The Testing Column
Common Goals with Increasingly Similar Outcomes: Jurisdiction Approaches to Bar Exam Grading, Scoring, and Standards

by Susan M. Case, Ph.D.

Every year, I look forward to receiving the annual edition of the *Comprehensive Guide to Bar Admission Requirements* (the *"Comp Guide"*) in order to pore over my favorite table, the one on Grading and Scoring (Chart 9 in the 2011 edition). Over the past several years, there has been a notable movement toward convergence among the jurisdictions. It is particularly notable that the movement has been consistently in the direction of best practices, as outlined below.

Use of the MBE: Washington will begin using the MBE as part of its adoption of the UBE in July 2013, leaving only Louisiana and Puerto Rico as non-users.

We strongly recommend the use of the MBE because of its psychometric properties. The MBE is a high-quality, standardized examination. Test questions are developed using best practices for test development in high-stakes situations, including review by content experts, review by external reviewers, pre-testing by examinees, professional editing, and professional proofreading. MBE scores are equated so that scores are based solely on the performance of the individual and are not affected by the varying difficulty of the exam or by the varying abilities of examinee groups from one test administration to the next. The reliability of the scores meets the standards of the testing industry.

Of course, it is possible to develop a bar examination without using the MBE. However, any jurisdiction that is not using the MBE should ensure that its examinations are of sufficiently high quality to meet professional testing standards. Best practices require that high-stakes decisions such as those for bar admission be based on scores with reliability and validity such as those demonstrated on the MBE. There is an obligation to use rigorous test development procedures as well as psychometric analyses to investigate the levels of reliability and validity associated with any scores used in bar admissions.

Scaling of the written component to the MBE: All jurisdictions that use the MBE also scale their written component scores to the MBE with the exception of Kentucky, Oklahoma, South Carolina, Wyoming, Palau, and the Virgin Islands. (The Northern Mariana Islands has indicated that it will begin scaling this year.)

We strongly recommend that written component scores be scaled to the MBE. Scaling helps to ensure that the written scores are

not unfairly affected by question difficulty and by examinee group ability that varies from one administration to the next.

Any jurisdiction that is not scaling its written component scores to the MBE should have procedures in place to ensure the consistent meaning of scores over time. I believe that the only appropriate method is to scale the essays to some standardized exam with equated scores.

Weighting of the MBE: Figure 1 shows the distribution of weights used by the jurisdictions; 33 jurisdictions weight the MBE 50%.

We recommend that the MBE be weighted at least 50%. This recommendation is based on our research. Weighting the MBE at least 50% will generate a total score with sufficient reliability to meet testing standards.

Jurisdictions that do not weight the MBE at least 50% should perform the psychometric analyses to ensure that the scores on which decisions are made are sufficiently reliable to meet professional testing standards. For jurisdictions that scale the written component to the MBE, combine the scores, and make a pass/fail decision on the total score, it is this total score that must meet the reliability standard. For jurisdictions that have separate hurdles (e.g., require a particular passing score on the MBE and a separate passing score on the written portion), each of the scores must meet the reliability standard.

Bar Exam Passing Standard: Figure 2 shows the distribution of passing standards on the bar exam. The reported standard for each jurisdiction is recalculated on the MBE scale to facilitate comparisons. For example, a standard of 270 is shown as 135.
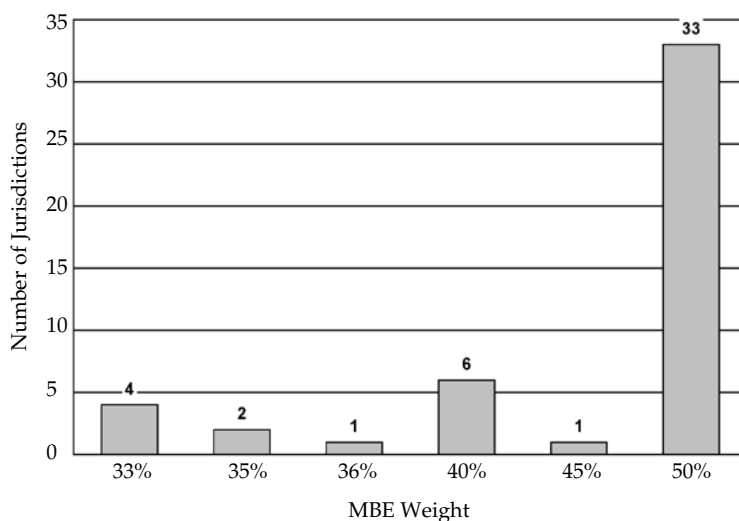

Figure 1: Distribution of the weights assigned to the MBE, as shown in the *Comprehensive Guide to Bar Admission Requirements 2011*, Chart 9, 32–33. (Of the 53 jurisdictions administering the MBE, only 47 report score weights for the MBE.)
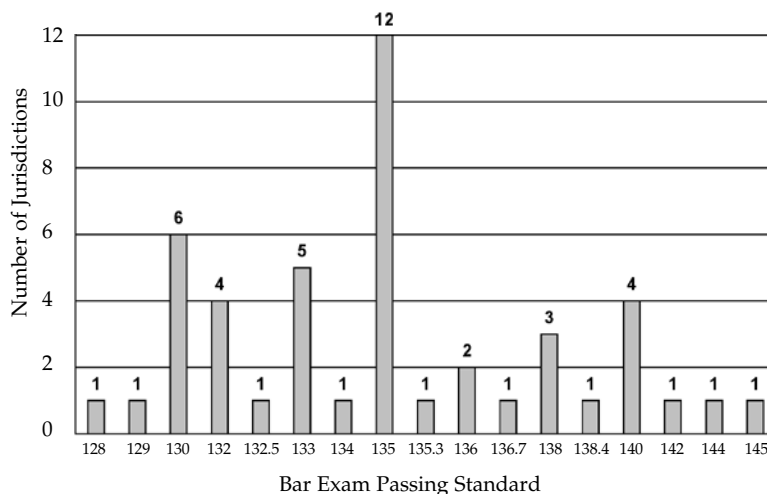

Figure 2: Distribution of bar examination passing standards, expressed on the MBE scale, as shown in the *Comprehensive Guide to Bar Admission Requirements 2011*, Chart 9, 32–33. (Of the 53 jurisdictions administering the MBE, only 46 report minimum passing standards on the MBE scale.)

We do not have a specific recommendation regarding the bar exam passing standard, but it is striking that the range of standards is so broad. The highest standards reported are in Delaware (145) and California (144); the lowest reported are in Alabama (128) and Wisconsin (129). The most common standard is 135.

It seems reasonable to ask why the standards are so different from jurisdiction to jurisdiction. Is there evidence to support the validity of one standard over another? Are there really differences in the practice of law among jurisdictions to suggest that these different standards are appropriate?

MPRE Passing Standard: Figure 3 shows the distribution of passing standards on the MPRE. The most common standard is 85.

The MPRE is used by all jurisdictions except for Maryland, Washington, Wisconsin, and Puerto Rico (Washington will begin using the MPRE in July 2013). Like the MBE, the MPRE is a high-quality, standardized examination developed using best practices and equated to ensure the consistent meaning of scores over time. The reliability is lower than that of the MBE because of the shorter test length.

We do not have a specific recommendation regarding the MPRE passing standard. However, those responsible for determining the standard should understand the score scale. The scale was established to range from 50 to 150; the average score at the time of the first administration was 100. While there is some variability from one administration to the next, a score of 100 reflects a performance of approximately 68 percent
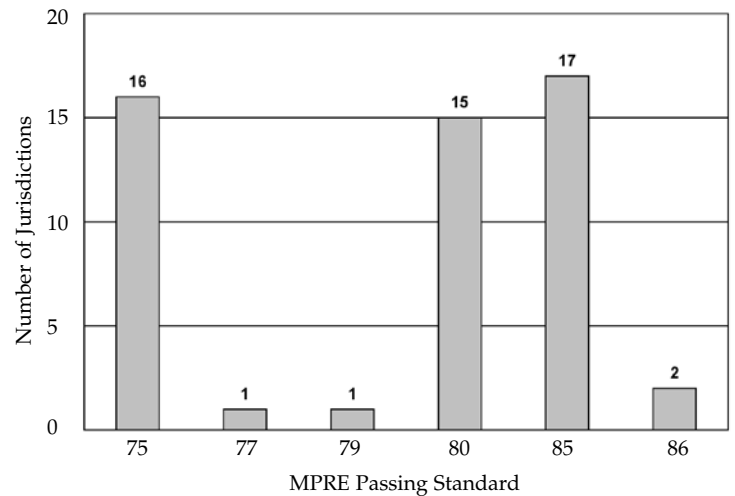

Figure 3: Distribution of MPRE passing standards, as shown in the *Comprehensive Guide to Bar Admission Requirements 2011*, Chart 9, 32–33.

correct. The current standards used by jurisdictions reflect lower performance levels: 85 is approximately 60 percent correct; 80 is approximately 58 percent correct; 75 is approximately 56 percent correct. The difference between an 85 and an 86, for example, is less than one question.

Is the intent among jurisdictions to require examinees to answer 56 to 60 percent of the questions correctly?

Testing for bar admission brings with it the responsibility to ensure that the decisions involved are sound and adhere to psychometric best practices. Each jurisdiction has an obligation to determine whether or not changes should be made to its tests and scoring procedures in order to meet professional testing standards. The *Comp Guide* highlights areas of consistency and areas of difference. Divergent practices should be supported by appropriate analyses. If any jurisdiction would like help with obtaining those analyses, we will be happy to assist. ▣

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