President's Page

by Erica Moeser

Every May the NCBE Board of Trustees takes up the matter of adopting an annual budget, and this May was no exception. As you would expect, a lot of work precedes the approval of each budget. The budgeting process provides the Board an opportunity to affirm its priorities and to set its agenda for the coming year. For the 2011–12 budget just adopted, some of the new initiatives have been under discussion since last fall.

Two items that may be of interest to readers of this magazine come to mind. First, NCBE is launching an ambitious effort to accumulate evidence of test validity. We are dedicating resources to having an outside vendor conduct a content validity study. The first step in the process is a job analysis—a major undertaking that will ask "What do lawyers do?" That inquiry will necessarily flow into "What do lawyers need to know in order to do whatever it is they do?" Ultimately, we will ask "Are we evaluating lawyers in ways that are relevant to entry into the profession of law?"

Since we focus the bar examination as an assessment of the entry-level practitioner, NCBE's job analysis will undertake to determine how new lawyers spend their time in those early years—and then consider what knowledge, skills—and yes, values—are essential.

We are told that law is late to the party when it comes to conducting a content validity study. Other professions have led the way. Of course, we accumulate information that relates to test validity on an ongoing basis. The difference here is that we are on the verge of one large concerted investigation.

The project will involve focus groups, survey development and dissemination, and data crunching. We anticipate that the first phase of the work will take a year to complete. We will be looking not only to new lawyers, of course. It will be important to engage those who observe and supervise entry-level professionals—law firm partners, district attorneys, public defenders, and judges, for example. Obviously, the results of the study can be no better than the quality of its input, and we are already at work putting the pieces in place. In short, we want to get it right.

Once we collect and analyze the data, the project will move on to relating the results to that which we test (as well as how we test it) and that which we don't or can't. Although I do not anticipate any cataclysmic changes in bar examining, I do foresee that we will have more than ample grist for discussions about what the future holds for testing lawyers. I think we are looking at evolution, not revolution. It will be important for bar examiners and courts across the country to participate in and follow these exciting and challenging developments.

In May the Board also committed funds to support a renewed educational offering to law school personnel who work with students in preparation for their first bar examination. This fall NCBE plans an invitational conference aimed at roughly 50 law schools that dedicate resources to helping students approach the bar examination through other than commercial providers.

We do this for several reasons—principally to counteract the mythology and mystery that surround the bar examination, and to fill in the information gap such that those who work directly with law students will be exposed to accurate material about bar examination construction, administration, and grading in ways that will benefit students who might otherwise waste time on efforts that are less productive.

It has not been long since the American Bar Association law school accreditors changed the standards by which law schools are evaluated to permit the granting of law school credit for bar prep courses. As these courses mature, we want to support the delivery of sound information to students. There is important work being done in the law schools, and students are direct beneficiaries of the helping hand that these courses represent. We are already familiar with improved bar passage performance of graduates from certain schools that appears to be attributable to the willingness of some law schools to devote resources to bar prep courses. These courses help students synthesize what they have learned earlier in school and provide critical feedback through assessment of writing and analytical skills via frequent graded exercises.

On another topic, the American Bar Association is circulating a proposal that would establish an LL.M. degree aimed at converting foreign-trained lawyers into candidates eligible to sit for the states' bar examinations. Of course, LL.M. programs already abound, but they are unrestricted as to content; that is, an LL.M. usually has no content distribution requirements such that a foreign-trained lawyer would necessarily be exposed to American common law and legal culture. There is still widespread misunderstanding about LL.M. programs: the ABA does not accredit graduate law programs, and even though from time to time the ABA reminds courts and boards that an LL.M. degree is not a proper substitute for a J.D. degree, many states do recognize an LL.M. as a substitute for a J.D. Only J.D. programs are regulated by the ABA through authorization by the U.S. Department of Education.

The proposal being floated would establish a particular type of LL.M. intended for foreign-trained lawyers. It has already gained some traction. Personally, I have grave reservations about the underlying policy questions that the current version of the proposal attempts to address as well as what I forecast to be its consequences, but what I think is neither here nor there.

I write about this development because it is essential that bar examiners—individually or acting as a body—participate in the process, pro or con. Although the ABA notifies boards and courts about proposals such as this, over the years I have observed that few licensing authorities accept such invitations to submit commentary.

This is an issue for which the expertise of bar examiners is critical. The alternative will be to cede the conversation—and the decisions—to others, whose roles as stakeholders are quite different. This is a time for bar examiners to move from the sidelines and into the action, whether the result is endorsement of the proposal or criticism of it.