating process	3.5	0	1	4	5
2. Time allocation to Training	2	0	9	1	
3. Confidence in Cognitive Complexity Ratings	3	0	1	7	2
4. Time allocated to Cognitive Complexity Ratings	3	0	1	5	4
6. Confidence in Day 1 ratings	4	1	0	2	6
7. Time allocated to Day 1 ratings	3	0	0	5	4
9. Confidence in Day 2 ratings	3	0	0	5	3
10. Time allocated to Day 2 ratings	3.5	0	0	4	4
12. Confidence in Day 3 ratings	3.5	0	0	4	4
13. Time allocated to Day 3 ratings	3.5	0	0	4	4
14. Overall success of the workshop	3.5	0	0	4	4
15. Overall organization of the workshop	4	0	0	3	5

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Gap Analysis

The content validation study was designed to evaluate the extent to which content on the California Bar Examination aligned with expectations for entry level practice for lawyers. In addition, a gap analysis was conducted to also respond to the question about what content may be important for entry level practice, but is not currently measured on the examination. For this analysis, two criteria were evaluated.

Specifically, the ratings of significance and percent performing from the NCBE job analysis survey were analyzed. For the purposes of this analysis, if a knowledge, skill, ability, or task (KSAT) statement received a significance rating of 2.5 or higher on a 1-4 scale, it was included as a potential gap. Note that some KSAT statements were not included, because they were ambiguous or not appropriate for the purposes of licensure (e.g., Professionalism, Listening Skills, Diligence). Further, statements that were judged to be subsumed within other statements (e.g., Organizational Skills as an element of Written Communication) are not included to avoid redundancy. The results of this analysis are shown in Table 5.

Table 5. Summary of gap analysis of content not primarily measured on the California Bar Examination.

	Knowledge, Skills, Abilities and Tasks from the NCBE Job Analysis Survey	Link to O*NET	Statement DOK	Significance (Mean)	% Performing
Section I. Knowledge Domains					
5	Research Methodology	K-1	2	2.91	89%
8	Statutory Interpretation	K-1	1	2.83	86%
9	Document Review/Documentary Privileges	K-1	2	2.73	81%
Section II. Skills and Abilities					
92	Using office technologies (e.g., word processing and email)	K-6	1	3.56	99%
102	Answering questions succinctly	N/A	1	3.30	99%
104	Computer skills	K-6	1	3.28	99%
105	Electronic researching	T-8	2	3.26	98%
113	Negotiation	S-7	1	2.97	87%
114	Resource management	K-4, T-11	1	2.93	96%
115	Interviewing	T-14	1	2.92	91%
118	Attorney client privilege - document reviewing	T-9	3	2.84	86%
119	Trial skills	T-7	1	2.71	68%
120	Legal citation	T-9, T-15	2	2.67	95%
Section III. General Tasks					
	Management of attorney-client relationship and caseload				
124	Establish attorney-client relationship	T-18	2	2.86	76%
125	Establish and maintain calendaring system	T-18	1	2.86	78%

127	Establish and maintain client trust account	T-21	1	2.52	36%
128	Evaluate potential client engagement	T-12	1	2.51	67%
	Research and Investigation				
142	Conduct electronic legal research	T-8	2	3.42	96%
143	Research statutory authority	T-8	2	3.38	95%
144	Research regulations and rules	T-8	2	3.31	96%
145	Research judicial authority	T-8	2	3.19	89%
146	Conduct document review	T-8	2	3.10	86%
147	Interview client and client representatives	T-14	2	3.04	77%
148	Conduct fact investigation	T-14	2	2.91	83%
149	Interview witness	T-14	1	2.75	69%
150	Research secondary authorities	T-8	2	2.70	92%
151	Obtain medical records	T-14	1	2.58	61%
152	Conduct transaction due diligence activities	T-2	1	2.54	58%
153	Request public records	T-16	1	2.53	81%
	Analysis and resolution of client matters				
157	Analyze law	T-1	3	3.46	97%
158	Advise client	T-2	2	3.20	87%
159	Develop strategy for client matter	T-13	1	3.13	87%
160	Negotiate agreement	T-9, T-10	1	2.93	77%
161	Draft memo summarizing case law, statutes, and regulations, including legislative history	T-15	3	2.81	86%
163	Draft demand letter	T-9	1	2.60	65%
164	Draft legal opinion letter	T-15	2	2.54	76%
165	Draft case summary	T-15	2	2.53	80%

The information from the gap analysis can be used to evaluate the current content representation of the examination to determine whether a) existing elements of measurement should be retained, b) new elements of measurement should be added, and c) the extent to which the current design of the examination supports measurement of the important aspects of the domain. A caution in interpreting these results is that some of the knowledge, skills, abilities, and tasks are not easily measurable in a written examination and may require different types of measurement strategies, some of these being potentially technology enhanced. An additional caution is that the statements from the 2012 NCBE job analysis overlapped with each other and were not mutually exclusive with respect to the tasks that lawyers might perform. For future studies, I would suggest a competency or integrated task statement based approach that is more consistent with the tasks, responsibilities, and activities that lawyers engage with as opposed to discrete aspects of practice.

Conclusions and Next Steps

At a summative level, the results of the content validation study suggest that the current version of the California Bar Examination is measuring important knowledge, skills, and abilities consistent with expectations of entry level attorneys as suggested by results from the 2012 NCBE job analysis. Whether the observed representation and proportional weighting are in alignment with the expectations for California cannot be determined without further evaluation. However, it is important to note that all content on the current examination was judged to align with elements of the NCBE job analysis that were rated as reasonably significant and/or performed frequently in practice. This also included the subject areas that are sampled across years, but were not included in this study.

As recommended next steps for the California Bar Examination in its evaluation of its design and content, the results of the gap analysis and feedback from panelists provide a useful starting point for further discussion. Specifically, from the results of the national survey, skills and tasks were generally interpreted as more generalizable than many of the knowledge domains. Given the diversity of subject areas in the law, this is not surprising. At the same time, it may also suggest that a greater emphasis on skills could be supported in the future. To answer this question, further study is warranted. This additional study would begin with a program design that leads to a job analysis for the practice of law in California. As an examination intended to inform a licensure decision, the focus of the measurement of the examination needs to be on practice and not on the education or training programs. Through this combination of program design and job analysis, results would inform and provide evidence for decisions about the breadth and depth of measurement on the examination along with the relative emphasis (e.g., weighting) of different components.

While the results of this study provided evidence to support the current iteration of the examination, there are also formative opportunities for the program to consider in a program redesign. Specifically, the current design and format for the California Bar Examination has been in place for many years. Feedback from the content validation panelists suggested that there are likely subject areas that could be eliminated or consolidated to better represent important areas needed by all entry-level practitioners.

To briefly reiterate an example described above, from a design perspective, it may be desired to define the components of the examination as a combination of a candidate's competency in federal law, California-specific law, and job-related lawyer skills. Further, if the MBE continues to be included as part of the California Bar Examination, it would be important to be able to review the items on a recently operational form (or forms) of the test to independently evaluate the content and cognitive complexity of the items. If the

California is unable to critically review this component of their program, it should prompt questions about whether it is appropriate to continue to include it as part of their examination.

Similarly, such a redesign activity would offer the program an opportunity to evaluate the assessment item types of the examination (e.g., multiple choice, short answer, extended response), scoring policies and practices for human scored elements (e.g., rubric development, calibration, evaluation of graders), alternative administration methods for components (e.g., linear on the fly, staged adaptive, item level adaptive), and alternative scoring methods for constructed response (e.g., automated essay scoring). Advances in testing practices and technologies as well as the evolution of the practice of law since the last program design activity suggest that this interim study may facilitate additional research questions. As an additional resource about the current practices within credentialing programs, interested readers are encouraged to consult Davis-Becker and Buckendahl (2017) or Impara (1995).

For licensure examination programs, in terms of evidence to define content specifications, the primary basis for evidence of content validity come from the results of a job analysis that provides information about the knowledge, skills, and abilities for entry-level practitioners. Although the results of the 2012 NCBE job analysis were used for this study, it would be appropriate for the program to conduct a state-specific study as is done for other occupations in California to then be used to develop and support a blueprint for the examination. The specifications contained in the blueprint are intended to ensure consistent representation of content and cognitive complexity across forms of the examination. This would strengthen the content evidence for the program and provide an opportunity for demonstrating a direct link between the examination and what occurs in practice. These two activities – program design and job analysis – should be considered as priorities with additional redevelopment and validation activities (e.g., content development, content review, pilot testing, psychometric analysis, equating) occurring as subsequent activities.

Recognizing the interrelated aspects of validation evidence for testing programs, it is valuable to interpret the results of this study and its potential impact on the recently conducted standard setting study for the California Bar Examination. Specifically, the results of the content validation study suggested that most of the content on the examination was important for entry level practice without substantive gaps in what is currently measured on the examination compared with what is expected for practice. However, if the examination is revised in the future, it would likely require revisiting the standard setting study.

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Appendix A – Panelist Information

Content Validity
Panelists.xlsx

Last Name	First Name	City	Role	Years in Practice
Baldwin-Kennedy	Ronda			
Barbieri	Dean			
Cramer	Mark			
Dharap	Shounak			
Gramme	Bridget			
Jackson	Yolanda			
Layon	Richard			
Lozano	Catalina			
Maio	Dennis			
Shultz	Marjorie			

Appendix B – Content Validation Materials and Data

The documentation used in the standard setting are included below.

Overview of
Content Validation 1

Cal Bar Content
Validation Worksho

Cal Bar Content
Validation Worksho

Cal Bar Content
Validation Worksho

NCBE Job Analysis
Summary 2013

O*NET Summary for
Lawyers

California Bar Exam

Content Validation Workshop

Agenda

Tuesday, June 6

7:30 – 8:00	Breakfast
8:00 – 8:30	Introductions and Purpose of the Study
8:30 – 10:00	Initial training
	Purpose and design of the California Bar Exam
	Content validation judgments (Job Analysis/O*NET)
10:00 – 10:15	Break
10:15 – 11:45	DOK Ratings for knowledge, skills, and abilities (independent)
11:45 – 12:45	Lunch
12:45 – 2:15	DOK Ratings for knowledge, skills, and abilities (group consensus)
2:15 – 2:30	Complete first evaluation form
2:30 – 2:45	Break
2:45 – 3:45	Begin content validation judgments for first essay question (facilitated)
	Review scoring rubric/criteria for the question
	Evaluate content and cognitive complexity match
3:45 – 4:00	Break
4:00 – 4:45	Continue content validation judgments for first essay question (facilitated)
4:45 – 5:00	Complete second evaluation form

Wednesday, June 7th

8:00 – 8:30	Breakfast
8:30 – 9:30	Begin content validation judgments for second/fourth essay question (independent within subgroup) Review scoring rubric/criteria for the question Evaluate content and cognitive complexity match
9:30 – 10:15	Discuss initial content validation judgments for second/fourth essay question (subgroup)
10:15 – 10:30	Break
10:30 – 11:30	Continue content validation judgments for third/fifth essay question (independent)
11:30 – 12:15	Discuss initial content validation judgments for third/fifth essay question (subgroup)
12:15 – 1:00	Lunch
1:00 – 2:15	Begin content validation judgments for performance task (independent) Review scoring rubric/criteria for the question Evaluate content and cognitive complexity match
2:15 – 2:30	Break
2:30 – 3:30	Discuss initial validation judgments for performance task (group)
3:30 – 3:45	Break
3:45 – 4:45	Begin judgments for MBE Subject Matter Outline – content focus (independent)
4:45 – 5:00	Complete third evaluation form

Thursday, June 8

8:00 – 8:30	Breakfast
8:30 – 9:30	Continue judgments for MBE Subject Matter Outline – content focus (independent)
9:30 – 9:45	Break
9:45 – 10:45	Discuss judgments for MBE Subject Matter Outline (group)
10:45 – 11:00	Break
11:00 – 11:45	Continue discussing judgments for MBE Subject Matter Outline
11:45 – 12:00	Complete fourth evaluation form

Evaluation – 1   Content Validation Workshop

The purpose of this evaluation is to get your feedback about the various components of the content validation workshop. Please do not put your name on this evaluation form. The information from this evaluation will be used to improve future projects. Thank you!

Training

The training consisted of several components: orientation to the workshop, overview of alignment, discussion of cognitive complexity levels, and training on the rating process.

1.   Using the following scale, please rate the success of each training component:

	Rating of Training Success			
Training Components	Very Unsuccessful		Very Successful	
a. Orientation to the workshop	1	2	3	4
b. Overview of alignment	1	2	3	4
c. Discussion of DOK levels	1	2	3	4
d. Rating process	1	2	3	4

2.   How would you rate the amount of time allocated to training?
      a.   Too little time was allocated to training.
      b.   The right amount of time was allocated to training.
      c.   Too much time was allocated to training.

Cognitive Complexity Ratings of Job Analysis/O*NET KSAs

3.   How confident were you about the cognitive complexity ratings you made?
      a.   Very Confident
      b.   Somewhat Confident
      c.   Not very Confident
      d.   Not at all Confident

4.   How did you feel about the time available to make your cognitive complexity ratings?
      a.   More than enough time was available
      b.   Sufficient time was available
      c.   Barely enough time was available
      d.   There was not enough time available

5.   Please provide any comments about the training or cognitive complexity ratings that would help in planning future workshops.

Evaluation – 2　　　　Content Validation Workshop

Day 1 Content Validity Judgments

6.　　How confident were you about your Day 1 judgments of content validity for the California Bar Exam?
　　　a.　　Very Confident
　　　b.　　Somewhat Confident
　　　c.　　Not Very Confident
　　　d.　　Not at all Confident

7.　　How did you feel about the time allocated for making these judgments?
　　　a.　　More than enough time was available
　　　b.　　Sufficient time was available
　　　c.　　Barely enough time was available
　　　d.　　There was not enough time available

8.　　Please provide any comments about the Day 1 content validity activities that would be helpful in planning future workshops.

Evaluation – 3   Content Validation Workshop

Day 2 Evaluation of Essay Questions and Performance Task

9.   How confident were you about your Day 2 judgments of content validity for the California Bar Exam?
   a.   Very Confident
   b.   Somewhat Confident
   c.   Not Very Confident
   d.   Not at all Confident

10.   How did you feel about the time allocated for making these judgments?
   a.   More than enough time was available
   b.   Sufficient time was available
   c.   Barely enough time was available
   d.   There was not enough time available

11.   Please provide any comments about the Day 2 rating activities that would be helpful in planning future workshops.

Evaluation – 4   Content Validation Workshop

Day 3 Evaluation of Content Outline for the MBE

12.   How confident were you about your Day 3 judgments of content validity for the California Bar Exam?
a.   Very Confident
b.   Somewhat Confident
c.   Not Very Confident
d.   Not at all Confident

13.   How did you feel about the time allocated for making these judgments?
a.   More than enough time was available
b.   Sufficient time was available
c.   Barely enough time was available
d.   There was not enough time available

Overall evaluation of the content validation workshop

14.   Overall, how would you rate the success of the content validation workshop?
a.   Very Successful
b.   Successful
c.   Unsuccessful
d.   Very Unsuccessful

15.   How would you rate the organization of the content validation workshop?
a.   Very Organized
b.   Organized
c.   Unorganized
d.   Very Unorganized

16.   Please provide any comments about the content validation activities that would be helpful in planning future workshops.

Thank you for your contributions to the Content Validation Workshop!

Overview of Content Validation

Content serves as a prioritized source of validity evidence for credentialing (e.g., licensure, certification) examinations (see *Standards for Educational and Psychological Testing*, [AERA, APA, & NCME, 2014]). The process of content validation involves collecting and evaluating evidence alignment of content and response processes (e.g., cognitive complexity, depth of knowledge) with job-related knowledge, skills, abilities, and tasks. Substantive overlap between what is measured by an examination and what occurs in entry level practice is needed to support an argument that the content evidence contributes to valid scores and decisions for the purpose of licensure.

In the content validation study being conducted June 6th-8th, panelists will provide a series of judgments about the evidence of content and response processes for the California Bar Examination. The materials will include results from the most recent National Conference of Bar Examiners (NCBE) job analysis, information from the U.S. Department of Labor's O*NET, exam questions and scoring criteria from the 2016 exam, and the content outline from the Multistate Bar Examination (MBE). The tasks will involve making judgments about:

- Cognitive complexity/Depth of Knowledge – level of response processes for job analysis statements and elements of examination content; and

- Content – fit of score points or subject area topics to job-related content.

Procedurally, these judgments will occur in two phases. Panelists will initially make these judgments independently followed by consensus discussions with the group. This consensus judgment will be recorded by a table lead and used for the analysis.

The findings from the study will be used to evaluate several questions of alignment:

- What is the representation of content and cognitive level of the California Bar Examination score points relative to the knowledge, skill, and task statements of the NCBE job analysis?

- What knowledge and task statements from the NCBE job analysis are NOT covered by the California Bar Exam?

- What California Bar Exam content does NOT align with the knowledge and task statements of the NCBE job analysis?

Following the study, we will prepare a technical report that includes a summary of the alignment findings and results, including evidence of the people, process, results, and decision rules applied during the study.

CALIFORNIA BAR EXAM

Content Validation Workshop

June 6-8, 2017

Chad W. Buckendahl, Ph.D.

ACS Ventures

Purpose of the Workshop

- Align test score points and topic areas:
  - Cognitive complexity
  - Content fit

- Communicate results to the Committee of Bar Examiners (CBE)

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WHY IS THIS IMPORTANT?

- Support interpretations of candidate performance
  - Want scores to represent important aspects of entry level practice
  - Valid score interpretations

- Professional standards define as a source of evidence for technical quality
  - Content evidence
  - Response processes

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WHAT WE ARE **NOT** ABLE TO CHANGE IN THE WORKSHOP

- Purpose of the examination

- Examination questions

- MBE topics

- Examination grading/scoring criteria

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Roles in the Process

- Facilitator
  - Guide panel through standard setting method

- Panelists
  - Use subject matter expertise to evaluate content and cognitive complexity

- California Bar Staff
  - Provide test, policy, and logistics support to panelists and facilitator

- External Evaluator
  - Monitor and evaluate fidelity of the content validation process

- Observers
  - Watch, but not participate or interact with panelists

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STEP 1: PURPOSE OF THE BAR EXAM
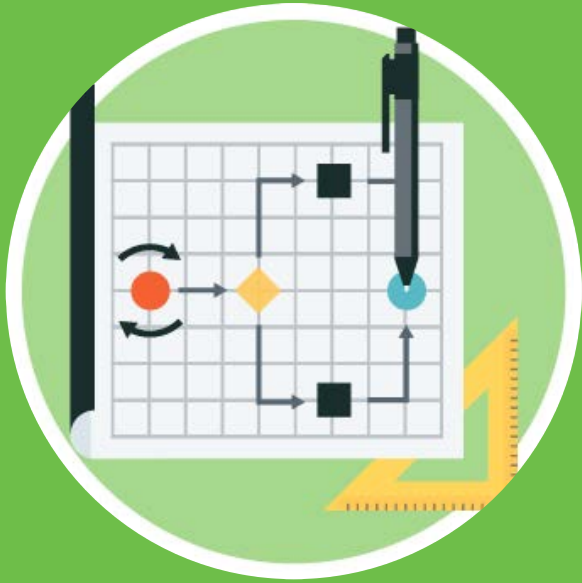
- The purpose of a licensure examination like the California Bar Exam is to distinguish minimally competent candidates from those that could do harm to the public.

- How is this examination different from:
  - Classroom or course assessments
  - Outcomes assessments
  - Certification tests
  - Employment tests

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STEP 2: OVERVIEW OF EXAMINATION STRUCTURE

- Components of the California Bar Examination
  - Selected response
    - Multistate Bar Examination
  - Constructed response
    - Essay Questions
    - Performance Task

SCORING CONSTRUCTED RESPONSES

- Scoring criteria/rubrics are question specific

- General scoring structure
  - Issue spotting
  - Identifying elements of applicable law
  - Analysis and application of law to fact pattern
  - Formulating conclusions based on analysis
  - Justification for conclusions

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STEP 3: OVERVIEW OF ALIGNMENT JUDGMENTS

- Evaluate cognitive complexity knowledge, skills, and abilities

- Evaluate cognitive complexity of exam score points and topics

- Evaluate content fit of exam score points and topics to knowledge, skills, and abilities

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Webb's Depth of Knowledge

- Level 1: Recall and Reproduction
- Level 2: Skills and Concepts
- Level 3: Strategic Thinking
- Level 4: Extended Thinking

LEVEL 1: RECALL AND REPRODUCTION

- Remembering a fact, definition, term, or simple procedure

- Performing a one-step, well-defined, and straight algorithmic procedure
  - Recalling a fact, term, or property
  - Retrieving information from text, a graph, table, or figure

LEVEL 2: SKILLS AND CONCEPTS

- Some mental processing

- Make decisions as to how to approach a problem, more than one step
  - Solving a problem involving application and/or reasoning
  - Retrieving information from text, a graph, table, or figure AND using it to solve a problem
  - Providing a justification for steps in a solution process

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LEVEL 3: STRATEGIC THINKING

- Deep knowledge using reasoning, planning, and using evidence

- Complex and abstract
  - Multistep
  - Describing, comparing, and contrasting solution methods
  - Providing domain specific justification

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LEVEL 4: EXTENDED THINKING

- Very complex

- Requires complex reasoning, planning, developing, and thinking

- Usually observed over an extended period of time

- Not an intended component of licensure or most education examinations

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STEP 4: ALIGNMENT PROCESS

- 1. DOK of the knowledge, skill, or ability
    - NCBE practice analysis/O*NET

- 2. DOK of the score point or topic area

- 3. Content match of score points or topic areas

- How does the item fit within the standard?
    - **Complete/Partial Fit** – significant portion or all of the content fits within a knowledge, skill, or ability
    - **Slight/No Fit** – only a small portion or none of the content fits

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STEP 4 (CONT.): OPERATIONAL ALIGNMENT JUDGMENTS

- 5 essay questions (first one facilitated as a group)

- 1 performance task

- MBE topics

- Independent judgments followed by consensus discussion

LIMITATIONS/NEXT STEPS

- No access to the MBE items; limited to topics
- Evaluation of content sampling plan for the Essay Questions and Performance Tasks
- Evaluation of content for the Bar Exam or the MCLE

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CONFIDENTIALITY AND NONDISCLOSURE

- Content validation/alignment process is published information and can be shared

- Results of judgments and discussions cannot be shared until the final technical report becomes public

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SUMMARY

- Provide independent information to the Committee of Bar Examiners regarding the alignment of the content and response processes of the California Bar Exam to knowledge, skills, and abilities for entry level practitioners

- Thank you in advance for your hard work!

Appendix C – Evaluation Comments

Each panelist completed written evaluations of the content validation process that included several open-ended response questions. The responses provided to each are included below.

Day 1 – Training and DOK Ratings

- Civ[il] Pro[cedure] should be a "3"
- Chad explained things very well and moderated and kept the discussions on pace.
- I think a more in-depth discussion up front about minimal competent lawyer would help with context.
- This was a difficult task for building consensus, largely due to vague and ambiguous terms that were being rated using terms/ratings that were also difficult to define/understand/read agreement about. That said, the process was enlightening and thought-provoking. Thanks for facilitating.
- The job analysis was so BAD, it was useless to do this task. [The job analysis contained] overlap, inconsistency, unclear terms, wouldn't be a minimally competent document.
- Examples illustrating the knowledge levels would be helpful to establish a baseline early on.

Day 1/2 – Content Validation Judgments

- Very good discussion.

Day 2/3 – Content Validation Judgments

- Starting with a large [concept] for each category was helpful in narrowing down. A whiteboard might be more effective/helpful.
- [Sufficient time was available] with the extension into Day 3.
- Having more than one performance test which assessed different skills (i.e., objective vs. persuasive vs. communications with a client/opposing counsel) would be helpful and provide additional information.
- I did feel that some of the ultimate skills we selected may have been subsumed within others and therefore it was difficult to break down, but ultimately I felt good about the final consensus.
- The required use/application of artificial constructs can be frustrating; many overlap. Devising a way to manipulate or modify categories would be very helpful.

Day 3 – Content Validation Judgments and Overall Evaluation

- The MBE section was unclear as to how it would actually affect the Bar.
- Discussion/evaluation of the relative weights of the different components of the Bar Exam i.e. Essay/PT/MBE [would be helpful].
- I felt the MBE portion was difficult to assess without having the questions. Overall, I felt the group was good and we came to consistent conclusions and I felt confident in our results.

Summary of group feedback about the design of the exam[18]

Suggestions for elimination

- Remedies (already part of Torts, Contracts, Real Property)

Suggestions for addition

- Skills, additional performance task

Suggestions for MCLE

- 1st year: Professional Responsibilities
- 1st year: Practice Management
- Business Associations
- Wills and Succession
- Trusts

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[18] Note that the summary information provided here was based on a brief discussion with panelists during the workshop and should not be interpreted as the outcome of a comprehensive program design activity that would evaluate the structure and substance of the examination.

Memo

To: Ron Pi, State Bar of California

From: Mary J. Pitoniak, Independent Consultant

Date: August 13, 2017

Re: Evaluation of Content Validation Study Conducted for State Bar of California

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Overview

This memo represents my evaluation of the content validation activities for the California Bar Exam conducted by Chad Buckendahl of ACS Ventures for the State Bar of California. Some of the observations contained herein were also provided in my memo of May 8, 2017, regarding the plans for the workshop prior to its being conducted.

This memo is framed in terms of four general sources of validity evidence: procedural, internal, external, and utility (Davis-Becker & Buckendahl, 2017). In some cases I will reference guidelines developed for standard setting that I believe are also relevant for this content validation workshop.

The report referred to in this memo is Buckendahl (2017), which is a draft report. My memo may be updated if relevant portions of the Buckendahl report are revised.

Procedural Evidence

Procedural evidence from this meeting includes the three areas outlined by Davis-Becker and Buckendahl (2017)—panelists, method, and process. In addition, I include other two sources of evidence typically used for standard setting studies—explicitness and documentation (Kane, 1994, 2001; see also Hambleton & Pitoniak, 2006).

1)   <u>Panelists</u>

Selection of Panelists

In terms of panelists, I noted my concern when reviewing the plan that the only target for panelist demographics was length of practice, specifically the number of recently licensed attorneys vs. experienced ones who supervise entry-level attorneys. The draft report also noted that some panelists had been selected to represent the Faculty/Educator category (panelists who are employed at a college or university). Generally panelists are selected in relation to other criteria as well, such as gender, area of the state, etc., and the characteristics obtained for the panel are then compared against them. No such characteristics were set in advance or reported for this workshop. Neither were target number of panelists in each of the three

categories specified. However, the total number of panelists was sufficient for this activity; Davis-Becker and Buckendahl (2013) note that the Webb (2007) method has typical panel sizes of 5–8 panelists. This study had 10 panelists.

A decision faced during panelist selection for any licensing exam is whether to include panelists who have previously been closely involved with the examination. In the context of standard setting, Raymond and Reid (1991) discuss the advantages and disadvantages of including what they term "members of the existing examination committee" (p. 134). Advantages include sensitivity to the factors that influence item performance, a genuine interest in the process, and possession of knowledge of the items and content specifications: "in short, examination committees are experts who know what to expect of items and examinees" (p. 134). However, they note that some agencies have policies that specifically exclude such individuals from the standard setting process so that the standard-setting group is totally independent of the test development process. The examination committee members may also be viewed as having expectations or biases that could unfairly influence their ratings. Raymond and Reid acknowledge that this is a reasonable concern but state that in their experience they have found that such members provide similar judgments to non-members.

At the content validation meeting described in this memo, one panelist had extensive experience with the California Bar Exam, having served as the Chair of the Examination Development and Grading (EDG) Team. In my opinion, his experience, coupled with his outspoken nature, may have influenced other panelists (he also participated in the standard setting study, at which I had the same concern). Similarly, one of the panelists at this meeting had previously served as the Director for Examinations at the State Bar of California for nine years, which could have given his opinions more weight; he was also rather outspoken with his views compared to other panelists.

While Raymond and Reid (2001) indicate that in their standard setting experience the judgments did not differ across exam committee members vs non-members, in my opinion given the high-profile nature of this content validation activity, any appearance of bias would best have been avoided by not having any members of the committee involved. Of note is that Davis-Becker and Buckendahl (2013) list as one of their threats to validity of content validation in the procedural category "panel members were part of the item writing team raising concerns about conflict of interest" (p. 26).

However, as Cizek and Bunch (2007) indicated in relation to standard setting, "the specification of the pool of participants in a standard-setting procedure is first a policy matter. As we have recommended vis-à-vis other policy matters in standard setting, we believe that the entity responsible for setting standards should explicitly discuss and adopt a position on the issue in advance of standard setting" (p. 50). It is my understanding that the policy makers, the California Supreme Court, weighed in in some manner to the effect that having panelists with some direct experience with the Bar Exam would be useful for the content validation workshop, which is of course their prerogative.

2) Method

Neither the proposal nor the plan presented in advance of the study explicitly described the method that would be used in the study. For example, the proposal refers to a "cognitive complexity framework (e.g., Bloom's, Webb's Depth of Knowledge), but leaves the choice of method open.

The report indicates that content and cognitive complexity were as defined by Webb's (1997) Depth of Knowledge, but does not describe why the method was chosen and what alternatives were available. Davis-Becker and Buckendahl (2013) provides descriptions of available methods, and it would have been helpful if the report had touched at least briefly on other approaches and why Webb's was chosen. That said, the Webb method is sound and has been often used for alignment studies, and is an appropriate choice for this workshop. It is worth noting that Davis-Becker and Buckendahl (2013) observe that the Webb method usually relies on data analysis for the final alignment ratings, though others use a consensus approach. In this study a consensus approach was used, which is a departure from how the Webb method is usually implemented.

An additional point is that, as noted in the report, it is unfortunate that panelists were not able to use items from the MBE:

> One threat to the validity of the results is the lack of direct evidence from the MBE. Content validation studies generally involve direct judgments about the characteristics of the examination content. Because examination items (i.e., questions) from the MBE were not available for the study, panelists were asked to make judgments about the content evidence from subject matter outlines provided by the NCBE. There is then [sic] assumption that items coded to these sections of the outline align as intended. (Buckendahl, 2017, p. 10).

3) <u>Process</u>

Training of Panelists

Two slides provided the context for the meeting. The first slide conveyed that the purpose was to "align test score points and topics areas: cognitive complexity and content fit" and "communicate results to the Committee of Bar Examiners." The second slide explained why the activity is important, followed by a slide outlining what could not be changed at the workshop. An additional slide outlined the roles of the attendees. The next slide outlined the steps in content validation. Three slides followed that focused on the purpose of the bar exam, an overview of the examination structure, and the general scoring framework. There were eight slides describing the method to be used for alignment judgments.

I tend to prefer more text-heavy slides for those panelists who are visual learners, vs. providing limited text and communicating the information verbally. Graphics would also have been useful for this, as well as other, topics.

Panelists' Evaluation of Process

<u>Design of Evaluation Forms.</u> The original agenda had panelists completing two evaluation forms, with the first being given at mid-day on the first day of the workshop, after the practice activity, and the second at the end of the workshop. In my May 8 memo I suggested that the first evaluation form have panelists indicate on the first survey, done after the practice activity, whether they felt confident in their ability to perform the task so that remediation could be done before providing content validation judgments for the first essay question. I also strongly suggested having additional evaluations, such as at the end of the first day, in order to allow for targeted remediation the next morning. Showing panelists that evaluation feedback is being reviewed and addressed can increase their confidence in the process as well as answering any questions they may have. I also suggested having an evaluation at the end of the second day.

There were four evaluation forms administered during the workshop, which was a useful modification to the design. However, the forms were rather short, and I would have liked to have seen additional questions. For example, on the first form a question asking how clear they were with the purpose of the meeting would have been informative.

On the final evaluation form panelists were asked "Overall, how would you rate the success of the content validation workshop?" However, it is not clear to me what the panelists would view as "success." Question 1 on the first evaluation form also asked about success of four activities: orientation to the workshop, overview of alignment, discussion of DOK levels, and the rating process. Again, I am not sure how the panelists would define success and if they would define it similarly.

The ratings scales used for the same category of questions also had some inconsistencies, making it difficult to make valid comparisons across questions in the same category:

- "Success" questions: Question 1 on form 1 had labels only for the ends of the rating scale (i.e., very unsuccessful and very successful), whereas question 14 on the final evaluation form had all four points on the scale labeled (very unsuccessful, unsuccessful, successful, and very successful).
- "Time" questions: Question 2 on form 1 had three points on the scale (too little time, the right amount of time, and too much time). The other questions related to time (questions 4, 7, 10, and 13) had four points on the rating scale (not enough time, barely enough time, sufficient time, more than enough time).
- "Confidence" questions: The questions asking about confidence had the label "somewhat confident" for rating point 3. Other questions (with the exception of questions 2 and 3) had an unqualified label for that rating point, such as "sufficient," "successful," and "organized." It would have been more consistent to have rating point 3 be labeled as "confident" rather than "somewhat confident."

Because of these rating scale inconsistencies, comparisons of median ratings across the questions could be misleading. More appropriate interpretations could be made by looking at the frequency of responses to each questions and within the same category (with the exclusion of questions 1 and 2, which had different labels than the other questions in that category).

Feedback Obtained. Most of the questions on the evaluation forms fell into three categories: timing, confidence, and success. It is of interest whether any panelists provided negative responses to any of the questions (the ACS report provides the full range of responses to each question; the breakdown of frequency between the two positive responses is not provided in this report).

Timing questions were asked about training and cognitive complexity ratings on the first day, and content validity ratings on each of the three days. Nine panelists indicated that there was barely enough time for training. One indicated that there was barely enough time for cognitive complexity ratings on the first day. In all other cases, panelists indicated that there was sufficient or more than enough time for ratings.

Four questions asked about panelists' confidence levels; one about cognitive complexity ratings and three about content validity ratings. In general, one expects panelist confidence to grow over the course of the workshop, which was the case. One panelist indicated they were not very confident in their cognitive complexity ratings, and one indicated that they were not at all confident in the first day's content validity ratings. On subsequent days all panelists felt somewhat confident or very confident in their content validity ratings.

Several questions asked about the success of different activities conducted during the workshop. One question asked about four different aspects of the training—orientation, overview of alignment, discussion of DOK levels, and rating process. For each of those aspects, one panelists gave a rating of 2 (which had no label, but presumably was interpreted as somewhat unsuccessful). One question asked about the overall success of the workshop; all panelists rated it as successful or very successful.

One question that does not fall into the previous categories asked about the overall organization of the workshop. All panelists rated it as organized or very organized.

Panelists were also asked open-ended questions on each of the four evaluation forms. (Because the forms were anonymous, it is not possible to know whether the same or different panelists provided responses on different forms throughout the process.)

- There were several comments voicing frustration with working with the job analysis:
  - "This was a difficult task for building consensus, largely due to vague and ambiguous terms that were being rated using terms/ratings that were also difficult to define/understand/read agreement about. That said, the process was enlightening and thought-provoking. Thanks for facilitating." (evaluation form 1)
  - The job analysis was so BAD, it was useless to do this task. [The job analysis contained] overlap, inconsistency, unclear terms, wouldn't be a minimally competent document." (evaluation form 1)
- One panelist indicated that it was difficult to evaluate the MBE on the basis of a content outline, while feeling positive about the overall outcome:
  - "I felt the MBE portion was difficult to assess without having the questions. Overall, I felt the group was good and we came to consistent conclusions and I felt confident in our results. (evaluation form 3)

4) Explicitness

Explicitness refers to the extent to which the study's activities were clearly and explicitly described in advance of implementation (van der Linden, 1995). As I noted in my May 8 memo, my concerns about the explicitness of the workshop plans fell into two categories, as described in the following sections.

Lack of One Comprehensive Document

Planning information was spread across multiple documents.

- *Proposal to Conduct a Content Validation Study for the California Bar Exam*, dated March 10, 2017
- *California Bar Content Validation Plan*, dated April 4, 2017
- *California Bar Exam Content Validation Workshop Agenda—DRAFT*, dated April 3, 2017

Ideally, the information about how the workshop would be conducted would have been in one comprehensive, detailed document. Such a document would have facilitated my review and evaluation of all of the different design designs that have been made. It would also have enhanced my ability to do a better evaluation of the procedural validity of the workshop now, after it had been conducted. As it stood I needed to check three different sources for information.

Lack of Detail

As I noted in an email on March 14, 2017 to Leah Wilson (Chief Operating Officer) after reviewing the proposals, to be able to evaluate evidence for procedural validity, the design, or plan, has to be thorough enough so that a reviewer could evaluate the extent to which the procedures were carried out as intended. Generally plans are detailed enough that they can be used as the basis for the technical report. An additional consideration is whether a future study could use the same procedures using the technical report as a basis, thus ensuring consistency across implementations.

I had thought that perhaps the proposals provided were less detailed since they were a general outline of the work. However, the subsequent documents did not provide additional detail in the following areas:

- Targets for panelist demographics, beyond differentiation between recently licensed attorneys and experienced ones who supervise entry-level attorneys. For example, targets could be set for gender, area of the state, etc., and the characteristics obtained for the panel would be compared against them.
- Description of any materials to be sent in advance, such as the agenda, purpose of the workshop, etc.
- More detailed description of the exam materials (content assessed, item types, etc.) and the rubrics
- Indication of the type of information that will be included in the technical report (to be sure it is collected during the study)
- More information about the validity criteria that would be used for evaluating the results of the study

5) <u>Documentation</u>

This criterion refers to extent to which features of the study are reviewed and documented for evaluation and communication purposes.

One component of documentation relates to the description of the procedures used. As I noted above under the explicitness criterion, I think more detail could have been provided in the plans. Now that the study has been conducted, I think the report should include more detail so that in the future the method can be clearly understood and, if necessary, replicated based on the documentation. As it stands it is difficult for the reader to know exactly what the tasks consisted of (e.g., the specific instructions that panelists were given).

Also, since the author of the report was a co-author of Davis-Becker and Buckendahl (2013), it would have been useful for an appendix to provide responses to the 18 questions provided in Table 1 of that publication.

Internal Evidence

Davis-Becker and Buckendahl (2013) list four sources of internal validity evidence--analysis of panelists' independent ratings, estimates of agreement among panelists/reliability, determination of final alignment results, and panelists' evaluation of the final results.

Although panelists did provide initial independent ratings, those data were not provided in the report and thus no reliability estimate can be calculated. Final ratings were obtained through consensus. As the report observes, though this does not indicate that panelists were unanimous in their views, they did agree to the outcomes during the discussion and did not indicate any unease with this report in the evaluations.

In terms of panelists' evaluation of the final results, no question directly addressed this issue. Panelists did indicate confidence in each day's ratings, particularly for days 2 and 3. However, the only question related to overall outcomes referred to the "success of the workshop." As I noted above, I do not see this as a very useful question. Ideally the panelists would have been asked something more direct about the specific outcomes of the workshop vis-à-vis alignment.

External Evidence

According to Davis-Becker and Buckendahl (2013), there are four sources of external evidence: results from separate panels, results from application of multiple methods, results from other applications of content analysis, and intended alignment of items to test content.

There were not separate panelists in the study, nor were there multiple methods. Strictly speaking there were no separate applications of content analysis.

According to Davis-Becker and Buckendahl (2013), the fourth source, intended alignment of items to test content relates to the question of whether "the results of the alignment study converge with the blueprint and the intentions of the test developer" (p. 26). The report describes how the NCBE job analysis and the O*NET categories were used as sources of external evidence. However, it does not clearly state the degree to which the alignment referred to in Davis-Becker and Buckendahl was achieved, which would ideally be rectified in the final report.

Utility

Davis-Becker and Buckendahl (2013) list three sources of evidence related to utility: interpretation and use of test-level results, interpretation and use of standard-level results, and interpretation and use of item-level results.

The report notes that "evidence of utility is based largely on the extent to which the summative and formative feedback can be used to inform policy and operational decisions related to examination development and validation" (p. 10). It concludes that the study results suggest alignment between the content and cognitive complexity of the exam and expectations for entry-level attorneys. I think a more lengthy discussion of utility in the final report would be beneficial.

Conclusion

Although both the plans and the report could be more detailed, in general the study was conducted in a reasonable fashion using established methodology. The inability of the panelists to review actual MBE items, having instead to rely on a content analysis, was unfortunate. Greater transparency of the content of the MBE as compared to the California-specific exam would have been helpful. In general, however, the workshop yielded useful information about the alignment of the exam and observations about gaps in coverage.

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August 7, 2017

Ron Pi, Principal Analyst
Office of Research & Institutional Accountability
The State Bar of California
180 Howard Street, San Francisco, CA 94105

Dear Mr. Pi:

Although the National Conference of Bar Examiners' (NCBE) job analysis and the California Bar Exam (CBE) Content Validation have been conducted, it is highly recommended that The State Bar conduct a comprehensive occupational analysis (OA) of the practice of law by California attorneys. Given that a state-specific OA does not appear to have been conducted, it is critical to have this baseline for making high-stakes decisions (e.g., determining content to be measured on the CBE; creating a common frame of reference for a Minimally Competent Candidate when establishing passing scores; providing preparation and training information to candidates and schools).

A California-specific OA should be conducted using California attorneys to develop and rate task and knowledge statements. The OA survey sample should be large enough to be representative of California practice and attorney demographics. Further, the results of a California-specific OA should then describe the relationship and relative importance of California practice content and entry-level performance expectations.

Finally, an audit of the Multistate Bar Exam program and a gap analysis of the NCBE job analysis can be performed. This sequence of steps should provide stronger evidence to support the validity of pass/fail decisions.

As The State Bar continues to explore possible causes of low pass rates, opportunities to educate stakeholders about entry-level expectations, psychometric guidelines and technical standards should be pursued. It is my understanding that the actions taken by The State Bar are not intended to necessarily make the exam easier but rather to ensure measurement of current, entry-level performance for public protection. These actions are consistent with validation efforts taken by other licensing examination programs.

If you have questions about these recommendations, please contact me at (916) 574-7956.

Tracy A. Montez, Ph.D., Chief
Division of Programs & Policy Review

Summary of the National Conference of Bar Examiners
Job Analysis Survey Results

January 2013

Prepared by Susan Case, Ph.D.,
Director of Testing, National Conference of Bar Examiners

Summary of the National Conference of Bar Examiners Job Analysis Survey Results

In 2011 and 2012, Applied Measurement Professionals, Inc. (AMP), conducted a job analysis at the request of the National Conference of Bar Examiners (NCBE). The purpose of the study was to describe the job activities of a newly licensed lawyer in sufficient detail to provide a job-related and valid basis for the development of licensing examinations offered by NCBE.

This summary of the AMP report, *A Study of the Newly Licensed Lawyer*, is divided into the same four sections of a survey that was developed and sent to lawyers, but is reordered here as follows: I. Knowledge Domains, II. Skills and Abilities, III. General Tasks, and IV. Specific Practice Area Tasks. It retains the specific practice area task inventories appearing in the AMP report.

The following pages are organized by section, as outlined above. After the line number for each entry, the first column shows the average significance rating indicated by the respondents (i.e., "Considering importance and frequency, how significant is this entry to your performance as a newly licensed lawyer?") on a scale of 4 ("Extremely significant") to 1 ("Minimally significant"). The second column shows the percentage of respondents who indicated that the knowledge domain, skills and ability, or task is performed or used by them in their work. The final column provides a reference back to the full AMP report.

Section I. Knowledge Domains

Line No.	Average Significance*	Percent Performing**	Knowledge Domains	Survey Number
1	3.08	86%	Rules of Civil Procedure	Knowledge 1
2	3.06	88%	Other Statutory and Court Rules of Procedure	Knowledge 3
3	3.01	81%	Rules of Evidence	Knowledge 33
4	2.95	87%	Professionalism	Knowledge 37
5	2.91	89%	Research Methodology	Knowledge 7
6	2.91	84%	Statutes of Limitations	Knowledge 34
7	2.83	93%	Rules of Professional Responsibility and Ethical Obligations	Knowledge 10
8	2.83	86%	Statutory Interpretation	Knowledge 48
9	2.73	81%	Document Review/Documentary Privileges	Knowledge 15
10	2.67	84%	Contract Law	Knowledge 6
11	2.50	61%	Tort Law	Knowledge 12
12	2.50	54%	Criminal Law	Knowledge 14
13	2.47	54%	Rules of Criminal Procedure	Knowledge 2
14	2.40	71%	Other Privileges	Knowledge 16
15	2.38	49%	Personal Injury Law	Knowledge 11
16	2.34	70%	Agency Procedural Rules	Knowledge 5
17	2.33	67%	Law of Business Organizations	Knowledge 13
18	2.32	71%	Administrative Law and Regulatory Practice	Knowledge 4
19	2.31	62%	Principles of Electronic Discovery	Knowledge 43
20	2.30	56%	Real Property Law	Knowledge 32
21	2.29	76%	Constitutional Law	Knowledge 8
22	2.27	49%	Practice Management	Knowledge 85
23	2.26	57%	Basic Accounting	Knowledge 86
24	2.23	52%	Family Law	Knowledge 9
25	2.21	46%	Wills, Probate and Estate Planning	Knowledge 19
26	2.20	67%	Freedom of Information Act/Public Records	Knowledge 45
27	2.19	45%	Insurance Law	Knowledge 83
28	2.18	58%	Alternative Dispute Resolution	Knowledge 71
29	2.16	55%	HIPAA/Privacy Law	Knowledge 57
30	2.15	67%	Legislative Knowledge	Knowledge 30
31	2.11	50%	Landlord-Tenant Law	Knowledge 20
32	2.10	54%	Data Privacy	Knowledge 66
33	2.10	45%	Labor and Employment Law	Knowledge 84
34	2.08	48%	Debtor Creditor	Knowledge 51
35	2.08	49%	Civil Rights	Knowledge 54
36	2.07	65%	Choice of Law and Conflicts of Law	Knowledge 46
37	2.06	53%	Employment Law	Knowledge 17
38	2.06	32%	Uniform Child Custody Jurisdiction and Enforcement Act	Knowledge 61
39	2.04	48%	Secured Transactions	Knowledge 23
40	2.04	43%	Employment Discrimination Law	Knowledge 69
41	2.01	52%	Sales and Leases of Personal Property	Knowledge 24
42	2.01	48%	Bankruptcy	Knowledge 50
43	1.97	53%	Tax Law	Knowledge 35
44	1.96	52%	Negotiable Instruments	Knowledge 25
45	1.96	39%	Securities Law	Knowledge 52
46	1.96	42%	ADA	Knowledge 68
47	1.95	44%	Trust Law	Knowledge 36
48	1.95	41%	Worker's Compensation	Knowledge 62
49	1.95	40%	Consumer Protection Law	Knowledge 65

* 1-4 with 4 being extremely significant.
** % reporting this is performed and/or expected of them

Section I. Knowledge Domains

Line No.	Average Significance*	Percent Performing**	Knowledge Domains (cont.)	Survey Number
50	1.93	39%	Healthcare Law	*Knowledge 58*
51	1.93	36%	Juvenile Law	*Knowledge 59*
52	1.90	39%	Immigration Law	*Knowledge 22*
53	1.90	41%	Intellectual Property	*Knowledge 38*
54	1.88	44%	Social Security	*Knowledge 67*
55	1.86	41%	Government Contract Law	*Knowledge 78*
56	1.84	42%	ERISA and Other Employee Benefits Law	*Knowledge 18*
57	1.83	45%	Non-Profit Organizations	*Knowledge 49*
58	1.83	43%	Employee Benefits	*Knowledge 53*
59	1.83	35%	Public Employees Discipline and Termination	*Knowledge 70*
60	1.81	40%	Investment Securities	*Knowledge 31*
61	1.80	38%	Housing Law	*Knowledge 21*
62	1.79	43%	Funds Transfers	*Knowledge 29*
63	1.79	36%	International Law	*Knowledge 56*
64	1.79	30%	Patent Law	*Knowledge 77*
65	1.78	35%	Construction Law	*Knowledge 64*
66	1.76	43%	Bank Deposits	*Knowledge 28*
67	1.76	38%	Unemployment Compensation	*Knowledge 63*
68	1.75	42%	Letters of Credit	*Knowledge 27*
69	1.75	33%	Public Contract Law	*Knowledge 81*
70	1.69	35%	Mental Health Law	*Knowledge 79*
71	1.68	32%	Energy	*Knowledge 40*
72	1.66	28%	Hospital Law	*Knowledge 76*
73	1.65	32%	Natural Resources	*Knowledge 41*
74	1.63	32%	Land Use Planning	*Knowledge 44*
75	1.62	38%	Bills of Lading, Warehouse Receipts, and Other Documents of Title	*Knowledge 26*
76	1.62	34%	Environment	*Knowledge 39*
77	1.57	30%	Education Law	*Knowledge 47*
78	1.56	24%	Indian Law	*Knowledge 42*
79	1.55	33%	Antitrust	*Knowledge 55*
80	1.55	29%	Science and Technology Law	*Knowledge 82*
81	1.51	27%	Public Utility Law	*Knowledge 74*
82	1.45	22%	Indian Child Welfare Act	*Knowledge 60*
83	1.42	26%	Transportation Law	*Knowledge 72*
84	1.42	26%	Communication Law	*Knowledge 80*
85	1.35	21%	Admiralty Law	*Knowledge 73*
86	1.25	21%	Bioethics	*Knowledge 75*

* 1-4 with 4 being extremely significant.
** % reporting this is performed and/or expected of them

2

Section II. Skills and Abilities

Line No.	Average Significance*	Percent Performing**	Skills and Abilities	Survey Number
87	3.77	100%	Written communication	*Skill/Ability 2*
88	3.67	99%	Paying attention to details	*Skill/Ability 29*
89	3.60	99%	Listening	*Skill/Ability 10*
90	3.58	99%	Oral communication	*Skill/Ability 1*
91	3.58	99%	Professionalism	*Skill/Ability 3*
92	3.56	99%	Using office technologies (e.g. word processing and email)	*Skill/Ability 19*
93	3.55	98%	Critical reading and comprehension	*Skill/Ability 16*
94	3.55	97%	Synthesizing facts and law	*Skill/Ability 17*
95	3.54	99%	Legal reasoning	*Skill/Ability 8*
96	3.46	99%	Knowing when to go back and ask questions	*Skill/Ability 21*
97	3.46	99%	Organizational skills	*Skill/Ability 26*
98	3.44	99%	Working within established time constraints	*Skill/Ability 13*
99	3.44	99%	Interpersonal skills	*Skill/Ability 27*
100	3.43	98%	Issue spotting	*Skill/Ability 24*
101	3.31	98%	Decisiveness	*Skill/Ability 18*
102	3.30	99%	Answering questions succinctly	*Skill/Ability 25*
103	3.29	89%	Judgment	*Skill/Ability 15*
104	3.28	99%	Computer skills	*Skill/Ability 22*
105	3.26	98%	Electronic researching	*Skill/Ability 5*
106	3.26	95%	Diligence	*Skill/Ability 31*
107	3.24	94%	Advocacy	*Skill/Ability 9*
108	3.22	96%	Fact gathering and evaluation	*Skill/Ability 7*
109	3.15	97%	Consciousness of personal and professional limitations	*Skill/Ability 36*
110	3.13	96%	Planning and strategizing	*Skill/Ability 32*
111	3.10	96%	Information integrating	*Skill/Ability 23*
112	2.98	97%	Working collaboratively	*Skill/Ability 12*
113	2.97	87%	Negotiation	*Skill/Ability 20*
114	2.93	96%	Resource management	*Skill/Ability 11*
115	2.92	91%	Interviewing	*Skill/Ability 28*
116	2.87	74%	Courtroom presence	*Skill/Ability 33*
117	2.85	95%	Creativity	*Skill/Ability 35*
118	2.84	86%	Attorney client privilege - document reviewing	*Skill/Ability 30*
119	2.71	68%	Trial skills	*Skill/Ability 34*
120	2.67	95%	Legal citation	*Skill/Ability 4*
121	2.31	44%	Jury selection	*Skill/Ability 14*
122	2.27	91%	Non-electronic researching	*Skill/Ability 6*

* 1-4 with 4 being extremely significant.
** % reporting this is performed and/or expected of them

3

General Tasks

Line No.	Average Significance*	Percent Performing**	Management of attorney-client relationship and caseload	Survey Number
123	3.40	95%	Identify issues in case	*Task 2*
124	2.86	76%	Establish attorney-client relationship	*Task 5*
125	2.86	78%	Establish and maintain calendaring system	*Task 8*
126	2.59	88%	Analyze application of rules of professional conduct and related law	*Task 6*
127	2.52	36%	Establish and maintain client trust account	*Task 9*
128	2.51	67%	Evaluate potential client engagement	*Task 1*
129	2.22	50%	Terminate attorney-client relationship	*Task 10*
130	2.11	60%	Draft engagement letter	*Task 3*
131	2.05	49%	Draft initial report and budget for client	*Task 4*
132	1.99	57%	Draft disclosure of potential conflict of interest and waiver	*Task 7*

Line No.	Average Significance*	Percent Performing**	Communications	Survey Number
133	3.49	89%	Supervising attorney	*Task 19*
134	3.48	88%	Client	*Task 12*
135	3.42	83%	Court	*Task 17*
136	3.33	88%	Counsel for other party	*Task 16*
137	3.22	93%	Non-lawyer staff	*Task 18*
138	2.85	83%	Government agency	*Task 15*
139	2.80	69%	Prospective client	*Task 11*
140	2.48	62%	Investigator	*Task 13*
141	2.43	56%	Law enforcement	*Task 14*

Line No.	Average Significance*	Percent Performing**	Research and Investigation	Survey Number
142	3.42	96%	Conduct electronic legal research	*Task 34*
143	3.38	95%	Research statutory authority	*Task 30*
144	3.31	96%	Research regulations and rules	*Task 31*
145	3.19	89%	Research judicial authority	*Task 29*
146	3.10	86%	Conduct document review	*Task 26*
147	3.04	77%	Interview client and client representatives	*Task 20*
148	2.91	83%	Conduct fact investigation	*Task 25*
149	2.75	69%	Interview witness	*Task 21*
150	2.70	92%	Research secondary authorities	*Task 32*
151	2.58	61%	Obtain medical records	*Task 28*
152	2.54	58%	Conduct transaction due diligence activities	*Task 24*
153	2.53	81%	Request public records	*Task 27*
154	2.38	69%	Investigate the background of opposing party	*Task 23*
155	2.29	85%	Research legislative history	*Task 33*
156	2.16	48%	Investigate the scene of the incident	*Task 22*

* 1-4 with 4 being extremely significant.
** % reporting this is performed and/or expected of them

			General Tasks (cont.)	
Line No.	**Average Significance***	**Percent Performing****	**Analysis and resolution of client matters**	**Survey Number**
157	3.46	97%	Analyze law	*Task 35*
158	3.20	87%	Advise client	*Task 37*
159	3.13	87%	Develop strategy for client matter	*Task 36*
160	2.93	77%	Negotiate agreement	*Task 43*
161	2.81	86%	Draft memo summarizing case law, statutes, and regulations, including legislative history	*Task 39*
162	2.79	72%	Negotiate dispute	*Task 42*
163	2.60	65%	Draft demand letter	*Task 41*
164	2.54	76%	Draft legal opinion letter	*Task 40*
165	2.53	80%	Draft case summary	*Task 38*

* 1-4 with 4 being extremely significant.
** % reporting this is performed and/or expected of them

Section IV. Specific Practice Area Tasks

Specific Practice Area Tasks

Line No.	Average Significance*	Percent Reporting**	Administrative Law Tasks (Practice Area for 21 percent of Respondents)	Survey Number
166	3.31	99%	Research agency procedural and substantive rules	Task 44
167	3.12	98%	Review agency opinions and determinations	Task 45
168	2.68	87%	Request documents from administrative agencies	Task 46
169	2.47	74%	Respond to document requests from administrative agencies	Task 47
170	2.67	68%	Prepare application to government agency	Task 48
171	2.60	53%	Advise client on permitting or licensing decisions	Task 49
172	2.59	55%	Advise client regarding benefit eligibility	Task 50
173	2.78	82%	Develop and review administrative records	Task 51
174	3.03	70%	Represent client before administrative agency	Task 52
175	2.85	74%	Draft or respond to petition for review of administrative action	Task 53
176	2.66	52%	Prosecute appeal on denial of eligibility	Task 54
177	2.23	49%	Participate in rulemaking procedures	Task 55

Line No.	Average Significance*	Percent Reporting**	Business Organizations Tasks (Practice Area for 20 percent of Respondents)	Survey Number
178	3.00	87%	Draft documents for formation of business organizations	Task 57
179	2.86	71%	Draft resolutions, written consents, and/or meeting minutes of shareholders and directors	Task 63
180	2.75	86%	Advise client regarding forms of business organizations	Task 56
181	2.67	75%	Draft purchase agreement	Task 59
182	2.54	61%	Draft closing checklist and flow of funds statement	Task 60
183	2.50	71%	Draft non-compete agreement or provisions	Task 65
184	2.46	73%	Draft term sheet or letter of intent for business transactions	Task 58
185	2.46	62%	Evaluate applicability of state and federal securities law	Task 69
186	2.40	47%	Prepare schedules for merger and acquisition transactions	Task 68
187	2.38	67%	Draft employment agreement	Task 67
188	2.27	66%	Negotiate non-compete agreement or provisions	Task 64
189	2.22	55%	Draft merger and acquisition agreement	Task 62
190	2.14	60%	Negotiate employment agreement	Task 66
191	1.99	51%	Negotiate merger and acquisition agreement	Task 61

Line No.	Average Significance*	Percent Reporting**	Civil Litigation Tasks (Practice Area for 43 percent of Respondents)	Survey Number
192	3.25	85%	Draft/respond to motion for summary judgment or other dispositive motion	Task 110
193	3.19	85%	Prepare/respond to request for production (including electronically stored information)	Task 82
194	3.17	79%	Draft answer to complaint	Task 74
195	3.16	80%	Draft summons and complaint	Task 72
196	3.16	92%	Conduct document review	Task 90
197	3.13	85%	Prepare/respond to interrogatories	Task 80
198	3.10	82%	Represent client in court hearing	Task 112
199	3.09	84%	Draft/respond to motion to dismiss	Task 109
200	3.06	82%	Prepare/respond to request for admission	Task 81
201	3.06	84%	Draft/respond to non-dispositive motion	Task 111

* 1-4 with 4 being extremely significant.
** % reporting this is performed and/or expected of them

6

Specific Practice Area Tasks (cont.)

Line No.	Average Significance*	Percent Reporting**	Civil Litigation Tasks (cont.) (Practice Area for 43 percent of Respondents)	Survey Number
202	3.03	82%	Analyze deposition testimony	Task 89
203	2.99	84%	Analyze medical/business records	Task 91
204	2.98	79%	Represent client at court conference	Task 96
205	2.95	84%	Draft proposed order	Task 106
206	2.94	81%	Draft/respond to discovery motion	Task 95
207	2.92	86%	Draft affidavits and declarations	Task 78
208	2.89	74%	Conduct/defend deposition	Task 88
209	2.85	78%	Prepare client for testimony	Task 99
210	2.83	75%	Draft release/settlement agreement	Task 103
211	2.79	76%	Draft settlement proposal	Task 102
212	2.79	64%	Draft/assist with appellate brief	Task 128
213	2.78	58%	Perform direct examination and cross-examination	Task 116
214	2.77	61%	Make objections	Task 118
215	2.76	81%	Draft witness and exhibit lists	Task 97
216	2.75	73%	Draft/respond to discovery deficiency letters	Task 92
217	2.74	75%	Draft and serve subpoena duces tecum	Task 100
218	2.73	80%	Resolve discovery disputes	Task 93
219	2.71	62%	Make trial motions	Task 119
220	2.70	75%	Prepare testimony outlines	Task 98
221	2.70	73%	Draft motions in limine	Task 101
222	2.70	60%	Introduce exhibits	Task 117
223	2.70	54%	Represent client at mediation	Task 133
224	2.69	56%	Communicate with insurer	Task 77
225	2.66	68%	Prepare/respond to request for inspection	Task 83
226	2.66	56%	Draft proposed jury instructions	Task 120
227	2.65	63%	Draft/respond to post-judgment motion	Task 123
228	2.65	52%	Present oral argument	Task 129
229	2.64	53%	Present closing argument	Task 122
230	2.63	76%	Prepare pretrial order	Task 113
231	2.62	53%	Draft mediation statement	Task 132
232	2.60	75%	Draft discovery plan	Task 79
233	2.58	73%	Identify/evaluate expert witnesses	Task 86
234	2.51	53%	Present opening statement	Task 115
235	2.49	41%	Represent client at arbitration	Task 134
236	2.48	65%	Prepare expert disclosure	Task 87
237	2.46	53%	Represent client in post-judgment proceedings and other collection activities	Task 124
238	2.43	54%	Prepare or designate record on appeal	Task 127
239	2.42	38%	Analyze Medicare issues in personal injury action	Task 76
240	2.41	60%	Prepare meet-and-confer letter	Task 94
241	2.38	62%	Draft protective order	Task 105
242	2.37	52%	Prepare/respond to request for independent medical examination	Task 84
243	2.36	42%	Negotiate with subrogation claimants and lien holders	Task 125
244	2.34	62%	Prepare privilege log	Task 85
245	2.34	43%	Select jury	Task 114
246	2.29	44%	Draft demand for arbitration and response	Task 130
247	2.28	46%	Prepare offer of judgment	Task 126
248	2.25	43%	Draft contempt documents	Task 121
249	2.23	58%	Draft removal and remand documents	Task 75

* 1-4 with 4 being extremely significant.
** % reporting this is performed and/or expected of them

			Specific Practice Area Tasks (cont.)	

Line No.	Average Significance*	Percent Reporting**	Civil Litigation Tasks (cont.) (Practice Area for 43 percent of Respondents)	Survey Number
250	2.18	50%	Draft litigation hold letter	*Task 104*
251	2.17	57%	Draft petition for extraordinary relief	*Task 73*
252	2.14	50%	Develop "market value" of similar cases in similar venues	*Task 70*
253	2.12	28%	Draft foreclosure documents	*Task 108*
254	2.11	59%	Draft confidentiality agreement	*Task 71*
255	2.04	35%	Draft settlement brochure	*Task 131*
256	1.89	32%	Draft civil/criminal forfeiture documents	*Task 107*

Line No.	Average Significance*	Percent Performing**	Commercial Law Tasks (Practice Area for 12 percent of Respondents)	Survey Number
257	3.28	86%	Draft contracts	*Task 135*
258	3.03	78%	Draft Terms and Conditions for client forms and agreements	*Task 136*
259	2.82	62%	Draft resolutions, written consents, and/or meeting minutes of shareholders and directors	*Task 149*
260	2.80	76%	Analyze loan documents	*Task 138*
261	2.65	54%	Draft closing checklists and flow of funds statements	*Task 144*
262	2.63	64%	Draft assignment and assumption agreements	*Task 148*
263	2.62	66%	Draft asset purchase agreements	*Task 141*
264	2.51	66%	Perform lien, litigation, and bankruptcy filing searches	*Task 150*
265	2.50	58%	Draft licensing agreements	*Task 137*
266	2.49	61%	Draft loan documents	*Task 139*
267	2.48	61%	Draft term sheet letters of intent for business transaction	*Task 143*
268	2.44	60%	Draft, perfect, or enforce liens	*Task 151*
269	2.38	45%	Draft merger and acquisition agreements	*Task 146*
270	2.36	67%	Analyze issues of insurance coverage	*Task 140*
271	2.25	54%	Draft UCC financing statements	*Task 142*
272	2.23	45%	Negotiate merger and acquisition agreements	*Task 145*
273	2.01	38%	Draft bond documents	*Task 147*

Line No.	Average Significance*	Percent Performing**	Criminal Law Tasks (Practice Area for 18 percent of Respondents)	Survey Number
274	3.55	87%	Conduct plea negotiations	*Task 157*
275	3.54	73%	Advise client regarding plea options	*Task 159*
276	3.42	75%	Try misdemeanor case (jury and non-jury)	*Task 167*
277	3.39	86%	Raise/respond to suppression/evidentiary issues	*Task 166*
278	3.30	61%	Try felony case (jury and non-jury)	*Task 168*
279	3.23	80%	Draft/review plea agreement	*Task 160*
280	3.16	79%	Prepare/present sentencing arguments	*Task 172*
281	3.05	80%	Evaluate collateral effects of criminal conviction	*Task 171*
282	3.00	76%	Interview criminal complainant	*Task 152*
283	2.93	62%	Represent client in probation violation proceedings	*Task 176*
284	2.87	53%	Represent client in domestic violence/family offense protective order proceedings	*Task 165*
285	2.84	65%	Represent client at bail hearing	*Task 155*
286	2.84	69%	Draft jury instructions	*Task 170*
287	2.75	68%	Conduct proffer negotiations	*Task 158*
288	2.75	42%	Represent client in license revocation proceedings	*Task 162*

* 1-4 with 4 being extremely significant.
** % reporting this is performed and/or expected of them

			Specific Practice Area Tasks (cont.)	

Line No.	Average Significance*	Percent Performing**	**Criminal Law Tasks (cont.)** **(Practice Area for 18 percent of Respondents)**	Survey Number
289	2.72	75%	Communicate with probation agent	*Task 175*
290	2.68	62%	Represent client in traffic matters	*Task 161*
291	2.68	43%	Represent client in juvenile delinquency matters	*Task 163*
292	2.67	74%	Raise/respond to defendant's mental competency issues	*Task 156*
293	2.65	49%	Represent client in post-conviction relief proceedings	*Task 173*
294	2.63	41%	Draft criminal charging documents	*Task 154*
295	2.53	60%	Conduct pre-charging negotiations	*Task 153*
296	2.50	35%	Represent client in child protection matters	*Task 164*
297	2.37	41%	Petition for writ of habeas corpus	*Task 174*
298	2.22	40%	Litigate property forfeiture issues	*Task 169*

Line No.	Average Significance*	Percent Performing**	**Debtor/Creditor Relations Tasks** **(Practice Area for 11 percent of Respondents)**	Survey Number
299	2.91	82%	Advise client regarding collection options	*Task 179*
300	2.80	89%	Analyze loan documents	*Task 177*
301	2.79	62%	Analyze bankruptcy petition and schedules	*Task 182*
302	2.77	83%	Analyze effects of bankruptcy on enforcement of liens	*Task 178*
303	2.73	50%	Engage in motion practice in bankruptcy court	*Task 188*
304	2.68	51%	Draft pleadings in bankruptcy court	*Task 187*
305	2.65	43%	Represent client in 341 hearing	*Task 185*
306	2.65	50%	Assess or object to dischargeability	*Task 189*
307	2.63	45%	Draft complaint for adversary proceedings in bankruptcy	*Task 186*
308	2.62	63%	Advise client regarding bankruptcy filing options	*Task 180*
309	2.61	55%	Analyze avoidability of transfers	*Task 190*
310	2.58	62%	Represent client in post-judgment proceedings and other collection activities	*Task 193*
311	2.54	45%	Draft bankruptcy petition and schedules	*Task 181*
312	2.54	45%	Draft debtor's disclosure statement and plan	*Task 183*
313	2.52	49%	Participate in automatic stay proceedings	*Task 191*
314	2.46	39%	Draft foreclosure documents	*Task 194*
315	2.42	42%	Draft claim against bankrupt estate	*Task 192*
316	2.36	39%	Represent client in bankruptcy committee meeting	*Task 184*

* 1-4 with 4 being extremely significant.
** % reporting this is performed and/or expected of them

Specific Practice Area Tasks (cont.)

Line No.	Average Significance*	Percent Performing**	Employment Law Tasks (Practice Area for 11 percent of Respondents)	Survey Number
317	2.94	72%	File and respond to federal and state discrimination claim	Task 206
318	2.89	73%	Represent client on employment rights and obligations	Task 202
319	2.76	80%	Advise client on discipline and termination issues	Task 198
320	2.76	76%	Analyze client practices and procedures in light of employment laws	Task 200
321	2.74	65%	Conduct witness interviews in light of discrimination claim	Task 205
322	2.57	69%	Advise client on disability accommodation issues	Task 199
323	2.41	57%	Draft employment and non-compete agreements	Task 196
324	2.40	55%	Draft employee handbook and employment policies	Task 195
325	2.39	61%	Advise client on unemployment laws	Task 203
326	2.34	33%	Represent client in collective bargaining matters and related proceedings	Task 208
327	2.33	53%	Draft separation agreement	Task 197
328	2.14	32%	Prosecute/defend workers' compensation claim	Task 207
329	2.08	48%	Determine applicability of workers' compensation benefits	Task 201
330	1.91	29%	Draft/revise appeal of denial of employee benefits (ERISA)	Task 204

Line No.	Average Significance*	Percent Performing**	Environmental Law/Natural Resources Tasks (Practice Area for 4 percent of Respondents)	Survey Number
331	3.15	89%	Research applicability of var. fed. and state environmental programs & procedural rules	Task 210
332	2.66	77%	Perform environmental litigation support	Task 221
333	2.64	53%	Support preparation of comments on proposed environmental regulations	Task 222
334	2.61	55%	Draft FOIA requests	Task 218
335	2.51	49%	Perform environmental liability research in real estate transactional contexts	Task 220
336	2.36	55%	Review and analyze Phase 1 environmental reports	Task 211
337	2.26	70%	Negotiate with regulatory authorities	Task 214
338	2.26	62%	Conduct compliance activities and support client in responding to non-compliance issues	Task 215
339	2.23	53%	Draft permit applications	Task 209
340	2.14	40%	Draft conservation agreements	Task 219
341	2.02	57%	Support client during permit application/review process and communnications with regulators and opponents of permit	Task 213
342	2.00	58%	Support client during environmental data/information response requests from regulators	Task 212
343	1.81	43%	Draft insurance coverage opinions	Task 217
344	1.76	49%	Draft response to audit reports	Task 216

* 1-4 with 4 being extremely significant.
** % reporting this is performed and/or expected of them

			Specific Practice Area Tasks (cont.)	

Line No.	Average Significance*	Percent Performing**	Family Law Tasks (Practice Area for 13 percent of Respondents)	Survey Number
345	3.51	86%	Draft property settlement agreement and documents related to spousal support, child support, and child custody/visitation	*Task 236*
346	3.50	89%	Represent client in support, child custody, and visitation proceedings	*Task 230*
347	3.49	88%	Represent client in divorce, property settlement, and child custody hearings	*Task 235*
348	3.31	84%	Prepare petition for custody	*Task 237*
349	3.17	86%	Draft motion/brief for modification of prior court order	*Task 232*
350	3.10	80%	Draft motion/brief for interim relief	*Task 231*
351	3.10	79%	Draft motion/brief for enforcement of prior court order	*Task 240*
352	2.95	76%	Represent client in domestic violence/family offense proceedings	*Task 226*
353	2.82	52%	Represent client in juvenile court proceedings	*Task 239*
354	2.70	70%	Represent client in paternity proceedings	*Task 227*
355	2.64	69%	Represent client in abuse and neglect proceedings	*Task 228*
356	2.56	64%	Represent client in termination of parental rights proceedings	*Task 229*
357	2.29	59%	Prepare adoption petitions	*Task 225*
358	2.23	35%	Draft special needs trust documents	*Task 238*
359	2.15	48%	Prepare placement petitions	*Task 224*
360	2.11	25%	Represent client in Indian Child Welfare proceedings	*Task 234*
361	2.09	39%	Analyze tribal jurisdiction	*Task 233*
362	1.98	54%	Draft prenuptial agreements	*Task 223*

Line No.	Average Significance*	Percent Performing**	Immigration Law Tasks (Practice Area for 5 percent of Respondents)	Survey Number
364	3.55	91%	Review regulations to determine client's eligibility for immigration benefit	*Task 241*
365	3.51	81%	Evaluate client's criminal record to determine if conviction/crime renders client deportable or excludable	*Task 250*
366	3.48	90%	Prepare visa applications and asylum petitions	*Task 244*
367	3.40	79%	Draft immigration and deportation documents	*Task 254*
368	3.38	74%	Evaluate collateral effects of criminal conviction	*Task 251*
369	3.37	90%	Review forms submitted in conjunction with immigration benefit petitions	*Task 246*
370	3.27	87%	Analyze client's eligibility for relief from removal	*Task 249*
371	3.16	79%	Represent client in deportation or other immigration proceeding	*Task 253*
372	3.09	81%	Prepare client for and accompany client to interviews by case adjudicators	*Task 252*
373	3.03	80%	Review agency and ALJ opinions related to immigration benefits denials	*Task 255*
374	2.88	70%	Assist client with completion of online forms for consular appointments	*Task 247*
375	2.51	76%	Communicate with law enforcement	*Task 248*
376	2.36	53%	Audit client's activities to determine compliance	*Task 243*
377	2.24	43%	Assist employer in determining legality of workforce	*Task 242*

* 1-4 with 4 being extremely significant.
** % reporting this is performed and/or expected of them

	Specific Practice Area Tasks (cont.)			

Line No.	Average Significance*	Percent Performing**	Intellectual Property Tasks (Practice Area for 7 percent of Respondents)	Survey Number
378	3.14	63%	Review alleged prior art	Task 276
379	3.08	50%	Analyze patentability of invention	Task 264
380	3.04	40%	Draft patent application	Task 266
381	3.02	50%	Draft trademark application	Task 268
382	2.96	62%	Draft cease-and-desist letter	Task 277
383	2.94	72%	Advise client on types of intellectual property protection available for inventions and creations and any gaps in coverage	Task 262
384	2.94	73%	Maintain industry knowledge of intellectual-property-focused industries (e.g., publishing)	Task 281
385	2.89	57%	Negotiate licensing agreement	Task 274
386	2.87	66%	Draft non-disclosure agreement	Task 260
387	2.83	54%	Perform and analyze trademark clearance searches	Task 267
388	2.83	51%	Draft release agreement for use of intellectual property	Task 272
389	2.79	67%	Draft licensing agreement	Task 275
390	2.71	62%	Maintain calendaring system for trademark and patent filings	Task 256
391	2.70	58%	Draft intellectual property assignment agreement for transaction	Task 271
392	2.65	59%	Advise client on maximizing intellectual property portfolio	Task 278
393	2.62	49%	Prepare copyright application	Task 269
394	2.57	60%	Evaluate new technologies' impact on and treatment under existing law	Task 279
395	2.56	53%	Draft intellectual property development agreement	Task 257
396	2.48	47%	Draft work-for-hire agreement	Task 259
397	2.46	56%	Draft website terms of use and privacy policy	Task 261
398	2.46	39%	Identify open-source software licenses and advise client on commercialization of same	Task 273
399	2.45	64%	Advise client on fair use doctrine	Task 270
400	2.44	52%	Review office-specific resources (e.g., Copyright Office circulars)	Task 280
401	2.43	52%	Draft intellectual-property-specific representations and warranties in purchase agreement	Task 258
402	2.38	55%	Prepare intellectual property due diligence checklist	Task 263
403	2.33	45%	Draft invention assignment agreement	Task 265

Line No.	Average Significance*	Percent Performing**	Real Estate Tasks (Practice Area for 10 percent of Respondents)	Survey Number
404	3.23	70%	Draft deed and real estate closing documents	Task 298
405	2.98	75%	Communicate with title agent and other third parties	Task 294
406	2.98	64%	Draft real estate purchase and sale agreement	Task 297
407	2.96	84%	Review and evaluate a title examination/report	Task 293
408	2.96	58%	Conduct real estate closing	Task 296
409	2.92	60%	Represent client in real estate closing	Task 307
410	2.89	55%	Draft closing checklist	Task 295
411	2.89	72%	Draft lease agreement, amendments, and memorandum of lease	Task 300
412	2.85	71%	Represent client in landlord-tenant matters	Task 308
413	2.75	83%	Analyze loan documents	Task 282
414	2.75	46%	Represent client in loan closing	Task 306
415	2.68	70%	Draft power of attorney	Task 287
416	2.64	49%	Draft deeds of trust	Task 310
417	2.62	52%	Draft easements and other servitudes	Task 302
418	2.57	53%	Draft, perfect, or enforce lien	Task 305
419	2.56	75%	Review organizational documents	Task 290
420	2.55	72%	Review and analyze land survey	Task 288

* 1-4 with 4 being extremely significant.
** % reporting this is performed and/or expected of them

	Specific Practice Area Tasks (cont.)			

Line No.	Average Significance*	Percent Performing**	Real Estate Tasks (cont.) (Practice Area for 10 percent of Respondents)	Survey Number
421	2.40	51%	Represent client in foreclosure proceedings	Task 309
422	2.34	38%	Draft real estate construction agreement	Task 303
423	2.32	60%	Draft loan documents and modifications/amendments	Task 284
424	2.31	55%	Review and analyze environmental reports	Task 289
425	2.31	37%	Draft condominium documents	Task 299
426	2.26	51%	Negotiate with zoning and other regulatory authorities	Task 291
427	2.25	57%	Review insurance certificates	Task 292
428	2.24	44%	Draft operating agreement and division order	Task 304
429	2.23	57%	Negotiate loan document	Task 283
430	2.21	53%	Draft construction/mechanic's lien waiver	Task 286
431	2.14	54%	Draft UCC financing statement	Task 285
432	2.13	37%	Draft land use planning documents	Task 301

Line No.	Average Significance*	Percent Performing**	Wills, Trusts, Estate Planning, and Probate Law Tasks (Practice Area for 12 percent of Respondents)	Survey Number
433	3.32	91%	Draft wills	Task 312
434	3.21	91%	Draft power of attorney	Task 315
435	3.20	85%	Draft healthcare surrogate/healthcare power of attorney	Task 318
436	3.18	91%	Advise client on estate planning matters	Task 311
437	3.15	88%	Draft living will	Task 316
438	3.10	82%	Draft estate plan documents	Task 314
439	3.09	79%	Draft trusts	Task 313
440	2.90	73%	Draft documents for probate proceeding	Task 323
441	2.88	66%	Represent client in probate proceeding	Task 328
442	2.57	52%	Draft closing checklist	Task 324
443	2.57	53%	Prepare/review estate and inheritance tax filings	Task 327
444	2.51	64%	Draft conservatorship/guardianship documents	Task 321
445	2.49	56%	Draft special needs trust	Task 317
446	2.40	55%	Evaluate need for mental competency evaluation	Task 322
447	2.28	45%	Draft claim against estate	Task 325
448	2.17	43%	Draft motion/brief for interim relief	Task 326
449	2.15	49%	Draft prenuptial agreement	Task 320
450	2.09	47%	Draft covenants and restrictions	Task 319

* 1-4 with 4 being extremely significant.
** % reporting this is performed and/or expected of them

O*NET Tasks, Knowledge, Skills, and Abilities

Tasks	
T-1	Analyze the probable outcomes of cases, using knowledge of legal precedents.
T-2	Advise clients concerning business transactions, claim liability, advisability of prosecuting or defending lawsuits, or legal rights and obligations.
T-3	Select jurors, argue motions, meet with judges, and question witnesses during the course of a trial.
T-4	Interpret laws, rulings and regulations for individuals and businesses.
T-5	Present evidence to defend clients or prosecute defendants in criminal or civil litigation.
T-6	Represent clients in court or before government agencies.
T-7	Present and summarize cases to judges and juries.
T-8	Study Constitution, statutes, decisions, regulations, and ordinances of quasi-judicial bodies to determine ramifications for cases.
T-9	Prepare, draft, and review legal documents, such as wills, deeds, patent applications, mortgages, leases, and contracts.
T-10	Negotiate settlements of civil disputes.
T-11	Supervise legal assistants.
T-12	Examine legal data to determine advisability of defending or prosecuting lawsuit.
T-13	Evaluate findings and develop strategies and arguments in preparation for presentation of cases.
T-14	Gather evidence to formulate defense or to initiate legal actions, by such means as interviewing clients and witnesses to ascertain the facts of a case.
T-15	Prepare legal briefs and opinions, and file appeals in state and federal courts of appeal.
T-16	Search for and examine public and other legal records to write opinions or establish ownership.
T-17	Confer with colleagues with specialties in appropriate areas of legal issue to establish and verify bases for legal proceedings.
T-18	Perform administrative and management functions related to the practice of law.
T-19	Work in environmental law, representing public interest groups, waste disposal companies, or construction firms in their dealings with state and federal agencies.

T-20   Probate wills and represent and advise executors and administrators of estates.

T-21   Act as agent, trustee, guardian, or executor for businesses or individuals.

T-22   Help develop federal and state programs, draft and interpret laws and legislation, and establish enforcement procedures.

Knowledge	
K-1	**Law and Government** — Knowledge of laws, legal codes, court procedures, precedents, government regulations, executive orders, agency rules, and the democratic political process.
K-2	**English Language** — Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
K-3	**Customer and Personal Service** — Knowledge of principles and processes for providing customer and personal services. This includes customer needs assessment, meeting quality standards for services, and evaluation of customer satisfaction.
K-4	**Administration and Management** — Knowledge of business and management principles involved in strategic planning, resource allocation, human resources modeling, leadership technique, production methods, and coordination of people and resources.
K-5	**Personnel and Human Resources** — Knowledge of principles and procedures for personnel recruitment, selection, training, compensation and benefits, labor relations and negotiation, and personnel information systems.
K-6	**Computers and Electronics** — Knowledge of circuit boards, processors, chips, electronic equipment, and computer hardware and software, including applications and programming.

Skills	
S-1	**Active Listening** — Giving full attention to what other people are saying, taking time to understand the points being made, asking questions as appropriate, and not interrupting at inappropriate times.
S-2	**Speaking** — Talking to others to convey information effectively.
S-3	**Reading Comprehension** — Understanding written sentences and paragraphs in work related documents.
S-4	**Critical Thinking** — Using logic and reasoning to identify the strengths and weaknesses of alternative solutions, conclusions or approaches to problems.
S-5	**Complex Problem Solving** — Identifying complex problems and reviewing related information to develop and evaluate options and implement solutions.
S-6	**Judgment and Decision Making** — Considering the relative costs and benefits of potential actions to choose the most appropriate one.
S-7	**Negotiation** — Bringing others together and trying to reconcile differences.

S-8   **Persuasion** — Persuading others to change their minds or behavior.

S-9   **Writing** — Communicating effectively in writing as appropriate for the needs of the audience.

S-10   **Active Learning** — Understanding the implications of new information for both current and future problem-solving and decision-making.

S-11   **Time Management** — Managing one's own time and the time of others.

S-12   **Social Perceptiveness** — Being aware of others' reactions and understanding why they react as they do.

S-13   **Monitoring** — Monitoring/Assessing performance of yourself, other individuals, or organizations to make improvements or take corrective action.

S-14   **Systems Analysis** — Determining how a system should work and how changes in conditions, operations, and the environment will affect outcomes.

S-15   **Coordination** — Adjusting actions in relation to others' actions.

S-16   **Instructing —** Teaching others how to do something.

S-17   **Service Orientation** — Actively looking for ways to help people.

S-18   **Learning Strategies —** Selecting and using training/instructional methods and procedures appropriate for the situation when learning or teaching new things.

S-19   **Systems Evaluation —** Identifying measures or indicators of system performance and the actions needed to improve or correct performance, relative to the goals of the system.

Abilities	

A-1   **Oral Expression** — The ability to communicate information and ideas in speaking so others will understand.

A-2   **Oral Comprehension** — The ability to listen to and understand information and ideas presented through spoken words and sentences.

A-3   **Written Comprehension** — The ability to read and understand information and ideas presented in writing.

A-4   **Speech Clarity** — The ability to speak clearly so others can understand you.

A-5   **Written Expression** — The ability to communicate information and ideas in writing so others will understand.

A-6   **Deductive Reasoning** — The ability to apply general rules to specific problems to produce answers that make sense.

A-7   **Inductive Reasoning** — The ability to combine pieces of information to form general rules or conclusions (includes finding a relationship among seemingly unrelated events).

A-8   **Information Ordering** — The ability to arrange things or actions in a certain order or pattern according to a specific rule or set of rules (e.g., patterns of numbers, letters, words, pictures, mathematical operations).

A-9   **Near Vision** — The ability to see details at close range (within a few feet of the observer).

A-10   **Problem Sensitivity** — The ability to tell when something is wrong or is likely to go wrong. It does not involve solving the problem, only recognizing there is a problem.

A-11   **Category Flexibility** — The ability to generate or use different sets of rules for combining or grouping things in different ways.

A-12   **Fluency of Ideas** — The ability to come up with a number of ideas about a topic (the number of ideas is important, not their quality, correctness, or creativity).

A-13   **Originality** — The ability to come up with unusual or clever ideas about a given topic or situation, or to develop creative ways to solve a problem.

A-14   **Selective Attention** — The ability to concentrate on a task over a period of time without being distracted.

A-15   **Speech Recognition** — The ability to identify and understand the speech of another person.

Five-Year Member Survey - 2017

Survey Results Related to Trends of Attorney Employment, Career Path, Practice Areas, and Specialization Patterns

Employment changed not only in the overall employment opportunity in the legal job market but also in terms of the particular sector or firm type with job opportunities. The two tables below show the firm or organization types where the respondents were first employed after graduation and their current employment. A few highlights are summarized as following:

- There is a significant decline in the proportion of attorneys in solo practice, with 9.8 percent in current employment for the youngest cohort, compared to 50 percent for the oldest cohort.
- The proportion initially employed in small firms have not seen significant changes, in contrast to the large increase in younger cohorts employed in large firms, rising from 6 and 16 percent for the over-65 and 55-64 age groups, respectively, to 22 percent for younger cohorts.

Employment Type after Graduation by Age Group (%)

Employment Type	40 & Under	41-54	55-64	65 & Over	Total
Solo practice	6.6	6.5	9.7	13.6	9.2
Small firm	33.4	32.3	36.4	36.5	34.7
Medium firm	5.7	11.5	12.3	8.2	9.4
Large firm	22.7	22.3	16.1	6.1	16.5
Corporate in-house	4.5	3.8	4.3	6.3	4.8
Non-profit organization	6.8	4.1	2.9	3.6	4.4
District Attorney	2.6	3.5	3.2	4.7	3.6
Public Defender	2.4	2.9	2.0	2.2	2.4
Court	6.9	6.6	5.9	4.9	6.0
Other Government	6.9	5.8	7.0	13.1	8.4
Academic	1.3	0.6	0.5	1.0	0.9
Total	100.0	100.0	100.0	100.0	100.0

Current Employment Type by Age Group (%)

Employment Type	40 & Under	41-54	55-64	65 & Over	Total
Solo practice	9.8	20.7	30.7	49.6	26.3
Small firm	27.7	23.2	22.2	21.4	23.8
Medium firm	6.5	4.6	4.8	5.5	5.4
Large firm	13.5	10.0	9.8	8.1	10.5
Corporate in-house	12.5	14.5	11.0	4.5	10.9
Non-profit organization	7.4	4.3	3.0	1.9	4.3
District Attorney	3.0	2.9	2.8	0.7	2.4
Public Defender	3.1	2.1	1.6	0.7	2.0
Court	3.0	2.2	2.1	1.4	2.2
Other Government	12.3	13.7	10.6	4.3	10.6
Academic	1.2	2.0	1.6	1.9	1.7
Total	100.0	100.0	100.0	100.0	100.0

The table below shows, again by age group, the various practice areas selected by the respondents who are currently employed in the private sector (with more than one choice allowed). The shifts among the age groups are significant in many areas, with the direction of the change indicated in the first column.

Practice Area Choices, % by Age Group

Change*	Practice Area	40 & Under	41-54	55-64	65 & Over	Total
	Business	44.5	42.9	43.8	41.0	43.1
	Other Areas**	29.4	31.7	32.5	30.3	31.0
⭕	Real Estate	16.7	19.6	25.9	27.5	22.4
⭕	Personal Injury	17.1	17.5	20.1	17.1	18.0
🔵	Intellectual Property	18.3	19.3	14.8	9.2	15.5
⭕	Probate	9.4	11.2	14.1	20.9	13.9
⭕	Appellate	11.6	12.2	14.4	11.8	12.5
⭕	Family Law	8.8	10.0	10.1	14.0	10.7
⭕	Criminal	6.5	8.5	8.5	9.7	8.3
🔵	Labor Relations	9.9	9.1	7.4	5.6	8.0
⭕	Taxation	4.9	4.2	6.1	7.9	5.8
	Workers Comp	4.5	4.2	5.1	4.9	4.7
	Elder Abuse	3.1	3.4	4.1	3.9	3.6
🔵	Immigration	5.2	4.5	2.3	2.5	3.6
⭕	Legal Malpractice	2.2	2.7	4.0	3.5	3.1
⭕	Insolvency	1.9	2.2	4.4	3.3	2.9
	Disability Rights	2.6	2.5	2.1	2.2	2.4
	Juvenile Dep	0.9	1.0	1.0	1.5	1.1
⭕	Juvenile Del	0.3	0.8	0.6	1.3	0.7
⭕	Military Law and	0.3	0.8	0.4	0.7	0.5

**Extracted and categorized from "Other" answers with greater than 1 percent total response.

Change*	Practice Area	40 & Under	41-54	55-64	65 & Over	Total
🔵	Employment	5.8	5.1	3.0	2.2	4.0
⭕	Estate Planning	2.5	3.4	3.2	4.3	3.3
⭕	Insurance	1.4	1.7	3.1	1.8	2.0
⭕	Construction	0.9	2.0	1.8	1.5	1.5
	Entertainment	1.6	1.1	0.8	1.2	1.2
	Health Care	1.5	1.1	1.0	0.9	1.1
	Environment	1.1	0.9	1.4	0.9	1.1

*Statistically significant changes at 5% confidence level, with either 🔵 Increase or ⭕ decrease in younger cohorts.

The table below shows the various practice areas selected by the respondents who are currently employed in the private sector (with more than one choice allowed). A breakdown by firm type shows that some practice areas are more common in solo practice and small firms.

Practice Area Choices, % by Firm Type and Sorted by Greater Prevalence in Solo Practice and Small Firms

Practice Area	Solo practice	Small firm	Medium firm	Large firm	Corporate in-hou	Total
Family Law	20.4	11.1	1.4	0.4	0.5	10.7
Probate	22.3	16.8	7.5	2.5	0.7	13.8
Personal Injury	19.1	26.2	20.5	6.9	7.4	18.0
Criminal	16.6	6.5	2.6	3.4	0.6	8.5
Real Estate	24.0	26.9	27.2	12.8	17.2	22.6
Estate Planning	5.5	4.0	0.9	0.5	0.1	3.2
Elder Abuse	3.9	6.6	2.5	0.8	0.6	3.7
Immigration	5.0	3.6	1.4	2.4	2.0	3.6
Appellate	11.2	15.8	17.2	14.7	2.8	12.3
Disability Rights	2.3	3.7	2.0	1.1	1.1	2.4
Juvenile Dep	2.3	0.8	0.3	0.1	0.0	1.1
Juvenile Del	1.7	0.6	0.3	0.1	0.0	0.8
Insolvency	3.5	3.0	3.2	2.9	1.1	2.9
Military Law and Veterans	0.8	0.3	0.0	0.5	0.5	0.5
Taxation	5.3	6.1	5.8	6.8	4.7	5.7
Legal Malpractice	2.6	4.0	7.5	2.7	0.4	3.0
Employment	2.4	5.3	4.6	4.9	3.5	3.9
Workers Comp	3.4	5.4	8.2	3.2	6.4	4.7
Labor Relations	4.7	8.7	11.6	8.3	11.5	7.9
Business	37.6	40.7	39.2	47.1	60.1	43.2
Intellectual Property	9.6	10.3	13.6	22.6	34.8	15.5
# of Respondents	3,392	3,001	691	1,316	1,421	9,821

Aside from the change in specific practice areas, the different age groups also exhibits difference in the number of practice areas in their current practice. In general, younger cohorts are less likely to be engaged in multiple practice areas. While 42 percent of all respondents selected only one practice area, among the youngest cohort, those under the age of 40, 46 percent selected only one practice, compared to 39 percent for those over the age of 65.

When other factors are included in the analysis, it is revealed that age in itself is not an independent factor that influence the number of practice areas. Rather, the difference among age groups is a reflection of firm types in which they are employed. With those in solo practice and small firms having a higher propensity to select more than one practice, and a smaller percentage of younger attorneys employed in these firm types, the logical conclusion is that younger attorneys are less likely to select more than one practice area as a result of fewer of them in solo practice.

The data also shows that, with other factors held constant, women attorneys have a higher propensity to engage in a single practice area.

Number of Practice Areas by Age Group (%)

# of Practice Areas	40 & Under	41-54	55-64	65 & Over	Total
1	45.7	42.7	40.0	38.8	41.8
2	28.6	27.9	27.2	28.7	28.1
3	14.9	17.0	16.7	18.2	16.7
4 +	10.7	12.3	16.1	14.3	13.4
Total	100.0	100.0	100.0	100.0	100.0
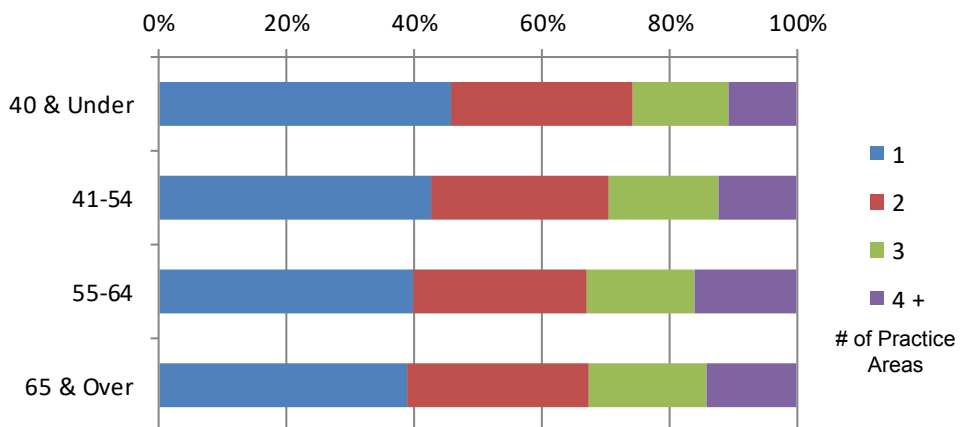
Bar Exam Subjects – Alpha Sort
(California, Florida, Illinois, Massachusetts, Texas & New York)

	CA	FL	IL	MA	TX	NY
Access to Justice				E		
Administrative Law			E			
Agency			E			
Business Associations/Org./Ent. (Corporations - Illinois)	E	E	E	E	E	E
Civil Procedure (State & Fed.)	B	B	B	B	B	B
Commercial Paper			E			
Community Property	E					
Conflict of Laws			E			E
Constitutional Law (State & Fed.)	B	B	B	B	B	B
Consumer Rights					E	
Contracts	B	B	B	B	B	B
Criminal Law and Procedure	B	B	B	B	B	B
Descent & Dist. of Estates				E		
Equity			E			
Evidence	B	B	B	B	B	B
Family Law (Dom. Relations – MA)		E	E	E	E	E
Federal Jurisdiction & Procedure			E	E		
Federal Taxation			E			
Florida Bar R&R, Chpts. 4 & 5		E				
Florida Constitutional Law		E				
Florida Rules of Judicial Admin.		E				
Illinois Rules of Civ. Procedure			E			
Mass. Rules of Civ. Procedure				E		
Partnerships			E			
Personal Property			E			
Professionalism		E				
Professional Responsibility	E			E		
Real Property	B	B	B	B	B	B
Remedies	E					
Sales			E			
Secured Transactions			E			
Suretyship			E			
Texas Rules of Civ. Procedure					E	
Texas Rules of Crim. Pro. & Evid.					E	
Torts	B	B	B	B	B	B
Trusts	E	E	E	E	E	E
Unfair or Deceptive Practices				E		
Uniform Commercial Code (Art. 9 Secured Transactions)		E (3 & 9)		E (Art. 1-9)	E	E (Art. 9)
Wills and Succession	E	E	E	E	E	

Subjects tested both by the MBE and other methods (i.e. essay) = B
Extra subjects tested in addition to MBE subjects = E

Bar Exam Subjects – Related Topic Groupings
(California, Florida, Illinois, Massachusetts, Texas & New York)

	CA	FL	IL	MA	TX	NY
MBE* & RELATED SUBJECTS						
*Civil Procedure (State & Fed.)	B	B	B	B	B	B
Conflict of Laws			E			E
Federal Jurisdiction & Proc.			E	E		
Illinois Rules of Civ. Proc.			E			
Mass. Rules of Civ. Proc.				E		
Texas Rules of Civ. Proc.					E	
*Constitutional Law (State & Fed.)	B	B	B	B	B	B
Florida Constitutional Law		E				
*Contracts	B	B	B	B	B	B
Sales			E			
Secured Transactions			E			
Suretyship			E			
Uniform Commercial Code (Art. 9 Secured Transactions)		E (3 & 9)		E (Art. 1-9)	E	E (Art. 9)
*Criminal Law and Procedure	B	B	B	B	B	B
Texas Rules of Crim. Pro. & Evid.					E	
*Evidence	B	B	B	B	B	B
*Real Property	B	B	B	B	B	B
*Torts	B	B	B	B	B	B
NON-MBE SUBJECTS						
Access to Justice				E		
Administrative Law			E			
Business Associations/Org./Ent. (Corporations - Illinois)	E	E	E	E	E	E
Agency			E			
Partnerships			E			
Commercial Paper			E			
Community Property	E					
Consumer Rights					E	
Equity			E			
Family Law (Dom. Relations – MA)		E	E	E	E	E
Federal Taxation			E			
Florida Bar R&R, Chpts. 4 & 5		E				
Florida Rules of Judicial Admin.		E				
Personal Property			E			
Professional Responsibility	E			E		
Professionalism		E				
Remedies	E					
Unfair or Deceptive Practices				E		
Wills and Succession	E	E	E	E	E	
Descent & Dist. of Estates				E		
Trusts	E	E	E	E	E	E

Bar Exam Content in Alignment with NCBE Job Analysis Survey Results*

	Knowledge, Skills, Abilities and Tasks from the NCBE Job Analysis Survey	Statement DOK	% of Exam		
			Essays and PT	MBE	Total
Section I. Knowledge Domains					
1	Rules of Civil Procedure	2	4%	4%	7%
2	Other Statutory and Court Rules of Procedure	1		4%	4%
3	Rules of Evidence	2		7%	7%
10	Contract Law[1]	2	3%	7%	10%
11	Tort Law	2		4%	4%
12	Criminal Law	2		7%	7%
13	Rules of Criminal Procedure[2]	2			0%
14	Other Privileges[3]	2			0%
15	Personal Injury Law	1		4%	4%
19	Principles of Electronic Discovery[4]	1	1%		1%
20	Real Property Law	2	3%	7%	10%
21	Constitutional Law[5]	2	3%	7%	10%
24	Family Law	2	3%		3%
Section II. Skills and Abilities					
87	Written communication	3	4%		4%
93	Critical reading and comprehension	3	3%		3%
94	Synthesizing facts and law	3	8%		8%
95	Legal reasoning	3	15%		15%
100	Issue spotting	3	1%		1%
108	Fact gathering and evaluation	3	2%		2%
Section III. General Tasks					
123	Identify issues in case	2	2%		2%
	Total		50%	50%	100%

* From draft report for Content Validation Study.

Potential Gap Between Bar Exam Content and NCBE Job Analysis Survey Results*

	Knowledge, Skills, Abilities and Tasks from the NCBE Job Analysis Survey	Statement DOK	Significance (Mean)	% Performing
Section I. Knowledge Domains				
5	Research Methodology	2	2.91	89%
7	*Rules of Professional Responsibility and Ethical Obligations*	3	2.83	93%
8	Statutory Interpretation	1	2.83	86%
9	Document Review/Documentary Privileges	2	2.73	81%
16	Agency Procedural Rules	1	2.34	70%
17	*Law of Business Organizations*	2	2.33	67%
18	Administrative Law and Regulatory Practice	1	2.32	71%
26	Freedom of Information Acts/Public Records	1	2.2	67%
30	Legislative Knowledge	1	2.15	67%
Section II. Skills and Abilities				
92	Using office technologies (e.g., word processing and email)	1	3.56	99%
102	Answering questions succinctly	1	3.3	99%
104	Computer skills	1	3.28	99%
105	Electronic researching	2	3.26	98%
113	Negotiation	1	2.97	87%
114	Resource management	1	2.93	96%
115	Interviewing	1	2.92	91%
118	Attorney client privilege - document reviewing	3	2.84	86%
119	Trial skills	1	2.71	68%
120	Legal citation	2	2.67	95%
122	Non-electronic researching	2	2.27	91%
Section III. General Tasks				
	Management of attorney-client relationship and caseload			
124	Establish attorney-client relationship	2	2.86	76%
125	Establish and maintain calendaring system	1	2.86	78%
127	Establish and maintain client trust account	1	2.52	36%
128	Evaluate potential client engagement	1	2.51	67%
	Research and Investigation			
142	Conduct electronic legal research	2	3.42	96%
143	Research statutory authority	2	3.38	95%
144	Research regulations and rules	2	3.31	96%
145	Research judicial authority	2	3.19	89%
146	Conduct document review	2	3.1	86%
147	Interview client and client representatives	2	3.04	77%
148	Conduct fact investigation	2	2.91	83%
149	Interview witness	1	2.75	69%
150	Research secondary authorities	2	2.7	92%

	Knowledge, Skills, Abilities and Tasks from the NCBE Job Analysis Survey	Statement DOK	Significance (Mean)	% Performing
151	Obtain medical records	1	2.58	61%
152	Conduct transaction due diligence activities	1	2.54	58%
153	Request public records	1	2.53	81%
154	Investigate the background of opposing party	1	2.38	69%
155	Research legislative history	1	2.29	85%
	Analysis and resolution of client matters			
157	Analyze law	3	3.46	97%
158	Advise client	2	3.2	87%
159	Develop strategy for client matter	1	3.13	87%
160	Negotiate agreement	1	2.93	77%
161	Draft memo summarizing case law, statutes, and regulations,	3	2.81	86%
163	Draft demand letter	1	2.6	65%
164	Draft legal opinion letter	2	2.54	76%
165	Draft case summary	2	2.53	80%

* From draft report for Content Validation Study.