

THE EARLY DAYS OF NCBE'S MBE COMMITTEE: REMINISCENCES FROM A FORMER CHAIR

by Douglas D. Roche

David Boyd's article in the September 2012 issue of the *Bar Examiner* on the occasion of the 40th anniversary of the Multistate Bar Examination¹ caused me to reflect on my 20 years as a member of the MBE Committee, 6 as its chair.

Until the early 1970s, the bar exam in Michigan, my state, and in most other states consisted entirely of essay questions prepared by the bar examiners or their agents. My colleagues and I on the Michigan Board of Law Examiners did the best we could, but we had little or no exposure to the science of testing. Adoption of the MBE introduced us to the availability of important quality improvements. These improvements included the use of psychometrics and expert test drafting committees to enhance the quality of the test.

The Conference was as deeply committed to the quality of the MBE in its infancy as it is today. One of the Conference's earliest quality-control efforts was the first MBE content validity study conducted in 1980 (a second study was conducted in 1992). The study, guided by testing professionals and conducted by practicing lawyers and academics who were unaffiliated with the MBE program, affirmed the MBE as a valid means of testing what a newly licensed lawyer needs to know.

When I joined the MBE Committee in 1974, I found myself among able, diligent, and friendly

colleagues. The first chair during my term was John Germany of Florida, one of the fathers of the MBE. John, a very busy and successful lawyer, contributed immense amounts of time and talent to getting the MBE developed and accepted around the country. An unfailingly cordial gentleman, John found the time to mentor a rookie—me. John has remained my friend to this day. The relationships that John developed with bar examiners and Courts throughout the country were very helpful to his successors.

I also fondly recall Joe Covington, the Conference's first Director of Testing. Joe, a former dean of the University of Missouri–Columbia School of Law, also played a significant role in launching the MBE as well as being its great advocate. His reputation and contacts in the law school community enabled him to recruit the very best for the test drafting committees. His talent scout abilities extended to identifying bar examiners who could contribute to the work of the MBE Committee and the Conference.

Sumner Bernstein, an able lawyer from Portland, Maine, succeeded John Germany as MBE chair. One of Sumner's areas of expertise was Real Property. He had served as a member of the MBE Real Property Drafting Committee, and he brought the benefit of this experience to his tenure as chair. Sumner prided himself on being a member of the affably named "New England Mafia," which included Bob Muldoon of Boston and Jack Holt-Harris of Albany, New York. (Although it remains a mystery to me as

to why the New England Mafia included a member from New York....)

I had the honor of succeeding Sumner as MBE Committee chair in 1988. During my term as chair, one of the committee's efforts was to expand our thinking about the bar admissions process by studying licensure requirements in Canada. I was extremely fortunate to have strong and committed committee members such as Greg Murphy of Montana and David Boyd of Alabama, both future chairs of the Conference.

Greg Murphy came to the attention of the Conference when, as a member of the Montana Board of Bar Examiners in the late 1980s, he successfully responded to a petition by some University of Montana law students challenging the MBE in the Montana Supreme Court. The petition asked the Court to rescind its order adopting the MBE. Montana had previously had the diploma privilege, allowing graduates of the University of Montana Law School to be admitted to the bar in Montana without having to take the bar exam. The Court adopted the MBE, and after a few years, the students filed their petition. The Board of Bar Examiners assigned to Greg the task of drafting a response. After filing the board's response, Greg brought the matter to the attention of NCBE, whose president and chair (Dick Julin and Lee Satterfield) expressed interest in contributing information in support of the board's response. Greg argued the case in court, with Dick and Lee also addressing the Court. A few weeks later, the Court denied the students' petition. Greg succeeded me as MBE Committee chair in 1994 and led the committee until 1999 with great ability and dedication.

David Boyd followed Greg as chair from 1999 to 2008, continuing the tradition of excellence. David's enthusiasm for the MBE and the other work of the

Conference is remarkable. (I daresay it might rival his affection for his beloved Crimson Tide.)

The MBE Committee continues its important work under the strong leadership of Franklin Harrison of Florida, chair since 2008 and chair of the NCBE Board of Trustees for the 2012–2013 term.

As I look back on my time with the MBE Committee and the Conference, I must recognize the Conference's three presidents and chief executive officers, Dick Julin, Frank Morrissey, and Erica Moeser.

J. Richard (Dick) Julin, a former dean of the University of Florida Law School, succeeded Joe Covington as the Conference's Director of Testing and, in 1988, was elected the Conference's first president and CEO. Dick excelled in defining his new role. As with Joe Covington, Dick used his connections with academia to maintain the quality of the test drafting committees.

In 1990, Dick was succeeded by Frank Morrissey of Chicago. Frank was largely responsible for having brought the Multistate Professional Responsibility Examination into existence and acceptance in the 1980s.

Erica Moeser, former director of the Board of Bar Examiners in Wisconsin, succeeded Frank in 1994. She led the transfer of the Conference headquarters from Chicago to Madison. She also strengthened the Conference's in-house measurement capabilities. Erica is an innovative force behind recent and future programs.

My 20-year tenure on the MBE Committee had, of course, its share of challenges; occasionally, despite our best efforts, Murphy's Law (apologies to Greg Murphy) intervenes. I remember an earthquake occurring near the test center in Pomona,

California, during the break between the morning and afternoon sessions of the MBE. The Pomona test center was unusable for the afternoon session, and we faced the question of how to determine scores for the Pomona test takers. I recall another interruption in Michigan: a young lady completed the MBE and gave birth to a child before the essay exams the next day. The local press learned of this and asked me what the Michigan Board would do for the lady. I replied that we would send flowers.

My association with the Conference and the opportunity to contribute to the MBE have been highlights of my career. I am grateful for the chance to have served and for the wonderful relationships formed with my colleagues. I extend my best wishes to the Conference for further success in serving the public and the profession. 

NOTE

1. David R. Boyd, *A Milestone Birthday for the MBE*, 81(3) THE BAR EXAMINER 25-30 (Sep. 2012), available at http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2012/810312beBoyd.pdf.



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